1979 January 17

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, DEMETRIADES, SAVVIDES, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

ANDREAS A. POURIS AND 6 OTHERS,

Respondents.

(*Criminal Appeals Nos.* 3932-3938).

Criminal Procedure—Appeal—Right of appeal—Acquittal by Assize Court—Attorney-General has no right of Appeal from an acquittal by Assize Court—Section 25(2) *of the Courts of Justice Law,* 1960 (*Law* 14/60) *does not confer an unqualified right of appeal but one subject to the provisions of the Criminal Procedure Law, Cap.* 155—*Sections* 131 *and* 137(1)(*a*) *of the latter Law.*

The seven respondents in these appeals were tried by the Assize Court of Limassol on four counts charging them with the premeditated murder of four persons. At the close of the case for the prosecution the Assize Court ruled that a *prima facie* case had not been made out against the respondents sufficiently to require them to be called upon and make their defence on any of the four counts of the information and acquitted and discharged all seven respondents of the offences charged under the said counts. The Assize Court, however, were of the view that the evidence adduced by the prosecution disclosed a *prima facie* case against all respondents for offences contrary to sections 40 and 41 of the Criminal Code, Cap. 154 and directed that two new counts be added to the information charging the respondents for offences contrary to the said sections and called upon them to plead to the new counts.

The Attorney-General of the Republic appealed against the above decision of the Assize Court to acquit the seven respondents of the offences of premeditated murder.

At the commencement of the hearing counsel for the re-

spondents raised a preliminary objection to the effect that there was no right of appeal against an acquittal by an Assize Court.

Part V* of the Criminal Procedure Law, Cap. 155, which is the part dealing with appeals, makes no provision for appeal against an acquittal by an Assize Court; and both parties were agreed that whether there is a right for such an appeal or not depends on the provisions of section 25(2) of the Courts of Justice Law, 1960 (Law 14/60) which runs as follows:

"25(2) Subject to the provisions of the Criminal Procedure Law but save as otherwise in this subsection provided every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court.

Any such appeal may be made as of right against conviction or sentence on any ground."

It was argued by the Duputy Attorney-General of the Republic that there is a right of appeal from judgments of acquittal both by District Courts and Assize Courts and that such right is given clearly and unambiguously by s. 25(2) of the Courts of Justice Law, 1960; and that in this respect the relative provisions of the Criminal Procedure Law, Cap. 155 and particularly s. 137 thereof, which limits the Attorney-General's right of appeal against an acquittal to judgments of acquittal by a District Court on the grounds therein specified, has been impliedly repealed and that such right, since the enactment of the Courts of Justice Law, 1960 and by virtue of the provisions of s. 25(2) thereof now covers judgments of acquittal by an Assize Court also.

Held, (*Triantafyllides P. dissenting*) that there is no right

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* The relevant sections are sections 131, and 137(1)(a) which run as follows:
"131(1) Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising Criminal jurisdiction except as provided for by this Law.

(2) There shall be no appeal from an acquittal except at the instance or with the written sanction of the Attorney-General, as in this Law provided.

137(1)(a) The Attorney-General may -

(a) appeal or sanction an appeal from any judgment of acquittal by a *District Court* on any of the following grounds:-

... .

......"

of appeal from an acquittal by an Assize Court and that, therefore, the present appeals do not lie.

Per L. Loizou J., A. Loizou, Malachtos, Demetriades and Savvides, JJ. concurring:

(1) It is to my mind quite clear that the scope of section 25(2) of the Courts of Justice Law, 1960 was to abolish the requirement, for which provision is made in sections 132(1)(b) and (c) and 133(1)(b) of the Criminal Procedure Law, Cap. 155 for leave to appeal against conviction or sentence by any person convicted and sentenced either by a District Court or an Assize Court. If the sentence "every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court" were to be taken in isolation and unqualified it might certainly appear that it did confer a right of appeal from a judgment of acquittal by an Assize Court.

(2) But the whole subsection is expressly made "subject to" the provisions of the Criminal Procedure Law; and these opening words are in my view equivalent to "without prejudice to" the provisions of the Criminal Procedure Law and that the only reasonable explanation why it was thought necessary to introduce them was to keep in force the provisions of the Criminal Procedure Law relating to appeals "save as otherwise in the subsection provided" and cannot reasonably be construed as ousting such provisions by implied repeal. If it were to be held that the right to appeal from a judgment of acquittal by every Court were no longer subject to the provisions of the Criminal Procedure Law it seems to me that this would also mean that the Attorney-General's written sanction, for which provision is made in sections 131(2) and 137(1) of the Criminal Procedure Law, would no longer be a prerequisite to the filing of an appeal against an acquittal by a District Court contrary to the decision in the case of *Xenophontos* v. *Charalambous*, 1961 C.L.R. 122.

(3) On the other hand the sentence "every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court" occurring in the first paragraph of the subsection, upon which the main force of the argument that the Attorney-General's right of appeal from an acquittal is extended to judgments of acquittal by an Assize Court was based, is qualified and explained by the second paragraph of

the subsection which provides that "any such appeal"—that is to say any such appeal as in the preceding paragraph provided—"may be made as of right against conviction or sentence on any ground".

(4) In the light of the above I am not inclined to hold that the provisions of subsection (2) of section 25 can be relied upon in support of the view that they give a right of appeal against an acquittal by an Assize Court in words clear, express and free from ambiguity. On the contrary it seems to me that if the intention of the Legislature was to give an unqualified right of appeal from any judgment of acquittal both by a District Court and an Assize Court such intention could have been expressed in clear and unequivocal terms free from any doubt or ambiguity.

(5) In the result I feel bound to resolve this issue in favour of the respondents and hold that, having regard to the present state of the Law, there is no right of appeal from an acquittal by an Assize Court and that, therefore, the present appeals do not lie.

Per Hadjianastassiou, J., A. Loizou, and Demetriades, JJ. concurring:

(1) The Supreme Court in dealing with the interpretation of s. 25(2), in a series of decisions (see, *inter alia, Georghadji and Another* v. *Republic* (1971) 2 C.L.R. 229) established that that section does not confer an unqualified right of appeal, but a limited one, qualified by the opening words "subject to the provisions of the Criminal Procedure Law".

(2) In my view, these introductory words are intended to save the provisions of the Criminal Procedure Law both as to the form that a criminal appeal may be made, as well as in substance. In *Rodosthenous & Another* v. *The Police*, 1961 C.L.R. 48, it was expressly held that the introductory parts of s. 25(2) require that an appeal should be made in the form envisaged by Cap. 155. But obiter dicta in the same judgment suggested that s. 25(2) must be read, except to whatever extent there is express departure, subject to the provisions of Cap. 155. This was supported by a decision of the High Court delivered shortly afterwards, *viz.*, *Xenophontos* v. *Charalambous*, 1961 C.L.R. 122, where it was expressly decided that s. 25(2) does

not confer an unqualified right of appeal against every decision of the Criminal Court, but a limited one conferred by the express provisions of Cap. 155. Two subsequent decisions of the Supreme Court establish firmly that a right of appeal exists only where it is expressly conferred either by the provisions of Cap. 155, or by the provisions of s. 25(2) of Law 14/60. See *Christofi* v. *Police* (1970) 2 C.L.R. 117 and *Georghadji and Another* (*supra*). In the latter case, it was pointed out that the limitation of the right of appeal in the manner indicated in no way conflicts with the provisions of Article 155.1 of the Constitution because the Constitution does not provide for a right of appeal against all decisions of the Courts of the Republic, but only for such rights as may be conferred by law.

(3) That the only express right of appeal conferred by s. 25(2) is a right of appeal against conviction or sentence.

(4) The expression in s. 25(2) "but save as otherwise provided" would be superfluous if the legislature intended to establish a right of appeal against every decision of a Court exercising criminal jurisdiction. Equally, I think it would be superfluous to make express reference to a right of appeal against conviction or sentence.

(5) I think a comparison of the provisions of s. 25(1) with those of s. 25(2) is again suggestive of legislative intent. In the former case the right of appeal is made subject to the rules of Court without qualification, and in the latter it is extended in the way expressly referred to therein.

(6) Finally, and having regard to the principle enunciated in a number of cases that a right of appeal cannot be invented and the existence of any such right must be found in the express provisions of a statute, I am of the view that the Attorney-General has no right to appeal against a verdict of acquittal by an Assize Court.

Per A. Loizou, J.: The wording of section 25(2) of the Courts of Justice Law, 1960, is not so clear and unambiguous as to enable me to hold that it confers on the Attorney-General, or to anyone else, a right to appeal against an acquittal from a judgment of an Assize Court, which admittedly did not exist under the Criminal Procedure Law, Cap. 155 and in particular Part V thereof, which specially dealt with the right of appeal; nor is

there any clear indication from the words used therein, as it should be in such cases, that this pre-existing provisions were by necessary implication repealed, altered, or modified, thereby.

Appeals dismissed.

Cases referred to:

Healey v. *Ministry of Health* [1954] 3 All E.R. 449 at pp. 453, 454;

Benson v. *Northern Ireland Transport Board* [1942] A.C. 520 at p. 528;

Cox v. *Hakes* [1890] 15 App. Cas. 506 at p. 522;

L. v. *L.* [1962] P. 101 at p. 118;

Corporation of Blackpool v. *Starr Estate Co. Ltd.* [1922] 1 A.C. 27 at p. 34;

Shourris v. *The Republic and Kazantzis* v. *The Police*, 1961 C.L.R. 11 at pp. 12–13;

Xenophontos v. *Charalambous*, 1961 C.L.R. 122, at pp. 125, 126, 127–128;

McNabb v. *United States*, 87 Law. Ed. 819 at p. 827;

R. v. *Georghiades* (1972) 3 C.L.R. 594 at p. 680;

R. v. *Simpson* [1914] L.J. Q.B. Vol. 83, 233 at p. 237;

R. v. *Jefferies* [1968] 3 All E.R. 238 at p. 240;

R. v. *Smith* (*Martin*) [1974] 1 All E.R. 651 at pp. 654–656;

Re Central Funds Costs Order [1975] 3 All E.R. 238 at pp. 241–243;

Varellas and Others v. *The Police*, 19 C.L.R. 46;

The Police v. *Nikola and Others*, 7 C.L.R. 14;

Petri v. *The Police* (1968) 2 C.L.R. 1;

Savva and Another (*No.* 2) v. *The Police* (1977) 12 J.S.C. 2092 (to be reported in (1977) 2 C.L.R.);

R. v. *Ramsgate* (*Inhabitants*) (1827) 6 B. & C. 712;

Barrell v. *Fordree* [1932] A.C. 676 at p. 682;

Hack v. *London Provident Bldg. Society* [1883] 23 Ch. D. 103 at p. 108;

Rodosthenous and Another v. *The Police*, 1961 C.L.R. 48 at p. 49;

Christofi v. *The Police* (1970) 2 C.L.R. 117 at p. 119;

Georghadji and Another v. *The Republic* (1971) 2 C.L.R. 229 at pp. 233, 234;

Lazarou and Others v. *The Police* (1973) 2 C.L.R. 81 at pp. 82–83;

Savva and Another (*No.* 1) v. *The Police* (1977) 12 J.S.C. 2088 at p. 2089 (to be reported in (1977) 2 C.L.R.);

The Republic v. *Kalli* (*No.* 1), 1961 C.L.R. 266 at p. 286;

R. v. *Collins* [1969] 3 All E.R. 1562 at pp. 1563–1564;

The Attorney-General v. *Sillem and Others*, 11 E.R. 1200 at pp. 1207–1208;

R. v. *West Kent Quarter Sessions Appeal Committee. Ex parte Files* [1952] 2 All E.R. 728 at p. 730;

R. v. *London County Justices* [1890] 25 Q.B.D. 357 at p. 360;

R. v. *Duncan* [1880–81] 7 Q.B.D. 198 at p. 199;

Commonwealth of Australia and Others v. *Bank of New South Wales* [1950] A.C. 235 at p. 307;

W. & J.B. Eastwood Ltd. v. *Herrod* (*Valuation Officer*) [1968] 2 Q.B.D. 923 at p. 936; affirmed on appeal: [1970] 1 All E.R. 774;

Corocraft Ltd. and Another v. *Pan American Airways Inc.* [1969] 1 Q.B.D. 616 at p. 638;

Holme v. *Guy* [1877] 5 Ch. D. 901 at p. 905;

The River Wear Commissioners v. *William Adamson and Others* [1976–77] 2 A.C. 743 at pp. 763–765;

The Eastman Photographic Materials Company, Limited v. *The Comptroller-General of Patents, Designs, and Trade-marks* [1898] A.C. 571 at p. 573;

The South Eastern Railway Company v. *The Railway Commissioners, & c., The Mayor, Aldermen, and Burgesses of Hastings* [1879–80] 5 Q.B.D. 217 at p. 240;

Thomson v. *Lord Clanmorris* [1900] 1 Ch. 718 at p. 725;

Pratt v. *Cook, Son and Company* (*St. Pauls*) *Limited* [1939] 1 K.B. 364 at p. 382;

Rex v. *Paddington and St. Marylebone Rent Tribunal*—ex parte *Bell London and Provincial Properties Limited*, 65 T.L.R. 200 at p. 203;

Keates v. *Lewis Merthyr Consolidated Collieries, Limited* [1911] A.C. 641 at p. 642;

Committee for Privileges, Viscountess Rhondda's Claim [1922] 2 A.C. 339 at pp. 368–370;

Attorney-General for Northern Ireland v. *Gallagher* [1963] A.C. 349 at p. 366;

Chandler and Others v. *Director of Public Prosecutions* [1964] A.C. 763 at p. 791;

Themistocles v. *Christophi*, 6 C.L.R. 121;

Electricity Authority of Cyprus v. *Partassides and Others*, 20 (II) C.L.R. 34 at pp. 36–37;

Hinis v. *The Police* (1963) 1 C.L.R. 14 at pp. 25–27;

Petrides and Others v. *The Republic*, 1964 C.L.R. 413 at pp. 424–428;

Eraklides v. *The Police* (1971) 2 C.L.R. 8 at pp. 13–14;

Athanassi v. *The Police* (1974) 2 C.L.R. 7 at pp. 13–14;

Garnet v. *Bradley* [1877] 2 Ex. D. 349 at pp. 351–352;

Ex parte Attwater. In re Turner [1877] 5 Ch. D. 27 at p. 32;

Seward v. *The Owner of the "Vera Cruz"* [1884–1885] 10 A.C. 59 at pp. 68–69;

Kutner v. *Phillips* [1891] 2 Q.B. 267 at pp. 271–272;

Barker v. *Edger and Others* [1898] A.C. 748 at p. 754;

Felton and Another v. *Bower and Co.* [1900] 1 Q.B. 598 at pp. 602–604;

In re Chance [1936] Ch. 266 at pp. 270–271;

In re Berrey. Lewis v. *Berrey* [1936] Ch. 274 at p. 279;

Walker v. *Hemmant* [1943] K.B. 604 at pp. 605–606;

Garnett v. *Bradley* [1877–1878] 3 A.C. 944 at p. 966;

Goodwin v. *Phillips* [1908–9] 7 C.L.R. 1 at p. 16 (decided by the High Court of Australia);

Charnock v. *Merchant* [1900] 1 Q.B. 474 at pp. 476–477;

Pilkington v. *Cooke*, 153 E.R. 1336;

Luby v. *Warwickshire Miners' Association* [1912] 2 Ch. 371 at pp. 380–381;

Ellen Street Estates Limited v. *Minister of Health* [1934] 1 Q.B. 590 at pp. 595–596;

Kouppis v. *The Republic* (1977) 11 J.S.C. 1860, at pp. 1877–1887 (to be reported in (1977) 2 C.L.R.);

Walker v. *The King* (1939) S.C.R. 214;

Lattoni and Corbo v. *The Queen* (1958) S.C.R. 603;

The Queen v. *Sheets*, 16 D.L.R. (3d) 221.

Appeals against acquittal.

Appeals by the Attorney-General of the Republic against the

acquittal of the respondents by the Assize Court of Limassol, sitting at Nicosia (Loris, P.D.C., Hadjitsangaris and Chrysostomis, S.D.JJ.) of the offence of premeditated murder of four persons, contrary to sections 203, 204, 20 and 21 of the Criminal Code, Cap. 154 (as amended by section 5 of Law 3 of 1962).

L. Loucaides, Deputy Attorney-General of the Republic, with *M. Kyprianou*, Senior Counsel of the Republic, and *M. Florentzos*, for the appellant.

A. Eftychiou, for respondents 1 and 3.

M. Christofides, for respondents 2, 4, 6 and 7.

P. Solomonides, for respondent 5.

Cur. adv. vult.

The following Decisions were read:

L. Loizou J. The seven respondents in these appeals filed by the Attorney-General of the Republic were charged before the Assize Court of Limassol sitting in Nicosia with the premeditated murder of the four victims named in the counts of the information.

The information filed on behalf of the Attorney-General of the Republic contained four counts framed under sections 203, 204, 20 and 21 of the Criminal Code, Cap. 154, as amended by section 5 of Law 3 of 1962, each count charging all seven accused that they, on the 16th July, 1974, at the locality Vathy Argaki in the area of the village of Ayios Tychonas, in the district of Limassol, did by an unlawful act, to wit by shooting, cause the death of each of the four victims.

The trial before the Assize Court commenced on the 15th May, 1978, and the case for the prosecution closed on the 11th August, 1978, after the Court had heard the evidence of 123 prosecution witnesses. At that stage counsel appearing for the seven accused informed the Court that they proposed to make a submission of no case under the provisions of section 74(b) of Cap. 155. Then, at the request of counsel appearing on both sides, the Court adjourned the case to the 21st August, 1978, to enable counsel to go through the notes of evidence and prepare their submissions on the question of whether a prima facie case had been made out sufficiently to require the accused to make a defence.

The addresses of counsel were concluded on the 31st August, 1978, and the Assize Court gave its decision under section 74(c) of Cap. 155 on the 8th September, 1978 and expressed the view, and so ruled, that a prima facie case had not been made out against the accused sufficiently to require them to be called upon and make their defence on any of the four counts of the information and acquitted and discharged all seven accused of the offences charged under the said counts.

The Assize Court, however, were of the view that the evidence adduced by the prosecution disclosed a prima facie case against all accused for offences contrary to sections 40 and 41 of the Criminal Code committed by all accused acting in concert on the 15th, 16th and 17th August, 1974, at various areas of the Limassol district and directed that two new counts be added to the information charging the accused for offences contrary to the said sections and called upon them to plead to the new counts.

At the next sitting of the Assize Court on the 11th September, 1978, senior counsel of the Republic appearing for the prosecution made an application on behalf of the Attorney-General of the Republic under section 148(1) of the Criminal Procedure Law to reserve for the opinion of the Supreme Court a number of questions of law which had arisen during the trial. Counsel appearing for the accused objected to the application but the Court being of the opinion that, in view of the mandatory provisions of section 148(1) in the case of an application by the Attorney-General, they had no discretion in the matter, the President of the Assize Court did, on the same day, reserve for the opinion of the Supreme Court the questions of law as applied for and adjourned the proceedings pending the opinion of the Supreme Court on the questions of law so reserved.

On the same day, 11th September, 1978, the seven accused filed appeals Nos. 3923–3929 against the decision of the Assize Court to add the two new counts.

On the 20th September, 1978, the Attorney-General filed the present appeals (Nos. 3932–3938) against the decision of the Assize Court to acquit the seven accused of the offences of premeditated murder.

On the 21st September, 1978, the seven accused filed appeals Nos. 3939–3945 against the decision of the Assize Court to

reserve for the opinion of the Supreme Court the questions of law applied for on behalf of the Attorney-General.

Then on the 2nd October, 1978, Application No. 15/78 was filed on behalf of the Attorney-General for an order of certiorari to remove into this Court for the purpose of its being quashed the ruling of the Assize Court that no prima facie case had been made out against the accused and an order of mandamus directing the Assize Court to call upon the accused to make their defence pursuant to section 74(1)(c) of the Criminal Procedure Law.

On the 19th October, 1978, counsel appearing for accused 2, 4, 5, 6 and 7 filed application 18/78 for an order of cetiorari to remove into this Court and quash the decision and/or ruling of the Assize Court to reserve the questions of law applied for on behalf of the Attorney-General for the opinion of the Supreme Court.

Finally, on the 21st October, 1978, counsel appearing for the other two accused i.e. accused 1 and 3 filed a similar application under No. 20/78 in relation to the same decision and/or ruling of the Assize Court.

All these proceedings were listed before this Court on the 23rd October, 1978.

At the request of the Deputy Attorney-General of the Republic and with the consent of counsel appearing for the respondents the Court agreed that appeals Nos. 3932-3938 filed by the Attorney-General should be taken first.

At the commencement of the hearing counsel appearing for the respondents raised a preliminary objection to the effect that there was no right of appeal against an acquittal by an Assize Court.

After hearing able and extensive argument from counsel on both sides for four days this Court has, at this stage, to decide this preliminary point.

It may be said at the outset that both sides were agreed that an appeal against an acquittal by an Assize Court would only lie if given by the words of a statute which were clear, express and free from ambiguity.

I am in full agreement with the above proposition, which is indeed supported by a wealth of authority, and I do not propose to dwell on this principle at any length.

In the case of *Healey* v. *Ministry of Health* [1954] 3 All E.R. 449, a civil case, in which the question of the jurisdiction of the Court to hear the dispute was heard as a preliminary point and was determined against the plaintiff he appealed to the Court of appeal against such decision. Morris, L.J., as he then was, in the course of his judgment said this: (at p. 453).

> "In my judgment there is no right of appeal to the Court from the determination of the Minister. None is given by reg. 60 or in any other regulation. There can certainly be no implication of a right of appeal. Had it been desired to provide some machinery or procedure for an appeal from the decision of the Minister, it could have been done. Any such prescribed appeal might or might not have been an appeal to the courts. Questions as to which methods for determining rights are the most desirable raise issues of policy which are for Parliament to decide; but the courts cannot invent a right of appeal where none is given. The courts will not usurp an appellate jurisdiction where none is created."

and Parker L.J. (at p. 454) said:

> "A right of appeal is the creature of statute, and the regulations give no right of appeal. Further, the absence of such words as 'whose determination is final' or 'whose determination shall not be called in question in any Court of law' cannot preserve a jurisdiction which apart from such words did not exist."

In *Benson* v. *Northern Ireland Transport Board* [1942] A.C. 520, a Court of summary jurisdiction in Northern Ireland having dismissed a summons under section 15, sub-s.1, of the Road and Railway Transport Act (Northern Ireland), 1935, for contravention of which a fine of 100 L might be imposed, and ordered the complainants to pay a sum in respect of costs, the complainants appealed to quarter sessions, which dismissed the appeal. On a case stated, the Court of Appeal in Northern Ireland held that an offence had been committed and that the decision of the Court of summary jurisdiction should be reversed. The de-

fendants appealed to the House of Lords. The relevant statute was the Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1935, section 24, sub-s.1 of which provided that "an appeal shall lie to a Court of quarter sessions against an order of a Court of summary jurisdiction, in cases of a civil nature by either party whether he is the complainant or defendant, and in other cases by any party against whom an order is made for payment of any penal or other sum, or for any term of imprisonment, or for the estreating of any recognizance to a greater amount than twenty shillings."

The House of Lords held that the order for payment of costs was not "an order ..... for the payment of any penal or other sum" within section 24, sub-s.1, of the Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1935, and accordingly since the case was of a criminal nature there was no right of appeal from the dismissal of the summons.

Viscount Simon L.C., in the course of his speech, after citing a number of authorities on the subject said: (at p. 528)

> "In the light of the above pronouncements, very clear statutory language would be needed to establish, by way of exception to the general rule, a right of appeal from a decision dismissing the criminal charge, and nothing contained in s.24 of the Act of 1935 could establish such an exception.
>
> The conclusion that the dismissal of the complaint is final necessarily leads to the view that the whole of the proceedings from the moment that the resident magistrate discharged the appellant are misconceived. Neither the deputy recorder nor the Court of Appeal in Northern Ireland had any jurisdiction to deal with the matter, and this also applies to the House itself."

In *Cox* v. *Hakes* [1890] 15 App. Cas. 506, another House of Lords case, a clerk having been sued in an Ecclesiastical Court for offences against the ritual of the Church and pronounced guilty of contempt and contumacy, a writ de contumace capiendo was issued, and he was arrested and imprisoned. A rule nisi for a habeas corpus having been granted the Queen's Bench Division made the rule absolute and the clerk was discharged from custody. The Court of Appeal having reversed the order making the rule absolute the case went to the House of

Lords which reversed the decision of the Court of Appeal and restored the decision of the Queen's Bench Division on the ground that the appeal to the Court of appeal was not "in a criminal cause or matter" within section 47 of the Judicature Act 1873; but that no appeal lay to the Court of Appeal under s.19 from an order discharging a person under habeas corpus.

Lord Halsbury, L.C., in the course of his speech said: (at p. 522):

> "My Lords, upon the merits of this appeal I have of course formed no opinion. The preliminary point has alone been argued; and I will only say that if it be true, as one of the parties contends, that there has been a disobedience to the law obstinate and persistent, I have no doubt at all that the law either is or can be made strong enough to deal with it. But Your Lordships are here determining a question which goes very far indeed beyond the merits of any particular case. It is the right of personal freedom in this country which is in debate; and I for one should be very slow to believe, except it was done by express legislation, that the policy of centuries has been suddenly reversed and that the right of personal freedom is no longer to be determined summarily and finally, but is to be subject to the delay and uncertainty of ordinary litigation, so that the final determination upon that question may only be arrived at by the last Court of Appeal."

But whereas, as it emerges from their respective arguments advanced before this Court, the parties were agreed that whether there is a right of appeal against an acquittal by an Assize Court or not depends on the provisions of s.25(2) of the Courts of Justice Law 1960 (Law 14 of 1960) their views were diametrically opposed as regards the interpretation of the section and its true meaning and effect.

It is undisputable that Part V of the Criminal Procedure Law, Cap. 155, which is the part dealing with appeals, makes no provision for appeal against an acquittal by an Assize Court. On the contrary sub-section (2) of section 131 which is the opening section of this Part expressly states that "there shall be no appeal from an acquittal except at the instance or with the written sanction of the Attorney-General, as in this law provided."

The section which deals with appeals by the Attorney-General is section 137 which expressly states that the Attorney-General may appeal or sanction an appeal from any judgment of acquittal by a District Court on the grounds therein enumerated.

The first subsection of section 131 which is framed in more general terms reads as follows:

> "131(1). Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law."

So, as the learned Deputy Attorney-General has submitted, the whole matter starts and finishes in section 25(2) of the Courts of Justice Law, 1960. Indeed, if a right of appeal exists against an acquittal by an Assize Court such right could only emanate from the provisions of this section.

Great emphasis was placed by the learned Deputy Attorney-General of the Republic to a passage from the speech of the Earl of Selborne L.C., in the House of Lords in the *Vera Cruz* [1884] 10 App. Cas. 59 at p. 68, which is repeatedly cited in Maxwell on Interpretation of Statutes, 12th ed. The passage reads as follows:

> "Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from, merely by force of such general words, without any indication of a particular intention to do so."

This passage is cited at p. 160, chapter 7 of Maxwell which deals with presumptions regarding jurisdiction under the heading 'Presumption Against Creating New, and Enlarging Existing Jurisdictions'.

In the same page the learned author also cites the case of *L.* v. *L.* [1962] P. 101. This was a case in which a wife, whose husband had deserted her in 1938, obtained a divorce from him in 1955 but did not then proceed with the prayer for maintenance

and secured provision included in her petition because she was at that time in receipt of specified monthly sums from him under a deed of covenant, made in October, 1953, by which he covenanted to pay such sums during their joint lives or for sevens years, whichever was the shorter period. In 1957, the wife, for her own reasons, opened negotiations for the payment by her former husband of a lump sum in substitution for the monthly sums remaining to be paid under the deed of covenant. She was independently advised and clearly understood and accepted the agreement eventually reached for the payment by her former husband of the lump sum of £660, on four attached conditions. That agreement gave her substantial advantages as compared with the superseded deed of covenant. A consent summons was thereupon taken out on behalf of the husband, and on February 13, 1958, it came before the registrar, who made an order in the form customary since 1940. It recited that the husband having paid and the wife having accepted the sum agreed "in full satisfaction of all present and future rights to maintenance for herself and by consent it is ordered that the petitioner's application for maintenance ..... in the prayer of the petition ..... be dismissed."

On March 8, 1961, the wife, relying on the provisions of section 1 of the Matrimonial Causes (Property and Maintenance) Act, 1958, which had come into force on January 1, 1959, issued a summons, asking for secured provision and maintenance during joint lives. It was in the first instance held that the Act of 1958 had given the Court jurisdiction to award maintenance to a wife on a fresh application although her original application had been dismissed in pursuance of an agreement sanctioned by the Court, and the wife was given leave to file a new claim. Section 1 of the Matrimonial Causes (Property and Maintenance) Act, 1958, provided that "any power of the Court, under the enactments mentioned in the next following subsection, to make an order on a decree for divorce, nullity of marriage or judicial separation shall ..... be excercisable either on pronouncing such a decree or at any time thereafter .....". On appeal by the husband it was held, allowing the appeal, that the Act of 1958 did not give the Court jurisdiction to entertain a fresh application for maintenance by a wife who had in pursuance of an agreement sanctioned by the Court received an agreed capital sum and had her application for

maintenance dismissed. It was further held that the Act of 1958, by section 1, did no more than enlarge the time within which an existing jurisdiction in relation to maintenance awards might be exercised, by enabling the Court to award maintenance either "on" a decree or "at any" time thereafter; and precedent and practice prior to the Act of 1958 tended to show that there was no jurisdiction, once an application for maintenance had been dismissed, to entertain a fresh application or a plurality of applications.

Willmer L.J., in the course of his judgment said: (at p. 118)

> "If, as I think, jurisdiction to maintain such a second application did not exist before, I cannot construe the provisions of the Act of 1958 as conferring it. All that is provided by section 1 is that any power of the Court to award maintenance under section 19 of the Act of 1950 might be exercised either on pronouncing the decree of divorce, or at any time thereafter. That is to say, the section merely enlarges the time within which an existing power of the Court might be exercised ..... If the legislature had intended to confer a new right to make a second application for maintenance in a case where a previous application had been dismissed, it would be reasonable to expect that such a provision would have been expressed in clear and unambiguous terms."

The same passage from the *Vera Cruz* is cited at p. 196 of Maxwell (*supra*) in the chapter dealing with Construction to avoid collision with other provisions under the special heading of the maxim 'Generalia Specialibus Non Derogant'. In the same page is cited the case of *Corporation of Blackpool and Starr Estate Co. Ltd.* [1922] 1 A.C. 27. Lord Haldane in the course of his speech in the House of Lords after referring to the facts had this to say: (at p. 34)

> "My Lords, in that state of matters we are bound, in construing the general language of the Act of 1919, to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general

principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover such cases of the kind I have referred to."

In approaching this issue it is well to bear in mind a passage from the same edition of Maxwell on Interpretation of Statutes, at p. 29, which is in these terms: "Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the Court as to what is just and expedient; words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the Court is to expound the law as it stands, and to 'leave the remedy (if one be resolved upon) to others'."

Section 25(2) of the Courts of Justice Law reads as follows:

"(2). Τηρουμένων τῶν διατάξεων τοῦ περὶ Ποινικῆς Δικονομίας Νόμου πλὴν ὡς ἄλλως προβλέπεται εἰς τὸ ἐδάφιον τοῦτο, πᾶσα ἀπόφασις δικαστηρίου ἀσκοῦντος ποινικὴν δικαιοδοσίαν θὰ ὑπόκειται εἰς ἔφεσιν εἰς τὸ 'Ανώτατον Δικαστήριον.

Πᾶσα τοιαύτη ἔφεσις δύναται νὰ ἀσκηθῇ κατὰ τῆς καταδικαστικῆς ἀποφάσεως ἢ τῆς ἐπιβαλλούσης ποινὴν τοιαύτης δι' οἱονδήποτε λόγον."

and in English

"(2). Subject to the provisions of the Criminal Procedure Law but save as otherwise in this subsection provided every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court.

Any such appeal may be made as of right against conviction or sentence on any ground."

In the case of *Theodoros Panayioti Shourris* v. *The Republic* and *Gregoris N. Kazantzis* v. *The Police*, 1961 C.L.R. p. 11,

the two applicants who had been convicted and sentenced by a Court exercising criminal jurisdiction, applied severally to the then High Court for leave to appeal under the relevant sections of Part V of the Criminal Procedure Law, Cap. 155.

In view of a probable discrepancy between the Greek and Turkish versions of section 25(2) of the Courts of Justice Law, 1960, the question arose whether leave to appeal was required. The discrepancy in question was that whereas in the Greek version it is provided that "..... every such appeal may be made (δύναται νὰ ἀσκηθῇ) against conviction or sentence on any ground" in the corresponding Turkish text the words "hak olarak" are used. The words "hak olarak" mean "as of right". It was held that there is no conflict between the Greek word "δύναται" and the Turkish words "hak olarak" used in the corresponding Turkish text of the subsection in that what is expressed by "hak olarak" in Turkish "as of right" is conveyed by the Greek word "δύναται" used in the Greek version which connotes, when unqualified, not merely the power or ability to appeal but also the legal right to do so and that consequently a person convicted may lodge a notice of appeal in all cases either against conviction or against sentence and that leave of the High Court or any Judge thereof was no longer necessary.

The concluding paragraph of the unanimous short judgment of the Court delivered by O'Briain, P., the then President of the High Court, reads as follows:

> "In the result, this Court is of opinion that in the case of appeal against conviction or sentence the section in question, section 25(2), gives a convicted person the right to appeal from every such decision and leave by this Court or any Judge thereof is no longer a requisite.
>
> .....
>
> In future, no such applications for leave to appeal should be made. A person convicted may lodge a notice of appeal in all cases."

About a month later the case of *Maroulla Xenophontos* v. *Panayiota Charalambous*, 1961 C.L.R. 122 went before the High Court on appeal.

The appellant in this case preferred a charge in the District Court of Nicosia sitting at Morphou against the respondent

charging the latter with insult contrary to section 99 of the Criminal Code, Cap. 154. By reason of the absence of the appellant's advocate when the case was called for hearing, it was dismissed for want of prosecution and the respondent was discharged in accordance with the provisions of section 89(2) of the Criminal Procedure Law, Cap. 155. The complainant appealed from that acquittal.

When the appeal went before the High Court a preliminary objection was raised on behalf of the respondent that the order of the trial Judge amounted to an acquittal and that, accordingly, no appeal lay to the High Court save with the written sanction of the Attorney-General which had not been given as required by sections 131(2) and 137(1)(a) of the Criminal Procedure Law.

Counsel for the appellant argued that the provisions of section 25 of the Courts of Justice Law, 1960, give an unqualified right of appeal from a decision of every Court exercising criminal jurisdiction, including a decision to acquit. It was further contended that since the enactment of that section the written sanction of the Attorney-General referred to in the Criminal Procedure Law, was no longer required, in cases of appeals from judgments of acquittal.

As it appeared to the Court that the rights and privileges of the Attorney-General were directly involved in this argument, the Court, with the consent of the parties, gave notice to the Attorney-General of the point raised by the parties and indicated to him that it would be proper to hear argument, on his behalf, on this point if he desired to be heard and adjourned the case. At the adjourned date the Attorney-General appeared, in person, to argue the matter.

At p. 125 of the report O'Briain, P., says this in relation to the submissions of the Attorney-General:

> "The Attorney-General submitted that section 25, subsection (2) of the Courts of Justice Law, 1960, provides that every decision of a Court exercising criminal jurisdiction is appealable to the High Court, but 'subject to the provisions of the Criminal Procedure Law'. He submitted that the provisions of section 131(2) of Cap. 155 are applicable to this case that section being one of the provisions

of the Criminal Procedure Law relating to acquittals. The effect of his argument was that there is, in a case such as this no appeal except with the written sanction of the Attorney-General as provided in that Law."

and at p. 128 it appears that the Attorney-General, in the course of his argument, stated that the right of appeal conferred upon the Attorney-General by section 137 of the Criminal Procedure Law now extends to acquittals by Assize Courts.

In the course of his judgment the President of the then High Court said: (at p. 126)

"It is, I think, correct that a right of appeal clearly given in unqualified terms in a statute cannot be cut down by provisions of another procedural statute or statutory order. The difficulty arises, from the point of view of the appellant that in section 25 the right of appeal, though clearly given, is no less clearly qualified by the opening words of the sub-section. Furthermore, the concluding sentence of sub-section (2) 'any such appeal may be made as of right against conviction or sentence on any ground' with its significant omission of any reference to acquittal is, in my opinion, a point rather against Mr. Pantelides' s" - counsel' s for the appellant-"argument."

But as the issue before the Court was an acquittal by District Court the Court were not prepared to express an opinion regarding acquittals by Assize Courts and they considered it sufficient in order to determine the preliminary point before them to say that there were not in section 25(2) of the Courts of Justice Law, 1960 any words "clear, express and free from any ambiguity", giving a general right of appeal against acquittals as contended on behalf of the appellant and held that no appeal from an acquittal by a District Court could be brought without the written sanction of the Attorney-General as in the Criminal Procedure Law provided. In the result the appeal was dismissed.

In *Evangelos Christofi* v. *The Police* (1970) 2 C.L.R., p. 117, the appellant appealed against the ruling of the District Court of Limassol whereby it was ruled that a preliminary inquiry be held in the case of the appellant and another person who were charged together in a charge-sheet charging appellant of being

a member of an unlawful association contrary to s.56(1) of the Criminal Code, Cap. 154, and the other person of holding an office in an unlawful association contrary to s.56(2) of the Criminal Code.

Vassiliades P., who delivered the unanimous judgment of the Court of Appeal said: (at p. 119)

> "The first question which arises is whether such an appeal lies. Counsel on behalf of the appellant submitted that the appeal lies under s.25(2) of the Courts of Justice Law, 1960 (No. 14 of 1960) which reads:
>
> .....
>
> The submission on behalf of the appellant is that the decision to hold a preliminary inquiry is a 'decision' of a Court exercising criminal jurisdiction and, therefore, it is subject to an appeal to the Supreme Court.
>
> We find ourselves unable to accept this submission. The section provides that an appeal lies under sub-section (2) 'subject to the provisions of the Criminal Procedure Law', save as 'otherwise provided' in the sub-section. The provisions in the Criminal Procedure Law, Cap. 155, governing appeals in criminal cases, are contained in Part V of the statute, sections 131-153 inclusive. The opening section 131(1) reads:
>
> > '131(1). Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law.'
>
> It is clear, we think, that when sub-section (2) of s.25 of the Courts of Justice Law, refers to 'every decision', this must be read 'subject to the provisions of the Criminal Procedure Law'; and, therefore, it can only refer to 'decisions' which are subject to an appeal under the Criminal Procedure Law. The ruling against which the present appeal is taken, is not, as far as we can see on the basis of the argument that we have heard, such a decision."

In the result the appeal was dismissed.

In *Photini Polycarpou Georghadji and Another* v. *The Republic*

(1971) 2 C.L.R. 229, the appellants appealed against a ruling of the Assize Court of Nicosia refusing an application by the appellants, made in the course of the hearing of a criminal case whereby they sought permission "jointly or separately to enter an appearance through Counsel with the right to summon witnesses and the right to speak." The Supreme Court having heard argument on the issue of jurisdiction of this Court to entertain an appeal against a ruling of this kind was of the view that no appeal could be made to this Court against such ruling and dismissed the appeal.

Triantafyllides, P., in giving the reasons for the judgment had this to say: (at p. 233)

> "As has been stated in the judgment delivered by Vassiliades, P. in the case of *Christofis* v. *The Police* (1970) 2 C.L.R. 117 the effect of s.25(2) of the Courts of Justice Law, 1960 (14/60) is that, save as otherwise provided by the said section (in relation to conviction or sentence), an appeal from a decision of a Court exercising criminal jurisdiction lies only subject to the provisions of the Criminal Procedure Law (Cap. 155).
>
> Sub-section (1) of s. 131 of Cap. 155 lays down that 'Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law.'
>
> Having not been referred, by learned counsel for the Appellants, to any provision in Cap. 155, or in any other enactment, enabling an appeal to be made against the ruling of the Assize Court, which is the subject-matter of these appeals, we reached the conclusion that the Supreme Court has no jurisdiction to deal on appeal with such ruling."

Then after referring and dealing with certain authorities cited the learned President had this to say: (at p. 235)

> "It is, also, interesting to note that soon after the Rodosthenous case there was examined, again, in the case of *Xenophontos* v. *Charalambous*, 1961 C.L.R. 122, the question of the right of appeal under section 25(2) of Law 14/60 and it was held that as the general right of appeal

provided for by section 25(2) is qualified therein by the words 'subject to the provisions of the Criminal Procedure Law' it was not possible to appeal against an acquittal by a District Court without the sanction of the Attorney-General, which is required by virtue of section 131(2) of the Criminal Procedure Law (Cap. 155).

In approaching the issue before us we have borne in mind, also, that the Courts cannot invent a right of appeal where none is given nor will they usurp an appellate jurisdiction where none is created."

In *Loizos Savva & Another (No. 1) v. The Police* (1977)* 12 J.S.C. 2088, an appeal from a decision concerning bail, a preliminary objection was raised by counsel for the respondents to the effect that this Court does not possess jurisdiction to deal with the appeals under s. 157 of the Criminal Procedure Law, Cap. 155. The learned President of this Court in dealing with the submission of counsel had this to say: (at p. 2089)

"He has submitted, in this respect, that, as has been decided in cases such as *Xenophontos* v. *Charalambous*, 1961 C.L.R. 122, *Christofi* v. *The Police*, (1970) 2 C.L.R. 117, *Georghadji and Another* v. *The Republic*, (1971) 2 C.L.R. 229 and *Lazarou and Others* v. *The Police*, (1973) 2 C.L.R. 81, the right of appeal, provided for under s. 25(2) of the Courts of Justice Law, 1960 (Law 14/60), can be exercised in criminal matters on the basis only of the relevant provisions of Cap. 155. We see no reason to disagree with him on this point."

In the textbook 'Criminal Procedure in Cyprus' by A. N. Loizou and G. M. Pikis published in 1975 the authors deal with the right of the Attorney-General to appeal at p. 182. In relation to an appeal against an acquittal by an Assize Court one reads the following:

"It is a moot point whether the Attorney-General has a right to appeal against an acquittal by the Assize Court; there is no precedent on the matter in Cyprus. Traditionally under the Common Law, an acquittal by an Assize Court cannot be questioned on appeal, whereas decisions

* To be reported in (1977) 2 C.L.R.

of lower Courts may be reviewed by means of prerogative orders. The Criminal Procedure Law nowhere expressly confers a right on the Attorney-General to appeal against an acquittal from the judgment of an Assize Court. It is submitted that, in the absence of any express provision conferring on the Attorney-General a right to appeal against an acquittal from a judgment of the Assize Court, the Attorney-General has no right either to appeal or sanction an appeal from such judgment. It must not be forgotten that under the Common Law there is no right to appeal against an order of a Court exercising criminal jurisdiction, unless such right is expressly conferred by statute. There is no right to invent a right to appeal where none is given by statute."

It was forcefully argued by the learned Deputy Attorney-General that there is a right of appeal from judgments of acquittal both by District Courts and Assize Courts and that such right is given clearly and unambiguously by s. 25(2) of the Courts of Justice Law, 1960; and that in this respect the relative provisions of the Criminal Procedure Law, Cap. 155 and particularly of s. 137 thereof which limits the Attorney-General's right of appeal against an acquittal to judgments of acquittal by a District Court on the grounds therein specified has been impliedly repealed and that such right, since the enactment of the Courts of Justice Law, 1960 and by virtue of the provisions of s. 25(2) thereof now covers judgments of acquittal by an Assize Court also.

On the subject of implied repeals one reads the following in Maxwell on Interpretation of Statutes, 12th ed., under the heading "Repeal by implication not favoured" at p. 191:

"A later statute may repeal an earlier one either expressly of by implication. But repeal by implication is not favoured by the Courts. 'Forasmuch', said Coke, 'as Acts of Parliaments are established with such gravity, wisdom and universal consent of the whole realm, for the advancement of the commonwealth, they ought not by any constrained construction out of the general and ambiguous words of a subsequent Act, to be abrogated.' If, therefore, earlier and later statutes can reasonably be construed in such a way that both can be given effect to, this must be done. If, as

with all modern statutes, the later Act contains a list of earlier enactments which it expressly repeals, an omission of a particular statute from the list will be a strong indication of an intention not to repeal that statute. And when the later Act is worded in purely affirmative language, without any negative expressed or implied, it becomes even less likely that it was intended to repeal the earlier law."

And in Craies on Statute Law at p. 366 under the heading "Implied Repeals":

"Where two Acts are inconsistent or repugnant, the later will be read as having impliedly repealed the earlier. The Court leans against implying a repeal, 'unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied. Special Acts are not repealed by general Acts unless there is some express reference to the previous legislation or unless there is a necessary inconsistency in the two Acts standing together'. 'The latest expression of the will of Parliament must always prevail'. It does not matter whether the earlier or the later enactment is public, local and personal, or private, or is penal or deals with civil rights only, and the rule is equally applicable to Orders in Council or Rules of Court if they have statutory force and are made under authority empowering the rule-makers to supersede prior enactments as to procedure. Before coming to the conclusion that there is a repeal by implication the Court must be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together before they can, from the language of the later, imply the repeal of an express prior enactment—*i.e.* the repeal must, if not express, flow from necessary implication."

There is substantive provision in Part V of the Criminal Procedure Law and more particularly in sections 131 and 137 thereof that an appeal by the Attorney-General from a judgment of acquittal is limited to a judgment by a District Court; and the question is whether the wording of s.25(2) of the Criminal Procedure Law, 1960 warrants abrogation of such provision.

Turning now to s. 25(2) it is to my mind quite clear that the

scope of this subsection was to abolish the requirement, for which provision is made in sections 132(1)(b) and (c) and 133 (1)(b) of the Criminal Procedure Law, for leave to appeal against conviction or sentence by any person convicted and sentenced either by a District Court or an Assize Court. If the sentence "every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court" were to be taken in isolation and unqualified it might certainly appear that it did confer a right of appeal from a judgment of acquittal by an Assize Court.

But the whole subsection is expressly made "subject to" the provisions of the Criminal Procedure Law; and these opening words are in my view equivalent to "without prejudice to" the provisions of the Criminal Procedure Law and that the only reasonable explanation why it was thought necessary to introduce them was to keep in force the provisions of the Criminal Procedure Law relating to appeals 'save as otherwise in the subsection provided' and cannot reasonably be construed as ousting such provisions by implied repeal. If it were to be held that the right to appeal from a judgment of acquittal by every Court were no longer subject to the provisions of the Criminal Procedure Law it seems to me that this would also mean that the Attorney-General's written sanction, for which provision is made in sections 131(2) and 137(1) of the Criminal Procedure Law, would no longer be a prerequisite to the filing of an appeal against an acquittal by a District Court contrary to the decision in the *Xenophontos* case (*supra*).

On the other hand the sentence "every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court" occurring in the first paragraph of the subsection, upon which the main force of the argument that the Attorney-General's right of appeal from an acquittal is extended to judgments of acquittal by an Assize Court was based, is qualified and explained by the second paragraph of the subsection which provides that "any such appeal"—that is to say any such appeal as in the preceding paragraph provided—"may be made as of right against conviction or sentence on any ground."

In the light of the above I am not inclined to hold that the provisions of subsection (2) of section 25 can be relied upon in support of the view that they give a right of appeal against an

acquittal by an Assize Court in words clear, express and free from ambiguity. On the contrary it seems to me that if the intention of the Legislature was to give an unqualified right of appeal from any judgment of acquittal both by a District Court and an Assize Court such intention could have been expressed in clear and unequivocal terms free from any doubt or ambiguity.

In the result I feel bound to resolve this issue in favour of the respondents and hold that, having regard to the present state of the Law, there is no right of appeal from an acquittal by an Assize Court and that, therefore, the present appeals do not lie.

HADJIANASTASSIOU J.: In these appeals, the question raised is whether the Attorney-General of the Republic has a right to appeal against the acquittal of the respondents from the judgment of the Assize Court of Limassol—sitting in Nicosia district.

The seven respondents have been accused of the premeditated murder of four victims, and after a long trial lasting for a number of days, they were acquitted by the Assize Court. The Assize Court, *at the close of the case for the prosecution, upheld a* submission of the defence that a prima facie case has not been made out against anyone of the respondents sufficiently to require each to make a defence. The trial Court in upholding that submission had this to say:-

> "...We may as well repeat what we have stated earlier on about the testimony of this witness (Vrountos): We find ourselves unable to act upon his evidence when same stands alone and unsupported by other evidence. So, allegations of Vrountos unsupported by other evidence as to what was said or done to him by any one of the accused have been disregarded by us: such allegations are *inter alia* the alleged words uttered by accused 1 at the road block of Pareklishia (village) at about 4.30-5.00 p.m. of 16th July, 1974, and similarly the alleged explanation given to Vrountos about the latter' s companions by accused 4 at the same place and time.
>
> In connection with the incident at the petrol station of P.W. 92 where accused 7 allegedly said: 'Kamete piso re, simera efaamen Kammian ikosarian, an fame akoma ena

ti pirazi", we must say that such conduct cannot be considered but a mere puffery and boasting which cannot be taken seriously to mean more than a threat in view of the fact that according to the evidence both of Xenias (P.W. 92) and his wife (P.W. 98), despite the fact that accused 7 and his companions were armed and P.W. 92 was unarmed, the former left at the end without even arresting P.W. 92.

We have considered very carefully the conduct of accused 7 in connection with the investigation of this case. We have noted in particular his entries in Exh. 49(k) to the effect that he interrogated P.W. 50 and P.W. 109 about probable use of their excavators in connection with this case, whilst both these witnesses deposed before us that they were never so interrogated. In view, however, of our findings as to the cause of death and in particular the identification of the victims, such conduct, however reprehensible, cannot go beyond a serious suspicion. But as stated in Wills on Circumstantial Evidence, 7th Edition, p. 110:- 'Circumstances of suspicion merely without more conclusive evidence, are not sufficient to justify conviction, even though the party offer no explanation of them.' "

Then the trial Court concluded in these terms:-

" For all the above reasons, we hold the view that a *prima facie* case has not been made out against the accused sufficiently to require them to be called upon to make their defence on any one of the four counts of the present information..... and all accused are hereby acquitted and discharged on counts 1, 2, 3 and 4 of the information."

The Deputy Attorney-General, feeling aggrieved from the judgment of the Assize Court, appealed against that decision on a number of legal points, and claimed that under the provisions of the Courts of Justice Law 1960, sub-section 2 of s. 25, the right to appeal is given clearly and unambiguously against the acquittal of the Assize Court.

Before dealing with the submission of counsel, I consider it pertinent to deal first with the accusatorial system. In Cyprus, the common law accusatorial system of criminal justice has been in force for almost a century and has come to be cherished and respected as a corner stone of fairness. This success should

partly be attributed to the system of criminal procedure that is in force in Cyprus—a system emanating from the English system of criminal procedure, as well as from other countries, adapted in certain respects to suit the conditions prevailing in our country.

In *McNabb* v. *United States*, 87 Law. Ed. 819, Frankfurter, J., dealing with the procedural safeguards, said at p. 827:-

> "The interruption of the trial for this purpose should be no longer than is required for a competent determination of the substantiality of the motion. As was observed in *Nardone* v. *United States*, 308 U.S. 338, 'The civilized conduct of criminal trials cannot be confined within mechanical rules. It necessarily demands the authority of limited direction entrusted to the Judge presiding in Federal trials, including a well-established range of judicial discretion, subject to appropriate review on appeal, in ruling upon preliminary questions of fact. Such a system as ours must, within the limits here indicated, rely on the learning, good sense, fairness and courage of federal trial Judges.'.....
>
> The history of liberty has largely been the history of observance of procedural safeguards. And the effective administration of criminal justice hardly requires disregard of fair procedures imposed by law."

In *R.* v. *Georghiades*, (1972) 3 C.L.R. 594, A. Loizou, J., dealt with a case involving disciplinary proceedings against the applicant, and said at p. 680:-

> "Since the aforesaid judicial pronouncement, the Public Service Law has been enacted. It lays down a procedure which takes cognizance of the aforesaid principles of law and which afford to a civil servant every safeguard of procedural fairness. In fact, it ensures that the civil servant is not only afforded an opportunity to know the case against him throughout the hearing of the case, but also at the preliminary stage of its investigation by an investigating officer. It introduces the accusatorial system followed in criminal proceedings in our country for almost a century and which has come to be cherished and respected as a corner stone of fairness."

It appears, therefore, that the history of liberty has largely

been the history of observance of procedural safeguards, and the effective administration of criminal justice hardly requires disregard of fair procedures. Furthermore, I would add, that because of the Constitution of Cyprus and in particular Part II, the fundamental rights and liberties have played an important part in moulding present-day rules of criminal procedure in upholding in an effective way civil rights and liberties.

With this in mind, the first question is which are the appealable decisions of the District Court and Assize Court liable to appeal before the enactment of Law 14/60. There is no doubt that strict adherence to procedural safeguards is vital for maintaining a healthy system of criminal justice and a prerequisite in effectively upholding some fundamental presumptions deeply rooted in Cyprus in our system, such as the presumption of innocence.

The decisions of the District Courts and the Assize Court liable to appeal are to be found in sections 132, 133, 135 and 136 of the Criminal Procedure Law which define any decision of the trial Courts in the exercise of their criminal jurisdiction, that may be the subject of the appeal. The right to appeal from a judgment of a Court of first instance and other incidental matters relevant to appeals are regulated by the provisions of Part (V) of the Criminal Procedure Law, Cap. 155. The right to appeal against an acquittal from a judgment of the District Court is regulated by the provisions of section 131(1) which says that: "Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law;" and by sub-section 2, "There shall be no appeal from an acquittal except at the instance or with the written sanction of the Attorney-General, as in this Law provided."

I think that the strict regulation of the right to appeal against acquittal by the provisions of the Criminal Procedure Law, Cap. 155, is salutary and consonant with the traditional position at common law that a man should not be tried twice for the same offence.

In *R.* v. *Simpson*, [1914] L.J. Q.B. Vol. 83, 233, Ridley J., delivering the first judgment said at p. 237:-

"In *Reg.* v. *Duncan* 7 Q.B.D. 198, an indictment had been

preferred against the defendant for obstruction of a highway and he had been acquitted. A rule was granted calling upon him to shew cause why the verdict for him should not be set aside and a new trial ordered. In the course of the argument the following observation was made per Curiam:

'Has a new trial ever been granted after acquittal on a criminal charge?' and Mr. Charles, Q.C., who was shewing cause, said, 'No new trial can be granted either after conviction or acquittal.' Lord Coleridge, C.J., in giving judgment said: 'It is plain that we cannot interfere. What may have been the constitutional or legal principles on which the practice was founded it is much too late to inquire. The practice of the Courts has been settled for centuries, and is that in all cases of a criminal kind where a prisoner or defendant is in danger of imprisonment no new trial will be granted if the prisoner or defendant, having stood in that danger, has been acquitted.' In my opinion that is a principle which we ought to be slow to transgress. It is true that in this case the consequences if we reversed the acquittal could not be so serious as they might be in other cases. But we are dealing with a principle of great importance, and if we make an exception in this case it would probably be sought to be extended to others. If a person has stood in peril of a conviction and been acquitted I think we cannot interfere with that acquittal."

It must not be forgotten that under the common law there is no right to appeal against an order of the Court exercising criminal jurisdiction, unless such right is expressly conferred by statute. As it was aptly said, there is no right to invent a right to appeal when none is given by statute. It appears further that the prosecutor has no right to appeal against an acquittal from a judgment of the Assize Court. This was conceded by the Deputy Attorney-General, but he may appeal against a judgment of acquittal of the District Court with the sanction of the Attorney-General. Also, the Attorney-General may appeal on his own motion against a judgment of acquittal of the District Court, independently of who the prosecutor is. But I repeat, the Attorney-General, in the absence of any express provision conferring on him a right to appeal against an acquittal

from the judgment of the Assize Court, has no right either to appeal or sanction an appeal from s· ch judgment.

In *Healey* v. *Ministry of Health*, [1954] 3 All E.R. 449, Morris L.J., dealing with the question of jurisdiction of the Court of Appeal, said at p. 453:-

> "The plaintiff is asking the Court to assume a jurisdiction to overrule the Minister. By raising the preliminary issue the defendant invites the Court to rule now that it is not endowed with any jurisdiction to grant the relief sought. In my judgment there is no right of appeal to the Court from the determination of the Minister. None is given by reg. 60 or in any other regulation. There can certainly be no implication of a right of appeal. Had it been desired to provide some machinery or procedure for an appeal from the decision of the Minister, it could have been done. Any such prescribed appeal might or might not have been an appeal to the Courts. Questions as to which methods for determining rights are the most desirable raise issues of policy which are for Parliament to decide; but the Courts cannot invent a right of appeal where none is given. The Courts will not usurp an appellate jurisdiction where none is created."

Parker, L.J., delivering a separate judgment, had this to say at p. 454:-

> "The issue to be tried is whether the Minister having made a determination, this Court has jurisdiction by declaration, not to declare that his determination is null and void or that it should be quashed, but to make another determination and one in the opposite sense to that made by the Minister. In my opinion the Court has no such jurisdiction. To hold otherwise would be to invest the Court with an appellate jurisdiction, as opposed to a supervisory jurisdiction, which it certainly has not got. A right of appeal is the creatute of statute, and the regulations give no right of appeal. Further, the absence of such words as 'whose deteimination is final' or 'whose determination shall not be called in question in any Court of law' cannot preserve a jurisdiction which apart from such words did not exist."

In *R.* v. *Jefferies*, [1968] 3 All E.R. 238, Widgery, L.J., in dealing with the question of the right of hearing an appeal, had this to say at p. 240:–

> "Whatever may be the powers of Courts exercising a jurisdiction that does not derive from statute, the powers of this Court are derived from, and confined to, those given by the Criminal Appeal Act, 1907. We take it to be a general principle that whenever a party to proceedings dies, the proceedings must abate, unless his personal representatives both have an interest in the subject-matter and can by virtue of the express terms of a statute (or from rules of Court made by virtue of jurisdiction given by a statute) take the appropriate steps to have themselves substituted for the deceased as a party to the proceedings. Although in this case the estate would benefit if the widow were allowed to continue the appeal and were successful, there is no procedure whereby she can be substituted as an appellant, and we do not see how there can be an inherent power in the Court to allow this when the appeal is itself the creature of statute. We would add that not only the wording of s. 3 of the Act of 1907 but the general tenor of the statute as a whole is such as to make the right of appeal strictly personal to the 'person convicted'. Moreover neither the Criminal Appeal Rules, 1908[1], nor any subsequent amendment of them purports to provide procedure for the substitution on the record after the death of the person convicted of someone who could either embark on or continue an appeal."

In *R.* v. *Smith* (*Martin*) [1974] 1 All E.R. 651, Lord Denning, M.R., dealing on appeal with the question of the jurisdiction of the Crown Court, raised this question at pp. 654–656:–

> "What is the position of the Crown Court? It is a Court newly constituted under the Courts Act 1971. It takes the place of the old Courts of assize and of quarter sessions. The judges of the Crown Court are High Court judges, circuit judges, recorders, with the help occasionally of magistrates. The Courts Act 1971 says nothing expressly of the jurisdiction of the Crown Court over solicitors. But

1. S.R. & O 1908 No. 227.

the Act says in terms that the Crown Court is part of the Supreme Court: see s. 1(1); and that it is a superior Court of record: see s. 4(1). It follows that every solicitor, who is admitted to practise in the Supreme Court, is automatically an officer of the Crown Court as well as of the Court of Appeal and of the High Court; and it being a superior Court of record, he is necessarily subject to the jurisdiction of the Court.

The Crown Court has, therefore, as full and ample a jurisdiction over solicitors as the High Court has. It can order a solicitor personally to pay the costs occasioned by his negligence, just as the High Court can. No matter whether the judge is a High Court judge or a circuit judge, he can make such an order.

The remedies in case the Court goes wrong.

But if the Crown Court makes a mistake and orders a solicitor to pay costs when he does not deserve it, what remedy has the solicitor got? This raises the wide question: if a person is aggrieved by an order made by the Crown Court, what is his remedy? How can it be put right?

(i) *The Divisional Court.* The first question is whether he has any recourse by applying to the Divisional Court. The answer is this: seeing that the Crown Court is a superior Court of record, the remedies of certiorari, mandamus and prohibition do not lie to it: see *Ex parte* Fernandez[1]; *R.* v. *Justice of the Central Criminal Court ex parte* London County Council[2]; except insofar as the statute may so provide. In s. 10 of the Courts Act 1971; the statute does provide for a case stated, or mandamus, prohibition or certiorari, in matters which do not relate to trial on indictment. There are many matters falling under this head, such as summary offences, licensing matters, and so forth. But no such jurisdiction is given in respect of 'matters relating to trial on indictment'. They are expressly excluded. So there is no recourse to the Divisional Court for them.

1. [1861] 10 C.B.N.S. 3.
2. [1925] 2 K.B. 43 [1925] All E.R. Rep. 429.

(ii) *The Court of Appeal.* So far as trials on indictment are concerned, the only remedy, so far as I can see, is that given by the Criminal Appeal Acts to the criminal side of the Court of Appeal. These give an appeal to a 'person convicted'; see ss.1(1) and 9 of the Criminal Appeal Act, 1968. He can appeal after he is convicted. But not before. It seems that there is no appeal against an interlocutory order: see *R.* v. *Collins*[1]. This may, at first sight, seem surprising, but on consideration, there is much to be said for it. The trial Judge should have the final word on such matters as adjournments, joint or several trials, bail, particulars and so forth. The only remedy is this: in case a trial Judge should make a mistake on an interlocutory matter, such as to cause injustice, the man can appeal against his conviction, and it will be taken into account at that stage: see *R.* v. *Grondowski and Malinowski.*[2] But save in this way, there is no appeal to the Court of Appeal against an interlocutory order.

Nor is there any appeal to the Court of Appeal against any other order, judgment or decision of the Crown Court which relates to trial on indictment: see s. 10(1)(a) of the 1971 Act. Take a case where an accused man, who was acquitted, applied for costs. The circuit judge refused it. The man sought to upset his decision by means of certiorari. The Divisional Court held that it was a decision 'relating to trial on indictment' and no appeal lay by case stated, certiorari or any other way: see Ex parte Meredith[3]. Likewise, when a circuit judge ordered two men, who had been acquitted to make a contribution towards the costs of their defence. They applied for certiorari to quash. The Divisional Court held that the decision related to 'trial on indictment' and that there was no remedy by certiorari or in any other way: see R *v.* Crown Court at Cardiff, *ex parte* Jones[4].

.....

(iii) *The result.* Speaking generally, it appears that in matters relating to trial on indictment, there is no recourse

1. [1969] 3 All E.R. 1562; [1970] 1 Q.B. 710.
2. [1946] 1 All E.R. 559.
3. [1973] 2 All E.R. 234.
4. [1973] 3 All E.R. 1027.

from the Crown Court to any higher Court save by the person convicted. But in matters which do not relate to trial on indictment there is recourse to the Divisional Court by any party aggrieved on a point of law or for excess of jurisdiction.

Then what about the present order on a solicitor to pay the costs personally? Is that order one 'relating to trial on indictment'? The words 'relating to' are very wide. They are equivalent to 'connected with' or 'arising out of'. So interpreted, they cover the present case. The order against the solicitors arose out of a trial by indictment. It related to the adjournment of it. It was, therefore, an order 'relating to trial on indictment'.

But, if I am wrong about this—if the order against the solicitors was not a matter relating to trial on indictment—the solicitors could have recourse to the Divisional Court.

Conclusion.

In my opinion the circuit judge (sitting in the Crown Court to try a case on indictment) had jurisdiction to order the solicitors to pay the costs personally; but there is no procedure by which the solicitors can challenge the order in any higher Court. This seems to me very unfortunate. But we can, I think, do something to remedy the injustice. We can express our views on the matter in the hope that what we say may be heeded by those concerned."

In *Re Central Funds Costs Order* [1975] 3 All E.R. 238, a private prosecution was brought by B against the defendant. In consequence the defendant was convicted at the Central Criminal Court. Following the conviction an order was made that the prosecution costs should be paid out of central funds pursuant to s. 3a of the Costs in Criminal Cases Act 1973. On taxation the Crown Court allowed a lesser sum to B than the substantial costs that he had in fact incurred and that he had asked for. He then sought leave to appeal to the Court of Appeal, Criminal Division, against the taxation order of the Crown Court. The Court of Appeal, Criminal Division, held that it had no statutory or inherent jurisdiction to hear an appeal against the taxation by the Crown Court of a prosecutor's costs. Lord Widgery, C.J. having heard the contention of counsel, dismissed the motion and said at pp. 241-242:-

"But none of those to my mind even begins to show that we are exercising, or are entitled to exercise, a general supervision over the Crown Court from this Court, the Court of Appeal, Criminal Division.

The other way in which Mr. Bennion seeks to support his contention is to take us through a number of cases and a number of definitions in the dictionaries supportive of the view that a superior Court has powers of supervision, and that such powers of supervision can go to costs. ...

In our opinion the matter is finally put beyond argument by reference to the recent authorities to which counsel appearing as amicus curiae has drawn our attention." ... (See *R.* v. *Jefferies; R.* v. *Collins and R.* v. *Smith* (*supra*)).

Finally, his Lordship, having relied on the authorities quoted earlier, said at pp. 242–243:–

" I think it remarkable that we have progressed through so many years without this difficulty having come to light before. It may be because few private prosecutors have put up the amount of money that Mr. Bennion has in this case, and it is no doubt high time that the question of taxation of the prosecutor's costs should be carefully considered, and carefully considered in the light of the fact that we may be talking about really large sums of money. The days are past when matters of costs could be brushed aside as being unimportant additions to the really interesting argument. The amount of money involved in this case and others of its kind is such that the recipient of its costs must be protected by a proper system of appeal so that the costs are assessed by a person knowledgeable in the subject, and that there is one appeal which involves the consideration of the matter by another knowledgeable person."

Having reviewed and analysed the law in the different sets of cases quoted earlier in this judgment, I have reached the conclusion that the Attorney–General of the Republic is not given a right of appeal under the Criminal Procedure Law from a decision of acquittal of the Assize Court. I would, therefore, find myself in agreement with counsel on this issue.

The second question is whether, having regard to the wording of s.25(2) of Law 14/60, an accused person or a prosecutor is

entitled to appeal against every decision of a Court exercising criminal jurisdiction. There cannot be any doubt that the said enactment confers an unfettered right to appeal against conviction and sentence on any ground, and it is now clear that those provisions of the Criminal Procedure Law that deal with applications for leave to appeal against conviction and/or sentence must be treated as having been abolished by necessary implication. I am aware, of course, that the Courts lean against the principle of repeal by implication, but our Supreme Court has accepted such principle [1]. In *Rodosthenous and Another* v. *The Police*, 1961 C.L.R. 48, it was held that an application to the High Court for a review of the decision of a lower Court as to bail, is, in fact, an appeal under s. 25(2) of the Courts of Justice Law 1960, against such decision, and the provisions, therefore, of ss. 138 and 139 of the Criminal Procedure Law, Cap. 155 relating to appeals should be complied with. O'Brian P., delivering the unanimous judgment of the Court, had this to say:-

> "The Court has considered what to do in this matter which, unfortunately, is complicated by the fact that some decisions of the former Supreme Court have treated these applications in the nature of revisional applications without strictly defining them as appeals or as applications to the jurisdiction of the Court for bail. The matter is further complicated, or rather becomes so, by reason of the fact that the Court sitting to-day is dealing with the first such application since the Courts of Justice Law, 1960, and the Constitution were enacted, and has to consider carefully the question of setting a precedent. As we understood Mr. Pavlides, he has put this application to the Court as an application to review the decision of the learned District Jurdge and we take the view that that, in effect, means that that is an appeal against his order. We are satisfied, having considered this matter, that having regard to the terms of the Courts of Justice Law, section 25, we have jurisdiction to entertain such an appeal. Section 25(2) commences with the words 'subject to the provisions of the Criminal Procedure Law' and the relevant provisions of the Criminal Procedure Law relating to appeals appear to be sections 138 and 139. It is clear that this application

1. See *Shourris* v. *The Republic and Kazantzis* v. *The Police*, 1961 C.L.R. 11.

is not in compliance with sections 138 and 139. We are faced with the express provision of section 138 that no notice of appeal shall be valid unless it complies with the requirements of this section.

The Court has carefully considered the matter, and having made due allowance for the difficulty that the applicants found themselves in, by reason of the matters referred to and terminology of the language in some of the judgments, we think that the proper thing to do is to hold that this matter is not properly before the Court, as an appeal, by reason of not complying with the sections that I have mentioned.

The Court, however, having regard to the fact that it is a matter involving the liberty of the citizen, is prepared to give every facility to the parties to put the case in the list and to have it heard at the earliest possible moment after they lodge notices of appeal in a proper form setting out the grounds of appeal."

In view of the difficulties which the Court faced in that case, the Court, in *Georghadji & Another* v. *The Republic*, (1971) 2 C.L.R. 229, held that the Ruling of the Assise Court refusing application to enter an appearance..... was an interlocutory matter, and no appeal lies against such ruling. Triantafyllides, P., in delivering the judgment of the Court of Appeal, said that the Court possessed no jurisdiction to entertain the present appeals, and added at pp. 233-234:-

" As has been stated in the judgment delivered by Vassiliades, P. in the case of *Christofis* v. *The Police* (1970) 2 C.L.R. 117 the effect of section 25(2) of the Courts of Justice Law, 1960 (14/60) is that, save as otherwise provided by the said section (in relation to conviction or sentence), an appeal from a decision of a Court exercising criminal jurisdiction lies only subject to the provisions of the Criminal Procedure Law (Cap. 155).

Sub-section (1) of section 131 of Cap. 155 lays down that 'Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law.

Having not been referred, by learned counsel for the appellants, to any provision in Cap. 155, or in any other enactment, enabling an appeal to be made against the ruling of the Assize Court, which is the subject-matter of these appeals, we reached the conclusion that the Supreme Court has no jurisdiction to deal on appeal with such ruling.

Counsel for the appellants submitted that we possessed jurisdiction to entertain these appeals even in the absence of any specific statutory provision to that effect. He contended in this respect that though no provision for an appeal against a decision refusing bail exists in the relevant Part—Part V—of Cap. 155 yet such an appeal was entertained, after the coming into force of Law 14/60, in the case of *Rodosthenous and Another* v. *The Police*, 1961 C.L.R. 50."

Then, the learned President, having dealt with the submission of counsel, came to the conclusion that it was not a valid one and in doing so, he reviewed the cases of *Varellas and Others* v. *The Police*, 19 C.L.R. 46; *The Police* v. *Nikola and Others*, 7 C.L.R. 14; *Petri* v. *The Police*, (1968) 2 C.L.R. 1, *Xenophontos* v. *Charalambous*, 1961 C.L.R. 122. Finally, he added that "In approaching the issue before us, we have borne in mind, also, that the Courts cannot invent a right of appeal where none is given nor will they usurp an appellate jurisdiction where none is created."

In England, as I have shown earlier, the Criminal Justice Act, 1968, does not refer to interlocutory appeals, and the Appeal Court, in *R.* v. *Collins* (*supra*), held that it had no inherent power to deal with interlocutory appeals. On the other hand, in Cyprus it was said that in general there is no right to appeal against interlocutory orders of a Court exercising criminal jurisdiction because a decision is not final. But the Supreme Court, however, consistently held or assumed that it had such power and that there was a right of appeal by both sides against a decision of bail. I must confess—speaking for myself—that we have never clearly indicated the grounds upon which such jurisdiction was exercised. I repeat that we had assumed jurisdiction and rested our reasoning on the necessity of reviewing such decisions on appeal because of their implications on

the liberty of the subject. I fully agree, however, that a decision on the question of bail is not final, in the sense that it does not dispose of the charge, if any, against the accused, and is neither a conviction in any true sense of the word. Furthermore, it is also correct to say that decisions on bail cannot be said to be within the provisions of sections 132-133 of the Criminal Procedure Law.

In the case of *Lazarou and Others* v. *Police*, (1973) 2 C.L.R. 81, it was held that there was no right to appeal against an order of the Judge remanding the accused in custody over an adjournment of a criminal case. Triantafyllides, P., having repeated that s. 25(2) of Law 14/60 does not create an unlimited right of appeal in criminal cases but only a right of appeal regulated by Cap. 155, in dismissing the appeal, said at p. 82:-

> " We do not propose to refer to other cases in the past in which appeals against remand orders were entertained; because none of them involved a remand order at a stage of the proceedings such as the one in the present case. In the absence of any authority to the contrary—and none was cited—we are of the opinion that it is not possible to construe section 157 in such a manner as to deduce from its provisions that we possess jurisdiction thereunder to interfere on appeal with an order for remand in custody made on the adjournment of the hearing of a criminal case by another Court exercising criminal jurisdiction."

Pausing here for a moment, if the effect of detention was at the root of the appellate jurisdiction exercised in respect of decisions as to bail, the Supreme Court has not consistently upheld this as a reason for conferring jurisdiction to the said Court to hear an appeal against detention.

In *Savva and Another (No. 1)* v. *The Police*, (1977)* 12 J.S.C. 2088, a case of bail, Triantafyllides, P., dealing with the objection of counsel for the respondents that the Court of appeal did not possess jurisdiction to deal with those appeals under s. 157 of the Criminal Procedure Law, Cap. 155, said at p. 2089:-

> "He has submitted, in this respect, that, as has been decided in cases such as *Xenophontos* v. *Charalambous*, 1961

* To be reported in (1977) 2 C.L.R.

C.L.R. 122, *Christofi* v. *The Police*, (1970) 2 C.L.R. 117, *Georghadji and another* v. *The Republic*, (1971) 2 C.L.R. 229 and *Lazarou and others* v. *The Police*, (1973) 2 C.L.R. 81, the right of appeal provided for under section 25(2) of the Courts of Justice Law, 1960 (Law 14/60), can be exercised in criminal matters on the basis only of the relevant provisions of Cap. 155. We see no reason to disagree with him on this point.

He has, however, went on to argue further that in dealing with the present appeals we would not be a 'Court exercising criminal jurisdiction', in the sense of section 157(1) of Cap. 155, and, consequently, we are not vested with jurisdiction to entertain them. It seems that counsel for the respondents thought fit to raise this objection regarding our jurisdiction in view of the fact that in *Leftis* v. *The Police*, (1973) 2 C.L.R. 87, we chose not to pronounce finally in this connection."

Then, the learned President, having referred to *Varellas and Others* v. *The Police*, 19 C.L.R. 46, continued as follows:-

"...the Supreme Court did not sustain the objection and proceeded to deal with an appeal concerning bail. Since the *Varellas* case appeals of this kind were made both by persons in custody, to whom bail had been refused, as well as by the police, in cases in which bail had been granted, and in all those cases, to which we need not refer specifically, the appeals were entertained and decided, without any objection as to jurisdiction having been raised. Thus, a practice was established on the basis of what was decided in the *Varellas* case; but, of course, such practice cannot, in our view, be treated as being of so conclusive a nature as to preclude counsel for the respondents from reverting to the subject of the correct construction of section 157(1) of Cap. 155.

What we have been called upon to decide is whether in dealing with the present appeals we are a 'Court exercising criminal jurisdiction' in the sense of that section; though admittedly this is an issue which did present some difficulty, we have, in the end, reached the conclusion that, since any Court, when dealing at any stage with an application for bail, is exercising for this purpose criminal juris-

diction, we, too, when sitting on appeal from a decision concerning bail, are exercising, to the required limited extent, criminal jurisdiction in the sense of section 157(1) of Cap. 155; in our opinion this view is the one which is the most consonant with the protection of the interests of justice in general and of the liberty of the subject in particular; and it coincides, too, with the proper construction of section 157(1), above.

We hold, therefore, that we have jurisdiction to proceed to deal with these appeals on their merits."

With respect, I was a member of this Court also, as well as in the case of *Loizos Savva and Another (No. 2)* v. *The Police*, (1977)* 12 J.S.C. 2092, and I take it that we have assumed jurisdiction to proceed to deal with those appeals, because the said decisions involve the liberty of the subject who would remain in prison without a trial. Whether such a practice can be considered as anomalous, I think it is too late now to try and change the position as presented in a number of judicial authorities of this Court regarding the right of appeal in Cyprus.

Turning now to the question as to whether having regard to the true construction of s. 25(2) of the Courts of Justice Law, 1960, the Attorney-General is entitled to appeal against the acquittal of the Assize Court, it has been said that the first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and, otherwise, in their ordinary meaning, and the second, that the phrases and sentences are to be construed according to the rules of grammar. "It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed." See *R.* v. *Ramsgate (Inhabitants)*, [1827] 6 B. & C. 712, per Bayley, J.

Furthermore, it was said that from those presumptions it is not allowable to depart where the language admits to no other meaning. Nor should there be any departure from them where the language under consideration is susceptible to another meaning, unless adequate grounds are found, either in the hi-

* To be reported in (1977) 2 C.L.R.

story or cause of the enactment or in the context or in the consequences which would result from the literal interpretation, for concluding that that interpretation does not give the real intention of the legislator. If there is nothing to modify, nothing to order, nothing to qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. "The safer and more correct course of dealing with a question of construction is to take the words themselves, and arrive, if possible, at their meaning, without in the first place, reference to cases." (See *Barrell & Fordree*, [1932] A.C. 676, 682, per Warrington, L.J.; see also *Hack* v. *London Bldg. Society* [1883] 23 Ch. D. 103, 108; see also Maxwell on Interpretation of Statutes, 11th edn., at pp. 3 & 4).

With this in mind, I will also deal with *Mary Seward and The Owner of the "Vera Cruz"*, [1884] 10 A.C. 59 H.L. In this case, the Admiralty Court Act, 1861 (24 Vict. c. 10) which by s. 7 gave the Court of Admiralty "Jurisdiction over any claim for damages done by any ship" did not give a jurisdiction over claims for damages for loss of life under Lord Campbell's Act (9 & 10 Vict. c. 93); and the Admiralty Division cannot entertain an action in rem for damages for loss of life under Lord Campbell's Act.

In confirming the decision of the Court of Appeal and dismissing the appeal, Earl of Selborne, L.C. said at pp. 68–69:–

> " Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. For that principle I may refer to *Hawkins* v. *Gathercole* 6 D.M. & G. 1. That case arose under the judgment Act, 1 & 2 Vict. C. 110, s. 13, which provided that a judgment should be binding, *inter alia*, on all the interest of the debtor in 'lands, tenements, rectories, advowsons, tithes', and so forth, and that for the amount of the judgment these different descriptions of property to which he might be entitled should be charged in the same manner as if 'the person against whom the judgment should have

been entered up had power to charge the hereditaments, and had by writing under his hand agreed to charge them with the amount of the debt'. The question arose as to an ecclesiastical benefice. By the restraining Act of Elizabeth a clergyman had no power to charge his benefice, but Lord Cranworth thought, when the case came before him in the first instance, that those words in sec.13 relieved him from the want of power indirectly in that particular case, and in favour of the creditor did away with the effect of the restraining Act of Queen Elizabeth, putting him in the situation of a man who could charge, and who had charged. But that decision was reversed: it was held that all those general words about tithes and rectories, and so on, were capable of a reasonable application to subjects not affected by any particular legislation; and that the statute of Elizabeth, not being referred to in any way, the Act being in diversa materia, and not containing the slightest indication of any such intention, was not unnecessarily to be repealed or altered by such general words. I need not read more from the case than the words of Turner L.J. (6 D.M. & G. 31). 'Can', he says, 'the Statute of Elizabeth be held to be practically repealed' (and of course alteration in any important particulars is pro tanto the same) 'by such general words as are contained in the 13th section of this statute? I venture to think that it cannot, grounding that opinion upon the authorities to which I have generally referred, and adding to them the 11th Case in Jenkins, fifth century, in which it is thus said, 'A special statute does not derogate from a special statute without express words of abrogation.' To me it seems to be not only easy but right to construe the words in the Act of 1861 in a sense in which they are quite inapplicable to this particular cause of action, and leave all the provisions of Lord Campbell's Act in full force and effect, not modified or interfered with; because in truth 'damage done by any ship' was a form of expression naturally applicable to that description of damage, maritime damage, as to which, in cases falling within the jurisdiction of the Admiralty Court, the ship was treated as, so to say, in delicto, and was liable to a proceeding in rem, such as the 35th section contemplated.

I think that I have said all that is really necessary. The

argument from the Merchant Shipping Act, as it appears to me, manifestly fails."

With respect, I would fully endorse and follow the principle enunciated in that case. In reaching my own conclusion as to the correct meaning of s. 25(2) of Law 14/60, I shall certainly bear in mind the words of the Lord Chancellor, and I would be guided by such a far reaching statement of the law.

The Deputy Attorney-General, in his full and able argument, put forward a number of propositions, and tried to persuade this Court that the new enactment gives such right to the Attorney-General to appeal against the acquittal of the Assize Court; and that it is in the interest of justice that he should possess the right to appeal against both convictions and acquittals from the decisions of all Courts. This, he argued, is also within the new constitutional structure calling for a right to an appeal against both conviction as well as acquittal, thus safeguarding at a final stage, through the special structure of the Supreme Court, the constitutional balance of bi-communal justice. See Article 155.3 and 159.4 of the Constitution.

I think it is no disrespect not to deal with each separate submission counsel has put forward—certainly he has done his very best in arguing this appeal.

Now, section 25(2) of Law 14/60 says:

" Subject to the provisions of the Criminal Procedure Law but save as otherwise in this subsection provided every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court.

Any such appeal may be made as of right against conviction or sentence on any ground."

Counsel, in trying to construe the provisions of that section, said that the words "but save as otherwise in this sub-section provided" have one true meaning only, and that is that whatever it follows prevails over any procedural or other limitation or restriction of Cap. 155; and that where there is a conflict, section 25 of the Courts of Justice Law prevails.

I have considered very carefully all the contentions of counsel for the appellant, and in giving the words of this section their

ordinary meaning, I have reached the conclusion that his arguments fail for the following reasons:

(1) The Supreme Court in dealing with the interpretation of s. 25(2), in a series of decisions established that that section does not confer an unqualified right of appeal, but a limited one, qualified by the opening words "subject to the provisions of the Criminal Procedure Law".

In my view, these introductory words are intended to save the provisions of the Criminal Procedure Law both as to the form that a criminal appeal may be made, as well as in substance. In *Rodosthenous & Another* (*supra*), it was expressly held that the introductory parts of s. 25(2) require that an appeal should be made in the form envisaged by Cap. 155. But obiter dicta in the same judgment suggested that s. 25(2) must be read, except to whatever extent there is express departure, subject to the provisions of Cap. 155. This was supported by a decision of the High Court delivered shortly afterwards, *viz.*, *Xenophontos* v. *Charalambous* (*supra*), where it was expressly decided that s. 25(2) does not confer an unqualified right of appeal against every decision of the Criminal Court, but a limited one conferred by the express provisions of Cap. 155. Two subsequent decisions of the Supreme Court establish firmly that a right of appeal exists only where it is expressly conferred either by the provisions of Cap. 155, or by the provisions of s. 25(2) of Law 14/60. See *Christofi* (*supra*) and *Georghadji and Another* (*supra*). In the latter case, it was pointed out that the limitation of the right of appeal in the manner indicated in no way conflicts with the provisions of Article 155.1 of the Constitution because the Constitution does not provide for a right of appeal against all decisions of the Courts of the Republic, but only for such rights as may be conferred by law. I think I have said enough in order to show that the right of appeal is a creation of the legislature.

(2) that the only express right of appeal conferred by s. 25(2) is a right of appeal against conviction or sentence;

(3) the expression in s. 25(2) "but save as otherwise provided" would be superfluous if the legislature intended to establish a right of appeal against every decision of a Court exercising criminal jurisdiction. Equally, I think it would be superfluous

to express reference to a right of appeal against conviction or sentence.

(4) I think a comparison of the provisions of s. 25(1) with those of s. 25(2) is again suggestive of legislative intent. In the former case the right of appeal is made subject to the rules of Court without qualification, and in the latter it is extended in the way expressly referred to therein.

Finally, and having regard to the principle enunciated in a number of cases that a right of appeal cannot be invented and the existence of any such right must be found in the express provisions of a statute, I am of the view that the Attorney-General has no right to appeal against a verdict of acquittal by an Assize Court.

I think I ought not to conclude this judgment without saying how much I owe in the preparation of it to certain writings in the "Criminal Procedure in Cyprus" by Justice A. Loizou and Judge Pikis.

I would dismiss the appeal.

A. LOIZOU J.: The elaborate judgments just delivered by my brother Judges L. Loizou and Hadjianastassiou, which I had the privilege of reading in advance, and with which I agree, have made my task an easy one and render superfluous anything that I might wish to say on the point raised.

The wording of section 25(2) of the Courts of Justice Law, 1960, is not so clear and unambiguous as to enable me to hold that it confers on the Attorney-General, or to anyone else, a right to appeal against an acquittal from a judgment of an Assize Court, which admittedly did not exist under the Criminal Procedure Law, Cap. 155 and in particular Part V thereof, which specially dealt with the right of appeal; nor is there any clear indication from the words used therein, as it should be in such cases, that these pre-existing provisions were by necessary implication repealed, altered, or modified, thereby.

DEMETRIADES J.: I am also of the opinion that the submission of counsel for the respondents that the Attorney-General of the Republic is not given, by section 25 of the Courts of Justice Law 14/60, the right to appeal against an acquittal by

an Assize Court, must be upheld and that these consolidated appeals must, therefore, be dismissed.

I have had the opportunity of reading the judgment of my brother Judges L. Loizou and T. Hadjianastassiou and since I am in full agreement with them I do not propose to make any comments of my own.

MALACHTOS J.: I have had the opportunity of reading and fully considering the judgment just delivered by L. Loizou, J. and I must say that I agree with the conclusions reached and the reasons given therein.

I am, therefore, of the view that no appeal lies from an acquittal by an Assize Court and, consequently, the present appeals should be dismissed.

SAVVIDES J.: I have read in advance the elaborate judgment just delivered by my brother Judge L. Loizou and I agree with all that has been said by him in his judgment, and I find that I have nothing useful to add.

I agree with the result that, having regard to the present state of the Law, there is no right of appeal from an acquittal by an Assize Court and, therefore, the present appeals should be dismissed.

TRIANTAFYLLIDES P.: These seven appeals, which were lodged by the Attorney-General of the Republic and which are being heard together in view of their nature, challenge the acquittals—in Criminal Case No. 22534/77 of the District Court of Limassol—of the respondents, by an Assize Court sitting in Nicosia; they were acquitted, on September 8, 1978, in respect of four counts charging all seven of them together with the premeditated murders of, respectively, four persons, on July 16, 1974, at a locality near the village of Ayios Tychonas in the District of Limassol.

The respondents were not acquitted at the end of their trial before the Assize Court, but when, at the close of the case for the prosecution, the Assize Court sustained submissions by counsel for the respondents, under section 74(1)(b) of the Criminal Procedure Law, Cap. 155, that a prima facie case had not been made out against their clients, as accused persons, sufficiently to require them to make a defence in respect of the said

four counts of premeditated murder. The trial was not, however, concluded then, as, by means of the Ruling upholding the aforementioned submissions of counsel for the respondents, the Assize Court directed the addition to the information of two new counts charging the respondents with use of armed force against the Government and, also, with carrying on war or warlike undertaking, between July 15 and July 17, 1974, that is in the course of the abortive coup d' etat which occurred on July 15, 1974, and called on the respondents to plead to the said new counts.

At that stage the further progress of the trial was interrupted because the Attorney-General applied, under section 148(1) of Cap. 155, that the Court should reserve questions of law arising in relation to the acquittals of the respondents for the opinion of the Supreme Court; and this matter is, also, pending before us as Question of Law Reserved No. 175; on the other hand, counsel for the respondents appealed against the addition of the two new counts (Criminal Appeals Nos. 3923-3929); but, for the time being we are dealing only with the appeals of the Attorney-General against the acquittals of the respondents.

At the commencement of the hearing of the said appeals (Nos. 3932-3938) counsel for the respondents objected that the Attorney-General of the Republic is not entitled to appeal against a verdict of acquittal by an Assize Court and their objection has been heard as a preliminary legal issue; thus no arguments were heard regarding the merits of these appeals; and it is in relation to the preliminary issue only that this Decision is now to be delivered.

It is common ground that the right of appeal to the Supreme Court is provided by means of section 25 of the Courts of Justice Law, 1960 (Law 14/60), which reads as follows:-

> "25.-(1) Subject to Rules of Court every decision of a Court exercising civil jurisdiction shall be subject to appeal to the High Court.
>
> (2) Subject to the provisions of the Criminal Procedure Law but save as otherwise in this subsection provided every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court.

Any such appeal may be made as of right against conviction or sentence on any ground.

(3) Notwithstanding anything contained in the Criminal Procedure Law or in any other Law or in any Rules of Court and in addition to any powers conferred thereby the High Court on hearing and determining any appeal either in a civil or a criminal case shall not be bound by any determinations on questions of fact made by the trial Court and shall have power to review the whole evidence, draw its own inferences, hear or receive further evidence and, where the circumstances of the case so require, re-hear any witnesses already heard by the trial Court, and may give any judgment or make any order which the circumstances of the case may justify, including an order of re-trial by the trial Court or any other Court having jurisdiction, as the High Court may direct."

The provision of section 25 above with which we are particularly concerned is subsection (2), and the effect of the opening phrase of the said subsection, namely "Subject to the provisions of the Criminal Procedure Law", has been already considered in a number of cases in the past:

In *Rodosthenous and another* v. *The Police*, 1961 C.L.R. 48, O' Briain P. said (at p. 49) in relation to an appeal against an order refusing bail pending trial:-

"We are satisfied, having considered this matter, that having regard to the terms of the Courts of Justice Law, section 25, we have jurisdiction to entertain such an appeal. Section 25(2) commences with the words 'subject to the provisions of the Criminal Procedure Law' and the relevant provisions of the Criminal Procedure Law relating to appeals appear to be sections 138 and 139. It is clear that this application is not in compliance with sections 138 and 139. We are faced with the express provision of section 138 that no notice of appeal shall be valid unless it complies with the requirements of this section."

In *Xenophontos* v. *Charalambous*, 1961 C.L.R. 122, O'Briain P. stated the following (at pp. 125, 126):-

"The Attorney-General submitted that section 25, sub-

section (2) of the Courts of Justice Law, 1960, provides that every decision of a Court exercising criminal jurisdiction is appealable to the High Court, but 'subject to the provisions of the Criminal Procedure Law'.

.....

It is, I think, correct that a right of appeal clearly given in unqualified terms in a statute cannot be cut down by provisions of another procedural statute or statutory order. The difficulty arises, from the point of view of the appellant that in section 25 the right of appeal, though clearly given, is no less clearly qualified by the opening words of the sub-section."

In *Christofi* v. *The Police*, (1970) 2 C.L.R. 117, Vassiliades P. said (at p. 119):-

"The first question which arises is whether such an appeal lies. Counsel on behalf of the appellant submitted that the appeal lies under section 25(2) of the Courts of Justice Law, 1960 (No. 14 of 1960) which reads:-

'25(2). Subject to the provisions of the Criminal Procedure Law, but save as otherwise in this sub-section provided, every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court.

Any such appeal may be made as of right against conviction or sentence on any ground.'

The submission on behalf of the appellant is that the decision to hold a preliminary inquiry is a 'decision' of a Court exercising criminal jurisdiction and, therefore, it is subject to an appeal to the Supreme Court.

We find ourselves unable to accept this submission. The section provides that an appeal lies under sub-section (2) 'subject to the provisions of the Criminal Procedure Law', save as 'otherwise provided' in the sub-section. The provisions in the Criminal Procedure Law, Cap. 155, governing appeals in criminal cases, are contained in Part V of the statute, section 131 to 153 inclusive. The opening section 131(1) reads:-

'131(1). Subject to the provisions of any other enact-

ment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law.'

It is clear, we think, that when sub-section (2) of section 25 of the Courts of Justice Law, refers to 'every decision', this must be read 'subject to the provisions of the Criminal Procedure Law'; and, therefore, it can only refer to 'decisions' which are subject to an appeal under the Criminal Procedure Law. The ruling against which the present appeal is taken, is not, as far as we can see on the basis of the argument that we have heard, such a decision."

In *Georghadji and another* v. *The Republic*, (1971) 2 C.L.R. 229, the relatives of a deceased person, who was referred to in the particulars of a count for conspiracy as a co-conspirator with four other persons who were the accused before an Assize Court, applied for permission to enter an appearance in the proceedings through counsel with the right to summon witnesses and the right to speak; the Assize Court refused the application and allowed them only to retain counsel for a watching brief; they appealed against this ruling of the Assize Court and in dismissing their appeal I stated the following (at pp. 233-236):-

" As has been stated in the judgment delivered by Vassiliades, P. in the case of *Christofis* v. *The Police* (1970) 2 C.L.R. 117 the effect of section 25(2) of the Courts of Justice Law, 1960 (14/60) is that, save as otherwise provided by the said section (in relation to conviction or sentence), an appeal from a decision of a Court exercising criminal jurisdiction lies only subject to the provisions of the Criminal Procedure Law (Cap. 155).

Sub-section (1) of section 131 of Cap. 155 lays down that 'Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law.'

Having not been referred, by learned counsel for the appellants, to any provision in Cap. 155, or in any other enactment, enabling an appeal to be made against the ruling of the Assize Court, which is the subject-matter of

these appeals, we reached the conclusion that the Supreme Court has no jurisdiction to deal on appeal with such ruling.

.....

It is, also, interesting to note that soon after the *Rodosthenous* case there was examined, again, in the case of *Xenophontos* v. *Charalambous*, 1961 C.L.R. 122, the question of the right of appeal under section 25(2) of Law 14/60 and it was held that as the general right of appeal provided for by section 25(2) is qualified therein by the words 'subject to the provisions of the Criminal Procedure Law' it was not possible to appeal against an acquittal by a District Court without the sanction of the Attorney-General, which is required by virtue of section 131(2) of the Criminal Procedure Law (Cap. 155).

In approaching the issue before us we have borne in mind, also, that the Courts cannot invent a right of appeal where none is given nor will they usurp an appellate jurisdiction where none is created (see *Healey* v. *Ministry of Health* [1954] 3 All E.R. 449).

A case in which a decision of a District Judge regarding an adjournment of the hearing of a criminal case was dealt with on appeal, though no express statutory provision appears to exist in relation to an appeal of this kind, is that of *The Attorney-General of the Republic* v. *Enimerotis Publishing Co. Ltd. and Others* (1966) 2 C.L.R. 25. It is clear, however, from the judgment of one of us, Stavrinides, J., in that case (see at pp. 31–32) that the question of the jurisdiction of the Supreme Court to entertain an appeal of this nature had not been raised on that occasion; and, actually, in the said judgment the opinion was expressed that 'the proper way of questioning the order of adjournment was by application for an order of mandamus'. The main judgment in that case was given by Vassiliades, J., as he then was, who, later on, when the issue of the criminal appellate jurisdiction of the Supreme Court was raised and considered in the *Christofi* case (*supra*), joined in the unanimous view that such jurisdiction is to be exercised as and when laid down by statutory provisions. As at present advised, we are not inclined to regard the *Enimerotis* case as authoritatively establishing that an appeal lies otherwise than as provided for by statute."

In *Lazarou and others* v. *The Police*, (1973) 2 C.L.R. 81, I said (at pp. 82–83):–

" Section 25(2) of Law 14/60 does not create an unlimited right of appeal in criminal cases, but only a right of appeal regulated by Cap. 155 (see, *inter alia*, *Christofi* v. *The Police* (1970) 2 C.L.R. 117 and *Georghadji and Another* v. *The Republic*, (1971) 2 C.L.R. 229).

Section 157 of Cap. 155 reads as follows:–

' 157.(1) Subject to the provisions of subsection (2) of this section, any Court exercising criminal jurisdiction may, if it thinks proper, at any stage of the proceedings, release on bail any person charged or convicted of any offence, upon the execution by such person of a bail bond as in this Law provided.

(2) In no case a person upon whom sentence of death has been passed shall be released on bail; and no person charged of any offence punishable with death shall be released on bail, except by an order of a Judge of the Supreme Court'.

We do not propose to refer to other cases in the past in which appeals against remand orders were entertained; because none of them involved a remand order at a stage of the proceedings such as the one in the present case. In the absence of any authority to the contrary—and none was cited—we are of the opinion that it is not possible to construe section 157 in such a manner as to deduce from its provisions that we possess jurisdiction thereunder to interfere *on appeal* with an order for remand in custody made on the adjournment of the hearing of a criminal case by *another* Court exercising criminal jurisdiction."

In *Savva and another* (*No.* 1) v. *The Police*, (1977)* 12 J.S.C. 2088, in which it was held that the Supreme Court possessed jurisdiction under section 157(1) of Cap. 155 to deal, when sitting on appeal, with a decision concerning bail, the proposition that "the right of appeal, provided for under section 25(2) of the Courts of Justice Law, 1960 (Law 14/60), can be exercised

* To be reported in (1977) 2 C.L.R.

in criminal matters on the basis only of the relevant provisions of Cap. 155" was affirmed and relevant case-Law, such as *Xenophontos, supra, Christofi, supra, Georghadji, supra,* and *Lazarou, supra,* was referred to with approval.

I still subscribe to the correctness of the views expounded in the case-law already referred to, above; but it is quite clear from such case-Law that the question of whether, as a result of reading together section 25(2) of Law 14/60 with the relevant provisions of Cap. 155, a right of appeal from an acquittal by an Assize Court has been created has never been examined, or pronounced on, till now.

I shall examine next the relevant provisions of the Criminal Procedure Law, Cap. 155: This Law was first enacted on November 25, 1948, as the Criminal Procedure Law, 1948 (Law 40/48).

Section 131 of Cap. 155 reads as follows:-

" 131. (1) Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law.

(2) There shall be no appeal from an acquittal except at the instance or with the written sanction of the Attorney-General, as in this Law provided."

As regards an appeal from an Assize Court against conviction section 132 of Cap. 155 reads as follows:-

" 132. (1) Any person convicted by an Assize Court and sentenced to death or to any term of imprisonment or to a fine exceeding twenty pounds may, subject to the provisions of sections 135 and 136 of this Law, appeal to the Supreme Court -

(a) against his conviction as of right on any ground of appeal which involves a question of law alone;

(b) with the leave of a Judge of the Supreme Court (not being the Judge who presided at the trial), against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other

ground which appears to the Judge who considers the application for leave to appeal to be a sufficient ground of appeal;

(c) with the leave of a Judge of the Supreme Court (not being the Judge who presided at the trial), against the sentence passed on his conviction unless the sentence is one fixed by law.

(2) Where a person, entitled to appeal as of right on a point of law as in paragraph (a) of subsection (1) of this section provided, desires to appeal to the Supreme Court, he shall give notice of appeal by causing the same to be delivered to the Chief Registrar within ten days of the date upon which sentence was pronounced.

(3) Where a person desires to appeal to the Supreme Court as in paragraphs (b) and (c) of subsection (1) of this section provided, he shall apply for leave to appeal by causing the application to be delivered to the Chief Registrar within ten days of the date upon which sentence was pronounced.

(4) Where the person appealing is confined in any prison or institution or is otherwise in custody, he shall be deemed to have sufficiently complied with the provisions of subsection (2) or (3) of this section, if he delivers his notice of appeal or his application for leave to appeal, as the case may be, to the officer having charge of him for transmission to the Chief Registrar."

As regards an appeal from a District Court against conviction section 133 of Cap. 155 reads as follows:-

"133. (1) Any person convicted by a District Court and sentenced to any term of imprisonment or to a fine, exceeding ten pounds may, subject to the provisions of sections 135 and 136 of this Law, appeal to the Supreme Court-

(a) against his conviction as of right on any ground which involves a question of law alone;

(b) with the leave of a Judge of the Supreme Court against his conviction or sentence.

(2) Where a person, entitled to appeal as of right on a

point of law as in paragraph (a) of subsection (1) of this section provided, desires to appeal to the Supreme Court he shall give notice of appeal by causing the same to be delivered to the Registrar of the District Court in which the appellant had been sentenced, within ten days of the date upon which sentence was pronounced.

(3) Where a person desires to appeal as in paragraph (b) of subsection (1) of this section provided, he shall apply for leave to appeal by causing the application to be delivered to the Registrar of the District Court in which the applicant had been sentenced, within ten days of the date upon which sentence was pronounced.

(4) The provisions of subsection (4) of section 132 of this Law shall apply, mutatis mutandis, to notices of appeal and applications for leave to appeal under this section."

Sections 135 and 136 of Cap. 155, which are referred to in section 133(1), above, of the same Law, read as follows:-

"135. A person who has been convicted and sentenced by any Court upon a plea of guilty shall only be entitled to apply for leave to appeal to the Supreme Court-

(a) against sentence unless the sentence is one fixed by Law;

(b) against conviction on the ground that the facts alleged in the charge or information to which he pleaded guilty did not disclose any offence.

136. No appeal or application for leave to appeal shall lie where a person has been adjudged to undergo imprisonment for failure to comply with an order for the payment of any penalty or other money, for finding sureties, for entering into any recognisance or for giving any security."

Sections 132, 133, 135 and 136 of Cap. 155 have never been directly repealed or amended by any subsequent enactment, but ever since the enactment of Law 14/60 they have always been treated as having been impliedly repealed and amended to the extent required to bring them into conformity with the subsequently enacted Law 14/60, which, for example, no longer provides that a Judge of the Supreme Court presides at a trial

by an Assize Court (see section 5 of such Law) and which confers a general right of appeal against conviction and sentence without any leave to appeal, by the Supreme Court, being any longer required.

In *Shourris* v. *The Republic* and *Kazantzis* v. *The Police*, 1961 C.L.R. 11, O' Briain P. said (at pp. 12–13):-

> "These are two applications for leave to appeal against conviction and sentence. The point for consideration, at this stage, is whether there is any defference in effect between the Greek text and the Turkish text of section 25(2) of the Courts of Justice Law, 1960. This section deals with appeals from a decision of a Court exercising criminal jurisdiction and it provides that every such decision shall be subject to an appeal to this Court. It then provides that such appeals against conviction or sentence may be made, on any ground, but in the Turkish text the words 'hak olarak' are used. The Court is satisfied that they mean 'as of right' ; no such adverbial phrase is found in the Greek text.
>
> However, the matter has now been argued by the Attorney–General in person and by the counsel for the applicants and this Court is unanimously of opinion that there is, in effect, no difference between the two texts. What is expressed by 'hak olarak' in Turkish ('as of right') is conveyed by the Greek word 'δύναται' used in the corresponding clause in the Greek version, which connotes, when unqualified, not merely the power or ability to appeal but also the legal right to do so and is not inconsistent with the Turkish text.
>
> In the circumstances the Court is unanimously of the opinion that there is no conflict between the two texts. The other questions which might have arisen do not require consideration.
>
> In the result, this Court is of opinion that in the case of appeal against conviction or sentence the section in question, section 25(2), gives a convicted person the right to appeal from every such decision and leave by this Court or any Judge thereof is no longer a requisite. We shall place these two applications for leave to appeal on the list for

hearing at an early date as appeals. Any other applications for leave to appeal already lodged with the Registrar will be listed similarly at an early date for hearing as appeals. In future, no such applications for leave to appeal should be made. A person convicted may lodge a notice of appeal in all cases."

Section 137 of Cap. 155, which relates to appeals from judgments of acquittal, reads as follows:-

"137. (1) The Attorney-General may-

(a) appeal or sanction an appeal from any judgment of acquittal by a District Court on any of the following grounds:-

(i) that there was no evidence on which the Court could reasonably find a fact or facts necessary to support such judgment;

(ii) that evidence was wrongly admitted or excluded;

(iii) that the law was wrongly applied to the facts;

(iv) that there has been some irregularity of procedure;

(b) appeal or sanction an appeal from any judgment of a District Court on the ground that the sentence was insufficient.

(2) An appeal under this section shall be made by causing notice of appeal to be delivered to the Registrar of the District Court against the judgment of which the appeal is made within fourteen days of the date on which the judgment was delivered.

(3) Every notice of appeal under this section shall be in the prescribed form; it shall be signed by the Attorney-General or by such person as he may authorise in that behalf and shall set out in full the grounds on which it is founded."

The above section was introduced for the first time by Law 40/48 (see its section 134).

Law 40/48 repealed, *inter alia*, the relevant provisions of the Courts of Justice Law, 1935 (Law 38/35); Law 38/35 contained separate provisions concerning the powers of the Supreme Court on hearing appeals in criminal cases from Assizes and District Courts, respectively (see sections 31 and 40 thereof), and it is noteworthy that the Supreme Court was empowered to order a new trial only when dealing with an appeal from a District Court.

When Law 40/48 was enacted provision was made, by means of its section 142, for uniform powers of the Supreme Court in respect of all appeals in criminal cases, whether from Assize Courts or District Courts; these powers are set out now in section 145 of Cap. 155, which reads as follows:-

"145.(1) In determining an appeal against conviction, the Supreme Court, subject to the provisions of section 153 of this Law, may-

(a) dismiss the appeal;

(b) allow the appeal and quash the conviction if it thinks that the conviction should be set aside on the ground that it was, having regard to the evidence adduced, unreasonable or that the judgment of the trial Court should be set aside on the ground of a wrong decision on any question of law or on the ground that there was a substantial miscarriage of justice:

Provided that the Supreme Court, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred;

(c) set aside the conviction and convict the appellant of any offence of which he might have been convicted by the trial Court on the evidence which has been adduced and sentence him accordingly;

(d) order a new trial before the Court which passed sentence or before any other Court having jurisdiction in the matter.

(2) In determining an appeal against sentence, the Supreme Court may increase, reduce or modify the sentence.

(3) In determining an appeal by or with the sanction of the Attorney-General-

(a) from a judgment of acquittal, the Supreme Court may-

(i) set aside such judgment and convict and sentence the accused of any offence of which he might have been convicted on the evidence which has been adduced;

(ii) direct that further inquiry be made or that the accused be re-tried;

(iii) dismiss the appeal;

(b) from a judgment on the ground that the sentence was insufficient the Supreme Court may-

(i) increase the sentence;

(ii) dismiss the appeal."

As already indicated, earlier on in this Decision, the crucial issue which has to be determined is whether section 25(2) of Law 14/60, when read together with the relevant provisions of Cap. 155, and, in particular, sections 131(2) and 137, has created a right of appeal against a judgment of acquittal by an Assize Court: In the *Xenophontos* case, *supra*, the matter was left open; O'Briain P. said, in this respect, the following (at pp. 127-128):-

"It is true that, in Cyprus, a limited right to appeal against acquittal has existed for years past, but, in my view, the principles referred to by the distinguished Judges I have quoted apply here with regard to any extension of that right. In this case, both the appellant and the Attorney-General contend for an extension of the right of appeal against acquittal because I observed that the Attorney-General, in the course of his argument, stated that the right of appeal conferred upon the Attorney-General by section 137 of the Criminal Procedure Law now extends to acquittals by Assize Courts. However, in this case, the Court is concerned with an acquittal by the District

Court only and no question, therefore, arises regarding a decision by an Assize Court, and I express no opinion upon that point."

Earlier on in his judgment O'Briain P. had said (at pp. 126–127):–

" In its general features and historical growth, the present Criminal Code of Cyprus stems from the Common Law. It shares with the Law of England, Ireland, United States, and most countries of the Commonwealth, a common root and origin. That law, in recent centuries at any rate, has leaned strongly against an accused person having to stand a second trial in respect of a charge on which he has been tried and acquitted by a Court of competent jurisdiction. It is an extremely important and universally accepted principle that the clearest terminology is required to give an appeal against an acquittal. Lord Chief Baron Palles, probably the most eminent Judge that Ireland had produced in the last century and one of the greatest authorities on the Common Law, spoke in *Reg.* v. *Tyrone* JJ. (40 Ir. L.T. 181) of the 'elementary' principle that –

> 'an acquittal made by a Court of competent jurisdiction and made within its jurisdiction, although erroneous in point of fact, cannot as a rule be questioned and brought before any other Court'.

I pause to observe that the present proceedings are not by way of certiorari seeking to have the Order of the District Judge quashed for want of jurisdiction or for disregard of *the essentials of justice. If they were, quite different* considerations would arise. Palles C.B. continues –

> 'I, therefore, first rest my view on settled principles, that, before you can appeal against an acquittal, the words must be clear, express, and free from any ambiguity'.

That passage from the judgment of the Lord Chief Baron was quoted with approval by the Lord Chancellor, Viscount Simon, delivering the unanimous opinion of the House of Lords in a comparatively recent case, *Benson* v. *Northern Ireland Road Transport Board* [1942] A.C. 520. Lord Coleridge, C.J., in *Reg.* v. *London County Justices* had

stated the same principle in these words [1890] 25 Q.B.D. 357 at p. 360:-

> 'The general principle of law is that, if acquitted, he (an accused person) is not to be a second time vexed'.

More recently, Lord Halsbury L.C. in *Cox* v. *Hakes* [1890] 15 App. Cas. 506 at p. 522 has put the matter thus -

> 'Your Lordships are here determining a question which goes very far indeed beyond the merits of any particular case. It is the right of personal freedom in this country which is in debate; and I for one should be very slow to believe, except it was done by express legislation, that the policy of centuries has been suddenly reversed and that the right of personal freedom is no longer to be determined summarily and finally, but is to be subject to the delay and uncertainty of ordinary litigation so that the final determination upon that question may only be arrived at by the last Court of appeal'."

The same issue was left open in the subsequent case of *The Republic* v. *Kalli (No. 1)* 1961 C.L.R. 266, where Vassiliades J., as he then was, said (at p. 286):-

> " In the case of *Maroulla Xenophonthos* v. *Panayiota Charalambous* (Criminal Appeal No. 2335 decided in May last) the learned Attorney-General argued before this Court regarding his rights under the law as at present, in appeals against acquittals by a District Court. The position in cases of acquittal by an Assize Court was argued, but as it did not arise in that case, the Court expressly kept it open. It may or may not be the same, as prior to the establishment of the Republic and the new Courts of Justice Law."

In "Criminal Procedure in Cyprus", by Loizou and Pikis (1975), the following passage is to be found (at pp. 182-183):-

> " It is a moot point whether the Attorney-General has a right to appeal against an acquittal by the Assize Court; there is no precedent on the matter in Cyprus. Traditionally under the Common Law, an acquittal by an Assize

> Court cannot be questioned on appeal, whereas decisions of lower Courts may be reviewed by means of prerogative orders. The Criminal Procedure Law nowhere expressly confers a right on the Attorney-General to appeal against an acquittal from the judgment of an Assize Court. It is submitted that, in the absence of any express provision conferring on the Attorney-General a right to appeal against an acquittal from a judgment of the Assize Court, the Attorney-General has no right either to appeal or sanction an appeal from such judgment. It must not be forgotten that under the Common Law there is no right to appeal against an order of a Court exercising criminal jurisdiction, unless such right is expressly conferred by statute. There is no right to invent a right to appeal where none is given by statute.[1]"

It is well established that "there is no right of appeal from a decision dismissing a criminal charge unless clearly given by statute" (see Halsbury's Laws of England, 4th ed., vol. 11, p. 363, para. 611).

The above proposition is based on the wider principle that a right to appeal, generally, must be given by express legislative provision, and that there is no inherent jurisdiction to entertain an appeal; in *R.* v. *Collins*, [1969] 3 All E.R. 1562, Salmon L.J. said (at pp. 1563-1564):-

> "Counsel for the applicant frankly admits that he cannot find any provision in any statute which confers jurisdiction on this Court to hear the motion which he is seeking to make. He says, however, that we have an inherent jurisdiction to hear such a motion. We do not accept that submission. A Court of appeal created by statute has no jurisdiction beyond that which Parliament confers upon it: *R.* v. *Grantham*[2]; *R.* v. *Jefferies*[3]. Even if we agreed with counsel for the applicant that it would be desirable that we should have the powers to which he refers, we cannot call them into existence by assuming them."

The *Collins* case, *supra*, was applied in *Re Central Funds Costs Order*, [1975] 3 All E.R. 238, 242.

1. *Healey* v. *The Ministry of Health* [1954] 3 All E.R. 449.
2. [1969] 2 All E.R. 545.
3. [1968] 3 All E.R. 238.

I consider it useful to refer to some more relevant case-Law on this point:

In *The Attorney-General* v. *Sillem and others*, 11 E.R. 1200, Lord Westbury L.C. said (at pp. 1207-1208):-

> "The creation of a new right of appeal is plainly an act which requires legislative authority. The Court from which the appeal is given, and the Court to which it is given, must both be bound, and that must be the act of some higher power. It is not competent to either tribunal, or to both collectively, to create any such right."

In *R.* v. *West Kent Quarter Sessions Appeal Committee. Ex parte Files*, [1951] 2 All E.R. 728, Lord Goddard C.J. stated (at p. 730):-

> "It is most elementary that no appeal from a Court lies to any other Court unless there is a statutory provision which gives a right to appeal. The decision of every Court is final if it has jurisdiction, unless an appeal is given by statute."

In *Healey* v. *Ministry of Health* [1954] 3 All E.R. 449, Morris L.J. stressed (at p. 454) that in that particular case the Court of Appeal in England could not assume "an appellate jurisdiction which is has not been given and which the Court cannot create."

It is, also, an equally well settled general principle of law that if an accused person is acquitted he is not to be vexed a second time (see the *Xenophontos* case, *supra*, and the case of *R.* v. *London County Justices*, [1890] 25 Q.B.D. 357, 360, which is referred to in the judgment of O'Brian P. in that case, at p. 127). Also, in *R.* v. *Duncan*, [1880-81] 7 Q.B.D. 198, Lord Coleridge C.J. said (at p. 199):-

> "The practice of the Courts has been settled for centuries, and is that in all cases of a criminal kind where a prisoner or defendant is in danger of imprisonment no new trial will be granted if the prisoner or defendant, having stood in that danger, has been acquitted."

But, the said principle has ceased to be applicable in Cyprus, in so far as criminal appeals against judgments of acquittal are

concerned, ever since, by virtue of the relevant provisions of Law 40/48, it was made possible to appeal against such judgments when delivered by District Courts, and the Supreme Court was empowered, in determining an appeal against acquittal, to order a new trial (as provided now in the already quoted in this Decision sections 137 and 145 of Cap. 155).

It is correct that section 137 of Cap. 155, as it stood prior to section 25(2) of Law 14/60, enabled the Attorney-General to appeal against a judgment of acquittal only if it had been delivered by a District Court; but, it is the contention, in the present proceedings, of the learned Deputy Attorney-General that the said section 25(2) has extended the right of appeal against a judgment of acquittal so as to be applicable, also, to acquittals by Assize Courts.

It is a common ground that full effect must be given to what is provided for by means of section 25(2) of Law 14/60; what the parties to the present appeals disagree about is what is the true effect of such section.

In approaching this matter it is useful to bear in mind some relevant principles which are expounded in the case-law which is referred to hereinbelow:

In *Commonwealth of Australia and others* v. *Bank of New South Wales and others*, [1950] A.C. 235, Lord Porter said (at p. 307):-

> " But, in whatever sense the word 'object' or 'intention' may be used in reference to a Minister exercising a statutory power, in relation to an Act of Parliament it can be ascertained in one way only, which can best be stated in the words of Lord Watson in *Salomon* v. *Salomon & Co.*[1]: 'In a Court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable necessary implication'. The same idea is felicitously expressed in an opinion of the English law officers Sir Roundell Palmer and Sir Robert Collier cited by Isaacs J. in *James* v. *Cowan*[2]: 'It must

1. [1897] A.C. 22, 38.
2. 43 C.L.R. 386, 409.

be presumed that a legislative body intends that which is the necessary effect of its enactments: the object, the purpose and the intention of the enactment, is the same.' The same learned Judge adds: 'By the 'necessary effect', it needs scarcely be said, those learned jurists meant the necessary legal effect, not the ulterior effect economically or socially.' ".

In *W. & J.B. Eastwood Ltd* v. *Herrod* (*Valuation Officer*), [1968] 2 Q.B.D. 923, Diplock L.J. stated (at p. 936):-

" All that this Court is entitled to do is to determine whether or not the buildings whose character and use is described in the decision and the case stated fall within the words which Parliament in fact adopted in the Act to describe 'agricultural buildings'. If the answer which the Court gives does not accord with what Parliament in 1968 considers to be the right fiscal policy today now that factory farming is carried on in many buildings throughout England and Scotland, it is for Parliament, not for the Courts of either country, to put the matter right."

It is to be noted that the outcome of the *Eastwood* case, *supra*, was affirmed on appeal by the House of Lords in England ([1970] 1 All E.R. 774).

In *Corocraft Ltd. and another* v. *Pan American Airways Inc.*, [1969] 1 Q.B.D. 616, Donaldson J. said (at p. 638):-

" The duty of the Courts is to ascertain and give effect to the will of Parliament as expressed in its enactments. In the performance of this duty the Judges do not act as computers into which are fed the statute and the rules for the construction of statutes and from whom issue forth the mathematically correct answer. The interpretation of statutes is a craft as much as a science and the Judges, as craftsmen, select and apply the appropriate rules as the tools of their trade. They are not legislators, but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing."

As is pointed out in Maxwell on the Interpretation of Statutes, 12th ed., p. 47 "statutory language is not read in isolation, but in its context"; and, it is added that, in this connection, "...

external circumstances may be taken into account in construing an Act of Parliament"; such circumstances include "the historical setting" in which a statute was enacted (see, too, Craies on Statute Law, 7th ed., p. 127).

Also, in this respect, it is stated in Halsbury's Laws of England, 3rd ed., vol. 36, p. 409, para. 620, that "in construing a statute it is permissible to have regard to the state of things existing at the time the statute was passed, and to the evil which, as appears from its provisions, the statute was designed to remedy."

In *Holme* v. *Guy*, [1877] 5 Ch. D. 901, Jessel M.R. stated (at p. 905):-

> " The Court is not to be oblivious—and I have cited from the authorities to which I have referred to shew that such is the case—of the history of law and legislation. Although the Court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of law and legislation tells the Court, and prior judgments tell this present Court, what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view of finding out what it means, and not with a view to extending it to something that was not intended."

In *The River Wear Commissioners* v. *William Adamson and others* [1976–77] 2 A.C. 743, Lord Blackburn stated the following (at pp. 763–765):-

> " My Lords, it is of great importance that those principles should be ascertained; and I shall therefore state, as precisely as I can, what I understand from the decided cases to be the principles on which the Courts of Law act in construing instruments in writing; and a statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view;

for the meaning of words varies according to the circumstances with respect to which they were used.

.....

As long ago as *Heydon's Case*[1] Lord Coke says that it was resolved 'that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered; 1st. What was the Common Law before the Act? 2nd. What was the mischief and effect for which the Common Law did not provide? 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth? And 4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy.' But it is to be borne in mind that the office of the Judges is not to legislate, but to declare the expressed intention of the Legislature, even if that intention appears to the Court injudicious; and I believe that it is not disputed that what Lord Wensleydale used to call the golden rule is right, *viz.*, that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, and to justify the Court in putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear."

The rules in the *Heydon's* case were referred with approval by the Earl of Halsbury L.C. in *The Eastman Photographic Materials Company Limited* v. *The Comptroller-General of Patents Designs, and Trade-marks*, [1898] A.C. 571, 573.

In *The South Eastern Railway Company* v. *The Railway Commissioners, & C., The Mayor, Aldermen, and Burgesses of Hastings*, [1879-80] 5 Q.B.D. 217, Lush J. said (at p. 240):-

" The first part of the Act of 1854, which we are called on to construe, is by no means explicit. The particular phrase

1. 3 Co. Rep. 7 b.

which creates the difficulty is large enough to admit of a wider or a narrower meaning, and a preliminary question arises, namely, what is the rule of construction to be applied to it? Is the Act a remedial or a penal Act? and if remedial, on whose behalf? To my mind the answer is obvious, that it is a remedial Act, and that it was passed in the interest of the public and not in the interest of the companies. The 7th section, it is true, gives a benefit to companies by limiting their liability for the loss of, or injury to, animals, to specified amounts, unless an insurance rate is paid for their carriage; but, on the other hand, this section also protects the sender of traffic, whether animals or goods, from being subjected to unreasonable conditions in carrying contracts; and all the rest of the Act contemplates only the convenience of the public.

If it is a remedial Act, it is to receive as liberal a construction 'to advance the remedy' as its language taken as a whole will fairly admit of. For while we are to collect what the legislature intended from what it has said, we must look, not at one phrase or one section only, but at the whole of the Act, and must read it by the light which the state of the law at the time and the relation in which the travelling and sending public then stood to the carrying companies, throw upon it."

In *Thomson* v. *Lord Clanmorris*, [1900] 1 Ch. 718, Lindley M.R. said (at p. 725):-

"In construing s. 3 of the Act of 1833, as indeed in construing any other statutory enactment, regard must be had not only to the words used, but to the history of the Act, and the reasons which led to its being passed. You must look at the mischief which had to be cured as well as at the cure provided. And when we look at the state of the law before the Act of 1833 we can see pretty plainly what was the mischief at which it was aimed."

The above view of Lindley M.R. was referred to with approval by Goddard L.J.—as he then was—in *Pratt* v. *Cook, Son and Company (St. Pauls) Limited*, [1939] 1 K.B. 364, 382 and again, by Lord Goddard C.J. in *Rex* v. *Paddington and St. Marylebone Rent Tribunal—ex parte Bell London and Provincial Properties, Limited*, 65 T.L.R. 200, 203.

In *Keates* v. *Lewis Merthyr Consolidated Collieries, Limited*, [1911] A.C. 641, Lord Atkinson said (at p. 642):-

> "In the construction of a statute it is, of course, at all times, and under all circumstances permissible to have regard to the state of things existing at the time the statute was passed, and to the evils which, as appears from its provisions, it was designed to remedy."

In *Committee for Privileges, Viscountess Rhondda' s Claim*, [1922] 2 A.C. 339, Viscount Birkenhead L.C. stated the following (at pp. 368-370):-

> "Is there any rule of English law which compels us, where general words are used, so to construe them as to produce a result which is so inconvenient in itself and so repugnant to our constitutional theories?
>
> On the contrary, a long stream of cases has established that general words are to be construed so as, in an old phrase, 'to pursue the intent of the makers of statutes': *Stradling* v. *Morgan*[1], and so as to import all those implied exceptions which arise from a close consideration of the mischiefs sought to be remedied and of the state of the law at the moment, when the statute was passed. 'The Sages of the Law,' say the Barons of the Exchequer in *Stradling* v. *Morgan*[1], after the consideration of a long line of cases, 'heretofore have construed Statutes quite contrary to the Letter in some appearance, and those Statutes which comprehend all Things in the Letter they have expounded to extend but to some Things, and those which generally prohibit all people from doing such an Act they have interpreted to permit some People to do it, and those which include every Person in the Letter they have adjudged to reach to some Persons only, which Expositions have always been founded upon the Intent of the Legislature, which they have collected sometimes by considering the cause and Necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign Circumstances. So that they have ever been guided by the Intent of the Legislatute, which they have always taken according to the Necessity of the Matter, and accord-

1. 1 Plowd. 203, 205.

ing to that which is consonant to Reason and good Discretions.'

This case was considered in the case of *Hawkins* v. *Gathercole*.[1] In that case Turner L. J., in giving judgment, quoted and approved the passages which I have already read and continued as follows: 'The same doctrine is to be found in *Eyston* v. *Studd*, and the note appended to it, also in Plowden[2], and in many other cases. The passages to which I have referred, I have selected only as containing the best summary with which I am acquainted of the law upon this subject. In determining the question before us, we have therefore to consider not merely the words of this Act of Parliament, but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign (meaning extraneous) circumstances, so far as they can justly be considered to throw light upon the subject.'

When the Learned Lord Justice turns to discuss the 'extraneous circumstances' which, as he thought, a Court of law might take into consideration in the construction of an Act of Parliament his reasoning (with the substitution of this statute for that which then fell to be construed by the Lords Justices in Chancery and with the substitution of the two Acts of 1918 for the Acts which he was considering in comparison with it) might be applied almost verbatim to the matter now before us. I do not set it out at length here, but reference should be made to pp. 28 and 29 of the report.

These two cases, decided at an interval of some 300 years, furnish, when taken together, a complete exposition of the common law upon this subject. Since 1855 the doctrines which they embody have been applied in innumerable instances."

In *Attorney-General for Northern Ireland* v. *Gallagher*, [1963] A.C. 349, Lord Reid said (at p. 366):–

"In my judgment, the change of language can properly be regarded as indicating an intention to make some alteration, but the question remains: What was the alteration

1. 6 D. M. & G. 1, 21.
2. Pp. 459, 465.

which was intended? In deciding that well-settled principles require us to go to the words of the new Act. We can have in mind the circumstances when the Act was passed and the mischief which then existed so far as these are common knowledge, but we can only use these matters as an aid to the construction of the words which Parliament has used. We cannot encroach on its legislative function by reading in some limitation which we may think was probably intended but which cannot be inferred from the words of the Act."

In *Chandler and others* v. *Director of Public Prosecutions*, [1964] A.C. 763, the House of Lords in England had to construe section 1(1) of the Official Secrets Act, 1911, the material part of which provides that " '(1) If any person for any purpose prejudicial to the safety or interests of the State—(a) approaches or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act; ...he shall be guilty of fenoly,...' ", and Lord Reid stated the following (at p. 791):-

" The 1911 Act was passed at a time of grave misgiving about the German menace, and it would be surprising and hardly credible that the Parliament of that date intended that a person who deliberately interfered with vital dispositions of the armed forces should be entitled to submit to a jury that Government policy was wrong and that what he did was really in the best interests of the country, and then perhaps to escape conviction because a unanimous verdict on that question could not be obtained. Of course we are bound by the words which Parliament has used in the Act. If those words necessarily lead to that conclusion then it is no answer that it is inconceivable that Parliament can have so intended. The remedy is to amend the Act. But we must be clear that the words of the Act are not reasonably capable of any other interpretation."

It is pertinent to examine, at this stage, the situation in which Law 14/60, and particularly its section 25(2), was enacted:

In the Constitution of the Republic of Cyprus, which came into operation on August 16, 1960, when Cyprus became an independent State, provision was made, by means of Articles 158 and 190.1, that a new Law would be enacted regarding the constitution of the Courts of the Republic, and this Law is

Law 14/60 which repealed, *inter alia*, the Courts of Justice Law, Cap. 8.

Under Article 155 of the Constitution the High Court of Justice—the jurisdiction of which is now exercised by the present Supreme Court of Cyprus—became the highest appellate Court in the Republic.

The High Court of Justice was composed of two Greek Cypriot Judges, one Turkish Cypriot Judge and a neutral Judge, who was the President of the Court and had two votes.

By virtue of the provisions of Law 14/60 there were established inferior Courts, namely Assize Courts and District Courts.

Regarding the composition of these courts the following provision was made by Article 159 of the Constitution, which reads as follows:-

"1. A court exercising civil jurisdiction in a case where the plaintiff and the defendant belong to the same Community shall be composed solely of a judge or judges belonging to that Community.

2. A court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same Community, or where there is no person injured, shall be composed of a judge or judges belonging to that Community.

3. Where in a civil case the plaintiff and the defendant belong to different Communities the court shall be composed of such judges belonging to both Communities as the High Court shall determine.

4. Where in a criminal case the accused and the person injured belong to different Communities the court shall be composed of such judges belonging to both Communities as the High Court shall determine.

5. A coroner' s inquest where the deceased belonged to the Greek Community shall be conducted by a Greek coroner and where the deceased belonged to the Turkish Community shall be conducted by a Turkish coroner. In case there are more than one deceased belonging to different

Communities the inquest shall be conducted by such coroner as the High Court may direct.

6. The execution of any judgment or order of a court exercising civil or criminal jurisdiction, if the court is composed of a Greek judge or Greek judges shall be carried out through Greek officers of the court, if the court is composed of a Turkish judge or Turkish judges shall be carried out through Turkish officers of the court, and in any other case such execution shall be carried out by such officers as the court of trial shall direct."

In the above Article "Community" means the Greek or the Turkish Community in Cyprus.

Regarding the composition of an Assize Court the following further provision was made, by means of section 5 of Law 14/60, which, at the time of its enactment, read as follows:-

"5. An Assize Court shall be composed of a President of a District Court, who shall preside, and two District Judges to be nominated by the High Court:

Provided that the High Court may, in any case other than in a case where the accused is charged with an offence punishable with death, when the circumstances so require, direct that an Assize Court may be composed of three District Judges to be nominated by the High Court, to be presided over by one of such District Judges as the High Court may designate."

Section 5, above, was amended subsequently by the Courts of Justice (Amendment) Law, 1972 (Law 58/72), so as to include in it a reference to the Senior District Judges, whose posts were created in the meantime, but such amendment is not material for the purposes of the present judgment.

It is to be noted that section 5 of Law 14/60 introduced a new form of composition of Assize Courts, other than the one provided for earlier by means of section 5 of Cap. 8, which read as follows:-

"5. An Assize Court shall consist of the Chief Justice or such one of the Puisne Judges as the Chief Justice may

direct, who shall be the President of the Assize Court, and either–

(a) a President of a District Court and a District Judge nominated by the Chief Justice; or

(b) two District Judges nominated by the Chief Justice."

In addition to the Assize Courts and District Courts, provided for by Law 14/60, there was created an even higher criminal Court of first instance, by means of Article 156 of the Constitution, which reads as follows:–

"The following offences in the first instance shall be tried by a court composed of such judges belonging to both Communities as the High Court shall determine presided over by the President of the High Court:–

(a) treason and other offences against the security of the Republic;

(b) offences against the Constitution and the constitutional order:

Provided that in the appeal from any decision of such court the High Court shall be presided over by the President of the Supreme Constitutional Court in the place of the President of the High Court and in such a case the President of the Supreme Constitutional Court shall have all the powers vested in the President of the High Court."

Thus, at the time when the Constitution came into operation there came into existence a new structure of Courts of criminal jurisdiction, with the participation therein of Judges belonging to both Communities in Cyprus, as well as of two neutral Judges (the President of the Supreme Constitutional Court and the President of the High Court of Justice), in a manner regulated by the Constitution (see Articles 156 and 159, above) or as might be determined by the High Court of Justice (see, again, Article 159, above); and when Law 14/60 was enacted, providing for a new form of composition of the Assize Courts, such Courts came to be composed exclusively and always by judicial officers who were members of the District Courts and were not presided over by any member of the High Court of Justice.

When the Constitution came into operation section 137 of Cap. 155, which has already been quoted above, provided for an appeal against a judgment of acquittal only in relation to judgments of District Courts.

On December 17, 1960, Law 14/60 was enacted and by means of its section 25 there was regulated the right of appeal to the High Court of Justice. I shall not quote, again, the text of section 25, because it has been quoted at the beginning of this Decision, but I find it useful to point out that by virtue of subsection (1) of section 25 every decision of a Court exercising civil jurisdiction was made subject to appeal, that by virtue of subsection (2) of the said section every decision of a Court exercising criminal jurisdiction was made subject to appeal, and that in dealing with such appeals the High Court of Justice was vested with the very wide powers set out in subsection (3) of the same section.

It is to be noted that in section 25 of Law 14/60 no provision is made about appeals against decisions of the criminal Court created directly by Article 156 of the Constitution, because it is stated expressly in such Article that an appeal lies "from any decision" of such Court to the High Court of Justice which, in such a case, is presided over by the President of the Supreme Constitutional Court; it is clear that in relation to the criminal court created under Article 156 it is possible to appeal against even a judgment of acquittal delivered by such Court.

I am of the opinion that–

(a) in the context of the system of administration of justice for both Communities in Cyprus which was set up, as aforesaid, under the Constitution and Law 14/60,

(b) since for some of the most serious criminal offences, which come within the jurisdiction of the Court created by Article 156 of the Constitution, as well as for the less serious offences, which are tried by District Courts, a right of appeal against judgments of acquittal was provided for, and

(c) in view of the sweeping powers granted to the supreme appellate Court, by means of subsection (3) of section 25 of Law 14/60, when dealing with, *inter alia*, any criminal appeal,

it was the intention of the Legislatute when, in 1960, it enacted section 25 of Law 14/60, to extend the right of appeal from Assize Courts so as to cover, also, any judgment of acquittal.

This was achieved, not only by means of the express language of section 25(2), but, also, because the said provision has, inevitably, to be construed as having modified, by necessary and unavoidable implication, section 137 of Cap. 155, to such an extent as to do away with the restriction of its application only in relation to appeals from judgments of acquittal by District Courts and to extend such application to, also, judgments of acquittal by Assize Courts.

Before I proceed any further I should stress that in this case we are concerned, as counsel appearing for the appellant Attorney-General has conceded, with the existence of a right of appeal against a final judgment of acquittal, only; therefore, previous case-law of this Court (that is cases such as *Christofi*, *Georghadji* and *Lazarou*, *supra*) which relates to matters other than a final judgment of acquittal, and in respect of which no right of appeal, at all, appears to have been provided for, either directly by means of section 25(2) of Law 14/60 or by any of the provisions of Cap. 155, does not, in any way, conflict with the reasoning which is set out in this Decision.

It is useful to refer, next, to the principles of law applicable to the notion of implied repeal or modification of an earlier statute by a subsequent one:

The said principles are set out at length in, *inter alia*, Halsbury' s Laws of England, 3rd ed., vol. 36, pp. 465–469, paras. 709–713, Maxwell, *supra*, pp. 191–198, Craies, *supra*, pp. 366–382 and Odgers' Construction of Deeds and Statutes, 5th ed., pp. 360–364.

Our own Supreme Court has had the opportunity to deal with this matter in a number of cases, including, *inter alia*, *Themistocles* v. *Christophi*, 6 C.L.R. 121, *The Electricity Authority of Cyprus* v. *Partassides and others*, 20 (II) C.L.R. 34, 36–37, *Hinis* v. *The Police*, (1963) 1 C.L.R. 14, 25–27, *Petrides and others* v. *The Republic*, 1964 C.L.R. 413, 424–428, *Eraklides* v. *The Police*, (1971) 2 C.L.R. 8, 13–14 and *Athanassi* v. *The Police*, (1974) 2 C.L.R. 7, 13–14, in all of which it applied the afore-

mentioned principles. In these cases there were referred to, *inter alia*, the cases of *Garnet* v. *Bradley*, [1877] 2 Ex. D. 349, 351–352, *Ex parte Attwater. In re Turner*, [1877] 5 Ch.D. 27, 32, *Seward* v. *The Owner of the "Vera Cruz"*, [1884–1885] 10 A.C. 59, 68–69, *Kutner* v. *Phillips*, [1891] 2 Q.B. 267, 271–272, *Barker* v. *Edger and others*, [1898] A.C. 748, 754, *Felton and another* v. *Bower and Co.*, [1900] 1 Q.B. 598, 602–604, *Corporation of Blackpool* v. *Starr Estate Company, Limited*, [1922] 1 A.C. 27, 34, *In re Chance*, [1936] Ch. 266, 270–271, *In re Berrey. Lewis* v. *Berrey*, [1936] Ch. 274, 279 and *Walker* v. *Hemmant*, [1943] K.B. 604, and, therefore, it is not necessary for me to refer to all of them at length in this Decision.

In the light of the canons of construction of statutes, which are expounded in the above case-law, it is clear that the Courts lean against implying a repeal of an earlier statute by a later one unless the two statutes are so repugnant to each other that effect cannot be given to both of them in whole or in part.

In delivering his judgment in the House of Lords in England in the case of *Garnett* v. *Bradley*, [1877–1878] 3 A.C. 944, 966, Lord Blackburn stated the following (at p. 966):-

> "I shall not attempt to recite all the contrarieties which make one statute inconsistent with another; the *contraria* which make the second statute repeal the first. But there is one rule, a rule of common sense, which is found constantly laid down in these authorities to which I have referred, namely, that when the new enactment is couched in general affirmative language and the previous law, whether a law of custom or not, can well stand with it, for the language used is all in the affirmative, there is nothing to say that the previous law shall be repealed, and therefore the old and the new laws may stand together. There the general affirmative words used in the new law would not of themselves repeal the old. But when the new affirmative words are, as was said in *Stradling* v. *Morgan*[1], such as by their necessity to import a contradiction, that is to say, where one can see that it must have been intended that the two should be in conflict, the two could not stand together; the second repeals the first."

1. Plowd. 206.

It is useful, also, to refer to the case of *Goodwin* v. *Phillips*, [1908–09] 7 C.L.R. 1, which was decided by the High Court of Australia; Isaacs J. said (at p. 16):

> "The latest expression of the will of Parliament must always prevail. An express repeal of or exemption from an earlier enactment is not more effectual than if it were created by implication. The only difference is in ascertaining the fact and extent of the implied exemption or repeal."

As a general rule, a special prior enactment is not treated as having been repealed by implication by means of a subsequent general enactment (generalia specialibus non derogant), but such rule is not an absolute one (see Craies, *supra*, pp. 377–381).

In *Charnock* v. *Merchant*, [1900] 1 Q.B. 474, the headnote of the report of the case reads as follows:–

> " The appellant was charged before a Court of summary jurisdiction with an offence under the Prevention of Cruelty to Children Act, 1894, and gave evidence on his own behalf as that Act permits. He was asked in cross-examination whether he had not been previously convicted of a similar offence, and answered that he had. The Criminal Evidence Act, 1898, s. 1, enables 'every person charged with an offence' to give evidence on his own behalf; but (f) 'a person charged and called as a witness in pursuance of this Act' shall not be asked or required to answer any question tending to shew that he has been convicted of any other offence than that with which he is charged. By s. 6, 'this Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act'.
>
> The Court of summary jurisdiction convicted the appellant:–
>
> *Held*, that s. 1 of the Criminal Evidence Act, 1898, applied; that the evidence of the appellant's previous conviction was wrongly admitted, and, therefore, that the conviction was bad."

In that case Grantham J. said (at pp. 476–477):–

> " As to the point taken that the provisions of s. 1 of the

Criminal Evidence Act, 1898, do not apply to alter the provisions of prior Acts which are not inconsistent, I can say from my own knowledge that since the passing of the Act of 1898 it has always been applied by the Judges in cases under the Criminal Law Amendment Act, 1885."

Also, Channell J. stated (at p. 477):-

"It is of great importance to hold that the Criminal Evidence Act, 1898, has established one rule to be observed in all criminal courts and cases. The 6th section amply establishes that. If the contention made for the respondent were well founded, in cases under the Criminal Law Amendment Act, 1885, the defendant could still be cross-examined as to previous convictions, and prosecuting counsel, if the defendant did not give evidence on his own behalf, would still have the right to comment on that fact in his reply. The practice, since the Act of 1898 was passed, has always been to the contrary, and s. 6 makes it quite clear that the right course has been pursued."

The *Walker* case, *supra*, related to an extension of a right of appeal; the headnote of the report of the case reads as follows:-

"The appellant, who did not plead Guilty or admit the truth of the information, was convicted by a court of summary jurisdiction of an offence against the Coal Mines Act, 1911, and was ordered to pay a fine which did not amount to one-half the maximum fine for the offence, so that he could not appeal from the conviction to quarter sessions under s. 104 of that Act, but, *held*, that he had a right so to appeal under s. 37, sub.-s. 1, of the Criminal Justice Administration Act, 1914, which extends the right of appeal granted by s. 104."

In that case Viscount Caldecote C.J., with whom agreed Humphreys J. and Asquith J., delivered the following judgment, which is worth quoting in full (at pp. 605-606):-

"The question raised by the special case is whether the appeal committee came to a correct conclusion when they held that a right of appeal to quarter sessions from a conviction by a court of summary jurisdiction of an offence under the Coal Mines Act, 1911, is limited to the right

given by s. 104 of that Act. The appellant contends that it is not, and says that he has a right of appeal under the wide words of s. 37, sub.-s. 1, of the Criminal Justice Administration Act, 1914. The respondent relies on the maxim Generalia specialibus non derogant, a principle which has been stated thus by Lord Haldane L.C. in *Blackpool Corporation* v. *Starr Estate Co.*[1]: 'It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the legislature had before provided for individually, unless an intention to do so is specially declared'. Lord Selborne L.C. in *Seward* v. '*Vera Cruz*' put the principle a little differently when he said[2]: 'If anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words without any indication of a particular intention to do so'. It seems to me, looking at the provisions of s. 37, sub.-s.I, of the Criminal Justice Administration Act, 1914, that the present is not a case where a later and general Act has derogated from earlier and special legislation, but that the later Act provides an extension of the right of appeal granted by the earlier statute. The right of appeal granted by s. 104 of the Act of 1911 was limited to those cases where imprisonment or a fine amounting to or exceeding one-half the maximum fine for the offence was adjudged, but the right was granted whether or not the defendant had pleaded Guilty. By s. 37, sub.-s. I, of the Act of 1914, a right of appeal was granted, in words which are very wide and general, to 'any person aggrieved by any conviction of a Court of summary jurisdiction in respect of any offence', the only condition being that he did not plead Guilty or admit the truth of information. That limitation does not appear in s. 104 of the Act of 1911, and so the two enactments do

1. [1922] 1 A.C. 34.
2. [1884] 10 App. Cas. 68.

not cover the same territory. In my opinion, to restrict the universality of the right of appeal granted by s. 37, sub.-s. 1, of the Act of 1914 by reason of the provisions of s. 104 of the Act of 1911 would not be giving a reasonable interpretation to the words of the later statute with its thrice repeated emphasis on the word 'any'. The appeal committee, therefore, arrived at a wrong decision, and the case must go back to them that they may hear the appeal."

It is quite possible for a later enactment not to repeal completely, as a whole, an earlier one, but to alter it to a certain extent only; as has been pointed out in the "*Vera Cruz*" case, *supra* (at p. 69), "alteration in any important particulars is pro tanto the same" as a repeal (and see, also, in this respect, Craies, *supra*, p. 375).

In *Pilkington* v. *Cooke*, 153 E.R. 1336, the relevant part of the headnote of the report of the case reads as follows:-

" The stat. 29 Eliz. c. 4, (against extortion by sheriffs, & c.), is not repealed by the 1 Vict. c. 55; but the only effect of the latter statute is to exempt from the penalties of the statute of Elizabeth the cases in which the sheriff shall take no larger fees than shall be allowed by order of the Judges."

In *Luby* v. *Warwickshire Miners' Association*, [1912] 2 Ch. 371, the relevant part of the headnote of the report of the case reads as follows:-

" The Act 39 Geo. 3, c. 79, after prohibiting certain societies, enacts (s. 2) that every society composed of different divisions or branches acting in any way separately or distinct from each other and having separate or distinct officials shall be deemed to be an unlawful combination or confederacy; and the Act 57 Geo. 3, c. 19, after prohibiting certain societies, enacts (s. 25) that every society which nominates or appoints delegates to meet and confer with any other society, or with any delegate of such other society, shall be deemed to be an unlawful combination or confederacy:-

Held, that although modern trade unions having branches and appointing delegates came within the scope of the

said Acts of George III., and were not expressly exempted from those Acts by any subsequent Act, their existence had been recognized by the Legislature in the Acts relating to trade unions, and they must be deemed to be impliedly exempt from the provisions of the said Acts of George III."

In that case Neville J. said (at pp. 380–381):–

"It is true that trade unions have in their own interests not been invested with a legal status, but when it is asserted, as it sometimes is, that trade unions are illegal associations, it is true only in the sense stated. Their existence has been repeatedly recognized by the Legislature and their affairs regulated by Acts of Parliament. Numerous decisions of the Courts have been come to with regard to them, and it has never until the present case, I think, been suggested that the membership of trade unions involved a criminal act. That trade unions are organized by means of largely independent branches and that they constantly employ delegates is and has long been notorious, and it would be ridiculous to suppose that both the Legislature and the Courts of justice remained in ignorance of facts so well known. Moreover, so far as branches are concerned, their existence has been in evidence before the Courts and is expressly referred to in the Acts of Parliament which have been cited. If, however, the Acts of George III. above referred to applied, the existence of the trade union branches would make every member of the union a participator in a criminal act, and their recognition by the Legislature, not for the purpose of imposing penalties but for the regulation of their affairs, would be wholly inexplicable. The conclusion, therefore, that trade unions are not criminal associations and consequently that the Acts of George III. do not apply, assuming as I do that the words of the Acts are sufficiently wide to cover trade unions with branches and delegates, seems to me inevitable. If this be so, it must be on one of two grounds, either that the statutes in question have become obsolete or that trade unions have been exonerated from their provisions by the Legislature. In my opinion the latter is the true explanation. There is no express provision in the Acts dealing with trade unions that the statutes of George III. shall not apply, but inasmuch as the manner in which Parliament

has dealt with them is quite inconsistent with their criminality, I think such a provision must of necessity be implied."

In *Ellen Street Estates Limited* v. *Minister of Health*, [1934] 1 Q.B. 590, Scrutton L.J. said (at pp. 595–596):-

"The second point advanced by Mr. Hill seems to me even more impossible. It is this: the Acquisition of Land (Assessment of Compensation) Act, 1919, lays down certain principles on which compensation for land taken is to be assessed. Sect. 7, sub.-s. 1, says this: 'The provisions of the Act or order by which the land is authorised to be acquired, or of any Act incorporated therewith, shall, in relation to the matters dealt with in this Act, have effect subject to this Act, and so far as inconsistent with this Act those provisions shall cease to have or shall not have effect'. Mr. Hill's contention is that if in a later Act provisions are found as to the compensation to be paid for land which are inconsistent with those contained in the Act of 1919, the later provisions are to have no effect. Such a contention involves this proposition, that no subsequent Parliament by enacting a provision inconsistent with the Act of 1919 can give any effect to the words it uses. Sect. 46, sub-s. 1, of the Housing Act, 1925, says this: 'Where land included in any improvement or reconstruction scheme ..... is acquired compulsorily,' certain provisions as to compensation shall apply. These are inconsistent with those contained in the Acquisition of Land (Assessment of Compensation) Act, 1919, and then s. 46, sub-s. 2, of the Act of 1925 provides: 'Subject as aforesaid, the compensation to be paid for such land shall be assessed in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919'. I asked Mr. Hill what these last quoted words mean, and he replied they mean nothing. That is absolutely contrary to the constitutional position that Parliament can alter an Act previously passed, and it can do so by repealing in terms the previous Act—Mr. Hill agrees that it may do so—and it can do it also in another way—namely, by enacting a provision which is clearly inconsistent with the previous Act. In Maxwell's Interpretation of Statutes I find three or four pages devoted to cases in which Parliament, without using the word 'repeal', has effected the same result by enacting a section incon-

sistent with an earlier provision. It is impossible to say that these words that compensation shall be assessed in a particular way and, subject as aforesaid, shall be assessed in accordance with the provisions of the Act of 1919 have no effect. This point was not dealt with before Swift J., because in *Vauxhall Estates Ld.* v. *Liverpool Corporation*[1] a Divisional Court rejected Mr. Hill's argument and held that the provisions of the Act of 1925, so far as they were inconsistent with, must prevail over, those of the Act of 1919. In the present case the matter is carried a step further, because s. 12 of the Housing Act, 1930, says in effect that compensation shall be assessed in accordance with the provisions of the Act of 1919 except as altered in a series of matters which the Act of 1930 prescribed."

It is to be noted that the notion of partial repeal, or modification, by implication, seems to have been accepted, also, by our own Supreme Court in, *inter alia*, the *Petrides* case, *supra* (p. 428) and the *Hinis* case, *supra* (p. 26).

Also, as already stated at an earlier part of this Decision, the application of the relevant principles of implied repeal and modification to a very radical extent, indeed, is demonstrated by the cases of *Shourris and Kazantzis*, *supra*, in relation to sections 132, 133, 135 and 136 of Cap. 155.

I shall endeavour, now, to explain, in some greater detail, my approach to what I regard to be the correct interpretation and application of subsection (2) of section 25 of Law 14/60: Its text has been quoted earlier on in this judgment, but I have to resort to quoting it again in relation to what I state immediately hereinafter:

It consists of what I would describe as two paragraphs, of which the first reads as follows: "Subject to the provisions of the Criminal Procedure Law but save as otherwise in this subsection provided every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court, "; and by the second there is made the following specific provision:

"Any such appeal may be made as of right against conviction or sentence on any ground."

1. [1932] 1 K.B. 733.

If the first paragraph of subsection (2) had stood alone then, because of the existence in it of the phrase "every decision of a Court exercising criminal jurisdiction shall be subject to appeal", the Attorney-General would clearly be entitled to appeal, or sanction an appeal, against any judgment of acquittal by an Assize Court; and the opening part of such first paragraph, namely "Subject to the provisions of the Criminal Procedure Law", would not render this view invalid on the ground that section 137 of Cap. 155, as it stood when Law 14/60 was enacted, was limited only to appeals against any judgment of acquittal by a District Court, inasmuch as the opening part of the said first paragraph, which has just been quoted above, is qualified by the words "but save as otherwise in this subsection provided", which follow immediately the said opening part and precede the phrase "every decision of a Court exercising criminal jurisdiction shall be subject to appeal". In my opinion, the inevitable result must be that the first paragraph of subsection (2) of section 25 of Law 14/60 creates, itself, in unmistakable terms, a right of appeal against every decision of a Court exercising criminal jurisdiction, irrespective of whether such decision is one of conviction or of acquittal, provided, of course, as pointed out earlier on in this Decision, that such decision is of a final nature, and notwithstanding the fact that no provision enabling an appeal against a judgment of acquittal by an Assize Court was to be found in the Criminal Procedure Law, Cap. 155, as it stood at the time when Law 14/60 was enacted.

It has, however, been put forward in argument that the word "appeal" in the first paragraph of subsection (2) of section 25 should be treated as being qualified by the opening words—"Any such appeal"—of the second paragraph of the said subsection, and that since such second paragraph provides only about an appeal "as of right against conviction or sentence on any ground", it follows that the first paragraph of subsection (2) cannot be construed as providing, itself, expressly for a right of appeal against a judgment of acquittal by an Assize Court notwithstanding that no such provision is to be found in Cap. 155.

I cannot accept the above argument as a valid one, because if it were to be treated as being so, then the only, and inescapable, logical conclusion to which it would lead would be that subsection (2), when read as a whole with the word "appeal"

in its first paragraph being qualified by its second paragraph, has impliedly repealed section 137 of Cap. 155 in such a manner that it is no longer possible to appeal against any judgment of acquittal, even by a District Court, since such judgment of acquittal cannot, in any way at all, be regarded as "conviction or sentence" referred to in the second paragraph of subsection (2).

As this could not have over been intended to be the consequence of the enactment of subsection (2) of section 25 of Law 14/60—and as a matter of fact it has not even been suggested by any party to the present proceedings that it was so intended—and, moreover, as such a result would be entirely incompatible and inconsistent with the natute of the judicial system set up by means of the Constitution and Law 14/60 itself, it follows that the second paragraph of subsection (2) has to be treated as only being destined to repeal impliedly provisions in sections such as 132, 133, 135 and 136 of Cap. 155 which prevented, in certain cases, an appeal against conviction or sentence "as of right" and "on any ground"; and the said second paragraph of subsection (2) should not, then, be regarded as qualifying in any restrictive manner the provisions of the first paragraph of the same subsection.

Thus, the words "every decision" in the first paragraph of subsection (2), when read and applied in the context as a whole of such first paragraph, and unqualified and unrestricted by anything in the second paragraph of the subsection, not only result in creating, in explicit terms, a right of appeal even against a judgment of acquittal by an Assize Court, but they repeal, by necessary implication, the words "District Court" in section 137 of the Criminal Procedure Law, Cap. 155, rendering thus possible such an appeal under the said section 137 itself, that is "Subject to the provisions of the Criminal Procedure Law." It is to be noted that the implied repeal and modification of section 137, which has taken place, in accordance with my above view, because of the enactment of the first paragraph of subsection (2) of section 25 of Law 14/60, is a much less radical one than that which has been accepted as having been effected because of the enactment of the second paragraph of the same subsection in relation to sections 132, 133, 135 and 136 of Cap. 155 (see *Shourris and Kazantzis, supra*).

I would summarize my opinion by stating that subsection (2)

of section 25 of Law 14/60 has not only created directly, by means of its first paragraph, a right of appeal against a judgment of acquittal by an Assize Court, but has, also, created such right under the relevant provision of Cap. 155, namely section 137, due to the implied partial repeal or modification of such section (namely the elimination of the words "District Court") entailed by the enactment of the first paragraph of the said subsection (2).

Had this not been so, we would have had a situation in which there would be an appeal as of right against conviction or sentence by any Court exercising criminal jurisdiction, an appeal against acquittal by the Court created under Article 156 or by a District Court, but there would not be an appeal against acquittal by an Assize Court.

In my opinion such a situation would be entirely incompatible and inconsistent with the nature of the system of the administration of justice set up under the Constitution and Law 14/60 itself, and it would, also, entail manifest injustice, inconvenience and, in a certain way, absurdity, which are things to be avoided, at all costs, if possible, when construing a statute (see, *inter alia*, Craies, *supra*, pp. 86–91, Maxwell, *supra*, pp. 208–212 and Odgers', *supra*, pp. 263–268).

I would like to draw particular attention, in this connection, to the fact that under section 155(b) of Cap. 155, it is possible for the Attorney-General to direct that a case is to be tried and determined by a Court of summary jurisdiction, that is a District Court, even if such case has already been committed for trial by an Assize Court; and, also, under section 24(2) of Law 14/60, it is possible for a District Court, with the consent of the Attorney-General, to try an offence which would, normally, be triable only by an Assize Court. Thus, if an appeal is not found to lie against a judgment of acquittal by an Assize Court, even after the enactment of section 25(2) of Law 14/60, it would be possible if three different persons, A, B and C, have committed separately the same kind of offence in substantially similar circumstances, for A to be tried by a District Court under section 24(2) of Law 14/60, for B to be committed for trial by an Assize Court but his case to be, later, remitted for summary trial and be tried by a District Court under section 155(b) of Cap. 155, and for C to be committed for trial by an Assize Court and be, actually, tried by such Court, and if all three are acquitted then

an appeal would lie against the acquittals of A and B, but not, also, as regards the acquittal of C.

This situation would, *inter alia*, be manifestly contrary to, and inconsistent with, the provision, in Article 28.1 of the Constitution, that "All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby."

Also, the deprivation of the Attorney-General of the Republic of a right of appeal against an acquittal by an Assize Court, when an appeal may be made as of right on any ground against conviction by such a Court, would be contrary to the notion of "equality of arms" which is enshrined in our Constitution by means of Article 30.2, and which is, also, safeguarded by the application in Cyprus of Article 6(1) of the European Convention on Human Rights (see, *inter alia*, my judgment in *Kouppis* v. *The Republic*, (1977)* 11 J.S.C. 1860, 1877-1887); and such deprivation would be, as well, contrary to Article 28.1, above.

It is, furthermore, pertinent to point out that Article 113(2) of the Constitution empowers the Attorney-General "..at his discretion in the public interest, to institute, ...any proceedings for an offence against any person in the Republic"; and if this Article is read in the context of the system of the administration of justice set up by the Constitution, and, also, in conjunction with Article 28.1, above, I fail to see why it should not be held that the Attorney-General is thereby empowered to institute, *inter alia*, proceedings by way of an appeal against acquittal.

For all the foregoing reasons I am of the view that the appellant Attorney-General had a right to file the present appeals.

Before concluding I have to deal with two other ancillary issues which have been raised in the course of argument before this Court:

The first is that the notices of appeal in these cases have been signed by Mr. M. Kyprianou, Senior Counsel of the Republic, "for Attorney-General of the Republic", and not by the Attorney-General himself; and it has been contended that they

* To be reported in (1977) 2 C.L.R.

have not been properly filed in view of the fact that any power of the Attorney-General to appeal from a judgment of acquittal cannot be delegated; reliance has been placed, in this respect, on section 156 of Cap. 155, the material part of which reads as follows:-

> "156. With the exception of the power to appeal from any judgment of acquittal by any District Court under the provisions of section 137 of this Law, the Attorney-General may by writing under his hand or by notice in the Gazette delegate all or any of the other powers vested in him under this Law ...."

The above provision has, however, to be read together with subsection (3) of section 137 of Cap. 155, which reads as follows:-

> "(3) Every notice of appeal under this section shall be in the prescribed form; it shall be signed by the Attorney-General or by such person as he may authorise in that behalf and shall set out in full the grounds on which it is founded."

Moreover, Article 113.2 of the Constitution, to which reference has already been made for another purpose, reads:-

> "The Attorney-General of the Republic shall have power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Such power may be exercised by him in person or by officers subordinate to him acting under and in accordance with his intructions."

In view of the express provisions in Article 113.2 and section 137(3), above, I have no difficulty in holding that the present appeals have been properly filed, as signed by Senior Counsel of the Republic on behalf of the Attorney-General.

In any event, I think that what cannot be delegated, because of the provisions of section 156 of Cap. 155, is not the procedural step of signing a notice of appeal from a judgment of acquittal, in respect of which express provision is made by subsection (3) of section 137, but the decision to appeal against such judgment,

or to sanction such an appeal, under subsection (1) of section 137.

The second of the aforesaid two issues is whether these appeals, against the acquittal of the respondents on the counts charging them with premeditated murder, could have been made at the present stage of the trial before the Assize Court, before the conclusion of the trial as a whole, as the trial has to be continued, in any event, in view of the addition to the information by the trial Court of two new counts charging the respondents with other offences arising out of the evidence already adduced at the trial.

I am of the opinion that inasmuch as the acquittals of the respondents amount to final judgments of acquittal these appeals could be filed, at the present stage, against them (see, by analogy, in relation to the right of the Attorney-General in Canada to appeal against an acquittal, Crankshaw's Criminal Code of Canada, 7th ed., p. 1039, *Walker* v. *The King*, (1939) S.C.R. 214, *Lattoni and Corbo* v. *The Queen*, (1958) S.C.R. 603, and *The Queen* v. *Sheets*, 16 D.L.R. (3d) 221).

It is hereby, held, therefore, that the present appeals should be heard as regards their merits.

TRIANTAFYLLIDES P.: In the result these appeals are dismissed by majority.

Appeals dismissed.