1981 October 16

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS AND SAVVIDES, JJ.]

ANDREAS AZINAS AND ANOTHER,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos.* 4214–17).

Criminal Procedure—Trial of criminal cases—Submission that no prima facie case has been made against accused—Approach to—Section 74(1)(*b*) *of the Criminal Procedure Law, Cap.* 155.

Evidence—Statements to Police—Admissibility—Voluntariness—Judges' Rules—Not Rules of Law but Rules of practice for guidance of the police—Absence of caution—Whether statement inadmissible—Form of caution—Applicability of rules II and III of the Judges' Rules.

Fair trial—Criminal case—Tried contemporaneously with sittings of Commission of Equiry which was set up to inquire, inter alia, *into matters relating with conduct of accused—Fair trial of accused not adversely affected because he has been tried by a Judge and not by a Jury.*

Criminal Procedure—Charges—Framing—Duplicity—Stealing charges—Attaching schedules to the charge-sheet—Though undesirable, in the circumstances of this case, charges not bad for duplicity—Proviso to section 39 *of the Criminal Procedure Law, Cap.* 155.

Stealing—Stealing by agent—Sections 255, 270(*b*) *and* 257 *of the Criminal Code, Cap.* 154*—Ingredients of the offence—Stealing money entrusted for a particular purpose by giving it for another purpose—"Fraudulently" and "without a claim of right" in section* 255(1) *of the Criminal Code—Meaning—Such cases to be approached by reference to Cyprus Criminal Code and not to the Common Law—Proof of ownership of the money and absence of consent of owners—Whether absence of consent of all persons who entrusted money has to be proved—Time of*

"taking" of money by appellants was the time of using it for purposes other than those specified—Whether identification of the money stolen needed—Platritis *v.* Police (1967) 2 C.L.R. *followed*—R. *v.* Feely [1973] 1 *All E.R.* 343, *adopted in* Zissimides *v.* Republic (1978) 2 *C.L.R.* 382, *not applicable.*

Stealing—Stealing by agent—Sections 255, 270(*b*) *and* 257 *of the Criminal Code, Cap.* 154—*Drafting of charges—Statement of offence—Non-inclusion of section* 257 *therein—Conviction not a nullity.*

Criminal Procedure—Charges—Drafting—Statement of offence—Stealing by agent—Sections 255, 270(*b*) *and* 257 *of the Criminal Code, Cap.* 154—*Non-inclusion of section* 257 *in statement of offence—Conviction not a nullity.*

Evidence—Admissibility—Charge of stealing by agent—Certified copies of lists in possession of Co-Operative Institution—Rightly admitted in evidence under section 31 *of the Co-Operative Societies Law, Cap.* 114.

Co-operative Societies Law, Cap. 114—*Section* 31 *of the Law—Identical with provisions of the Bankers Books Evidence Act,* 1879—*Constitutes an exception to the hearsay evidence rule and is not contrary to the provisions of the Evidence Law, Cap.* 9.

Breach of trust affecting the public—Section 133 *of the Criminal Code, Cap.* 154—*Ingredients of the offence—"Trust" meaning—"Public" meaning—Whether ordinary negligence enough to prove the offence and whether wilful negligence required.*

Words and phrases—"Trust"—"Public"—"Fraudulently"—Meaning.

Criminal Procedure—Charge—Particulars—Asked for and given during the trial—Whether absence of particulars can be raised on appeal.

Criminal Procedure—Trial of criminal cases—Evidence—Within province of trial Judge to believe or disbelieve evidence given by the parties.

Criminal Law—Offences—Same set of facts can make more than one offence—What matters is whether ingredients of the offence have been proved.

Common Law—Principles of—Applicability in Cyprus.

Criminal Law—Parties to offences—Aiders and abettors—Section 20 of the Criminal Code, Cap. 154—Law applicable.

Stealing—Stealing by agent—Aiding and abetting—Section 20 and sections 255, 270(b) and 257 of the Criminal Code, Cap. 154—Stealing money entrusted for a specified purpose by paying it for another purpose—Aider and abettor truly believing or taking it for granted that payments were within the specified purpose—Should have been given the benefit of doubt.

Criminal law—Sentence—Appeal against sentence—Approach of Court of Appeal—Stealing by agent, breach of trust affecting the public and abuse of office—Sentences of six months to eighteen months' imprisonment—Not manifestly excessive in the circumstances of this case.

Criminal law—Sentence—Disparity of sentence as a ground of appeal—Principles applicable—Imposition of punishment should be proportionate to participation in the crime—Eighteen months' imprisonment on principal offender and twelve months' on aider and abettor—Differentiation made by trial Judge inadequate to recognise the difference between their cases—Sentence passed on aider and abettor wrong in principle and manifestly excessive—Reduced.

The appellants were convicted by the District Court of Nicosia on six counts of the offence of stealing by an agent, contrary to sections 255, 270(b) and 20 of the Criminal Code, Cap. 154; on six counts of the offence of abuse of office by a public servant, contrary to sections 105 and 20 of the Criminal Code; and on six counts of the offence of breach of trust affecting the public, contrary to sections 133 and 20 of the Criminal Code; and appellant 1 was sentenced to concurrent sentences ranging from six to eighteen months' imprisonment and appellant 2 to concurrent sentences of six to twelve months' imprisonment. Appellant 2 was convicted as aiding and abetting appellant 1 contrary to section 20 of the Criminal Code. Moreover appellant 1 was convicted on three more counts which related to each of the above offences.

Appellant 1 was at all material times a public servant holding the post of Commissioner of Co-operative Development; and appellant 2 was holding the post of Director of the Co-operative College, but he was not a public servant.

Following the Turkish invasion of Cyprus many employees

of the Co-operative movement had to leave their homes and became, thus, displaced and unemployed. On December 22, 1974, appellant 1 convened a meeting with a view to finding ways and means to improve the position of these employees. At this meeting it was decided to set up a fund called the "Self-Assistance Fund" for the purpose of rehabilitation of the displaced co-operative employees by granting to them financial aid. There followed circulars signed by appellant 1, in his capacity as Commissioner of Co-operative Development, which were addressed to Co-operative Institutions and Co-operative employees, inviting them to contribute to the above Fund and that their contributions would be utilized for the displaced Co-operative employees who lost their jobs. As a result of the above circulars Co-operative Institutions and other persons made contributions to the "Self-Assistance Fund" which was under the administration of appellant 1. Appellant 1 aided by appellant 2 made payments out of the above Fund, amounting to £105,894.009 mils to third persons and for purposes other than those of the "Self-Assistance Fund". These payments formed the subject matter of the above counts and according to the particulars of the first six counts (stealing by agent) the appellants fraudulently converted, on various dates the said total sum of £105,894.009 mils, which was entrusted to the first appellant by Co-operative Societies and other persons whilst he was the Commissioner of Co-operative Development in order to pay the said sum to displaced and unemployed Co-operative employees and appellant 1 aided by appellant 2 paid the said sums to third persons for purposes other than those of the "Self—Assistance Fund". The particulars of the charge relating to the above offences of abuse of office by a public servant and breach of trust referred to the payment of the above sums to the same persons and generally to the facts constituting the offence of stealing by agent.

Appellant 2 was involved in the administration of the "Self-Assistance Fund" and he knew very well the purposes for which it had been created. Payments from the fund were made through cheques prepared in his office, he was making announcements inviting the persons entitled to payments from the Fund to go and collect their cheques from his office and was aware of everything that was done by appellant 1. The name of the "Self-Assistance Fund" was changed in September, 1978.

In the course of investigating the above offences the police took a statement from appellant 1 on the 1st May, 1980 and before cautioning him the investigating officer made the following statement:

> "I inform you that I am carrying out investigations with regard to offences, which in accordance with the material I have in my hands, you have committed in your capacity as Commissioner of Co-operative Development and Registrar of Co-operative Societies".

Appellant 1 was then questioned and his statement was in the form of questions and answers. The trial Judge in ruling that the statement in question was admissible held that once the material which the police had in their hands at the time did not justify the bringing of charges against appellant 1 the statement was admissible because rule II of the Judges' Rules was applicable.

Upon appeal against conviction and sentence Counsel for the appellants contended:

(1) That the conviction of appellant 1 was the result of a substantial miscarriage of justice inasmuch as in deciding the submission of counsel for the appellant that the prosecution did not prove a prima facie case against the appellant, the trial Judge, by its ruling of the 24th January, 1981, decided certain matters affecting the guilt or innocence of the appellant finally and before having heard the evidence of the appellant and his witnesses contrary to the accepted principle of law that the final pronouncement of the guilt or innocence of an accused person should be pronounced only after hearing the whole of the case including the appellant's version.

(2) That the trial Judge erroneously accepted and received in evidence the statement made by appellant 1 to the police on the 1st May, 1980, which statement materially affected the final verdict. The objection to its admissibility being that it was rule III of the Judges Rules which was applicable and no rule II; and that since rule III was applicable only in exceptional cases questions relating to the offence should have been put to the appellant and this after cautioning him in the terms prescribed

by paragraph (b) of rule III; and not in the terms of rule II as was done in this case.

(3) That appellant 1 was prejudiced because of the contemporaneous sittings of the Commission of Enquiry, set up by the Council of Ministers to enquire into, *inter alia*, the conduct of officers of the Co-operative Movement and the press publications of such sittings which were most of the time misleading, with the sittings of the Court in the present criminal case, adversely affected the fair trial of the appellant to such an extent as to render his conviction and sentence unconstitutional and illegal.

(4) That the framing of the charges with schedules attached to the charge-sheet giving details of the various payments was faulty because it introduced more than one offence contrary to the basic procedural rule against duplicity.

(5) That the trial Court erroneously found appellant 1 guilty of the offences of stealing by agent* under sections 255 and 270(b)** of the Criminal Code Cap. 155, inasmuch as section 270(b) creates the offence of fraudulent conversion and not the offence of stealing by an agent; and the non-inclusion in the relevant counts of section 257***

* Section 255(1) reads as follows:

"1. A person steals who, without the consent of the owner fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking permanently to deprive the owner thereof.

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof if, being a bailee or part owner thereof he fraudulently converts the same to his own use or the use of any person other than the owner".

** Section 270(1)(b) reads as follows:

"If the thing stolen is any of the following, that is to say:

(b) the property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay or deliver for any prupose or to any person the same or any part thereof or any proceeds thereof".

*** Section 257 provides as follows:

"257. When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the sale, mortgage, pledge, or other disposition of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person for whom the money, security, or power of attorney was received until the direction has been complied with".

of the Code makes the conviction of the appellant on these counts a nullity.

(6) That the trial Court erroneously convicted the first appellant of the offences of stealing by agent once the following necessary ingredients of the offence under sections 255 and 270(b) of the Criminal Code had not been proved by the prosecution: (a) that appellant acted "fraudulently"; (b) that there was no averment and no proof of the ownership of the money, subject-matter of the relevant counts, in the charge-sheets; (c) that there was no proof of the absence of the consent of the owners for the actions of the appellant; (d) that the prosecution failed to call all owners of the money, subject-matter of the said counts, to give evidence; (e) that the absence of proof that at the time the money was being entrusted to appellant there was no intention on his part to deprive the owners of the money of the Fund or their property; and (f) that there was no evidence of any taking by the appellant of the money in the sense of section 255 of the Criminal Code since the said money was being lawfully paid into the Fund by the various donors of the Fund.

(7) That the offences of stealing by agent have not been proved because there has not been an identification of the money.

This contention was based on the fact that money belonging to the "Self-Assistance Fund" was amalgamated with the money belonging to another Fund namely the Fund of Ethnarch Makarios III.

(8) That the trial Judge erroneously accepted as evidence the lists and other connected documentary evidence in respect of the donors to the Fund, relying on section 31* of the Co-Operative Societies Law, Cap. 114, because section 31 was not applicable and could not override the provisions of the Evidence Law, Cap. 9.

(9) That the trial Judge erroneously found appellant 1 guilty

* Section 31 is quoted at pp. 95-96 *post*.

of the offences of breach of trust contrary to section 133* of the Criminal Code, Cap 154

(10) That the particulars of the offences in the charge-sheet were not complete.

(11) That the verdict of the trial Judge concerning appellant 1 on all counts is contrary to the weight of evidence and is not supported thereby, the trial Judge having wrongly accepted the evidence of the prosecution and rejected that of the defence.

(12) That appellant 1 could not be found guilty of the offences of abuse of office and breach of trust because he was found guilty of the offence of stealing by agent.

(13) That the trial Judge wrongly found that appellant 2 was aiding and abetting appellant 1 on various counts, by virtue of the provisions of section 20 of the Criminal Code, because there was no evidence establishing any conduct on his part that would render him guilty.

(14) That the trial Judge wrongly found that appellant 2 knew the purposes of the "Self-Assistance Fund".

(15) That the sentence passed on appellant 1 was manifestly excessive

(16) That the sentence imposed on appellant 2 was manifestly excessive and wrong in principle because it contravened the principle of disparity of sentence.

Held, (1) that the mere fact that the trial Judge decided in his ruling, which he gave on the submission of the defence that there was no case to answer, the relevant elements of the offences which the appellants were facing does not mean that the Judge decided their guilt before hearing them, that, on the contrary, it has helped the defence by pointing out in his ruling what the legal aspect of the case was, that the trial Judge never dealt with the evidence adduced, and indeed, he never decided the

* Section 133 provides as follows

'133 Any person employed in the public service who in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of a misdemeanour"

guilt of the appellants as the defence had argued; that the trial Judge followed the proper approach as laid in the relevant case-law; accordingly contention (1) must fail (see Practice Note issued in 1962 by the Divisional Court of the Queen's Bench Division of the High Court of Justice in England; *Wiseman and Another* v. *Borneman and Others* [1969] 3 All E.R. 275 at p. 277; *Rex* v. *Kara Mehmed*, 16 C.L.R. 46 and *R.* v. *Galbraith* [1981] 2 All E.R. 1061).

(2) That the basic criterion which is taken into consideration by a trial Judge for admitting or not the statement of an accused person, is whether it was given voluntarily; that compliance, however, with the Judges' Rules would help considerably a Court to decide as to whether the statement taken was given voluntarily or not; that the question whether a person has been duly cautioned before making a statement is a circumstance to be taken into account by the Judge in exercising his discretion whether to exclude the statement, but the absence of a caution does not as a matter of law make the statement inadmissible; that the Judges' Rules are applicable in Cyprus in exactly the same way as they are applicable in England and therefore they do not have the force of law, but are rules of practice for the guidance of the police officers and not for the circumscription of the Judicial power (see section 8 of the Criminal Procedure Law, Cap. 155); that the phraseology used by the police in this case does not form part of the caution as it is stated in the Judges' Rules, rule II, but it is an introduction to the subject only, and therefore, there is no particular phraseology which is binding; that, furthermore, the phraseology used by the police does not mean that the investigating officer had informed the accused that he had in his hands evidence which justified criminal proceedings; that, therefore, the trial Judge rightly accepted the statement of appellant 1; accordingly contention (2) must fail.

(3) That appellant 1 was not prejudiced because of the contemporaneous sittings of the Commission of Enquiry because in Cyprus there is no jury system; that this case has been tried by an experienced Judge who has been sitting on the bench listening to the arguments of all counsel for a long time and with his training he was in a position to discard extraneous matters and publications, and not to allow himself to be influenced by anything outside his Court, as he himself clearly stated in

his ruling on this point; accordingly contention (3) must also fail.

(4) That though the course of attaching schedules to the charge-sheet is undesirable and this Court has certain misgivings with regard to the framing of the charges, finally, in view, particularly, of the proviso to section 39 of the Criminal Procedure Law, Cap. 155 to the effect that no error in stating the offence or the particulars required to be stated in the charge shall be regarded at any stage of the case as non-compliance with the provisions of this law unless in the opinion of the Court, the accused was in fact misled by such error, it would support the ruling of the trial Court that the charges were not bad for duplicity; accordingly contention (4) should fail.

(5) That independently of the name one gives to the offence it is clear that the Judge found the first appellant guilty of stealing as it is laid down in sections 255 and 270(b) of the Criminal Code; that what really matters is whether the relevant ingredients of the offence can be proved in the present case; that, of course, if that offence happens to be named fraudulent conversion in England it does not mean that it must be named also here fraudulent conversion, in view of the fact, that in the margin of section 270 it is described as stealing by an agent; that the mere fact that section 257 was not used does not mean that there is no offence because the offence exists by combining the proviso to section 255 with that of section 270(b); that, therefore, the non-inclusion of section 257 in the relevant counts does not make the conviction of appellant 1 a nullity; accordingly contention 5 must fail (*Platritis* v. *Police* distinguished; see, also, section 39(c) and proviso to section 39 of the Criminal Procedure Law, Cap. 155).

(6)(a) That under the relevant sections charging the accused it is essential that three things should be proved by the prosecution to the satisfaction of the Court; first, that the money was entrusted to the accused person for a particular purpose; secondly, that he used it for some other purpose; and thirdly that such misuse of the money was fraudulent and dishonest; that for the money to be considered as being "entrusted" no written evidence nor the creation of an official entrustment is required; that the phrase "fraudulently" and "without a claim of right made in good faith" in s.255(1) of the Criminal Code mean that

both the possession and the taking must be made intentionally, without a mistake of the person liable and it must be made without a claim of right made in good faith that the property belonged to another person; that, in other words, that phrase does not mean taking by fraud or defrauding (katadolievsi) but it means intentional and deliberate and not under the mistake that the property belonged to some other person; that the fact that a persom liable of stealing may have a hope in the future to return the stolen money is a matter which can be taken into consideration in mitigation and does not amount to a defence; that it is safer to approach such case having in mind the provisions of the Cyprus Criminal Code instead of turning to the English Common Law which does not constitute directly the prototype of our legislation; that the purpose for which the money has been misappropriated is of no consequence once the owner has been deprived of his money; that the fact that such purpose was of a philanthropic nature or not is irrelevant because section 9 of the Criminal Code states that the motive is immaterial so far as regards criminal responsibility; that the fact that the appellant has not appropriated the money himself does not amount to a defence; that, therefore, the prosecution has proved that the appellant has acted fraudulently; accordingly contention 6(a) should fail. (*Platritis* v. *Police* (1967) 2 C.L.R. 174 followed; principle in *R.* v. *Feeley* [1973] 1 All E.R. 341, which was adopted by the Supreme Court of Cyprus in *Zissimides* v. *Republic* (1978) 2 C.L.R. 382, to the effect that the intention of returning the money would constitute a defence, not applicable because the *Feely* case was decided under the provisions of the Theft Act, 1968, which are different both from the provisions of the Larceny Act, 1916 and sections 255 and 270 of the Cyprus Criminal Code and have thus no direct relevance to the interpretation of the Cyprus Statute on theft; and because though Cyprus Courts can apply the principles of the Common Law to the needs of Cyprus the Theft Act, 1968, contrary to the Larceny Act, 1916, was not based on and did not purport to codify the Common Law definition of theft (pp. 82–85 post)).

6(b) That in the charge-sheet there are stated the persons which have entrusted sums to appellant 1 and for what purpose and that he converted the money and gave it for other purposes from those for which they entrusted it to him; that before the trial started full details have been given by the prosecution to

the other side as regards the persons who gave money and the persons to whom money was given; and that, therefore, the counts of stealing by agent referred to the owners of the money; accordingly contention 6(b) should fail (see section 39(f) of the Criminal Procedure Law, Cap. 155 and Archbold, 36th ed. p. 694 paragraph 1908).

6(c) That since the owners of the money gave the money for the purposes referred to in the circulars sent by appellant 1 and that since the said purposes have never been amended the consent of those who gave the money was given for that purpose only; that since 24 out of the 300 owners have not given their consent the prosecution has proved the element of consent, accordingly contentions 6(c) and (d) should fail (see section 255(2)(c) of Cap. 154).

6(d) That the time of taking the money in this case was the time of giving it for purposes other than those which were referred to in the relevant circulars because the offence of stealing by agent is not a simple stealing under section 255 of Cap. 154 where the intention of appropriating money must be at the time of taking; that this was a case where money was lawfully given to the offender and later on he decided to misappropriate it, that, therefore, the prosecution has proved the presence of intention to deprive the owners of the money of their property, accordingly contentions 6(e) and (f) should fail.

(7) That once all the payments which were made and constituted the subject matter of the offences of stealing by agent were payments different from the purposes of the "Self-Assistance Fund", as well as the Fund of Co-Operativists in memory of Ethnarch Makarios III, it is not necessary or indeed no reason existed to have the identification of the money, that, moreover, as the first appellant had deviated from the purposes of the two funds, the trial Judge was not bound to make a finding whether each particular donation from the fund fell or did not fall within the meaning of the circulars and give reasons for such finding; accordingly contention (7) should fail.

(8) That as the provisions of section 31 of the Co-Operative Societies Law, Cap 114, are identical with the provisions of the Bankers Books Evidence Act, 1879, they constitute an exception to the hearsay evidence rule and are not contrary to the provisions

of the Evidence Law, Cap. 9; accordingly contention 8 must fail (see *Attorney-General* of the *Republic* v. *Theocharides and Others* (1973) 2 C.L.R. 75).

(9) That since the relevant ingredients of the offence of breach of trust are (a) that the person liable must first be a public servant in the discharge of his duties; (b) that there must be a trust; (c) that there must be also a breach of trust; (d) that the breach of trust must affect the public; and (e) that there must exist a mens rea which in the present case is wilful negligence, that is, a will to be negligent, an intentional breach of duty or reckless carelessness in the sense of not caring whether one's act or omission is or has not created a breach of duty; that since appellant 1 during the relevant period was a public servant and the success of the "Self-Assistance Fund" was due to appellant 1 not as an individual but because of the post he was holding; that since having regard to the meaning of the word "trust" (vide pp. 102-3 post) the trial Judge rightly reached the conclusion that there was a trust; that since the money, subject-matter of the relevant charges was given for purposes other than those for which it was donated; that since the Co-operative employees, for whom the money was collected, as well as those who have contributed to the "Self-Assistance Fund", were affected and that since the word "public" (see section 4 of the Criminal Code, Cap. 154) means the public in its totality or any other part of it, the trial Judge rightly found that the public was affected; that since ordinary negligence is not enough to prove the offence of breach of trust but there must exist wilful negligence; and that since the trial Judge correctly accepted that appellant 1 acted deliberately wilfully and without mistake that the property used by him belonged to another person, the trial Judge rightly found that the prosecution proved the ingredients of the offence of breach of trust; accordingly contention 9 should fail.

(10) That since the offences were described with every detail in the charge-sheet; that since during the trial the defence asked for particulars and after such particulars were given the defence has not raised again the issue of particulars it is too late to raise a complaint about absence of particulars at this stage; accordingly contention (10) should fail (*Kannas alias Pombas* v. *The Police* (1968) 2 C.L.R. 29 at pp. 35, 36, 37 and 38 followed).

(11) That the trial Judge for the reasons given, accepted the evidence of the prosecution and rejected that of the defence; that in the particular facts of this case, this Court should not interfere because it is within the province of the trial Judge to believe or disbelieve the evidence given by the parties; accordingly contention (11) should fail.

(12) That appellant 1 could be found guilty of the offence of stealing by agent and, also, of the offences of abuse of office and breach of trust because the same set of facts can make more than one offence and because what matters is whether all the relevant ingredients of the offence have been proved; accordingly contention (12) should also fail.

(13) (*After dealing with the principles governing aiders and abettors—vide pp.* 118–120 *post*) That appellant 2 was rightly found guilty as an aidor and abettor because he knew the purposes of the "Self-Assistance Fund", because payments therefrom were made unlawfully contrary to the purposes of the Fund and he was taking part in its administration; accordingly contention (13) should fail.

(14) That appellant 2 was fully aware of the objects of the "Self-Assistance Fund" at least up to the change of its name in September, 1978; that appellant 2 took it for granted or really truly believed that after the change of its name the purposes of the Fund were widened to cover other charitable purposes; that having regard to this belief of appellant 2 the trial Judge ought to have given him the benefit of doubt regarding the payments made after that date with regard to three of the counts (counts 6, 12 and 18); accordingly the conviction of appellant 2 on counts 6, 12 and 18 should be quashed.

(15) (*After stating the principles on which the Court of Appeal acts in appeals against sentence—vide pp.* 128–129 *post*) That the Courts of this Country have treated with severity offences of this kind; that in the circumstances of this case the sentence imposed on appellant 1 is not manifestly excessive; accordingly the appeal of appellant 1 against sentence should fail.

(16) (*After stating the principles governing disparity of sentence as a ground of appeal—vide pp.* 138–141 *post*) That though the trial Judge, in dealing with appellant 2, said that in his case a differentiation was justified because the imposition of punish-

ment should be proportionate with his participation in the crime he has failed to consider the warning that "the distinction which the sentencer has made in favour of the appellant is inadequate to recognise the difference between their cases" (see Principles of Sentencing by D.A. Thomas at pp. 71–73); that, therefore, this Court is bound to conclude that the extent of differentiation, regarding punishment, between appellant 2 and appellant 1 was wrong in principle, particularly in view of the role of appellant 1 in the commission of the offences in question as compared with that of appellant 2; accordingly the sentence passed on appellant 2 is wrong in principle and manifestly excessive and will be reduced to seven months on counts 2–5, 8–11 and 14–17.

Appeal of appellant 1 *against conviction and sentence dismissed. Appeal of appellant* 2 *against conviction and sentence partly allowed.*

Cases referred to:

Wiseman and Another v. *Borneman and Others* [1969] 3 All E.R. 275 at p. 277;

Rex v. *Mustafa Kara Mehmed*, 16 C.L.R. 46;

R. v. *Galbraith*, [1981] 2 All E.R. 1061;

R. v. *Osborne* [1973] 2 W.L.R. 209 at p. 216;

Kokkinos v. *The Police* (1967) 2 C.L.R. 217 at p. 227;

Petri v. *The Police* (1968) 2 C.L.R. 40 at pp. 84–89;

Ioannides v. *The Republic* (1968) 2 C.L.R. 269;

R. v. *Voisin* [1918] 1 K.B. 531 at pp. 537–38;

R. v. *Prager* [1972] 1 W.L.R. 260;

Vrakas and Another v. *The Republic* (1973) 2 C.L.R. 139;

Akritas v. *Regina*, 20 C.L.R. 110;

Fatma Mehmet v. *The Police* (1970) 2 C.L.R. 62;

Attorney-General of the Republic v. *Hji Constanti* (1969) 2 C.L.R. 5 at pp. 8–9;

Iacovou and Others v. *The Republic* (1976) 2 C.L.R. 114 at p. 122;

Platritis v. *The Police* (1967) 2 C.L.R. 174 at pp. 184, 185, 188;

King v. *Grubb* [1915] 2 K.B. 683 at pp. 689–90;

Oktay v. *Rex*, 18 C.L.R. 195 at pp. 198–99;

Rex v. *Williams and Another* [1953] 1 All E.R. 1068;

Zissimides v. *The Republic* (1978) 2 C.L.R. 382;

R. v. *Feely* [1973] 1 All E.R. 341 at p. 344;

De Lasala v. *De Lasala* [1979] 2 All E.R. 1146 (P.C.);

K.E.M. (Taxi) Ltd. v. *Tryfonos* (1969) 1 C.L.R. 52;

Universal Advertising and Publishing Agency v. *Vouros*, 19 C.L.R. 87;

HadjiTheodossiou v. *Koulia and Another* (1970) 1 C.L.R. 310;

Hillier and Another v. *Attorney-General and Another* [1954] 2 All E.R. 59 at pp. 70, 71;

James Hudson (1943) Court of Criminal Appeal 43;

Attorney-General of the Republic v. *Theocharides and Others* (1973) 2 C.L.R. 75 at pp. 78, 79, 80;

Kannas alias Pombas v. *The Police* (1968) 2 C.L.R. 29 at pp. 35, 36, 37, 38;

Johnson v. *Youden and Others* [1950] 1 All E.R. 300 at p. 302;

Director of Public Prosecutions for Northern Ireland v. *Maxwell* [1978] 3 All E.R. 1140 H.L.;

Katsaronas and Others v. *The Police* (1973) 2 C.L.R. 17 at p. 35;

Moon v. *The Police* (1973) 2 C.L.R. 99 at pp. 103–104;

Christofides v. *The Republic* (1970) 2 C.L.R. 78;

Reginalt Charles Edward Stiles-Altieri v. *The Police* (1967) 2 C.L.R. 140;

Politis v. *The Police* (1973) 2 C.L.R. 211;

Afxenti "Iroas" v. *The Republic* (1966) 2 C.L.R. 116 at p. 118;

Chomatenos v. *The Police* (1979) 2 C.L.R. 119 at p. 124;

Christodoulou alias Farfaros v. *The Republic* (1963) 2 C.L.R. 36 at pp. 37–38;

Terlas v. *The Police* (1970) 2 C.L.R. 30 at p. 34;

Kakouris v. *The Police* (1972) 2 C.L.R. 42 at p. 44;

Attorney-General of the Republic v. *Mavrokefalos* (1966) 2 C.L.R. 93 at pp. 95-96;

Attorney-General of the Republic v. *Lazarides* (1967) 2 C.L.R. 210 at pp. 212, 213;

Nicolaou v. *The Police* (1969) 2 C.L.R. 120 at pp. 122, 123;

Coe, 53 Cr. App. R. 66 at p. 71;

R. v. *Robson and East* (1970) Crim. L.R. 354 at p. 355;

R. v. *Brown* (1975) Crim. L.R. 177.

Appeals against conviction and sentence.

Appeal against conviction and sentence by Andreas Azinas and another who were convicted on the 9th April, 1981, at the District Court of Nicosia (Criminal Case No. 17841/80) as follows:- appellant 1 on seven counts and appellant 2 on six counts of the offences of (a) stealing by agent contrary to sections 255 and 270(b) of the Criminal Code Cap. 154 (b) breach of trust affecting the public contrary to section 133 of the Criminal Code Cap. 154 and (c) abuse of office contrary to section 105 of the Criminal Code Cap. 154 and were sentenced by Nikitas, S.D.J. to concurrent sentences of imprisonment ranging from six to eighteen months and six to twelve months, respectively.

L.N. Clerides with *A. Triantafyllides*, for appellant 1.

E. Efstathiou with *St. Charalambous*, for appellant 2.

A. Evangelou, Senior Counsel of the Republic, for the respondents.

HADJIANASTASSIOU J. read the following judgment of the Court. In the present appeals, the first appellant was found guilty by a Judge of the District Court of Nicosia, and was sentenced to imprisonment in all for 18 months on the following counts:-

(a) 6 counts which refer to stealing by an agent contrary to ss.255 and 270(b) of the Criminal Code Cap. 154;

(b) 6 counts which refer to breach of trust affecting the public contrary to s.133 of the Criminal Code, Cap. 154; and

(c) 6 counts which refer to abuse of office contrary to s.105 of the Criminal Code, Cap. 154.

For all these counts, the second appellant was found guilty of aiding and abetting the first appellant in committing the offences referred to earlier contrary to s.20 of the Criminal Code Cap. 154, and was sentenced to concurrent terms of imprisonment for a period of 12 months. In addition, the first appellant was found guilty on three more counts, viz., counts 19, 20 and 21, which relate again to stealing, breach of trust, and abuse of office.

The first appellant was originally facing 18 counts, but three new counts were added in the course of the hearing. These offences can be divided into three categories:

(a) Stealing money by an agent contrary to sections 255, 270(b) and 20 of the Criminal Code Cap. 154. In this category fall the first six counts. In accordance with the particulars of these counts, the appellants fraudulently converted on various dates the total sum of £105,894.009 mils. As it appears from the charges, that sum was entrusted to the first appellant by Co-operative Societies and other persons whilst he was the Commissioner for Co-operative Development in order to pay the said sums to displaced and unemployed co-operative employees and the first appellant aided by the second appellant paid the said sums to third persons for purposes other than those of the Self-Assistance Fund. The names of those persons to whom the money was given, and the corresponding sums which they took are set out in six schedules attached to the counts under letters A to F. Furthermore, in accordance with the particulars of the charges, the time of committing the offences and the stolen amount in money is as follows:-

First count : Between 31.12.74 and 21. 4.75—£70.
Second count: Between 22. 4.75 and 24.11.75—£ 9,595.510
Third count : Between 25.11.75 and 12.12.76—£ 5,622.775
Fourth count: Between 13.12.76 and 8.11.77—£25,055.620
Fifth count : Between 9.11.77 and 18. 9.78—£43,081.184
Sixth count : Between 19. 9.78 and 3. 1.79—£22,468.920

It should be observed that originally the said sum in the sixth count was £85,446.735 mils but the trial Court amended on its own this count on the 24th January, 1981, and reduced the said sum to £22,468.920 mils, and amended the period the offence was committed as being the 3rd January, 1979, instead of the 8th November, 1979.

(b) Abuse of office by a public servant contrary to sections 105 and 20 of the Criminal Code which is the subject of counts 7–12. As it appears from the particulars of the charges, and the evidence, it was the same set of facts on which the first six counts were based which constituted these offences also.

(c) Abuse of trust from a public servant contrary to the provisions of sections 133 and 20 of the Criminal Code which is the subject of counts 13–18. It should be added that the prosecution bases its case on the same facts on which it relies in relation to counts 1–12.

The second appellant was charged with aiding and abetting under section 20 the first appellant. The amendments made by the trial Court with regard to count 6 do not affect the sum, the subject of counts 12 and 18, which remains the same, viz., £85,446.735. The sum which appears in the counts for abuse of power and abuse of trust is £168,871.824 mils.

Counts 19–21 are against the first appellant only and fall within the first, second and third group of charges respectively. They concern a sum of £24,500.000, entrusted to him by the Co–operative Society Comarine Ltd.

THE FACTS:

The first appellant was appointed by the then Greek Communal Chamber as Registrar of the Co–operative Societies on 1st December, 1960. Later on when the said Greek Communal Chamber was dissolved by the provisions of Law 12/65, all services have ceased to exist as from 31st January 1965, and all posts held by all the employees were considered as being vacant. Indeed, in accordance with s.16(1) of Law 12/65, every employee who was in the service of the Greek Communal Chamber came under the jurisdiction of the Republic, and was entitled once it was practicably possible, to be emplaced to the same post which he was holding earlier. In effect, as from that date, all persons employed were reinstated and became public servants in accordance with the provisions of s.16 of Law 12/65. In the meantime, the first appellant had addressed a letter to the Public Service Commission dated 6th October, 1967, seeking a re–appointment and an emplacement to the previous post he held. (See *exh.* 1).

On 15th May, 1967, on behalf of the Director–General of the Ministry of Commerce and Industry, a letter was addressed to the Greek Commissioner of Co–operative Societies, informing him that the matter of his salary would be settled by the Public Service Commission when he would be posted to the appropriate post, in accordance with the provisions of s.16(1) of Law 12/65.

On 6th October, 1967, the first appellant addressed a letter to the Chairman of the Public Service Commission, and having referred to the provisions of Law 12/65, he invited the Commission to emplace him to the post he held earlier in the Communal Chamber before its dissolution on the 1st April, 1965. This

letter was signed by Mr. A. Azinas in his capacity as Commissioner for Co-operative Development and Registrar of Co-operative Societies.

On 21st December, 1967, a letter was addressed to the Chairman of the Public Service Commission on behalf of the said Director-General, and after referring to the decision under No. 7319 of the Council of Ministers, dated 14th December, 1967, regarding the approval of the scheme of service for the post of Commissioner of Co-operative Development and of the General Secretary in the Department of Co-operative Development, invited the said Commission to proceed to emplace Mr. A. Azinas to analogous posts in accordance with s. 16(1) of Law 12/65. The author of this letter pointed out that Mr. Azinas had been carrying out the duties of the Commissioner for Co-operative Development as from 1st December, 1960. (See *exh.* 2).

On 28th December, 1967, the Public Service Commission addressed a letter to Mr. Azinas through the Director-General of the Ministry of Commerce and Industry, and informed him that the Commission decided in accordance with s.16 of Law 12/65 to emplace him to the post of Commissioner of Co-operative Development in the Department of Co-operative Development on a permanent basis as from 15th December, 1967. (See *exh.* 3).

It appears that according to the schemes of service, the post of the Commissioner of Co-operative Development is a first entry and promotion post. The duties and responsibilities of the post in question are as follows:-

Management of the Department of Co-operative Development and responsibility for the promotion, development and orderly operation of the co-operative movement in the island. Exercise of the power and duties provided by the relevant laws and regulations. Advisor to the Minister on co-operative matters. Represents the Co-operative Department in various committees and bodies. Performance of any other duties which may be assigned to him.

Required qualifications:

(a) For first appointment: university diploma or degree in economics, commercial or other appropriate sciences. Very

good knowledge of the co-operativism and of the co-operative movement of the island. Knowledge of economic and financial matters of the island.

(b) For promotion: Higher education, preferably university diploma or degree in economic, commercial or other sciences. Very good knowledge of the co-operative theory and practice and the co-operative and other related legislation. Knowledge of economic and financial matters of the island. Long and very good service in the department of co-operative development.

(c) For both instances (a) and (b): Excellent knowledge of the Greek and very good knowledge of the English language. Administrative and organizing ability, judgment, initiative, impartiality, fairness and integrity of character, ability to establish and maintain harmonious relations with the officials and members of the co-operative movement of the Republic.

It appears further that the post in question was approved by the Council of Ministers by its decision under No. 7319 dated 14th December, 1967.

Whilst at this point, it may be noted that with the accession to independence, the Co-operative movement in Cyprus saw a marked progress. It embraced every scheme of economic activity and its members increased considerably. Unfortunately, the steady progress that our island was experiencing was abruptly interrupted by the coup d'etat, organized by the Greek junta, and by the Turkish invasion which followed it, as a result of which 200,000 people were displaced from their homes in the occupied north part of the island and became homeless in their own country, and as a result, their Co-operative Societies were disrupted and their employees remained without employment.

Indeed, as a result of the coup d'etat, the President of the Republic, Archbishop Makarios, was forced to leave the island, and the first appellant joined him in London. Later on the first appellant returned to Cyprus, and having seen the plight in which the displaced employees of the Co-operative movement found themselves, he decided to convene a meeting with a view to finding ways and means to assist them.

On 22nd December, 1974, at a meeting convened by the first appellant at the Mimoza cinema, a great number of displaced

co–operative employees and others attended, with a view to finding ways and means to improve the position of those unemployed displaced persons. The meeting was presided by the first appellant, and after they elected a committee of 5, and explained the purpose of such meeting, it was then decided to set up a fund for the rehabilitation of the displaced co–operative employees by granting to them financial help.

With that in mind, and fully aware of the urgency of the matter, the first appellant, on 30th December, 1974, called Mr. Glafkos Petrides, P.W.17, the assistant Manager of the Central Co–operative Bank which is also a Co–operative society, as well as the rest of its Committee members to his office. Indeed, according to the evidence of Mr. Petrides, the appellant gave them instructions to make a plea to all Co–operative employees, as well as to Co–operative Societies to contribute to a fund which would be utilized for the displaced employees who lost their jobs. In addition, Mr. Petrides told the Court that the first appellant gave to them a circular which would be circulated the next day, on 31st December, 1974, to the various Co–operative Societies and which in effect was referring to the purposes which they had discussed earlier at the meeting. (See circular 191). No doubt the first fund created was the Co–operativists Self Assistance Fund.

Questioned further, Mr. Petrides added that the circular which has been handed to them was signed by the first appellant, and having explained to them the contents of the circular, he informed them also that in the meantime, and because it was Christmas, he had used a certain amount from the Inspection and Supervision Fund. He further added that the first appellant informed them that the total amount which was used for that purpose viz., for the payment to unemployed co–operative employees and those in need of funds was the sum of £20,000, and he had asked them, in their capacity as members of the committee to approve a temporary credit accommodation. He further told them that he would put before them a list of the cheques issued as well as the names of those to whom the cheques were issued from the said fund. The witness added that the Commissioner went on to say that after his plea and after sending that circular, he expected that money would be coming in. (See circular *exh.* 191 signed by him). Questioned

further as to what actually was said by the first appellant at that meeting, and not his own conclusions, he emphatically said "that was exactly what was said, it was not my own conclusion".

Furthermore, the witness stated that after the circular was sent to the various Co–operative societies, it was published also in the press, and in the light of the reasons given at the meeting by the first appellant, the Committee agreed to approve the amount of £20,000 used by the first appellant. It appears further that during that meeting, minutes were kept and were produced at the trial as *exhibit* 214. The witness conceded that he prepared the minutes himself, he signed them and had also decided that the said minutes should also bear the signatures of Messrs. Th. Malekides as Chairman, Elia Loizou, Loizos HjiLoizou and Panayioti Karayianni who in the meantime died, i.e. the President and the three members of the Committee. Furthermore, Messrs. G. Demetriou, the 5th member of the Committee, the Chairman and Renos Clerides the Manager of the Bank, had signed them and added that they had taken note of the minutes prepared.

When the meeting was over, he went to his office and within a few days after the first of the year he proceeded to put into effect the decision of the committee and gave written instructions to Mr. Andreas Ioannides (P.W.6), who was in charge of the sub–branch as to how he would act in order to put the said decision into effect. (See *exhibit* 188).

The witness also said that it was his signature on that document and added that a copy of that letter was circulated to the general accountant and the heads of the other branches. Regarding *exhibit* 185, he said that this was sent from the office of the Commissioner of Co–operative Development and in that list there appeared the cheques which have been issued from the Inspection and Supervision Fund in favour of the distressed Co–operative employees, about whom the Commissioner of Co–operative Development had spoken to him in his office on the 31st December, 1974.

Then he went on to add that in his letter he enclosed also that list (see *exhibits* 192–196). Questioned further he said those *exhibits* were the circulars which have been issued from

the Commissioner for Co-operative Development which had been sent to all the committees of Co-operative Societies and were signed by the first appellant as the Commissioner for Co-operative Development. The witness said also that he had occasion to see *exhibits* 5-170, the cheques which have been signed by the first appellant. The witness added that towards the end of September, 1977, he saw again the first appellant with regard to the opening of a new account sometime at the end of October, 1977, when he called him to his office and informed him that he was going to create a fund which would be used by the Co-operative Societies.

The reason he was called by the Commissioner was to ask him whether that fund could be kept separately and secretly in the Bank. In the Bank there was a secret ledger where there are certain details which are kept from the general directorate and from the general accountancy department. He then went on to add that when he said general accountancy department, it was to be understood that he was referring to the general accountant and his assistant. Indeed, he said this constitutes part of the whole system of a bank. He further explained that there was nothing illegal in that and the secret ledger was kept by him in the strong room and the only people who had access to it were the Secretary-Manager, the Assistant, and the General Accountant as well as his assistant who were making the entries in that ledger.

Towards the end of November, the Commissioner handed to him a cheque which was issued by Comarine on 22nd November, 1977, for the benefit of the Commissioner for Co-operative Development Self-assistance Fund of Co-operative Societies and the Fund of Audit and Supervision for the sum of £100,000. (See *exhibit* 215).

On 31st August, 1978, he was again given by Mr. Azinas another cheque issued by Comarine for the sum of £26,000 and both these two cheques were credited to the account to which he referred earlier. (See *exhibit* 216). That account, was duly certified, and was of 4 pages, and are true copies of the originals. (See *exhibit* 217). He issued a cheque book, and in accordance with his instructions, the general accountant issued the cheque book No. 169676-169700 which he delivered personally to Mr. Azinas. At that time, the Commissioner,

Mr. Azinas, made it quite clear to him that the whole movement of the account and of the handling of it would be his own responsibility and only after it bears his own signature. The title of that account was Commissioner for Co-operative Development—Fund, and on those cheques it was written in Greek Δ.Σ.Α. General Accounts Department. He concluded that the measures which were taken by them were for the account to remain secret; and in all the sums of £216.000 were paid into that account. (See *exhibit* 217).

Out of that fund, on 28th December, 1977, cheque 169676 was issued in favour of the Co-operative Credit Society of Trimiklini, for the sum of £21,000. (See *exhibit* 218). On 21st December, 1977, another cheque was issued under No. 169700 in favour of the Co-operative Grocery Kambou Ltd. for the sum of £2,000. (See *exhibit* 219).

On 22nd December, 1977, there was another cheque under No. 169678 which was issued in favour of Σ.Ε.Γ.Ι.Δ.Ε.Π. of Pelendri and Kato Amiandos for the sum of £1,500. (See *exhibit* 220). All three cheques bear the signature of Mr. Azinas as Commissioner.

On 22nd March, 1978, this secret account was debited with the sum of £70,000 because of a cheque which has been issued by Mr. Azinas in favour of the Audit and Supervision Fund. The balance of that account remained credited in the bank until March, 1980, but on 6th March, 1980, the Commissioner for Co-operative Development wrote to the Co-operative Central Bank and as a result this account was closed. (See *exhibit* 217).

At the same time, he credited with the balance the Co-operative Society, Self-assistance Fund, which was £31,500. In addition, Mr. Azinas addressed a letter to the Central Co-operative Bank, dated 15th September, 1978, giving instructions to amalgamate the two accounts kept viz., Commissioner for Co-operative Development in memory of Ethnarch Makarios, and Commissioner of Co-operative Development—Self-Assistance Fund of Co-operativists, into one account, under the name of Self-Assistance Fund.

Dealing further with *exhibit* 200 A, the witness said that it was a letter dated 16th September, 1978, which he had addressed

to persons in charge of the sub-branches of the Co-operative Central Bank Limited giving them instructions with regard to the amalgamation of the aforesaid accounts in accordance with the written instructions of Mr. Azinas.

In addition he said a cheque was sent to him bearing the name of Commissioner of Co-operative Development—Self-Assistance fund. In fact, he added, a lot of cheques were used by Mr. Azinas and there was no complaint at all that the account was no opened properly. Speaking further about *exhibits* 207, 209 he explained that *exhibit* 207 is a letter written by Mr. Azinas in his capacity of Commissioner for Co-operative Development, to the Co-operative Central Bank on 30th November, 1979 in which he was giving written instructions to the effect that every balance (of the account) which was to be found in the account under the name Self-Assistance Fund, to be transferred to the Co-operative Society Self-Assistance Limited. At the same time he was seeking the closing of the account of the Self-Assistance Fund. That new account would be handled by the committee which was recently elected. Dealing further with *exhibit* 209 he explained that it was a letter from the Co-operative Society Self-Assistance Limited, dated 7th December, 1978, and was signed by Mr. P. Orphanos, the second appellant, the secretary of Co-operative Society Self-Assistance Limited. Having further stated that he knew the signature of Mr. Orphanos he added that when he had the latest developments of that account he addressed a comment to the secretary-manager of the bank whose name appeared in the application and as a result it was placed in advance before the convening of the committee of the bank on the 18th January, 1980, and the said committee had approved the loan to the Co-operative Society Self-Assistance Limited. Questioned further as to who had signed the letter *exhibit* 190 his reply was that it was Mr. Azinas who signed in his capacity as Commissioner for the Co-operative Development and related to the Co-operativists Self-Assistance Fund. Pausing here for a moment, this letter dated 14th January, 1975, (*exhibit* 190) under the heading Co-operativists Self-Assistance Fund reads:-

> "Παρακαλῶ σημειώσατε ὅτι ἔχει ἀποφασισθῆ ἡ ἵδρυσις Ταμείου Ἀλληλοβοηθείας Συνεργατιστῶν πρὸς παροχὴν βοηθείας εἰς παθόντας Συνεργατιστὰς ἐκ τῶν τελευταίων τραγικῶν γεγονότων.

2. Ὡς ἡ ἀπόφασις τῆς ὑμετέρας Ἐπιτροπείας, παρακαλεῖσθε ὅπως:-

(α) ἀνοίξετε σχετικὸν λογαριασμὸν εἰς τὸν ὁποῖον θὰ κατατίθενται ὅλαι αἱ εἰσφοραὶ ἀπὸ οἱανδήποτε πηγὴν διὰ τὸν ἄνω σκοπὸν καὶ ἀπὸ τὸν ὁποῖον θὰ πληρώνωνται οἱ διάφοροι δικαιοῦχοι,

(β) ἐμβάσετε εἰς τὸ Ταμεῖον Ἐξελέγξεως καὶ Ἐπιθεωρήσεως τὸ ποσὸν τῶν λιρῶν δεκαεπτὰ χιλιάδων πεντακοσίων δεκαεπτὰ μόνον (Ἀρ. £17,517.-) ὡς ὁ ἐπισυνημμένος κατάλογος πρὸς τακτοποίησιν τοῦ λογαριασμοῦ μεταξὺ τῶν δύο ταμείων,

(γ) μὲ ἐφοδιάσετε μὲ βιβλιάριον ἐπιταγῶν διὰ τῶν ὁποίων νὰ διενεργῶ τὰς μελλοντικὰς πληρωμάς.

3. Τὴν διαχείρησιν τοῦ Ταμείου θὰ ἀσκῇ πρὸς τοῦτο ἐκλεγεῖσα Παγκύπριος Ἐπιτροπὴ ὑπὸ τὴν προεδρίαν μου.

Δικαίωμα ὑπογραφῆς ἔχει ὁ Διοικητὴς Συνεργατικῆς Ἀναπτύξεως".

And in English it reads:

"Please note that the establishment of a Self-Assistance Fund for rendering help to co-operative employees who have suffered by the last tragic events has been decided.

2. According to the decision of our Committee, you are requested to:

(a) open a relative account in which all contributions from every source for the above purpose will be deposited and from which the various beneficiaries will be paid,

(b) put into the Audit and Supervision Fund the sum of seventeen thousand five hundred and seventeen pounds only (No. £17,517.-) as the attached list for settlement of the account between the two funds,

(c) provide me with a cheque book with which I shall effect the future payments.

3. The administration of the Fund will be effected by a Pancyprian committee elected for this purpose, presided over by me.

The Commissioner of Co-operative Development has the right to sign".

See also the evidence of P.W.6, Andreas Ioannides, who was in charge in one of the branch of the Central Bank of Nicosia, at p. 91 on this issue.

According to Mr. Renos Clerides (P.W.8) whose position at the Co-operative Central Bank was that of a secretary-manager, the circular, *exhibit* 199 was addressed to all committees and to all secretaries of all the co-operative societies of Cyprus. He further added that it was signed by Mr. Azinas in his capacity as Commissioner for Co-operative Development and was bearing the title Contribution of Co-operative Societies in memory of Ethnarch Makarios. In that circular, *exhibit* 199, the Commissioner was appealing for funds in order to enable him to build a hospital for children. Because of that circular, he himself circulated an internal circular (*exhibit* 198), dated 29th August, 1977, to all heads of the sub-branches of the Co-operative Central Bank signed by him, and bearing the title "Contributions of Co-operative Societies in memory of Ethnarch Makarios". When he was asked by counsel for the prosecution as to whether he knew that the hospital referred to earlier was finally built, counsel for the defence put forward the argument that such question was irrelevant because there was no charge against his client which related to the Fund of Ethnarch Makarios. On the contrary, counsel for the prosecution argued that the question was admissible in evidence because an amount of about £28,000 was collected from funds. The trial Court, having overruled the objection, pointed out that once there was sufficient evidence regarding that matter, Mr. Renos Clerides could reply, and he emphatically said that as far as he was aware, such hospital was not built.

Dealing also with the minutes of the Committee of the Central Bank dated 17th October, 1979, at p. 2, he said that he was also present and had this to say regarding the third item on the agenda (*exhibit* 225): Account "Commissioner Co-operative Development—Self-Assistance Fund". The minutes read: The Commissioner informs the Committee that the said account for which Δ.Σ.Α. is responsible personally and is using it, shows today a debit balance of £15,216.211 mils".

Then the minutes go on: "The Committee approved the

said overdraft, in spite of the fact that it was made contrary to the provisions of section 34(1) of the Co-operative Societies Law Cap. 114 and because the said Fund does not constitute a legal person". Finally the minutes further read: "The General Manager is authorized to ask from Δ.Σ.Α., Commissioner of Co-operative Development to pay off the said overdraft the sooner". (See *exh.* 226).

This was indeed a stern warning by the Committee to Mr. Azinas and in the light of this decision Mr. Renos Clerides who was at the meeting, as secretary-manager had no alternative and indeed addressed a letter to Mr. Azinas in his capacity as Commissioner of Co-operative Development, dated 18th October, 1979, and in Greek it reads:

"Κύριε,

Λογαριασμός: 'Διοικητὴς Συνεργατικῆς 'Αναπτύξεως-Ταμεῖον 'Αλληλοβοηθείας'.

Παρατηροῦμεν ὅτι ὁ ἀνωτέρω παρ' ἡμῖν λογαριασμὸς διὰ τὸν ὁποῖον εἴσθε προσωπικῶς ὑπεύθυνος ἐφ' ὅσον τὸ Ταμεῖον δὲν ἀποτελεῖ νομικὸν πρόσωπον, παρουσιάζει σήμερον χρεωστικὸν ὑπόλοιπον ἐκ £51,266.811 μιλς (Λίρας Πεντήκοντα Μίαν Χιλιάδας Διακοσίας 'Εξήκοντα ἕξ καὶ 811 Μίλς).

Τὸ παρατράβηγμα τοῦτο γενόμενον κατὰ παράβασιν τοῦ ἄρθρου 34(1) τοῦ περὶ Συνεργατικῶν 'Εταιρειῶν Νόμου συνιστᾶ παράνομον χορηγίαν δανείου ὑπὸ τῆς ἡμετέρας Τραπέζης ὡς ἐκ τούτου δὲ δέον ὅπως ἐξοφληθῆ τὸ συντομώτερον".

And in English it reads:

"Sir,

Account: 'Commissioner Co-operative Development-Self-Assistance Fund".

We have noted that the above mentioned account for which you are personally responsible once the Fund does not constitute a legal person, shows today a debit balance of £51,266.811 mils. The overdraft which has been made contrary to section 34(1) of the Co-operative Societies Law constitutes an illegal act of the loan by our bank and therefore it should be paid off the sooner".

In spite of the fact that there was no reply by the Commissioner, on 18th January, 1980, the Committee of the Co-operative Central Bank at its meeting had approved a limited credit to the Co-operative Society of Self-Assistance Limited. Present were Mr. Th. Malekides, the Chairman of the Committee, H. Loizides, a member, L. Hadjiloizou a member, G. Demetriou a member, and C. Marangos a member. Present were again both Mr. Renos Clerides and Mr. Glafkos Petrides. In *exhibit* 227 on the second page, it appears that the amount which was approved was £80,000 to the Co-operative Society, Self-Assistance Limited. Furthermore, on the third page of the same *exhibit*, we have this warning:-

> "It is decided furthermore that all the above companies be notified that in no event the withdrawal of any sum in excess of their above approved credit limit will any more be permitted and that in case of non-compliance by them with the above conditions, the cheques issued by them will be returned.
>
> Moreover, the debited interest for 1979 or other interest for previous years already debited, must be paid off within a reasonable time, this being defined after an agreement with the debtors. Likewise, the debtor companies should arrange that the interest for the current year be paid off towards the end of 1980 as there will be no case of increasing their credit limits because of the debit of these interests.
>
> With regard to the limits granted as above to SOGEA Ltd. and the Co-operative Society for Self-Assistance Ltd., it is clarified that they will be used exclusively for paying off amounts equal to overdrafts of the accounts of 'SOGEA' (to be established) and 'C.C.D. Self-Assistance Fund' respectively.
>
> These limits will be for an indefinite duration of time".

There was further questioning by counsel and Mr. Clerides said that he knew the signature of the first appellant and he had seen his signature on many occasions and when he was signing letters and other material. But with regard to *exhibits* 197, 201-205 he said that it was a list containing contributions and there was a covering note which there is in each of the *exhibits* and it bears the signature of the responsible officers

of the said bank. He then added that in addition it was signed by him personally and by the three members of the governing Committee..

There was further evidence and indeed we do not think it is necessary to deal with all prosecution witnesses, but according also to P.W. 10 Nicos Gregoriades, the secretary of the Co-operative Credit Society of Strovolos he said that towards the end of 1974 and the end of 1976, he had received circulars from the Commissioner of Co-operative Development (see *exhibits* 191-194) inviting them to make contributions to the Co-operativists and to the Self-assistance Fund. He convened a meeting of the Committee, and on 3rd February, 1975, the Committee is recorded as saying this:

> "In response to a circular of the Commissioner of Co-operative Development, the Committee has decided to contribute the sum of £1,000.—in aid of the Self-Assistance Fund for Co-operative employees".

The next day he addressed a letter to the Commissioner of Co-operative Development dated 4th February, 1975, for the approval of that sum and when he received a reply on 8th February, 1975, that the sum was approved, he deposited it to the Co-operativists Self-Assistance Fund. Furthermore, the witness added that always acting on the basis of the circular, he submitted to the Committee of the Co-operative to approve a further amount of £500 for the fund in question. Indeed, he said that he had addressed a letter on 28th February, 1975, to the Commissioner and received a reply on 8th July, 1975, approving that amount. The second decision reached by the Committee reads as follows:- "It is decided that we should contribute the sum of £500—a second instalment, for the reinforcement of the Fund for Displaced Co-operative employees". Questioned further on which circular they acted and from whom, his reply was from the office of Co-operative Development. In cross-examination the witness said that he received only two circulars and not six. He further added that in any event he had seen only two.

As we said earlier in the light of the statements of a number of witnesses when they were receiving circulars addressed to them by the first appellant they have done their very best to

help as much as possible in order to alleviate the suffering of their colleagues, but since all counsel appearing in the present case have attached quite rightly, a lot of importance to these circulars, we propose reading right away the first one which was sent to all co-operative societies. The circular in question, under the heading "13th salary 1976", says:

"The conditions prevailing in our island are known to everybody. It is known to everybody that hundreds of co-operative societies have suffered irreparable damages.

It must be a common secret to all of us that hundreds of our colleagues remain unemployed, homeless and away from their houses. In spite of all this, we cannot deprive anybody of the 13th salary which is paid in order to cover the increased family expenses during these festive days. The duty towards our colleagues who remained without any income is imperative. For these reasons, I invite today your feelings for colleague solidarity. As it has been written in the press, a Self-Assistance Fund for co-operative employees has been established in order to meet the various needs of our colleagues. This fund will be aided by all co-operative societies but in any way by the employed and paid co-operative employees also. It is approved, therefore, that the 13th salary be paid to all co-operative employees for the year 1974, provided that 25% of the payable sum will be withheld for the benefit of the Self-Assistance Fund for Co-operative employees. From the 13th salary will be cut also the amount specified by Law 54/74 for the Relief Fund for Displaced and Stricken Persons. The 25% withheld from the whole of the 13th salary will be deposited with the Central Co-operative Bank to the credit of the Self-Assistance Fund for co-operative employees and will be used for the purpose of assisting our unemployed colleagues.

At the same time I appeal to the Committees of all the co-operative societies to approve a good amount on behalf of the society which they direct for the benefit of the Self-Assistance Fund for Co-operative employees.

The decisions of the committees shall be submitted for approval as always. I hope and believe that both the

co–operative employees as well as the committees of the Co–operative establishments will show by acts also, their love and solidarity for colleagues which are imposed by the difficult moments we are facing in order to prove to the public of Cyprus that the slogan 'EACH FOR ALL AND ALL FOR EACH ONE' continues to exist and apply in our country....."

In another circular (*exhibit* 196), the first appellant once again praised the work of everybody and had this to say:–

"Created for Self–Assistance Fund through which it tried with understanding and affection to heal the wounds of all colleagues Co–operative employees of the displaced Co–operative Societies. It took and takes care for the Co–operative Societies. It took and takes care for the equipment of the Sanitary Services of the State with the appropriate instruments for the fight against anaemia, takes care of the Institutions for mentally retarded children, it brought doctors from abroad and took care of sick people to go abroad for treatment etc.

You are therefore invited, colleagues, as soon as you get this circular, to meet and decide the amount of the contribution which you have to deposit in the same way as last year, through the Co–operative Central Bank for the benefit of the Self–Assistance Fund. Your contribution must be generous because as it has been stressed before, Attila has bequeathed to us numerous and serious wounds".

It appears that from the trend of all the circulars in question the first appellant has never informed the persons or Societies who were contributing to the Fund that the purpose of the Fund had changed, but continued to state in the circulars that the main purpose of the fund was for the displaced unemployed co–operative employees in order to continue collecting large sums for his various funds.

FACTS REGARDING APPELLANT 2:

The second appellant, Panayiotis Orphanos, in November, 1957, was granted a scholarship from the Archbishopric in order to study agriculture in the Aristotelion University of Thessaloniki. In 1961, and before he succeeded in getting his

diploma, he was elected unanimously as general secretary of PEK, (The Pancyprian Farmers Union), a post which he held until August, 1966. He obtained, however, his diploma in November, 1964. Finally, he was appointed, on 1st November, 1966, to serve with the Co-operative Societies in charge of Co-operative enlightenment and propaganda.

According to the terms of the letter addressed to him by the Greek Registrar of Co-operative Societies, his appointment was on a temporary basis and his salary was £642 reaching the sum of £900 and in addition he was receiving a monthly cost of living allowance. In this letter, it was made clear to him that he was not a civil servant and his duties as we said earlier, were the enlightenment and propaganda, as well as any other duties which would have been assigned to him.

In addition, it was made amply clear under the heading "duties" of the post in question, that he would be directly responsible to the Registrar, the first appellant. His salary was coming from the Inspection and Supervision Fund. This Fund, he said, was in the hands of the Commissioner of Co-operative Development. On being asked by his counsel appearing before the trial Court whether he had any right to refuse to obey any warrant or any instructions of the Commissioner of Co-operative Improvement, his answer was that according to his appointment-no.

We think it is right to state that the contract of appointment of the second appellant to the post in question was rightly described by counsel appearing for him as harsh, because under the term "termination of appointment", we read:-

> "Your appointment can be terminated at any time without giving you any reason and once you will be given by me one month's written notice or instead of giving notice to be paid to you a salary and cost of living of one month".

He could, however, terminate his appointment himself, after giving to the Registrar one month's written notice. The second appellant accepted the post in question, expressing his thanks to the first appellant, on 29th October, 1966 (see *exhibit* 261).

On 18th February, 1975, he was appointed by the Co-operative

Development as Director of College (temporary) with a salary scale of £2004 × £96—£2100X£120—£2820. His salary at the time was £2,460 p.a. plus authorized increment of £120, and in all he was earning £2,580 as from 1st January, 1975. (See *exhibit* 262).

In the meantime, in 1973, he visited various countries in order to study the system used by the co-operative colleges which have been functioning in Greece, Great Britain, Germany, Israel and Sweden. Furthermore, he was in touch with international co-operative alliance and with the international labour office with the view of creating in Cyprus a co-operative cultural centre which could be used not only for the needs of the co-operative movement of Cyprus, but also for the needs of co-operative movements of the Middle East countries.

In praising the success of the college, the second appellant said that in the domain of education and enlightenment the college was a success. Furthermore, he said a number of professors visited our country with a view of following what was going on in the college, and who expressed the wish of starting a closer co-operation with our country. Indeed, he added, the college became known to a lot of people abroad.

In the college he was employing nine persons and there was also another economist who was teaching economics and dealing with the subjects of management and marketing. In addition there were another two economists who are statisticians and their work was the collection of various materials from all co-operative societies of Cyprus; and that the collection of that material finally would be studied by the department of co-operative development. There were three other female employees working as clerks, typists and telephone operators. Questioned further as to what were actually his duties in the college, he said that he was in charge of the functioning of the college. He was organizing cycles of lessons regarding the principles of the co-operative movement, and lecturing on co-operativism.

Speaking as to the Self-Assistance Fund and as to what was the procedure in completing and delivering the cheques to those who were entitled, he said that since Christmas of 1974, they had instructions that the college would be dealing and also handling the delivery of those cheques. They were also keeping

a list (*exhibit* 189), which was prepared by the department of Co-operative Development. Because they carried out their work regarding the distribution of the cheques, they were again instructed to deliver the cheques from the Self-Assistance Fund for the Easter of 1975. Indeed, he added, after an announcement in the press, to the effect that the cheques were to be distributed from the College, the displaced persons entitled were calling to collect their cheques from the college.

The personnel of the College were again used for the next years of Christmas and Easter. Indeed, he said, there was a further announcement on the same subject both in the press and on the radio calling on those who were entitled to the cheques to pass from the college and receive their cheques. (See *exhibits* 171, 182 and 189).

He further stated that for the Easter of 1975, the list of 1974 was used as a basis for those who were entitled for the year 1975. This list was prepared by the typist. He repeated that the whole list of names who were entitled to receive funds was prepared by the employees of the college and had nothing to do with the list or with the sums paid, and/or the persons who would have been receiving help from the Self-Assistance Fund. He admitted however, that when instructions were given by the first appellant, the names of those persons were put on the list. (See *exhibits* 311-314, which show that those names were added on the list).

Questioned as to whether he had a right to decide as to who would be added on the list, or whether he could erase names from the list and not to give them assistance, the reply was "No". In principle, he said, it should have been checked with the personnel of the Department of Co-operative Development, as to whether the person which would be added on the list was an employee or holding a higher post. He further said that he had no files in the college regarding these matters, viz., as to whether someone was an employee or not.

In the college, he added, the work of preparing the lists and/or other material was of a mechanical nature as regards the previous list and was preparing also the new one with the additions and/or erasures and were signed by the Department of Co-operative Development; and distributed the cheques only when they were approved and signed in the meantime. Speaking further on

the same subject, he repeated again that the cheque books from which the cheques were issued were distributed in accordance with instructions. The procedure which was followed for granting funds to other persons apart from the persons whose names were on the list, was the following:- Someone was telephoning from the office of the first appellant, sometimes himself or his private secretary, and they were asking for the cheque books to be sent to them.

There was a further procedure, he added, that any time he visited the office of the first appellant he used to take those cheque books and they were working together for the completion of those cheques. Sometimes again telephone calls were received from his office and they were given instructions for the addition on the list of a particular name.

Turning to the question as to whether at any stage he had knowledge of the circulars prepared by the first appellant, regarding *exhibits* 191–196, he emphatically said that he had never received either personally or in his capacity of being in charge of the college such circulars. He further stated that the first time he saw those circulars was when the trial of this case started.

Dealing also with the question of certain cheques which have been issued in his name, he explained that those cheques appearing in supplement B, and particularly *exhibit* 7, was for £33.040 mils and was issued in his name for the expenses he had made for two meals in entertaining Mr. Chronopoullos, the Chairman of the Π.Α.Σ.Ε.Γ.Ε.Σ. of Greece, who was invited and attended the conference of the refugees agriculturalists.

Having given details regarding the money spent, and the reason why certain cheques were issued in his name personally, he explained that in some cases some persons did not want to insert their names on the cheque for various reasons. He admitted that he paid in cash to PEK of Paphos £700 and to PEK of Limassol another £700. The reason for this, he explained was because it was the wish of the persons who received the money not to be known publicly.

Speaking about his journeys abroad and in attending various conferences, he explained that the decision to go abroad was taken by the Commissioner. He also added that he had supported before international forums our stand for the with-

drawal of the foreign troops from Cyprus, and the right to every Cypriot to return to his home. There is no doubt, and it has not been challenged, that his journeys to the various meetings were approved by the Commissioner, and it was also part and parcel of their policy to co-operate with various agricultural organizations including PEK, EKA and a number of other organizations.

Having given reasons for each item he had spent, and we need not proceed to deal with each and every one, we would reiterate that the whole stand of appellant 2 during the trial was that everything which he has done was done after he had the approval of the Commissioner and with regard to the payments made to P.E.K. and others, the reasons were to avoid publicity. However, as it appears from his own statement given to the police earlier, he contradicted himself because he admitted that he was not receiving orders from appellant 1 but it was simply a matter of co-operation. (See *exhibit* 280 at p. 5; see also the statement of the first appellant given to the Police).

Indeed, the questioning and cross-examination of the second appellant has covered a great number of pages, and we do not propose adding anything else, except to repeat once again that from the whole questioning of counsel for appellant 2, it appears that his stand all along was that he had no personal gain from any of the funds which have been established and that he only did what he thought his duty to co-operate, and his duty to help his country by attending conferences abroad in order to contribute as much as he could in enlightening public opinion abroad about the Cyprus problem.

On the contrary, counsel for the prosecution, in challenging him that he was aware of what was going on with regard to the various payments made, questioned him in these terms:-

"*Q.* But you were issuing announcements as you have told us, every Christmas and Easter and such announcements have been produced as *exhibits* 306-310 and you said who were the persons responsible and would be coming to take their cheques.

A. In my opinion the announcements say what they are and those which refer in the announcements and they were calling them to come and take their cheques from the Self-Assistance Co-operativists Fund.

Q. But you have not replied clearly whether you knew the purposes of the Self-Assistance Co-operativists Fund. You told us of principles for a section of the Law, but you did not tell us who were entitled and by whom this fund was created.

A. If you mean the purposes which refer in the charge against me I did not know them".

STATEMENT OF APPELLANT 1 TO THE POLICE:

Before dealing with the substance of the statement of appellant 1 to the police, it appears that on that date the police informed the first appellant that they were carrying out enquiries with regard to offences, which according to the material which they had in their hands, he (Azinas) had committed, in his capacity as the Commissioner of Co-operative Development, and as Registrar of Co-operative societies. Then, having written down the various charges, A,B,C,D,E,F, the police proceeded to inform him that for the said charges he was proposing to interrogate him and obtain a statement from him. The police further warned him that he was not bound to say anything unless he wanted to do so, but whatever he would say may be taken down in writing and be adduced in evidence.

According to the statement, the first question was in these terms:- "There is an allegation that between the 13th January, 1979 until 29th February, 1980, you have illegally incurred a loan from a current account under the name 'Commissioner of Co-operative Development—Self-Assistance Fund', and on the 29th February, 1980, the said loan reached the sum of £73.893. What do you have to say with regard to that allegation?"

Then, under the heading "Reply", the first appellant gave this statement:- "In December of 1974, we have returned from England together with the President of the Republic, Archbishop Makarios. More than 900 co-operative employees remained unemployed and without an income. With the approval of His Beatitude, and before Christmas of 1974, I have urgently adopted a suggestion of the committee of displaced co-operative employees for collecting money which would be used for the payment of part of the salary to those employees who became refugees and were not emplaced in

their jobs. That unofficial collection of money had the stamp of being temporary, because then every one of us believed that the return of the displaced persons to their homes was a question of weeks, and it developed into the creation of a Self-Assistance Fund, and today has developed into a Co-operative Society, Self-Assistance Ltd. This fund has started with a debit account at the Central Co-operative Bank for about £20,000 in order to pay the refugees during Christmas of 1974. Those three forms of Funds, Self-Assistance, was handled by the committee of the displaced co-operative employees and the Pancyprian Co-operative Federation.

For the purpose of the success of the fund, I accepted to sign the cheques issued and these circulars for collection of money. In accordance with the law, the Co-operative Society Self-Assistance, was registered and has undertaken all the financial obligations of the Self-Assistance Fund. The Self-Assistance Fund, until 1978, had a credit balance in the Central Co-operative Bank. As I am informed, after 1978 the Co-operative Central Bank allowed an overdraft. No-one had asked to approve the borrowing of money from that fund in accordance with my powers.

,It is well-known that the Commissioner of the Co-operative Bank has the power to approve a decision of any co-operative society to lend money to a legal body, co-operative or not, in accordance with the regulations of the said Co-operative Bank. I want to make this clear: One co-operative society can approve a loan to a non-member as long as it secures by an obligation the permission of the Commissioner of Co-operative Development. The applicant may be an individual, or a co-operative society or any other type of a legal person. According to my own interpretation, if the committee of the Central Bank was examining my application for borrowing such a loan, and I had approved of that decision of the committee of the bank, then legally a loan would be granted to me. I refer you to s.34 of Co-operative Societies Law, Cap. 114 and Law 28 of 1979. For the handling of that fund, the accounts and its handling, Mr. Orphanos, the Secretary of the Co-operative Self-Assistance Fund will be in a position to inform you".

It should be added that Mr. Orphanos was also present during the questioning of the first appellant.

On the 31st May, 1980, the second appellant gave a voluntary statement to the police and had this to say–

"I am the Director of the Co-operative college and Secretary of the Pancyprian Co-operative Federation and at the same time I am secretary of the Pancyprian Co-operative Company of Self-Assistance since the 1st November, 1979. The Co-operative company of Self-Assistance constitutes the official expression of the unofficial Self-Assistance Fund of co-operative employees and of the Self-Assistance Fund. The Self-Assistance Fund of Co-operative employees, was founded in December, 1974 after the return of the Commissioner of Co-operative Development, Mr. Azinas, from abroad with the late Archbishop Makarios.

As soon as Mr. Azinas returned, he was confronted with a claim from the displaced co-operative employees for assistance to all that had not the opportunity of employment. As the Christmas holidays were approaching and the time was limited, it was decided to set up an account with the Co-operative Central Bank from which grants would be given to all co-operative employees who were in need of assistance and to which all the co-operative societies of Cyprus would contribute. At the beginning when it was opened, it was a debit account and an amount of about £20,000 was used. This account was named "Self-Assistance Fund of Co-operative Employees" c/o Commissioner of Co-operative Development, as a Co-operative Society. In order to lend to a non-member, it needs the approval of the C.C.D. This account was managed by the staff of the co-operative college in co-operation with the committee of displaced co-operative employees and the Pancyprian Co-operative Federation, the cheques for the sake of convenience, were signed always by the C.C.D. until the establishment of the Co-operative Society of Self-Assistance. The amounts that were given from this fund were given in co-operation and with the knowledge of the C.C.D. The Self-Assistance of Co-operative Employees was changed later on, I think in the year 1977, to Self-Assistance Fund with wider aims and in order to cover grants to other purposes of public benefit. This had the name Δ.Σ.Α., Self-Assistance Fund. The account of this fund was a credit one until the beginning

of 1978. The grants which were given for purposes of public benefit to hospitals, churches, organizations, clubs and others were almost always in cheques except isolated instances where there were technical difficulties and they were given in cash with the relevant evidential factors. With regard to the accounts of this fund, the only books which were kept were files with the evidential material, as all the collections of contributions and remittances were made through the Co-operative Central Bank and appeared on the statements of account. All the grants were given either to displaced co-operative employees or co-operativists who were in need of assistance or medical treatment and for public benefit purposes which were mentioned earlier and no amount was given to individuals but all the amounts which were given were intended for some general purpose.

On the 1st November, 1977, the Co-operative Society of Self-Assistance was established, a committee was elected consisting of Mr. Georghios Demetriou as Chairman, Theodosis Malekides, Kyriakos Louca, Angelis Charalambous and Andreas Charalambous as members, who appointed me as Secretary of the society.

The Co-operative Society of Self-Assistance, by decision of its committee, took over the balance of the account of self-assistance with the Central Co-operative Bank. The account today of the Society of Self-Assistance with the C.C.B. is a credit one, and reaches the level of about £30,000. From the date that the Co-operative Society of Self-Assistance took over the account of the fund of self-assistance, which was round £75,000 in the debit, the C.C.D. has no interference except those which on the basis of the existing legislation, the C.C.D. has with other co-operative societies, and the account is administered by the committee and the secretary. The objects of the society continue to remain the same as before. All the cashed cheques of the fund of self-assistance which were kept originally with the C.C.B. were taken by the auditors of the department of Co-operative Development who audited the fund at the beginning of the year 1978 and the beginning of 1980. These cheques, as well as other evidential matters were placed

from the beginning of March, 1980, by me at the disposal of the President of the Republic who gave instructions to the Minister of Finance who checked them in my presence and in the presence of the C.C.D. on the 29th March, 1980. The cheques and the evidential material remained in the hands of the auditors and were delivered today to the police.

The Δ.Σ.Α. Self-Assistance Fund, was administered by the same persons who administered the Fund of Self-Assistance of Co-Operative Employees. When I say that the staff of the co-operative college took part in the administration of the self-assistance fund, I mean on principle, the clerks, typists in whose possession there were found the cheque books and who filled them in, and myself as the Director of the Co-operative College where many addressed themselves for assistance from the fund. Depending on the instance and the amount which was asked for, there was a proportionate co-operation with the Pancyprian Co-operative Federation, the committee of displaced co-operative employees, and the C.C.D. When the account of the self-assistance fund was in the debit, neither was asked for nor there existed any guarantee to the C.C.B. A guarantee was given when the Co-operative Society of Self-Assistance was founded".

Finally, his statement was read to him, and having said that it was correct, he signed it.

On 11th June, 1980, the second appellant was informed by the police that they were carrying out investigations with regard to some of the allegations made to them on various dates, and the questions and answers cover 20 handwritten pages. As we think that it is unnecessary to quote all these pages in the present judgment, we shall now proceed to deal with the grounds of appeal.

GROUNDS OF APPEAL 1(*a*), (*b*) *and* (*c*):

Mr. Clerides in support of ground 1(a) argued that the conviction of the first appellant was the result of a substantial miscarriage of Justice in as much as in deciding the submission of counsel for the appellant that the prosecution did not prove a prima facie case against the appellant, the trial Judge, by its ruling of the 24th January, 1981, decided certain matters

affecting the guilt or innocence of the appellant finally and before having heard the evidence of the appellant and his witnesses contrary to the accepted principle of law that the final pronouncement of the guilt or innocence of an accused person should be pronounced only after hearing the whole of the case including the appellant's version. After the closing of the case for the prosecution, counsel for the defence submitted under section 74(1)(b) of the Criminal Procedure Law, Cap. 155, that no prima facie case had been proved against the accused sufficiently to require them to make their defence, and invited the trial Judge to acquit them at that stage.

The ruling of the trial Judge with regard to this submission clearly shows how the whole matter had been approached. Indeed, he took into consideration the criteria on which he had relied in order to decide whether a prima facie case has been proved. With respect to counsel, the mere fact that the trial Judge decided in its ruling the relevant elements of the offences which the appellants were facing does not, in our view, mean that the Judge decided their guilt before hearing them, on the contrary, in our view, it has helped the defence by pointing out in its ruling what the legal aspect of the case was. Indeed, in going through this ruling, we have noticed that he never dealt with the evidence adduced, and indeed, he never decided the guilt of the appellants as the defence had argued on this ground.

The Practice Note issued in 1962 by the Divisional Court of the Queen's Bench Division of the High Court of England by way of direction of justices designed to guide them in determining whether a prima facie case has been made out or not, reads as follows:-

> "Those of us who sit in the Divisional Court have the distinct impression that justices today are being persuaded all too often to uphold a submission of no case. In the result, this Court has had on many occasions to send the case back to the justices for the hearing to be continued with inevitable delay and increased expenditure. Without attempting to lay down any principle of law, we think that as a matter of practice justices should be guided by the following considerations.
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> A submission that there is no case to answer may properly

be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer".

This Practice Note, though not binding on Cyprus Courts, forms in practice an important guide, and has rightly been followed by Courts here exercising criminal jurisdiction, because of the identity of our law on the subject, and as it incorporates the fundamental principles that a Court should have in mind in coming to a decision on the matter.

In *Wiseman and Another* v. *Borneman and Others*, [1969] 3 All E.R. 275, Lord Reid, in dismissing the appeal had this to say with regard to the term "prima facie" at p. 277:-

"It is, I think, not entirely irrelevant to have in mind that it is very ususual for there to be a judicial determination of the question whether there is a prima facie case. Every public officer who has to decide whether to prosecute or raise proceedings ought first to decide whether there is a prima facie case but no one supposes that justice requires that he should first seek the comments of the accused or the defendant on the material before him. So there is nothing inherently unjust in reaching such a decision in the absence of the other party".

In Cyprus, reference on this point may be made to the case of *Rex* v. *Mustafa Kara Mehmed*, 16 C.L.R. 46, which, however, turned on the interpretation of the statutory provisions in force

at the time, namely clauses 143 and 144 of the Cyprus Courts of Justice Order, 1927. In respect of this case, the following observation, with which we agree, is made in the textbook of Criminal Procedure in Cyprus by A. Loizou & G. Pikis, at p. 111 et seq.

> "The only decided case on the question of a prima facie case is that of *R.* v. *Mustafa Kara Mehmed*, 16 C.L.R. 46. But the decision given in that case is of no great assistance as it was primarily based on the interpretation of the provisions of clause 143 of the Courts of Justice Order, 1927, the wording of which is, at least in one material respect, different from that of s.74(1)(b). In accordance with clause 143, the Court was required to examine, at the close of the case for the prosecution, whether the evidence adduced was sufficient 'to support the conviction' whereas in accordance with the present Law, as earlier indicated, the Court is merely required to decide whether the accused should, in the light of the totality of the evidence, be required to make his defence.
>
> The present wording of the statute is more in line with the traditional concept of a prima facie case enunciated in a number of English cases, that is, the Court is required to decide whether there is enough to call for an answer. (*Wiseman and Another* v. *Borneman and Others* [1967] 3 All E.R. 1045 (see in particular, the judgment of Lord Denning M.R.).
>
> Findings of fact at this intermediate stage of the trial are provisional as the Court must preserve an open mind to the very end of the proceedings (*Cozens* v. *Brutus* [1972] 2 All E.R. 1). A practical way to approach the question of whether a prima facie case has been made out is that suggested by the Court in *Vye* v. *Vye* [1969] 2 All E.R. 29 (a decision in the field of Matrimonial Law); see also *Ellis* v. *Jones* [1973] 2 All E.R. 893), where it was said:-
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> > 'We have heard enough of the case and we do not think anything of the case. This is a right proposition, provided it is coupled with the advice that it is usually better to wait and see both sides in matrimonial cases, before coming to a conclusion'.

The present position is more in line, as opposed to the position adopted in the case of Kara Mehmed (*supra*) with Constitutional provisions laying down that nobody is guilty of an offence unless convicted by a Court of Law. (Article 12.4 of the Constitution.)"

In a very recent case, the Court of Appeal in England, in *R.* v. *Galbraith*, [1981] 2 All E.R. 1061 dealing with the question of how to approach a submission of no case to answer, had this to say under the heading "Two schools of thought":

"The judge rejected a submission of no case at the close of the prosecution evidence and the principal ground of appeal was that he was wrong.

Their Lordships had been told that some doubt existed as to the proper approach to be adopted by the judge at the close of the prosecution case on a submission of no case: Archbold Criminal Pleadings Evidence and Practice, 40th Ed., (1979) 5th Cumulative Supplement, para, 575, and *R.* v. *Tobin* [1980] Crim. L.R. 731.

There were two schools of thought: (1) that the judge should stop the case if in his view it would be unsafe, alternatively, unsafe or unsatisfactory, for the jury to convict; (2) that he should do so only if there was no evidence on which a jury properly directed could properly convict. In many cases the question was one of semantics and each test would produce the same result, but that was not necessarily so. A balance had to be struck between on the one hand a usurpation by the judge of the jury's function and on the other the danger of an unjust conviction.

Before the Criminal Appeal Act, 1966, the second test was applied, but section 4(1)(a) required the Court of Appeal to allow the appeal if they were of the opinion that the verdict should be set aside on the ground that 'under all the circumstances of the case it is unsafe or unsatisfactory'. Thereafter a practice grew up on inviting the judge at the close of the prosecution case to say that it would be unsafe, or, sometimes, unsafe or unsatisfactory,

to convict on the prosecution evidence and on that ground to withdraw the case from the jury.

It was doubtful whether the change in the Court of Appeal's powers could logically be said to justify a change in the basis of a nocase submission. The fact that the Court of Appeal had power to quash a conviction on that ground was a slender basis for giving the trial judge a similar power at the close of the prosecution case. However, there was a more solid reason for doubting the wisdom of the test. If a judge was obliged to consider whether a conviction would be unsafe or unsatisfactory he could scarcely be blamed if he applied his view as to the weight to be given to the prosecution evidence and as to the truthfulness of the prosecution witnesses and so on.

That was what Lord Widgery said was clearly not permissible in *R.* v. *Barker* (Note [1975] 65 Cr. App. R. 287): 'It is not the judge's job to weigh the evidence, decide who is telling the truth and stop the case merely because he thinks the witness is lying. To do that is to usurp the functions of the jury'.....

How then should the judge approach a submission of no case? (1) If there was no evidence that the crime alleged had been committed by the defendant there was no difficulty—the judge would of course stop the case. (2) The difficulty arose where there was some evidence but it was of a tenuous character, for example, because of inherent weakness or vagueness or because it was inconsistent with other evidence; (a) where the judge concluded that the prosecution evidence, taken at its highest was such that a jury properly directed could not properly convict on it, it was his duty on a submission being made to stop the case; (b) where, however, the prosecution evidence was such that its strength or weakness depended on the view to be taken of a witness's reliability or other matters which were generally speaking within the jury's province and where on one possible view of the facts there was evidence on which the jury could properly conclude that the defendant was guilty, then the judge should allow the matter to be tried by the jury.

It followed that the second school of thought was to be

preferred. There would be borderline cases. They could safely be left to the judge's discretion.

In the present case the circumstances were such that it was a case where the jury should decide the weight of the evidence on which the prosecution based its case. There was no substance in any other ground of appeal. The application was refused".

There is no doubt that the trial Judge in our case from the material before him, rightly reached the conclusion that the prosecution had made out a prima facie case, and correctly, in our view, rejected the submission of counsel for both appellants. In the light of those weighty pronouncements, we find that he followed the proper approach by adopting the criteria laid down in the aforesaid cases. Therefore, the submission of counsel on ground 1(a) should fail.

We turn now to ground of appeal 1(b). Counsel for the first appellant argued that the trial Judge erroneously accepted and received in evidence the statement made by him to the police on the 1st May, 1980, which statement materially affected the final verdict. The objection to its admissibility was that it was rule III of the Judges' Rules which was applicable and not rule II.

The argument of the defence was based on a statement made by the investigating officer which preceded the caution, and which statement reads as follows:-

"I inform you that I am carrying out investigations with regard to offences, which in accordance with the material I have in my hands, you have committed in your capacity as Commissioner of Co-operative Development and Registrar of Co-operative Societies."

The appellant then was questioned, and the statement is in the form of questions and answers. The difference that results from the applicability of rule III to rule II is that if rule III was applicable only in exceptional cases relating to the offence questions should have been put to the accused person after he had been charged or informed that he may be prosecuted, although he might be questioned about other offences and such other questions as are necessary for the purpose of preventing

or minimizing harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement. The accused should then be cautioned in the prescribed terms.

The trial Judge, in his Ruling at the close of a side trial, ruled that once the material which the police had in their hands at the time did not justify the bringing of charges against the first appellant, examining it either with objective or subjective criteria, the statement was admissible as rule II, was the one applicable in the case irrespective of the unfortunate phraseology used by the investigating officer. In fact, the defence conceded that the material which the police had in their hands did not justify the preferment of charges at the time against the first appellant by any objective criteria, though they maintain in their argument that because of the phraseology used, no questions could be put to the appellant in the way that they were put to him and the statement was obtained thereunder.

Having heard the submissions of both counsel, and particularly counsel for the prosecution, we agree that the phraseology used by the police does not form part of the caution as it is stated in the Judges' Rules, rule II, but it is an introduction to the subject only, and therefore, there is no particular phraseology which is binding. Furthermore, the phraseology used by the police, in our view, does not mean that the investigating officer had informed the accused that he had in his hands evidence which justified criminal proceedings.

What constitutes evidence within this rule II it was decided in the case of *R.* v. *Osborne* [1973] 2 W.L.R. 209 which provides the answer. In this case the defendants were arrested on suspicion of having taken part in a robbery and were taken to a police station. A police officer, who had reasonable grounds for suspecting the defendants but was of the opinion that he had no evidence to justify his suspicion interrogated them about their movements at the time of the robbery without cautioning them under rule II of the Judges' Rules 1964. On appeal against conviction on the grounds that the evidence of the interrogation was inadmissible because, in the absence of a caution rule II of the Judges' Rules 1964 had not been complied with and that the evidence of the police inspector at the parade had been wrongly admitted: Held, dismissing the appeal, (1) that "evi-

dence" in rule II of the Judges' Rules 1964 meant information which could be put before a Court; accordingly, an interrogation police officer was not bound to administer a caution until he had some information which he could put before a Court at the beginning of a case, and that, since the interrogating officer had obtained no such information either before or during the interrogation of the defendants, his evidence was correctly put before the jury.

Lawton L.J., in delivering the judgment of the Court, had this to say at p. 216:

> "Now I turn to the basis of the submission with regard to the rejection of the evidence of the interrogation. It is said on behalf of both defendants that by the time Chief Inspector Gittus came to carry out the interrogation he had evidence which would have afforded reasonable grounds for his suspecting that they had committed an offence. The first problem which arises in this case is what is meant by 'evidence' in this context.
>
> It is important for the Court to remind that the Judges' Rules are intended for the guidance of police officers. They have to comply with the rules. If a police officer looks at the rules and asks himself the question 'What do they mean?' he would answer in the light of his own police experience. In police experience, evidence means information which can be put before a Court: and it means that not only to police officers but to the general public, as is shown clearly by one of the meanings given to the word 'evidence' in the Shorter Oxford English Dictionary, 3rd ed., (1944) p. 643 which under the subheading 'Law', defines 'evidence' in these terms: 'Information that is given in a legal investigation, to establish the fact or point in question'. If a police officer, who was trying to understand what the word 'evidence' meant in the Judges' Rules, felt that he ought to turn to a standard legal textbook in the case the Oxford Dictionary definition was too wide, and he turned to Phipson on Evidence, 11th ed. (1970), p. 2, para. 3, he would have found 'evidence' defined as follows:
>
> > 'Evidence, as used in judicial proceedings, has several meanings. The two main senses of the word are: first, the means, apart from argument and inference,

whereby the Court is informed as to the issues of fact as ascertained by the pleadings; secondly, the subject-matter of such means'.

In the judgment of this Court, that is how a police officer would understand these rules".

Then Lawton L.J. goes on:

"There are other indications in the rules that that is the right way for them to be construed. The rules contemplate three stages in the investigations leading up to somebody being brought before a Court for a criminal offence. The first is the gathering of information, and that can be gathered from any body, including persons in custody provided they have not been charged. At the gathering of information stage no caution of any kind need be administered. The final stage, the one contemplated by rule III of the Judges' Rules, is when the police officer has got enough (and I stress the word 'enough') evidence to prefer a charge. That is clear from the introduction to the Judges' Rules which sets out the principle. But a police officer when carrying out an investigation meets a stage in between the mere gathering of information and the getting of enough evidence to prefer the charge. He reaches a stage where he has got the beginnings of evidence. It is at that stage that he must caution. In the judgment of this court, he is not bound to caution until he has got some information which he can put before the Court as the beginnings of a case".

But in any event, with that weighty judicial pronouncement in mind, and assuming that in the present case there was a violation of the Judges' Rules, such violation does not automatically make a statement not admissible but it grants to the Court the discretionary power to decide whether to accept or to dismiss the said statement. Indeed, the trial Judge exercising his discretionary power accepted the statement made by the first appellant. As to what is, then, the basic criterion which a Court takes into consideration whether a statement is free and voluntary reference may be made to the case of *Costas Andreou Kokkinos* v. *The Police* (1967) 2 C.L.R. 217. In delivering a separate judgment, and having agreed with the reasoning and

conclusions reached by the then learned President of this Court H.H. Vassiliades P., had this to say at p. 227:

"The principle with regard to the admissibility of confessions is too well known and has been expounded in many English and Cyprus cases; and, in order to be admissible, a confession must be free and voluntary, and unless it be shown affirmatively, on the part of the prosecution, that it was made without the prisoner's being induced to make it by any promise of favour, or by menaces, or undue terror, it shall not be received in evidence against him, vide *R.* v. *Thompson* [1893] 2 Q.B. 12; *Ibrahim* v. *The King* [1914] A.C. 599 at p. 609. This principle was adopted and followed in the very well known case of *R.* v. *Georghios Sfongaras*, (1957) 22 C.L.R. at p. 113, decided in the dark days of the EOKA fighting. See also the recent case of the Commissioners of Customs and *Excise* v. *Harz and Another*, (House of Lords) [1967] 1 All E.R. 177, where the principle relating to confessions was extended to the effect that a confession or statement by an accused is not admissible in evidence at his trial, if it was induced by a threat or promise, applies equally where the inducement does not relate to the charge or contemplated charge as where the inducement does so relate".

See also the case of *Michael Antoniou Petri* v. *The Police* (1968) 2 C.L.R. 40 and *Ioannides* v. *The Republic* (1968) 2 C.L.R. 269. On the question whether or not the statement was voluntary see *R.* v. *Voisin* [1918] 1 K.B. 531 and *R.* v. *Prager* [1972] 1 W.L.R. 260.

There is no doubt from the authorities that trial Courts in exercising their discretionary power have to take into consideration the consequences of the breach, the extent and the length and whether the violation turns on typical subjects. In *Michael Antoniou Petri* v. *The Police supra*, Vassiliades P., in dealing with the exercise of discretionary power with regard to the statements obtained by police has quoted a passage from Lord Devlin from his text book "The Criminal Prosecution in England" (1960) at pp. 38-39, which reads:

"The essence of the thing is that a Judge must be satisfied that some fair or unfair oppressive use has been made of police power. If he is so satisfied, he will reject the evidence

notwithstanding that there is no rule which specifically prohibits it: if he is not so satisfied he will admit the evidence even though there may have been some technical breach of one of the Rules. It must never be forgotten that the Judges' Rules were made for the guidance of the police and not for the circumscription of the judicial power".

It is important to state further that with regard to the basic criteria which are taken into consideration by a trial judge for admitting or not the statement of an accused person, is whether it was given voluntarily; compliance however with the Judges' Rules would help considerably a Court to decide as to whether the statement taken was given voluntarily or not. The question whether a person has been duly cautioned before making a statement is a circumstance to be taken into account by the judge in exercising his discretion whether to exclude the statement, but the absence of a caution does not as a matter of law make the statement inadmissible. In the case of *R.* v. *Voisin* (*supra*) Lawrence J. in delivering the unanimous judgment of the Court, had this to say, at pp. 537, 538:

"The alleged misreception of evidence relates to a paper writing containing the words 'Bladie Belgiam'. This was written by the prisoner at the request of the police at a time while he was being detained at Bow Street. The trunk of the body of the murdered woman had been found contained in a parcel in Regent Square with a label containing these words upon it. The police were making investigations. They had requested the prisoner to go to Bow Street and to account for his movements at the supposed time of the murder. He had just made a statement which had been taken down in writing, and after he had done so he was asked whether he would have any objection to write down the two words 'Bloody Belgian'. He said 'Not at all' and then wrote them down as above. It was argued that that writing was inadmissible in evidence on the ground that it was obtained by the police without having first cautioned the prisoner and while he was in custody. A number of cases were called to our attention in which different views had been entertained by judges as to when statements by prisoners should and when they should not be excluded from consideration by the jury. It is clear, and has been frequently held, that the duty of

the judge to exclude statements is one that must depend upon the particular circumstances of each case. The general principle is admirably stated by Lord Summer in his judgment in the Privy Council in *Ibrahim* v. *Rex* (1) as follows:

'It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority'. The point of that passage is that the statement must be a voluntary statement; any statement which has been extorted by fear of prejudice or induced by hope of advantage held out by a person in authority is not admissible. As Lord Summer points out, logically these considerations go to the value of the statement rather than to its admissibility. The question at to whether a person has been duly cautioned before the statement was made is one of the circumstances that must be taken into consideration, but this is a circumstance upon which the judge should exercise his discretion. It cannot be said as a matter of law that the absence of a caution makes the statement inadmissible; it may tend to show that the person was not upon his guard as to the importance of what he was saying or as to its bearing upon some charge of which he has not been informed. In this case the prisoner wrote these words quite voluntarily. The mere fact that the words were written at the request of police officers, or that he was being detained at Bow Street, does not make the writing inadmissible in evidence".

But there was another question raised, namely, whether there was a violation and whether the Judges' Rules have the force of law or only the force of an administrative practice as in England. Counsel for the first appellant further argued that from the provisions of section 3 and section 8, the Judges' Rules have definitely the force of law in Cyprus. On the contrary, it was the submission of counsel for the prosecution that in our country the Judges' Rules do not have the force

(1) [1914] A.C. 599-609, 610.

of law but they were intended for the guidance of police officers only as to the manner of taking statements. There is no doubt that in Cyprus it was often argued before the Courts that because of section 8 of Cap. 155 the said Rules had the force of law but this argument remained open. In *Pantelis Vrakas and Another* v. *The Republic*, (1973) 2 C.L.R. 139, a case of premeditated murder, President Triantafyllides, myself and Justices A. Loizou and Malachtos, in delivering the judgment of the Court made reference to the effect that the Judges' Rules in Cyprus have no more force than they have in England. We think we would go further and state that the phrascology of section 8, and particularly the phrase "as those are in force regarding the taking of statements in England" supports the view that the Judges' Rules are applicable in Cyprus in exactly the same way as they are applicable in England and therefore they do not have the force of law, but are rules of practice for the guidance of the police officers. Indeed, we would go further and state that the relevant section 8 simply acts as the means of transferring the Judges' Rules from England to Cyprus. As we have explained earlier, the Rules would not have been applicable in Cyprus if section 8 was not there.

Having given the matter our full consideration, we think, in the light of the observations made in the *Vrakas* case (*supra*), that the Judges' Rules, were made for the guidance of the police and not for the circumscription of the Judicial power and in Cyprus have not the force of law, but as in England, are rules of practice.

For the reasons we have given at length, and as we find ourselves in agreement with the ruling of the trial Judge who rightly accepted the statement of the first appellant, we would dismiss ground of appeal 1(b) also.

GROUND OF APPEAL 1(*c*):

The next complaint of counsel was to the effect that the appellant 1 was prejudiced, because of the contemporaneous sittings of the Commission of Equiry set up by the Council of Ministers to enquire into, *inter alia*, the conduct of officers of the Co-operative Movement and the press publications of such sittings which were most of the time misleading, with the sittings of the Court in the present criminal case, and that they adversely

affected the fair trial of the appellant to such an extent as to render his conviction and sentence unconstitutional and illegal.

With the greatest respect to counsel, we are of the view that this argument is untenable. Indeed, it might have found favour if we had in Cyprus the jury system. In this case, we have an experienced Judge who has been sitting on the bench listening to the arguments of all counsel for a long time, and we think, to say the least, that with his training he was in a position to discard extraneous matters and publications, and not to allow himself to be influenced by anything outside his Court, as he himself clearly stated in his ruling on this point. We, therefore, dismiss this ground of law also.

GROUND OF APPEAL 2:

Mr. Triantafyllides, counsel for the appellant, in support of this ground of law, argued that the charges as framed against the appellant cannot stand, being faulty, and introducing offences more than one contrary to the basic procedural rule against duplicity. He further argued that the prosecution ought to have drafted the charges in such a way so that every payment which was made ought to have been the subject of independent charge instead of consolidating the various items into one count, a practice which has been followed by the prosecution. He further complained that such violation prohibits an accused person to raise the maxim "autrefois acquit" or "autrefois convict" in a later case, and in order to enable an accused person to put forward such defences as it is necessary to know at the end of the trial or regarding a previous trial for which case he was found guilty or acquitted. Counsel went even much further and stated that such violation appears also with regard to the description of those "entitled persons", and particularly, in certain circumstances are described as "unemployed co-operativists", and in other cases "displaced co-operativists or unemployed displaced persons". Indeed, these arguments of Mr. Triantafyllides were adopted by Mr. Charalambous, counsel for the second appellant.

On the contrary, counsel for the prosecution, Mr. Evangelou, argued that the charges were properly framed, having been made in accordance with the provisions of section 39 of the Criminal Procedure Law Cap. 155, and specifically of paragraph (c) and the proviso to section 39; and secondly because the Court may

specify with absolute precision on which occasions finds them guilty or acquits them because the various payments are particularly mentioned distinctly and are numbered to the attached schedules, a practice which was followed in the case of *Akritas* v. *Regina*, 20 C.L.R. 110 and also *Fatma Mehmed* v. *The Police*, (1970) 2 C.L.R. 62.

The trial Judge, in his ruling, dealing with the argument that the charges were bad for duplicity, decided that the offences in the present case fall within the category of offences which are covered by section 39(i) of the Criminal Procedure Law Cap. 155, and therefore, the prosecution could adopt this course in making the charges as it did. Indeed, the trial Judge went even further and stated that by attaching schedules A to Z to the charge-sheet, schedules show all the details of the various payments, and by this, the risk suggested by counsel for the appellant that if his client was found guilty of having committed the offence the subject of a smaller amount, he would not be able to raise the plea of autrefois acquit or convict being eliminated, as in the case of such a conviction an amendment of the charge would have been made.

Having considered the very long arguments of counsel for the defence and counsel for the prosecution, we would certainly have certain misgivings with regard to the framing of the charges but finally, and particularly, in view of the proviso to section 39 to the effect that no error in stating the offence or the particulars required to be stated in the charge shall be regarded at any stage of the case as non-compliance with the provisions of this law, we would support the ruling of the trial Court on this issue, viz. not bad for duplicity. Indeed, this Judge has given the matter also a lot of consideration and addressed his mind to the well-known case of *Ioannis Solomou Akritas* v. *Regina*, 20 C.L.R. 110, which simply refers that the formulation of the offences with schedules is undesirable but it does not exclude such a course.

Hallinan, C.J., in delivering the judgment of the Court had this to say at p. 111:

> "However, we think it desirable to make some observations on the form of the information. The appellant is in substance charged with falsifying accounts with intent

to defraud, on twenty different occasions. The information only contains two counts: the first charges him with falsifying accounts and appends a schedule containing twenty items each giving particulars of a separate falsification; the second charges him with embezzling the total sum fraudulently omitted from the accounts, being the total of the several amounts fraudulently omitted from the accounts and particulars of which are given in the schedule to the first count.

When including all twenty occasions in one count, the prosecution were apparently relying on section 30 paragraph (i) of the Criminal Procedure Law which states that: 'where the accused is charged with.....fraudulent falsification of accounts....., it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed. In our view, where it is possible to trace the individual items which were falsified, each item is a separate offence and (as provided in section 38 para. (a)) each offence must be set out in a separate count. If the prosecution had merely specified the gross sum and not given particulars of each item in the schedule, the information would undoubtedly offend against two cardinal principles of procedure in criminal cases: the accused would be embarrassed in making his defence for lack of particulars; and at the conclusion of the trial he would not know precisely for what matters he had been convicted and for what acquitted—he would be unable properly to plead 'autrefois convict' or 'autrefois acquit'. The prosecution by attaching the schedules to the first count have prevented a miscarriage of justice for the appellant knew the particulars of each occasion on which he was alleged to have falsified the accounts; and the Court in its findings specified the offences on which it found him guilty and not guilty".

In *Attorney-General of the Republic* v. *Petros Demetriou Hjiconstanti*, (1969) 2 C.L.R. 5, Josephides, J., in delivering the first judgment of the Court and with whom Triantafyllides J., as he then was, agreed, had this to say on the question of duplicity at p. 8:

"With great respect to the Judge, we think that section

39(d) of the Criminal Procedure Law, Cap. 155, covers the case and that it cannot be said that, having regard to the way the count was drafted, it was bad for duplicity. In reading section 39(d) of the Criminal Procedure Law, one should not lose sight of the proviso at the end of that section, which lays down that no error in stating the offence or the the particulars required to be stated in the charge shall be regarded at any stage of the case as non-compliance with the provisions of this Law unless, in the opinion of the Court, the accused was in fact misled by such error; and we have not been persuaded that the accused has been misled in any way. Moreover, it should be borne in mind that the accused was entitled to apply for further particulars of the charge if it was not sufficiently detailed".

Vassiliades, P., having stated that he agreed, went on to add at p. 9:

"I would only add that the Criminal Procedure Law Cap. 155 contains sufficient provisions to ensure the fair trial aimed at under the law. If at the opening of a trial the Judge is of the opinion, either on his own motion, or on the application of a party to the proceeding, that the charge as framed, is capable of creating embarrassment to the defence or to the proper conduct of the trial, he has sufficient powers under the statute, to see that the embarrassment is removed; and that the charge is framed in such a way as to form the foundation required for the criminal proceeding before him".

We would reiterate that although it is undesirable, it does not prevent such a course. Indeed, the inclusion in the charges of all the payments, was made in the interest of the appellant because it would have been unjust not to include all payments which were made for philanthropic reasons also.

For the reasons we have given, we would dismiss ground 2 of the appeal also.

GROUND OF APPEAL 3(a) AND (b):

In support of this ground counsel complained that the trial Court erroneously found the appellant guilty on counts 1-6 and 19 under section 255 and 270(b) of the Criminal Code Cap. 155, of stealing by an agent, inasmuch as section 270(b) creates

the offence of fraudulent conversion and not the offence of stealing by an agent; and (b) the non-inclusion in counts 1-6 and 19 of section 257 of the Code makes the conviction of the appellant on these counts a nullity. In our view independently of the name one gives to the offence it is clear that the Judge found the first appellant guilty of stealing as it is laid down in sections 255 and 270(b) of the Criminal Code. What really matters is whether the relevant ingredients of the offence can be proved in the present case. Of course if that offence it happens to be named fraudulent conversion in England it does not mean that it must be named also here fraudulent conversion, in view of the fact, that in the margin of section 270 it is described as stealing by an agent. Let us now see what section 39 of the Criminal Procedure Law Cap. 155 says with regard to the framing of the charges and the name of the various offences. Indeed section 39(c) of Cap. 155 reads as follows:

"39. The following provisions shall apply to all charges and, notwithstanding any law or rule of practice, a charge shall, subject to the provisions of this Law, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Law—

(c) the count in a charge shall describe the offence with which the accused is charged shortly in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence and it shall contain a reference to the section of the enactment creating the offence. When an offence consists of something which is forbidden by the joint effect of more enactments than one, the charge shall contain a reference to both such enactments and if the offence is defined by one enactment and punishment is provided for it by another enactment reference shall also be made to the enactment by which punishment is provided".

These are as regards the statement of the offence and the particulars of the offence in ordinary language. Indeed according to the proviso of section 39 even in a case where the formulation of the statement of the offence is somehow wrong, we think the proviso provides the answer and says:

"Provided that no error in stating the offence or the parti-

culars required to be stated in the charge shall be regarded at any stage of the case as non-compliance with the provisions of this Law unless, in the opinion of the Court, the accused was in fact misled by such error".

This, in our view, shows that the proviso clearly says that even if there was a mistake it is not fatal. In addition we would add that what matters is that the first appellant knew that he was facing a charge in accordance with sections 255 and 270(b). He also knew the details of the offence and for which matters he was accused. But there was a further complaint by the defence that because s. 257 is not referred to in the charge the accused was wrongly convicted. On the contrary, counsel for the prosecution submitted that the non-reference in the charge of section 257 of the Criminal Code, and even assuming that it was relevant, it does not affect the conviction of the first appellant because in the charge in accordance with section 39(c) of the Criminal Procedure Law is referred to the section which creates the offence, and therefore, it is not necessary to refer to any other section. As we have said earlier the section which creates the offence, in the present case, is section 270(b), and therefore, the non-reference to section 257, and even if it was necessary for the proof of the present case, it was not necessary its reference in the statement of the offence. Indeed in *Michalakis Andreou Iacovou and Others* v. *The Republic* (1976) 2 C.L.R. 114 Triantafyllides P., had this to say at p. 122:

"We have not been able to agree with the submission in question of counsel for the appellants:

In the first place, it is quite clear, on the basis of previous decisions of this Court, one of which is that in *Soteriou* v. *The Republic*, 1962 C.L.R. 188, 194, that section 268 is not merely a punishment prescribing section, but one creating a separate offence; in this respect Vassiliades J., as he then was, said in the *Soteriou* case the following (at pp. 194, 195):-

'As regard the first part of the submission, to the effect that sections 262 and 267 of our Code, merely provide for punishment, one may observe at once, that both sections refer to the offence of stealing defined in section 255. But that cannot mean that without the definition-section, the offence of stealing is not provided for.

Reading section 262, or section 267 in its context, one would only have to attach a meaning to the words 'any person who steals' in the former section, or the corresponding expressions in the latter, and one would have both offence and punishment in the section. And surely the Courts applying the law codified in the Cyprus Criminal Code, would be able to give a meaning to these words or expressions, even without section 255' ".

Let us now examine what is the effect of section 257 to which reference was made earlier. This section 257, in our view, does not create an offence but provides that in case of moneys which are found in the possession of a person in accordance with specific direction this sum is considered that it belongs to the person for which it was received until the direction was carried out. Section 257 of our Criminal Code reads as follows:

"When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the sale, mortgage, pledge, or other disposition of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person for whom the money, security, or power of attorney was received until the direction has been complied with".

With that in mind counsel for the prosecution further submitted that in the present case there was no question of specific directions nor a particular person or specified persons for which the sums of money were received. The persons, counsel went on to add, for which the donations were given were unspecified persons, and became specified every Easter and Christmas. In other words, the class of persons was changing in accordance with the conditions existing and there was no particular person or persons for whom the money were given by the Co-operative Societies. Indeed the money were sent by the various Co-operative Societies for displaced co-operative employees who

were in need of help, and we repeat this class of persons was changing in accordance with their needs.

Turning now to the case of *Costas Michael Platritis* v. *The Police* (1967) 2 C.L.R. 174 reference was made to a particular person for which the money would be paid. Furthermore there was also a specific direction and indeed that was the reason why section 257 was used. With respect to counsel for the defence the mere fact that in the present case section 257 was not used it does not mean that there is no offence. The offence, in our view, exists by combining the proviso of section 255 with that of section 270(b). Indeed we would go further and state that in *Platritis* case section 257 was used because the accused had specific instructions from his superior to take and keep the money until the end of the collections and to give the donations to the wife of the deceased. Therefore the mere fact that reference is not made, in the present case to section 257 it does not mean that no offence is created. We think it is useful, at the present case, to read a passage from *Platritis* case where Vassiliades P., had this to say at p. 188:

> "Here in Cyprus, we have statutory provisions regarding the matter under consideration, which provide that a person steals money entrusted to him, if 'without the consent of the owner, fraudulently and without a claim of right made in good faith', takes such money. The statute expressly provides that he may be guilty of stealing such money, 'notwithstanding that he had lawful possession' of it, if he fraudulently converts it 'to his own use or the use of any person other than the owner' ".

For the reasons we have given we have reached the conclusion that the non-inclusion in counts 1-6 and 19 of section 257 does not make the conviction of the first appellant a nullity, and we would dismiss ground of appeal 3(a) and (b).

GROUND OF APPEAL 4:

Counsel in support of ground 4 in a strong and able submission argued that the trial Court erroneously convicted the first appellant on counts 1-6 and 19 once the following necessary ingredients of the offence under sections 255 and 270(b) of the Cyprus Criminal Code had not been proved by the prosecution: (a) that appellant acted "fraudulently"; (b) that there was no aver-

ment and no proof of the ownership of the money subject-matter of counts 1-6 and 19 of the charge-sheets; (c) that there was no proof of the absence of the consent of the owners for the actions of the appellant; (d) that the prosecution failed to call all owners of the money subject-matter of counts 1-6 and 19 to give evidence; (e) that the absence of proof that at the time the money was being entrusted to appellant there was no intention on his part to deprive the owners of the money of the Fund of their property; and (f) that there was no evidence of any taking by the appellant of the money in the sense of section 255 of the Criminal Code since the said money was being lawfully paid into the Fund by the various donors of the Fund.

On the contrary, Mr. Evangelou, counsel for the prosecution, very ably argued that in order to prove the offence of stealing by an agent, as it is laid down in section 270(b) of the Criminal Code, it is necessary to prove the following ingredients: (a) that the money has been entrusted to the accused for a particular purpose; (b) that the accused had used the money for a different purpose; and (c) that that use was fraudulent within the meaning of section 255. In *Platritis* v. *The Police* (1967) 2 C.L.R., 174, in delivering the first judgment, I had this to say at p. 184:

> "In my opinion, under the sections charging the accused, it is essential that three things should be proved by the prosecution to the satisfaction of the Court; first, that the money was entrusted to the accused person for a particular purpose; secondly, that he used it for some other purpose; and thirdly that such misuse of the money was fraudulent and dishonest".

Indeed, this passage must be read in conjunction with what was said by Vassiliades P. at p. 188:

> "Here in Cyprus, we have statutory provisions regarding the matter under consideration, which provide that a person steals money entrusted to him, if 'without the consent of the owner, fraudulently and without a claim of right made in good faith', takes such money. The statute expressly provides that he may be guilty of stealing such money, 'notwithstanding that he has lawful possession' of it, if he fraudulently converts it 'to his own use or the use of any person other than the owner".

The trial Judge, in his ruling, followed and adopted the two judgments in *Platritis* case.

With that in mind, we considered it convenient to deal with the meaning of the word "entrusted" and we would add that the trial Judge had already dealt with the meaning of the word "entrusted" in its ruling both with regard to the legal side, and in its final judgment as regards the relevant facts. It appears from the trend of the authorities that for the money to be considered as being "entrusted", no written evidence, nor the creation of an official entrustment is required.

Counsel for the prosecution went even further and argued that a person may be entrusted if he will receive money on behalf of any other person in spite of the fact that the other person does not know his existence and he does not intend to trust him with anything. Indeed, *King* v. *Grubb*, [1915] 2 K.B. 683, provides the answer. A person may be "entrusted" with property, or may "receive" it "for or on account of any other person" within the meaning of s.1 of the Larceny Act, 1901, notwithstanding that it is not delivered directly to him by the owner and that the owner does not know of his existence and has no intention of entrusting it to him. If a person has obtained or assumed the control of the property of another under circumstances whereby he becomes entrusted, or whereby his receipt becomes a receipt for or on account of another, and he fraudulently converts it, he commits an offence under s.1. Lord Reading C.J., in dismissing the appeal, had this to say at pp. 689, 690:

> "The question raised is of general importance, for, if the appellant's contention is right, it would follow that, by the interposition of a duly formed company as the person entrusted with the property or by whom it is received, no person could be convicted of offences under the Larceny Act, 1901, and indeed of any offence against the criminal law notwithstanding the undoubted fraudulent conversion of the property, since the company cannot be indicted and sent to prison. Section 1 of the Larceny Act, 1901, was passed for the purpose of meeting technical difficulties which had arisen in proving offences under ss. 75 and 76 of the Larceny Act, 1861, and was substituted for those sections. The first point to be decided in this case is whether there was evidence that the appellant was 'entrusted'

with the property in question or whether he received it for or on account of any other person.

This Court has no doubt that if the appellant was entrusted with the property or if he received it, there was evidence that he fraudulently converted it to his own use or benefit. In the opinion of this Court, a person may be entrusted with property, or may receive it for or on account of another person, within the meaning of this section, notwithstanding that the property is not delivered to him directly by the owner and that in fact the owner does not know of his existence and has no intention of entrusting the property to him. If the accused has obtained or assumed the control of the property of another under circumstances whereby he becomes entrusted or whereby his receipt becomes a receipt for or on account of another person, and fraudulently converts it or the proceeds, then he has committed an offence within the section. For the purpose of determining whether the offence has been committed, the words 'being entrusted' should not be read as being limited to the moment of the sending or delivering of the property by the owner, but may cover any subsequent period during which a person becomes entrusted with the property. Equally the words 'having received' may cover the receipt at any time by a person who receives the property for or on account of another. There cannot, however, be a fraudulent conversion without an intent to defraud. A company has no mind and cannot have an intention; if the person directing and controlling the affairs of the company and by whose instructions the property has passed into the possession of the company and has been converted intended to convert it fraudulently, he would be guilty of an offence whether the property was fraudulently converted to the use or benefit of the company or to his own use or benefit. If he did the acts with an intent to defraud, it would not be an answer to prove that he did them as the agent or servant of another person whether a company or an individual. Moreover, if the company was used by his directions as the instrument to enable him in the name of the company to become possessed of the property and by means of the company to convert it fraudulently to his own use or benefit, he would be guilty of an offence under this statute".

In *Hassan Oktay* v. *Rex*, 18 C.L.R. 195, tne question of entrustment has been raised. The appellant, as Secretary of the Co-operative Society of Mora, was entrusted with 2,000 okes of wheat for distribution by the Society among the villagers of Mora as part of their ration for the month of September, 1948. This wheat was delivered to the appellant, through an intermediary, from the Government store after he had paid for it with his own money to the office of the Controller of Supplies. The appellant sold the wheat so delivered to him to a certain baker in Nicosia at a profit. The Assize Court held that, in spite of the sale of the wheat to the appellant, the ownership of it remained in the Government and that the appellant was only a distributing agent, and it convicted him of theft, under sections 245 and 260(b) of the Cyprus Criminal Code. It was argued for the appellant that he could not be convicted of stealing the wheat, for it had become his own property when it had been sold to him for his own money by an official of the Controller of Supplies. The accused had bought the wheat with his own money and obviously he was a person which had interest on the wheat which was stolen, and therefore having regard to the circumstances of this case there was no entrustment within the meaning of the section on which he was accused. The relevant section under which he could have been found guilty was the then section 250 of the Criminal Code, the present section 270. Jackson, C.J. had this to say at pp. 198, 199:-

> "We have already said that the particular charge upon which the appellant was convicted was framed under section 245 of the Criminal Code, which defines the offence of stealing, and section 260 which prescribes a specially heavy punishment where the thing stolen falls within one of several descriptions. The charge alleged that the thing stolen in this case, namely the 2,000 okes of standard wheat, fell within the description (b) in section 260, since it was property which had been entrusted to the appellant in order that he might deliver it to someone else-in this case, the villagers of Mora. But it was said that section 260 does not in any way modify or change the essentials of the offence of stealing as defined by section 245, it only increases the penalty for stealing property of particular descriptions.
>
> The argument for the appellant accordingly was, in effect, that if he could not be convicted under section 245,

taken by itself, he could not be convicted under section 245 taken together with section 260. It was further argued that he could not be convicted under section 245 because he had bought the wheat and paid for it with his own money and had so become the owner.

The Assize Court held that, in spite of the sale of the wheat to the appellant, the ownership of it remained in the Government and the appellant was only a distributing agent. The first part of that statement was qualified to some extent in later passages of the Assize Court's judgment, but it seems clear that the Court's conviction of the appellant was based on their conclusion that some property in the wheat itself remained in the Government notwithstanding the sale to the appellant.

We would feel great difficulty in supporting the view of the Assize Court on that particular point of law, but there is another section of the Code upon which there was a good deal of argument during the trial but to which the Assize Court did not refer in their judgment. We refer to section 250 which deals, *inter alia*, with the theft of property, either by taking or by conversion, by a person who 'is the owner of the thing taken or converted subject to some special property or interest of some other person therein'. The taking or conversion must be 'under such circumstances as would otherwise amount to theft', and the section declares that if the taking or conversion occurs under such circumstances, it is immaterial that the person who takes or converts is the owner of the thing taken or converted subject to some special interest in some other person.

In this case there was undoubtedly a conversion of the wheat to the use of the appellant by its sale to the baker, but it was argued that the conversion could not amount to theft because the appellant was the owner of the wheat. For that reason, it was said, the appellant was not a person entrusted with the wheat, within the meaning of section 260 of the Code, in order that he might deliver it to somebody else.

Assuming that argument to be correct and that the Government had parted with their ownership of the wheat,

and assuming that ownership of it passed to the appellant, the case seems to us to be precisely one of those with which section 250 of the Code is intented to deal. The appellant's conversion of the wheat to his own use was a conversion which, but for the transfer of ownership to him would 'otherwise' (to quote from section 250) have amounted to theft under section 245 and 260(b). But section 250 provides that if that is the case, it is immaterial that the person who converts property is the owner of it, provided that his ownership is subject to some special interest in somebody else.

In our view, the villagers of Mora undoubtedly had a special interest in wheat sold by the Controller of Supplies to the appellant, as Secretary of their Co-operative Society, for delivery to them at a fixed price. He could not have obtained the wheat from the Controller except for that special purpose, and he obtained only the quantity shown to be required for villagers to whom no ration had already been delivered in that particular month. It is universally known that the price at which the Government sells standard wheat for distribution to the public, by way of ration, is heavily subsidised and the Controller of Supplies would certainly not have sold this wheat to the appellant, either at the price he paid or at all, in order that he might immediately re-sell it at a substantial profit on the black market.

If, therefore, the appellant became the owner of the wheat, he became the owner subject to a special interest in the villagers of Mora and he defeated that interest when he fraudulently converted the wheat to his own use. Accordingly there can be no doubt, in our opinion, that he was guilty of theft under section 245 of the Criminal Code read with section 250. Since he was convicted under other provisions of the Code, we think that his conviction should be altered to a conviction for theft under the two sections that we have quoted but this appeal must be dismissed".

With respect to the argument of counsel for the defence, in that case the accused bought the wheat with his own money, and was a person who had interest in the property which was stolen and, therefore, in the circumstances, no entrustment was made within the meaning of the section under which he was

accused. Indeed, the relevant section under which he could have been found guilty was the then section 250 of the Criminal Code–the present section 260, but, in any event, that case is distinguishable.

The second ingredient is that the first appellant used the money for a different purpose from that for which he was entrusted with; and the third is that the use of the money was fraudulent as it has been interpreted in the case of *Platritis* (*supra*). The trial Judge, in delivering his judgment, had adopted and accepted the legal interpretation followed in *Platritis*' case. We find it convenient to state that counsel for the defence, in the present case, conceded that the *Platritis*' case was rightly decided by the Court, and with that in mind counsel for the prosecution pointed out that the word "fraudulently" adds something more to the phrase which follows that is "without a claim of right made in good faith" and the real interpretation is the one which has been adopted in the case of *Platritis* that the taking of the money must be intentional and deliberate and not under the mistake that the property belonged to some other person. Furthermore, counsel went on to add that the word "dishonest" which is referred to again in the case of *Platritis*, is not included either in section 255 or in section 270 of our Criminal Code, but the taking is considered as such when it is made without a claim of right made in good faith. See Smith and Hogan, 3rd edn., at p. 423.

We have considered very carefully the clear and lucid contentions of all counsel and we shall try to see what is the meaning of the word "fraudulent". Indeed, we have to turn to the past in order to follow the evolution of our case law. The word "fraudulent" has been interpreted for the first time in *Rex* v. *Williams and Another*, [1953] 1 All E.R. 1068 where it was said that the phrase "fraudulent" and "without a claim of right made in good faith" mean that both the possession and the taking must be made intentionally without a mistake of the person liable and it must be made without a claim of right made in good faith that the property belonged to another person. In other words, that phrase does not mean taking by fraud or defrauding (kata-dolievsi) but it means intentional and deliberate and not under the mistake that the property belonged to some other person. See Russel on Crime, 12th edn., at pp. 11–16 and Archbold,

36th edn., at p. 696 para. 1916. Furthermore, we would add that the case of Williams was adopted in the case of *Platritis*, where the same phraseology was used exactly, at p. 185.

Turning once again to the *Platritis* case (*supra*), it appears that at p. 185 it was further said:-

> "The fact that a person liable of stealing may have a hope in the future to return the stolen money, is a matter which can be taken into consideration in mitigation, and does not amount to a defence".

We would repeat this was said in *Platritis* case adopting a passage from the case of *R.* v. *Williams* (*supra*).

On the contrary, in *Zissimides* v. *The Republic*, (1978) 2 C.L.R. 382, the Supreme Court, without overruling the *Platritis* case, said that it would have been a mistake to say that the evolution of the principles of common law, as were formulated in *R.* v. *Feeley*, [1973] 1 All E.R. 341, must be ignored in Cyprus. In other words, our Supreme Court in *Zissimides* (*supra*), accepted that we must follow the evolution of common law principles of England. The trial Court, in *Zissimides* case heard the same argument as the one which was put forward on appeal, and Triantafyllides, P., had this to say:-

> "At the trial of the present case, counsel for the appellant invited the Assize Court to treat the Feeley case, *supra*, as expounding the correct principle applicable to the matter before it; and in its judgment the Assize Court had this to say in this respect:
>
> 'Now, the legal point which falls for determination is whether *R.* v. *Feely* is applicable in Cyprus, in view of the fact, (a) that it was decided in connection with the Theft Act 1968, which is not part of our law, (b) that the dicta in *R.* v. *Williams* which were adopted by our Supreme Court in the case of *Platritis*, were disapproved expressly in *R.* v. *Feely*.
>
> As regards (a) above, we have noted that in *R.* v. *Feely* a new element is introduced, namely Moral Obloquy. In this respect, the Court of Criminal Appeal (Lawson L.J. at p. 346 (g)), says: 'In our judgment, a taking to which no moral obloquy can reasonably attach, is not

within the concept of stealing either at Common Law or under the Theft Act 1968'. In view of the above, we might accept 'moral obloquy' as an extension of the Common Law principle.

As regards (b), we hold the view that we are bound by the decision of our Supreme Court in the *Platritis* case (*supra*). We have decided though, for the purposes of the present judgment, – in case our Supreme Court holds otherwise – to consider the principle set out in *R.* v. *Feely* as part of our law'."

Then the President had this to say at p. 413:

"We are not entirely sure what the trial Court meant when it said that it 'might accept 'moral obloquy' as an extension of the Common Law principle', but we are in any event, of the opinion, that when the notion of 'moral obloquy' was introduced in no uncertain terms by the judgment in the *Feely* case it was not introduced only for the purposes of the application of the provisions of the Theft Act, 1968, but generally in relation to the crime of 'larceny' or 'theft', however it might be described (see, in this respect, the judgment of Lawton L.J. in the *Feely* case, at p. 348); furthermore, we cannot agree with the view that the trial Court was not bound by the decision of the Court in *Platritis* case, because that case was decided on the basis of the law as it had developed till then, and prior to the decision in the *Feely* case; in other words, in the judgments in the *Platritis* case are expounded the relevant principles of the Common Law as they were understood in England, and applicable in Cyprus, at that time and it would be wrong to say that the further development and elucidation of such principles, as it took place in the *Feely* case subsequently, is to be ignored in Cyprus by treating the *Platritis* case as case-law which has frozen for ever, for the purposes of the law of Cyprus, the relevant principles of the Common Law".

In *Zissimides* case, the Supreme Court decided that we must accept the evolution of the principles of the common law of England. With respect to the Supreme Court the statement made at p. 413 cannot be reconciled with two other passages from the judgment of Vassiliades P., in the *Soteriou* case (*supra*)

at p. 195, and in the case of *Platritis* at p. 186, where clearly he makes reference to the Criminal Code of Cyprus and states clearly and lucidly that our Criminal Code does not originate in an enactment intended to codify the English Common Law.

We would, reiterate that, in those two passages, Vassiliades P., has repeated his stand that it is safer to approach such a case, having in mind the provisions of our own Code, instead of turning to the English Common Law, which does not constitute directly the prototype of our own legislation. But we would go further and state that in some way Triantafyllides P. follows the stand taken by Vassiliades, P. in the case of *Iacovou* v. *The Republic*, (1976) 2 C.L.R. at p. 114, whilst in *Zissimides* case says that it would be a mistake to say that the evolution of the principles of common law should be ignored in Cyprus.

With this in mind, we would point out that *Feely* has been decided under the provisions of the Theft Act, 1968, and that those provisions are also different both from the provisions of the Larceny Act 1916, as well as from our own section 255 and 270. We would go further and state that the main change of the Theft Act of 1968 was to the effect that it changed among other provisions, the legal phraseology and replaced it in some cases, by words of common parlance. In *R.* v. *Feely* [1973] 1 All E.R. 341, Lawton, L.J., dealing with the Theft Act, 1968, had this to say at p. 344:

> "Should the jury have been left to decide whether the appellant had acted dishonestly? The search for an answer must start with the Theft Act, 1968, under s. 1 of which the appellant had been indicted. The long title of this Act starts with these words: 'An act to revise the law of England and Wales as to theft and similar or associated offences...' The draftsman seems to have searched the statute book for all the statutes dealing with offences of dishonesty and it is probable that all the old enactments have been repealed so as to enable the Theft Act 1968 to deal comprehensively with this branch of the law. The design of the new Act is clear; nearly all the old legal terms to describe offences of dishonesty have been left behind; larceny, embezzlement and fraudulent conversion have become theft; receiving stolen goods has become handling stolen goods; obtaining by false pretences has become

obtaining pecuniary advantage by deception. Words in every day use have replaced legal jargon in many parts of the Act. This is particularly noticeable in the series of sections (ss 1 to 6) defining theft.....

This word is in common use whereas the word 'fraudulenty', which was used in s. 1(1) of the Larceny Act 1916, had acquired as a result of a case law a special meaning".

We are really indebted to all counsel appearing in this case, for doing their very best in presenting and arguing that case before us in order to expound our case law also. But, we should point out further that the argument in *Feely* case regarding the legal discussion of the meaning of the word "dishonestly", as it is interpreted clearly in the Theft Act, 1968, was the result of the allegation of the accused person that he believed that he was in a position to return the money which he had misappropriated, whilst in the present case, no such point of returning the money was raised. As we have said earlier in *Platritis* case, we have relied on *Williams* case (*supra*), and accepted that the word "fraudulently" means intentional and deliberate, and not under the mistake that the property belonged to some other person. With respect, in *Zissimides* case, there was an attempt to diminish and undermine the importance of *Platritis* case, but we would reiterate, it does not in any way affect the *Platritis* case, and also the *Williams* case on which we relied. We would further add that with regard to that point, in the case of *Platritis* and the case of Williams on which we relied, something else was said. It was said "the fact that the person who stole the money may have a hope of returning the stolen money in the future, is a point which may be taken into consideration for imposing a lesser punishment, but it does not amount to a legal defence". Indeed, this is the principle which is doubted in *Feely* case, and it was added that it consists of a legal defence if it can be proved that the accused had the intention to return the stolen money, and had reasonable ground to believe, and really believed, that he was in a position to do so, viz., to return the money.

Because of the importance attached to this case by counsel for the appellant, and for the prosecution, we turn once again to the *Feely* case, in order to show what was the subject-matter,

and in order to make it clear, i.e. that the interpretation of the word "fraudulently" is not affected but only that part of the decision which refers to the return of the money. In *Feely* case (*supra*) at p. 341, letter 'e', we read:-

> "The judge directed the jury that it was no defence for the appellant to say that he intended to repay the money and had the means to repay it, or that the employers owed him more than enough to cover what he had taken. At no stage did the judge direct the jury to decide whether the Crown has proved that the appellant had taken the money dishonestly, and he expressed his concept of dishonesty as follows: '...If someone does something deliberately knowing that his employers are not prepared to tolerate it, is that not dishonesty?' The appellant was convicted and appealed".

There is no doubt that it is acknowledged that the Courts have the power and the right to extend the Common Law in order to meet situations unforeseen by its forerunners or non-existing at the time of the declaration of the relevant principles. As to the evolutionary powers of the Common Law see the case of *De Lasala* v. *De Lasala* [1979] 2 All E.R. 1146 (P.C.) where Lord Diplock discusses eloquently those powers. Indeed the inherent powers of the Common Law were acknowledged by our Supreme Court in *K.E.M. (Taxi) Ltd.* v. *Anastassis Tryfonos* (1969) 1 C.L.R. 52. Furthermore the need to apply the principles of the Common Law to the needs of Cyprus and model its application accordingly was recognised by our Supreme Court both before and after independence. See *Universal Advertising and Publishing Agency* v. *Panayiotis A. Vouros*, 19 C.L.R. 87-94; and *Katina Hadjitheodossiou* v. *Petros Koulia and Another* (1970) 1 C.L.R. 310.

We further agree that the law Courts have no right either to change the Common Law which is the prerogative of Parliament, or extend it beyond the scope of its principles which is again the task of Parliament. With that in mind, we would add, that whereas the Larceny Act 1916, on which our Theft Law is based and purported to codify the common law definition of theft, the 1968 Theft Act made no such effort. The concept of theft of the 1968 Act and notion of dishonesty, introduced thereby, are the product of statute, modelled on the recommendations

of the Law Commission. For these reasons the decisions on the interpretation of the 1968 Act, with regard to the definition of dishonesty have no direct relevance to the interpretation of our Cyprus statute on theft.

Finally, we would add that even if we accepted the legal principle as has been expounded in the *Feely* case, and was adopted in *Zissimides*, i.e. that the intention of returning the money would constitute a defence, in the present case, no such matter was raised, and no allegation was made that the appellants had an intention to return the stolen money.

The prosecution went even further, and argued that the fact that the appellants have not appropriated the said money themselves, does not amount to a defence, because as it is known, in the proviso to section 255, it is clearly stated that a person may be guilty of stealing irrespective that he has lawful possession thereof, if being a bailee fraudulently converts the money to his own use or the use of any other person other than the owner. With respect, this point, we repeat, has been clearly decided by the *Platritis'* case at p. 188. But we would go further and state that in spite of all the contentions of counsel for the first appellant, the purpose for which the money has been misappropriated, is of no consequence, once the owner has been deprived of his money.

We repeat, that what matters is that the onwers of the money have been deprived of their property. But we would further state that the fact that the purpose was of a philanthropic nature or not, is irrelevant, because section 9 of our Criminal Code states that the motive is immaterial so far as regards criminal responsibility. For the reasons we have given, we would dismiss ground of appeal 4(a).

Turning now to ground of appeal 4(b) it was the allegation of the defence that counts 1-6 and 19 are null and void because they do not refer who are the owners of the money in the charge-sheet. On the contrary, counsel for the prosecution repudiated the allegation of the defence and argued that the trial Judge had decided earlier that in accordance with the provisions of section 39 of the Criminal Procedure Cap. 155, it is not necessary to refer clearly in the charge-sheet who are the owners, but with

the exception only of those cases in which one person has a special property in the thing stolen. Section 39(f) says:

> "If the offence charged consists in doing anything with or to any property, except where required for the purpose of describing an offence depending on any special ownership of property or special value of property, it shall not be necessary to state that the property belongs to any particular person, and whether such statement is made or not, it shall be sufficient for the prosecution to prove such facts as to ownership as to show that the accused committed the offence with which he was charged;"

Having considered the submissions of both counsel and in the light of the provisions of section 39 we are of the view that in the charge-sheet one finds all the necessary elements of the offences which the appellants were facing. Indeed in the charge-sheet it is referred to which persons have entrusted sums to the first appellant and for which purpose viz., that the first appellant converted the money and gave it for other purposes from those for which they entrusted him; and indeed before the trial started full details have been given to the other side as regards the persons who gave money and to the persons to whom money were given, as it appears in schedules A to ST. With regard to the charge-sheet see Archbold, 36th edn. p. 694 para. 1908 where an example is given regarding the formulation of the charge-sheet relating to a similar offence in England. For the reasons we have given and as we agree with the learned Judge we reach the conclusion that counts 1-6 and 19 are not null and void.

GROUND OF APPEAL 4(c) AND (d):

In support of ground 4(c) and (d) taken together counsel for the defence argued that there was no proof of the absence of the consent of the owners for the actions of the appellant and that the prosecution failed to call all owners of the money subject-matter of counts 1-6 and 19 to give evidence. With regard to the consent of the owners the trial Judge from the whole of the evidence which he accepted concluded that it was proved that the donations which have been made in response to the circulars, *exhibits* 190-196, were made for the purposes which are referred to in those circulars, and which purposes have never been amended, and therefore the consent of those who gave

money was given for that purpose only. Indeed all the circulars from the beginning to the end are the same and the purpose remained the same for which the Self-Assistance Co-operative Fund was created for the displaced co-operative employees. Counsel for the prosecution went even further and argued that even assuming that there was not the consent of all those who were entitled, and once 24 persons came forward and gave evidence that they were part of those, it was sufficient, once it was clearly said that they never gave their consent for any other payments except for the purposes of the Fund. Indeed in section 255(2)(c) the expression "owner" includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen. In our view having read sub-section (2) and even if the persons entitled were the owners, we have 24 part owners out of 300 who did not give their consent, and therefore, we repeat, there was no consent for any other payments except for the purposes for which the various institutions have entrusted the first appellant with money. Therefore whether the owners are those who gave money or whether they were the displaced employees, we find ourselves in agreement that the prosecution has proved beyond reasonable doubt the element of consent. In other words, we must make it clear, that the first appellant did not have the consent either of those who donated money or those who were entitled to the money in order to make payments outside the purposes for which the Self-Assistance Co-operative Fund was created. There was a further argument by counsel for the defence that the fund was the owner. On the contrary, counsel for the prosecution argued that the suggestion of the defence cannot stand once the fund was not a legal person but simply an account to which money were paid in and for which the first appellant had exclusive control. In other words, the fund was simply an account and it was not a legal person. In *Hillier and Another* v. *Attorney-General and Another* [1954] 2 All E.R. 59—relied upon by the defence, Denning L.J., as he then was, dealing with the question of trust had this to say at pp. 70, 71:

> "The question is: What is to happen when the trustees cannot apply the money in the way intended? Suppose, for instance, they have got more than enough, what is to happen to the excess? It is I think, well settled that if the money received by the trustees is more than is needed

for the named purpose, they do not have to return the surplus to the givers. They must apply it under the directions of the court for a purpose as near as may be to the original purpose. The reason is not solely on the ground of inconvenience. It is not merely because it is practically impossible to find out who gave the money or to check the claimants. It is because they all gave their money without reserve, and no reserve will be imputed to them. It is useless to ask what was their intention, for a situation has arisen which they did not contemplate, and for which they did not provide. They had formed no relevant intention. So the law must provide. The law must say what is to happen to the money. It does it by making presumptions in favour of charity. It presumes that those who gave the money would wish that any surplus should be devoted to a charitable purpose as near as may be to the original purpose: See *Re Monk*(1), per Sargant, L.J.; re *North Devon* case(2); and *Re British School of Egyptian Archaeology*(3), per Harman, J.

There may be some exceptional cases where the donor makes it clear that if the main purpose should become impossible, he will want his money back. I regard the *Medical Science* case [1909] 2 Ch. 1 as such a case. But in the absence of some such evidence, the law will, I think, make in every case a presumption in favour of charity".

With respect to counsel for the defence this case is distinguishable for three basic reasons because a trust was made for a specific purpose; and because the purpose for which the donations were given could not be materialised once in the meantime a law was enacted in England. And the question before the Court was whether the cypres principle was applicable; and which is the most important one in this case, is that the donors have published in the press and were inviting the donors to come and take the amounts which they donated but no one replied and cared to go and collect the money. The trustees

(1). [1927] 2 Ch. 197; 96 L.J. Ch. 296; 137 L.T.4; Digest Supp.
(2). [1953] 2 All E.R. 1032.
(3). [1954] 1 All E.R. 887.

thought to apply to the Court in order to authorise them what they would do with the money which were donated to them. With respect, this, as we have said earlier, is distinguishable from the present case and for the reasons we have given we would dismiss ground 4(c) and 4(d) also.

GROUNDS OF APPEAL 4(e) AND 4(f):

Counsel for the defence, in support of grounds 4(e) and (f), argued that the absence of proof that at the time the money was being entrusted to the appellant there was no intention on his part to deprive the owners of the money of the fund their property; and that there was no evidence of any taking by the appellant of the money in the sense of s. 255 of the Criminal Code once the said money was lawfully paid into the fund by the various donors. On the contrary, counsel for the prosecution made it clear that he was not alleging that the money was stolen from the donors from the very beginning, and further conceded that those sums were donated to the first appellant lawfully, but he concluded that later on the donations have been used for other purposes. Indeed, he pointed out that the time of taking, in this particular case, is the time of giving the money for purposes other than those which are referred to in the circulars because the offence is not a simple stealing under s.255 where the intention of appropriating money must be at the time of taking. Here it is a case where one gives money lawfully to the offender and later on he decides to misappropriate it.

Counsel for the appellant, taking a further stand, referred to the case of *James Hudson*, (1943) Court of Criminal Appeal 65. In this case, a letter containing a cheque from the Ministry of Food was delivered by mistake to the appellant, who received the letter innocently. He subsequently opened the letter and appropriated the cheque, though he was not expecting to receive any cheque from the Ministry. The Judge directed the jury that the material time at which they must consider the appellant's state of mind was the time when he opened the letter and first discovered that it contained a cheque, and that if they were satisfied that at that time the appellant had the animus furandi in relation to the cheque, they should convict him of larceny of the cheque. It was held that the direction was correct in law, as the appellant did not receive the cheque until he opened the letter and discovered that it contained a

cheque. With respect, we have gone through this case, and we think that the principles upon which counsel for the defence relied, as regards the time of appropriation are applicable to simple stealing. In addition, we would add, that they are not applicable in a case where the object comes lawfully into the possession of the person liable and later on embezzles it. See Stephen's Commentaries of the Laws of England, 21st edn., Vol. 4 at p. 84, para. IV.

There was a further argument by defence counsel that the offence pre-supposes first stealing and afterwards *entrustment*. The trial Court has dealt with this point and rejected the argument of the defence. With respect having considered the contentions of both counsel, we are of the view, that the argument put forward on this point by counsel for the defence cannot stand, because the relevant ingredients are those to which we have been referred earlier by counsel for the prosecution. For the reasons we have given we would dismiss grounds of appeal 4(e) and 4(f) because there was ample evidence to support the finding of the Court.

GROUNDS OF APPEAL 5, 7 *AND* 14:

Turning now to ground of appeal 5, it was the allegation of Mr. Triantafyllides that the finding of the Judge as to the objects and purposes of the Self-Assistance Fund was based on the interpretation given by the Court to *exhibits* 191-196, and particularly *exhibit* 196 is erroneous, arbitrary unwarranted and contrary to the accepted canons of construction of documents and that the conviction of the appellant on the aforesaid counts was erroneous in law and in fact. The trial Judge, in dealing with the same submission earlier, has decided that the contributions have been given exclusively for the benefit of displaced and unemployed co-operative employees, who were in need of help, excluding any other third persons. There is no doubt about it that the Judge as it was emphatically stated, relied on the aforesaid circulars 191-196. In addition he relied on independent evidence which supported the conclusions by the Court. With regard to the interpretation of the circulars, the trial Judge made it clear that in order to find what is the correct meaning, it was necessary to refer to all the circulars because it was not permitted to find the interpretation by referring only to one, and excluding the substance of the rest. In

every circular, the trial Judge goes on, the accused was renewing his plea for generous contributions to the Fund and in every case, as evidence of P.W. 6 Ioannides shows, the response was immediate and generous. Having then read *exhibit* 191 dated 31st December, 1974, the first circular, the Judge pointed out that in accordance with the evidence of Andreas Hadjiyiannis (P.W. 120), only the co-operative employees were paid a salary. The members of the Committee were not paid, and it is obvious that when he used the words "the colleagues who remained without an income", he referred to the displaced co-operative employees. The trial Judge went even fruther and made it clear, that that was the reason why the word "indispensably" is in capital letters, and that the Fund must be reinforced from the working co-operative employees who were receiving salaries.

Then the Judge dealt with the second circular, *exhibit* 192, and pointed out the words "our colleagues the employees of Co-operative Societies" and further in the second paragraph the words "those of our colleagues". Then the Judge added that "in the last paragraph he—(this appellant)—makes a plea for contributions to the Fund to enable him to give to the displaced colleagues during the forthcoming Easter the pleasure and the happiness with a sum of money which will make less the pain of being displaced and turned into refugees".

Again, the Judge having pointed out that the wording of this circular speaks clearly and lucidly only for the displaced co-operative employees, quoted a passage from *exhibit* 193, the third circular, dated 25th November, 1975, and made a statement that it was clear and obvious that from what he had read, the purpose of the Fund was to help the displaced co-operative employees who according to an expression used by the appellant were deprived of the most material necessities of life. Then, he proceeded and dealt with *exhibits* 194, 195, 196, and said that the defence had pointed out that the provisions of *exhibit* 196 widened the purpose of the Fund and covered all the payments which have been paid after the *exhibit*. Indeed, the Judge goes on "the use of the verb care in the past tense and particularly the words 'frontise ke frontizi' (cared and cares), referred to the donations which took place in the past until *exhibit* 196 was sent".

On the contrary, counsel for the prosecution in arguing to the

opposite, submitted that the sixth circular does not change the purpose of the Fund, but simply enumerates the achievements of the Co-operative Movement in which the appellant included also the donations which were referred to in the second paragraph without referring that they were coming from the Self-Assistance Fund. The trial Judge in examining carefully this issue said that circular *exhibit* 196 in its totality not only did not change the purposes of the Fund, but it confirmed for a number of times that its purpose was the healing of the wounds of the co-operative employees. Further that the Self-Assistance Fund was one of the successes of the Co-operative Movement and that this circular in all other circumstances speaks for the Co-operative Movement. Finally the learned judge concluded as follows: "I have gone carefully through all the circulars and I am convinced beyond reasonable doubt that the contributions have been given exclusively for the displaced co-operative employees, who had need of help, excluding any other third persons". He further said: "This is according to the judgment of the Court the true grammatical interpretation of the various contents which I have read, as well as with any other principle of interpretation". Then he goes on to say that "apart from the circulars there is independent evidence oral as well as written which supports the conclusion to which the Court has reached".

In referring to this evidence, the Judge said: "(1) all the facts which surrounded the meeting which took place in Mimoza, the decisions which were approved during the meeting; (2) the meeting in the office of the accused on 30th December, 1974, which according to P.W. 7 the accused told them that the Self-Assistance Fund for co-operativists was created for the granting of help to the displaced co-operative employees. That conversation has been taken down by P.W. 7 and it has not been doubted by the accused (see *exhibit* 214); and (3) the statement of the first accused, *exhibit* 278, as well as the statement of the second accused, *exhibit* 279, to which I will refer later on".

Then having dealt with the cheques, *exhibits* 5-170, the Judge proceeded to add that the prosecution called all the witnesses who took the said cheques or their equivalent in cash. The witnesses gave evidence that they took the cheques or the amounts in cash and explained the circumstances under which they received them and for which purposes they spent the money.

The Judge having examined all the 166 occasions which the charge-sheet covers reached the conclusion beyond reasonable doubt that the prosecution had proved (1) that the sums which were referred to the counts 1–18 were paid to the persons, clubs, organisations and Ecclesiastical Institutions which were referred to in schedules A–F; (2) the payments were made by the cheques, *exhibits* 5–170, and all without exception have been signed by the first appellant and were cashed from the Self-Assistance Fund; with that phrase we understand the title which the Fund had during various times; (3) that no one from those who received such money was a displaced co-operative employee; and (4) the said payments were made contrary to the letter and spirit of the circulars, *exhibits* 191–196.

Counsel for the defence, argued extensively, that the interpretation placed on the provisions of circular 196 was wrong, and that the trial Judge erred in law, and that at least there was room for doubt as to the objects of the Fund; and also that he did not consider that there was no limitation placed by the said *exhibit* as to how the appellant should spend the money donated to the Fund. The defence finally complained that the Judge completely overlooked and failed to pronounce on the submission that in any case the prosecution failed to prove that the money subject-matter of count 1 should have been paid to unemployed co-operativists, in count 2 to displaced co-operativists and in count 3 to unemployed displaced co-operativists. On the contrary, and with the same force, in supporting the decision of the trial Judge, counsel for the prosecution argued that the mere fact that the trial Judge proceeded after reading each circular to analyse it, it does not support the complaint of counsel that it was wrong that he analysed one by one the six circulars and that was not at fault as the defence has alleged because the Judge could not have read the six circulars at the same time.

We have given the matter a lot of thought, and indeed we have read carefully ourselves the six circulars, as well as the whole of the evidence, and we have reached the conclusion that in this particular case, and because the first appellant never disclosed to the persons from whom he was collecting the funds that he was using them for other purposes, we find ourselves unable to interfere with the findings and the conclusions of the

trial Judge that the true construction of the circulars was that the contributions were given exclusively for the displaced co-operative employees, who as so lucidly the first appellant said, "had need of help". For the reasons we have given, we would dismiss ground of appeal 5.

Counsel for the first appellant in arguing ground 7 complained that the Court erroneously convicted him on count 6, having rejected the defence submission that the amounts specified in that count, after its amendment by the Court were fully covered by the objects of the Fund on the correct interpretation of *exhibits* 191–196; and that there was no identification of the money spent by the appellant since money belonging to the Self-Assistance Fund was amalgamated with the money belonging to the Fund in memory of Ethnarch Makarios III. In effect the defence is complaining that count 6 has not been proved because it has not been an identification of the money. But with respect from the facts presented to this Court as well as to the trial Judge the first appellant gave instructions to the Co-operative Central Bank (see *exhibit* 200) to consolidate the two accounts into one, viz., the Self-Assistance Co-operativists Fund and the Co-operative Fund in memory of Ethnarch Makarios III, and from the consolidated account he began to pay money which appears in schedule F of the charge-sheet. Having considered the totality of the circumstances relevant to this issue, we have reached the view that once all the payments which were made and appear in schedule F were payments different from the purposes of the Self-Assistance Fund, as well as the Fund of Co-operativists in memory of Ethnarch Makarios III, it is not necessary or indeed no reason existed to have the identification of the money. One would go further and say that obviously the first appellant had deviated from the purposes of the two funds, and indeed the trial Judge was not bound to make a finding whether each particular donation from the fund fell or did not fall within the meaning of the circulars and give reasons for such finding.

Finally, once we have accepted the findings of the trial Judge as to which was the true purpose of the Fund, and although some payments were made to philanthropic institutions there is no doubt that all payments made were illegal and that the first appellant was not entitled to make them. We would, therefore, dismiss grounds 5, 7 and 14.

GROUND OF APPEAL 13:

We must confess that this is one of the grounds to which we have attached a lot of more importance, and we think quite rightly Mr. Triantafyllides treated it as one of the important grounds of law in this appeal. Counsel for the defence in a strong and able argument complained that the trial Judge erroneously accepted as evidence the lists and other connected documentary evidence in respect of the donors to the Fund, relying on section 31 of The Co-operative Societies Law Cap. 114. He also advanced the argument that whatever was contained in those lists it was hearsay evidence. Furthermore he pointed out, that section 31 of Cap. 114 is not applicable in this particular case, and that it cannot override the Evidence Law Cap. 9, and that even if this section was applicable, it again could not authorize the production of the said lists, and other documentary evidence in this case.

The trial Judge having dealt with this matter decided that the receipts and the lists which had been prepared, and which were produced in Court by witness Ioannides (P.W.6) in six envelopes, (see *exhibits* 197, 205-210), were made in accordance with regulation 97 of the Co-operative Society Fund and were certified accordingly, and that in the light of this, they were admissible as evidence in Court. It seems to us, in going through the voluminous minutes, the defence has not raised an objection at the time, but on the contrary, asked P.W. 6 to produce also the accounts of the three funds, *exhibits* 210-213.

Section 3 of our Evidence Law Cap. 9 reads as follows:-

> "3. Save in so far as other provision is made in this Law or has been made or shall be made in any other Law in force for the time being, every Court, in the exercise of its jurisdiction in any civil or criminal proceedings, shall apply, so far as circumstances may permit, the law and rules of evidence as in force in England on the 5th day of November, 1914".

Then we turn to section 31 of the Co-operative Societies Law Cap. 114 which says:-

> "31.(1) A copy of any entry in any book, register or list regularly kept in the course of business and in the possession of a registered society shall, if duly certified in such manner

as may be prescribed by the Rules, be admissible in evidence of the existence of the entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent which, the original entry would, if produced, have been admissible to prove such matters and transactions.

(2) No office of a registered society shall in any legal proceedings to which such society is not a party be compelled to produce any of the society's books the contents of which can be proved under subsection (1) or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a Court of law or a Judge made for special cause".

As the provisions of section 31 of the Co-operative Societies Law Cap. 114, are identical to the provisions of the Bankers Books Evidence Act 1879, in our view, these provisions constitute an exception to the hearsay evidence, and are not contrary to the provisions of our Evidence Law Cap. 9. Indeed we would go further and state that the Bankers Books Evidence Act of England which is applicable also in Cyprus, was enacted for the convenience of the banks in order to be able to prove in a Court of Law statements which are in their books with copies, instead of bringing the originals in Court as it appears from the provisions of section 31 which in effect permits the proof of transactions the recordings by copies if and when the requirements of this section are satisfied. With regard to this legal point one finds the answer in the case of *The Attorney-General of the Republic* v. *Theocharis Theocharides and Others* (1973) 2 C.L.R. 75. In that case the application was duly served on two banks concerned which were not a party to the said criminal proceedings as well as on the accused, in the said criminal case. It is to be noted that the effect of an order under section 6 of the English Act is that the bankers concerned are allowed to prove the entries in their books by copies verifying orally or on affidavit, as being correct, and as being made from their ordinary books, and as having been entered also at the time in the usual and ordinary course of business. Then, under the said section, a Banker is to be relieved from being compelled to attend and produce his books in any proceedings to which his bank is not a party, so long as the contents of the books can be proved in the manner provided by the preceding sections.

Triantafyllides P. delivering the ruling of the Full Bench including myself and Justices A. Loizou and Malachtos, in dismissing the application had this to say at pp. 78, 79, 80:

"We have considered the question of the competence to make an order under section 6 and we are of the view, not only because of the provisions of the said section 3 of Cap. 9, but, also, in the light of the structure of our judicial system (see section 3 et seq. of the Courts of Justice Law, 1960, 14/60) and because of section 17 of the Interpretation Law, Cap. 1, that the trial Court is competent to make the order applied for; and as this application should have been made to such Court in the first instance, it has, in any case, to be dismissed on this ground....."

Then the learned President goes on:

"It would, therefore, be useful, in this respect, to refer to a case which has not been mentioned in argument, but which can be found referred to in the notes to section 6 of the 1879 Act in Halsbury's Statutes of England, 3rd ed. vol. 12 849, and which shows what is the position in law in the matter: In *Emmott* v. *The Star Newspaper Company* [1892] 62 L.J. Q.B. 77, Lord Coleridge, C.J., stated the following, in dealing with an application under section 7 of the Bankers' Book Evidence Act, 1879:

'What was the duty of a banker in regard to the supplying of evidence at the time when this Act was passed? It was the same as that of any other person. He was obliged to attend under a subpoena with his books if their contents were receivable in evidence. But this was said to be a class of peculiar and practical hardship in disturbing their business and displacing their business books, filled as they were with the details of other people's affairs quite external to the matters in dispute. The Act, or rather the original Act of 1876, which the Act of 1879 repealed, and for which it is substituted, was passed to give a sensible and reasonable relief for this particular class of persons, but not to alter the whole of the rules of evidence so as to place Bankers in a different position in regard to giving evidence from any other subjects of the Queen. Bankers are not to be so differently treated, nor was any such

change intended. They remain bound at common law to attend and to produce their books under subpoena, except in so far as the inconvience may be modified by the statute. That is to say, they are allowed by the Bankers' Books Evidence Act, 1879, to prove the entries in their books by copies verified orally, or on affidavit, as being correct, and as being made from the ordinary books of the bank, as as having been entered also at the time in the usual and ordinary course of business. Then, under section 6, a banker is to be relieved from being compelled to attend and produce his books in any proceedings to which his bank is not a party, so long as the contents of these books can be proved in the manner provided by the preceding sections, unless by order of a Judge made for a special cause. The section does not say that he is not to be compellable in any cases where the contents of the books could formerly be proved at common Law, but only in case 'where their contents can be proved in the manner provided by this Act'. If the banker does not choose to follow out these provisions of the Act, he is left with the old burden of personal attendance and production of the books. The construction contended for by the defendants would otherwise give a banker an unreasonable amount of relief. If the banker will not attend or supply the copies required at the trial he must be subpoenaed to produce the books at the trial as before the Act. If he will not take the course pointed out by the Act, or attend under the subpoena, he will find himself in a bad way at the trial. That would be an attempt to defy the jurisdiction of the Court, and could be dealt with as such'."

Then the President quoted a passage from L.J. Smith who stated the following:

"What is the true meaning of the Act? That bankers were not in any case to which their banks were not a party to be compelled to appear or to produce their books? I do not think that this is the construction of section 6 and 7.

Sections 2 to 5 were passed for the benefit of bankers,

to enable them to prove entries by copies, and to verify the copies on oath, either by sending a clerk to attend the trial, or by affidavit. Then comes section 6. It does not stand alone. It must be read in conjunction with sections 2, 3, 4 and 5. Taken together, the sections convey that if a banker chooses to take advantage of these first sections, he shall not be compelled, in cases to which section 6 applies, to attend or to produce his books without an order of the Court made in view of special circumstances".

In the light of these weighty pronouncements, we have reached the conclusion that the trial Judge rightly addressed his mind, and reached the conclusion that *exhibits 197, 201–205* constituted admissible evidence, because P.W. 6 Ioannides said that he opened the account of Self-Assistance Fund on 7th January, 1975, when he received a letter from the first appellant and the circular *exhibit* 191. There was further evidence that cheques, *exhibits* 5–170, which are the payments, were issued from the cheque book which the first appellant had received from P.W. 6, Ioannides, and had signed personally. Therefore, there was evidence, at least for the sums which are referred to in *exhibits* 5–170, that they were issued from the Self-Assistance Fund. In these circumstances, this ground of appeal cannot stand, and indeed, it was not necessary for Mr. Ioannides to give evidence once he admitted that they were signed by the first appellant. For these reasons, we would dismiss ground of appeal 13 also.

GROUND OF APPEAL 9:

Mr. Triantafyllides, in support of ground 9 with regard to breach of trust, complained that the Court erroneously found the appellant guilty on counts 13 to 18. The trial Judge in his ruling dealt with the subject of breach of trust, and having also taken into consideration the facts, proceeded to analyse the offence of stealing by an agent and in his judgment reached the conclusion that those facts constituted the offence of breach of trust contrary to section 133. Now, section 133 of our Criminal Code reads as follows:-

"133. Any person employed in the public service who, in the discharge of the duties of his office commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not

if committed against a private person, is guilty of a misdemeanour".

It is convenient to state that wrongly in our view counsel for the defence complained that the Judge gave to this point two lines only, because before reaching his conclusion, he took into consideration all the facts and it was not necessary in our view to analyse them once again. Finally, he reached the conclusion that the facts which were before him constituted the offence of breach of trust.

In this case, the first appellant is not accused that he had committed fraud. He is accused that he has committed breach of trust. Now what are the relevant ingredients of this offence: In our view, the relevant ingredients of breach of trust are the following five:- (a) that the person liable must first be a public servant in the discharge of his duties; (b) that there must be a trust; (c) that there must be also a breach of trust; (d) that the breach of trust must affect the public; and (e) that there must exist a mens rea which in the present case is wilful negligence, that is, a will to be negligent, an intentional breach of duty or reckless, carelessness in the sense of not caring whether one's act or omission is or has not created a breach of duty.

That the first appellant during that period was a public servant there is no doubt about it, and the trial Judge, had accepted that he was a public servant. Indeed, we would go further and state, that in dealing with the facts relating to the first appellant, we have also indicated that he was a public servant as provided in the scheme of service. But counsel for the defence put forward that during that time the first appellant was not acting in the discharge of his duties or his functions, but he was acting as an individual, and that his whole purpose was to collect funds for the benefit of the displaced co-operativists.

There was once again a lot of argument, both before the trial Judge, and before this Court, but with the greatest respect to counsel, there is no doubt at all that at all meterial times, from the time the meeting was called at Mimoza until the end, the first appellant was relying, in order to collect funds, in his capacity exclusively as being a public servant, and with all the powers given to him by law. Indeed, the success of the Fund was due to the first appellant not as an individual, but

because of the post he was holding, and quite clearly and lucidly had stated, that he was speaking in his capacity as the Commissioner of Co-operative Societies in one of his circulars. Furthermore, he used his powers under section 38(2) to approve the sums which the Co-operative Societies should pay for that purpose. With that in mind, and in fairness to everyone, we would add that the trial Judge quite fairly attached importance to the point in question, and rejected the statement made by counsel that without having behind him the power of his post, his pleas would not have been successful. But we would go further and state that we have doubts whether the various Co-operative Societies would have given so much, without such authorization. We would add also, that the post which the first appellant was holding was in effect an important one, and indeed, he was using language in his circulars which would be understood by anyone that he, as Commissioner expected them to be generous and to pay to the Fund substantial amounts of money; and in addition he was telling them further that he was not willing to approve the payment of the 13th salary to the co-operative employees unless they would have given part of their salaries, viz., the 25% for their colleagues, the displaced co-operative employees. We would reiterate once again, that such argument does not do justice to the first appellant whose whole idea started with the aim of helping those displaced co-operativists in need, but at the end had changed his course and had embarked on a lot of other activities contrary to the wish of the donors.

As we have pointed out when the facts were quoted earlier, the first appellant, in his capacity as Commissioner of the Co-operative Societies, had approved, himself, the sums which would have been paid into the Self-Assistance Fund of Co-operativists, relying on the provisions of s. 38(2) of Cap. 114. This fund was audited by Mr. Sotiris Evangelou (P.W. 4) who was serving as an auditor to the Co-operative Development.

For these reasons, we would reiterate that the allegation that the first appellant was acting as an individual cannot stand, and therefore, the relevant ingredient of the offence has been proved.

The next question is, is there a trust. With respect to all

counsel concerned, the classic meaning of the term "trust" is that which has been accepted in *re Marshall's Trusts*, [1945] Ch. D. 217. The trustees in that case, for the purposes of the Settled Land Act, 1925, were trustees of a trust within the meaning of that word as used in s. 1 sub-s. 1 of the Judicial Trustees Act, 1896, and therefore the court had power to appoint the official solicitor or any other judicial trustee, sole trustee for the purposes of the Settled Land Act, 1925.

Cohen, J., in dealing with the word "trust", had this to say at p. 219:-

> "The Act contains no definition of 'trust' and I must therefore give to that word its ordinary meaning. For the purposes of this case I think that I can take the definition in Underhill on Trusts, 8th ed., p. 3, which reads as follows: 'A trust is an equitable obligation, binding a person who is called a trustee, to deal with property over which he has control (which is called the trust property) for the benefit of persons (who are called the beneficiaries or cestuis que trusts), of whom he may himself be one, and any one of whom may enforce the obligation'. In my opinion, Settled Land Act trustees are trustees of a trust within that definition. The land is not vested in them, but capital money must be paid to them and they hold the investments representing capital money in trust for the persons who are entitled under the settlement".
>
> See also Snell's Principles of Equity, 26th edn., (1966) at at p. 97.

With that in mind, we turn to our Trustee Law of Cap. 193, and s.2(1) says clearly that it applies to trusts including, so far as this Law applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Law. And subsection 2 states clearly that the powers conferred on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply, if and so far only as contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

With respect, in the present case, the first appellant, definitely, does not come within the provisions of our section 310 of the

Criminal Code, because he is not a trustee, within the meaning of the term which is interpreted in that section.

But, we would go further and point out, that one of the basic elements of trust is the existence of property over which the trustee can exercise control. Furthermore, we take the view, irrespective of the arguments, which have been put forward, both by the defence counsel as well as by the prosecution, that this is a classic case of trust where the various Co-operative Societies and other persons, after continuous pleas by the first appellant, had entrusted to him their money for a specific purpose only, in contrast with the case of *Petri*, where the Court decided that there was no trust. Here we would reiterate that there was ample evidence on this point, and quite rightly the trial Judge reached the conclusion that there was a trust.

Once, therefore, there is a trust, the next question is to see whether there has been a breach of trust by the first appellant, irrespective of the purposes of the Self-Assistance Fund with which we have dealt earlier. The trial Judge reached the conclusion that the contributions were given exclusively for the displaced co-operative employees, who were in need of help, excluding any other third person. We find ourselves in agreement with the Judge that the sums of money which are referred to in the charge-sheet were given for other purposes, and we have no doubt that there was a breach of trust by the first appellant.

The trial Judge, having examined one by one the 166 occasions which the counts cover, reached the conclusion that the prosecution proved beyond reasonable doubt that (1) all payments which are referred to in counts 1-18 were paid to persons, clubs, organizations and ecclessiastical institutions and which are referred to in Schedules A-ST; (2) the payments were made by cheques, *exhibits* 5-170 all of which were signed by the first appellant, and have been cashed from the account of the Self-Assistance Fund and with that phrase, the Judge goes on "we mean the fund with the name which was given at different times; (3) that no-one from those who received the money was a displaced co-operative employee; and (4) the said payments were made contrary to the letter and spirit of *exhibits* 191-196".

In addition, the trial Judge made this comment: "In any case, the first accused in cross-examination admitted that no

cheque was given directly to the displaced co-operative employees". Then this question was put to the accused: "Please look at schedules A-Z and tell us among the payments which are referred to, where there is a displaced co-operative employee". The answer is: "It is on the charge sheet". Having given to the witness schedules A-Z, his reply was in these terms:- "As I have mentioned in my main examination—even though in the schedules A-Z inclusive the names of displaced co-operativists do not appear, nevertheless, the lists in those schedules refer to the names of persons of whom the activities for this case have immediate relation with those".

Having gone carefully into the conclusions of the trial Court, as well as the questioning and answers of the first appellant quoted earlier, we are of the view that the main exclusive purpose was the granting of financial assistance to the displaced co-operative employees. Indeed, we go further and state—and at a later stage we shall be dealing also with the construction of the circulars—that those sums which appear in the counts, have been given for other purposes, and we support the statement of the learned Judge that there was a breach of trust, because the purposes of S.A.F. were exclusively for granting funds to the displaced employees.

The further question in whether the general public must be affected generally by the breach of trust. In accordance with our definition section 4, of the Criminal Code, Cap. 154 at p. 11, the word "public" refers not only to all persons within the Republic, but also to the persons inhabiting or using any particular place, or any number of such persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect of which such expression is used.

The trial Judge, having dealt with the submission of Mr. Clerides regarding the meaning of the word "public" appearing in s. 3 of our Criminal Code 154, and that it covers only the circumstances where the public in its totality is affected, and excluding any other section of the public, in dismissing that submission had this to say "submission is dismissed because of the definition section 4 of our Criminal Code, which clearly provides that where one finds the word 'public', it is to be understood the public in its totality, or any other part of it". With respect to counsel's argument, we find ourselves in agreement

with the ruling of the trial Judge, and we would dismiss this contention also.

The next question is whether the public was affected. The answer in our opinion is in the affirmative, because the displaced co-operative employees for whom the money was collected were affected, as well as those who have been contributing to the funds, including the co-operative societies, and other persons who gave donations for that particular purpose only. There is no doubt at all that the money has been used in this case for other purposes, and indeed for purposes for which the persons who contributed their money have never authorized the first appellant.

What amounts in effect to a breach of trust has been discussed at length also in *Petri* case (*supra*), (1968) 2 C.L.R. 40. Vassiliades, P., in dealing with the breach of trust in our Criminal Code, had this to say at pp. 84–89:

> "We now come to the expression 'breach of trust' in section 133 of our code. Counsel for the prosecution submitted that this expression in section 133, means breach of confidence or misconduct, on the basis of the case of *R.* v. *Bembridge* (1783) 22 State Tr. 1; and not a breach of trust in the equity sense of that expression. He further submitted that both motive and intention were irrelevant; and that they were not necessary ingredients of the offence under section 133.
>
> Counsel further argued that, if his submission as to the construction of the term 'fraud' under section 133 were not accepted, the conviction on counts 10 and 16 could be supported as breach of trust on the basis that the appellant 'wilfully', but not 'fraudulently' omitted to disclose to the other members of the Tender Board the discrepancies between the specifications and the samples submitted by Stamatis & Sons. Counsel further submitted that, even if this Court did not find that the appellant's convictions under counts 10 and 16 for 'wilfully' omitting to disclose, could be supported, this would be a proper case for the Court to convict the appellant after amending the particulars in counts 10 and 16 to read: '... that he negligently and in breach of his duties towards the Tender Board he

failed to disclose, etc.'. He conceded, however, that if the Court convicted the appellant of negligence, on these two counts, as amended, such conviction would not justify imprisonment.

In England 'any public officer is guilty of a common law misdemeanour who commits a breach of trust, fraud, or imposition in a matter affecting the public, even although the same conduct, if in a private transaction, would, as between individuals, have only given rise to an action'. (10 Halsbury's Law, 3rd Ed., page 618, paragraph 1162). Six cases are quoted in support of that statement of the law in Halsbury's Laws (note (t)), which we shall proceed to consider.

The leading case is that of *R.* v. *Bembridge* (1783) 22 State Tr. 1, at page 155 et seq. 3 Doug. K.B. 327 at page 332; also reported in 99 English Reports 679. The facts briefly were that Bembridge was an accountant in the office of the Receiver and Paymaster-General of the Forces and he was charged and found guilty of wilfully and fraudulently refusing and neglecting to disclose to the Auditor any charges upon a former Receiver and Paymaster of the Forces which had been omitted from the accounts, although he knew that several sums of money had not been included in the said accounts; and that he permitted and suffered the Auditor to close the final accounts without the said sums having been brought into the account. It will thus be seen that that was a clear case of fraud and not a case of breach of trust. Lord Mansfield in the course of his judgment on the motion of arrest of judgment said: 'The objection then is, that at most this amounts to a breach of trust, a concealment, a fraud of a pecuniary nature, which is a civil injury, and therefore not indictable; that he is accountable—an agent, a trustee that embezzles money, or by neglect suffers it to be lost, is accountable,—for a civil injury, and not for a public offence' (22 State Trials, at page 155). Pausing there, it should be noted that Lord Mansfield refers to a trustee who embezzles money or by neglect suffers it to be lost, and who is then accountable.....

Reverting to section 133 of our Criminal Code, which

provides that any public officer who 'in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of misdemeanour', this would seem to embody the second principle laid down in Lord Mansfield's Judgment in substantially the same words; that is to say, that a public officer is guilty of a misdemeanour who commits 'any fraud or breach of trust' affecting the public. In the following section 134, there is express provision for the punishment of a public officer who wilfully neglects to perform any duty which he is bound by law to perform. Compare also the offence of 'abuse of office' under section 105 of our Criminal Code, and 'false accounting by public officers' under section 314.

The only case cited to us by respondent's counsel concerning breach of trust through negligence by a public officer in the discharge of his duties and affecting the public, was a Canadian case, *Rex* v. *McMorran* (1948) Ontario Reports 384 (Court of Appeal). As the full report was not available in Cyprus we caused a photostat copy to be brought over to Cyprus which we made available to both sides to enable them to make their submissions on the point.

The Canadian section under which the accused was charged section 160 of the Canadian Criminal Code, R.S.C. 1927, c.36, which was substantially the same as section 133 of our Criminal Code. The Canadian section reads as follows:-

> 'Every public officer is guilty of an indictable offence and liable to five years' imprisonment who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud of trust would have been criminal or not if committed against a private person'.

In the *McMorran* case the Ontario Court of Appeal construed the term 'breach of trust' in the equity sense of that expression, and not as breach of confidence. It was held by that Court that the evidence established that the breach of trust on the part of the accused was not

caused by what is termed 'ordinary negligence', but that the acts of the accused were 'premeditated, deliberate and intentional'. The Court, however, considered at some length the ingredients of the offence of breach of trust by a public officer in the discharge of his duties and affecting the public, and expressed the view that a breach of trust by such officer is an offence under section 160 of the Code, even though it is caused by ordinary negligence which, as between individuals, would found only an action for damages; but they held that the trial Judge's direction to the jury on this point was unnecessary since the acts of the accused were, as already stated, clearly shown to have been premeditated, deliberate and intentional.....

Counsel for the prosecution relied on the dictum in the *McMorran* case that ordinary negligence would suffice to establish breach of trust under section 133. It might well be said that in dealing with a statutory offence in our Criminal Code, ordinary negligence would not be sufficient to prove the offence of breach of trust but that it would require wilful negligence, that is, a will to be negligent— an intentional breach of duty or reckless carelessness in the sense of not caring whether one's act or omission is or is not a breach of duty.

A wilful act, which (act) amounts to negligence, is not wilful negligence unless there be a will to be negligent. As Warrington L.J. said in the case of *In re Trusts of Leeds City Brewery* [1925] 1 Ch. 532, at page 544, 'then it becomes important to consider what is meant by a wilful breach of trust or wilful negligence or wilful failure to perform his duty. I think it means this. I think it means deliberately and purposely doing something which he knows, when he does it, is a breach of trust, consisting in a failure to perform his duty as trustee'."

Finally, the President, without deciding whether there was a trust in that case, concluded his judgment on this point in these terms, at p. 89:-

"We find it, however, unnecessary to decide whether ordinary negligence would suffice for the purposes of section 133 or whether wilful negligence would be required because on the facts of the present case, the appellant could not

be held liable for breach of trust even through ordinary negligence".

In our view that case shows clearly that ordinary negligence is not enough to prove that offence but it must be wilful negligence, and Vassiliades P. left this point open once he reached the conclusion that the appellant was not liable even through ordinary negligence.

In the present case from the evidence which was before the trial Judge it was accepted by him that the first appellant acted deliberately wilfully and without mistake that the property used by him belonged to another person. Once, therefore, the Judge reached that decision he further stated that the relevant ingredients which are required were also proved under section 133 of our Criminal Code.

But there was a suggestion by defence counsel that the trial Judge in this case did not analyse the mental element which is a necessary ingredient for that offence. We think with respect to counsel for the defence, that the answer of this Court is, that it was not necessary to analyse it once it already decided that the actions of the appellants were intentional and deliberate. Counsel for the prosecution quite fairly submitted that with regard to the mental element of the offence something more is needed than ordinary negligence, but he added that it was not necessary to prove that the acts of the appellant were fraudulent within the meaning of section 255 of our Criminal Code. With that in mind and fully aware that under section 133 of our Criminal Code the mental element required is not the same and because there is sufficient evidence that both appellants knew well what they were doing when they were using the money for other purposes from those for which the Fund was created, we dismiss this contention of counsel also.

But the defence went further and suggested rather late that the particulars in the charge-sheet were not complete. As we have said earlier, there was evidence that during the proceedings, before the trial Judge, particulars were asked, and were given to the defence, and no such point has been raised after that. The particulars given were the list of donors, a list of displaced co-operative employees, copies of cheques, *exhibits* 5-170, and after that no such matter was raised that the particulars

were not complete. Indeed going through the charge-sheet the offences are described with every detail, and therefore, is too late to make this complaint now because our Supreme Court has decided on a number of times this issue. In *Panayiotis Foka Kannas alias Pombas* v. *The Police* (1968) 2 C.L.R. 29, it was submitted that the conviction was bad in law because the counts in the charge-sheet were not framed in accordance with Article 12.5(a) of the Constitution which provided that every person charged with an offence has the right "to be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him". It was further submitted that in this respect it was not sufficient to state in the particulars of the counts merely that the appellant had driven carelessly, but that it was necessary to give, also, details of the careless driving, a thing which was not done in this case. Triantafyllides, J., as he then was, in delivering the judgment of the Court dealt with this point, and had this to say at pp. 35, 36, 37 and 38:

> "Learned counsel for the appellant have submitted that the conviction of their client on both counts was bad in law in view of the fact that such counts were not framed in accordance with Article 12.5(a) of the Constitution, which provided that every person charged with an offence has the right 'to be informed promptly and in a language which he understands and in detail of the nature and grounds of the charge preferred against him'. It was submitted that it was not sufficient to state in the particulars of the counts that the appellant had driven carelessly, but it was necessary, to give, also, details of the careless driving.
>
> Our Article 12.5(a) is in every material respect similar to Article 6.3(a) of the European Convention on Human Rights, of 1950, which provided that everyone charged with a criminal offence has the right 'to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusations against him'.
>
> The Convention forms part of the law of Cyprus, in the sense envisaged by Article 169.3 of the Constitution, since its ratification by the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62).
>
> In examining whether the charges on which the appellant

has been convicted were sufficiently detailed, as required by Article 12.5(a) of our Constitution as well as by Article 6.3(a) of the Convention—it is quite useful to bear in mind the relevant jurisprudence of the European Commission of Human Rights, set up and functioning under the Convention.....

It appears from the foregoing that, in deciding if a charge is sufficiently detailed, what has to be examined is whether or not an accused person has been deprived, through the omission from the charge of any element, of the possibility of adequately preparing his defence; and in this connection regard must be had to any circumstances showing that such accused person had in fact knowledge of the essential elements of the offence with which he was charged.

Applying the above test to the present case we find that, though the appellant was only told, by means of the particulars of the two counts on which he has been convicted, that his 'careless act' was 'careless driving', and he was not given in the said counts any details regarding his 'careless driving', nevertheless, the appellant, having been present when the police took relevant measurements on the spot, after the accident, and having seen the real evidence discovered there, such as the length and direction of the marks on the asphalt left by the tyres of his lorry, must have known—and been in a position to instruct his counsel accordingly—of the essential elements constituting his 'careless driving'; thus, the appellant was not deprived of the possibility of adequately preparing his defence because of the lack of any details in the charges".

In the present case, we repeat, particulars were given, and the appellants in our view, is too late to raise such a complaint. With the greatest respect and in the light of this authority, and for the reasons we have given earlier that the details were given to the defence, we would dismiss this contention also and ground of appeal 9.

GROUND OF APPEAL 17:

Before dealing with the submission of counsel for the appellant we have been asked by counsel for the prosecution to allow him to argue first ground 17 because he said that that ground was

connected with ground 9 of the appeal. With that in mind, Mr. Triantafyllides counsel for the first appellant, in support of this ground submitted that the Court erroneously convicted the first appellant on counts 12 and 18 without amending them as it was done in the case relating to count 6. On the contrary, Mr. Evangelou in objecting to the stand of the defence counsel regarding counts 12 and 18, argued that these counts have been proved as they have been framed in the charge-sheet, without any amendment, because both the act of amalgamation of the two accounts into one, as well as the creation of the overdraft are acts which were contrary to section 105 of our Criminal Code as well as to section 133, and invited the Court to find that it was not necessary to amend those counts. Counsel for the prosecution went even further and invited the Court to accept that rightly both appellants were found guilty for the whole amount which is referred to in schedule ST, and added that the amendment which was made with regard to the sixth count viz., the offence of stealing by agent, is in line with the facts as finally have been proved before the trial Judge. The reason for the amendment was that after the 3rd January, 1979, that fund did not have any money until the creation of the Self-Assistance Limited as from the 3rd January, 1979. Once, therefore, there was no money it was clear that they could not have been stealing the money and inevitably the counts ought to have been amended. Furthermore on the 15th September, 1978, the first appellant in the light of *exhibit* 200 which was before the trial Judge, had given instructions that the two accounts be amalgamated into one account and that account be named Self-Assistance Fund. All the money in that account was previously in the accounts of Self-Assistance Co-operativists Fund and Co-operative Fund in memory of Ethnarch Makarios. Indeed all the payments after the 15th September, 1978, were made from this Fund. Those payments appear in schedule ST and are referred to the 6, 12 and 18 counts. We have considered the contentions of both counsel and we find ourselves in agreement with counsel for the defence that it was better for the prosecution to amend those two counts, but although we agree, nevertheless, we think that the failure to do so does not make those two counts null and void and we would dismiss this ground also.

GROUND OF APPEAL 10:

Mr. Clerides, counsel for the defence, complained further

that the trial Judge erroneously found the first appellant guilty on counts 19 to 21 relating to the case of Comarine. Indeed these counts were brought only against the first appellant. The trial Judge in dealing with this complaint had this to say: "I have considered very carefully the evidence which is connected with counts 19 to 21 in its totality. I have already made certain observations with regard to some points from the evidence given under oath by the accused which unfavourably reflect to his credibility. I now add another reason. In spite of the fact that the evidence of the accused with regard to Mr. Mavrommatis was a substantial one for the accused, Mr. Mavrommatis was not in any case asked on the subjects which the accused had mentioned..... This fact tends to show that the relevant allegations of the accused form thoughts which were made at a later stage and as such do not have any value. I am convinced beyond reasonable doubt that the exclusive administrator of the secret account was the accused". Then he goes on: "With regard to the witnesses for the prosecution in spite of the fact that they have been cross-examined at length and with much ability by Mr. Clerides their evidence was not shaken. On the contrary from the circumstances which surround those charges support the acceptance of their evidence, and as a result I do not believe the evidence of the accused, and I find, that Comarine company entrusted to the accused its money in order to be used for the purposes of the Self-Assistance Co-operative Fund only, but the accused used the money to serve his own purposes. I have reached the conclusion that the prosecution has proved beyond reasonable doubt counts 19 to 21, and I find the accused guilty on these counts".

Let us now consider why the trial Judge has preferred the oral evidence instead of the written evidence. This appears from the decision of the trial Judge where it decided that the minute, *exhibit* 283, does not form the authentic decision of the Committee because there was evidence that until the 20th June, 1980, the minute was signed by two members only in contravention of the Co-operative Rules, rule 45, and later on after the criminal trial has started it was found signed by four members. Indeed the trial Court went even further and rightly decided that it is possible for oral evidence to be given in order to show that the particular document was not valid. In the light of the evidence which was before the trial Judge and having

considered the evidence connected with counts 19, 20 and 21 in its totality, we agree that the Judge could not have given weight to the written evidence which was put before him, and rightly has preferred the oral evidence which was a credible one.

Indeed, the first appellant knew already from the conversation which he had with the members of the Committee of Comarine, and with P.W. 163 A. Papadopoullos on 20th September, 1977, that the money was intended to be paid to the Self-Assistance Co-operative Fund, and the question is why they were paid to the secret account. But we go further and state that in spite of the fact that the oral evidence of the aforesaid witnesses for the prosecution stated that they did not know of the existence of the Self-Assistance Co-operative Fund, and therefore it was not possible to consent to give help to that Fund, it was accepted as true beyond reasonable doubt. Indeed, in our view, quite rightly it was accepted by the trial Judge, because the secret account was opened on 24th November, 1977. *Exhibit* 217, the decision of the Committee, as it appears in *exhibit* 283, was taken on 27th October, 1977, and the cheque, *exhibit* 215 for £100,000.- was issued on the 20th November, 1977, in other words, before the opening of that account. But we should go further and state that the consent of the first appellant was given to the Comarine Company one year after the submission of an application when the payments to schedule Z were already made.

For the reasons we have given, and in the light of the facts and circumstances of this case, we would support the trial Judge that the first appellant, in the light of the evidence, was rightly found guilty on counts 19, 20 and 21. We would, therefore, dismiss ground of appeal 10 also.

GROUND OF APPEAL 18:

Counsel for the appellant further argued that the verdict of the trial Judge on all counts is contrary to the weight of evidence and is not supported thereby, the trial Judge having wrongly accepted the evidence of the prosecution and rejected that of the defence. With the greatest respect to counsel, the trial Judge for the reasons given, accepted the evidence of the prosecution and rejected that of the defence and, indeed, as we have already said, we think, in the particular facts of this case,

that we should not interfere because it is the province of the trial Judge to believe or disbelieve the evidence given by the parties. Indeed, this has been a very long trial, and the trial Judge has tried his very best to see that justice is done and we would reiterate that we are not prepared to interfere with such findings. For these reasons, we have no alternative but to dismiss ground of appeal 18 also.

Finally, there was a further complaint by counsel for the appellant that because the first appellant was found guilty of stealing he could not be found guilty for other offences. There is no doubt that such proposition cannot be put forward because the same facts can make more than one offence. In our view, what matters is whether all the relevant ingredients of the offences have been proved. With respect to the argument of counsel, we repeat that we have already dealt with this point at an earlier stage of this appeal. For all the reasons we have given, and in the light of the authorities, we have no alternative but to support the judgment of the trial Judge, because though the first appellant originally started collecting money for the purpose of helping the displaced co-operative employees, he later on used it for other purposes entirely unconnected with the real purpose of the Funds. It is true that the first appellant has not used any of the money for himself, but he used it, as the trial Judge said, for purposes of putting himself in the limelight, and that was one of the reasons also that he has given money to the President, to the Minister of Health and to other officials. The fact that persons in high authority had accepted those funds and thus deprived the persons entitled to them, regretfully cannot be taken as minimising the responsibility of the first appellant, whether or not they were aware from which fund the money came from. Finally, in supporting the judgment of the trial Judge, we would conclude this long judgment by quoting the lucid and clear statement made by Justice Stephen, a great Judge, in giving a warning to everyone who breaks the law of the land. And irrespective of time a person who breaks the law will finally be called to pay for his acts, independently of his rank. Justice Stephen, in his Commentaries on the Laws of England, 31st edn. Vol. 4 of Criminal Law, says:-

> "But the acts need not be to the advantage of the offender. All that is required is that the offender shall be in possession of some property intended for the benefit of another and

shall prevent that other from enjoying it. He may thus appropriate it for his own purpose, or give it away to some third person or simply destroy it".

For the reasons we have given at length, we would dismiss the appeal of the first appellant.

GROUND OF APPEAL 1:

This ground of appeal is identical to ground 2 argued on behalf of the first appellant, which has already been dismissed for the reasons given earlier in this judgment. We, therefore, consider it unnecessary to deal with it any further and we dismiss it likewise.

GROUND OF APPEAL 2:

Counsel in support of this ground argued at length that the trial Judge wrongly found the second appellant as aiding and abetting the first appellant on various counts by virtue of the provisions of s.20 of the Code, inasmuch as he claimed there was no evidence establishing any conduct on his part that would render him guilty.

It was argued that from the evidence adduced, the necessary ingredients had not been established. The learned trial Judge, it was urged, wrongly assessed the evidence and found the second appellant guilty on evidence that related only to the conduct of the first appellant. Furthermore, the learned trial Judge was wrong by putting forward the theory that this appellant was the alter ego of the first appellant, a theory which had nothing to do with the correct principles of the criminal law regarding criminal responsibility. Indeed, counsel went further and invited this Court to conclude that the trial Judge had failed to examine objectively the evidence adduced, but found this appellant guilty on the basis of the evidence and on the facts relating to the first appellant and without judging him on the basis of his own acts.

The second appellant was in charge of propaganda of the Co-operative Movement, and he knew well the subjects relating to such matters. Indeed, the trial Judge, in his findings of fact found that the second appellant knew very well the purposes for which the fund was created, as well as that the Self-Assistance Fund was created for the displaced co-operative

employees, and, therefore, in our view he was aware of the essential facts.

Furthermore, from the lists *exhibits* 171–182 which he kept in the College which included the names of the co–operative employees to whom grants of not more than £50 were made every Christmas and Easter, it was possible to see that more money was given in some cases, as *exhibit* 129 shows and which was not within the purposes of the Self–Assistance Fund. It appears further that the second appellant was presenting vouchers for his personal expenses and was being paid from the Self–Assistance Fund. No doubt he was also liable, because those sums were paid by cheques which were issued from the cheque book which he kept himself.

Indeed, the second appellant maintained that he did not know anything and that he had never received the circulars and, therefore, he was not aware of the purposes of the Self–Assistance Fund. That the second appellant knew apears also from the totality of the evidence adduced, and from the announcements given to the press (see *exhibits* 306–310). That the second appellant was involved, in our view, can be deduced from his presence at the meeting with the Minister of Finance together with the first appellant and P.W.2, Savvas Christodoulou, who had in his possession all the facts of the case. His behaviour supports the conclusion that he was involved in the administration of the Fund. In addition, there was other evidence by P.W.4, Sotiris Evangelou, that for any queries he had when he was carrying out the auditing of the accounts, he would turn to both appellants, who used to give him the necessary explanations. We would like to repeat what the trial Judge said on this point:

> "I would like to refer to the contents of the statement of the second accused which is supported from the rest of the evidence in this case and in which I have already referred to and it does not consist of the only evidence against the accused.
>
> Counsel for the second accused had submitted that with regard to charges 7–18 there was no evidence that the second accused knew that the first accused was a public servant".

The trial Judge in answering this submission of counsel, said that what matters is the fact that the second accused knew that

the first one was Registrar of Co-operative Societies and Commissioner of Co-operative Development and on this point there is sufficient evidence (see in other words his appointment *exhibit* 261 and his statement *exhibit* 279). Indeed, the trial Judge went on to add that his appointment as a public servant is provided by law.

But there was a further argument by counsel for the second appellant that the latter was called to pay for the deeds and/or acts of the first appellant once the trial Judge found him that was the alter ego of the latter, and therefore, once the Judge was prejudiced he was not given a chance to defend himself properly in Court.

On the contrary, counsel for the prosecution argued that the second appellant was rightly found guilty of aiding and abetting the first appellant from the totality of the evidence before the trial Judge, and the fact that he was present when the first appellant was giving his statement to the police, and because he has admitted that there was no question of receiving orders but co-operating with him. Finally, counsel concluded that the second appellant was aware of what was going on with regard to the various payments and because he was making the announcements inviting the person entitled to them to go and take their cheques from the Self-Assistance Co-operativists Fund.

With the greatest respect to counsel for the second appellant having gone into the facts and circumstances of this case and having quoted earlier in this judgment his evidence, we have reached the conclusion that he was aware of everything which was done by the first appellant, and we would support the findings of the trial Judge that his acts and deeds fall within the provisions of section 20 of our Criminal Code once he was aiding and abetting the first appellant. Indeed counsel for the defence went even further and stated that the trial Judge in convicting the second appellant failed to consider the elements or the ingredients of the offence of our section 20 of the Criminal Code. Section 20 reads as follows:

> "When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—

(a) every person who actually does the act or makes the omission which constitutes the offence;

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence; and

(c) every person who aids or abets another person in committing the offence."

In Archbold Criminal Pleading Evidence & Practice Fortieth Edition at p. 1893 in paragraph 4123 we read:

"Aiders and abettors are those who are present at the commission of the offence, and aid and abet its commission. In some modern cases the phrase has been used in a wider sense, so as to include those who are referred to in this chapter as counsellors or procurers. See *Thambiah* v. v. *R.* [1966] A.C. 37; *National Coal Board* v. *Gable* [1959] 1 Q.B. 11, post paras 4141, 4142.

A person may be an aider and abettor even if from sex or age incapable of being a principal: *R.* v. *Eldershaw*, 3 C. & P. 396, (boy under fourteen abetting rape); *R.* v. *Ram.*, 17 Cox 609 (woman abetting rape). In *R.* v. *Tyrell* [1894] 1 Q.B. 710, however, the Court of Crown Cases Reserved quashed the conviction of a girl for aiding and abetting a man to have carnal knowledge of her whilst she was between the ages of 13 and 16, contrary to section 5 of the Criminal Law Amendment Act 1855. Lord Coleridge C.J., observed that it was impossible to say that the Act could have been intended to punish the very girls for whose protection it was passed if the offence was committed upon themselves. This principle was applied by the Court of Appeal in quashing a conviction for a man for inciting his daughter aged 15 to aid and abet him in committing incest with her: *R.* v. *Whitehouse* [1977] 3 All E.R. 737, C.A., see ante, para. 2869".

And at p. 1895 in paragraph 4126 under the title "Participation" we read:

"There must also be a participation in the act: *R.* v. *Borthwick*, 1 Doug. 207; for even if a man is present whilst

an offence is committed, if he takes no part in it and does not act in concert with those who commit it, he does not become an aider and abettor merely because he does not endeavour to prevent the offence, or fails to apprehend the offender: 1 Hale 439; Fost. 350; *R.* v. *Fretwell*, L. & C. 161.

It is not necessary to prove that the party actually aided in the commission of the offence; if he watched for his companions in order to prevent surprise, or remained at a convenient distance, in order to favour their escape, if necessary, or was in such a situation as to be able readily to come to their assistance, the knowledge of which was calculated to give additional confidence to his companions, he was, in contemplation of law, present aiding and abetting".

In *Johnson* v. *Youden and Others* [1950] 1 All E.R. 300 Lord Goddard C.J. had this to say at p. 302:

"This letter naturally put the third respondent, who was dealing with the matter, on inquiry, and he thereupon read the relevant provisions of the Act of 1945 and also spoke to the builder who told him a story which, even if it were true, was on the face of it obviously a colourable evasion of the Act. The builder's story was that he had placed the extra £250 in a separate deposit account and that it was to be spent on payment for work as and when he (the builder) would be lawfully able to execute it in the future on the house on behalf of the purchaser.

It seems impossible to imagine that anyone could believe such a story. Who has ever heard of a purchaser, when buying a house from a builder, putting money into the builder's hands because he may want some work done thereafter? I think that the third respondent could not have read s. 7(5) of the Act as carefully as he should have done, because I cannot believe that any solicitor, or even a layman, would not understand that the bargain which the builder described was just the kind of transaction which the Act prohibits. Section 7(5) provides.

'In determining for the purposes of this action the consideration for which a house has been sold or let,

the Court shall have regard to any transaction with which the sale or letting is associated.....'

If the third respondent had read and appreciated those words he would have seen at once that the extra £250 which the builder was getting was in regard to a transaction with which the sale was associated, and was, therefore, an unlawful payment. Unfortunately, however, he did not realise it, but either misread the Act or did not read it carefully, and on the following day he called on the purchaser to complete. He was, therefore, clearly aiding and abetting the builder in the offence which the builder was committing. The result is that, so far as the first two respondents are concerned, the appeal fails and must be dismissed, but, so far as the third respondent is concerned, the case must go back to the justices with an intimation that an offence has been committed, and there must be a conviction".

In the *Director of Public Prosecutions for Northern Ireland* v. *Maxwell* [1978] 3 All E.R. 1140 H.L., the appellant was a member of an illegal organisation in Northern Ireland which had been responsible for sectarian murders and bombings. On the night of 3rd January 1976 the appellant was told by a member of the organisation to guide a car at night to a public house in a remote country area. The appellant knew that he was being sent on a terrorist attack but did not know what form it would take. Driving his own car he led another can containing three or four men to the public house. When he arrived there the appellant drove slowly past and then drove home. The other car stopped opposite the public house, one of the occupants got out, ran across to the public house and threw a pipe bomb containing 5 lbs of explosive into the hallway. The attack failed due to action taken by the licensee's son. The appellant was charged with doing an act with intent to cause an explosion by a bomb, contrary to s. 3(b) of that Act. The appellant was convicted on both of the offences as principal in the second degree (i.e. as an accomplice). He appealed contending that since he did not know what form the attack would take or of the presence of the bomb in the other car, he could not properly be convicted of aiding and abetting in the commission of crimes of which he was ignorant. The Court of Criminal Appeal in Northern Ireland dismissed the appeal. The appellant appealed to the House of Lords.

Held—A person may properly be convicted of aiding and abetting the commission of a criminal offence without proof of prior knowledge of the actual crime intended if he contemplated the commission of one of a limited number of crimes by the principal and intentionally lent his assistance in the commission of such a crime. It was irrelevant that at the time of lending his assistance the accused did not know which of those crimes the principal intended to commit. On the facts, the appellant must have known when he was ordered to act as a guide for the other car that he was taking part in a terrorist attack and although he may not have known the precise target or weapons to be used, he must have contemplated, having regard to his knowledge of the organisation's methods, that the bombing of the public house was an obvious possibility among the offences likely to be committed and consequently must have contemplated that the men in the second car had explosives. The appellant was therefore rightly convicted and his appeal would be dismissed.

Johnson v. *Youden*, [1950] 1 All E.R. 300 and *R.* v. *Bainbridge* [1959] 3 All E.R. 200 approved.

In the light of the principles expounded in the aforementioned authorities, and having regard to the facts of this case as a whole, and in particular to those facts relating to the conduct of the second appellant, we hold the view that he was rightly found guilty as an aider and abettor, because he knew the purposes of the fund, that payments therefrom were made unlawfully, and that he was taking part in its administration.

Having considered the long and able arguments, and in the light of the authorities quoted, we have reached the conclusion to support the finding of the trial Judge that the second appellant was clearly aiding and abetting the first appellant in the commission of the offences which the first appellant was committing once he was fully aware that the payments made were contrary to the purposes of the Fund, and that the money was given to a lot of other persons who had nothing to do with the purposes of such Fund.

Turning now to the point raised as regards the alter ego used by the trial Judge regarding the second appellant, with respect, that is not a legal term, and in our view what the Judge means

here is that he was so involved with regard to these matters, as much as the first appellant. With that in mind, we are not prepared to say that the learned Judge misdirected himself because there was sufficient evidence to justify his conclusions, particularly so, when the first appellant called him to be present when he was giving a statement to the police. Indeed, we would repeat that the further complaint of counsel is not justified also for the reasons we have given earlier, and because in the light of the facts and circumstances, we repeat, that the second appellant was rightly found guilty on the basis of the evidence before the Court and not on the evidence of his co-accused. We would, therefore, dismiss this ground of appeal.

GROUND OF APPEAL 3:

Counsel for the defence in support of this ground of appeal argued that the conviction of the second appellant was the result of a substantial miscarriage of justice inasmuch as in deciding the submission of counsel for the second appellant, the trial Judge by his ruling, decided certain matters affecting the guilt or innocence of the appellant contrary to the accepted principles of law that the final pronouncement of the guilt or innocence of an accused person should be made only after hearing the whole of the case including the appellant's version.

It is true that after the closing of the case for the prosecution learned counsel for the defence submitted under section 74(1) (b) of the Criminal Procedure Law Cap. 155 that no prima facie case has been proved against the second appellant sufficiently to require him to make his defence and invited the trial Judge to acquit him. We have considered this complaint, and having read the ruling of the trial Judge on this issue, we think that there was sufficient material before him to call upon the second appellant for the reasons we have given at length in dealing with the case of the first appellant.

For these reasons, and in the light of the authorities we have quoted earlier in our judgment on this point, we would dismiss this ground of Law.

GROUND OF APPEAL 5:

Mr. Efstathiou in arguing this ground of law, submitted that the decision of the trial Judge was not duly reasoned and indeed he did not proceed to explain and/or justify why and

under which manner and in which particular circumstances the second appellant was found guilty. Furthermore counsel complained that his client is facing 166 charges, the Judge found him guilty without examining the case for the prosecution lawfully and that of the second appellant and his witness.

The trial Judge had this to say regarding this complaint: "Having examined with great care the case of the prosecution against the second accused, and since I have weighed his evidence and that of his witness, I find that the accused had lied before me in an endeavour to mislead the Court as to his role in the administration of the fund and the illegal payments which were made from that... He was aiding the acts of the first accused and had helped him in the commission of the offences as well as in keeping in the dark the realities. The Court finds that the prosecution has proved beyond reasonable doubt the case against the second accused whom I find guilty on counts 1–18".

Counsel, in complaining that the decision of the trial Judge was not duly reasoned, relies on *Andreas Georghiou Katsaronas and Others* v. *The Police*, (1973) 2 C.L.R. 17, and at p. 35, Triantafyllides, P. says:–

> "During the hearing before us the question was raised as to whether the contents of the judgment of the trial Judge are such as to satisfy duly the requirement, under Article 30.2 of the Constitution, that a 'judgment shall be reasoned', as well as the requirement under section 113(1) of the Criminal Procedure Law, Cap. 155, that every judgment in a criminal case where an appeal lies shall 'contain the point or points for determination, the decision thereon and the reasons for the decision".

In *David Moon* v. *The Police*, (1973) 2 C.L.R. 99, I had this to say at pp. 103–104:–

> "The second point taken by counsel for the Appellant is that the judgment of the trial Judge was not adequately reasoned and he invited the Court to quash the conviction. It is true that this Court, from time to time, said that it is desirable that trial Judges, in deciding to believe the version of one party and reject that of the other should normally give reasons for doing so. The case always

referred to on this issue is *Andreas Economides* v. *Ioannis L. Zodhiatis*, 1961 C.L.R. 306, where Josephides, J. said so, and the other three Judges concurred. Josephides, J. said there, at pp. 307 and 308 'The main complaint of the Appellant is that the trial Judge said baldly that he believed the plaintiff and his witnesses and discarded the evidence of the Defendant and his witness without giving any reasons for doing so. In support of his argument, Mr. Antoniou for the Appellant has pointed out one or two apparent contradictions in the evidence of the plaintiff and his witnesses.

Undoubtedly a Court of Appeal has the power to set aside the findings of fact of a trial Court where the trial Judge has failed to take into account circumstances material to an estimate of the evidence, or where he has believed testimony which is inconsistent with itself, or with indisputable fact. And since the enactment of the Courts of Justice Law, 1960, under section 25(3) this Court is not bound by any determinations on questions of fact made by the trial Court and has power to re-hear any witness already heard by the trial Court, if the circumstances of the case justify such a course. But this provision has to be applied in the light of the general principle that a Court of Appeal ought not to take the responsibility of reversing the findings of fact by the trial Court merely on the result of their own comparisons and criticism of the witnesses, and of their own view of the probabilities of the case' ".

Having considered the complaint of counsel, and in the light of the authorities which we adopt and apply in the present case, we are of the view that the learned trial Judge has given sufficient reasons in his judgment in a case which has taken him many months to complete. For these reasons, we would dismiss this ground of appeal also.

GROUNDS OF APPEAL 6 & 7:

Counsel for the defence in support of the two grounds taken together, complained that in the present case the Court placed the onus on the second appellant to prove his innocence and wrongly did not rule that that onus must be on the prosecution. Finally, counsel complained that the trial Judge, in his judgment

and his conclusions as to the guilt of the second appellant, conflicts with various points and/or is completely contrary to the evidence adduced. There is no doubt that the trial Judge in his judgment and from the evidence before him, found the second appellant guilty beyond reasonable doubt based on the evidence, and in our view, once he accepted it, we see no reason to interfere with the said judgment. In no way it can be deduced from the whole of the judgment that the trial Judge misdirected himself on the burden of proof. On the contrary, all along he made it clear that this burden rests squarely on the shoulders of the prosecution.

GROUND OF APPEAL 9:

Finally, in support of this ground, counsel argued that the trial Judge wrongly found that the second appellant knew the purposes of the fund. It would be recalled that the second appellant denied that he had received any circulars from the first appellant, but from the statement he has given to the police on 31st May, 1980, implicating himself, it is evident that he was fully aware of the objects of the fund at least up to the change of the name of that fund. It appears further that the co-operative employees fund was changed later on in 1978 and not in 1977 as claimed by the second appellant, to Self-Assistance Fund with wider aims. With that in mind, and with respect to the trial Judge, this shows that the first appellant took it for granted or really truly believed that after the 16th September, 1978, the purposes of the fund were widened to cover other charitable purposes. Indeed, in our view, and having regard to the belief of the second appellant, the trial Judge ought to have given him the benefit of doubt regarding the payments made after that date with regard to counts 6, 12 and 18.

We would, therefore, quash the conviction on counts 6, 12 and 18 relating to the payments made on those dates.

Turning now once again to the circulars sent by the first appellant, and for the reasons we have given earlier, we would support the judgment of the trial Judge as to the construction of the circulars placed on them that the real purpose of the fund was to help the displaced employees only, and not to be used for the purposes of the first appellant also.

GROUNDS OF APPEAL AGAINST SENTENCE:

Before dealing with the ground against sentence we considered

it necessary to add that sentencing is a fundamental aspect of the criminal process and the principal tool in the hands of the Court for the furtherance of the objects of the Criminal Law. It is indeed a difficult and delicate duty that must be performed with the greatest care. See *Antonis Christofides* v. *The Republic* (1970) 2 C.L.R. 78. In determining the appropriate sentence and measuring its extent, the Court must have regard to a wide variety of factors, often conflicting, and must balance them in a way that makes the criminal process socially fruitful, sustaining thereby the faith of the public in the law and the administration of justice. It is a process involving the exercise of discretionary powers that must never be standardized, for justice should never be blind in its path. See Article 12.3 of the Constitution; and *Reginald Charles Edward Stiles-Altieri* v. *The Police* (1967) 2 C.L.R. 140. In the long run the ability of the courts to do justice according to the intrinsic merits of the case is perhaps the one single factor that tends to uphold and strengthen the faith of the people in the courts as the law-enforcing authority of the State and arbiters of the rights of citizens under the law. But we would go further and state that the proper enforcement of the law in the interests of the society is the most important consideration to which a Court of law should have regard in selecting the sentence and determining its extent. In our democratic society laws embody the objectives of the society and the judicial process is one of the avenues for the attainment of its goals. Therefore, the interest of the people in direct and proper law enforcement, is of supreme interest to every citizen conscious of the pursuits of his society. It has been observed that the main purpose of sentence is to punish the offender for the crime he has committed and not to confer benefits on the accused, implying thereby that the needs of the accused cannot take precedence over those of society. See *Politis* v. *The Police* (1973) 2 C.L.R. 211. With that in mind Mr. Clerides, counsel for the first appellant, in support of the grounds of appeal against sentence argued that the sentence passed on the first appellant by the trial Judge was manifestly excessive having regard to the circumstances of the case, (a) because the trial Judge acted upon wrong principle in finding that the most substantial mitigating factor in favour of the appellant was that the investigation into the present case was decided in 1980 although the appellant began his illegal acts in 1975; and that out of twenty mitigating factors placed before

the trial Judge he did not attach any importance to them. Furthermore, counsel invited the Court to accept that this was a serious misdirection in the circumstances of this case, and particularly because he did not give importance to the point that the first appellant did not receive any pecuniary or any other benefit out of the money entrusted to him. (b) That the Judge failed to place any and sufficient weight on the personal circumstances of the appellant.

The first question is what are the principles on which the Court of Appeal acts when there is an appeal against sentence. We shall turn first to consider the English practice followed in England regarding the principles on which the courts act. In Archbold 38th Edn. paragraph 940 at p. 548 we read:

> "Principles on which Court acts. In exercising its jurisdiction to review sentences the Court of Appeal does not alter a sentence on the mere ground that if the members of the Court had been trying the appellant they might have passed a somewhat different sentence. The sentence must be manifestly excessive in view of the circumstances of the case or be wrong in principle before the Court will interfere:
>
> *R.* v. *Shershewsky*, 28 T.L.R. 364; *R.* v. *Gumbs*, 19 Cr. App. R. 74. For a review of the general principles on which the Court acts on an appeal against sentence, and for observations on the propriety of differentiating between co-defendants convicted of the same offence see *R.* v. *Ball*, 35 Cr. App. R. 164".

Turning now to our own country time and again it was said that responsibility of sentence rests primarily with the trial Court and in our view this is a correct approach once the trial Court is the fact finding tribunal and is in a unique position to assess the gravity of the case. Also, it has a first hand knowledge and can therefore make a valid assessment of the needs of the criminal administration of justice in different areas. The principles upon which the Appeal Court will interfere with the sentence imposed by the trial Court were discussed in a number of cases. On consideration of the authorities it appears that the Supreme Court interferes when the sentence is manifestly excessive in view of the circumstances of the case or be wrong

in principle before the Court will interfere. In *Michael Antoni Afxenti "Iroas"* v. *The Republic* (1966) 2 C.L.R. 116 Vassiliades Ag. P., as he then was, supported this principle and had this to say at p. 118:

> "This Court has had occasion to state more than once in earlier cases, that the responsibility of imposing the appropriate sentence in a case, lies with the trial Court. The Court of Appeal will only interfere with a sentence so imposed, if it is made to appear from the record that the trial Court misdirected itself either on the facts or the law; or, that the Court, in considering sentence, allowed itself to be influenced by matter which should not affect the sentence; or, if it is made to appear that the sentence imposed is manifestly excessive in the circumstances of the particular case".

In *Charalambos Chomatenos* v. *The Police* (1979) 2 C.L.R. 119 in delivering the judgment of the Court I had this to say, at p. 124, in setting aside the sentence of imprisonment:

> "As we are of the view that the trial Judge allowed himself to be influenced by matters which should not affect the sentence, we have decided to interfere as we think that the proper sentence in this case is to bind the appellant over in the sum of £500 to keep the peace and be of good behaviour for a period of 2 years, because in our view, the sentence was wrong in principle and manifestly excessive. (See also *Panayiotis Georghiou Alexandrou 'Vraka' 'Patitoutsis'* v. *The Police*, (1966) 2 C.L.R. 77)".

Dealing now with the complaint of counsel for the first appellant it is true that the trial Judge did take into consideration in passing the sentence also the mitigating factor in favour of the appellant that the investigation into the present case was decided in 1980 although the appellant began his illegal acts in the beginning of 1975. But with respect apart from the fact that the trial Judge did not say so in so many words in his own judgment that he took into consideration all the facts which were put before him on behalf of the defence, and in fairness to the trial Judge in his judgment made clear reference to the effect that in considering what was the correct punishment he gave the proper weight to everything which was said by counsel for the defence; and in his opinion the basic fact was that the

investigation of the case of the appellant was delayed. Indeed in going through the argument of counsel it did not influence at all the case of the first appellant but on the contrary it was taken into his favour. We would reiterate that we must not forget that this has been a very long trial indeed and with respect to the argument put forward we think in the light of the authority of *Nicolas Christodoulou alias Farfaros* v. *The Republic* (1963) 2 C.L.R. 36 the trial Judge in the light of such a long delay took it into consideration in favour of the first appellant. Wilson, P., in delivering the first judgment with which both Justices Zekia and Josephides agreed had this to say at p. 37:

> "There is, therefore, no reasonable excuse for the failure to prosecute this man promptly and as a result, in so far as this offence is concerned, his term of imprisonment is running from February 18 of this year, instead of from some date about the middle of 1961. And I must express strong disapproval of the failure to prosecute this case promptly. Having said this, however, I must not overlook the seriousness of the offence committed nor the long record of the prisoner. Taking this into account and also taking into account that the sentence might well have been five years, instead of three, it is my view that we would not be justified in reducing the penalty in this case. The sentence should run from the date of conviction".

On the contrary, Vassiliades J., as he then was, in a dissenting judgment had this to say at p. 38:

> "I fully share the view expressed by the President of the Court, as to the desirability of bringing an offender to justice as early as this may be done. The present case demonstrates one of the adverse consequences of delay upon the accused person.
>
> In this particular case, this particular offender, such as he may be, would have been tried, if prosecuted in due course, some time in the autumn of 1961. And I must presume that, for his offence, he would have received the present sentence of three years, which would either be made to run from the date of his conviction, or at the worst, from expiry of the sentence which he was then serving. According to the record before the Court, that would be

at the latest some time in July, 1962. Instead of that, his sentence of three years' imprisonment is now running from his conviction in February 1963; and the result, in my mind, is obvious: this man is being prejudiced by a delay in the prosecution of the case against him, due to no fault on his part.

It is no consolation for him that the Police or other responsible officer have been rebuked for that. The practical way to counter-balance the adverse consequences of the delay would, in my opinion, be to reduce the sentence so that the appellant might be put in, more or less, the same position as he would have been if prosecuted in due course".

In *Nicos Charalambous Terlas* v. *The Police* (1970) 2 C.L.R. Vassiliades P., dealing with the very same complaint regarding one year's delay in bringing the matter to Court had this to say at p. 34:

"Another point taken on behalf of the appellant in this connection, was the delay in taking the matter to Court. Counsel referred to Nicolas Christodoulou alias *Farfaros* v. *The Republic* (1963) C.L.R. Part 1, 36, and pointed out that while the information regarding the case reached the Police as early as May, 1968, no prosecution was filed until September, 1969. Matters were no longer fresh in the minds of the witnesses, which may well have prejudiced the appellant".

In the light of the authorities and as we have been satisfied that the trial Judge has taken into consideration the long and able arguments of counsel we have reached the conclusion that the learned trial Judge has taken into consideration everything which counsel placed before him and in our view there is no room for the complaint of counsel in this case. We would dismiss the grounds against sentence.

There was further argument by Mr. Triantafyllides that the trial Judge wrongly imposed on the appellant six months imprisonment on the first count of each group, i.e. six months on the count of stealing, six months on the first count of abuse of authority, six months on the first count of abuse of trust and 18 months imprisonment on the rest of the counts. He further complained

that the trial Judge indulged in mathematical exercise rather than applying judicially the principles of sentencing and he chose to treat alike the first count of the stealing group with the first count of the abuse of authority group and with the first count of breach of trust group and the same applied to the other 5 counts. He gave six months for the first count in each group and then 18 months for the five remaining counts in each group. Indeed counsel went on to add that there is nothing on record why he chose to follow that, and is now complaining that one is left at a loss to understand why the Court gives six months for stealing in one case and 18 months for stealing in another. And six months for abuse of authority and 18 months for abuse of authority. With respect we have followed the argument of counsel and indeed at first side one may wonder why the learned Judge has taken that course, but with the greatest respect at the end of the trial irrespective of mathematical and perhaps of unjustified way in passing sentence the first appellant will only have to serve a period of 18 months and nothing more. There was a further argument and counsel very ably argued that our two sections 105 and 133 are inadequate relics of legislation, and that definitely should not be invoked. Counsel went even further and invited this Court to accept that any breach of those offences is technical, and in any case it cannot by any stretch of imagination justify a sentence of imprisonment. Finally counsel argued that the sentence lacks justification and reasoning and it was imposed wrongly. Counsel relied on *Kyriakos Kakouris* v. *The Police* (1972) 2 C.L.R. 42 at p. 44. Before dealing with this part of the argument of counsel I would like to quote a passage from the text book of Principles of Sentencing by D.A. Thomas 2nd Edn. heading "Thefts by employees and persons in positions of trust" at p. 152:

> "The considerable volume of cases of theft by employees or other persons in positions of trust provides a useful guide to the appropriate sentencing brackets for case of theft generally. The substantial mitigation often seen in cases of this kind, where a man of good character may stand to lose as a result of his conviction his career, pension rights and possibly his home, is often balanced by the agravating effect of the abuse of trust which the offence constitutes.

The scale of sentences appears to extend to about seven

years' imprisonment, but sentences in the highest bracket, between five and seven years, are reserved for cases involving extremely large sums of money. In *House* (1) the appellant admitted over two hundred thefts of the funds of a company of which he was a director and major shareholder. Over of £270,000 was stolen over a period of five years and the company was eventually wound up with a deficit of £150,000. The money was spent in part to meet the appellant's 'grandiose' living expenses. The Court held that the sentence of seven years was not excessive in relation to the facts, but could be reduced to five years in view of the appellant's plea of guilty. By contrast in *Gunningham* (2) the appellant admitted twenty-two offences involving the misappropriation of about £13,000 belonging to his employers and was sentenced to six years' imprisonment, with a suspended sentence for other offences activated consecutively. The Court observed that while precise figures were not critical, it was essential 'to place the offences in the right perspective within offences of this type'. This was not a case of a man defrauding his employer of hundreds of thousands of pounds, but it could not be equated with that of a man who appropriated a few hundred pounds. The case accordingly fell 'within the middle range'; a sentence of three years was appropriate (together with the activated suspended sentence). Many comparable cases can be found. In *Albiston* and others five men, all of good character, were each sentenced to three years' imprisonment for conspiring to steal tyres from their employer; goods worth about £14,000 were stolen over a period of just over a year. The Court considered that sentences of three years were 'not out of keeping... with the sort of sentences that are passed for... serious offences of dishonesty ... on the part of employees', and upheld the sentence on the appellants who had initiated the scheme, making various reductions in the sentences of those who had taken part at later stages. In *Hunter* the treasurer and secretary of a club misappropriated about £10,000 of the club's funds over a period of fifteen months; almost all the money was lost in gambling. Accepting that it

(1). 18.1.74, 1186/C/73.
(2). 21.4.75, 3561/B/74.

was 'in many ways a tragic case' in view of the appellant's 'hitherto exemplary character' the Court upheld the sentence of three years with the comment that 'others faced with a similar temptation ... must ... be fortified by knowing that the penalty for committing a breach of trust is bound to be ... a sentence of substantial duration'."

In *The Attorney-General of the Republic* v. *Yiannacos Procopiou Mavrokefalos* (1966) 2 C.L.R. 93, Triantafyllides J., as he then was, had this to say at pp. 95, 96:

"It is well settled that this Court will not intervene, on an appeal of this kind, unless it is satisfied that the sentence imposed is manifestly inadequate (vide The *Attorney-General* v. *Kouppis and Others*, 1961 C.L.R., p. 188, *The Attorney-General* v. *Stavrides*, 1962 C.L.R., p. 220, The *Attorney-General* v. *Ttofi*, 1962 C.L.R. p. 225 and The *Attorney-General* v. *Mozoras*, (1963) 1 C.L.R. 144).

That the offences to which the respondent has pleaded guilty are very serious is not really in dispute; they are, both, felonies punishable with imprisonment up to seven years.

The seriousness of offences of this kind—and particularly when committed by persons in the employment of co-operative societies, as in the present case—has been stressed in the past at the highest judicial level; without, in the least, losing sight of the principle that the sentence in each case has to be fitted to the particular circumstances thereof, it is useful to bear in mind that in *Ioannou* v. *The Police* (XVIII, C.L.R., p. 46) Jackson, C.J. had this to say (at p. 56):

'The sentence on the charge on which we have confirmed the conviction was six months imprisonment and, in passing it, the District Judge observed that the appellant, using a position of trust which he held as secretary of the co-operative society in his village, put into execution 'a plan of fraud'. There can be no doubt, from the evidence given at the trial, that the particular theft for which the appellant was convicted did not stand alone and, though small in itself, was part of a substantial fraud against a considerable number of people who trusted him and whose

trust he flagrantly abused. We are strongly of opinion that the sentence of six months' imprisonment on him was too lenient and we accordingly increase it to an imprisonment for a year'.

Also, in *The Attorney-General* v. *Ttofi*, (*supra*)—a case of fraudulent accounting by a co-operative society employee —Wilson, P. had this to say (at p. 226):

'In respect of the fraudulent accounting the Court imposed fines varying from £10 to £15, according to the nature of the count.

The conclusion expressed by the learned trial Judge that this is a very serious type of offence is concurred by this Court but we are also of the opinion that fines are not adequate penalties. We have not overlooked the fact that the accused has made reimbursement. Nevertheless there are still too many of these cases and we take the view in this case that there must be sentences of imprisonment. The terms we are about to impose would have been much heavier but for the particular facts of this case, in which we include, of course, the reimbursement which has been made, although not too much credit should be given because there was a bond and the bondsmen would probably have had to make good the defalcation, at least in part.

It is quite possible that in future cases, where the Law permits, and unless this offence ceases to be as common as it is now, we shall feel called upon to impose substantially longer terms of imprisonment than we are going to impose this time'.

And then sentences varying from one year's to two years' imprisonment were imposed on the respondent in that case, in respect of various counts of false accounting.

Counsel for respondent has contested the allegation of the appellant that the offences in question are prevalent; on the other hand, counsel for the appellant, has tried to show that such offences are prevalent by referring this Court to similar cases, recently dealt with by Assize Courts all over Cyprus.

We do not, indeed, think that it is necessary for us to go at any great length into this issue. We do take the view that this Court is entitled to take judicial notice

virtute officio, of the prevalence or not of a certain class of offences. We are of the opinion that offences, such as the present ones, are prevalent, in the sence that they are, unfortunately, 'common', as it has been put in *The Attorney-General and Ttofi* (*supra*) at p. 226. The present case is certainly not one of those isolated cases which present no need for deterrence, and in relation to which a Court could, possibly, show great leniency.

We have duly considered all that which the learned trial Judge has taken into account in not imposing a sentence of imprisonment on the respondent, as well as all that has been so ably argued before us by counsel appearing for him.

We have taken, particularly, into account the fact that respondent has paid off in full the relevant deficiency, and before the case was reported to the police—even though here, as in the case of *Ttofi* (*supra*), there did exist bondsmen responsible for such deficiency and the complainant Cooperative Stores would probably have recovered their loss in the end, in any case.

We have borne in mind, also, the long and, in our opinion, not justified delay in reporting the matter to the police. There is no doubt that such delay has kept the respondent in suspense, causing him prolonged anxiety; it is, in our view, the kind of delay which we are entitled to take into account in mitigation of punishment (see the case of Kouppis, supra, at p. 197).

We have taken fully into consideration the ill-health of the respondent, who is suffering from bronchial asthma; though the existence of such affliction has not been established on oath before the trial Court, we are quite prepared to accept as correct the relevant medical certificates, once they have not been contested by the prosecution at the trial.

In the light of everything, including the circumstances of the case, the seiousness and recurrence of the offences concerned, as well as all mitigating factors, we are unable to reach the conclusion that, in a case of this nature, the learned trial Judge has not erred too much on the side of leniency and that a sentence of only a fine, as imposed, is not manifestly inadequate and wrong in principle; we

are of the view that anything less than a term of imprisonment of six months cannot properly meet the situation.

It is hereby ordered, therefore, that the sentence imposed by the trial Court, on both counts, shall be set aside and that, instead, there shall be imposed a sentence of six months' imprisonment on each count to run concurrently as from today".

In *The Attorney-General of the Republic* v. *Costas Lazarou Lazarides* (1967) 2 C.L.R. 210 Vassiliades P., in delivering the judgment of the Court had this to say at pp. 212, 213:

"Learned counsel on behalf of the Attorney-General, submitted in this appeal, that notwithstanding the mitigating circumstances pertaining to the accused, (which apparently influence the learned trial Judge in reaching his decision) the sentence imposed for an offence of this nature was manifestly inadequate.

On behalf of the respondent, his advocate this morning put forward a well belanced plea in support of the sentence imposed by the trial Court; and stressed again the social and other reasons for which this young man should be spared a sentence of imprisonment.

Giving the matter our best consideration, we find ourselves unable to allow the sentence imposed, to remain on record. The offence of which the respondent was convicted, on his own plea, carries a punishment of 7 years imprisonment, which indicated sufficiently the intention of the legislator regarding punishment in this kind of offence. This Court has stated time and again the principles upon which appeals of this nature should be approached. We need hardly refer to any specific case; but we may mention *The Attorney-General* v. *Neophytos Nicola Vassiliotis and Another*, *reported in* (1967) 2 C.L.R. at p. 20.

We are unanimously of the opinion that this is a case which calls for a sentence of imprisonment. But in measuring the term, we met with considerable difficulty; particularly from the mitigating circumstance emanating from the accused's good record in the past, and his young age. The most lenient sentence which we can impose in this case, is six months imprisonment from today. We hope this will not be taken as laying down any sort of precedent

for the punishment of such offences, the nature of which is, indeed, very serious".

With great respect to counsel it is obvious that the Courts of this country have taken a different view at it appears from the authorities. For these reasons we have no alternative but to dismiss the appeal of the first appellant once in principle the sentence is not manifestly excessive in the circumstances of this case.

Turning now to the second appellant, counsel argued that the trial Judge wrongly imposed on him an excessive sentence of imprisonment in view of the minor role played by him, and particularly because he had to rely on the first appellant and because of his contract by which he could have been dismissed by one month's notice, which the Court described as harsh; and by referring to *Nicolaou* v. *The Police* (1969) 2 C.L.R. 120 at p. 123, where the principle of disparity of sentence as a ground of appeal was for the first time accepted by our Court of Appeal, he contended that the sentence was wrong in principle and manifestly excessive in that it contravened the principle of disparity of sentence as formulated in the above case.

Indeed, this Court should bear in mind certain considerations and one of them is that in dealing with the culpability for the commission of an offence in which more than one person is involved, a Court has to consider too, the role of the offender in relation to the planning of the offence and not only the part played in the actual commission of it.

With that in mind, we would add that in England, the principle of disparity of sentence has been expounded in a number of cases. In the case of *Coe*, 53 Cr. App. R. 66, Lord Parker C.J. had this to say at p. 71:

> "The Court on many occasions, and it has been referred to several cases, has reduced a sentence to bring it more in line to the sentence imposed on a co-accused; it is something that this Court tries to do in the general run of cases on the basis that only thereby can a sense of grievance be averted. But there is no principle of law that the sentence must strictly compare, and as Lord Goddard C.J. said, in giving the judgment of the Court, in *Richards*, [1955] 39 Cr. App. R. 191, at p. 192 the fact that one of two prisoners jointly indicted has received too short a sentence is not a ground on which this Court necessarily interferes

with a longer sentence passed on the other. The Court does in general seek to ensure that sentences as far as possible favourably compare one with another, but they are not bound to do so and when one finds, as one does in the present case, that the sentence imposed on the co-accused is a wholly inadequate sentence, this Court can see no ground whatever for making the larger sentence strictly compare with the lower one."

In *R.* v. *Robson and East*, [1970] Crim. L.R. 354, 355, it was stated that "the Court was unable to accept as an accurate statement of its attitude that it is 'more important that sentences should be proportionate to one another than that they should be proportionate to guilt': Smith and Hogan, Criminal Law (2nd Ed.), p. 10."

More recently in *R.* v. *Brown*, [1975] Crim. L.R. 177, it was stressed that the correct basis of the principle in question is to avoid a legitimate sense of grievance on the part of a person sentenced due to disparity of sentences.

Our Supreme Court in Cyprus had adopted and followed the same approach for the same reasons; See *Nicolaou* v. *The Police* (1969) 2 C.L.R. 120, where Vassiliades, P. said at pp. 122–123:

"It is true that there is considerable difference in the past record of these two young men. On the other hand, their past is only an incidental matter in the case. The substance of the matter for adjudication lies in their respective conduct in the commission of the offences. We think that, in the circumstances, for the commission of the same offence (where, perhaps, the part played by the other person is even more blameworthy than the part played by the appellant now before us) the disparity in their respective sentences is unsatisfactory; and is, we think, offensive to the common sense of justice, so important to maintain in the minds and hearts of all people; especially the people who exhibit a tendency to break the law. Unless they have faith and confidence that in the hands of the Courts they will meet with justice and receive the consequences of their conduct upon that footing, neither the sentences they receive can have the proper effect on their mind, nor can the Courts be of much help to them in reforming their life.

We also have to bear in mind the principle of equality

between all persons before the law which is generally accepted, but is not always apparent in every day life. If this young man and his family circle, as well as those who may have taken an interest in his case, will look upon the matter intelligently, they will not be able to find the expected equality of treatment, in the case of these two young men. All these considerations have made this simple case (which in itself presents no difficulty whatsoever) a matter requiring special and exceptional treatment.

The sentence of nine months' imprisonment imposed on the appellant for the offence committed, seen apart of the case of the other person involved in the commission of the offence, cannot, we think, be described as manifestly excessive. We would interfere with it on that ground alone. But considering all the circumstances of the case, including the disparity of the sentence imposed by the Military Court, we are of the opinion that the sentence imposed on the present appellant is wrong in principle".

(See, also, *Iacovou and Others* v. *The Republic* (1976) 2 C.L.R. 114).

In Principles of Sentencing by D.A. Thomas at pp. 71–73 it is stated:

"DISPARITY OF SENTENCE AS A GROUND OF APPEAL

Disparity of sentence may take several forms. It may be claimed that the sentencer has without proper reason imposed a more severe sentence on the appellant than on his co–defendant, or that in imposing the same sentence in each case he has ignored factors which warrant a differential in favour of the appellant. Alternatively, it may be asserted that although a distinction in favour of the co–defendant is justified, the distinction that has been made is excessive. A fourth version is that the distinction which the sentencer has made in favour of the appellant is inadequate to recognize the difference between their cases. Whichever variety is present, the main value of an argument based on disparity between the sentences passed on co–defendants is the force it may add to the claim that relevant considerations affecting the individual appellant have been ignored. Disparity of sentence will rarely be effective as an independent argument.

In some cases the Court is confronted with an appellant

whose sentence appears to be correct in every respect, but whose co-defendant has received a sentence which is in the Court's view unduly lenient. The Court has no power to increase the co-defendant's sentence, whether or not he has appealed, and is therefore faced with the choice between upholding the sentence and leaving the appearance of injustice or reducing the sentence to which it considers an inappropriate level. In such a case the practice of the Court is to reduce the more severe sentence only if there is 'such a glaring difference between the treatment of one man as compared with another that a real sense of grievance would be engendered'. Many illustrations of this practice can be found. In *Stephens* the appellant was sentenced to seven years' imprisonment for 'a very unpleasant robbery'; his co-defendant, tried earlier, received 'an extraordinarily lenient sentence' of two years. Although the longer sentence was 'perfectly proper', the Court considered that 'the disparity is so startling' that it was bound to make some reductions in the sentence, which was varied to five years. The practice is not confined to cases involving long sentences. In *Street* the appellant was sentenced to twelve months' immediate imprisonment for handling stolen television sets; another man convicted of handling substantially more property stolen by the same burglar received a suspended sentence. The Court stated that both men should have received immediate imprisonment and that the second receiver had been treated 'with a leniency which we are at a loss to understand'; however, the resulting disparity was so great as to amount to 'a denial of justice', leaving the appellant 'suffering from a very real sense of grievance'. The sentence was suspended".

Furthermore, it is important to state that where the Court finds that the trial Judge has failed to give the proper weight to the fact that the particular appellant played only a minor role in the offence or has ignored some relevant mitigating factors it will normally reduce the appellant's sentence accordingly. There is no doubt that in the present case in spite of the fact that the second appellant was aiding and abetting the first appellant in the commission of the various offences, it is equally clear that the part played by the second appellant was a minor one and particularly because he was bound to rely on the first appellant who was his superior, and who was in a position to

terminate his contract of employment after giving him one month's notice.

It is true that the trial Judge, in dealing with the second appellant, said that in his case a differentiation was justified because the imposition of punishment should be proportionate with his participation in the crime, but in spite of the fact that the trial Judge has reached that conclusion, with respect, he has failed to consider the warning that "the distinction which the sentencer has made in favour of the appellant is inadequate to recognise the difference between their cases". See Thomas (*supra*) at p. 71.

We, are therefore, bound to conclude that the extent of diffrentiation, regarding punishment, between this appellant and appellant 1 was wrong in principle, particularly in view of the role of appellant 1 in the commission of the offences in question as compared with that of appellant 2. And that the sentence passed on this appellant is for this reason wrong in principle and manifestly excessive and will be reduced to seven months on counts 2–5, 8–11 and 14–17.

Before concluding this long judgment, we would express our appreciation to all counsel appearing for the appellants and the prosecution for their valuable assistance to this Court in arguing very ably every novel point which has been raised in this appeal.

In the result the appeal of the first appellant both against conviction and sentence is dismissed. The appeal of the second appellant against his conviction on counts 2–5, 8–11 and 14–17 is dismissed but the appeal against conviction on counts 6, 12–18 is allowed and the sentence imposed thereon is hereby set aside. The appeal against sentence of 12 months' imprisonment which has been imposed on counts 2–5, 8–11 and 14 and 17 is hereby allowed for the reasons stated earlier, to the extent that the sentence is reduced to seven months as from the date of conviction, and the appeal against sentence on the remaining counts is hereby dismissed.

Appeal of appellant 1 against conviction and sentence dismissed. Appeal of appellant 2 against conviction and sentence partly allowed.