G [illegible] 16,1956

IN THE PRIVY COUNCIL No. 49 of 1955

ON APPEAL

FROM THE SUPREME COURT OF CYPRUS

B E T W E E N:-

MICHALAKIS SAVVA KARAOLIDES Appellant

— and —

T H E Q U E E N ... Respondent

CASE FOR THE APPELLANT

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1. This is an appeal by Special Leave granted by Order in Council dated the 22nd day of December 1955 from a Judgment of the Supreme Court of Cyprus (Zekia and Zannetides, JJ.) dated the 12th November, 1955, dismissing the Appellant's appeal from the Judgment of the Assize Court of Nicosia (Hallinan, C.J., Pierides, P.D.C., and Ekrem, D.J., sitting without a jury) on the 28th October 1955, whereby the Appellant was convicted of the murder of Michael Poullis, a police constable, on the 28th August, 1955, and sentenced to death. p. 185 p.174 - 184 p.159 - 169

2. The appeal is based in the main on three grounds. The first and most important ground is that the Trial Court admitted in spite of the objection of the Appellant's Counsel a large volume of inadmissible evidence which was highly prejudicial to the Appellant. The Supreme Court held on appeal that part of this inadmissible evidence should have been "excluded in fairness to the Accused" and that even if this part of the evidence was "strictly admissible, its prejudicial effect might well outweigh the necessity of calling such evidence", but that the remainder was admissible. The Supreme Court then went on to hold that the Trial Court in accepting the

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Prosecution's case and rejecting the Defence had not been influenced by the part of the Prosecution's evidence which the Supreme Court had held to be prejudicial to the Appellant. The Appellant submits that the Supreme Court was wrong in holding that the Trial Court had not been influenced by this evidence, and also wrong in holding that the remainder of this evidence was admissible.

3. The law of evidence in Cyprus is, subject to immaterial exceptions, that which prevailed in England on the 5th November, 1914 (Evidence Law, Cap. 15, Laws of Cyprus, 1949). The power of the Supreme Court of Cyprus in dealing with criminal appeals, where evidence has been wrongly admitted at the trial, (Criminal Procedure Law, Cap. 14, Laws of Cyprus, 1949), is in substance identical with the power of the Court of Criminal Appeal in England, under the proviso to section 4 (1) of the Criminal Appeal Act, 1907. It is submitted that the correct rule is that where evidence is wrongly admitted by the Trial Court the conviction must be quashed unless the wrongly admitted evidence is of such a nature that it cannot reasonably be said to have affected the minds of the Tribunal of fact, in this case the Judges of the Assize Court who had admitted the evidence as being relevant. The Appellant submits that the nature of the evidence which the Supreme Court held on appeal to have been wrongly admitted in this case was such that it was wrong to hold that there was no possibility that the Trial Court was affected by this evidence, and that it must inevitably have reached the same verdict if this evidence had been excluded. The Appellant will rely on the observations of the Supreme Court referred to above, namely, that the evidence should have been "excluded in fairness to the Accused" and "the prejudicial effect" of the evidence, as showing that the Supreme Court itself recognised that the nature of the evidence was such that it could not be said that the evidence could not have affected the minds of the Tribunal. It is submitted that one cannot hold at one and the same time that evidence is unfair and prejudicial to the Defence and that it cannot affect the minds of those who admitted it. The Appellant further submits that it was in fact clear from the proceedings at the trial that the Trial Court had been affected by this inadmissible evidence. This point is developed below, in paragraph 22 of this Case. The

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Appellant will rely upon the remarks by the Trial Court during the trial and in the course of the judgment of the Trial Court (referred to below in the same paragraph), and also on the weakness of the Prosecution's case apart from the evidence wrongly admitted, as showing that the Trial Court was influenced in arriving at their conclusion by the evidence which the Supreme Court held to be wrongly admitted. As to that part of the evidence which the Supreme Court held to be admissible, the Appellant submits that that Court erred in holding this evidence admissible, and that if the Supreme Court had come to a correct conclusion on the admissibility of this evidence it must have quashed the conviction.

4. The second ground on which the Appellant relies is that the Trial Court wrongly refused to permit certain questions to be put by the Appellant's Counsel in cross-examination to one of the prosecution witnesses (Feyzi Derekoglou, P.W.3).

This point is developed below in paragraphs 24 to 28 of this Case.

5. The third ground upon which the Appellant relies is that the Trial Court in its judgment seriously mis-directed itself upon, or misunderstood and mis-stated, one of the important questions of fact which it had to decide, namely the question whether the Appellant had established an alibi.

This point is developed below in paragraphs 29 to 35 of this Case.

6. The story of the murder as disclosed by the evidence called by the Prosecution was as follows: On Sunday morning the 28th August, 1955, there was a political meeting of the "old trade unions" at the Alhambra Hall in Ledra Street, Nicosia. The meeting finished at about midday. At about 12,25 p.m. the said Police Constable Poullis, who was on duty in plain clothes, was standing in Ledra Street at the entrance to the Women's Market, which is not far from the Alhambra Hall, when three men walked out of the Women's Market and surrounded him. One of the three men fired three shots. Poullis staggered forward a few paces and fell dead. The men ran away. The man who fired the shots

p.33 l.18

p.22,11.30-37 picked up a bicycle from the pavement some yards up Ledra Street as he ran. He first pushed and then rode the bicycle. When he came to the junction of Ledra Street and Kykko Avenue a member of the
p.34, 1.4. public threw a bicycle in his path, and thus knocked him off the bicycle. The murderer abandoned the bicycle, ran down Kykko Avenue, and disappeared into a side turning. The case for the Prosecution was that this man was the Appellant.

7. Apart from the evidence which is impugned as inadmissible, the Prosecution's evidence falls into three main categories :-

(1) The evidence of eye witnesses who claimed to identify the Appellant as the murderer.

(2) Evidence that the bicycle on which the man attempted to escape belonged to the Appellant.

(3) Evidence of the behaviour of the Appellant after the offence.

8. The evidence of the eye witnesses called at the trial was conflicting. There were in all eight eye-witnesses or alleged eye witnesses, four called by the Prosecution and four by the Defence. Of the Prosecution witnesses the first, Hussein
p. 4-7 Mehmet Djonkiz (P.W.2) a taxi driver, claimed to have seen the murder, and identified the Appellant as the murderer both in Court and at an identification parade held by the police on the 4th September 1955. The Defence was able to establish by evidence that this witness was lying and that in fact he was not in Ledra Street at all at the material time but either in his employer's office or driving a taxi a considerable distance
p.162, 1.39. from the scene of the murder. In the judgment the Court said that, apart from this evidence called by the Defence, they had already come to the conclusion from this witness' demeanour in the box that they could not rely on his evidence.

Of the three remaining Prosecution eye-witnesses, Christodoulos Michael (P.W.5), the person who had thrown his bicycle in front of the escaping murderer, and thus had a better opportunity to see him than anyone else, did not identify the
p.44, 1.40 Appellant as the murderer at the said identification parade, and at the trial said in cross-examination

that the Appellant was not the murderer. He was immediately pressed by the Chief Justice and then said "he was not sure".

The other two Prosecution eye-witnesses were both connected with the Police. Mehmet Ismael (P.W.4) was a Police Constable and Feyzi Derekoglou (P.W.3) a Special Constable. Both those witnesses identified the Appellant at the identification parade and in Court. There were various weaknesses in the evidence of these witnesses. (The evidence of Derekoglou is examined below in paragraphs 24 to 28.) In any event it is submitted that the Trial Court should have been very cautious in considering evidence of identification by Police Officers in a case where a Police Officer was the victim, where the Prosecution witness who had the best opportunity to see the murderer did not identify the Appellant, and where the Police had held an identification parade at which a witness whom the Court held to be unreliable had picked out the Appellant as the murderer, and where the witnesses who did identify him had only a limited and momentary opportunity of seeing the murderer face to face.

9. Against this evidence the Defence called four eye-witnesses, three of whom were independent, having no connection whatsoever with the Appellant. The fourth witness was the Appellant's brother-in-law. One of the three independent witnesses, Panayotis Hallis (D.W.4), had chased the murderer and had attended the Police identification parade, and said that the person he chased was not in the parade. Another of the three, Yangos Myrianthopoullos (D.W.3), a school master, said that he had watched the murderers escape and that the Appellant was not one of them. The third was Georghios Haritonides (D.W.2) who was at the material time in his kiosk at the entrance to the Women's Market within a very few yards of the murder, and saw the three men who passed in front of his shop when coming out of the market; he said that the Appellant was not one of the three men who surrounded P.C. Poullis. Both these last witnesses had volunteered to give evidence for the Defence when they saw the Appellant's picture published in the Press during the Preliminary

p.132, l.3(
p.127, l.2
p.122, l.1
p.122, l.3

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Investigation, and realised that the Police were prosecuting the wrong man.

10. There was evidence -as the Appellant submits, strong evidence- before the Trial Court to establish an alibi for the Appellant, to the effect that, at the time of the murder, he was at his uncle's house in another part of Nicosia. As already mentioned, the manner in which the Trial Court dealt with this evidence is the subject of the Appellant's third ground of appeal. The evidence in support of the alibi, (which can be conveniently stated at this stage) was as follows :-

The Appellant's uncle, Damianos Michael Kamenos (P.W.13), who was called by the Prosecution to prove that the bicycle used by the murderer belonged to the Appellant, gave evidence in cross-examination supporting the Appellant's alibi. The Prosecuting Counsel, encouraged by the Court, attempted to establish during re-examination that Damianos was a hostile witness on the alleged ground that he had not, when he was interviewed by the Police, disclosed the Appellant's presence in his house at the material time. However, when one of the Police Officers was called to support this allegation, he said that Damianos, when interviewed by him, had begun to tell him that the Appellant was at the witness's house at the material time, but that, on the instructions of his (the Police Constable's) superiors, this matter was deliberately not recorded.

p.56, l.19 to p.57, l.48.

p.66, l.19.

The evidence of Damianos was supported by three witnesses called for the Defence. The disclosure of the alibi to the Police by Damianos and the conduct of the Police when it was disclosed are points of great importance, because both the Trial Court and the Supreme Court used as material for discrediting the alibi that it had not been disclosed to the Police at the earliest opportunity. Further, this conduct of the Police was, the Appellant submits, another reason why the Court should have approached the evidence of the two Police eye-witnesses with great caution.

11. The second category of evidence relied upon by the Prosecution (apart from the evidence to which objection was made) was to the effect that

the bicycle on which the murderer tried to make his escape belonged to the Appellant.

The Appellant admitted that the bicycle belonged to him but said that on the morning in question he had lent it to his brother-in-law, Phidias Christodoulou (D.W.11). This was corroborated by Phidias, who said that he had borrowed it to go to the trade union meeting at the Alhambra Hall, that on arrival there he left it in Ledra Street, and that after he came out from the meeting he saw the murderer take the bicycle in his flight. The evidence of the loan of the bicycle to Phidias was also corroborated by a cafe proprietor, Costas Moshitis (D.W.6), who had been asked by Phidias to go with him to the meeting, and had heard and seen Phidias borrow the Appellant's bicycle. This evidence was also corroborated by a number of other witnesses who said that they had seen the Appellant on the morning in question riding a Lady's bicycle, that is, a bicycle other than his own. (It was, of course, the tracing to the Appellant of the bicycle which had been abandoned by the murderer that led the Police to suspect the Appellant).

p.106, l.32
p.153, l.45.
p.137, l.16.
p.136, l.29.

12. The third category of evidence relied on by the Prosecution, apart from the evidence objected to, was the conduct of the Appellant after the crime. The conduct consisted of, in effect, going into hiding. After the murder, the Appellant failed to go to the office where he worked; on the 3rd September 1955 he was seen by the Police trying to avoid a road block at Chatos by walking through the fields, and when then questioned by the Police he gave a false name, address and occupation.

p.67, l.19
p.67, ll.31-41

The Appellant admitted these allegations but explained his conduct by saying that, while he was at his uncle's house on the morning of the murder, Phidias came to the house and told him that the murderer of P.C. Poullis had taken his bicycle and had attempted unsuccessfully to make his escape on it, and that the bicycle had fallen into the hands of the Police. The fact that Phidias came to the house and took the Appellant aside and spoke to him was confirmed by the other witnesses who were present.

p.107, ll.41-50

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p.108, l.10 p.108, ll.11-16 p.111, l.45 to p.112, l.2.

The Appellant said that he was frightened by the news which Phidias brought to him. There had recently been an unexploded bomb outrage in the office where he worked, and he felt that he was bound to come under suspicion, and that at the very least he would be detained under the Emergency Regulations. So he decided to go into hiding.

13. The Appellant submits that on the evidence summarised above it is quite impossible to say that the Trial Court was bound to have convicted him of the crime if the Court had not wrongly admitted the inadmissible evidence already mentioned, which was very prejudicial to his case. The evidence of identification by two Police witnesses out of eight eye-witnesses called was, it is submitted, very weak, especially when set against the evidence of the alibi. The other matters, namely, the bicycle and the conduct after the crime were not so strong that a conviction could in the circumstances be founded on them alone. They were no more than matters of suspicion which might in certain conditions strengthen the Prosecution's case, but which, it is submitted, the Appellant had adequately displaced by his explanations, supported by the evidence of other witnesses. It cannot possibly be said that this is a case where no reasonable Court could have come, on the above evidence, to any verdict other than guilty.

14. Turning now to develop the Appellant's first ground of appeal, the evidence which the Appellant submits was inadmissible was as follows :-

When the Appellant was stopped by the Police on the 3rd September at the road block at Chatos a piece of paper was found in his breast pocket. On it was written, in Greek, words which in the translation exhibited at the Trial ran as follows :-

2.9.55.

Ex.8 p.188.

"Zedro,

I am sending you the bearer of these presents and look after him well. He is a good boy and a patriot to the point of self-sacrifice, you can trust him.

No one should know about his identity.

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The Appellant said in evidence that this note was folded when it was put into his pocket by, as he alleged, the driver of the motor car in which he had travelled to Chatos. The Appellant said that he had no idea of the contents of the note and had not read it. The note itself shows signs that it had at some time been folded into four. It is clear from the Police evidence that the Appellant made no attempt to conceal or destroy this note, which he had plenty of opportunity to do when he was hailed by the Police. This suggests that the Appellant was quite unaware of the nature of its contents, and in particular of the description of himself as "a patriot to the point of self-sacrifice". The Police did not read the note to the Appellant when they found it.

p.109, l.10
p.109, l.13
p.116, l.27
p.116, l.39

15. No objection was taken at the trial to the production of this note. It is conceded that articles found on an accused by the Police at the time of his arrest may be produced in evidence if they connect him with the crime. This document might have been admissible simply on the ground that it showed, as the admitted conduct of the Appellant also showed, that the Appellant was "on the run" at the time of his arrest. But the Prosecution sought to make a far greater use of this document. They sought to use it, by itself and in conjunction with other evidence, to prove, as they suggested, that the Appellant had a motive for the murder. It is submitted that this suggestion was in effect simply a suggestion that the Appellant was by reason of his character and association a person who was more likely than another to have murdered Poullis. As a result of this use of the document, the Appellant submits that this document comes into the category of evidence which, even if admissible as something found upon him on arrest, was in fact so prejudicial to the Accused that it should have been excluded in fairness to the Accused.

16. The improper use made by the Prosecution and the Court of this document can be divided into two parts. First, the Prosecution and the Court relied on the phrase describing the Appellant as "a patriot to the point of self-sacrifice"; and during cross-examination the Appellant was asked the following questions :-

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p.115, l.44. "Q. (by Prosecuting Counsel): "Did you at any time tell either your trusted friend" (with whom the Appellant said he had lived after the murder) "or Christoudes" (the driver of the motor car) "that you were a patriot up to self sacrifice? A. No.

"Q. This letter says that you have been sent to this Zodro to be taken care of and that you are a good boy and patriot to self-sacrifice?

"Court: What do you think it is meant by this expression 'a patriot up to self-sacrifice'?

"A. I have no idea who the author of this letter is and I do not know what prompted him to write that letter in these words.

"Q. You would not describe yourself as a patriot up to a point of self-sacrifice?

"A. No."

The above quotation shows that the Prosecution and the Trial Court attached great importance to this

p.178, l.22 description of the Appellant. This description was also referred to in the judgment of the Supreme Court as "suggesting strongly that the Appellant was not a victim of unfortunate circumstances". It appears to have been overlooked that this was merely a description not by a witness, but by an unknown third party, of the Appellant's character. Such evidence would have been inadmissible even if given in evidence by a witness at the trial; indeed the Prosecuting Counsel, when he attempted to ask a Defence witness whether the Appellant was not to his knowledge an ardent nationalist, was stopped by the objection of Counsel for the Defence. Such evidence did not become any more admissible because it was in writing and was the opinion of a person not before the Court.

17. The second use which the Prosecution made of this document (Ex. 8) was to suggest that it showed some connection between the Appellant and EOKA, a terrorist organisation. The Prosecution then proceeded, resting on this alleged connection, to give evidence of a large number of crimes which were suspected of having been committed by members of EOKA. Evidence of the

alleged connection between the Appellant and EOKA was extremely slender. There was no evidence that he was a member of EOKA; he himself denied in his evidence in chief that he was a member and this answer was not challenged in cross-examination. The Appellant's connection with EOKA was indeed sought to be inferred solely from the name of the alleged addressee of the document (Ex. 8). This name was written in Greek at the top of the Note. It was evidently very difficult to read as it was at the trial first described as Zodro, then Zidro and finally as Zedro. For convenience the name will be referred to hereafter as Zedro. It was suggested by the Prosecution and accepted by both Courts, without any evidence to support it, that this was the name of one of the leaders of EOKA. This suggestion was founded solely on two leaflets, also (wrongly it is submitted) admitted in evidence, which were alleged to have been found five months before the murder and which bore the word "Zedro"; see paragraph 19 (c) of this Case. It was not suggested that there was any connection between the Appellant and these two documents.

p.68, l.22
p.86, l.21
Ex.8 p.188

18. The following witnesses were called in the attempt to prove this part of the case.

(a) Neophytos Petrou (P.W.23) who said that on the 31st March he had lent a motor car, TA 041, to one Gregoris Afxentiou and that thereafter he did not see the said Afxentiou.

p.83, ll.20-30

(b) Police Constable Agathangelos Petrou (P.W.24), who said that on the 1st April 1955 he stopped the said motor car TA 041 at Ahna; the car was then being driven by one Christofis Pandeli of Leopetri. He said that he had found in the car 15 pamphlets, 12 hand grenades, 2 anti tank mines, 2 pieces of fuse with detonator, and other explosives; and that the said Pandeli was tried at Famagusta Assizes. One of the pamphlets was exhibited as Exhibit 13. It was headed "EOKA" and called on Cypriots to rise against British rule.

p.84, ll.30-34
p.84, l.36
p.84, l.38
Ex.13. p.188

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p.85, l.31 (c) Police Sergeant Mehmet Jemal (P.W.25), who said that on the 1st April, 1955, he searched the house of the said Afxentiou and found in a pocket of a military jacket a piece of fuse and a detonator and in a pocket of a pair of trousers two leaflets which were exhibited as Exhibits 14 (A) and (B). On the top left corner both these documents had the letters "EOKA" and in the top centre the word in ink "Zedro". Near to this were written in ink Greek words which were evidently also difficult to read but of which one suggested translation was "File Number". Underneath these words were the figures 15 in Ex. 14 A and 14 in Ex. 14 B. Ex. 14 A was dated the 28th March 1955, and Ex. 14 B was dated the 27th February, 1955. They purported to be orders from the leader of EOKA.

p.86, l. 3
p.86, l. 6
Ex.14(A) p.189
Ex.14(B) p.190
p.87, l.22

No evidence was given that these leaflets, or any of the pamphlets mentioned below, bearing the word "EOKA", were or was in fact issued by the EOKA organisation. No other evidence was given as to the identity of Zedro nor as to whether there were one person or many persons bearing such a name or nickname.

19. The Trial Court found that the evidence summarised above proved that the addressee, whoever he might be, of the note found on the Appellant, was a leader of EOKA. On appeal the Supreme Court did not hold any of the above evidence to be inadmissible, and even went so far as to suggest (in spite of the absence of evidence on the points) that "very probably" the said Afxentiou was "Zedro" and that Averoff, the writer of the note, was "another EOKA man of some influence," through whom the Appellant sought to be protected by Zedro. The Supreme Court found that this showed some association between the Appellant and EOKA.

p.177, l.47
p.178, l. 1
p.178, l.16
p.178, l.19

20. To prove the criminal activities of EOKA, the Prosecution called the following witnesses:-

p. 95, l.33 (a) Police Constable Fikret Feramez (P.W.27), who said that he had picked up in a district of Nicosia a pamphlet which was exhibited as Exhibit 17, and that he handed it to Inspector Kaminarides (P.W.26) on the 5th

p.191.
p.96, l.5.

September. This document had the letters "EOKA" on it and suggested that a number of Police Officers who had been "executed" (including Poullis) were not "innocent".

The Prosecution appears to have relied on this pamphlet as proof that EOKA admitted having murdered the Police Officers referred to in the Pamphlet including, of course, Poullis. The Trial Court said in their Judgment that stronger evidence than Exhibit 17 would be required to establish such an admission and they said that they would disregard this Pamphlet. However, evidence of other murders or attempted murders was admitted against the Appellant and, as the Appellant understands the Prosecution's case, the main, and perhaps the sole, reason for suggesting that these were EOKA crimes, and as such evidence against the Appellant, was the reference to these crimes in Exhibit 17. p.162, l.15

(b) Police Constable Kyriacos Patsios (P.W.28), who produced another alleged EOKA pamphlet (Exhibit 18) picked up in Nicosia on the 5th April, 1955. This document was addressed to the Cyprus Police. It warned the Police for the last time and said that "sanctions would be applied against those with whom we shall fail to find understanding". p.96, l.32 Ex.18, p.192

(c) Police Inspector Christos Sophocleous (P.W.29), who said that on the 1st July he had picked up another alleged EOKA pamphlet (Exhibit 19) outside Nicosia. This was also addressed to the Police and said that "whoever offers resistance to the Cypriot Patriots will be executed", but that "no one will suffer anything so long as he does not obstruct our work". p.97, l.5 Ex.19, p.193

(d) Police Inspector Sophocles Kaminarides (P.W.26), who said inter alia that :-

(i) on the 1st July he investigated the case of an attempted murder of John Aspros, a Special Branch Police Constable, and that no one was detected. p.92, l.1.

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p.92, l.7. (ii) on the 13th July he investigated an attempted murder of P.C. Poullis, (the man subsequently murdered in this case), and that he found a bullet which was

E.15. exhibited. Again no one seems to have been detected.

Prosecuting Counsel told the Trial Court that the

p.92, l.27. bullet was "the same calibre", presumably meaning that it was the same calibre as the bullet with which P.C. Poullis was shot on the 28th August.

p. 2, l.28. Whereupon the Court said "I see". The Appellant can only imagine that the purpose of this evidence (which appears to have been accepted by the Court) was to suggest that the same weapon had been used in each case, with the inference that the Appellant had some connection with the earlier attempt on Poullis' life. It is difficult to conceive a more prejudicial piece of inadmissible evidence. However the Prosecution continued to give in evidence that other crimes were committed with .38 bullets, as is set out

p.161, l.48. below, and this coincidence clearly impressed the Trial Court who referred to it in their Judgment. (No attempt was made to prove that any of these bullets had been fired from the same revolver).

p.92, l.31. (iii) on the 10th August, 1955, he investigated the murder of Mikis Zavros, a mail officer and Special Constable, who had three brothers in the Police force. This

p.92, l.46. man was said to have been shot in the back, again by a .38 bullet.

p.100, l.14. (e) Police Inspector Styllis Iacovou (P.W.31), who said that P. Sgt. Costopoulos of the Special Branch of Famagusta was shot dead on

p.100, l.21. the 11th August, 1955, again by a .38 bullet.

p.101, l.10. (f) Police Inspector Apostolos Papaconstantinou (P.W.32), who said that on the 16th August, 1955, one Kikis Antonis Filiasides fired at

p.101, l.17. him with a pistol, using a .38 calibre bullet. Filiasides had run away and since disappeared. He added that there was no personal grudge between himself and his assailant, but that the latter had previously been arrested "in connection with

p.101, l.23. outrageous offences" and released because of insufficient evidence.

The Chief Justice then asked the witness the following questions :-

"Q. You had investigated into the case of some men who were convicted in Larnaca of explosions?

"A. That is so, my Lord, which occurred on the night of the 1st April.

"Q. You were in charge of this investigation?

"A. That is so, my Lord.

"Q. On the 1st April?

"A. Yes, my Lord.

"Q. Certain persons were charged?

"A. That is so, my Lords.

"Q. Were they convicted?

"A. Yes.

"Q. When?

"A. On the 23rd June, my Lord."

These questions by the Chief Justice show, in the Appellant's submission, a desire to introduce into the case against the Appellant all the evidence of terrorist activities on the island on or after the 1st April, 1955. It does not appear whether the Accused in the case referred to by the Chief Justice were alleged to have been members of EOKA. It is submitted that these interventions by the Chief Justice demonstrate how his mind had become affected against the Appellant by the suggestion of his connection with EOKA.

(g) Police Sub-Inspector Petros Paraskevas (P.W.30), who said that on the 29th August a certain Stavros Archilleas Papouis had been brought into the Police Station at Limassol as having been found writing seditious slogans on the walls of the Turkish Family Court at Limassol. This p.97, l.33.

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man was seen to put three pieces of paper into his mouth which were promptly recovered, and were exhibited (Ex.20) (A) (B) and (C).

Ex.20(A) p.194 Exhibit 20 (A) purported to be a form of EOKA
Ex.20(B) p.195 oath. Exhibit 20 (B) purported to be an EOKA order, dated 25th August, 1955, that all group leaders arrange that raids shall be made when necessary during the noon hours.

Ex.20(C) p.195 Exhibit 20(C) purported to be another EOKA order, dated the 25th August, 1955, that no member should carry on him or hide in his house anything incriminating.

21. The Appellant was asked in cross-examination, both by Prosecuting Counsel and the Court, a series of questions set out below which were clearly based on the assumption (which was not, however, put directly to the Appellant) that the Appellant had taken the EOKA oath, Exhibit 20(A), in which the member swore "in the name of the
p.194 l.12. Holy Trinity" that (inter alia) "he would
p.194 l.16. execute without objection all the orders of the organisation which may be assigned to him". The form of the questions put by the Court shows in the Appellant's submission that the Court's mind had been affected by the suspicion that the Appellant was connected with EOKA caused by the inadmissible evidence called by the Prosecution, and that this suspicion was not displaced by the Appellant's denial on oath, unchallenged in cross-examination, that he was a member of EOKA. The questions were as follows :-

p.117, l.35. "Q. Are you a religious man?

"A. I am a Christian Orthodox.

"Q. If you swear on the Holy Trinity to do something will you go back on it?

"A. No.

"Q. Whatever it may be you will do it to the end?

"A. I would say that the object would be carried to the end if I took an oath in the name of the Holy Trinity.

"Court: If part of the oath was to implicitly obey somebody else's orders would you carry out whatever these orders were?

"A. Before I should have given that oath I should have tried to find out how that oath would operate on me and what my obligations would be on me in taking the oath.

"Court: Assuming for a moment that you took the order (sic) to obey implicitly the orders of another would you carry out these orders no matter what they were?

"A. I do not think I would ever find myself in such a position because if I were to take an oath I should have known in the first instance what was expected from me and what I should do.

"Q. So you would not carry (sic) an oath to carry out blindly another person's order?

"A. No."

22. In addition to the Court's interventions referred to above, the Appellant relies on the following matters as showing that the Trial Court attached a great deal of importance to the inadmissible evidence :-

(1) Although the Defence had given notice to the Prosecuting Counsel that they objected to the admissibility of this evidence, the Prosecuting Counsel gave a summary of it in opening. When the time came for the Defence objection to be made, the Court did not call on the Prosecuting Counsel to make any submission but itself put forward arguments in favour of the admissibility of this evidence itself, and asked the Defence Counsel if there was any objection. It is clear from the Record that the Counsel for the Defence had some difficulty in formulating his argument owing to interruptions from the Court. The Court's view was that this evidence proved motive, which was the ground on which the Prosecution tendered the evidence, but it is clear from the following passages that the Court intended to use it also to support the evidence of

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identification:-

p.81, l.26

"Court:..... You start a train of evidence showing that Zedro is a certain person connected with EOKA, but you have to bring the trail back to the crime and to the accused, in order that it should be of any value as motive. You have to show that Zedro and EOKA have threatened and carried out attacks on the Police, and therefore it is likely that it is an inference that the Court could draw that the Accused who is one of their men killed Poullis in carrying out their orders.

"MR. PAVLIDES: I do see the point and certainly do not suggest that motive is inadmissible in evidence, but in my humble submission it is a wrong way. It is rather stretching the law of evidence regarding motive a bit too far to bring up evidence of matters found in the possession of other people just on the single charge of murder, in which I stress that there are eye-witnesses on whose evidence the identity of the prisoner must stand or fall.

"COURT: But even when one has very good evidence of identity it is always open to the Defence at the end to say that there is no scintilla of evidence and there is no reason why the accused should kill the deceased; and it is of some help to a Court to be able to reply, 'well there is evidence as to why he should do this'.

"Court: The Court's ruling is that this evidence can go in and is relevant."

(2) In the course of the cross-examination of the Appellant the Chief Justice intervened to ask the following questions :-

p.115, l.27.

"Q. Did you have at that time" (viz: at the time when the Appellant was making the journey on which he was intercepted and arrested) "any suspicion that the murder of Poullis might have been done by EOKA?

"A. Rather.

"Q. Did it not occur to you that if you came under the protection of the suspected murderers of Poullis that your case was rendered almost hopeless?"

This demonstrates, as the Appellant submits, that the Court at a relatively early stage, had been convinced by the inadmissible evidence that the murder was arranged and carried out by EOKA, and had been prejudiced thereby in considering the Appellant's Defence on its merits.

(3) In the Judgment of the Trial Court delivered by the Chief Justice, the following passage occurs :-

" The Prosecution have led evidence to establish that this note found in the possession of the accused was to one of the leaders of the terrorist organisation known as EOKA. On the night of the 31st March last a certain Neofytos Petrou, of Lyssi, lent his car to a man called Afxentiou. There is evidence that this car was afterwards found that night containing explosives and also that in a number of places throughout the Island explosions occurred which were due to the activities of EOKA. Indeed, a pamphlet found in the car purported to be issued by EOKA and declared its objects were the liberation of Cyprus from the English yoke, and declaring the intention of the organisation and its members either to kill or be killed. The house of Afxentiou was searched at Lyssi, and in his clothing were found one document headed 'Order' and another document headed 'General Order' issued by Dighenis, the leader of EOKA, and directed to one Zedro. The Prosecution have thus established that the note which the accused was carrying was directed to one of the leaders of Eoka. They have also produced some pamphlets picked up by the Police purporting to be distributed by EOKA, and these are put in evidence

p.161, l.11.

in order to show that it was one of the objects of EOKA to punish Police Officers who resist their activities. One, on the 5th April, which was directed to the Cyprus Police, said that sanctions will apply to those who resist EOKA, and another, picked up on the 1st April, also directed to the police, states that whoever offers resistance against the Cypriot patriots will be executed. Evidence was then led that these were not idle threats but were followed by deadly attacks on the police. There was an attempt on the life of a policeman called Aspros on the 1st July. Another attempt to murder the victim in the present case, Poullis, on the 13th July. Again a .38 bullet was used. On the 10th August special constable Zavros was murdered. He had three brothers in the police, one of them in the Special Branch; and on the 11th August Police Sergeant Costopoulos was murdered. All these attacks were made on members of the Special Branch. The Crown have also put in a pamphlet picked up in the Ayios Antonios quarter of Nicosia on the 5th September. This purports to be issued by EOKA and to state that those policemen who have been murdered were justly murdered as traitors. In our view the evidence that it was an object of EOKA to threaten and to execute these threats against members of the Special Branch is established by the first two pamphlets that I have mentioned which were picked up by the police, and the attacks on the policemen and their killing. To establish the fact that EOKA openly admits, after these crimes, having done them, would, in our view, require stronger evidence than the production of this pamphlet found at Ayios Antonios quarter on the 5th September. We therefore disregard Exhibit 17 for the purposes of this case."

(4) Later in the Judgment, when the Court came to consider their conclusions, the following passage shows the importance the Court attached to the inadmissible evidence in finding that the Prosecution's evidence of

identity was true and in rejecting the evidence of the Defence:-

" So that we have to consider who is telling the truth; the eye witnesses for the Crown, Derekoglou and P.C. Ismael on the one hand, who positively identified the accused, or to believe the story that he was not there at all, that some other person stole the bicycle from Phidias while the accused was in the house of Damianos. We have to consider on the one hand the manner in which these two eye-witnesses have given their evidence and their demeanour, and on the other hand the incredible evidence given by Phidias. p.168, l.16.

We have the incontrovertible evidence that the man who shot Poullis was the man on the bicycle of the accused. We have it that the accused disappeared immediately after the crime, we have it that everything points to this crime having been planned and ordered by the terrorist organisation known as EOKA, and we have it that the accused when he disappears after some days of hiding goes off in a motor car with a note to one of the leaders of EOKA.

It has been put forward by his Counsel that EOKA would manage things better than to let him ride on such a fateful undertaking on his own bicycle, but we must remember that but for a failure of nerve on behalf of the accused when he got to Chatos he would have escaped. Only for his own failure of nerve the organisation would have saved him. He was unfortunate to have found so resolute an eye-witness as Derekoglou and Ismael, but nevertheless he got away.

Having regard to the evidence against him, which is not seriously challenged by the defence, and the evidence of the eye-witnesses Derekoglou and Ismael, which we accept, we must reject his evidence and his alibi."

With reference to the view of the Supreme Court that the Trial Court had not been influenced by the evidence which it regarded as inadmissible, the Appellant submits that it is clear from the parts of the judgment of the Trial Court set out above that it was in truth so influenced.

23. The Appellant submits that on these passages it is impossible for a Court to be satisfied (as the Supreme Court expressed itself to be satisfied) that the Trial Court must have convicted the Appellant even if the inadmissible evidence connecting the Appellant with EOKA and purporting to show that the present crime was one of a number of EOKA crimes had not been produced.

It is clear from the judgment of the Supreme Court that the only evidence which this Court held should, in fairness to the Appellant, not have been introduced was the evidence of the unsolved murders or attempted murders of Police Officers between the 1st July and the 11th August 1955. All the other evidence, including the evidence purporting to connect the Appellant with EOKA and with certain crimes attributed to its agency, the pamphlets, and the description of the Appellant as a "patriot to the point of self-sacrifice" were held to be admissible as evidence of motive and indeed were used by the Supreme Court against the Appellant. The Appellant submits that the Supreme Court came to a wrong conclusion on all this evidence and if they had come to the correct conclusion they would have been bound to quash the conviction.

24. The second ground of this appeal deals with the interference by the Court with the cross-examination of the Prosecution witness Derekoglou (P.W.3.)

It must be remembered that the evidence of this witness was given at a most critical period of the trial. He was the third witness called by the Crown. The first witness had merely produced the plan. The second witness was the first alleged eye-witness, the taxi driver Djenkiz, who claimed to have watched the murder taking place before his eyes and identified as the murderer the Appellant, whom he had undoubtedly picked out at an identification parade. This witness had been cross-examined on behalf of the Appellant and in spite of a number of interruptions by the Court of

the cross-examination, the result of his answers was that the Court, as stated in its judgment, had come to the conclusion, before he left the witness box, that he was a witness on whom they could not rely. Derekoglou, the second of the alleged eye-witnesses called by the Prosecution, who identified the Appellant, was therefore a most critical witness. If any doubt had been cast on his credibility by his conduct and answers in the box as a result of full cross-examination, it is difficult to see how the Prosecution's case could have survived. It is submitted, therefore, that the Court should have been anxious that his evidence should be fully tested by cross-examination. Instead of this, the Court appeared to go out of its way to assist and protect Derekoglou during his cross-examination on the one vital point of his evidence, namely, how he came to identify the Appellant as the murderer. In his evidence in chief Derekoglou first described how he saw the murderer escaping with the bicycle. He was then asked:- p.162, l.39

"Q. How was that man dressed, will you tell the Court? p.23, l.10

"A. He had a white shirt, it looked to be white, and he was about 5'8". I described his age as 25 years of age.

"Q. Did you recognise that man later? Do you know who he is now?

"A. Yes, I know.

"Q. Who is that person?

"A. He is the accused there.

Later in his evidence in chief he was asked :-

"Q. Did you know the accused? Had you seen the accused before? p.24, l.5.

"A. Yes.

"Q. Where?

"A. I saw him at the Secretariat where I used to work before."

p.24, l.17. He then described how he picked out the Appellant at the identification parade on the 6th September, the same parade at which the discredited Djenkiz had also identified the Appellant.

25. During the early stages of his cross-examination it was suggested to Derekoglou that he had not had much opportunity of seeing the murderer, but to this he replied :-

> " When he turned and looked towards me I saw him very well, I saw him on five occasions on that day, and I looked at him very well, so that I could recognise him again."

Later in the cross-examination Counsel came to his explanation of how he had later recognised the murderer as the Accused whom he already knew, and the following incident took place :-

p.29, l.1.

> "Q. (By Counsel for Appellant). There is what appears to me rather an extraordinary way in which you came to fix on the accused as the person whom you chased that day. What you said today in Examination in Chief is that you did not at that time recognise the person but later you recognised that the man was the Accused."

There must have been some interruption by the Court which is not recorded, because the Appellant's Counsel then said to the Court :-

p.29, l.7.

> "PAVLIDES: I believe I am correct my Lord in saying that that is how he put it.
>
> "CHIEF JUSTICE: The only sort of delay was apparently in connecting the man he was looking at with the man he had known at the Secretariat.
>
> "PAVLIDES: What did he actually say, my Lords? I think rather that he put it in this way: 'Then I did not connect the person I was pursuing with the Accused'. I do not know what he means."

The witness, who had thus been given some time to collect his thoughts, and perhaps some assistance in doing so, by the intervention of the Court, then said :-

"WITNESS: My first impression on that day was that I had seen him somewhere, but I could not make up my mind where it was; but at the identification parade I understood that I had seen him at the Secretariat.

"Q. I see, so it was only at the identification parade on the 4th September for the first time that you thought that the person whom you were chasing was the person whom you had met before at the Secretariat. Am I putting it correctly?

"A. Not quite correct. The first thing I saw at the police station was the same person I saw on the 28th and the same person I saw at the Secretariat.

"Q. Yes, but for the first time you connected the person you had seen on that day?

"CHIEF JUSTICE: It is very muddling, but what he said is that: 'When I saw this man immediately after the shooting his face seemed familiar, I had seen him before'. And then he said that: 'At the parade I realised the place I had seen him before was at the Secretariat'. You must take it from me that that is his evidence. I have listened very carefully to his evidence and that is his evidence.

"PAVLIDES: I am the last person who wants to waste the time of the Court. But what I am asking him is: Am I correct in assuming that the first time you connected the person you were chasing with the person you had met at the Secretariat was at the Identification Parade. I said: Am I correct? He said: Not quite correct.

"CHIEF JUSTICE: Are we in any doubt as to what he says?

"Q. The first time you connected the man you saw at the Secretariat was at the Identification Parade?

"A. Yes."

26. The witness was then asked when he had met

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p.30, l.11. p.30, l.12. p.30, l.20. p.30, l.14.

the Accused at the Secretariat and he answered in 1952 - 1953. Counsel then said: "You had not seen him before and you had not seen him since until the date of this occurrence". The witness then, possibly thinking that if he accepted this it might be suggested that it was improbable that he would remember the Accused for so long a period, said for the first time that he had seen the Accused in 1955, about 20 days before the murder, when he (the Accused) came to the witness' office and spoke to one of the witness' friends. This was, of course, an answer of great importance. Not only was it a complete change of the witness' evidence, but it made much more improbable his story that he had looked very carefully at the murderer on the 28th August, but had been unable to recognise him as the man he knew well by sight and had seen only three weeks before. Counsel for the Defence naturally wanted to press the witness on this story and the following is a Record of what took place :-

p.30, l.21.

"Q. And why then in connecting the person whom you were chasing and the accused did you not think of saying that: 'It occurred to me that it was the person whom I had seen not very long ago in my office'. Why did you connect him back to the Secretariat, 3 years ago and not to the last time you saw him 20 days previously?

"CHIEF JUSTICE This is all psychology, because if it is psychology I can tell you the reason. In one place he was working in the same building as the man, the other was a fleeting visit of a person - he would not have remembered it if he had not known him already at the Secretariat - all this is inference and psychological.

"PAVLIDES: I think psychologists can give different reasons for the same event.

"CHIEF JUSTICE: The witness is called to give facts, not to be introspective and analyse the psychology of his own mind on different occasions. I think this is getting over subtle.

"PAVLIDES: We are cross-examining as to credibility, that he said one thing and not the other thing, and if the Court finds a reason for everything he says it is no use cross-examining.

"CHIEF JUSTICE: I am not finding reasons, I am merely occasionally trying to keep the cross-examination within bounds. I did not for example stop you this morning on many occasions, but what you were doing was nothing more than repeating word for word what he gave in examination, and I bore with you.

"PAVLIDES: I have had long experience in Court and it is the first time I heard that my cross-examination is irrelevant. But I must learn as I grow old.

"CHIEF JUSTICE: I did not say it was irrelevant but I said it was repetitive.

"PAVLIDES": I must ask this witness - if Your Lordships rule my questions out I will of course abide by it - but I do ask the witness why instead of linking the accused with the person that had visited him 20 days before this occurrence he linked him up with the Secretariat two or three years ago. That is my question.

"CHIEF JUSTICE: Well, I rule it out. I consider it an over subtle question of human psychology which the witness should not be required to answer unless he is an expert."

27. The witness was further cross-examined about the occasions when he had seen the accused during 1952 - 1953. His answers were very confused but the effect appears to be that he said that he knew that the Accused worked in the Income Tax Office during that period, that the witness used to visit a friend in the Income Tax Office at least once a week, and that he used then to see the Accused; that, when he remembered at the Identification Parade that he had seen the Accused before, he did not even then remember that it was in the Income Tax Office but thought that it was at the Secretariat by which he meant not the Secretariat building where he himself worked and which was a separate building from the Income Tax Office, but the whole compound in which the Secretariat building was situated and in which he included the Income Tax Building. (This last explanation was suggested to the witness by another

p.31, l.23.
p.31, l.27.
p.31, l.36.
p.32, l.29.
p.32, ll.3-10

intervention of the Court, which was to some extent contrary to the Court's earlier suggestion quoted above that the witness was in 1952-1953 working in the same building as the Accused and therefore when the witness saw the Accused at the identification parade he had remembered this rather than the Accused's visit to the witness' office in the previous month.) Finally, the witness was asked what he had said to the Magistrate about the number of times he had seen the Accused at the Secretariat. The witness first said he had told the Magistrate he had seen
p.32, l.34. the Accused once; then he said that he had not
p.32, l.38. told the Magistrate anything on this point; then he said that he could not remember; and finally he said that he had told the Magistrate that he
p.32, ll.42-4 had seen the Appellant a few times and by this he meant many times.

28. It is submitted that it is difficult to conceive any less convincing evidence and that but for the interference by the Court this witness would have been completely dis-credited in cross-examination. The Trial Court in their judgment made no reference to any of these points and merely stated that they had
p.163, l.40. considered the slight discrepancies in the evidence of this witness' statement, but they did not consider that his evidence or the evidence of the other witness who identified the Appellant had been shaken in cross-examination.

29. Turning to the third ground of this appeal, the Appellant submits that the Trial Court erred gravely in that it treated the matter of the alibi and the matter of the evidence called by the Defence relating to the Appellant's bicycle as closely bound up together, to such an extent indeed that it held that the alibi must be rejected unless all the evidence relating to the bicycle was accepted.

30. The evidence in support of the alibi has already been set out above, in paragraph 10.

The evidence relating to the bicycle falls into two parts. In the first, the Appellant, his brother-in-law Phidias, and one other person, all gave evidence that on the morning of the murder, and some time before the murder, the Appellant lent the bicycle to Phidias; and this evidence was corroborated by other witnesses

who -as already mentioned- said that they saw the Appellant himself riding not his own but a lady's bicycle (in fact, according to the Appellant's evidence, his sister's bicycle) on that morning. In the second part of his evidence Phidias gave his explanation as to how the Appellant's bicycle came into the murderer's possession, namely that he had himself attended the "old Trade Union" meeting in the Alhambra Hall, leaving the bicycle in Ledra Street, and that when he came out of the Hall he saw one of the murderers take the bicycle and escape on it.

There is not, the Appellant submits, anything particularly improbable in Phidias' statement in the second part of this evidence, for the Prosecution evidence was to the effect that the three murderers arrived on foot and that one of them immediately after the murder seized a bicycle and made off with it; but if the evidence of Phidias on this point be disbelieved, as the Court disbelieved it, there still remains a substantial body of evidence, unaffected by anything in this part of the evidence of Phidias, to show that the Appellant had discharged himself of the bicycle at the material time, from which it follows that the person who rode the bicycle from the scene of the murder was not the Appellant. It follows that the really important part of the evidence relating to the bicycle was the first part, its loan to Phidias.

31. The Appellant submits that the only proper course for the Trial Court to follow was to consider the alibi and the evidence of the loan of the bicycle to Phidias quite separately. It should have considered independently the two questions (1) whether the evidence of the Appellant's alibi caused it to have any reasonable doubt about the case against the Appellant, and (2) whether the story of the loan by the Appellant of the bicycle to Phidias caused it to have any such doubt. In fact the Court dealt with this part of the case in such a manner that it never properly considered either of these questions, and most certainly did not consider them separately.

In its Judgment the Court summarised briefly the effect of the Appellant's evidence. The Court then said :-

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p.166, l.46. " Now his evidence falls into two parts, one his explanation of why his bicycle was being ridden by Poullis' assailant, and the second an alibi. But both parts of his defence are closely bound up together. For if we are unable to accept the story of the bicycle it will be fatal of course to the alibi."

32. The Appellant submits that this amounted to a most serious misdirection. It is clear that by the words "if we are unable to accept the story of the bicycle" the Court meant "if we are unable to accept Phidias' story of the way in which the murderer took the bicycle". The Trial Court later in their judgment considered that part of Phidias' story which dealt with the manner in which the murderer took the bicycle, and concluded (for reasons which the Appellant submits are not at all compelling) that it was "frankly incredible", and therefore rejected that part of his story. The Appellant submits that it is clear from the Judgment that the Court thought that, if they rejected that part of Phidias' story, it followed that they must reject not only the story of the loan of the bicycle to Phidias, but also the whole of the evidence of the alibi. The Court in effect were holding that, if Phidias' account of how the murderer took the bicycle from in front of his very eyes was untrue, then the Appellant must have ridden the bicycle from the scene of the murder. This, of course, does not follow. Phidias might have had several motives for telling an untrue story of how he saw the murderer take the bicycle. For instance, even though he had not actually seen it, he might have thought that to say that he had seen it would make his evidence more convincing and so help his brother-in-law whom he had brought into trouble by letting the bicycle be stolen. Secondly, Phidias could have had some reason for not wanting to tell the true story of how the murderer took the bicycle, lest he be suspected of having been in some way involved in it. In either event Phidias' evidence on this point might well be unconvincing, but this would not mean that the bicycle had not been loaned to him or that the Appellant was not at his uncle's house at the time of the murder.

33. Support for the above contention that the Trial Court thought that if they rejected Phidias'

account on this point the whole of the case for the Defence fell with it is derived from the way in which the Court dealt, or rather failed to deal, in their Judgment with the rest of the case for the Defence. Except for a passing reference to the fact that "the cafe proprietor Costas" gave evidence in support of the loan of the bicycle to Phidias, the Court made no further reference to the evidence of the loan. They gave no reason for rejecting this evidence and indeed did not even expressly state that they had rejected it. This, it is submitted, clearly indicates that the Court thought that its rejection followed from their rejection of the other part of Phidias' evidence.

p.167, l.37.

34. Turning to the defence of alibi, the Court dealt with it in a most summary fashion. They mentioned by name the witnesses who gave evidence supporting it, stating incorrectly that one of these, Damianos (P.W.13), was called by the Defence; but they did not even give a summary of the effect of their evidence. And the sole reason they gave for rejecting the evidence is contained in the following passage of the Judgment :-

p.167, l.3 & l.23

> " It is very difficult to test the veracity of an alibi of this kind, but it is very often on a small matter that the weakness of an alibi might be revealed. The young Cherkezos said that he usually played draughts with the accused, but that before Sunday 28th August he had not played draughts with the accused for a long time; he had only played once or twice since the accused had gone to Strovolos a year ago. Yet Arghyros told us that the accused and young Cherkezos had had a game of draughts on the Sunday previous to the 28th August".

p.167, l.26.

35. It is submitted that such a minor and immaterial discrepancy between two witnesses cannot possibly have been the sole reason for rejecting the whole of this evidence. The correct conclusion is, it is submitted, that the Court rejected this evidence bacause they thought its rejection followed from the rejection of Phidias' account of how the murderer took the bicycle, and merely mentioned this small

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discrepancy in the evidence as something which in their view reinforced their conclusion which was based on other grounds.

36. On this point the Supreme Court expressed
p.182, l.37. themselves as being "to some extent in agreement with the Defence in saying that, if the Trial Court was unable to accept the story of the bicycle, that fact alone would not necessarily render fatal the defence of alibi". However, the Supreme Court treated the remark of the Trial Court on this point as being an "unguarded
p.183, l.1. remark", and held that the Trial Court did not
p.182, l.42. act under this reasoning in rejecting the defence of alibi. The Supreme Court relied on the fact
p.182, l.43. that the Trial Court considered the defence of alibi "at length elsewhere in the Judgment". The Appellant has set out above the way in which the Trial Court dealt with the defence of alibi, and submits that this can hardly be called dealing with this defence at length. Nor did the Trial Court give any other reason for rejecting this defence save the small discrepancy referred to above. The Appellant submits that the Supreme Court were in effect holding that the Trial Court did not mean what they said when they indicated that the rejection of the story of the bicycle would "of course, be fatal to the alibi". A proper reading of the Judgment of the Trial Court shows, in the Appellant's submission, that the Trial Court clearly did mean what they said.

37. The Appellant humbly submits that this appeal should be allowed and his conviction quashed for the following (among other)

R E A S O N S

(1) BECAUSE the trial court admitted a volume of inadmissible evidence which was highly prejudicial to the Appellant.

(2) BECAUSE the Supreme Court erred in holding that part of the said evidence was admissible.

(3) BECAUSE the Supreme Court on appeal erred in holding that the Trial Court could not have been and was not influenced in convicting the Appellant by the evidence which the Supreme Court hold should not have been admitted.

(4) Because, if the inadmissible evidence had not been given, the court could not properly have convicted the appellant.

(5) Because the cross-examination of Derekoglou (P.W.3) by the Counsel for the Appellant was seriously interfered with and at one stage stopped by the Chief Justice.

(6) Because the Trial Court, in dealing with the defence of alibi, seriously misdirected itself and failed properly to consider the Appellant's defence in that it acted on the wrong assumptions (a) that the defence of alibi had not been disclosed to the police at the earliest possible moment, and (b) still more, that it should reject the defence of alibi if it did not accept the explanation given by Phidias as to the use of the bicycle by the murderer.

D. N. PRITT.

D. A. GRANT

No. 49 of 1955

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF CYPRUS

B E T W E E N :-

MICHALAKIS SAVVA KARAOLIDES ... ... Appellant

—— and ——

T H E Q U E E N Respondent

CASE FOR THE APPELLANT

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