IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS KATSARAS AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF LABOUR AND SOCIAL INSURANCE AND OTHERS,

Respondents.

(Cases Nos. 168/69, 201/69, 202/69, 205/69, 206/69, 210/69, 237/69).

Social Insurance Law, 1964 (Law No. 2 of 1964)—Section 13(3)(a) and paragraph 3 of the Sixth Schedule to the said Law—Proviso to said paragraph 3—Combined effect of said provisions—Construction—Conflict between said provisions—Ambiguity as to their combined effect—How to be resolved—Canons of construction of statutes, and especially of remedial ones—See further infra.

Social Insurance—Old age pensioners—"Existing contributors"—Proviso to said paragraph 3—Persons already insured under the old Law viz. *the Social Insurance Law, Cap. 354 (repealed by the aforesaid Law No. 2 of 1964)—Refused full old age pension on the ground that their contributions do not satisfy the conditions required for full old age pension by the relevant statutory provisions correctly construed and correctly applied—Section 13(3)(a) of the said Law No. 2 of 1964 and paragraph 3 of the Sixth Schedule thereto,* supra—*Proviso to that paragraph—Course adopted by the respondents in these cases amounts to a wrong application of said statutory provisions when correctly construed—*Sub judice *decisions refusing to applicants full old age pensions annulled as being contrary to law—Cf. Article 9 of the Constitution looked at for the proper construction and application of the aforesaid statutory provisions—Cf. The Social Insurance Law, 1972 (Law No. 106 of 1972), section*

12(3)—Such subsequent legislation (repealing the earlier Law No. 2 of 1964) resorted to as aid to the proper interpretation of the earlier statute, both being of the same nature—Cf. supra; *cf. further* infra.

*Statutes—Construction—Canons and principles relating to the construction of statutes—With special emphasis on remedial statutes as the one under consideration in these cases (*viz. *Law No. 2 of 1964,* supra*)—The canon of 'equitable construction'—Sometimes it is necessary to disregard wording of a statute which makes no sense—Unreasonable and unjust results should be as far as possible avoided—Statutes must be construed as a whole—The rule laid down by the Chief Barons in the Heydon's case, 76 E.R. 637—See further immediately herebelow.*

Construction of Statutes—Construction of section 13(3)(a) of the Social Insurance Law, 1964 (Law 2/64) and paragraph 3 of the Sixth Schedule thereto—Proviso to said paragraph—Conflict—Ambiguity as to the combined effect of those provisions—How it should be resolved—Later statutes regarding same matter can be legitimately resorted to as aids to the interpretation of earlier statutes—Section 12(3) of such subsequent statute viz. *the Social Insurance Law, 1972 (Law No. 106/72) resorted to in these cases for the above purpose* i.e. *for the interpretation of the earlier Law No. 2 of 1964,* supra, *now repealed by said Law No. 106/72—Whether in cases of conflict between the enacting part of a statute and a Schedule thereto the latter has to yield to the former—Ambiguity and conflict as to the combined effect of certain provisions of the same statute—In the present cases, in order to resolve such conflict and ambiguity regard must be had,* inter alia, *to the legislative social policy, to the provisions of Article 9 of the Constitution and to the general intention of the legislature to promote social insurance and beneficial system of social security and welfare—And the policy of the Law is not to secure the operation of such system as cheaply as possible—Cf. further* infra.

Construction of statutes—Proviso to paragraph 3 of the Sixth Schedule to the aforesaid Law No. 2 of 1964—Right of election under such proviso—In conflict with section

13(3)(a) of the said same Law—How in these cases such conflict (and the resulting ambiguity) should be resolved —In any event not in the way done by the respondents —There are two alternative courses—Either to treat the whole proviso as inoperative—Or to treat it as a provision restricting the generality of the application of said section 13(3)(a) in the sense stated by the learned President in his Judgment to be preferable.

Constitutional Law—Article 9—Contains provisions and directives tending to promote social security, social insurance, welfare of workmen, decent life etc.—In a proper case it must be resorted to for the purpose of resolving ambiguities in a statute of this beneficial or remedial nature such as the Social Insurance Law, 1964.

The applicants in these cases complain that they have been granted reduced old age pensions instead of full ones, the respondents having taken in the matter the allegedly erroneous view that the yearly average of the contributions paid by or credited to the applicants, properly computed in accordance with the relevant statute (*infra*), was less than fifty *i.e.* less than the minimum required by the statute for a person to qualify for full old age pension. The learned President of the Supreme Court annulled the decisions complained of, holding that the respondents have wrongly resolved an ambiguity resulting from the conflict between the text of the two provisions of the statute. The facts of these cases are briefly as follows :-

The applicants in these cases, as already stated, were refused full old age pension on the ground that the yearly average of their contributions, rightly computed, was less than the minimum required by the statute *i.e.* less than fifty (*infra*). They were all already insured under the provisions of the Social Insurance Law, Cap. 354, before the enactment in 1964 of the new statute *viz.* The Social Insurance Law, 1964 (Law No. 2 of 1964), repealing the former. In other words they were all "existing contributors" in the sense of the relevant to these cases proviso to paragraph 3 of the Sixth Schedule to the said Law 2/64. The text of this vital proviso is quoted hereafter.

Two relevant provisions of the said new Law No. 2 of 1964 (which came into force on October 5, 1964, "the appointed day", *infra*) are sub-section 3(a) of section 13 and

paragraph 3 of the Sixth Schedule to the Law. Sub-section (3)(a) of section 13 reads as follows:

"(3) For the purpose of determining whether a person is entitled to benefit of any kind—(a) Any contributions paid by or credited to an insured person under the repealed Law"—Cap. 354—"prior to the appointed day" (October 5, 1964), "shall be considered as having been paid after the appointed day;"—(the appointed day being the 5th of October 1964 when this Law 2/64 came into force as aforesaid).

Paragraph 3 of the Sixth Schedule, reads as follows:

"3. The contribution conditions for a marriage grant, widow's pension or old age pension are —

(a) that not less than one hundred and fifty-six contributions have been paid by the insured person; and

(b) that the yearly average of the contributions paid by or credited to him over the period —

(i) beginning on the first day of the contribution year which includes the appointed day or, if he reaches the age of sixteen years after the appointed day, on the first day of the contribution year in which he reaches that age; and

(ii) ending on the last day of the last complete contribution year before the beginning of the benefit year which includes the day on which the conditions are required to be satisfied, is not less than fifty.

Provided that, where an existing contributor elects to have all or part of the contributions paid by or credited to him under the repealed Law, Cap. 354, to be considered as having been paid by or credited to him after the appointed day, the yearly average of contributions paid by or credited to him shall be for the period beginning on the first day of the contribution year, prior to the appointed day, which includes the first contribution considered as having been paid after the appointed day and ending on the last complete contri-

bution year before the beginning of the benefit year which includes the day on which the conditions are required to be satisfied."

Article 9 of the Constitution reads as follows:

"Every person has the right to a decent existence and to social security. A law shall provide for the protection of the workers, assistance to the poor and for a system of social insurance."

Those are the two vital texts in these cases. On the other hand it is common ground that the applicants were "existing contributors" within the said proviso of paragraph 3 of the Sixth Schedule (*supra*) *viz.* persons already insured under the old Law Cap. 354 (repealed in 1964, *supra*), who paid, and were credited with, contributions thereunder before the "appointed day" (October 5, 1964).

That being so, let us see how the respondents were led to the *sub judice* decision to the effect that the applicants were entitled to a reduced old age pension, and not to a full one as claimed by them. The reasoning of the respondents may be briefly put in this way:

The contributions paid by or credited to the applicants under the old Law Cap. 354 before the appointed day (October 5, 1964) are deemed by operation of law to have been paid *after* the appointed day (see section 13(3)(a) *supra*); it follows that there can be no question of any right of the applicants to elect under the said proviso to paragraph 3 of the Sixth Schedule (*supra*) to "have all or part of the contributions paid by or credited to" them "under the repealed Law Cap. 354, to be considered as having been paid or credited to" them "after the appointed day", because, whether they wish it or not, the totality of such contributions by operation of law have to be considered as having been paid *after* the appointed day (*see* the aforesaid section 13(3)(a)); but then the applicants would qualify for a full old age pension as claimed on condition—and on condition only—that, *inter alia*, the yearly average of their contributions for the longer period prescribed by the said proviso—*i.e.* for the full period starting from the first actual contribution made before the appointed day until the last contribution thereafter—is not less than fifty; now, on that basis none of the applicants can claim a yearly average of not less than

fifty; and that is the reason why they are only entitled to a reduced old age pension, notwithstanding that they may have actually paid after the appointed day contributions exceeding the required hundred and fifty six (see paragraph 3(a) of the said Sixth Schedule, *supra*) and the yearly average of which for the corresponding shorter period (prescribed under the said same paragraph 3(b)(i) and (ii), *supra*) is not less than fifty. In other words, what the respondents did in these cases was to treat the right of election in the said proviso as non-existent and yet to apply the other provisions in the proviso, the respondents apparently not realising that such other provisions can only come into operation if a right of election existed and had been actually exercised.

The reasoning of the respondents as well as the result outlined hereabove were held by the learned President of the Supreme Court to be untenable and utterly inconsistent with the beneficial policy of the statute in question (Law 2/64). After a thorough review of the authorities regarding the principles and canons of construction of statutes, with special emphasis on remedial statutes as the one under consideration in these cases, the learned President placed the said Law 2/64 in the context of Article 9 of the Constitution, which Article contains directives tending to promote "decent existence", "social security", "social insurance", "protection of the workmen";—and applying the aforesaid principles looked at as aforesaid; and resorting to subsequent legislation on the same subject (The Social Insurance Law, 1972, (Law 106/72) repealing the aforesaid Law 2/64 applicable to these cases) for guidance as to the interpretation of the earlier statute *viz.* Law 2/64, the learned President :-

Held, I : *As to the result of the recourses* i.e. *whether or not the* sub judice *decisions should be annulled as being contrary to law :*

(1)(a) There, obviously, arises great difficulty in trying to apply together subsection (3)(a) of section 13 and paragraph 3 of the Sixth Schedule (*supra*); there appears to exist a conflict between them; and there does exist much ambiguity as to the combined effect of these two provisions. From the tenor, however, of the relevant provisions of Law 2/64 (*supra*)—as well as from the tenor of the subsequent Law 106/72—it is clear that it was

not the intention of the Legislature to place in any way in a disadvantageous position those who were already insured under the provisions of the earlier statute Cap. 354 (*supra*). The intention, in my view, has been to afford them an opportunity of enjoying the rights accrued to them through their having been within the system provided by Cap. 354.

(b) It is not possible to construe section 13(3)(a) in conjunction with any other provision of Law 2/64 in a manner which would force any person to accept a reduced old age pension if, by virtue of the proper construction and application of another provision in the same Law he can secure a full old age pension.

(c) It is against the background of the foregoing that one should approach the riddle created by section 13(3)(a) of the said Law 2/64 followed by the proviso to paragraph 3 of the Sixth Schedule to the same Law.

(2) In the light of the various principles of construction of statutes (see *infra*), the provision regarding the right of election of an "existing contributor", in the proviso to paragraph 3 of the Sixth Schedule (*supra*) might be treated as inoperative in view of being in conflict with an enacting part in the body of the statute, namely section 13(3)(a) *supra*, but in such a case there must also be treated as inoperative the remaining provisions of the proviso, because it is clear from the proviso itself that such provisions become operative only when the right of election in question is exercised; and thus we are left only with the other relevant provisions in the said paragraph 3, which are those in sub-paragraph (b) thereof (*supra*).

(3) On the other hand, the said proviso can be treated as a provision restricting the generality of the application of the said section 13(3)(a), in the sense that it enables an "existing contributor" to elect *not* to accept the benefit conferred on him by the section, if this would entail adverse con-

sequences for him by way of reduced pension in view of the increase, by operation of the provisions of the proviso, of the years taken into account and the resulting reduction of the yearly average of his contributions.

(4) Neither of the alternative courses set out in (2) and (3) hereabove was adopted by the respondents in reaching their decisions under consideration; what they did was to treat the right of election in the proviso as non-existent and yet to apply the other provisions in the proviso, which could only come into play if a right of election existed and had been exercised. But such a course was not a correct application of the relevant Law and it follows that the *sub judice* decisions have to be declared null and void as being contrary to law.

Per curiam : Having annulled the *sub judice* decisions as contrary to law it is not really necessary to proceed further and decide which out of my two aforementioned alternative views as to the proviso in question is the correct one; but I might state for the sake of guidance of all concerned that I am inclined in favour of the latter because in this way, I think, is better served the social insurance legislative policy which is expressly stated in section 12(3) of the recent Law *viz.* the Social Insurance Law, 1972 (Law No. 106/72) and which had, without doubt, been all along sought to be implemented by means of the provisions, under scrutiny in this Judgment, of the Social Insurance Law, 1964 (Law No. 2 of 1964), now repealed by the aforesaid Law 106/72.

Held, II : *As to the canons and principles of construction of statutes to be applied in these cases :*

(1) "Obscurity of expression and difficulty of construction are not sufficient grounds for rejecting provisions in Acts of Parliament, although in wills and deeds they might justify a declaration of voidness for uncertainty" (*Commissioners of Inland Revenue* v. *Joicey (No. 1)* [1913] 1 K.B. 445, at p. 452 per Farwell L.J.).

(2) "What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth" and "the true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo,* and to add force and life to the cure and remedy according to the true intent of the makers of the Act, *pro bono publico*". (See *Heydon's* case, 76 E.R. 637; the said rules applied in cases such as *Seaford Court Estates Ltd.* v. *Asher* [1949] 2 All E.R. 155, at p. 164, per Denning, L.J.).

(3) A statute should be construed as a whole and so far as possible there should be avoided any inconsistency or repugnancy "either within the section to be construed or as between that section and other parts of the statue". (See Halsbury's Laws of England, 3rd Edn. Vol. 36, p. 395, paragraph 594).

(4) Also, in construing a statute there should be avoided, as far as possible, an unreasonable or unjust result. (See *The Countess of Rothes* v. *Kirkcaldy Waterworks Commissioners* [1881 - 82] 7 A.C. 694, at p. 702 per Lord Blackburn; *Artemiou* v. *Procopiou* [1966] 1 Q.B. 878, at p. 888, per Danckwerts L.J.; *In re Maryon-Wilson's Will Trusts* [1968] Ch. 268, at p. 282, per Ungoed-Thomas, J.).

(5) It is, however, necessary sometimes to go so far as to disregard words in a statute which do not make sense. (See *Stone* v. *The Mayor etc.,* of *Yeovil,* 45 L.J.Q.B. 657, at p. 660 per Brett J.; *R.* v. *Ettridge* [1909] 2 K.B. 24, at p. 27 per Darling, J.).

(6) After judgment in these cases was reserved the said Law 2/64 was repealed and replaced by the Social Insurance Law, 1972 (Law No. 106/72) section 12(3) of which throws light on the true effect of Law 2/64; and of course later statutes regarding the same matter can be resorted to as

aids to interpretation of earlier statutes (see *Ormond Investment Company Ltd.* v. *Betts* [1928] A.C. 143, at p. 156, per Lord Buckmaster, quoting with approval *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 2 K.B. 403, the passage at p. 414 which is quoted *post* in the judgment).

(7) Another matter which has to be kept in mind is that the right of election, which has given rise to this litigation, is provided in a Schedule to, and not in the main part of, Law 2/64. In certain cases, especially those in which there were concerned Schedules prescribing forms, it was held that in case of conflict between the enacting part of a statute and a Schedule thereto the latter had to yield to the former (see *In re Baines,* 41 E.R. 400 at p. 406; *Dean and Others* v. *Green* [1883] 8 P.D. 79, p. 89).
(*Note : See, however, further on this topic post* in the *judgment and the authorities*).

(8) In dealing with these cases I have borne in mind that Law 2/64 (*supra*) has created a system of social insurance which was, obviously, intended to be a better one than that existing under the previous relevant legislation *i.e.* Cap. 354 (*supra*). It is obvious that Law 2/64 was enacted not only because of the provisions of Article 9 of the Constitution (*supra*), but, also, because the public interest is served when the citizens of a State enjoy social security; it, definitely, cannot be said that there could exist as conflicting interests, on the one hand, a private interest of a person benefiting from a system of social security and, on the other hand, a public interest which requires that the said system should be implemented in a restrictive manner in order to operate it as cheaply as possible.

Sub judice decisions annulled.

Cases referred to :

Commissioners of Inland Revenue v. *Joicey (No. 1)* [1913] 1 K.B. 445, at p. 452, per Farwell L.J.;

Heydon's case, 76 E.R. 637;

Seaford Court Estates Ltd. v. *Asher* [1949] 2 All E.R. 155, at p. 164, per Denning L.J.;

The Countess of Rothes v. *Kirkcaldy Waterworks Commissioners* [1881 - 82] 7 A.C. 694, at p. 702, per Lord Blackburn;

Norman v. *Norman* [1950] 1 All E.R. 1082, at p. 1084 per Pearce J.;

Artemiou v. *Procopiou* [1966] 1 Q.B. 878, at p. 888, per Danckwerts L.J.;

In Re Maryon-Wilson's Will Trusts [1968] Ch. 268, at p. 282 per Ungoed-Thomas J.;

Stone v. *The Mayor etc. of Yeovil,* 45 L.J. Q.B. 657, at p. 660, per Brett J.;

R. v. *Ettridge* [1909] 2 K.B. 24, at p. 27, per Darling, J.;

Ormond Investment Company Ltd. v. *Betts* [1928] A.C. 143, at p. 156, per Lord Buckmaster;

Cape Brandy Syndicate v. *Inland Revenue Commissioners* [1921] 2 K.B. 403, at p. 414, per Lord Sterndale, M.R.;

Kirkness (Inspector of Taxes) v. *John Hudson and Co. Ltd.* [1955] 2 W.L.R. 1135, at p. 1141;

Re Baines, 41 E.R. 400, at p. 406;

Dean and Others v. *Green* [1883] 8 P.D. 79, at p. 89, per Lord Penzance;

The Attorney-General v *Lamplough* [1877 - 78] 3 Ex. D. 214, at p. 229, per Brett, L.J.;

Attorney-General v. *Governor and Company of Chelsea Waterworks,* 94 E.R. 716;

Littlewoods Mail Order Stores Ltd. v. *Inland Revenue Commissioners* [1963] A.C. 135;

Lloyd v. *Brassey* [1969] 2 W.L.R. 310.

Recourses.

Recourses against the decisions of the respondents to the effect that applicants as old age pensioners they were

entitled to reduced, and not to full, old age pensions.

L. Papaphilippou, for the applicants in Cases Nos. 168/69 and 210/69.

D. Demetriades, for the applicants in Cases Nos. 210/69 and 237/69.

Chr. Demetriades, for the applicants in Case No. 202/69.

E. Emilianides, for the applicants in Cases Nos. 205/69 and 206/69.

L. Loucaides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment * was delivered by :-

TRIANTAFYLLIDES, P. : All these cases were heard together in view of their nature; they relate to the same matter and the same issues were raised in relation to them.

The applicants complain against decisions to the effect that as old age pensioners they are entitled, under the in force at the time legislation—the Social Insurance Law, 1964 (Law 2/64)—to reduced, and not to full, old age pensions.

The salient facts are as follows :-

The applicants, before the enactment of Law 2/64, were insured persons under the provisions of the Social Insurance Law, Cap. 354.

After the 5th October, 1964, when Law 2/64 came into force, repealing Cap. 354, the applicants came within the ambit of the relevant provisions of Law 2/64; and eventually, on becoming entitled thereto, they applied for payment to them of old age pensions. They received replies in the terms of a letter dated 27th February, 1968 (see the file of recourse 144/68, *exhibit* 1, which had been made, prior to his present recourse, by one of the

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* For final judgment on appeal see (1976) 6 J.S.C. 946 to be published in due course in (1976) 3 C.L.R.

applicants in case 202/69); by the said replies the applicants were informed that they would be granted reduced old age pensions, because the yearly average of their contributions was less than the yearly average of fifty which was required for full pensions.

The applicants filed recourses against the granting to them of reduced old age pensions and such recourses were withdrawn on an undertaking by the authorities concerned to reconsider the relevant claims of the applicants and to inform the applicants if it was found that they had a right of election as provided in the Sixth Schedule to Law 2/64 (which is quoted hereinafter together with other relevant provisions of Law 2/64); in such a case the authorities would make available to the applicants all material information so as to enable them to exercise such right of election. Later on each applicant was informed by a letter, in the terms of the letters dated 6th May, 1969 in the file of case 168/69, that the decision regarding payment to him of a reduced old age pension could not be altered.

As a result the present recourses were made.

Two relevant provisions of Law 2/64 are subsection 3(a) of section 13 and paragraph 3 of the Sixth Schedule to such Law. Subsection 3(a) of section 13 reads as follows :-

> "(3) For the purpose of determining whether a person is entitled to benefit of any kind —
>
> (a) Any contributions paid by or credited to an insured person under the repealed law—Cap. 354— prior to the appointed day, shall be considered as having been paid after the appointed day;" —

the appointed day being the 5th October, 1964, when Law 2/64 came into force.

Paragraph 3 of the Sixth Schedule read, at the material time, as follows :-

> "3. The contribution conditions for a marriage grant, widow's pension or old age pension are —
>
> (a) that not less than one hundred and fifty-six contributions have been paid by the insured person; and

(b) that the yearly average of the contributions paid by or credited to him over the period —

(i) beginning on the first day of the contribution year which includes the appointed day or, if he reaches the age of sixteen years after the appointed day, on the first day of the contribution year in which he reaches that age; and

(ii) ending on the last day of the last complete contribution year before the beginning of the benefit year which includes the day on which the conditions are required to be satisfied,

is not less than fifty.

Provided that, where an existing contributor elects to have all or part of the contributions paid by or credited to him under the repealed Law, Cap. 354, to be considered as having been paid by or credited to him after the appointed day, the yearly average of contributions paid by or credited to him shall be for the period beginning on the first day of the contribution year, prior to the appointed day, which includes the first contribution considered as having been paid after the appointed day and ending on the last complete contribution year before the beginning of the benefit year which includes the day on which the conditions are required to be satisfied."

As it appears from the Oppositions filed in these seven recourses—in which this judgment is being given—the view was taken by the authorities concerned that the applicants were not entitled to a right of election under the proviso to paragraph 3 of the Sixth Schedule.

So, each applicant was not entitled to elect whether or not the contributions paid by, or credited to, him under Cap. 354 were to be considered as having been paid by, or credited to, him after the "appointed day", *viz.* the 5th October, 1964; thus an applicant who had paid after such date one hundred and fifty-six contributions, so as to become entitled to an old age pension under sub-paragraph (a) of paragraph 3 without there

having to be taken into account also the contributions paid by, or credited to, him before the 5th October, 1964, was refused the right to elect that such contributions be not taken into account so that his yearly average of contributions, and consequently the amount of his pension, would not be reduced by operation of the proviso to paragraph 3 of the Sixth Schedule.

There, obviously, arises great difficulty in trying to apply together subsection (3)(a) of section 13 and paragraph 3 of the Sixth Schedule; there appears to exist a conflict between them; and there does exist much ambiguity as to the combined effect of these two provisions; as a result the respondents treated the right of election in the proviso to paragraph 3 of the Sixth Schedule as being a provision which should be ignored, so as to give effect to the intention of the Legislature as allegedly otherwise expressed in Law 2/64, by subsection (3)(a) of section 13 in particular.

. It is useful to refer, at this stage, to certain principles of construction of statutes :

In *Commissioners of Inland Revenue* v. *Joicey (No. 1)*, [1913] 1 K.B. 445, Farwell, L.J. stated (at p. 452) :-

> "Obscurity of expression and difficulty of construction are not sufficient grounds for rejecting provisions in Acts of Parliament, although in wills or deeds they might justify a declaration of voidness for uncertainty."

In the *Heydon's* case, 76 E.R. 637, it was resolved by the Chief Baron and other Barons of the Exchequer that in construing statutes there have to be taken, *inter alia,* into account "what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth" and "the true reason of the remedy: and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo,* and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*".

The above rules in *Heydon's* case were applied in cases such as *Seaford Court Estates Ltd.* v. *Asher* [1949] 2

All E.R. 155, (at p. 164) where Denning, L.J., said :-

"A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down (3 Co. Rep. 7b) by the resolution of the judges (Sir Roger Manwood, C.B., and the other barons of the Exchequer) in *Heydon's* case, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his note (2 Plowd. 465) to *Eyston* v. *Studd.* Put into homely metaphor it is this : A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases;"

and, also, in *Norman* v. *Norman* [1950] 1 All E.R. 1082, where (at p. 1084) Pearce, J., cited with approval the dictum of Denning, L.J., in the *Seaford Court Estates Ltd.* case.

A statute should be construed as a whole (see Halsbury's Laws of England, 3rd ed., vol. 36, p. 395, paragraph 594) and so far as possible there should be avoided any inconsistency or repugnancy "either within the section to be construed or as between that section and other parts of the statute".

Also, in construing a statute there should be avoided, as far as possible, an unreasonable or unjust result :

In *The Countess of Rothes* v. *Kirkcaldy Waterworks*

Commissioners [1881 - 82] 7 A.C. 694, Lord Blackburn stated (at p. 702) :-

> "I quite agree that no Court is entitled to depart from the intention of the legislature as appearing from the words of the Act, because it is thought unreasonable. But when two constructions are open, the Court may adopt the more reasonable of the two."

In *Artemiou* v. *Procopiou* [1966] 1 Q.B. 878, Danckwerts, L.J., stated (at p. 888) :-

> "An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available".

In *Re Maryon-Wilson's Will Trusts* [1968] Ch. 268, it was said (at p. 282) by Ungoed-Thomas, J. :-

> "The Court will not ascribe to Parliament an unjust intention, but the Court cannot override Parliament and its statutes. If the Court is to avoid a statutory result that flouts common sense and justice it must do so not by disregarding the statute or overriding it, but by interpreting it in accordance with the judicially presumed parliamentary concern for common sense and justice".

In Maxwell on Interpretation of Statutes, 12th ed., p. 236, there is a reference to what is called "equitable construction" of a statute, as follows :-

> "By 'equitabe construction', the judges have sometimes meant nothing more than construction in accordance with the intention of the legislature. 'Within the equity', said Byles J., 'means the same thing as within the mischief of the statute'. In this sense, equitable construction is unobjectionable and is still common : In the application of the mischief rule, for instance; in a 'beneficial' or broadly liberal approach to problems of interpretation; and in the practice of construing a statute in such a way as to prevent evasion of its terms".

It is, however, necessary sometimes to go so far as to disregard words in a statute which do not make sense :-

In *Stone* v. *The Mayor, Aldermen and Burgesses of Yeovil*, 45 L.J. Q.B. 657, Brett, J., (at p. 660) said :-

> "As I have always understood, it is a canon of construction that you are to give effect to every word in an Act of Parliament or in an agreement, but if there be a word or phrase to which no effect can be given, which is of itself insensible, then that word must be eliminated".

In *R.* v. *Ettridge* [1909] 2 K.B. 24, it was said by Darling, J., (at p. 27) :-

> "Where no meaning can be given to certain words of a statute without rejecting some of those used in it, or where the statute would become a nullity were all the words retained, the Court has power to read a section as though the words which make it meaningless or nullify it were not there"

and (at p. 28) :-

> "We are of opinion that we may in reading this statute reject words, transpose them, or even imply words, if this be necessary to give effect to the intention and meaning of the Legislature; and this is to be ascertained from a careful consideration of the entire statute".

After judgment in these cases was reserved, Law 2/64 was repealed and replaced by the Social Insurance Law, 1972 (Law 106/72). It is very useful to note that sub-section (3) of section 12 provides that in relation to, *inter alia,* old age pensions contributions paid or credited prior to the 5th October, 1964—(the date of the coming into operation of Law 2/64)—are not taken into account unless the person claiming the pension becomes entitled, by the taking of such contributions into account, to a pension or to an increased pension; and paragraph 3 of the Fifth Schedule to the new Law (which corresponds to the Sixth Schedule to Law 2/64) has a proviso which corresponds as regards its part (i) to the proviso to paragraph 3 of the said Sixth Schedule, but it provides for no right of election as previously, because it refers only to those contributions which are taken into account for the benefit of a claimant under the provisions of section 12(3).

Thus, there has been made abundantly clear the intention of the Legislature that any contributions previous to the date of the coming into operation of Law 2/64—the 5th October, 1964—are not to prejudice, by their being taken into account, the entitlement to a full old age pension.

Later statutes regarding the same matter can be resorted to as aids to interpretation of earlier statutes :

In *Ormond Investment Company, Limited* v. *Betts* [1928] A.C. 143, Lord Buckmaster quoted (at p. 156), with approval the following passage from the judgment of Lord Sterndale in *Cape Brandy Syndicate* v. *Inland Revenue Commissioners* [1921] 2 K.B. 403, (at p. 414) :-

> "I think it is clearly established in *Attorney-General* v. *Clarkson* [1900] 1 Q.B. 156, that subsequent legislation on the same subject may be looked to in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation, if it proceed upon an erroneous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier".

The above passage was quoted, also, in *Kirkness (Inspector of Taxes)* v. *John Hudson & Co. Ltd.* [1955] 2 W.L.R. 1135, (at p. 1141).

The respondent authorities had not, at the time of their *sub judice* decisions, the benefit of receiving useful guidance from the provisions of the then not yet enacted Law 106/72. So this Court is now in a better position, than the respondents were, to construe the relevant provisions of Law 2/64, because the already referred to provisions of Law 106/72 make the intention of the Legislature abundantly clear.

Another matter which has to be kept in mind is that the right of election, which has given rise to this litigation is provided in a Schedule to, and not in the main part of, Law 2/64.

In certain cases, especially those in which there were

concerned Schedules prescribing forms, it was held that in case of conflict between the enacting part of a statute and a schedule thereto the latter had to yield to the former :

In *Re Baines*, 41 E.R. 400, it was stated (at p. 406) by Lord Cottenham :-

> "Another objection was that the significavit was in the name of Sir Herbert Jenner, the Dean of the Arches, and not in the name of the Archbishop of Canterbury. The Act is imperative upon the judge to make the certificate; but it was said that he ought to make it in the name of the Archbishop, not from any expression in the Act itself (all such expressions tending to the conclusion that the whole duty of sending the significavit was reposed in the judge), but because the form in the schedule is adapted to a significavit in the name of the Archbishop. If the enacting part and the schedule cannot be made to correspond, the latter must yield to the former; and particularly in this case, in which the form given in the schedule cannot be made to apply to all or nearly all the cases which must arise; for a Bishop could not send a significavit in that form."

In *Dean and Others* v. *Green* [1883] 8 P.D. 79, Lord Penzance stated (at p. 89) :-

> "Such being the effect of the enacting portions of the statute, it would be quite contrary to the recognised principles upon which courts of law construe Acts of Parliament, to enlarge the conditions of the enactment, and thereby restrain its operation, by any reference to the words of a mere form, given for convenience' sake in a schedule, and still more so, when that restricted operation is not favourable to the liberty of the subject, but the reverse."

It must be remembered, however, that a schedule is as much a part of a statute as any other part of it and it may, in a proper case, be used in construing sections in the body of the statute; and, similarly, provisions in a schedule may be construed in the light of what is enacted in the sections (see Maxwell on Interpretation of Statutes, 12th ed., p. 12).

In Halsbury's Laws of England, 3rd ed., vol. 36, p. 374, paragraph 551, it is stated that —

> "To simplify the presentation of statutes, it is the practice for their subject matter to be divided, where appropriate, between sections and schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement, and a schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced."

In *The Attorney-General* v. *Lamplough* [1877 - 78] 3 Ex. D. 214, the following was stated (at p. 229) by Brett, L.J.:-

> "With respect to calling it a schedule, a schedule in an Act of Parliament is a mere question of drafting—a mere question of words. The schedule is as much a part of the statute, and is as much an enactment as any other part."

In *Littlewoods Mail Order Stores Ltd.* v. *Inland Revenue Commissioners* [1963] A.C. 135, provisions of sections of a statute were relied on for the purpose of construing the provisions of a schedule to the same statute, and in *Lloyd* v. *Brassey* [1969] 2 W.L.R. 310, provisions of a schedule to a statute were relied on for the purpose of construing the provisions of a related statutory provision.

There were cases in which the Courts went so far as to hold that the schedule should override the purview of the statute, as in *The Attorney-General* v. *Governor and Company of Chelsea Waterworks*, 94 E.R. 716, the report of which reads as follows:-

> "Per Reynolds Chief Baron, Comyns and Thomson Barons: The question being upon the construction of the late Land-Tax Act; it was held, that where the proviso of an Act of Parliament is directly repugnant to the purview; the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers: And it was compared at the Bar to a will, in which the latter part, if inconsistent with the former, shall supersede and revoke it."

Before proceeding to deal with the difficulty arising due to the apparent conflict between the provisions of section 13(3)(a) and paragraph 3 of the Sixth Schedule to Law 2/64, it is useful to refer, too, to the following relevant provisions of the same Law :

Section 13(1)(g) provides about the benefit of old age pension and section 13(2) deals with the computation of, *inter alia,* old age pensions.

Paragraph (b) of subsection (2) of section 13 reads as follows :-

> "(b) the contribution conditions for the several kinds of benefit shall be as set out in the Sixth Schedule to this Law."

Subsection (4) of section 13 reads as follows :-

> "(4) Where a person would be entitled to benefit of any kind but for the fact that the relevant contribution conditions are not satisfied as respects the number of contributions paid or credited in the last contribution year, the yearly average of contributions paid or credited or in the case of a maternity allowance the number of contributions paid or credited in respect of the fifty-two weeks immediately preceding the period from which the allowance is payable, that person shall nevertheless be entitled, if the said number or yearly average is not less than twenty, to benefit of that kind at the reduced rate or of the reduced amount specified for benefit of that kind in the column of the Seventh Schedule to this Law which is appropriate to the said number or yearly average."

Section 24(1) of the law, as amended by Law 3/66, reads as follows :-

> "Subject to the provisions of this Law, a person shall be entitled to an old age pension if —
>
> (a) he is over pensionable age; and
>
> (b) he satisfies the relevant contribution conditions; or, if he does not satisfy those conditions on that day, as from the first day thereafter on which he satisfies those conditions :

Provided that where a person who was an existing contributor under the repealed Social Insurance Law, was over the age of fifty-five on the 7th January, 1957, and the number of contributions paid by him for contribution weeks which begin before the day on which he reaches the age of sixty-five, excluding contributions paid by him as a voluntary contributor under the repealed Law is less than fifty, that person shall be deemed for the purposes of this section to reach pensionable age, if he is then alive, on the 7th January, 1967 :

Provided further that any contributions paid by or in respect of an employed person under the repealed Social Insurance Law for any period after that person reached the age of sixty-five shall be considered for the purposes of this section as having been paid before he reached the age of sixty-five."

It may be noted, also, that by the material time—when the *sub judice* decisions were taken—section 13 of Law 2/64 had been amended by Law 28/68; and the same Law added a new paragraph—paragraph 4—to the Sixth Schedule of Law 2/64.

These amendments have not been relied upon as, in any way, affecting the outcome of these cases.

In dealing with these cases I have borne in mind that Law 2/64 has created a system of social insurance which was, obviously, intended to be a better one than that existing under the previous relevant legislation, Cap. 354. It is obvious that Law 2/64 was enacted not only because of the provisions of Article 9 of the Constitution—to the effect that every person has the right to a decent existence and to social security, and that a Law shall provide for the protection of the workers, assistance to the poor and for a system of social insurance—but, also, because the public interest is served when the citizens of a State enjoy social security; it, definitely, cannot be said that there could exist as conflicting interests, on the one hand, a private interest of a person benefiting from a system of social security and, on the other hand, a public interest which requires to implement the said system in a restrictive manner in order to operate it as cheaply as possible; in my view there can be no doubt that the

personal interest of a beneficiary under such a system coincides fully with the public interest, in the sense that it serves the public interest to implement the system so as to benefit those within its ambit as much as possible, by applying its provisions in a manner enabling the achievement of their social welfare object as fully as is permitted by the terms in which they have been framed.

From the whole tenor of the relevant provisions of Law 2/64—as well as from the whole tenor of relevant provisions of the subsequent Law 106/72, to which I have already referred—it is clear that it was not the intention of the Legislature to place, in any way, in a disadvantageous position those who were already insured under the provisions of Cap. 354. The intention has been to afford to them an opportunity of enjoying the rights accrued to them through their having been within the system provided by Cap. 354; and this should be borne in mind in construing section 13(3)(a) of Law 2/64 which, in effect, provides, in this connection, that any contributions paid by or credited to an insured person under Cap. 354, prior to the date of the coming into operation of Law 2/64, on the 5th October, 1964, shall be considered as having been paid after the said date.

Section 13(4) of Law 2/64, which follows immediately after section 13(3), is a provision intended to enable various categories of insured persons to receive reduced benefits of social security on occasions when they would not otherwise be entitled to any benefit at all. The obviously very generous provisions of section 13(4) implement further the beneficial policy of Law 2/64, as expressed by section 13(3)(a); and, therefore, it is not possible to construe section 13(3)(a) or section 13(4), in conjunction with any other provision of Law 2/64, in a manner which would force any person to accept a reduced old age pension if, by virtue of the proper construction and application of another provision in the same Law, he can secure a full old age pension.

It is against the background of the foregoing that there should be examined the riddle that, *though* the already quoted proviso to paragraph 3 of the Sixth Schedule to Law 2/64 gives a right to an existing contributor—that is (see section 2 of Law 2/64) a person who had been

contributing under Cap. 354—to elect to have the contributions under Cap. 354 treated as having been paid by, or credited to, him after the coming into force of Law 2/64 (provided that in such a case the method of calculating the yearly average of his contributions is different than the one laid down in sub-paragraph (b) of the said paragraph 3), *nevertheless* what such existing contributor can bring about by exercising the said right of election, under the proviso in question, is something which is ordained, by section 13(3)(a), to happen in any case by operation of law, without any right of election in this respect by the existing contributor concerned.

In the light of various principles of construction of statutes, which have been referred to in this judgment, the provision regarding the right of election of an existing contributor, in the proviso to paragraph 3 of the Sixth Schedule, might be treated as inoperative in view of being in conflict with an enacting part in the body of the statute, namely section 13(3)(a), but in such a case there must also be treated as inoperative the remaining provisions of the proviso, because it is clear from the proviso that such provisions become operative only when the right of election in question is exercised; and thus we are left only with the other relevant provisions in the said paragraph 3, which are those in sub-paragraph (b) thereof.

On the other hand, the said proviso can be treated as a provision restricting the generality of the application of section 13(4)(a), not in the sense that the said section comes into operation only when an existing contributor elects that this should be so, but in the sense that it enables such a contributor to elect not to accept the benefit conferred on him by section 13(3)(a), if this would entail adverse consequences for him by way of a reduced pension, in view of the, by operation of the provisions of the proviso, increase of the years taken into account and resulting reduction of his yearly average of contributions.

Neither of the above alternative courses was adopted by the respondent authorities in reaching the in these recourses *sub judice* decisions; what they did was to treat the right of election in the proviso as non-existent and

yet to apply the other provisions in the proviso, which could only come into operation if a right of election existed and had been exercised; as it is to be derived from the foregoing such a course was not a correct application of the relevant law and it follows that the *sub judice* decisions have to be declared to be null and void and of no effect whatsoever as being contrary to law.

Having annulled the *sub judice* decisions as contrary to law it is not really necessary to proceed further and decide, in these proceedings, which out of my two aforementioned alternative views as to the proviso in question is the correct one; but I might state for the sake of guidance of all concerned that I am inclined in favour of the latter because I think that in this way is better served the social insurance legislative policy which is expressly stated in section 12(3) of Law 106/72 and which had, without doubt, been all along sought to be implemented by means of the provisions, under scrutiny in this judgment, of Law 2/64.

Regarding costs, I have decided to award to each counsel who has appeared in these proceedings (not in respect of each individual case but in respect of his services as a whole in relation to such proceedings) the amount of £40 towards his costs.

Sub judice decisions annulled.
Order for costs as above