1978 December 11

[HADJIANASTASSIOU, J.]

GEORGE PAVLIDES AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(*Case Nos.* 218/77, 230/77 *and* 231/77).

Statutes—Temporary Act—Unless it contains some special provision to the contrary, no proceedings can be taken upon it and it ceases to have any effect after it has expired—Special Contribution (Temporary Provisions) Law, 1976 (*Law* 15 *of* 1976)*—No provision therein to the contrary—Once it expired on March* 31, 1977 *it could not have been prolonged or extended by Law* 22/77, *enacted on May* 20, 1977, *but only by a re-enactment of the whole Act—Once there was no valid law in force imposition of special contribution on applicants, under Law* 15/76 (supra) *made in excess or in abuse of powers—Annulled—Section* 10(2)(*a*) *of the Interpretation Law, Cap.* 1 *not applicable.*

Special Contribution (Temporary Provisions) Law, 1976 (*Law* 15 *of* 1976)*—A temporary Act—Once it expired it could not have been prolonged or extended by Law* 22/77 *but only by a re-enactment of the whole Act—Imposition of special contribution thereunder made in excess or in abuse of powers—Annulled—Section* 10(2)(*a*) *of the Interpretation Law, Cap.* 1 *not applicable.*

Administrative Law—Abuse or excess of powers—Imposition of special contribution under a law (The Special Contribution (Temporary Provisions) Law, 1976 (*Law* 15 *of* 1976)) *which had expired—Such imposition made in abuse or in excess of powers once there was no valid law in force—Annulled.*

The applicants in this recourse challenged the validity of the decision of the respondents, which was taken on the 10th June,

1977, to impose a special contribution on their income in respect of the quarter January 1, 1977—March 31, 1977. The special contribution in question was levied under sections 3 and 6 of the Special Contribution (Temporary Provisions) Law, 1976 (Law No. 15 of 1976 as amended by Law No. 22 of 1977).

Law 15/76 (*supra*) came into force on the 1st April, 1976 and was due to expire on the 31st March, 1977 (see section 12). On May 20, 1977, and after the expiring of Law 15/76, Law 22/77 was enacted and by virtue of section 6 thereof Law 15/76 was extended up to the 31st March, 1978 and was given retrospective effect as from 1st January, 1977.

Counsel for the applicant mainly contended that once there was no basic law in force—having expired on the 31st March, 1977—the dead law could not be extended on the 20th May, 1977, without a new re-enactment of the law itself; and that once the law had expired the imposition of a tax without the authority of the law, was contrary to Article 24.2 of the Constitution, and the purported extension could not be made validly.

Held, (1) that as a general rule, unless a temporary act contains some special provision to the contrary, no proceedings can be taken upon it and it ceases to have any further effect after it has expired; and that, therefore, once the House of Representatives has failed to insert some special provisions in the law to the contrary when that temporary Act had expired, no proceedings could be taken upon it and it ceased to have any further effect (section 10(2)(a) of the Interpretation Law, Cap. 1 not applicable).

(2) That once Law 15/76 expired, on March 31, 1977 and ceased to have any effect, it could not have been prolonged or extended by Law 22/77, which was enacted on May 20, 1977, by a mere amendment but only by a re-enactment of the whole act; and that as the law was dead, having expired, the assessments were wrongly made by the respondent Commissioner, and the decision to impose special contribution on the applicants was made in excess or in abuse of powers vested in him and is hereby declared *null* and *void* and of no effect whatsoever, once there was no valid law in force (*Mayor of Famagusta* v. *Petrides*, 4 R.S.C.C. 71 and *Nicosia Techalemit Co. & Another* v. *The Municipality of Nicosia* (1971) 3 C.L.R. 357 *distinguished*).

Sub judice decision annulled.

Cases referred to:

Mayor of Famagusta v. *Petrides*, 4 R.S.C.C. 71;

Nicosia Techalemit Co. and Another v. *The Municipality of Nicosia* (1971) 3 C.L.R. 357;

The India [1864] 33 L. J. Adm. 193;

Hebbert v. *Purchas* [1870] L.R. 3 P.C. 605;

Bowles v. Attorney-General [1912] 1 Ch. D. 123;

Bowles v. *Bank of England* [1913] 1 Ch. 57 at p. 86;

Spencer v. *Hooton* [1920] 37 T.L.R. 280;

Steavenson v. *Oliver* [1841] M. & W. 234;

R. v. *Wicks*, 62 T.L.R. 674;

Wicks v. *Director of Public Prosecutions* [1947] A.C. 362 at pp. 365-367;

R. v. *Ellis, ex parte Amalgamated Engineering Union* [1921] 125 L.T. 397.

Recourses.

Recourses against the decision of the respondent Commissioner of Income Tax to levy special contribution on applicants' income under the provisions of s.7 of the Special Contribution (Temporary Provisions) Law, 1976 (Law 15 of 1976 as amended by Law 22/77).

A. Triantafyllides, for the applicants.

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

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these three consolidated cases, the applicants, George Pavlides, Spyros Pavlides and Athinoulla Pavlidou, seek to challenge the decision of the Commissioner of Income Tax in levying on them special contribution on their income under the provisions of s. 7 of Law 15/76 (as amended), and claim that such contribution of the amounts of £262.000 mils for the quarter of January 1, 1977 - March 31, 1977; £28.500 mils; and £6.000 for the same period are *null* and *void* and of no effect whatsoever.

The facts are simple: On June 10, 1977, the Commissioner levied on the applicants the amounts referred to earlier above, as a special contribution for the quarter ended March 31, 1977 because, they had failed or refused to submit a return of income in accordance with Form IR.265 for the said quarter ended,

and asked for by the Commissioner in accordance with the provisions laid down under Regulation 2 of the Special Contribution (Temporary Provisions) Regulations 1975: see *exhibit* 1.

On June 18, 1977, the applicants, through their advocates, objected to the imposition of the special contribution levied on them, and having stated the grounds of such objection, raised, *inter alia*, that Law 15/76 (as amended by Law 22/77) was unconstitutional, because it imposed a personal special contribution on all incomes of a class of persons only and excluded another class whose income was derived from their remuneration: see *exhibit* 2. In spite of the fact that the applicants had claimed also that they were not deriving the income alleged by the Commissioner, the latter determined the said objection against them on July 21, 1977, and informed counsel that he was not prepared to accept his allegations that the imposition of special contribution under the provisions of Law 15/76 (as amended) was unconstitutional: see *exhibit* 3.

I think it is necessary to state, in order to complete the picture, that in view of the Turkish invasion on July 20, 1974, the Republic of Cyprus was forced to take socio-economic measures in order to alleviate the suffering of thousands of refugees who were forced to leave their homes. The legislative power continued to be exercised by the House of Representatives, and a number of laws were enacted dealing with the various questions created thereby and providing for adequate remedies in the particular circumstances. All such laws were of a temporary nature and all expired on December 31, 1975 unless before such expiration the period of their operation was extended by an ad hoc law. One of such laws was the Special Contribution (Temporary Provisions) Law 1974, No. 55/74, whereby in order to meet the financial repercussions of the abnormal situation created by the Turkish invasion, an extraordinary contribution of 20% on any income of any person was imposed in accordance with the specified rates in the schedule to the law, other than income derived from emoluments for services or in respect of any office.

Then, this was amended by Law 43/75, and its operation was extended by Law 67/75 up to 31st March, 1976, when it expired. Subsequently, the Special Contribution (Temporary Provisions Law) of 1976, (Law 15/76) was enacted for the purpose of

amending and extending the provisions of the previous legislation which as I said earlier, had in the meantime expired. This Law 15/76, in accordance with s.12, came into force as from 1st April, 1976 and was to expire on the 31st March, 1977.

As I have said earlier, this law had expired on 31st March, 1977. On the 20th May, 1977, the House of Representatives enacted another law, 22/77 intending to extend and amend the already expired law, but by giving the amending law retrospective effect as from 1st January, 1977. By virtue of s.6 of the said law, the phrase "31st March, 1977" appearing in Law 15/76, was amended and substituted with the phrase "31st March 1978". It is to be seen that the effect of that section 6, by virtue of s. 8 of the latter law, was to give it retrospective effect as from 1st January, 1977.

I think it is necessary to state that I have had the occasion to look into the bill; it was introduced into the House of Representatives before the expiration of Law 15/76. In fact, the Bill in question was published in the Official Gazette of January 21, 1977, Official Gazette No 1326. It would, therefore, appear that the House of Representatives had ample time to re-enact a new law before the expiration of the said statute, but for reasons not appearing before me, the said law was enacted after the expiration of the earlier law.

The applicants, feeling aggrieved because of the decision of the Commissioner, filed the present recourses on August 10 and 18, 1977, and the said applications were based on the following identical grounds of law –

1. Law 15/76 as amended by Law 22/77 imposes special contribution on all incomes excluding incomes from "remuneration".

2. The word "remuneration" as defined by s.2 of Law 22/77 includes, salary and allowances from every source and from every office, post or salaried services.

3. Consequently, there is a discrimination between those persons who derive their income from sources other than "remuneration", *i e.* salaries and allowances and persons who derive their income from salaries and allowances.

4. The above discrimination is entirely arbitrary and unreasonable. It has no rational or any other connection with the means of the tax payer because a person's income by way of salary may be far more than another person's income from sources other than salary.

5. Persons who are excluded from the provisions of Law 15/76 as amended by Law 22/77 are not taxed by any other law and consequently they pay no special contribution whatever because Law 14/76 has been repealed by Law 5/77.

6. Due to all the above the decision complained of contravenes Article 28(1) and (2) of the Constitution and 24(1) of the Constitution.

7. Law 22/77 was enacted on 20.5.77 and purports to amend law 15/76 which by virtue of s.12 of Law 15/76 expired on the 31st March, 1977. It is respectfully submitted that an amending law cannot amend or refer to a law which has already expired and is not in force at the time of the purported amendment.

8. Law 22/77 enacted on 20.5.77 takes effect from 1st January, 1977 (section 8) and it thus amounts to retrospective taxation contrary to Article 24(3) of the Constitution.

9. In any case applicant did not have the taxable income alleged by respondents and consequently the special contribution imposed on applicant should be reduced.

On October 1 and 4, 1977, counsel appearing for the respondents gave notice opposing the said applications, and the identical opposition for the three applications was based on the following grounds of law, that "the acts and/or decisions complained of were properly and lawfully taken after all relevant facts and circumstances were taken into consideration, viz:-

(a) The 'Special Contribution' for the quarter ended 31st March, 1977 was levied under section 3 and 6 of the Special Contribution (Temporary Provisions) Law No. 15 of 1976 as amended by Law No. 22 of 1977 and section 13(3) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of of 1969.

(b) The objection to the above 'Special Contribution' levied was determined under section 20(5) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969.

(c) Law 22 of 1977 does not amount to the imposition of tax retrospectively contrary to Article 24(3) of the Constitution because it is not retrospective taxation to tax in any year a person on the basis of his income in that particular year, by means of legislation enacted during that same year."

The main question raised in these applications is the validity of special contribution on the applicants under the provisions of Law 15/76. This law, as I have already said, is a temporary law and imposed special contribution on those persons who did not derive their income from remuneration. And under section 12 of the said law, it is enacted solely for one year. It was enacted on March 30, 1976 and clearly it says that it was expiring in a year's time on March 31, 1977. Furthermore, in its title, the said law makes it quite clear that it contained temporary provisions for the imposition of special contribution to meet the consequences of the Turkish invasion etc.

During the hearing of these cases, counsel appearing for the applicants, in support of his legal grounds, made these three propositions:

(1) that once there was no basic law in force—having expired on the 31st March, 1977, that dead law could not be extended on the 20th May, 1977, without a new re-enactment of the law itself; and that once the law had expired, the imposition of a tax without the authority of the law, was contrary to Article 24(2) of the Constitution, and the purported extension could not be made validly;

(2) that even if there was such a law, that law offended against the principle of equality safeguarded by Article 28(1) and (4) of the Constitution, which is not laying down that only a class of citizens is bound to contribute, but on the contrary, the Constitution clearly says "of every person". This tax, counsel went on to argue with force, is a tax over and above the normal income tax which

everybody pays; and that such treatment leads definitely to discriminatory treatment which is entirely arbitrary and unreasonable. It would be remembered that the test of the means based on Article 24(1) with the present treatment of the law disappears, because such means become irrelevant and the source of the income appears as the only criterion. In effect, if one gets a salary, whatever the amount, one pays nothing, but if one earns an income from his business or through his work, whatever the amount he earns, he is bound to pay in accordance with the scales. In effect, this is contrary to the decision of the Supreme Court that a bachelor should not pay more than a married person, and this Court should be slow to sanction the differentiation of the income as far as the source is concerned; and because the general burden is lifted only partly from one class of persons and imposed on the other class; and

(3) that the imposition of special contribution as from the first three months period commencing on the 1st January, 1977, when already a 3 months' period had elapsed, is contrary to Article 24(3) regarding the imposition of tax retrospectively. Finally, counsel argued that once the law was already dead, and because of the constitutional grounds, the Court, counsel submitted, should declare the administrative acts as *null* and *void.*

On the contrary, counsel on behalf of the respondents, made this proposition: that once a law had expired on the 31st March, and on the 20th May, the House of Representatives enacted another Law, 22/77, by which it extended the already expired law, and at the same time gave the amending law retrospective effect as from 1st January, 1977; then, counsel argued, the law in question remained valid because an amending law can amend or refer to an already expired law. That this is so, finds further support from the fact that there is no authority supporting the proposition that an expired law cannot be extended by an amending law; and especially since the amending law has been given retrospective effect to cover the period of the two months that had already elapsed.

In further support of his submission, counsel, although he conceded that this case was not on the point, he relied on *The*

Mayor of Famagusta and Nearchos Petrides, 4 R.S.C.C. 71; and cited the case of *Nicosia Techalemit Co. and Another* v. *The Municipality of Nicosia* (1971) 3 C.L.R. 357. The former was a case of re-enactment in a new context, of the Municipal Corporations Law, Cap. 240, by virtue of the provisions of the Municipalities Laws (Continuation) Law No. 10/61.

With this in mind, I think it is necessary to state that regarding the duration of statutes in general, it is accepted that every statute for which no time is limited, is called a perpetual Act, and continues in force until its repeal. "No doubt exists", said Dr. Lushington in the *India*, [1864] 33 L.J. Adm., 193, "that a British Act of Parliament does not become inoperative by mere non-user, however long the time may have been since it was known to have been actually in force, but the fact of non-user may be extremely important when the question is whether there has been a repeal by implication."

In *Hebbert* v. *Purchas*, [1870] L.R. 3 P.C. 605, the Judicial Committee observed at p. 650 that "It is quite true that neither contrary practice nor disuse can repeal the positive enactment of a statute."

Turning now to the Temporary Acts, one may observe that if an Act contains a proviso that it is to continue in force until for a certain specified time (as in our case) it is called a Temporary Act.

In *Bowles* v. *Attorney-General*, [1912] 1 Ch. D. 123, Parker, J. dealing with the question of temporary Acts said at p. 132:-

> " It appears certain that the income tax was originally imposed as, and was intended to be, a temporary tax only, and the Acts regulating its collection have always been so drawn as to expire automatically (except as to arrears) at the end of the period of such imposition. If reimposed at the end of this period, the Acts were revived and continued by the Act reimposing the tax, but again only for the period of reimposition. The tax is still, as a matter of form, imposed as a temporary tax only, the period of imposition being for one year."

Cf. *Bowles* v. *Bank of England*, [1913] 1 Ch. 57, 86.

In *Spencer* v. *Hooton*, [1920] 37 T.L.R. 280, Roche J., deli-

vered the considered judgment on the question of the jurisdiction of the munitions tribunals. When the appeals came before him on November 4, 1920, Mr. Slesser took the preliminary objection that the Court had no jurisdiction to deal with the appeals, because the Wages (Temporary Regulations) Act, 1918, which was passed on November 21, 1918, had expired on September 30, 1920, and the statutory jurisdiction of the Court to deal with the question of wages expired at the same time.

His Lordship, having upheld this preliminary objection, said at p. 281:-

> " The expiration of the statutes now under consideration is, if and so far as they expire, independent of the termination of the 'present war'. The matter, therefore, falls to be determined on the construction of the particular statute or statutes from which this Court derives its jurisdiction in matters of temporary wage regulation.
>
> It was suggested for the respondents that there was at any rate a presumption in their favour, and statements of text-book writers and of Judges were cited in favour of this view. See Bacon's Abridgement, Tit. Statutes D., Dwarris on Statutes, 2nd Edition, page 527, Maxwell on Statutes, 6th Edition, page 728, *Reg.* v. *Inhabitants of Mawgan* (8 Ad. and E. 496), *Surtees* v. *Ellison* (9 B. and Cr., 750). But some of these authorities were mainly directed to the consideration of the effect of a repeal of a statute, and none of them in my judgment establish the existence of a presumption in the case of expiring statutes in general.
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> On the other side certain dicta in *Steavenson* v. *Oliver*, [1841] (8 M. and W., 234) were strongly relied upon in opposition to the objection, namely, the observations of Baron Alderson at page 243, but I take the true view to be expressed by *Baron Parke in Steavenson* v. *Oliver* (*supra*) where he says that 'if an Act expires the duration of its provisions is a matter of construction'. See also Craies on Statute Law, page 339."

Then, having examined the three relevant statutes, without regard to any consideration or presumption or onus, His Lordship continued at p. 282:-

> " The third Act, the Industrial Courts Act, 1919, is, how-

ever, the crucial one. The jurisdiction of the Court in matters of wage regulation now depends on that Act, and the present appeals relate to alleged offences under that Act. Part III., section 6(1), enacts:- 'The provisions of the Wages (Temporary Regulation) Act, 1918, which are specified in the schedule to this Act, shall, subject to the modifications specified in the second column of that schedule, continue in operation until the thirtieth day of September, nineteen hundred and twenty.' (His Lordship read the Schedule.)

Section 5 of the Act of 1918 deals with legal proceedings. The joint effect of section 6 (1) of the Industrial Courts Act, 1919, and the schedule to that Act on section 5 of the Act of 1918 is, as it seems to me, to provide that section 5 of the first Act is to continue in force until September 30, 1920. Section 5 as re-enacted or continued would therefore read as follows:- 'Proceedings for offences under this Act shall until September 30th, 1920, be taken'. & c. Whatever doubts I may have, and I have many, whether this result was intended by the Legislature, I feel myself unable to give any other meaning to the language used than a meaning which involves the result that the jurisdiction of the tribunals and of this Appeal Court was continued until September 30, 1920, and no longer. Holding this view, it is clear that I must uphold the objection and decline to proceed with the hearing of the appeals."

The difference, between the effect of the expiration of a temporary Act and the repeal of a perpetual Act, was pointed out by Parke, B., in *Steavenson* v. *Oliver*, [1841] 8 M. & W. 234.

"There is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed and the durations of the provisions are matters of construction."

The *Steavenson* case and *Spencer* v. *Hooton* (*supra*) were considered in *R.* v. *Wicks*, 62 T.L.R. 674, and affirmed.

In *Wicks* v. *Director of Public Prosecutions* [1947] A.C. 362, the Emergency Powers (Defence) Act, 1939, s. 11 sub. s. 3,

provided that "The expiry of the Act shall not affect the operation thereof as respects things previously done or omitted to be done". The appellant was convicted in May, 1946, of offences committed in 1943 and 1944 contrary to Regulation 2A of the Defence (General) Regulations, 1939, made pursuant to the Act. Both the Act and the Regulations expired on February 24, 1946. It was held that although Regulation 2A had expired before his trial, he was properly convicted, since s. 11 sub. s. 3 did not expire with the rest of the Act being designed to preserve the right to prosecute after the date of expiry.

Viscount Simon, delivering his speech had this to say at pp. 365–367:–

> " There is, of course, no doubt that when a statute like the Emergency Powers (Defence) Act, 1939, enables an authority to make regulations, a regulation which is validly made under the Act, *i.e.*, which is *intra vires* of the regulation–making authority, should be regarded as though it were itself an enactment. As the Court of Criminal Appeal in its judgment has pointed out[1], that was decided by the Divisional Court in the case of *Willingale* v. *Norris*[2], and it appears to me that the decision is perfectly correct. Consequently, the charge against the appellant here was, in effect that he had committed crimes defined or contained in the Act of Parliament. Now, at the date when these acts were committed, the regulation to which I have referred was in force, and if the appellant had been prosecuted immediately afterwards—he may not have been in England at that time, but if he had been prosecuted immediately afterwards,—then the validity of his conviction could not be open to any challenge at all. But the Act of 1939 was a temporary Act, and after various extensions it expired on February 24, 1946. The trial of the accused, however, only took place in May, 1946, and he was convicted and sentenced to four years' penal servitude on May 28.
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> The question raised by this appeal, therefore, is simply this: Is a man entitled to be acquitted when he is proved to have broken a Defence Regulation at a time when that

1. [1947] L.J.R., 191. 192.
2. [1909] 1 K.B. 57.

regulation was in operation, because his trial and conviction take place after the regulation has expired? As was pointed out in the course of the argument, to which we have closely listened, very strange results would follow if that were so...

But of course the question is not, or at any rate not mainly, whether such a result would be reasonable or such as one should expect; the question is a pure question of the interpretation of sub-s. 3 of s.11 of the Emergency Powers (Defence) Act, 1939. I need not read it, because we have gone through it, with the help of counsel very carefully.

It is pointed out that s. 38 of the Interpretation Act, 1889, does not apply to the case of a statute, or a regulation which has the power of a statute, when it expires by effluxion of time. The section in the Interpretation Act is addressed to Acts which have been repealed, and not to Acts which expire owing to their purely temporary validity. It is, I apprehend, with this distinction in mind, which is quite well-known, and certainly quite well-known to the authorities who frame statutes, that the draftsman inserted the words used in s.11. Section 11 begins with the words 'Subject to the provisions of this section', and those introductory words are enough to warn anybody that the provision which is following immediately is not absolute, but is going to be qualified in some way by what follows. It is, therefore, not the case that, at the date chosen, the Act expires in every sense; there is a qualification. Without discussing whether the intermediate words are qualifications, sub.-s.3, in my opinion, is quite plainly a qualification. It begins with the phrase 'The expiry of this Act'—a noun which corresponds with the verb 'expire'—'The expiry of this Act shall not affect the operation thereof as respects things previously done or omitted to be done.'

Learned counsel for the appellant have therefore been driven to argue ingeniously, but to admit candidly, that the contention which they are putting forward is, that the phrase 'things previously done' does not cover offences previously committed. I think that view cannot be correct. It is clear that Parliament did not intend sub-s. 3 to expire with the rest of the Act, and that its presence in the statute is a provision which preserves the right to prosecute after

the date of expiry. This destroys the validity of the appellant's argument altogether.

The Court of Criminal Appeal, after a most careful examination of the whole matter, came to this conclusion—and I am now quoting the words of Lord Goddard C.J. (1): 'In our opinion, giving the words of the sub-section their natural meaning, there is neither doubt nor ambiguity and the result would appear to be both just and reasonable.' I think your Lordships unanimously agree with the conclusion of the Court of Criminal Appeal, and I therefore move that this appeal be dismissed."

In the light of the authorities, it is clear that the effect of the expiry of a temporary statute is in each case a matter of construction. In *R.* v. *Ellis, ex parte Amalgamated Engineering* Union, [1921] 125 L.T. 397, it was held that the effect of s.6(1) of the Industrial Courts Act 1919, and of the schedule to that Act, was that s. 5 of the Act of 1918 was to continue in force until the 30th September, 1920, and no longer, and, therefore, the Chairman was right in refusing to issue the distress warrant, because after that date he was functus officio. Darling, J., in reaching the opinion that the Rule should be discharged, and having referred to *Steavenson* v. *Oliver* (*supra*), said:-

" That case appears to me to be absolutely in point here. It may be that owing to legislation an offence may have to be punished in a manner different from that which the Legislature might have provided, if it had seen the exact point which might arise, but we cannot do what the Legislation might, it seems to me, very justly and very properly have done; we cannot say that the Interpretation Act 1889 shall apply so that legal proceedings can be completed, although they would be heard and determined at a time when no offence under the statute could be committed. We cannot do that when the Legislature has not itself done it; and the Legislature might very easily have done it here, because the same statute, the Industrial Courts Act 1919, constitutes the offence by the schedule to the Act, and in the same schedule it enacts that legal proceedings come within the same limit as that prescribed for the offence—that is, that they are all to be completed by the 30th September, 1920.

(1) [1947] L. J. R. 191, 196.

Therefore, it seems to me that, although it may be regrettable that proceedings which had been begun for an offence which had been committed cannot be completed, the Legislature has used language which, having regard to a case decided so long as 100 years ago, makes it impossible for this Court to remedy what the Legislature perhaps might have dealt with if it had only seen the loophole which it was leaving. Therefore, in my view, this rule should be discharged."

Turning now to the position in Cyprus, counsel for the respondent, in support of his argument, cited the case of the *Mayor of Famagusta and Nearchos Petrides & 2 Others*, (*supra*). It appears from a reading of this case, that what was sought to be determined was in effect the constitutionality of the initial Law 10/61, as continued in force until the 31st December, 1962. Counsel appearing for the accused, argued, *inter alia*, that Law 10/61 which purported to prolong the operation of laws which have expired by reason of paragraph 2 of Article 188 of the Constitution was unconstitutional in that it amounts to amending such paragraph 2 by way of normal legislation and not by way of the procedure for constitutional amendment prescribed under Article 182.

Forsthoff, P., delivering the decision of the Court made it quite clear that it had nothing to do with the question of "expiration" of the law, and said at pp. 75–76:–

"With regard to the above submission, it must first be observed that it is not proper to speak of 'expiration', as such term is not used at all in the said paragraph 2; what has been used therein is the expression 'no law ... shall ... continue to be in force' and that is exactly all that was meant to be provided for thereby and nothing more.

The Court has also considered whether the whole or only certain provisions of Cap. 240 have ceased to be in force by virtue of such paragraph 2 but it has unanimously reached the conclusion that it is not necessary in this Decision to go any further into such issue because in its opinion this issue might have been relevant to the constitutionality of Law 10 of 1961 only if such law were a mere prolongation of Cap. 240, as, indeed, it might appear at

first sight so to be from section 3 thereof if taken in isolation. Law 10 of 1961, has, however, to be read as a whole and section 4 provides expressly that Cap. 240 shall continue to have effect and be applied during the period in question, subject to the provisions of the Constitution and of Law 10 of 1961; such a mode of continuing in force Cap. 240 is not a mere prolongation, but in effect, a re-enactment thereof in a new context. In other words, Law 10 of 1961 became the legislation in force for the relevant period notwithstanding anything else in any other law to the contrary."

In *Nicosia Techalemit* (*supra*), the question which was *inter alia*, before the Court was that of the 1952 Bye Laws. The learned President said at p. 365:-

" Another argument of counsel for the applicants is that there could not be 'revived', by reference in the 1965 Bye-Laws, the 1952 Bye-Laws, which had ceased to be in force together with Cap. 240, and that new Bye-Laws ought to have been made in respect of the matters governed by the 1952 Bye-Laws, the full text of which would then have been published in the Official Gazette. In my opinion the 1952 Bye-Laws were not 'revived', but they were re-enacted by reference as new legislation and, therefore, I cannot agree with counsel for the applicants on this point.

It is, indeed, correct that to legislate by means of referring extensively to the texts of other enactments is not, as a rule, a desirable course (see, also, what is stated regarding legislation by reference in Craies on Statute Law, 6th edn., pp. 29-32; but on the other hand, bearing in mind that the 1965 Bye Laws were, obviously, made under the pressure of the events which led to the enactment of Law 64/64 and that in legislating by reference to the 1952 Bye-Laws, in relation to the regulation of traffic, there were re-enacted legislative provisions well known to all concerned for many years past, in all affected areas, and in view, too, of the judgment of the full bench of the Supreme Court in the case of *Andreas Koullapides Ltd. and Others* v. *The Municipality of Nicosia*, (1970) 2 C.L.R. 22, I have no difficulty in holding that the 1952 Bye-Laws, including the relevant to

this case bye-law 11(1)(a), were validly and properly re-enacted as part of the 1965 Bye-Laws."

Having reviewed and analysed the authorities, there is no presumption in my view that a statute is to be treated on expiry as dead for all purposes as it has been shown in *Spencer* v. *Hooton* (*supra*). On the other hand, the general statutory saving provisions (see the Interpretation Act, 1889 s. 38(2)) are confined in terms to the effect of repeal and do not apply on expiry. (Wicks case (*supra*)) a point conceded by both counsel, unless of course, they are specifically applied.

As to the proposition raised by counsel for the respondents that no authority has been cited, supporting the proposition that an expired law cannot be extended by an emending law, I think that the answer is that the position in England is regulated by Statute. In England, it was the practice to pass an Expiring Laws Continuance Act (see *e.g.* 11 & 12 Geo. 5, c. 53, 14 and 15 Geo., 6, c.1., (1950)), and annually since each session, and to put into a schedule all temporary Acts by name which it was intended to continue. Regarding the effect of expiration of an Act before the passing of a Continuance Act, it is provided by the Act of Parliament, Expiration Act, 1808 that:

> " Where any bill may have been or shall be introduced into this present or any future session of Parliament for the continuance of any Act which would expire in such sessions, and such Act shall have expired before the Bill for continuing the same shall have received the royal assent, such continuing Act shall be deemed or taken to have effect from the date of the expiration of the Act intended to be continued as fully and effectually, to all intents and purposes, as if such continuing Act had actually passed before the expiration of such Act: Provided, nevertheless, that nothing herein contained shall extend or be construed to affect any person or persons with any punishment, penalty, or forfeiture whatsoever by reason of anything done or omitted to be done by any such person or persons contrary to the provisions of the Act so continued between the expiration of the same and the date at which the Act continuing the same may have received or shall receive the royal assent."

As a general rule, therefore, and I would repeat, unless it

contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it, and it ceases to have any further effect. I also find myself in agreement with counsel that section 10(2)(a) of the Interpretation Act, Cap. 1, does not apply to the case of a Statute when it expires by effluxion of time. The section in question is addressed to Acts which have been repealed and not to Acts which expire owing to their purely temporary validity. This, I take it, was well known to the authorities who frame Statutes, but in the present case, as I have said earlier, they did not take measures before the expiry of the Act on March 31, 1977. It seems to me, therefore, that once the House of Representatives has failed to insert some special provisions in the law to the contrary, when that temporary Act had expired, no proceedings could be taken upon it and it ceased to have any further effect.

As I have shown earlier, in England, the position is different, and in my view, once the Act has expired, and it ceased to have any effect, it could not have been prolonged or extended by Law 22/77 by a mere amendment, but only by a re-enactment of the whole Act. In these circumstances, and as the two Cyprus cases quoted earlier are distinguishable, I find myself in agreement with counsel for the applicants that as the law was dead, having expired, the assessments were wrongly made by the Commissioner, and the decision to impose special contribution on the applicants was made in excess or in abuse of powers vested in such organ and is hereby declared *null* and *void* and of no effect whatsoever, once there was no valid law in force.

Having reached this conclusion, I do not think it is necessary to deal with the rest of the arguments, once I have been asked by counsel for the applicants not to embark on the rest of his grounds of law.

Finally, by order of this Court, the decision of the Commissioner is declared *null* and *void*, but in the circumstances—being a novel point, I am not making an order for costs.

Sub judice decision annulled.
No order as to costs.