1980 March 17

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. SABA, KYPRIS & CO.,
2. MICHAEL PSARAS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE REGISTRAR OF TRADE MARKS,

Respondent.

(*Case No.* 138/75).

Advocates—"Practising as an advocate"—Professional trade marks agent—Filing applications for registration of trade marks on behalf of proprietors of trade marks—Amounts to practising as an advocate within the meaning of section 2(1)(*iii*) *of the Advocates Law, Cap.* 2 (*as set out in section* 2 *of Law* 40/75).

Principal and agent—"Agent"—Meaning of, in a general and in a legal sense—Trade marks agent—Advocate and client.

Trade marks—Trade marks agents—Acting on behalf of proprietor of a trade mark under section 60 *of the Trade Marks Law, Cap.* 268 *and rule* 14 *of the Trade Marks Rules,* 1951–1971—*Whether they practise as advocates within the meaning of section* 2(1)(*iii*) *of the Advocates Law, Cap.* 2, (*as set out in section* 2 *of Law* 40/75).

Constitutional Law—Right to enter freely into any contract—Article 26.1 *of the Constitution—What is protected thereunder is the right to enter into a legal contract and not the rights created by an agreement resulting from the exercise of such right—Provisions of section* 2(1)(*iii*) *of the Advocates Law, Cap.* 2, *as set out in section* 2 *of Law* 40/75, *not contrary to the above Article.*

Constitutional Law—Right to practise any profession or to carry on any occupation trade or business—Article 25.1 *of the Constitution —Is subject to the formalities, conditions or restrictions set out*

in paragraph 2 of this Article—Provisions of section 2(1)(iii) of the Advocates Law, Cap. 2, as set out in section 2 of Law 40/75, not contrary to the above Article.

Constitutional Law—Equality—Principle of equality—Article 28.1 of the Constitution—It safeguards only against arbitrary differentiations and does not exclude reasonable distinctions—Provisions of s. 2(1)(iii) of the Advocates Law, Cap. 2, as set out in section 2 of Law 40/75, not contrary to the above Article.

Constitutional Law—Constitutionality of legislation—Judicial control—Principles applicable—Section 2(1)(iii) of the Advocates Law, Cap. 2, as set out in section 2 of Law 40/75, not contrary to Articles 25, 26 and 28 of the Constitution.

Advocates Law, Cap. 2 (as amended)—Section 2(1)(iii), as set out in section 2 of Law 40/75, not contrary to Articles 25, 26 and 28 of the Constitution.

Trade Marks Law, Cap. 268—Whether section 60 of the Law and rule 14 of the Trade Marks Rules 1951-1971 impliedly repealed by the Advocates (Amendment) Law, 1975 (Law 40/75).

Applicant 1 was a partnership registered in Cyprus which exercised the profession of Trade Mark and Patent Agents. They were controlled by a firm based in Lebanon and carrying on the same business in many countries. Applicant 2 was employed by applicant 1 in 1962 and as from July, 1967, he was appointed as the Manager of applicant's 1, Nicosia office. Throughout this period he has also exercised the profession of Trade Mark and Patent Agent and in this capacity he appeared before the Registrar of Trade Marks as well as before the Assistant Registrar for the discussion of objections raised by the office of the Registrar for the registration of trade marks.

On the 27th August, 1975, applicant 1 acting on behalf of the proprietors of the trade mark "Motorcraft" submitted to the Registrar an application for the registration of the said trade mark in Cyprus accompanied by the authorization of the proprietors. On the same day applicant 2 submitted to the Registrar on behalf of the proprietors of the trade mark "Pickwick" an application for the registration of the trade mark in Cyprus accompanied by the authorization of the proprietors.

On the 2nd September, 1975, under cover of a letter the

Registrar returned both the above applications and authorization on the ground that it contravened the provisions of s. 2(1)(iii)* of the Advocates Law Cap. 2 as set out in s. 2 of the Advocates (Amendment) Law of 1975 (Law 40 of 1975); and hence this recourse.

Counsel for the applicants contended:

(a) That the acts and/or decisions complained of were based on the wrong assumption that s.60** of the Trade Marks Law, Cap. 268 and rule 14*** of the Trade Marks Rules 1951–1971, by virtue of which applications for registration of trade marks may be made on behalf of the proprietor of a trade mark by a duly authorized agent, were repealed in consequence of the amendment of the Advocates Law, Cap. 2, by s.2 of Law 40 of 1975.

(b) That the decisions complained of and/or the definition of "practising as an advocate" as set out in paragraph (iii) of s.2 of the Advocates (Amendment) Law, 1975, are contrary to the provisions of Article 26.1**** of the Constitution in that they nullify the applicants' right of entering freely into a contract of agents and/or any other contract between themselves and the owners of trade marks.

(c) That the decisions complained of and/or the definition of "practising as an advocate" as set out in the Advocates Law (*supra*) are contrary to the provisions of Article 25***** of the Constitution.

(d) That the decisions complained of and/or the definition of "practising as an advocate" as set out in the Advocates Law (*supra*) are contrary to the provisions of Article 28****** of the Constitution in that they discriminate against the applicants in favour of advocates.

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* Section 2(1)(iii) reads as follows:

" 'practising as an advocate' means--

(iii) the registration of trade marks or patents on behalf of a client and the appearance before any administrative authority for the aforesaid purposes".

** Section 60 is quoted at p. 156 *post*.

*** Rule 14 is quoted at pp. 156–57 *post*.

**** Article 26.1 is quoted at p. 160 *post*.

***** Article 25 of the Constitution is quoted at pp. 160–61 *post*.

****** Article 28 of the Constitution is quoted at p. 161 *post*.

Held, (1) (*on the question whether section* 60 *of the Trade Marks Law, Cap.* 268 *and rule* 14 *of the Trade Marks Rules,* 1951–1971 *have been impliedly repealed by the Advocates (Amendment) Law,* 1975) that the Trade Marks Law and the rules made thereunder allow registration of a trade mark by a duly authorised agent acting on behalf of a proprietor; that an agent so acting does not practise as an advocate where the true relationship is that of principal and agent; that the word "agent" in its wider signification and in a general sense may apply to anyone who by authority performs, in a representative capacity, an act for another; that in the legal sense an agent is primarily a person employed to bring about business relations between the principal and third persons, a sort of conduit pipe connecting the two other parties; that under the Trade Marks Law there is nothing to prevent the proprietor of a trade mark to appear in person like any litigant in civil proceedings and do any act in relation to his trade mark and it may not reasonably be argued that he cannot authorize an agent to act for him in this respect; that this always on the assumption that the relationship between the two is that of principal and agent; that having come to this conclusion and in the light of the legal provisions on the point this Court does not feel constrained to hold that the relevant sections of the Trade Marks Law and the Trade Mark Rules have been impliedly repealed by the provisions of the Advocates (Amendment) Law, 1975.

(2) (*On the question whether the applicants in this case were, having regard to the admitted facts and circumstances, practising as advocates within the meaning of the Advocates Law,* 1975) that both these applicants were professional trade mark agents which implies holding themselves out to or inviting proprietors of trade marks to employ their services as such; that this being the position it seems that the status of the proprietors employing their services is more akin to a client than to a principal and that the proprietors of the trade marks they sought to have registered were no less their clients than a person who instructs an advocate to do the work is to the advocate; that in this respect the filing by them of the applications for registration of trade marks amounted to practising as advocates; and that, therefore, it was open to the respondent to refuse the applications as he did.

(3) That what is protected under Article 26.1 of the Constitu-

tion is the right to enter into a legal contract and not the rights created by an agreement resulting from the exercise of such right (see *Chimonides* v. *Manglis* (1967) 1 C.L.R. 125); that, assuming that the provisions of the Advocates Law, 1975, preclude the applicants from registering trade marks and patents in person and from appearing before the Registrar, it in no way affects their contractual relations with the proprietors of trade marks save that they will have to retain the services of an advocate for the above purpose; that, therefore, the provisions of the Advocates Law, 1975 are not contrary to Article 26.1 of the Constitution; and that, accordingly, contention (b) must fail.

(4) (*After stating the principles governing the exercise of judicial control of legislative enactments on questions of the constitutionality of a statute—vide* pp. 162–63 *post*) that having regard to all the circumstances of this case this Court is not prepared to subscribe to the proposition that paragraph (iii) of s.2 of the Advocates (Amendment) Law, 1975 is repugnant to or inconsistent with the provisions of Article 25 of the Constitution in view of the provisions in paragraph 2 of this Article that the right to practise any profession or to carry on any occupation, trade or business which is guaranteed by paragraph 1 "may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession ....": and that, therefore, contention (c) must fail.

(5) That, as to Article 28.1, it is well established that the principle of equality safeguards only against arbitrary differentiations and does not exclude reasonable distinctions; that in this case the distinction made between an advocate and a layman cannot, in all the circumstances, reasonably be said to be an arbitrary differentiation; and that, accordingly, contention (d) must, also, fail.

Application dismissed.

Cases referred to:

Kutner v. *Phillips* [1891] 2 Q.B. 267;

Flannagan v. *Shaw* [1920] 3 K.B. 96;

In re Chance [1936] Ch. 266;

Chimonides v. *Manglis* (1967) 1 C.L.R. 125;

Board for Registration of Architects and Civil Engineers v. *Kyriakides* (1966) 3 C.L.R. 640 at pp. 654–655.

Recourse.

Recourse against the refusal of the respondent Registrar of Trade Marks to accept for registration two trade marks.

A. Dikigoropoulos, for the applicants.

R. Gavrielides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. This recourse on behalf of the two applicants is against the decision of the Registrar of Trade Marks refusing to accept for registration two trade marks on the ground that the authorizations of the applicants as agents which accompanied the applications for registration did not nominate an advocate, allegedly contrary to section 2(1)(iii) of the Advocates Law (Cap. 2 and Laws 42/61, 20/63 and 46/70) as amended by Law 40 of 1975.

The facts of the case are not in dispute and are briefly these:

Applicant 1 is a partnership registered in Cyprus which exercises the profession of Trade Mark and Patent Agents. They are controlled by a firm based in Lebanon and carrying on the same business in many countries. Applicant 2 was employed by applicant 1 in 1962 and as from July, 1967, he was appointed as the Manager of applicant's 1, Nicosia office. Throughout this period he has also exercised the profession of Trade Mark and Patent Agent and in this capacity he appeared before the Registrar of Trade Marks as well as before the Assistant Registrar for the discussion of objections raised by the office of the Registrar for the registration of trade marks.

On the 27th August, 1975, applicant 1 acting on behalf of the proprietors of the trade mark "Motorcraft" submitted to the Registrar an application (*exhibit* 1) for the registration of the said trade mark in Cyprus accompanied by the authorization by the proprietors (*exhibit* 2).

On the 2nd September, 1975, under cover of the letter *exhibit* 3, the Registrar returned both the application and authorization on the ground that it contravened the provisions of s. 2(1)(iii) of the Advocates Law as set out in s. 2 of the Advocates (Amendment) Law of 1975 (Law 40 of 1975).

On the same day applicant 2 submitted to the Registrar on behalf of the proprietors of the trade mark "Pickwick" an application for the registration of the trade mark in Cyprus accompanied by the authorization by the proprietors and on the 2nd

September, 1975, the Registrar returned both the application and authorization on the same grounds as in the case of applicant 1. The application, the authorization and the Registrar's letter are *exhibits* 4, 5 and 6 respectively.

As a result this recourse was filed by the two applicants praying for a declaration that the decision of the Registrar contained in the letters *exhibits* 3 and 6 forwarded to the applicants respectively is null and void and of no effect as having been made and/or taken contrary to the provisions of the Law and of the Constitution and/or in excess and abuse of respondent's powers.

The Application is based on the following alternative grounds of law.

1. That respondent's acts and/or decisions complained of are based on the wrong assumption that s. 60 of the Trade Marks Law, Cap. 268 and rule 14 of the Trade Mark Rules 1951–1971 by virtue of which applications for registration of trade marks may be made on behalf of the proprietor of a trade mark by a duly authorized agent were repealed in consequence of the amendment of the Advocates Law, Cap. 2, by s. 2 of Law 40 of 1975 and/or

2. That the decisions complained of and/or the definition of "practising as an advocate" as set out in paragraph (iii) of s. 2 of the Advocates (Amendment) Law, 1975, are contrary to the provisions of Article 26.1 of the Constitution in that they nullify the applicants' right of entering freely into a contract of agents and/or any other contract between themselves and the owners of trade marks.

3. That respondent's decisions complained of and/or the definition of "practising as an advocate" as set out in paragraph (iii) of s. 2 of the Advocates (Amendment) Law, 1975 are contrary to the provisions of Article 25 of the Constitution.

4. That the decisions complained of and/or the definition of "practising as an advocate" as set out in the same law are contrary to the provisions of Article 28 of the Constitution in that they discriminate against the applicants in favour of advocates.

The definition of "practising as an advocate" (άσκεῖν τὴν δικηγορίαν) as amended by the 1975 Law reads as follows:

"'άσκεῖν τὴν δικηγορίαν' σημαίνει—

(i) .....

(ii) .....

(iii) τὴν ἐκ μέρους πελάτου ἐνέργειαν ἐγγραφῆς ἐμπορικῶν σημάτων ἢ διπλωμάτων εὑρεσιτεχνίας καὶ τὴν ἐμφάνισιν ἐνώπιον οἱασδήποτε διοικητικῆς ἀρχῆς διὰ τοὺς προειρημένους σκοπούς·

.....

....."

"'practising as an advocate' means—

(i) .....

(ii) .....

(iii) the registration of trade marks or patents on behalf of a client and the appearance before any administrative authority for the aforesaid purposes;

.....

.....)"

S. 60 of the Trade Marks Law, Cap. 268 reads:

"Where by this Law any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, the act may under and in accordance with the rules or in particular cases by special leave of the Court, be done by or to an agent of that person duly authorized in the prescribed manner."

Rule 14 of the Trade Mark Rules 1951–1971 is in these terms:

"14. Except as otherwise required by these rules, any application, request or notice which is required or permitted by the Law or these rules to be made or given to the Registrar, and all other communications between an applicant or a person making such a request or giving such a notice and the Registrar, and between the registered proprietor or a registered user of a trade mark and the Registrar or any other person, may be signed, made or given by or through an agent.

Any such applicant, person making request or giving

notice, proprietor, or registered user may appoint an agent to act for him in any proceeding or matter before or affecting the Registrar under the Law and these rules by signing and sending to the Registrar an authority to that effect in the Form T.M.–No. 1, or in such other written form as the Registrar may deem sufficient. In case of such appointment, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so appointing him, all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent, and all attendances upon the Registrar relating thereto may be made by or through such agent. In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

The Registrar shall not be bound to recognize as such agent any person who has been proved to him, or, on appeal, to the Court, to have been guilty of conduct discreditable to a trade mark agent or who has been convicted criminally or whose name has been struck off the Roll of Advocates, and not since restored or (during the term of his suspension) any person who has been suspended from acting as an advocate."

The first question that falls for determination is whether s. 60 of the Trade Marks Law and rule 14 of the Trade Mark Rules can be said to have been impliedly repealed by the Advocates (Amendment) Law, 1975.

As a general rule repeal by implication is not favoured by the Courts and if earlier and later statutes can reasonably be construed in such a way that both can be given effect to, this must be done. If however, the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together the maxim Leges posteriores priores contrarias abrogant applies. But the Court should not treat an earlier enactment as impliedly repealed unless it is impossible to put any reasonable meaning on the provisions of the later without implying the repeal of the earlier.

(See Maxwell on Interpretation of Statutes, 12th ed., p. 191

and *Kutner* v. *Phillips* [1891] 2 Q.B., 267, *Flannagan* v. *Shaw* [1920] 3 K.B., 96 and *In re Chance* [1936] Ch. 266).

In the present case the relevant legislative provisions of the Trade Marks Law, Cap. 268 and the rules made thereunder have not been in terms repealed by s. 2 of the Advocates (Amendment) Law, 1975; and the question is whether the provisions of the latter enactment are so inconsistent with those of the former that the effect of it is that the provisions of the former or any part thereof must be treated as having been repealed, although not expressly so stated in the latter.

The main force of the argument of learned counsel for the applicants on this ground was directed at the difference between the relevant provisions of the two enactments and more particularly to the point that the Advocates Law deals with the relationship of advocate and client and that what it provides is that nobody can take any step on behalf of a client to register a trade mark unless he is an advocate, whereas under the Trade Marks Law the relationship envisaged is that of principal and agent and that in this particular case what the Registrar had before him was two applications by the proprietors of the trade marks, filed on their behalf by two agents duly authorized in the manner prescribed by the Trade Marks Law and the Trade Marks Rules. The argument is no doubt attractive but whether it be right or wrong depends on the true construction of s. 2 of the Advocates Law as set out in paragraph (iii) of s. 2 of the Advocates (Amendment) Law, 1975.

Under paragraph (iii) of s. 2 of the Advocates (Amendment) Law, 1975, the registration of trade marks or patents on behalf of a client and the appearance before any administrative authority for the aforesaid purposes comes within the meaning of the definition "practising as an advocate"; and under s. 11 of the Law it is prohibited for any person to practise as an advocate unless he is enrolled as such, he has taken out an annual licence and he has paid in the Advocates' Pension Fund all sums due by him; and any person who practises as an advocate without being registered or who is not in possession of an annual licence in force is guilty of an offence. It is clear from the above that under the provisions of the Advocates Law no person other than an advocate can act on behalf of a client in relation to the registration of a trade mark or patent. The dictionary and ordi-

nary meaning of the word 'client' is one who gets help or advice from a lawyer or any professional man. In deciding, therefore, whether this restriction regarding the registration of a trade mark or patent is applicable in any given case it is necessary to decide what the relationship of the proprietor of the trade mark and the person who acts on his behalf is. As stated earlier on the Trade Marks Law and the rules made thereunder allow registration of a trade mark by a duly authorized agent acting on behalf of the proprietor; can it then be reasonably argued that an agent so acting practises as an advocate? I think that, where the true relationship is that of principal and agent, the answer must be in the negative.

The word "agent" in its wider signification and in a general sense may apply to anyone who by authority performs, in a representative capacity, an act for another. But in the legal sense an agent is primarily a person employed to bring about business relations between the principal and third persons. A sort of conduit pipe connecting the two other parties.

Under the Trade Marks Law there is nothing to prevent the proprietor of a trade mark to appear in person like any litigant in civil proceedings and do any act in relation to his trade mark and I do not think that it may reasonably be argued that he cannot authorize an agent to act for him in this respect. But this always on the assumption that the relationship between the two is that of principal and agent.

Having come to this conclusion and in the light of the legal provisions on the point to which I have referred I do not feel constrained to hold that the relevant sections of the Trade Marks Law and the Trade Mark Rules have been impliedly repealed by the provisions of the Advocates (Amendment) Law, 1975.

But the question still remains whether the applicants in this case were, having regard to the admitted facts and circumstances, practising as advocates within the meaning of the words in the Advocates Law. Both these applicants were professional trade mark agents which to my mind implies holding themselves out to or inviting proprietors of trade marks to employ their services as such. This being the position it seems to me that the status of the proprietors employing their services is more akin to a client than to a principal and that the proprietors of the

trade marks they sought to have registered were no less their clients than a person who instructs an advocate to do the work is to the advocate; and in this respect I am of the view that the filing by them of the applications for registration of trade marks amounted to practising as advocates and that it was open to the respondent to refuse the applications as he did.

I propose to deal very briefly, perhaps *ex abundanti cautela* in view of the conclusion that I have reached on the first ground of law, with the constitutional issues raised.

Ground 2 of the grounds of law relates to Article 26.1 of the Constitution which reads as follows:

> "26.1 Every person has the right to enter freely into any contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract. A law shall provide for the prevention of exploitation by persons who are commanding economic power."

It is to be observed that what is protected under this Article is the right to enter into a legal contract and not the rights created by an agreement resulting from the exercise of such right. See *Chimonides* v. *Manglis* (1967) 1 C.L.R. 125.

In the present case, assuming that the provisions of s. 2(1)(iii) of the Advocates Law, as amended, preclude the applicants from registering trade marks and patents in person and from appearing before the Registrar, it in no way affects their contractual relations with the proprietors of trade marks save that they will have to retain the services of an advocate for the above purposes.

The last two grounds relate to Articles 25 and 28 of the Constitution the relevant parts of which read as follows:

"25. 1. Every person has the right to practise any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the

constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest:

Provided .....

28. 1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this constitution.

3. .....

4. ....."

It is contended on the part of the applicants that the definition of the words "practising as an advocate" is contrary to the provisions of Article 25.1 in that the right of the applicants to practise their profession as trade mark agents is subjected to such formalities, conditions or restrictions which do not relate exclusively to the qualifications usually required for the exercise of the profession of a trade mark agent and are not necessary for any of the grounds set out in Article 25.2 of the Constitution in that the completion of the application form and its filing with the Registrar is so simple a matter that no professional qualifications are required. This may well be so but paragraph (iii) of s. 2 of the Advocates (Amendment) Law, 1975 does not provide only for completing the application form and filing it in the Registrar's office; it also refers to the appearance before any administrative authority for the aforesaid purposes. A perusal of the Trade Marks Law and the Rules reveals that the matter is not as simple as that, especially in cases where the Registrar objects to the application for registration or where he accepts it subject to conditions and also in the case of oppositions to the registration by third parties in which instances the procedure necessary becomes much more complicated and technical.

With regard to Article 28.1 learned counsel very briefly sub-

mitted that by the relevant paragraph of the Advocates (Amendment) Law, 1975 Applicants are arbitrarily excluded from the practice of their profession and advocates are given the status of a privileged class and that this is contrary to the Article in question in that it creates discrimination.

The principles governing the exercise of judicial control of legislative enactments on questions of the constitutionality of a statute have been considered by the Full Bench of this Court in the case of *The Board for Registration of Architects and Civil Engineers* v. *Kyriakides* (1966) 3 C.L.R., 640. The relevant part of the judgment is at pp. 654–655 and it reads as follows:

> "A rule of precautionary nature is that no act of legislation will be declared void except in a very clear case, or unless the act is unconstitutional beyond all reasonable doubt (*Calder* v. *Bull*, 3 Dall. 386, 399, (1798)). Sometimes this rule is expressed in another way, in the formula that an act of Congress or a State Legislature is presumed to be constitutional until proved otherwise 'beyond all reasonable doubt': see *Ogden* v. *Saunders*, 12 Wheat. 212 (1827); and other cases ending with Federation of *Labor* v. *McAdory*, 325, U.S. 450 (1945); see also The Attorney-General v. Ibrahim 1964 C.L.R. 195.
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> Another maxim of constitutional interpretation is that the Courts are concerned only with the constitutionality of legislation and not with its motives, policy or wisdom, or with its concurrence with natural justice, fundamental principles of government or spirit of the Constitution: see *Watson* v. *Buck*, 313 U.S. 387 (1941).
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> As was said by Mr. Justice Roberts in *Nebbia* v. *New York*, 291 U.S. 502 (1933); 78 Law. ed. 940, at page 957, 'with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the Courts are both incompetent and unauthorised to deal. The course of decision in this Court *exhibits* a firm adherence to these principles. Times without number we have said that the legislature is primarily the Judge of the necessity of such an enactment, that every possible presumption is in favour of its validity, and that though the Court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power'.

It is a cardinal principle that if at all possible the Courts will construe the statute so as to bring it within the law of the Constitution: *United States* v. *C.I.O.*, 335 U.S. 106 (1948); *Miller* v. *United States*, 11 Wall. 268 (1871).

The judicial power does not extend to the determination of abstract questions: *Ashwander* v. *Tennessee Valley Authority* 297 U.S. 288 (1935); 80 Law. ed. 688. 'It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case': *Burton* v. *United States*, 196 U.S. 283, 295; 49 Law. ed. 482, 485, 25 S. Ct. 243. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied': *Liverpool, N.Y. & P.S.S. Co.* v. *Emigration Comrs.* 113 U.S. 33; 28 Law. ed. 899, 5 S. Ct. 382.

In cases involving statutes, portions of which are valid and other portions invalid, the Courts will separate the valid from the invalid and throw out only the latter unless such portions are inextricably connected: *Pollock* v. *Farmers' Loan and Trust Company*, 158 U.S. 601, 635 (1895).

With regard to the power of the State to regulate the right to exercise a profession or carry on any trade or business it has been held that the power to impose reasonable conditions on such right includes that of excluding those who cannot meet those conditions: *Gant* v. *Oklahoma City*, 289 U.S. 98, 53 S. Ct. 530; 77 Law. ed. 1058."

Having regard to all the circumstances of this case I am not prepared to subscribe to the proposition that paragraph (iii) of s. 2 of the Advocates (Amendment) Law, 1975 is repugnant to or inconsistent with the provisions of Article 25 of the Constitution in view of the provisions in paragraph 2 of the Article that the right to practise any profession or to carry on any occupation, trade or business which is guaranteed by paragraph 1 "may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession .....". I, therefore, have to reject learned counsel's contention with regard to this ground.

Finally as to Article 28.1 it is well established that the principle of equality safeguards only against arbitrary differentiations and does not exclude reasonable distinctions. In the present case I do not think that the distinction made between an advocate and a layman can, in all the circumstances, reasonably be said to be an arbitrary differentiation.

For all the above reasons I cannot on any of the issues raised on behalf of the applicants grant the relief applied for. In the result this case is dismissed but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.