1988 February 3

[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, DEMETRIADES, SAVVIDES, STYLIANIDES, KOURRIS, JJ.]

IN RE YIANNAKIS ELLINAS,

Appellant - Applicant.

(Civil Appeal No. 7530).

Criminal Procedure — Indictable offences — Committal for trial before the Assize Court — The Criminal Procedure (Temporary Provisions) Law 42/74, as amended by Law 44/83, section 3 — Once the two prerequisites, namely certification by the Attorney-General signifying his consent not to hold a preliminary inquiry and furnishing the accused with copies of the statements of the witnesses that the prosecution intends to call, are satisfied, the committing Judge has no discretion to hold or not a preliminary inquiry, but his power is confined to the issue whether to commit or not — Such power must be exercised judicially — In case of conflicting evidence the test is whether the evidence, if uncontradicted, would raise a probable presumption of guilt.

Words and phrases: «Commit» in section 3 of the Criminal Procedure (Temporary Provisions) Law 42/74 as amended by Law 44/83 has, in virtue of section 2 of such Law, the same meaning as in section 94 of the Criminal Procedure Law, Cap. 155.

Criminal Procedure — The Criminal Procedure Law, Cap. 155 section 95 — Observation that in case of committal proceedings under the Criminal Procedure (Temporary Provisions) Law 42/74, as amended by Law 44/83, against a corporation, its provisions must be heeded.

Constitutional Law — Fair trial — Constitution, Art. 12 and 30 — Whether section 3 of the Criminal Procedure (Temporary Provisions) Law 42/74, as amended by Law 44/83, is inconsistent with said Articles.

European Convention for the Protection of Human Rights — Art. 6 — Fair trial — Whether section 3 of the Criminal Procedure (Temporary Provisions) Law 42/74, as amended by Law 44/83, is inconsistent with Art. 6.

The District Court of Limassol committed the appellant for trial on a number of indictable offences before the Assize Court, taking the view that it had no power to direct the holding of a preliminary inquiry.

A Judge of this Court* dismissed appellant's application for an Order of Certiorari, quashing his committal for trial. This is an appeal from the said judgment.

The question in this appeal is the interpretation of section 3 of the Criminal Procedure (Temporary Provisions) Law 42/74, as amended by Law 44/83.

In *Re Economides and Another* (1983) 1 C.L.R. 933, a case decided before the enactment of Law 44/83, Triantafyllides P. held that the District Court has a discretion whether to hold or not a preliminary inquiry, whereas in *Re Argyrides* (1987) 1 C.L.R. 30 Stylianides, J. decided that the District Court has no discretion to hold or not a preliminary inquiry, but simply to commit or not the accused for trial.

Held, dismissing the appeal: (A) *Per Triantafyllides, P.* (1) In *Re Economides,* supra the discretion was linked to the sufficiency in law of evidence justifying committal for trial. Since then, section 3 of Law 42/74 was amended (Law 44/83) with the result that in its paragraph (b) the word «substance» has been replaced by the word «copy» and so now a District Court Judge dealing with the matter of committal for trial by an Assize Court has before him the full texts of the statements to the police of the prosecution witnesses and, therefore, it is no longer necessary to envisage the possibility of resorting to the holding of a preliminary inquiry for the purpose of ascertaining the sufficiency of their evidence.

(2) As provided by section 2 of Law 42/74, the terms used in such Law have the same meaning as that given to them by the Criminal Procedure Law, Cap. 155 and, consequently, the notion of committal for the purposes of the application of section 3 of Law 42/74, has to be held to be the same as that in section 94 of Cap. 155.

(3) Section 3 as amended does not give discretion whether to hold a preliminary inquiry or not, but whether the evidence disclosed in the statement of the witnesses is sufficient to warrant committal or not.

B) *Per A. Loizou J., Kourris, J. concurring:* It may be noted here that originally paragraph (b) of section 3 of the Law provided that only the «substance» of the statement of each prosecution witness was to be given whereas by the only amendment effected to this law and by its amending Law 44/83, the word «substance» has been replaced by the word «copy».

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* *See Re Ellinas (1988) 1 C.L.R. 17.*

(2) In the light of the wording of the aforesaid section and the obvious intent of the legislator as emanating from within the four corners of the said statutory provision, the conclusion is that once the prerequisites of paragraphs (a) and (b) of section 3 are satisfied a committing Judge has no power to direct the holding of a preliminary inquiry contrary to the declared conclusion contained in the written consent of the Attorney-General of the Republic given under paragraph (a) thereof. The material words are to be found in paragraph (a) of section 3 where it says that «it is not necessary to hold a preliminary inquiry» and the words in its concluding part that «the Court has power to commit for trial without a preliminary inquiry». These expressions have to be read subject to the phrase in the opening paragraph of section 3 which say «notwithstanding the provisions of section 92 of the Criminal Procedure Law». The specific mention of section 92 clearly conveys the notion that it was the procedure envisaged thereby to the extent that the provisions governing same were incompatible with the Law that was rendered inoperative when the prerequisites of paragraphs (a) and (b) of section 3 were satisfied. If the legislator wanted to subject the decision of the Attorney-General to the discretion of the committing Judge it would have said so as it was done in the case of section 24(2) of the Courts of Justice Law 1960 (Law No. 14 of 1960) as amended.

(3) The word «commit» in the section should be given in accordance with section 2* of the Law the meaning it has in section 94 of Cap. 155. It follows that where there is a conflict of evidence the judge shall consider the evidence to be sufficient to commit the accused for trial if the evidence against him is such as, if uncontradicted, would raise a probable presumption of his guilt.

C) *Per Demetriades, J.*: Section 3 imposes a duty on the committing Judge to see that the statements of the witnesses intended to be called by the prosecution disclose sufficient grounds for committal. The word «commit» in section 3 has the same meaning as in section 94 of Cap. 155. When the accused is a corporation, regard must be had to section 95 of Cap. 155.

D) *Per Savvides, J.*: (1) The importance of the amendment effected by Law 44/83, has been stressed by Triantafyllides P., in his judgment in the present appeal and was considered by him as such that made him to adopt a different approach than that expressed by him in *Economides* case (supra).

(2) Counsel for appellant made reference to section 1 of the Criminal Justice Act, 1969 and section 6 of the Magistrates Courts

* *Quoted at p. 68.*

Act, 1980. It should be noted, however, that under both the said English Acts, there is an express provision in committal proceedings both in sub-section (4) of section 1 of the Criminal Justice Act, 1969, as well as in sub section (4) of section 102 of the Magistrates Courts Act.

(3) A perusal of the provisions of section 24(2) of the Courts of Justice Law, 1960 (Law 14/1960), may be useful in construing the provisions of section 3. Whereas under section 24(2) of Law 14/1960 the power of the Attorney-General to consent to a summary trial is subject to the control of the court, no restriction or limitation whatsoever is imposed on the right of the Attorney-General to dispense with the holding of a preliminary inquiry under section 3 of Law 42/74. Material also for the construction of section 3 is the title of Law 42/74 which gives the object of the Law as being that of facilitating and expediting the administration of justice in criminal cases.

In the light of the above one could safely reach the conclusion that if the intention of the legislature was to subject the consent of the Attorney-General for dispensation with a preliminary inquiry to the scrutiny of the committing Judge, such intention should have been clearly manifested by the inclusion of a provision to that effect in the relevant law.

E) *Per Stylianides, J.*: (1) The legislation under consideration is not inconsistent or contrary to any of the constitutional provisions, Articles 12 and 30 of the Constitution or Article 6 of the European Convention on Human Rights. The said Articles do not require anything more than a fair trial.

(2) The Court has power to commit for trial without a preliminary inquiry any accused person if two prerequisites are satisfied:

(a) Written consent of the Attorney-General to the effect that it is not necessary to hold a preliminary inquiry; and

(b) The service in advance on the accused or his advocate of copy of the statement of each witness for the prosecution whom the prosecution intends to call.

(3) The District Court has no power to decide whether to hold a preliminary inquiry or not. Its power is to commit without a preliminary inquiry. However, the committing Judge does not make automatically a committal order. His power should be exercised judicially. He has to satisfy himself that there are sufficient grounds for a person to stand trial (*Re Argyrides*, supra, adopted).

It may be well remembered that the committing Judge is not the trial Court and questions of admissibility of evidence and veracity of witnesses are decided on the trial. The District Court shall consider the evidence disclosed in the copy of statements to be sufficient to commit the accused for trial, if such evidence is such as, if uncontradicted, would raise a probable presumption of his guilt, independently of whether there is a conflict of evidence in the statements.

Appeal dismissed.

Cases referred to:

Re Economides and Others (1983) 1 C.L.R. 933;

Re Argyrides (1987) 1 C.L.R. 30;

Demetriades v. Republic (1977) 3 C.L.R. 213;

Xenophontos v. Republic, 2 R.S.C.C. 89;

Police v. Athienitis (1983) 2 C.L.R. 194;

R. v. Carden [1879] 5 Q.B.D. 1;

Atkinson v. U.S.A. Government [1971] A.C. 197;

R. v. Epping and Harlow Justices [1973] 1 Q.B.D. 433;

Re Ktimatias (1977) 2 C.L.R. 296;

Constantinides v. Republic (1978) 2 C.L.R. 337;

Pastellopoulos v. Republic (1985) 2 C.L.R. 165.

Appeal.

Appeal by applicant against the judgment of a Judge of the Supreme Court of Cyprus (Pikis J.) dated the 5th January, 1988 (Appl. No 194/87)* whereby his application for an order of certiorari to quash a ruling in Criminal Case No. 22444/87 of the District Court of Limassol was dismissed.

G. Cacoyiannis, for the appellant.

Cl. Antoniades, Senior Counsel of the Republic, for the respondent.

The following judgments were delivered:

* *Reported in this Part at p. 17 ante.*

TRIANTAFYLLIDES P.: This appeal has been made against the judgment of a Judge of this Court, Pikis J., by which there was dismissed the application of the appellant for an order of certiorari to quash a ruling given on 21 November 1987, in criminal case No. 22444/87, in the District Court of Limassol.

The appellant is the accused in the said case and by the complained of by him ruling a District Court Judge in Limassol appears to have, in effect, decided that he had no discretion under section 3 of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74) to hold a preliminary inquiry in that case, as had been applied for by counsel for the appellant.

My learned brother Judge, against whose judgment the appeal was made, has held that under the said section 3 of Law 42/74 there is no discretion to hold a preliminary inquiry and that the function of the court before which there has been made an application for committal for trial by an Assize Court, without a preliminary inquiry, is to ascertain whether on the basis of the statements of prosecution witnesses, which have been furnished under paragraph (b) of section 3, the committal for trial is warranted, in the sense that the statements raise a probable presumption of the guilt of the accused.

Section 3 of Law 42/74, as amended by section 2 of the Criminal Procedure (Temporary Provisions) (Amendment) Law, 1983 (Law 44/83), reads, in English translation, as follows:

> «3. During the continuance in force of the Courts of Justice (Temporary Provisions) Law, 1974, and notwithstanding the provisions of section 92 of the Criminal Procedure Law, in cases of offences created by the Criminal Code or any other Law in force, with the exception of offences punishable with the death penalty, if -
>
> (a) the Attorney-General of the Republic gives his written consent to the effect that it is not necessary to hold a preliminary inquiry; and
>
> (b) a copy of the statement of each prosecution witness, whom the prosecution intends to call, is served in advance on the accused or his advocate, the Court has power to commit for trial, without a preliminary inquiry, any accused person.»

The trial Judge in giving the judgment against which the present appeal has been made has followed *In re Arghyrides*, (1987) 1 C.L.R. 30, which was decided by Stylianides J. on 14 February 1987, and has not followed *In re Economides*, (1983) 1 C.L.R. 933, which was decided by me on 21 June 1983.

It is true that in the *Economides* case, supra, I held that a District Judge had a discretion to decide under section 3 of Law 42/74 whether or not a preliminary inquiry was to be held; and I linked this discretion to the matter of the sufficiency in law of evidence justifying committal for trial; and I pointed out that in view of the course that had been adopted by the District Court of Larnaca in that case there had, in actual fact, been held a preliminary inquiry not on the basis of oral evidence but «on the basis only of the written summaries of evidence» which had been produced as envisaged by paragraph (b) of section 3 of Law 42/74.

Since then, however, section 3 of Law 42/74 has been amended, as aforesaid, by Law 44/83 with the result that in its paragraph (b) the word «substance» has been replaced by the word «copy» and so now a District Court Judge dealing with the matter of committal for trial by an Assize Court has before him the full texts of the statements to the police of the prosecution witnesses and, therefore, it is no longer necessary to envisage the possibility of resorting to the holding of a preliminary inquiry for the purpose of ascertaining the sufficiency of their evidence.

Even though it is still the position that section 3 of Law 42/74 excludes the holding of a preliminary inquiry as such, a District Court Judge in exercising his powers under the said section 3 has before him the full texts of the statements to the police of the prosecution witnesses and has the duty and the opportunity to decide whether the evidence against the accused, as disclosed by the said statements, is such as, if uncontradicted, would raise a probable presumption of the guilt of the accused.

In interpreting section 3 of Law 42/74 there must be borne in mind that, as provided by section 2 of Law 42/74, the terms used in such Law have the same meaning as that given to them by the Criminal Procedure Law, Cap. 155, and, consequently, the notion of committal for the purposes of the application of section 3 of Law 42/74 has to be held to be the same as that in section 94 of Cap. 155.

For all the foregoing reasons I am of the opinion that section 3 of Law 42/74, as amended by Law 44/83, cannot be construed as empowering a District Court Judge in a case of this nature to decide whether or not to hold a preliminary inquiry, but empowers him to decide whether the evidence disclosed by the statements to the police of the prosecution witnesses is sufficient to warrant the committal of the accused for trial by an Assize Court, without a preliminary inquiry.

Consequently, this appeal has to be dismissed.

A. LOIZOU J.: The sole issue for determination in this appeal, from the judgment of a Judge of this Court (Pikis J.), as it was also before him, is the interpretation and effect of Section 3 of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law No. 42 of 1974). - hereinafter to be referred to as the Law - and in particular, whether there is power vested in the Court to order the holding of a preliminary inquiry notwithstanding the fulfilment of the conditions set out in paragraphs (a) and (b) of Section 3 thereof.

There has been a divergence of approach by members of this Court, namely Triantafyllides P., and Stylianides J., trying applications in the first instance on the issue before us, and their respective views are to be found in the cases of *In Re Economides and Others* (1983) 1 C.L.R. 933 and *In Re Argyrides* (1987) 1 C.L.R. 30. This situation rendered it desirable to have this appeal heard by the Full Bench of this Court, so that in view of the frequent occurrence of such issues before committing Judges the matter would be settled by establishing a judicial precedent binding on all in the sense that the doctrine of judicial precedent has been understood in our judicial system as being the necessary basis for providing a degree of certainty as to the law, in order to show a consistency in judicial pronouncements and at that an equality of treatment before the law and the means for the development of legal rules in a disciplined and regular manner. (See *Demetriades v. The Republic* (1977) 3 C.L.R. 213).

The appellant was charged before a Judge of the District Court of Limassol, in Criminal Case No. 22444/87, with thirty offences relating to stealing and/or stealing property received on the account of another in the period between February 1981 and July 1983, all being indictable offences. It may be noted here that there

were also filed in the same District Court three more cases under Nos. 22445/87, 22446/87 and 23802/87 for similar offences charging the appellant with one-hundred and fifty counts in all.

Learned counsel for the appellant applied to the learned Judge that a preliminary inquiry be held under the provisions of Sections 92 and 93 of the Criminal Procedure Law, Cap. 155, as the learned Judge had power to do so under the provisions of Section 3 of the Law and that the approach of Triantafyllides P., *In Re Economides* (supra) should be followed in preference to that of Stylianides J., in *Re Argyrides* (supra). On the other hand learned Senior Counsel of the Republic submitted that the said application should be refused and that he should follow the latter case and rule that it had no power to order the holding of a preliminary inquiry and commit the appellant for trial once the learned trial Judge was satisfied that the two prerequisites set out in paragraphs (a) and (b) of Section 3 of the Law had been complied with, namely that the Attorney-General of the Republic had given his written consent to the effect that it was not necessary to hold a preliminary inquiry and that copies of the statements of each prosecution witness, whom the prosecution intended to call, had been served in advance on the appellant or his advocate.

The learned trial Judge ruled that it had no discretion to direct the holding of a preliminary inquiry having taken the view that the discretion vested in the Court by virtue of Section 3 of the Law was confined to an evaluation of the effect of the statements of witnesses with a view to deciding whether they contained sufficient material to commit the accused for trial before the Assize Court.

Thereupon an application was filed in this Court seeking leave to apply for an order of certiorari in order to bring up and quash the said ruling of the committing Judge. Leave was granted and ultimately after hearing counsel on the 18th and 23rd December 1987, Pikis J., delivered the judgment under appeal on the 5th January 1988.

In Re Economides (supra) Triantafyllides, P., at pp. 940-941, said the following:

> «On the other hand, I do not regard the function of a District Court under Law 42/74 as being a merely automatic function, because the said Law by its section 3 clearly provides that the

Court 'has power to commit for trial' and this provision does vest, in my opinion, in the District Court concerned discretionary power to decide whether or not a particular case is one in which it is proper to commit the accused for trial by an Assize Court without holding a preliminary inquiry; and such power is to be exercised, of course, judicially in the light of all relevant considerations, one of which could be the sufficiency, of the evidence, in the sense that if either the District Court is prima facie of the view that there does not exist sufficient in law evidence justifying the committal for trial of the accused, or if counsel appearing for the accused puts forward such an argument and the District Court is of the opinion that this argument is prima facie well-founded, the District Court may decide not to commit the accused for trial without a preliminary inquiry, but instead to hold a preliminary inquiry, so as to avoid putting a person on trial before an Assize Court without sufficient evidence justifying such a course.»

In Re Argyrides (supra) however, Stylianides J., approached the issue at pp. 40 - 41 as follows:

«The controlling words of the section are: The Court has power to commit for trial without a preliminary inquiry any accused person. These words do not empower the Court to exercise discretion whether to hold or not a preliminary inquiry; the power is to commit without a preliminary inquiry or not to commit. The discretion whether a preliminary inquiry is necessary or not, whether the provisions of s. 92 of Cap. 155 should be followed or the provisions of this law should be applied, were entrusted by the legislator to the Attorney-General of the Republic whose written consent that the holding of a preliminary inquiry is not necessary, was made a prerequisite for the exercise of the power given to the Court by this section. The Attorney-General under the Constitution exercises very wide powers of quasi-judicial nature - (Article 113 of the Constitution - *Xenophontos v. The Republic*, 2 R.S.C.C. 89;*Police v. Athienitis*, (1983) 2 C.L.R. 194).

The committing Judge does not make automatically or as a matter of course a committal order. The object of the necessity of a case going through committal proceedings before trial by

the Assize Court is a safeguard for a citizen to ensure that he cannot be made to stand his trial without sufficient grounds. It serves as a safeguard of the liberty of the subject and of the ordeal of standing a trial before the Assise Court unnecessarily - *R.v. Carden*, [1879] 5 Q.B.D. 1: *Atkinson v. U.S.A. Government*, [1971] A.C. 197: *R. v. Epping & Harlow Justices* [1973] 1 Q.B.D. 433).

This function of the committal proceedings was not taken away by Law No. 42/74. It facilitated and shortened committal proceedings but it did not take away its basic function».

The learned trial Judge whose judgment is the one under appeal had this to say (see (1988) 1 C.L.R. 17 at pp. 23-24):

«Section 3 does not in terms repeal or amend s.92 of the Criminal Procedure Law providing for the holding of a preliminary inquiry. It merely obviates the need for such a course whenever the prerequisites laid down thereunder are satisfied, namely (a) certification by the Attorney-General of the non-necessity of holding a preliminary inquiry and (b) supplying the accused or his counsel with the statements of prosecution witnesses. The inevitable inference is that by s. 3(a) the legislature intended to constitute the Attorney-General, the arbiter of the necessity of holding a preliminary inquiry, and by s. 3(b) to establish a substitute for the depositions as a means of apprising the accused of the case he will face at the trial. For the reasons earlier indicated, no objection can be raised to the conferment of power upon the Attorney-General to determine the necessity for a preliminary inquiry. Similarly, it was in the power of the legislature to prescribe an alternative process of informing the accused of the case he will be required to meet at his trial. The law does not in terms make the decision of the Attorney-General as to the non-desirability of holding a preliminary inquiry subject to judicial control.

What we must determine is whether this power should be implied by the concluding words of s. 3 bestowing power upon the Court to commit the accused to trial without a preliminary inquiry. But for the ending part of s. 3, the Court would have had no power to commit to trial without a

preliminary inquiry. Therefore we can legitimately infer that the discretion vested in the Court thereby is directly related to the committal of the accused to trial without a preliminary inquiry. The power vested in the Court cannot be extricated or be read separately from the introductory part of s.3 defining the circumstances under which a preliminary inquiry may be dispensed with. Read in this light, the meaning and effect of s. 3 is to empower the Court to commit the accused to trial despite the absence of a preliminary inquiry; provided the conditions set down in s. 3(a) and (b) are satisfied. The power given to the Court by the concluding part of s. 3 is intended to save the power to commit notwithstanding the non-holding of a preliminary inquiry. While the discretion imported thereby is referable to the justification of committal, the law does not repeal s. 94 of the Criminal Procedure Law, Cap. 155, and does not abrogate the standard governing committal, namely probable presumption of the guilt of the accused. The Court must decide whether the material made available under s. 3(b) replacing the depositions, that is, the statements of witnesses, stripped of any contradictions, raises a probable presumption of the guilt of the accused.»

Sections 2 and 3 of the Law read as follows:

«2. In this Law the terms used have the same meaning as that given to them by the Criminal Procedure Law.

3. During the continuance in force of the Courts of Justice (Temporary Provisions) Law, 1974, and notwithstanding the provisions of section 92 of the Criminal Procedure Law, in cases of offences created by the Criminal Code or any other Law in force, with the exception of offences punishable with the death penalty, if-

(a) the Attorney-General of the Republic gives his written consent to the effect that it is not necessary to hold a preliminary inquiry: and

(b) copy of the statement of each prosecution witness, whom the prosecution intends to call, is served in advance on the accused or his advocate,

the Court has power to commit for trial without a preliminary inquiry any accused person).»

It may be noted here that originally paragraph (b) of section 3 of the Law provided that only the «substance» of the statement of each prosecution witness was to be given, whereas by the only amendment effected to this law and by its amending Law 44/83, the word «substance» has been replaced by the word «copy».

Having given my best consideration to the wording of the aforesaid section and the obvious intent of the legislator as emanating from within the four corners of the said statutory provision, I have come to the conclusion that once the prerequisites of paragraphs (a) and (b) of section 3 are satisfied, a committing Judge has no power to direct the holding of a preliminary inquiry contrary to the declared conclusion contained in the written consent of the Attorney-General of the Republic given under paragraph (a) thereof. I find myself in full agreement with the approach of both Stylianides and Pikis, JJ., as set out in the passages from their judgments hereinabove cited. Indeed the material words are to be found in paragraph (a) of section 3 where it says that «it is not necessary to hold a preliminary inquiry» and the words in its concluding part that «the Court has power to commit for trial without a preliminary inquiry». These expressions have to be read subject to the phrase in the opening paragraph of section 3, which say «notwithstanding the provisions of section 92 of the Criminal Procedure Law». The specific mention of section 92 clearly conveys the notion that it was the procedure envisaged thereby to the extent that the provisions governing same were incompatible with the Law that was rendered inoperative when the prerequisites of paragraphs (a) and (b) of section 3 were satisfied.

If the legislator wanted to subject the decision of the Attorney-General to the discretion of the committing Judge it would have said so as it was done in the case of section 24(2) of the Courts of Justice Law, 1960, (Law No. 14 of 1960), as amended which provides that:

> «Notwithstanding anything in this section contained a President of a District Court, a Senior District Judge, or a District Judge shall, with the consent of the Attorney-General of the Republic, have jurisdiction to try summarily any offence punishable with imprisonment for a term not exceeding seven years. If satisfied that it is expedient so to do, in all the circumstances of the case including considerartion of the

adequacy of the punishment, or compensation such President of a District Court, Senior District Judge or District Judge is empowered under this section to impose or award.....»

Under this section though consent of the Attorney-General is given it is expressly stated that the Judge has to be satisfied himself that it is expedient to try summarily an offender accused of such an indictable offence taking into consideration all the circumstances of the case, including the adequacy of the punishment and compensation that he may himself award.

That being so I turn now to the meaning and effect of the word «commit» in the last part of the section. It has to be given in accordance with the provisions of section 2 of the Law which provides that terms used have the same meaning as that given to them by Cap. 155, the meaning that the word «commit» has in section 94 of the Criminal Procedure Law, Cap. 155, namely that where there is a conflict of evidence, the Judge shall consider the evidence to be sufficient to commit the accused for trial if the evidence against him is such as if uncontradicted would raise a probable presumption of his guilt. This is the test by which the material placed before the committing Judge has to apply in order to decide if he will commit the accused for trial before the Assize Court, or not. Needless to say that in the case of an accused corporation, the provisions of section 95 of Cap. 155 are applicable.

For all the above reasons the appeal has to be dismissed.

DEMETRIADES J.: My brother Judges, who spoke before me, have clearly set out the facts of this appeal and I, therefore, propose not to deal with them.

Although I fully agree with the outcome of the appeal, I would like to state in short my reasons for reaching my decision.

The issue in this appeal is whether a committing Judge has a discretion to order that a preliminary inquiry be carried out notwithstanding that the prerequisites provided in paragraphs (a) and (b) of section 3 of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74), as amended by section 2 of the Criminal Procedure (Temporary Provisions) (Amendment) Law, 1983 (Law 44/83), are fulfilled.

In my view-

(a) the provisions of section 3 impose a duty on the committing Judge to see that the written statements of the witnesses which the prosecution intends to call at the trial before the Assizes disclose sufficient grounds for committing an accused for trial by an Assize Court,

(b) the meaning and effect of the word «commit» is none other than that appearing in section 94 of the Criminal Procedure Law, Cap. 155, and

(c) regard must be had, when an accused is a corporation, to the provisions of section 95 of Cap. 155 as these are applicable in proceedings of this nature.

Having reached my above findings, I have also come to the conclusion that the appeal must be dismissed.

SAVVIDES J.: In this appeal the decision of a Judge of this Court dismissing the application of the appellant for an order of certiorari to quash a ruling given on the 21st November, 1987, in Criminal Case No. 22444/87 in the District Court of Limassol, is being challenged.

The issue before the learned trial Judge was whether the ruling of a Judge of the District Court of Limassol in committal proceedings whereby he decided that he had no discretion under section 3 of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74), as amended by the Criminal Procedure (Temporary Provisions) (Amendment) Law 1983 (Law 44/83), to hold a preliminary inquiry once the prerequisites of such section had been satisfied.

The learned trial Judge in dismissing appellant's application, concluded as follows:

> «I conclude that the Judge inquiring into the case has no discretion to order the holding of a preliminary inquiry when the requisites of s. 3(a) and (b) of Law 42/74 are satisfied. The function of the Court is confined to ascertaining whether the material disclosed in the statements warrants the committal of the accused to trial.»

The Learned trial Judge in reaching his conclusion considered the divergent opinions expressed by Judges of this Court in two

different cases. In Re *Economides and others* (1983) 1 C.L.R. 933, section 3 of Law 42/74 was construed by Triantafyllides P. as giving a discretion to the committing Judge to decide whether or not a preliminary inquiry was to be held. In re *Arghyrides* (1987) 1 C.L.R. 30, Stylianides, J. held that the law does not empower the Court to hold a preliminary inquiry and that when the provisions of the law are satisfied, he has to commit the accused for trial before the Assizes.

The learned trial Judge adopted the view expressed in *Arghyrides* case and explained the reason why he did not follow the view expressed by him and A. Loizou, J. in their analysis of the provisions of section 3 in their book «Criminal Procedure in Cyprus», that residual discretion vests in the Court to hold a preliminary inquiry, notwithstanding the consent of the Attorney-General, to dispense with it.

Under section 3 of the Criminal Procedure (Temporary Provisions) Law, 1974 before it was amended by Law 44/83, the Court is empowered to commit an accused person for trial without a preliminary inquiry, provided that:-

> «(a) The Attorney-General of the Republic gives his written consent to the effect that the holding of such a preliminary inquiry is not necessary; and
>
> (b) the substance of the statement of each prosecution witness whom the prosecution intends to call, is served in advance on the accused or his advocate.»

Section 3 of Law 42/74 was amended by section 2 of Law 44/83 to the extent that the word «substance» in section 3(b) was deleted and substituted by the word «copy», with the result that one of the prerequisites now for dispensing with a preliminary inquiry is service in advance on the accused or his advocate of copy of the statement of each prosecution witness intended to be called by the prosecution.

The importance of the above amendment has been stressed by Triantafyllides, P., in his judgment in the present appeal and was considered by him as such that made him adopt a different approach than that expressed by him in *Economides* case (supra).

Learned counsel for the appellant submitted that in construing the provisions of section 3 the Court may derive assistance from

similar provisions in England and the English Case Law on the matter. In particular, counsel made reference to section 1 of the Criminal Justice Act, 1969 and section 6 of the Magistrates Courts Act, 1980. It should be noted, however, that under both the said English Acts there is express provision in committal proceedings both in sub-section (4) of section 1 of the Criminal Justice Act, 1969, as well as in sub-section (4) of section 102 of the Magistrates Courts Act, as follows:-

> «Notwithstanding that a written statement made by any person may be admissible in committal proceedings by virtue of this section, the court before which the proceedings are held may, of its own motion or on the application of any party to the proccedings, require that person to attend before the court and give evidence.»

A perusal of the provisions of section 24(2) of the Courts of Justice Law, 1960 (Law 14/1960) may be useful in construing the provisions of section 3. Section 24(2) relates to the power of the Attorney-General to give his consent for summary trial of offences punishable with imprisonment for a term not exceeding seven years. Under the provision of section 24(2) the power of the Attorney-General can be exercised if the Court is «satisfied that it is expedient so to do in all the circumstances of the case including consideration of the adequacy of the punishment or compensation.»

Whereas under section 24(2) of Law 14/1960 the power of the Attorney-General to consent to a summary trial is subject to the control of the Court, no restriction or limitation whatsoever is imposed on the right of the Attorney-General to dispense with the holding of a preliminary inquiry under section 3 of Law 42/74. Material also for the construction of section 3 is the title of Law 42/74 which gives the object of the law as being that of facilitating and expediting the administration of Justice in criminal cases.

Bearing in mind the relevant provisions in the English acts as well as the provision in section 24(2) of the Courts of Justice Law, 1960, one could safely reach the conclusion that if the intention of the legislature was to subject the consent of the Attorney-General for dispensation with a preliminary inquiry to the scrutiny of the committing Judge, such intention should have been clearly manifested by the inclusion of a provision to that effect in the relevant law.

Bearing in mind all the above I am in agreement with the construction of section 3 of Law 42/74, (as amended by Law 44/83) given by Triantafyllides, P. and A. Loizou, J. in their judgments just delivered to the effect that section 3 of Law 42/74 (as amended by Law 44/83) cannot be construed as empowering the Judge dealing with a case of this nature to decide whether or not to hold a preliminary inquiry and that the only thing that he has to consider is whether the evidence disclosed by their statements to the Police of prosecution witnesses is sufficient to warrant the committal of an accused person for trial by an Assize Court without a preliminary inquiry.

This appeal has therefore to be dismissed.

STYLIANIDES J.: This appeal raises a single and important question: Has a Judge of the District Court discretion under section 3 of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law No. 42/74) to hold a preliminary inquiry when the prerequisites set out in paragraphs (a) and (b) are satisfied?

A charge was brought against the appellant in the District Court of Limassol for a number of indictable offences. Copy of the statements of each prosecution witness intended to be called by the prosecution were served in advance on the advocate of the appellant and the written consent of the Attorney-General to the effect that is not necessary to hold a preliminary inquiry was available to be produced to the Court.

Learned counsel for the appellant submitted to the District Judge that in accordance with section 3 and particularly the last two lines thereof the Court has power to exercise a discretion whether to proceed with or without a preliminary inquiry.

The District Judge in a considered Ruling decided that he had no discretion to hold a preliminary inquiry.

Shortly afterwards certiorari proceedings were taken before a Judge of this Court to quash the Ruling of the District Judge of Limassol.

The Judge who dealt with the application for certiorari dismissed it, holding that the meaning and effect of section 3 of Law 42/74 is to empower the Court to commit the accused to trial despite the absence of a preliminary inquiry, provided the conditions set out in sections 3 (a) and (b) are satisfied and that no

discretionary power is bestowed upon the committing Court to hold a preliminary inquiry.

The Criminal Procedure (Temporary Provisions) Law, 1974 (Law No. 42/74) was promulgated on 27/9/1974. It was amended by the Criminal Procedure (Temporary Provisions) (Amendment) Law, 1983 (Law No. 44/83). Its object, as it emerges from the long title and the contents of the Law, is to facilitate and expedite the administration of justice in criminal cases during the emergency created in consequence of the Turkish invasion. This Law may be retained as a permanent feature of our legislation and then is expected that it will be formulated in a more elaborate manner.

This piece of legislation is not inconsistent or contrary to any of the constitutional provisions, Articles 12 and 30 of the Constitution, or Article 6 of the European Convention on Human Rights. The said Articles do not require anything more than a fair trial. It is not imperative, on the strength of the above Articles, to hold a preliminary inquiry in relation to criminal cases, otherwise than as provided from time to time by legislation. Absence of a preliminary inquiry does not result in violation of the rights under the above Articles and it does not result in depriving an accused person of a fair trial. (*In Re Ktimatias* (1977) 2 C.L.R. 296; *Constantinides v. The Republic* (1978) 2 C.L.R. 337; *Pastellopoulos v. The Republic* (1985) 2 C.L.R. 165.)

The preliminary inquiry originated in England, its object was to consider whether there was such evidence that accused might be sent to take his trial before another tribunal. Committal proceedings were held in England before the passing of section 25 of the Indictable Offences Act, 1848 whereby preliminary inquiry received statutory authority.

The object of the necessity of a case going through committal proceedings before trial by the Assize Court is a safeguard for a citizen to ensure that he cannot be made to stand his trial without sufficient grounds. It served as a safeguard of the liberty of the subject and of the ordeal of standing a trial before the Assize Court unnecessarily (*R. v. Carden* [1879] 5 Q.B.D. 1; *Atkinson v. U.S.A. Government,* [1971] A.C. 197; *R. v. Epping & Harlow Justices,* [1973] 1 Q.B.D. 433).

Section 3 of Law 42/74, as amended by section 2 of Law 44/83 reads as follows:-

«3. Διαρκούσης της ισχύος του περί Δικαστηρίων (*Προσωριναί Διατάξεις*) Νόμου του 1974 και παρά τας διατάξεις του άρθρου 92 του περί Ποινικής Δικονομίας Νόμου εις περιπτώσεις αδικημάτων προβλεπομένων υπό του Ποινικού Κώδικος ή οιουδήποτε ετέρου εν ισχύι Νόμου, εξαιρουμένων αδικημάτων τιμωρουμένων δια της ποινής του θανάτου, εάν-

(α) ο Γενικός Εισαγγελεύς της Δημοκρατίας παράσχη γραπτήν συγκατάθεσιν περί της μη αναγκαιότητος διεξαγωγής τοιαύτης προανακρίσεως· και

(β) αντίγραφον της καταθέσεως εκάστου μάρτυρος κατηγορίας τον οποίον προτίθεται να καλέση η κατηγορούσα Αρχή, επιδοθή προηγουμένως εις τον κατηγορούμενον ή τον δικηγόρον αυτού,

το Δικαστήριον κέκτηται εξουσίαν να παραπέμψη εις δίκην άνευ προανακρίσεως οιονδήποτε κατηγορούμενον.»

(«3. During the continuance in force of the Courts of Justice (Temporary Provisions) Law, 1974, and notwithstanding the provisions of section 92 of the Criminal Procedure Law, in cases of offences created by the Criminal Code or any other Law in force, with the exception of offences punishable with the death penalty, if-

(a) the Attorney-General of the Republic gives his written consent to the effect that it is not necessary to hold a preliminary inquiry; and

(b) copy of the statement of each prosecution witness, whom the prosecution intends to call, is served in advance on the accused or his advocate,

the Court has power to commit for trial without a preliminary inquiry any accused person.»)

This section was judicially considered before its amendment *In Re Economides and Others* (1983) 1 C.L.R. 933 and after its amendment *In Re Arghyrides* (1987) 1 C.L.R. 30.

The Court has power to commit for trial without a preliminary inquiry any accused person, if two prerequisites are satisfied:

(a) Written consent of the Attorney-General to the effect that it is not necessary to hold a preliminary inquiry; and

(b) The service in advance on the accused or his advocate of copy of the statement of each witness for the prosecution whom the prosecution intends to call.

I continue to hold the opinion which I expressed *In Re Arghyrides* (supra) that the District Court has no power to decide whether to hold a preliminary inquiry or not. Its power is to commit without a preliminary inquiry.

In Re Argyrides I said, inter alia, the following at pp. 39-40:-

«Though the notion of committing without preliminary inquiry was embodied as early as 1967 in the Criminal Justice Act in England, after comparison of the provisions of the two Laws, I am of the view that the Cypriot legislator did not follow in any respect the English Law. The English Law is not of any guidance in the interpretation or application of our Law, neither is the Magistrates' Act, 1980.

.....

The controlling words of the section are: 'The Court has power to commit for trial without a preliminary inquiry any accused person.' These words do not empower the Court to exercise discretion whether to hold or not a preliminary inquiry; the power is to commit without a preliminary inquiry or not to commit. The discretion whether a preliminary inquiry is necessary or not, whether the provisions of s. 92 of Cap. 155 should be followed or the provisions of this Law should be applied, were entrusted by the legislator to the Attorney-General of the Republic whose written consent that the holding of a preliminary inquiry is not necessary, was made a prerequisite for the exercise of the power given to the Court by this section. The Attorney-General under the Constitution exercises very wide powers of quasi-judicial nature - (Article 113 of the Constitution - *Xenophontos v. The Republic*, 2 R.S.C.C. 89; *Police v. Athienitis*, (1983) 2 C.L.R. 194).

The committing Judge does not make automatically or as a matter of course a committal order. .....

This function of the committal proceedings was not taken away by Law No. 42/74. It facilitated and shortened committal proceedings but it did not take away its basic function.

..... under our Law he is vested with power to commit without preliminary inquiry. Such power should be exercised judicially. He has to satisfy himself that there are sufficient grounds for a person to stand his trial. The object of the provision to deliver copies of the statements of the witnesses whom the prosecution intends to call at the trial is twofold: (a) to enable the committing Judge to exercise his discretion; and (b) to inform the accused of the case that he is due to face.»

The power conferred on the Court is a discretionary power which has to be exercised judicially on the material contained in the copies of the statements of the witnesses.

It may be well remembered that the committing Judge is not the trial Court and questions of admissibility of evidence and veracity of witnesses are decided on the trial.

The District Court shall consider the evidence disclosed in the copy of statements to be sufficient to commit the accused for trial, if such evidence is such as, if uncontradicted, would raise a probable presumption of his guilt, independently of whether there is a conflict of evidence in the statements.

For the foregoing reasons, I am of the opinion that no error of Law on the face of the record of the District Court of Limassol is manifest and consequently the application for certiorari was rightly dismissed.

I would dismiss this appeal.

KOURRIS, J.: I am in agreement with the judgment of A. Loizou, J. and for the same reasons I dismiss the appeal.

Appeal dismissed.