[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

THE REPUBLIC

Applicant,

v.

GEORGHIOS THEOCLI KALLI (*No.* 1)

Respondent.

(*Question of Law Reserved No.* 140).

Criminal Procedure—Question of law reserved for the opinion of the High Court—The Criminal Procedure Law, Cap. 155, *section* 148*—The trial Court are not precluded from reserving the question after they had made a ruling on the point—Or even after conviction—Right of the Attorney-General to apply for a question to be so reserved—That right or the discretion of the trial court should be sparingly used—Especially in cases of premeditated murder—Regard to be had to the proper administration of justice —Article* 113 *of the Constitution.*

Evidence in criminal cases—Confessions—Admissibility—A hope of help held out by an accused person to himself does not render his statement inadmissible in evidence—Unless that hope is sanctioned by the person in authority concerned.

On the trial of the prisoner (for capital murder — "premeditated murder") the Assize Court sitting at Kyrenia rejected a confession made by him in the following circumstances: Two days after his arrest and while he was in custody the prisoner expressed his wish to a police officer to see Sub-Inspector Frangos, the officer in charge of the investigation, and, thereupon, he was taken to the latter's office. On entering the office he said to the Sub-Inspector: "I am lost, Mr. Frangos. I will give you a statement, I will tell you the whole truth and do whatever you wish". Thereupon the Sub-Inspector cautioned the prisoner with the usual words. He then wrote down that form of caution and read it over to the prisoner who signed it. The prisoner then began his statement with the words: "I told you I want you to help me what you can". The Sub-Inspector did not administer to the prisoner another caution after the aforesaid words were uttered by the prisoner, nor did he say anything to show to him that he (the Sub-Inspector) could not do anything to help him. The prisoner went on and made a statement which

the prosecution sought to put in evidence. On an objection taken by counsel for the defence, the Assize Court by majority rejected the statement. In their ruling the Assize Court stated that they found that the statement was not induced by anything said to the prisoner either by the Sub-Inspector or any other police officer, that it was correctly recorded and that it was read over to the prisoner before he signed it. But the accused's opening sentence was construed by the majority of the Assize Court as showing a hope of favour and they said that it was, therefore, necessary for the Sub-Inspector as soon as that opening sentence had been uttered to administer to the prisoner another caution calculated to dispel that hope, and that his failure to do so, unwitting no doubt as it was, amounted in effect to sanctioning that hope, so that the position was as if he had held out to the prisoner a promise of favour in the first instance. The Assize Court relied on the case of *Regina v. Gillis* (1866) 11 Cox 69, especially the judgment of Fitzgerald B. The Attorney-General being dissatisfied with that ruling applied to the Assize Court under section 148 of the Criminal Procedure Law, Cap. 155 to reserve for the opinion of the High Court the question of law involved in this case, which, eventually, they did. The question reserved boiled down to this: whether or not in the light of the circumstances, as outlined hereabove, the statement (confession) of the accused was admissible in evidence.

By section 148 of the Criminal Procedure Law, Cap. 155, it is provided:

"(1) Any Court exercising criminal jurisdiction may, and upon application by the Attorney-General shall, at any stage of the proceedings reserve a question of law arising during the trial of any person for the opinion of the Supreme Court.

(2) In every such case the President of the Assize Court or the trial Judge, as the case may be, shall make a record of the question reserved with the circumstances upon which the same has arisen and shall transmit a copy thereof to the Chief Registrar.

(3) The Supreme Court shall consider and determine the question reserved and may—

a) if the Court has convicted the accused —

i) confirm the conviction;

ii) quash the conviction, in which case the accused shall be acquitted;

iii) direct that the judgment of the Court shall be set aside and that, instead thereof, judgment shall be given by the Court as ought to have been given at the trial;

b) if the Court has not delivered its judgment, remit the case to it with the opinion of the Supreme Court upon the question reserved".

Counsel for the prisoner raised before the High Court a preliminary objection that the Assize Court having already made a ruling on the admissibility of the statement were thus precluded from reserving the question pursuant to section 148 of the Criminal Procedure Law, Cap. 155. Section 148 of Cap. 155 was section 145 of the Criminal Procedure Law, Cap. 14 in the revised edition of the Statute Laws of Cyprus, 1949, referred to in the leading case *Nicos Sampson Georghiades* (No. 1) 22 C.L.R. 102 and of which case reference is made in the instant one.

Held:- 1. On the preliminary point (VASSILIADES, J. *dubitante*):

(1) Under section 148 of the Criminal Procedure Law, Cap. 155, any Court exercising criminal jurisdiction may in its discretion and shall upon the application of the Attorney-General, at any stage of the proceedings and even after conviction reserve a question of law arising during the trial for the opinion of the High Court.

Principles laid down in *Regina v. Nicos Sampson Georghiades* (No. 1) 22 C.L.R., 102 at pp. 104-105 per *BOURKE, C.J., applied.*

(2) *Per VASSILIADES, J.:* (a) With all respect to that judgment (*Regina v. Nicos Sampson Georghiades* (No. 1) 22 C.L.R. 102) I am still inclined to think that section 148 of the Criminal Procedure Law, Cap. 155 must be read and considered as part of the statute to which it belongs; and together with the sections providing for appeals. If so read, it still leaves me with a doubt regarding its application. In any case the position is now fundamentally changed. Cyprus is no longer a British Colony with a right of appeal, in a case such as this, to the Privy Council. It has a High Court

constituted as provided by the Constitution, which is the highest Court of Appeal in the Republic, vested with very wide powers. Its Assize Courts are constituted under a new Courts of Justice Law (Law No. 14 of 1960), section 25 (2) of which provides regarding the right of appeal in criminal cases.

(b) The reason for which this peculiar provision was first introduced and was subsequently retained in our criminal procedure in some form or another, has now practically ceased to exist. An appeal now appears to lie as a matter of right in most criminal matters from trial courts to the High Court; and questions of law arising during trials, can be discussed and decided by way of appeal. If the Attorney - General has no right of appeal against acquittals by Assize Courts, the remedy lies in amending the relative statutory provisions. And if it is intended that such appeal should not lie he cannot get round the difficulty by a proceeding such as this. Such proceedings during a trial should, in my opinion, be discouraged as tending to cause inconvenience, delay and embarrassment in the administration of criminal justice.

(c) Interruptions in criminal trials are highly undesirable for a number of obvious reasons. I venture the view that so long as this, extraordinary provision, is still allowed to remain on the Statute Book, trial courts faced with an application by or on behalf of the Attorney-General under this section, should comply with the peremptory provision in the statute, without, wherever possible, interrupting the trial; especially if the application is made after the Court has ruled on the point, as it happened in this case.

(d) A trial for murder or other serious crime, should not, in my opinion, be interrupted under this section, unless the Court think that in the interests of justice and for the Court's own benefit, a question of law arising during the trial, should be reserved for the opinion of the High Court to enable them to deal further with the case; and then only where such interruption of the trial should not prejudice or embarrass the defendant.

(3) *Per JOSEPHIDES, J.:* Needless to say that it is highly desirable that the trial of a criminal case and especially an Assize case involving a charge of premeditated murder should not be interrupted unduly. I understand that this right of the Attorney-General has been exercised very spa-

ringly, and I have no doubt that the Attorney-General of the Republic, as the officer responsible for the enforcement of the criminal law in a just and proper manner (see Article 113 of the Constitution) will continue to make a very sparing use of his right in future.

Held: II. On the question reserved: (1) The confession of the accused is admissible in evidence. The Sub-Inspector having already administered to the accused the proper caution when the latter was about to begin his statement, it was not necessary for the former to administer a fresh caution calculated to dispel the accused's hope as expressed by the words he had uttered at the opening of his statement. Nor does the failture of the Sub-Inspector to do so amount in effect to sanctioning that hope.

Reg. v. Gillis (1866) 11 Cox 69, *distinguished.*

(2) A hope for help held out by the accused to himself does not in law render *eo ipso*, his statement inadmissible.

Principle laid down in *R. v. Godinho*, 7 Cr. App.R. 12, at p. 14, per Hamilton J., *applied.*

(3) (VASSILIADES J., *dissenting*): Consequently the case will be remitted back to the Assize Court in accordance with section 148(3) of the Criminal Procedure Law, Cap. 155.

(4) *Per VASSILIADES, J.:* (a) This, in my opinion, is not a question of law which can be reserved under section 148. It is in this case a mixed question of law and fact. Probably more of fact than law.

(b) Once the Assize Court have ruled against the admissibility of the statement, the correctness of their ruling can, in my opinion, only be questioned in an appeal, when this Court shall have before it the whole record, and shall be able to consider the matter in the light of all the relevant circumstances, drawing, if necessary, their own inferences and conclusions, on the admissibility of the statement in question.

Ruling of the Assize Court reversed. Case remitted back to the Assize Court in accordance with section 148(3) *of Cap.* 155.

Cases referred to:

Reg. v. Nicos Sampson Georghiades (No. 1) 22 C.L.R. 102.

Reg. v. Gillis (1866) 11 Cox 69.

R. v. Godinho 7 Cr. App. R. 12.

Reg. v. Evgenia Papa Elia 1 C.L.R. 105.

R.v. Michael Savva 13 C.L.R. 63.

Attorney-General v. Kounnides (Question of Law Reserved No. 109/56 decided by the Supreme Court on December 6, 1956 (*unreported*).

Maroulla Xenophontos v. Panayiota Charalambous (Criminal Appeal No. 2335 decided by the High Court in May, 1961, now reported in this volume at p. 122 *ante*).

R. v. Louis Marie Joseph Voisin 13 Cr. App. R. 89.

R. v. Tramboulli 15 C.L.R. 106.

M. Volettos v. The Republic (reported in this volume at p. 169, *ante*).

Question of law reserved under section 148 of Cap. 155.

Question of law reserved by the Assize Court of Kyrenia (Stavrinides, P.D.C., Evangelides and Ioannides, D.JJ.) (Cr. Case No. 1350/61) on application by the Attorney-General of the Republic under s. 148(1) of the Criminal Procedure Law, Cap. 155, arising out of a majority ruling of the said Court in the course of the trial of a murder case whereby a statement made by the accused to the Gendarmerie was held inadmissible.

O. Feridun, Deputy Attorney-General with *A. Frangos*, Counsel of the Republic, for the Attorney-General.

Lefkos Clerides with *K. Saveriades* for the accused.

Cur. adv. vult.

The facts sufficiently appear in the judgments of VASSILIADES and JOSEPHIDES, JJ.

O' BRIAIN, P.: In this case there has been some controversy before us as to the manner in which the Assize Court reserved for the opinion of this Court pursuant to Section 148 of the Criminal Procedure Law, the question of law which the Attorney-General required them to reserve. Furthermore, it would appear that at least some of the ques-

tions set out by the Assize Court involve issues of fact and not law. However, it has been agreed by counsel on both sides that only one point of law is involved, namely the admissibility or otherwise of the statement of the accused referred to in the case upon the grounds appearing on the record.

A preliminary objection was taken by Mr. Clerides that as the Assize Court had made a ruling on the point, that Court was precluded from reserving the question pursuant to section 148. A similar objection was taken before the former Supreme Court in the case of *Regina v. Nicos Sampson Georghiades* (No. 1) reported in 22 C.L.R. 102. Delivering the judgment of the Court, Bourke, C.J., said at p. 104:

> "It appears that before the lower court there was agreement to the course required of referring the question for the opinion of this Court; but Mr. Pavlides for the accused has now raised the objection that it was not open to the trial Judge to reserve the question because he had already given his ruling and decided it. We do not think that there is substance in the submission. Under section 145 the Court may in its discretion at any stage of the proceedings reserve a question of law arising during the trial. It is apparent from sub-section (3) that this procedure may be resorted to even after conviction, which involves decision in the case. Upon application by the Attorney-General the Court is bound at any stage of the proceedings to reserve a question of law arising during the trial and clearly, in our opinion, this can also be done after conviction. It is evident that in whatever manner the machinery of section 145 is set in motion, there can be a question reserved and determined after judgment and conviction which would involve decision by the trial Court not only upon the general issue but upon the particular question arising during the trial and which is reserved for determination by this Court. Equally when the trial Court has decided the particular question prior to delivery of its judgment in the case, this constitutes no bar to the question being reserved and considered by this Court at such stage of the proceedings. It would fall to the trial Court, as is not disputed, to be guided by and act on the opinion of this Court upon the question reserved. In *Attorney-General* v. *Kounnides* (Reserved Case No. 109/56) a question was reserved under section

145 upon application by the Attorney-General after a ruling upon the point of law by the Court of trial and it was determined by this Court. We can discern no sufficient reason for limiting the words in section 145(1) - "at any stage of the proceedings" to mean at any stage of the proceedings *before* the Court of trial decides or rules upon the question of law arising".

I accept entirely the reasoning of the learned Chief Justice as set out in that passage and have nothing to add to it. In my opinion the preliminary point taken by Mr. Clerides is not well founded.

That leaves for consideration the question whether or not, in the circumstances set out in the case reserved by the Assize Court, the statement in question is admissible in law. I propose to deal with the matter on that basis exclusively because the case itself makes reference to another ground of objection to the admissibility of this statement. I think it is regrettable that the Assize Court did not consider and rule on all objections to the admissibility of this statement before reserving for this Court the question of its admissibility on some of those grounds. The Assize Court was pressed by Mr. Clerides with a statement of law in the judgment of Fitzgerald B. in the Irish case of *Reg. v. Gillis*, 11 Cox 69, where the learned Judge says -

"There are three conditions necessary to render a confession inadmissible: (1) The existence of a charge made against, or a suspicion attached to, a prisoner. (2) The presence of a person in authority. (3) Some reason to infer that the admission is made under the influence of hope or fear, sanctioned in some way by such person in authority".

It appears to have escaped notice that the decision of the majoritv of the Court in which five out of the nine Judges concurred was delivered by O' Hagan, J. Fitzgerald B. dissented from the majority as regards the admissibility of one statement and delivered his own judgment, concurring with them in regard to the second statement. None of the other eight members of the Court appear to have adopted his statement of the Law, and the judgment of the majority states the law otherwise. No case has been cited to this Court in which the dictum of Fitzgerald B. has been approved, and I, myself, am not aware of any in Ireland or England. In the case of

R. v. Godinho 7 Cr. App. R. 12, the law is stated as follows by Hamilton J. at p. 14:

"A question has been raised as to the admissibility of a confession which the prisoner volunteered to a police officer, though without any suggestion or question on his part. The suggested ground is that the operating motive on appellant's mind was the hope of pardon. Where such confessions have been rejected the hope of pardon has been held out, whether verbally or by proclamation, by some person in authority. Where a definite hope of pardon has been held out, but by a person not in authority, the confession has constantly been held to be receivable. A hope of pardon held out by appellant to himself can be in no better position".

In my opinion the law is correctly and succinctly stated in that passage. I agree with it and cannot usefully add anything to it. In my opinion, upon the circumstances set out in the case reserved the statement in question was clearly admissible as evidence.

ZEKIA, J.: I agree with the reasons given on the preliminary point, already ruled, and have nothing to add. Coming to the admissibility of the statement under consideration I wish to say only a few words. When the admissibility of a statement or confession made by an accused is objected to, the point to be considered is whether such a statement is free and voluntary. In ascertaining this, no doubt, among other things, the trial Court has to find whether the statement in question was made as a result of an inducement, by a promise of favour, held out by a person in authority. The Court, in the circumstances of the case, had to answer one question only, namely : Did the prosecution affirmatively and beyond reasonable doubt prove that the statement intended to be produced was free and voluntary? If the Court is satisfied beyond reasonable doubt that the statement was free and voluntary and in this particular case it was not the result of a promise of favour held out by a person in authority then the statement in question was an admissible one.

The trial Court rejected the statement solely, as far as the record before us goes, on the ground that the statement in question contained at the very start the following words in Greek : "Σοῦ εἶπα θέλω νὰ μὲ βοηθήσης ὅ,τι μπορεῖς" ("*I told you I want you to help me all you can*").

This introductory sentence impressed, as it appears, the trial Court which thought a fresh caution was necessary to dispel the hope entertained by the accused and the failure to do this rendered the statement inadmissible.

The same Court on the other hand expressly found that no inducement was held out by the Police Officer who took the statement or by any other policeman. This finding on the part of the Court amounts to a finding that the accused made his statement without any inducement although for some reason or other he entertained a hope of help from the officer taking down his statement. If an inducement was held out by a person not in authority the statement made as a result of such inducement is not inadmissible. A fortiori if the person making the statement expects favour not promised by anybody, leaving aside the weight to be attached, this fact would not render his statement inadmissible. This is not the case where owing to the expectation of favour expressed in the statement the Court thought, taking into account the evidence adduced, that the prosecution failed to satisfy them beyond reasonable doubt that the statement was free and voluntary. It seems that the Court misconstrued Gillis's case which is distinguishable on many points from the present one and I agree with my brother Josephides's J. comments on this aspect of the case.

In the circumstances, I agree that the statement in question was wrongly rejected.

VASSILIADES, J.: In the course of a murder trial before the Assize Court of Kyrenia the prosecution sought to put in evidence a statement made by the accused to a Police Inspector of the C.I.D. (Criminal Investigation Department) two days after his arrest and while in custody for the murder in question. The statement was offered as a confession volunteered by the prisoner and received by the Inspector after caution.

We have it from counsel that objection was taken to the admissibility of the statement, and that the trial Court heard evidence on this side-issue, as to the circumstances under which the statement was made, in order to enable the Court to decide the question of admissibility and rule on the objection.

As it appears from the ruling of the Assize Court, (the full text of which is given in paragraph 8 of the Presiding

Judge's statement of the case before us) the prisoner asked for an interview with the Inspector, and when taken to the latter's office, he put himself completely in his hands. On entering the office he said :

"Εχάθηκα κύριε Φράγκο. Νά σοῦ δώσω κατάθεσιν νά σοῦ πῶ οὔλλην τήν ἀλήθκειαν καί ὅτι θέλεις κάμε."

My interpietation of this into English is something like this: "I am a finished man Mr. Frangos. I am lost. Let me give you a statement and tell you the whole truth, and you can do whatever you like about it". This may not be a translation of the expressions used by the accused, word by word ; but I do not think that such a translation would convey incorrectly the meaning.

The Inspector's reaction to this overture, was to administer the usual formal caution, which he further proceeded to write down on the sheet of paper where he was about to take the prisoner's statement; and after this, the Inspector read the caution to the accused, and asked him to sign it, which the prisoner did.

Thereupon the prisoner said :
"Σοῦ εἶπα θέλω νά μέ βοηθήσης ὅ,τι μπορεῖς"

which the Inspector took down in writing, without making any observation, or saying anything to the prisoner about it. To me these words in Greek mean : "As I have already told you, I want you, I expect of you, to help me all you can". After this the prisoner contmued his statement, the Inspector taking it down in writing as it came along, from the prisoner's lips.

The trial court heard evidence on the issue of admissibility, which, I suppose, means that they heard the Inspector, and the prisoner answering numerous questions on the point. The court also heard counsel on both sides, addressing them on the nature of this statement; and they then retired to discuss and consider their ruling.

The result was a majority decision to reject the statement as inadmissible. Two of the members of the Court took the view that the Inspector's failure to do or say anything to dispel accused's expressed hope of help from him, "amounted in effect to sanctioning such hope", so that the position was as if the Inspector had held out the promise himself, which

would clearly render the statement inadmissible. The other member of the Assize Court did not share that view.

As put in the statement of the case before us, the minority view was that the opening words of the prisoner not showing any hope of favour so as to require any further caution, the statement was admissible.

The Court's ruling against the admissibility of the statement, apparently caused disappointment to prosecuting counsel who then applied for the question to be reserved under section 148 of the Criminal Procedure Law (Cap. 155) for the opinion of the High Court. Counsel formed his question in three paragraphs in a way which apparently found no agreement from the side of the defence. And eventually the Court framed the question as in paragraph 11 of the statement before us, which reads:

"11. For the foregoing reasons we have reserved for the opinion of the Honourable High Court the following question of law, namely, whether in the light of the above facts :

(a) the words : "Σοῦ εἶπα θέλω νὰ μὲ βοηθήσης ὅ,τι μπορεῖς" were capable of being construed as constituting an expression of hope that the Inspector would show favour to the accused ; if the answer is in the affirmative,

(b) whether the fact that the Inspector said and did nothing to dispel such hope amounted to sanctioning that hope; and if so,

(c) whether such sanctioning has the same effect as a prior promise of favour so as to render the statement inadmissible".

This was on the 13th October. On the same day the Attorney-General, apparently dissatisfied with the Court's drafting of the question, filed an application which is part of the record before us, where the matter is framed in the way the prosecution think more appropriate.

It is rather fortunate that this should happen so as to create the opportunity to have this peculiar provision in our law (as Bourke, C.J. called it in *Reg. v. Sampson*, 22 C.L.R. 102) discussed and considered again.

At the hearing before this Court, where the case for the prosecution was forcibly argued by the Deputy Attorney-General of the Republic, counsel were not able to inform us of the origin of this provision. A provision which, considering the present state of our law, would seem to be quite unnecessary, while on the other hand it may well cause inconvenience, delay and highly undesirable interruptions in criminal trials.

I need only refer here to a recent case which came before this Court on appeal, where there have been several side-trials, and no less than eight rulings on the admissibility of confessions and statements in the course of a long murder trial, to show what may happen in a case, if the Courts were to have to state a case for the opinion of the High Court, every time counsel for the prosecution or the defence, were dissatisfied with the view of the law taken by the Court in their rulings. I refer to *Volettos's* case, Criminal Appeal No. 2319 heard in this Court in May last.

In the present case, after elaborate argument on both sides, counsel eventually agreed that, as put by the President of the Court during the hearing "the net point of law involved in the question reserved, is the admissibility or otherwise of the statement in question, on the grounds appearing on the record".

Now this, in the circumstances of this particular case, is, in my opinion, a question of mixed fact and law, turning more on fact than on law. As a matter of law the statement is admissible if free and voluntary. And that this is the law on the point, no one disputes. But whether the statement is free and voluntary as required by law, it is a question of fact which would depend to a considerable extent on the persons involved, and on other circumstances surrounding the question. The very same words would, no doubt, carry a different meaning if put in a different set of circumstances.

I shall now proceed to trace, as far as I have been able to do it under the pressure of an interrupted murder trial, the origin and application of the provision in our statute book which gave rise to this "appeal within the trial", if I may use the expression.

It first appeared under the heading "Appeals from trial upon information in criminal cases" in Chapter XXI of the

Cyprus Courts of Justice Order in Council made by Her late Majesty Queen Victoria in November 1882, for Her recent Possession of the Turkish territory of Cyprus, which Her Majesty agreed to govern for His Imperial Majesty the Sultan of Turkey, in 1878.

Under clause 6 of that Order, which was to establish the new Courts in the territory, each 'caza' (District) was to have a "Court of Criminal Jurisdiction to be called an Assize Court". The Court was to be presided by the Chief Justice, or in his absence, by the Senior Puisne Judge of the Supreme Court ; and to be composed of three or five members, including one or three Judges of the District Court.

In view of this composition there could not be an appeal from an Assize Court to the Supreme Court, which was then composed by the Chief Justice and one Puisne Judge. So clause 138 of the Ordinance provided that "on any trial upon information, other than a trial before an Assize Court including two judges of the Supreme Court, if the accused thinks that the proceedings of the Court by which he is tried are irregular or not according to law, he may either during his trial or after his conviction apply to the Court before which he is being or was tried to direct a special entry to be made on the record, showing the nature of the proceedings alleged to be irregular ; and if the Court refuses to do so, he may, by leave of the Queen's Advocate, apply to the Supreme Court to order such entry to be made; but no such entry shall be made only upon the ground that the Court decided wrongly some question of law arising at the trial, except under the provisions next hereinafter contained". (Statute Laws of Cyprus and Imperial Orders in Council compiled in 1913 by Stanley Fisher, Vol. I, p. 268).

And Clause 139 provided that:

"If any question of law arises on the trial of any person for any offence not triable summarily, the Court may in its discretion reserve such question for the Supreme Court, except where the Court before which such case is being or was tried includes two judges of the Supreme Court".

These provisions were considered by the Supreme Court in *Reg. v. Evgenia Papa Elia* decided in 1890 by Bovil, C.J., and Smith, J. and reported in 1 C.L.R. 105. The head-note reads:

"A special case was reserved by a District Court for the opinion of the Supreme Court on an objection taken to the information before the witnesses for the prosecution were called.

Held: That under the provisions of the Cyprus Courts of Justice Order, 1882, section 139, a question reserved by a District Court can only be submitted for the opinion of the Supreme Court in cases where the trial has resulted in a conviction".

Mr. Law, Acting Queen's Advocate, who handled the case for the Crown before the Supreme Court, submitted that the District Court was premature in stating this case; it should have proceeded with the trial, and if the defendant was convicted then a case could have been stated.

Chief Justice Bovil in delivering the judgment of the Court says this:

> "Mr. Law objects to the jurisdiction of this Court, on the ground that the accused has not yet been convicted, and he argues that although it may be thought from a perusal of sections 138 and 139 of the Cyprus Courts of Justice Order, that a question of law may be raised at any stage of the proceedings, a perusal of sections 140 and 141 renders it clear that an Assize Court or a District Court, though it may make special entries or reserve questions of law, must nevertheless proceed to a finding as to the guilt or innocence of the accused, and cannot call on the Supreme Court for a decision on a question of law until the accused is convicted".

I shall now take a big step in the course of time, and come to the position 37 years later, in 1927, when (*vide* Cyprus Gazette (Extraordinary) No. 1691 of 1st May, 1925) Cyprus was a two-year old British Colony, and had its new Courts established under the Cyprus Courts of Justice Order, 1927.

The Supreme Court, under clause 3 of that Order, was constituted of five judges, one of whom was designated the Chief Justice, and the others Puisne Judges.

Two of the Puisne Judges were Cypriots, one a Christian and the other a Moslem. The other three were British Colonial Judges. The Chief Justice was again the President of the Supreme Court.

The Assize Courts, constituted under clause 5, consisted of three or five Judges as the Chief Justice might direct.

The provisions for cases reserved in trials upon information came under section 158 of the Order, which reads:

"158. If any question of law arises on the trial upon information of any person for any offence not triable summarily, the Assize Court may in its discretion reserve such question for the Supreme Court. If the Court determines to reserve any such question, it shall state the question or questions reserved, with the special circumstances upon which the same has arisen, and shall direct such case to be specially entered in the record, and a copy thereof to be transmitted to the Supreme Court.

If the Court by which any person is convicted of an offence not summarily triable reserves any question of law for the opinion of the Supreme Court in manner hereinbefore mentioned, the Supreme Court shall consider and determine such question, after hearing the advocates on both sides or the accused in person if the Attorney-General or the accused thinks it fit that the case should be argued".

The clause then proceeds on the footing that the trial court has delivered its judgment and has convicted the accused. And it is after this that the clause provides as to what happens if the trial court has not yet delivered its judgment. This is significant as the legislator appears to assume in the first place, that the question reserved will be argued and decided in the Supreme Court *after* conviction.

This new position of the law, was considered by the Supreme Court in *R. v. Michael Savva* in October, 1927, that is to say, a few months after the new Order in Council came into force.

The Assize Court of Nicosia in that case, reserved a question of law under clause 158, (which I have just read) and stayed the trial pending the decision of the Supreme Court. The case is reported in 13 C.L.R. p. 63. The head-note reads :

"Criminal Procedure - Question of Law reserved by the Assize Court, Nicosia, under Clause 158 of the Cyprus Courts of Justice Order, 1927 - After conviction only. Cyprus Courts of Justice Order, Clause 158:

If any question of law arises on the trial upon information of any person for any offence not triable summarily, the Assize Court may in its discretion reserve such question for the Supreme Court .. .. ..

If the Court by which any person is convicted for an offence not summarily triable reserves any questions of law for the opinion of the Supreme Court. .. ..

The Assize Court of Nicosia, during the hearing of the trial of the above-named person, stayed the trial pending the decision of the Supreme Court on a certain question of law reserved under the Cyprus Courts of Justice Order, Clause 158.

Held: That a question of law may only be reserved by the Assize Court for the determination of the Supreme Court after the accused has been convicted".

The case was decided by a court consisting of Belcher, C.J., Lucie-Smith, J. and Sertsios, J. It was argued before them by two most distinguished lawyers in their time, late Neoptolemos Paschalis and A. Triantafyllides. The Chief Justice, in delivering the judgment of the Court, referred to the case of *Reg.* v. *Elia*, which I have just mentioned, and said:

"We consider we have no power to hear a case before the verdict is delivered or arrived at"

And concluded the judgment as follows:

"At all events the proceedings must, in our opinion, have terminated except, it may be, for the actual words of judgment. The Court must have decided the accused to be guilty. Were it otherwise the Supreme Court might be dealing with matters which an acquittal would render academic. We think the matter must go back to the learned judges of the Assize with the intimation that we cannot hear it until a verdict is found".

This decision, not only confirms a long-standing practice, settled by the Court of Appeal upon sound principle in *Reg.* v. *Elia* (*supra*), but dealing with the provisions of cl. 158 which clearly visualize questions reserved after conviction, as well as questions reserved before the trial court has delivered its judgment, the Court of Appeal adopt the same view as that taken in *Elia's* case, and express the opinion that where the

question is reserved before conviction "........the proceedings must have terminated, except, it may be, for the actual words of judgment. The Court must have decided the accused to be guilty". In other words the clause does not provide, and is not to be acted upon so as to cause a stay of proceedings during trial; or be used so as to operate as an appeal in cases of acquittal.

About eight years later in December, 1935, a new Courts of Justice Law was enacted "to make better provision for the administration of justice and to reconstitute the Courts of the Colony" (Law 38 of 1935). Here the substance of cl. 158 is incorporated in section 24, the marginal note of which reads : "Question of law reserved for opinion of Supreme Court by Assize Court".

But the section is drafted in a manner apparently intended to override *R. v. Savva (supra)* as it provides for questions of law arising "during" the trial (and not "on" the trial) of any person before an Assize Court, which (questions) may be reserved "at any stage of the proceedings".

And sub-section (3) provides for cases transmitted for the opinion of the Supreme Court where (a) the trial court has convicted the accused, and (b) where the court has not delivered its verdict.

Two years later, in December, 1937, *R. v. Tramboulli* reached the Supreme Court under the provisions of section 24. This was a murder case before the Assize Court of Famagusta which at the conclusion of the case for the Crown, reserved five questions for the opinion of the Supreme Court under section 24. The case is reported in 15 C.L.R. 106, and only confirms the view that the position was now different, and *R. v. Savva* was no longer the law.

Until 1948 several amending laws brought about changes in the Courts of Justice Law, with which I find it unnecessary to deal in view of the consolidating law of that year (Law 40 of 1948.)

This Law was published as a Bill in February 1948 (Cyprus Gazette No. 3357) "to amend and consolidate the law relating to procedure in criminal matters". The provisions regarding questions of law reserved for the opinion of the Supreme Court in section 24 of the Courts of Justice Law, came now in the new Criminal Procedure Law as section 145 - (section 146 in the Bill).

In the Objects and Reasons published with the Bill (p. 133) by the then Attorney-General, Mr. St. Pavlides, one reads in connection with appeals:

> "Further, it may be noted that the sections dealing with appeals have been very extensively re-drafted, avoiding many repetitions which occur in the present sections. A novel but not uncommon feature is a right of appeal by the Attorney-General".

What, however, is significant in connection with this case is that a comparison of section 135 of the Bill dealing with appeals by the Attorney-General, with the corresponding section in the law enacted a few months later (section 134) shows that while the Bill purported to give the Attorney-General a right of appeal from any judgment of acquittal "by any court" on certain grounds, as well as a right to appeal against sentence by "any court", the Law as enacted (40 of 1948) limited such right to acquittals by a District Court, and sentences of that Court only. So that acquittals and sentences by Assize Courts, continued to be final as far as the Attorney-General was concerned.

On the other hand while section 146 of the Bill provided that a Court exercising criminal jurisdiction "may........ ....reserve a question of law................. for the opinion of the Supreme Court" as was the case hitherto, the corresponding section in the law (s.145) provided that "............ upon application by the Attorney-General (the Court) *shall*.......... reserve a question of law........ ...." under the section.

This position was retained in 1959 when the Criminal Procedure Law became Cap. 155 in the Statute Book, excepting for the renumbering of certain sections. Section 145 now became section 148.

Although the provisions of this section (148) read alone, may appear wide enough to open a side-door to the Attorney-General to challenge acquittals by Assize Courts on questions of law, I am inclined to doubt whether the section can be applied to that end, if read together with the sections providing for appeals.

Be that as it may, however, the provisions of this section were applied in *Attorney-General v. Kounnides* (*unreported*) (Q.L.R. No. 109/56 decided on Dec. 6, 1956) and in *Reg. v. Nicos Sampson Georghiades* (No. 1) 22 C.L.R. 102.

In the latter case Bourke C.J., delivering the judgment of the Supreme Court of the then Colony of Cyprus, had this to say : (p. 105).

> "Upon application by the Attorney-General the Court is bound at any stage of the proceedings to reserve a question of law arising during the trial and clearly, in our opinion, this can also be done after conviction. It is evident that in whatever manner the machinery of section 145 (now section 148) is set in motion, there can be a question reserved and determined after judgment and conviction which would involve decision by the trial Court not only upon the general issue but upon the particular question arising during the trial and which is reserved for determination by this Court. Equally when the trial Court has decided the particular question prior to delivery of its judgment in the case, this constitutes no bar to the question being reserved and considered by this Court at such stage of the proceedings. It would fall to the trial Court, as is not disputed, to be guided by and act on the opinion of this Court upon the question reserved. In *Attorney-General v. Kounnides* (Reserved Case No. 109/56), a question was reserved under section 145 upon application by the Attorney-General after a ruling upon the point of law by the Court of trial and it was determined by this Court. We can discern no sufficient reason for limiting the words in section 145(1) - "at any stage of the proceedings" to mean at any stage of the proceedings before the Court of trial decides or rules upon the question of law arising".

With all respect to that judgment, I am still inclined to think that section 148 must be read and considered as part of the statute to which it belongs; and together with the sections providing for appeals. If so read, it still leaves me with the doubt regarding its application, which I have already expressed.

In any case the position is now fundamentally changed. Cyprus is no longer a British Colony with a right of appeal, in a case such as this, to the Privy Council. It has a High Court constituted as provided in the Constitution, which is the highest Court of Appeal in the Republic, vested with very wide powers. Its Assize Courts are constituted under a new Courts of Justice Law, section 25(2) of which provides regarding the right of appeal in criminal cases.

In the case of *Maroulla Xenophontos v. Panayiota Charalambous* (Criminal Appeal No. 2335 decided in May last) the learned Attorney-General argued before this Court regarding his rights under the law as at present, in appeals against acquittals by a Distict Court. The position in cases of acquittal by an Assize Court was argued, but as it did not arise in that case, the Court expressly kept it open. It may or may not be the same, as prior to the establishment of the Republic and the new Courts of Justice Law. But whatever the position may be, I entertain very grave doubts whether the Attorney-General can now invoke the provisions of section 148 in order to take the most extraordinary step in criminal procedure, of virtually appealing against the ruling of an Assize Court on a question of admissibility, *during a murder trial.*

After this review of the position, I shall now proceed to state my conclusions in the case in hand.

First regarding the statutory provisions under which the present proceeding was taken:

1. The reason for which this peculiar provision was first introduced and was subsequently retained in our criminal procedure in some form or another, has now practically ceased to exist. An appeal now appears to lie as a matter of right in most criminal matters from trial courts to the High Court; and questions of law arising during trials, can be discussed and decided by way of appeal. If the Attorney-General has no right of appeal against acquittals by Assize Courts, the remedy lies in amending the relative statutory provisions. And if it is intended that such appeals should not lie he cannot get round the difficulty by a proceeding such as this. Such proceedings during a trial should, in my opinion, be discouraged as tending to cause inconvenience, delay and embarrassment in the administration of criminal justice.

2. Interruptions in criminal trials are highly undesirable for a number of obvious reasons. I venture the view that so long as this, extraordinary provision, is still allowed to remain on the Statute Book, trial courts faced with an application by or on behalf of the Attorney-General under this section, should comply with the peremptory provision in the statute, without, wherever possible, interrupting the trial; especially if the application is made after the Court has ruled on the point, as it happened in this case.

3. A trial for murder or other serious crime, should not, in my opinion, be interrupted under this section, unless the Court think that in the interests of justice and for the Court's own benefit, a question of law arising during the trial, should be reserved for the opinion of the High Court to enable them to deal further with the case; and then only where such interruption of the trial shall not prejudice or embarrass the defendant.

And now my conclusions on the question reserved.

1. To the questions framed by the President of the Assize Court, in the last paragraph of his statement, the answer in my opinion, should be:

To question (a) an answer in the affirmative. In the circumstances as stated, the words used by the accused are in my opinion, clearly capable of conveying an expression of hope that the Inspector would help him.

Question (b) should be answered in the negative. The object of the caution is to put the person making the statement on his guard. If the Court are satisfied that the Inspector did, in fact, put the accused on his guard, the expression of hope on the part of the accused and the conduct of the Inspector, *as appearing on the record*, cannot, in my opinion, as a matter of law, destroy the effect of the caution, so as to render the statement inadmissible.

Question (c). The answer to question (b) dispose of (c).

2. Counsel, however, at the hearing before this Court, eventually agreed that the net point involved in the question reserved, is the admissibility or otherwise of the statement in question, made in the circumstances appearing on the record before us.

Now this, in my opinion, is not a question of law which can be reserved under section 148. It is in this case, as it is in most such cases, a mixed a question of law and fact. Probably more of fact than of law.

The law about it is that if the statement is free and voluntary, and if made after sufficient caution, the statement is admissible. But whether it is free and voluntary, and whether it is made after sufficient caution, as required by law, are matters of fact. And they remain such, even though questions of admissibility, in England are decided by the Judge and not by the jury.

In this case, the majority of the trial Court seem to have been influenced in deciding the admissibility of the statement by what happened in *R. v. Gillis* and by what Fitzgerald B. thought and felt about it.

But as I said before, the admissibility of the statement in this case is more a question of fact than one of law. Independently of what happened in *Gillis's* case and what views were expressed there, as to the effect of the Magistrate's conduct on the mind of the accused in the circumstances of that case, the Assize Court in the present case, should approach the question directly, and decide with their own mind and conscience, whether the prosecution have discharged to their satisfaction the onus of establishing that this particular prisoner in the circumstances, made that statement freely and voluntarily.

Once the Assize Court have ruled against admissibility, the correctness of their ruling can, in my opinion, only be questioned in an appeal, when this Court shall have before it the whole record, and shall be able to consider the matter in the light of all the relevant circumstances, after hearing argument thereon, drawing, if necessary, their own inferences and conclusions, on the admissibility of the statement in question.

JOSEPHIDES, J.: The accused was charged with premeditated murder before the Assize Court of Kyrenia, and in the course of his trial a question arose as to the admissibility of a statement made by him, and the Assize Court, after hearing evidence and arguments, ruled by majority in favour of the defence and held that the statement was inadmissible.

Upon application by the Attorney-General the Court reserved the question as to the admissibility of the statement for determination by the High Court, pursuant to the provisions of section 148 of the Criminal Procedure Law, Cap. 155. Counsel for the accused, on the hearing of the question of law before this Court, raised the preliminary point that it was not open to the Assize Court to reserve the question because they had already given their ruling and decided it.

This point is covered by authority, and that is the case of *Regina v. Nicos Sampson Georghiades* (No. 1) (1957) 22 C.L.R. 102, in which it was held that the words in section 148(1) of the Criminal Procedure Law "at any stage of the proceedings

could not be limited to mean at any stage of the proceedings before the Court of trial decides or rules upon the question of law arising. Bourke, C.J., who delivered the judgment of the Court, in the course of his judgment said (at page 104):-

> "Under section 145 (now section 148) the Court may in its discretion at any stage of the proceedings reserve a question of law arising during the trial. It is apparent from sub-section (3) that this procedure may be resorted to even after conviction, which involves decision in the case. Upon application by the Attorney-General the Court is bound at any stage of the poceedings to reserve a question of law arising during the trial and clearly, in our opinion, this can also be done after conviction. It is evident that in whatever manner the machinery of section 145 is set in motion, there can be a question reserved and determined after judgment and conviction which would involve decision by the trial Court not only upon the general issue but upon the particular question arising during the trial and which is reserved for determination by this Court. Equally when the trial Court has decided the particular question prior to delivery of its judgment in the case, this constitutes no bar to the question being reserved and considered by this Court at such stage of the proceedings. It would fall to the trial Court, as is not disputed, to be guided by and act on the opinion of this Court upon the question reserved".

It is true that this is a decision of the Supreme Court of Cyprus given in 1957 before the establishment of the Republic of Cyprus. But, so far as I am aware, there is no provision either in the Constitution of the Republic or the new Courts of Justice Law, 1960, altering the situation, and I see no reason, why we should depart from that decision. Needless to say that it is highly desirable that the trial of a criminal case and especially an Assize case involving a charge of premeditated murder should not be interrupted unduly. I understand that this right of the Attorney-General has been exercised very sparingly, and I have no doubt that the Attorney-General of the Republic, as the officer responsible for the enforcement of the criminal law in a just and proper manner (see Art. 113 of the Constitution), will continue to make a very sparing use of his right in future.

In pursuance of the provisions of sub-section (2) of

section 148 of the Criminal Procedure Law, the President of the Assize Court has made a record of the question reserved with the circumstances upon which the same has arisen, and has also included in that record the reasoned decision upon the point by the Assize Court. The circumstances, as recited in the record, are that the accused two days after his arrest, and while he was in custody at Kyrenia, expressed his wish to a police officer to see Sub-Inspector Frangos, the Officer-in-Charge of the C.I.D., Kyrenia Gendarmerie, and he was thereupon taken to the latter's office. On entering the office he said to the Sub-Inspector: " Ἐχάθηκα κύριε Φράγκο. Νὰ σοῦ δώσω κατάθεσιν, νὰ σοῦ πῶ οὔλλην τὴν ἀλήθκειαν καὶ ὅ,τι θέλεις κάμε." (I am lost Mr. Frangos. I will give you a statement, tell you the whole truth and do whatever you wish). Thereupon the Sub-Inspector cautioned the accused with the words, "You are not bound to say anything, but whatever you say will be taken down in writing and may be given in evidence at your trial", or words to that effect. He then wrote down that form of caution and read it over to the accused who signed it. The accused then began his statement with the words: "Σοῦ εἶπα θέλω νὰ μὲ βοηθήσῃς ὅ,τι μπορεῖς". (I told you I want you to help me what you can). The Sub-Inspector did not administer to the accused another caution after the aforesaid words were uttered by the accused, nor did he do anything to show to the accused that he (the Sub-Inspector) could not do anything to help him.

The Assize Court in their decision stated that they found that the statement was not induced by anything said to the accused, either by the Sub-Inspector or any of the other policemen, that it was correctly recorded and that it was read over to the accused before he signed it. But the accused's opening sentence was construed by the majority of the Court as showing a hope of favour and they said that it was, therefore, necessary for the Sub-Inspector as soon as that opening sentence had been uttered to administer to the accused another caution calculated to dispel that hope, and that his failure to do so, unwitting no doubt as it was, amounted in effect to sanctioning that hope, so that the position was as if he had held out to the accused a promise of favour in the first instance. The Court relied on the case of *Reg.* v. *Gillis* (1866) 11 Cox's Criminal Cases, p.69, especially the judgment of Fitzgerald B.

There was some dispute before the Assize Court as to the form that the question of law should have been reserved and, as there was no agreement between Counsel, the Court framed the question in the way that it thought fit. The form of the reservation of the question was also argued before us, but it was eventually agreed by both parties that the net point of law involved in the question reserved is the admissibility, or otherwise, of the statement made by the accused, on the grounds appearing on the record. It was submitted on behalf of the accused that the failure of the police Sub-Inspector to administer to the accused a caution calculated to dispel the hope expressed by him amounted to the sanctioning of such hope by conduct, while it was submitted on behalf of the Attorney-General that there was no duty cast on the police officer to dispel a hope that he had not himself induced.

We were pressed by Counsel for the accused with the case of *Reg. v. Gillis* quoted above, and especially the judgment of Fitzgerald B., on which the majority of the Assize Court based their ruling. This is the relevant extract from the judgment of Fitzgerald B. (at page 73):

> "There are three conditions necessary to render a confession inadmissible:
>
> (1) The existence of a charge made against, or a suspicion attached to, a prisoner.
>
> (2) The presence of a person in authority.
>
> (3) Some reason to infer that the admission is made under the influence of hope or fear, sanctioned in some way by such person in authority".

In that case the prisoner was produced by a member of the police to a Magistrate in Dublin as a person wishing to give evidence for the Crown. He was then examined by the Magistrate as to pike-making. The Magistrate was not aware at the time that the prisoner knew anything of a conspiracy. The Magistrate did not look at the prisoner as an informer, but as an ordinary Crown witness, who was not then in custody. He was sworn by the Magistrate, but no caution whatever was administered to him and the Magistrate did not consider the prisoner would implicate himself. On the second occasion that the prisoner was taken before the Magistrate he was not cautioned either, but he made various self-criminating statements implicating himself in the Fenian

conspiracy. In cross-examination the prisoner was asked "how much do you expect for this job?" and he replied, "I swear I expect nothing; I came to save myself". The Magistrate in evidence at the trial of the prisoner stated "I did consider him on the second occasion in the light of an approver". The prisoner was bound over to prosecute, but he subsequently refused to prosecute the persons he had informed against, and was then put on his trial by the Crown.

It will be seen that in that case the prisoner was not cautioned and that the Magistrate himself actually stated that he considered him on the second occasion to be an approver and bound him over to prosecute the persons he had informed against.

In the light of the circumstances of *Gillis's* case one can understand what Fitzgerald B. meant when he said that the prisoner's hope had been sanctioned by the Magistrate by his conduct ; but that proposition cannot be carried too far and cannot possibly apply to the circumstances of this case where the Assize Court found as a fact that the statement of the accused had not been induced by anything said or done either by the Sub-Inspector himself or the other policemen in this case, and where the Sub-Inspector administered the caution orally and he then proceeded to write it down and read it over to the accused who immediately after began his statement with the words, "Σοῦ εἶπα θέλω νὰ μὲ βοηθήσῃς ὅ,τι μπορεῖς".

(I told you I want you to help me what you can).

It is well settled that if a promise or threat be made by anyone having authority over the prisoner in connection with the prosecution, the confession will be rejected as not being voluntary. The same rule will perhaps prevail, though the inducement was not actually offered by the person in authority, if it were held out by anyone in his presence, and he by his silence has sanctioned its being made: See Taylor, on Evidence, 12th edition, Vol. I, paragraph 873 at page 550, and the cases quoted in Note (n) in support of that proposition. It has been generally laid down that though an inducement has been held out by an officer, a prosecutor, or the like, and though a confession has been made in consequence of that inducement, still, if the prisoner be subsequently warned by a person in equal or superior authority that what he may say will be evidence against himself, or that a confession will be

of no benefit to him, or if he be simply cautioned by the Magistrate not to say anything against himself, any admission of guilt afterwards made will be received as a voluntary confession : See paragraph 878 of Taylor, on Evidence at page 553, and the cases quoted in support of that statement in Note (e) at page 554. The mere fact that a prisoner makes a confession with a view and in the hope of being permitted to turn King's evidence is not sufficient to exclude the confession as evidence against him. To exclude the confession it must be shown that a hope of pardon was held out by someone in authority and that the prisoner acted upon the hope so held out. See Taylor on Evidence, paragraph 881, at page 555, and the cases quoted in support of that statement in Note (c) at page 556.

In the case of *Francisco Carlos Godinho*, 7 Cr. App. R. 12, a stewardess on a ship was found one morning in a cabin with her head battered in with some blunt instrument. Appellant was a cabin-attendant on the ship and was suspected of the murder. It was contended that a statement made to a police officer by the prisoner and alleged to amount to a confession was wrongly admitted. It was not suggested that the officer used any threat, or held out any inducement, but the statement itself showed that it was induced by the hope of pardon operating on appellant's mind. Hamilton, J., ruled that (at page 14) -

> "Where such confessions have been rejected the hope of pardon has been held out whether verbally or by proclamation by some person in authority. Where a definite hope of pardon has been held out, but by a person not in authority, the confession has constantly been held to be receivable. A hope of pardon held out by appellant to himself can be in no better position".

From what has been stated above it follows that I do not accept the ruling of the majority of the Assize Court that it was necessary for the Sub-Inspector to administer to the accused a caution calculated to dispel his hope after the opening sentence had been uttered by the accused, nor that his failure to do so amounts, in effect, to sanctioning that hope, so that the position is as if he had held out to the accused a promise of favour in the first instance. If I may adopt the words used by Lawrence J., in the case of *Louis Marie Joseph Voisin* 13 Cr. App. Rep. 89, at page 95 - "it is desirable in the

interests of the community that investigations into crimes should not be cramped. The Court is of opinion that they would be most unduly cramped if it were to be held that a writing volurtarily made in the circumstances here proved was inadmissible in evidence".

I, therefore, consider that the statement made by the accused was wrongly excluded by the majority of the Assize Court in the circumstances and on the grounds appearing on the record, and I would remit the case to the Assize Court in accordance with section 148(3) of the Criminal Procedure Law.

Ruling of the Assize Court reversed.
Case remitted to the Assize Court in accordance with section 148(3) *of Cap.* 155.