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DEMETRIS
PETROU CHRISTOU
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
COMMISSIONER
OF INCOME TAX

(ZEKIA, P., VASSILIADES, TRIANTAFYLLIDES, MUNIR,
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION,

• DEMETRIS PETROU CHRISTOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMISSIONER OF INCOME TAX,

Respondent.

(Case No. 212/63).

Administrative Law—Income Tax—The Taxes (Quantifying and Recovery) Law, 1963, (Law 53 of 1963) and the Constitution of Cyprus, Article 24.3—Provisions of Law 53 of 1963 do not amount to retrospective taxation nor is law contrary to Article 24.3 of the Constitution—Income Tax Assessment made on Applicant under such Law in October, 1963, in respect of year of assessment 1958, validly made.

Income Tax—The Income Tax Law Cap. 323, and the Constitution of the Republic, Article 188.2—Law ceased to be in force by virtue of Article 188.2—Liability to pay income tax already accrued under the Law not extinguished when such Law ceased to be in force.

Constitutional Law—Constitution of The Republic, Articles, 24.3 and 188.2—Provisions of the Taxes (Quantifying and Recovery) Law, 1963 (Law 53 of 1963) do not amount to retrospective taxation—Income tax liability accrued under Cap. 323 not extinguished when such Law ceased to be in force.

Construction of Statutes—Temporary Statutes—The Duties and Taxes (Continuation of Provisions) Law, 1960, (Law 23 of 1960) and the Constitution of Cyprus, Article 188.2—Duration of the provisions of temporary statutes a matter of construction regard being had to the particular statute and the intention of legislature

The Applicant was assessed by a notice of assessment dated the 7th October, 1963, to pay the sum of £591.750 as income tax in respect of the year of assessment 1958,

being the year of income 1957. The Income Tax Law (Cap. 323) which was in force in 1957 and 1958, having ceased to be in force by October, 1963, the assessment in question was made under the provisions of the Taxes (Quantifying and Recovery) Law, 1963, No. 53 of 1963 which came into operation on the 18th July, 1963.

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The three principal issues dealt with in this case are:

(1) Whether or not any liability of the Applicant to pay income tax in respect of the year of assessment 1958 had accrued and was in existence at the time when the assessment, which is the subject-matter of this recourse, was made upon him on the 7th October, 1963; and

(2) If such a liability had in fact accrued and was still in existence on the 7th October, 1963, whether or not the provisions of Law 53/63 authorizes the making of the assessment the subject-matter of this recourse; and

(3) If such an assessment could have been made under Law 53/63, whether or not such assessment was validly made under the provisions of the said Law.

Held, I. With regard to issue (1).

(a) In the case of *Vasos Constantinou Kyriakides and The Republic*, 4 R.S.C.C. p. 109, the Supreme Constitutional Court held (at p. 115), *inter alia*. "that a proper interpretation and application of paragraph (2) of Article 188 can only lead to the result that whatever liability to pay income tax may have accrued under Cap. 323 until the prescribed relevant date has not been extinguished". The Court has given careful consideration to the reasons for which the Supreme Constitutional Court came to that conclusion and to the submissions made by learned counsel on this point, and has come to the conclusion that it sees no reason for differing from the conclusions reached on this issue by the Supreme Constitutional Court in the *Kyriakides Case*.

Vasos Constantinou Kyriakides and The Republic, 4 R.S.C.C. p. 109, followed:

II. With regard to issue (2):

(a) Law 53/1963 contained valid statutory provision for assessing and recovering the income tax in question,

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which had already been imposed on the Applicant in respect of the year of assessment 1958 by the relevant provisions of Cap. 323, and in particular Part II thereof, and with which too the Applicant had already been charged under the said relevant provisions of Cap. 323 and which liability had already accrued upon the ceasing to be in force of Cap. 323.

III. With regard to issue (3):

The assessment in question was validly made in accordance with the relevant provisions of Law 53/1963 and the Court sees no grounds for holding otherwise.

IV. As regards costs:

We award part of the Respondent's costs against the Applicant, which we fix at £10.-

Order: The assessment made on the Applicant in respect of the year 1958 has been validly made under the provisions of Law 53/63 and that this application cannot therefore succeed and is dismissed accordingly.

Per JOSEPHIDES, J.: (*In giving additional reasons for judgment*)

I. The duration of the provisions of a temporary statute is a matter of construction, having regard to the particular statute and the intention of the legislature.

II. The liability to pay tax under Cap. 323 accrued in the year when the income was earned irrespective of whether the Commissioner of Income Tax has served a notice of assessment on the tax-payer or not.

III. The liability for the payment of income tax in respect of the applicant accrued in the year when the income was earned, which was prior to the date when Cap. 323 ceased to be in force; and once the liability accrued, it was not extinguished when Cap. 323 ceased to be in force, by virtue of the provisions of Article 188 of the Constitution, as I hold that, as a matter of construction, it was not the intention of the legislature to extinguish such liabilities as had already accrued in the past; but simply to clear the legislative field in those respects in which the provisions of Article 78, paragraph 2, were designed to apply, viz. the majority vote required in the passing of

taxation and other laws by the House of Representatives.

IV. The Income Tax Law, Cap. 323, having ceased to be in force as a whole on the 31st March, 1961, there was no legislation in force after that date authorizing the making of any assessment until the 18th July, 1963, when the Taxes (Quantifying and Recovery) Law, 1963 (Law 53 of 1963), came into operation. Reading that Law as a whole I am of the view that, once it is held that under the legislation then in force, the tax was imposed and the liability accrued prior to 1960, as in the applicant's case, and that the liability has not been extinguished, the provisions of Law 53 of 1963 do not amount to retrospective taxation nor is that Law contrary to the provisions of Article 24, paragraph 3, of the Constitution and I agree with the reasons given in the judgment of the Court delivered by my brother Munir J.

V. The provisions of Law 53 of 1963 were a sufficient authority for the Commissioner to make the assessment complained of, and I would dismiss the application.

Application dismissed.

Cases referred to:

Vasos Constantinou Kyriakides and The Republic, (4 R.S.C. C., p. 109 and p. 115).

R.v. Wicks [1946] 2 All E.R. 529, at p. 532, per Lord Goddard, C.J.

Steavenson v. Oliver (1841), 8 M. & W. 234;

Stylianou v. Police (1962 C.L.R. p. 152);

Miller's case (1764), 1 Wm. BI. 451;

Rex v. Elizabeth M' Kenzie and Another (1820) Russ. & Ry 429;

Spencer v. Hooton (1920), 37 T.L.R. 280, Roche J.;

Bennett v. Tatton (1919) 88 L.J.K.B. 313 at p. 314.

Recourse.

Recourse against the income tax assessment made on applicant imposing an amount of £591.750 mils income tax for the year of assessment 1958.

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A. Triantafyllides for the applicant.

M. Spanos, Counsel of the Republic, for the respondent.

Cur. adv. vult.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Munir, and Mr. Justice Josephides will give additional reasons for judgment.

MUNIR, J.: By this recourse, made under Article 146 of the Constitution, the Applicant seeks a declaration "that assessment No. 96/AD/63 and/or the decision of Respondent to impose on Applicant the amount of £591.750 as income tax for the year of assessment 1958 is *null and void* and of no effect whatsoever".

It is common ground that the Applicant was assessed, by a notice of assessment dated the 7th October, 1963, to pay the sum of £591.750 as income tax in respect of the year of assessment 1958, being the year of income 1957. The Income Tax Law (Cap. 323) which was in force in 1957 and 1958, having ceased to be in force by October, 1963, the assessment in question was made under the provisions of the Taxes (Quantifying and Recovery) Law, 1963, Law No. 53 of 1963 (hereinafter referred to as "Law 53/63"), which came into operation on the 18th July, 1963.

The three principal issues which call for a decision in this case are—

- (1) whether or not any liability of the Applicant to pay income tax in respect of the year of assessment 1958 had accrued and was in existence at the time when the assessment, which is the subject-matter of this recourse, was made upon him on the 7th October, 1963; and
- (2) if such a liability had in fact accrued and was still in existence on the 7th October, 1963, whether or not the provisions of Law 53/63 authorize the making of the assessment which is the subject-matter of this recourse; and
- (3) if such an assessment could have been made under Law 53/63, whether or not such assessment was validly made under the provisions of the said Law.

With regard to issue (1) above, counsel for Applicant submitted that no such liability of the Applicant to pay income tax in respect of the year of assessment 1958 had accrued after Cap. 323 had ceased to be in force by virtue of the provisions of paragraph (2) of Article 188 of the Constitution. He invited the Court to reconsider the Interim Decision of the Supreme Constitutional Court of the 8th February, 1963, in the case of *Vasos Constantinou Kyriakides and the Republic*, 4 R.S.C.C., p. 109 (hereinafter referred to as "the *Kyriakides Case*").

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In the *Kyriakides Case* the Supreme Constitutional Court held (at p. 115), *inter alia*, "that a proper interpretation and application of paragraph (2) of Article 188 can only lead to the result that whatever liability to pay income-tax may have accrued under Cap. 323 until the prescribed relevant date has not been extinguished". The Court has given careful consideration to the reasons for which the Supreme Constitutional Court came to that conclusion and to the submissions made by learned counsel on this point, and has come to the conclusion that it sees no reason for differing from the conclusions reached on this issue by the Supreme Constitutional Court in the *Kyriakides Case*.

With regard to issue (2) above, counsel for Applicant submitted that Law 53/1963 did not contain any charging provision corresponding to sections 5 and 6 of Cap. 323 and drew the Court's attention to the difference in wording between section 13 of Law 53/1963 and the corresponding section 37 of Cap. 323. He pointed out that whereas section 37(1) of Cap. 323 states that the "Commissioner shall proceed to assess every person *chargeable* with the tax.....", section 13(1) of Law 53/1963 states that the "Director shall proceed to *assess* every person on whose object of the tax has been imposed.....". Counsel for Applicant submitted that the omission of any charging provision in Law 53/1963, *charging* the Applicant with the tax in question has resulted in a lacuna with the consequence that the assessment in question on the Applicant is invalid.

The Court is of the opinion that once the liability to pay the tax in question has already accrued in accordance with the principle laid down in *Kyriakides Case*, then it must follow, for the very reason why such liability has accrued (namely, the existence in force at the time of such accruing

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of the relevant provisions of Cap. 323) that such tax had already been imposed and *charged* under the relevant provisions of Cap.323 at the time such liability accrued. It seems to the Court that the reason why provisions corresponding to sections 5 and 6 of Cap.323 and indeed to the whole of part II of Cap. 323 (which is entitled "IMPOSITION OF TAX" and which also includes the said sections 5 and 6) have been omitted from Law 53/1963 is no doubt because Law 53/1963 does not purport to impose or charge a person with the liability to pay any tax but is merely intended and designed, as its title clearly indicates, to quantify an existing liability, already imposed and charged by some other law, by proceeding to assess the amount of the tax in question and to take steps for its recovery.

The Court is, therefore, of the opinion that Law 53/1963 contained valid statutory provision for assessing and recovering the income tax in question, which had already been imposed on the Applicant in respect of the year of assessment 1958 by the relevant provisions of Cap. 323, and in particular Part II thereof, and with which too the Applicant had already been charged under the said relevant provisions of Cap. 323 and which liability had already accrued upon the ceasing to be in force of Cap. 323.

With regard to issue (3) above, the Court is satisfied that the assessment in question was validly made in accordance with the relevant provisions of Law 53/1963 and sees no grounds for holding otherwise.

For all the reasons given above the Court is of the opinion that the assessment in question made on the Applicant in respect of the year 1958 has been validly made under the provisions of Law 53/63 and that this application cannot therefore succeed and is dismissed accordingly.

The Court has not considered it necessary to deal with the merits of the assessment in question in view of the declaration made by counsel for Applicant on the 15th September, 1964, that the merits of the assessment are not disputed.

Taking into account the circumstances of this Case, including the fact that one of the grounds on which the Application was based had already been decided, we award part of the Respondent's costs against the Applicant, which we fix at £10.—

JOSEPHIDES, J.: This is a recourse against the income tax assessment made on the applicant on the 7th October, 1963 in respect of the year of assessment 1958 (year of income 1957) under the Taxes (Quantifying and Recovery) Law, 1963 (No. 53 of 1963).

The amount of income tax assessed on the applicant is £591.750 mils, and it is not in dispute.

The applicant had in the past submitted completed returns for the year of assessment 1955, 1956 and 1957 but he failed to do so for the year 1958. The Commissioner of Income Tax proceeded to assess the applicant's chargeable income for the year of assessment 1958 on the 28th September, 1960, but that was subsequently discharged and eventually the assessment complained of was made on the 7th October, 1963.

The main grounds on which the case was argued before us on behalf of the applicant were:

- (1) that with the expiration of the Income Tax Law, Cap. 323, on the 31st December, 1960, all existing income tax liabilities under that Law were extinguished; and
- (2) even if not extinguished, the Taxes (Quantifying and Recovery) Law, 1963, did not warrant or authorize the assessment complained of.

On the first ground two questions fall for determination—

- (a) whether prior to the expiry of the Income Tax Law, Cap. 323, the liability for the payment of the income tax had accrued without service of notice of assessment; and
- (b) if yes, was such liability extinguished with the expiry of that Law?

These points were considered by the Supreme Constitutional Court in the case of *Kyriakides and The Republic (Minister of Finance and Interior)*, 4 R.S.C.C.-109, in which it was held that by virtue of the provisions of the Income Tax Law, Cap. 323, which was in force at the material time, income tax must be deemed to have been imposed then, that the liability accrued and that it was not extinguished with the expiry of that Law.

Applicant's counsel submitted that as the Income Tax

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Law, Cap. 323, ceased to be in force on the 31st December, 1960, by virtue of the provisions of Article 188, paragraph 2 of the Constitution, all accrued liabilities have been extinguished, and that this is in accordance with the established principles governing the expiration of statutes as distinguished from the repeal of statutes. He accordingly submitted that the Supreme Constitutional Court in the *Kyriakides*' case wrongly applied the principle of equality and equal contribution towards the public burdens safeguarded by Articles 24 and 28 of the Constitution and that the Court erred in drawing a distinction between "expiration" and "not continue to be in force" appearing in Article 188 of the Constitution.

Article 188, paragraph 2 of the Constitution, with which we are concerned reads as follows:

"2. Save where otherwise provided in the Transitional Provisions of this Constitution no provision in any such law which is contrary to, or inconsistent with, any provision of this Constitution and no law which under Article 78 requires a separate majority shall so continue to be in force:

"Provided that the laws relating to the municipalities may continue to be in force for a period of six months after the date of the coming into operation of this Constitution and any law imposing duties or taxes may continue to be in force until the 31st day of December, 1960".

On the 31st December, 1960, the Duties or Taxes (Continuation of Provisions) Law, 1960 (No. 23 of 1960) was enacted, whereby the Income Tax Law, Cap. 323, continued to be in force until the 31st March, 1961.

Applicant's counsel further submitted that as the Law was not repealed, the provisions of section 10(2) of the Interpretation Law, did not apply to save any liability already accrued prior to the repeal of the Law. He conceded that the duration of the provisions of a law which has expired was a matter of construction and that the Court had to look to the intention of the legislature having regard to the enactment. As Law 23 of 1960 was of a temporary nature, he said, it was a temporary statute and being a temporary statute the whole of the provisions of the Income Tax Law Cap. 323, expired

on the 31st March, 1961, at the latest. In support of his submissions counsel cited the case of *R. v. Wicks* [1946] 2 All E.R. 529.

In the course of his judgment in that case Lord Goddard, C.J. said (at page 532):

“This section, however, has no application to statutes which have expired, and the question must, therefore, remain one of construction whether the provisions as to expiry are such as to make it impossible for a prosecution or other proceeding to be either instituted or brought to conviction, or whether, on a true construction of the Act, Parliament has provided that legal proceedings, whether of a civil or criminal character, can be prosecuted in relation to matters connected with the Act after it has expired”.

Lord Goddard in his judgment, *inter alia*, referred with approval to the leading authority of *Steavenson v. Oliver* (1841), 8 M. & W. 234; L.J. Common Law, Volume 10, page 341, and quoted this extract (*Wicks* case, *supra*, at page 531):

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

“Temporary statutes” according to Craies on Statute Law (5th edition, page 61), “are those on the duration of which some limit is put by Parliament”; and (at page 376 of the same book) “If an Act contains a proviso so that it is to continue in force only for a certain specified time, it is called a temporary act”.

What we have here to consider is the construction of the provisions of Article 188, paragraph 2, of the Constitution and Law 23 of 1960. It is the duty of the Court to ascertain what was the intention of the framers of the Constitution and the legislature in enacting Law 23 of 1960. Was it the intention that income tax in respect of the years prior to 31st March, 1961, even if due, should not be collected from the persons concerned; or was it the intention of Article 188,

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paragraph 2, to clear the legislative field in those respects in which the provisions of Article 78 were designed to be applied; or was it both?

In considering this matter I think it would be useful to refer to English cases which may help us in reaching a conclusion one way or the other, though this would not necessarily mean that we are bound by such decisions. As we said in another case: "Undoubtedly decisions of the English, Scottish, and Irish Courts are not binding upon the Courts of the Republic of Cyprus, though entitled to the highest respect. I am of the view that, as a general rule, our Court should as a matter of judicial comity follow decisions of the English Courts of Appeal on the construction of a statute, unless we are convinced that those decisions are wrong". (*Stylianou v. Police* 1962 C.L.R. 152).

At Common Law and prior to the enactment of the Interpretation Act, 1889, section 38(2), offences committed against a statute while in force could not have been punished without a special clause to allow it: *Miller's case* (1764), 1 Wm.Bl. 451; English Reports, volume 96, page 259. In the case of *Rex v. Elizabeth M'Kenzie and another* (1820) Russ. & Ry. 429; English Reports, volume 168, page 881, it was held that an offence committed before the passing of a new Act but not tried till after, was not liable to be punished under either the former or the new Act. The prisoners in that case were tried in the year 1820 on an indictment charging them with feloniously stealing on the 11th July, 1820, twenty-three yards of lace, valued at £1.3.0., from a shop. The evidence in support of the indictment was clear, but the statute 1 Geo. IV c.117 which received the royal assent on the 25th July, 1820, having repealed the provisions of the Act which deprived persons convicted of stealing goods privately in a shop to the amount of five shillings in value, of the benefit of clergy, the learned Common Sergeant respited the judgment in order to take the opinion of the Judges, whether sentence of death could be passed on the prisoners by virtue of the previous statute which was in force at the date of the commission of the felony, or whether the prisoners should receive judgment as in cases of grand larceny, by virtue of the new Act. All Judges agreed that judgment could not be passed on the new Act which was prospective only, and that the prisoners must receive judgment as for a common larceny,

without reference to either statute.

Next in chronological order comes the leading case of *Steavenson v. Oliver* (quoted above), decided in 1841. The case related to 6 Geo. IV c.133, section 4, which enacted that every person who held a commission as surgeon in the army should be entitled to practise as an apothecary without having passed the usual examination. This Act was temporary, expiring on August 1, 1826; and it was contended that a person who under the Act was entitled to practise as an apothecary would lose his right after August 1, 1826. But the Court held that such a person could not be so deprived of his right, and Lord Abinger, C.B. in giving judgment said:

“It is by no means a consequence of an Act of Parliament expiring that rights acquired under it should likewise expire. The Act provides that persons who hold such commissions should be entitled to practise as apothecaries, and we cannot engraft on the statute a new qualification limiting that enactment”.

Parke, B. in the course of his judgment said: “Then comes the question, whether the privilege given by the statute 6 Geo. 4, is one which continues, notwithstanding the expiration of the statute: that depends on the construction of the temporary enactment. There is a difference between temporary statutes and statutes which are repealed; but with respect to the former, the extent of the restrictions imposed, and the duration of the provisions, are matters of construction”. This is the passage referred to in the judgment of Lord Goddard, C.J. in the *Wicks* case (1946), quoted above.

In the case of *Spencer v. Hooton* (1920), 37 T.L.R. 280, Roche J. held that he had no jurisdiction to hear appeals from Munition Tribunals in proceedings taken under the Wages (Temporary Regulation) Acts, 1918 and 1919, by reason of the Act giving him jurisdiction having expired in September, 1920, before the appeals came on for hearing. Roche, J. referred to the judgment of Baron Parke, in *Steavenson v. Oliver* (*supra*) where he says that if an Act expires the duration of its provisions is a matter of construction. -

In *Bennett v. Tatton* (1919) 88 L.J.K.B. 313, at page 314, a statement in Maxwell on the Interpretation of Statutes,

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5th edition, at page 671 to the following effect was approved: “where an Act expired or was repealed, it was formerly considered, in the absence of provision to the contrary, as if it had never existed, except as to matters and transactions past and closed. Where, therefore, a penal law was broken, the offender could not be punished under it, if it expired before he was convicted, although the prosecution was begun while the Act was still in force”.

The cases of *Steavenson* (1841) and *Spencer* (1920) were considered and applied in the case of *R. v. Wicks* (1946) quoted above.

The net result of these authorities is that the duration of the provisions of a temporary statute is a matter of construction, having regard to the particular statute and the intention of the legislature. One thing is clear, that apart from statute, no offence can be prosecuted or punished under a statute which has expired without any saving clause. But short of that, the authorities show that rights acquired under a statute are not lost or extinguished with the expiry of that statute.

In the same way, considering the particular provisions of the Income Tax Law, Cap. 323, and the intention of the legislature having regard to Article 188, paragraph 2, of the Constitution, and the Income Tax Law itself, I take the view that—(a) it was not intended that liabilities already accrued would be extinguished at the end of December, 1960, or at the end of March, 1961, when laws imposing taxes ceased to “continue to be in force”, if such liabilities had already accrued; and (b) that the intention was to clear the legislative field in respect of the majority vote required under Article 78, paragraph 2, in the passing of taxation and other laws by the House of Representatives.

The next question which I have to consider is whether the income tax liability of the applicant had accrued prior to the time when the Income Tax Law, Cap. 323 ceased to be in force. Could such a liability accrue without any notice of assessment having been served on him prior to the expiration of the Law? Having given the matter my best consideration I have come to the conclusion that the income tax liability of applicant accrued before the expiry of the Law. I am confirmed in that opinion having regard to—

- (i) the express provisions of the Income Tax Law, Cap. 323; and
- (ii) the language of another taxation law, that is to say, the Immovable Property Tax Law, Cap.322.

As regards (i), in section 2 of the Income Tax Law, Cap. 323 the expression "tax" is defined as "the income tax *imposed* by this Law". Part II of the Law is headed "Imposition of Tax", and section 5(1) in that Part provides that "Tax (imposed by the Law) shall, subject to the provisions of this Law, be payable at the rate or rates specified hereafter for the year of assessment commencing on the first day of January, 1941, and for each subsequent year of assessment upon the income of any person accruing in, derived from, or received in the Colony.....". Section 6 provides that tax shall be "charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment.....". Section 23 provides: "There shall be levied and paid upon chargeable incomes tax at the rates and in accordance with the provisions set forth in the Second Schedule to this Law". Section 37 empowers the Commissioner of Income Tax to assess every person chargeable with the tax as soon as may be after the expiration of the time allowed to such person for the delivery of his return; and subsection (3) of section 37 provides that where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to pay tax, he may, "according to the best of his judgment, determine the amount of the chargeable income of such person and assess him accordingly"

Finally, section 64 provides that notwithstanding anything contained in the Law (Cap. 323), tax "shall be *assessed* and *charged* on all emoluments" of salaried persons for any year of assessment, and such tax shall, subject to Rules made under section 75, "be deducted by the person making the payment of the emoluments *notwithstanding that when the payment is made no assessment has been made in respect of the emoluments.....*". The Rules made under section 75 provide, *inter alia*, that in the case of an employee who is paid monthly the tax payable is deducted (by the employer) from his monthly emoluments in 12 equal monthly instalments, and in the case of an employee who is paid weekly the tax is deducted from his weekly emoluments in

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52 equal weekly instalments, and paid by the employer to the Commissioner of Income Tax within 15 days after the end of each month. Moreover, rule 11(1) of the same Rules provides that "Income tax in respect of emoluments shall be assessed and charged by the Commissioner who shall serve a notice of assessment under section 41 of the Law on every employee assessed by whom tax is payable or *from whose emoluments any tax was deducted during the year of assessment*". If the tax payable under the assessment is less than the total tax deducted from the employee's emoluments in respect of the year the difference shall be repaid to the employee; and if the tax payable under the assessment exceeds the total tax deducted from the employee's emoluments in respect of the year the Commissioner shall require the employee to pay the difference (rule 11(2) and (3)).

To my mind, the combined effect of the aforesaid provisions, including section 64, make it abundantly clear that the liability to pay tax under Cap. 323 accrued in the year when the income was earned irrespective of whether the Commissioner of Income Tax has served a notice of assessment on the tax-payer or not.

As regards (ii), a comparison of the provisions of the Income Tax Law, Cap. 323, with the provisions of the Immovable Property Tax Law, Cap. 322, likewise leads one to the conclusion, from the wording of the two statutes, that the income tax is deemed to have been imposed at the time when the income is earned and that the liability actually accrued. Section 3 of the Immovable Property Tax Law provides that "on all immovable property there shall be raised, levied, collected and paid annually a tax to be called the immovable property tax". Section 4 provides that immovable property tax shall be assessed upon the value of immovable property as registered or recorded in the books of the Land Registry, and that if such value is not so registered or recorded, the tax shall be assessed upon ~~the value of such property as determined by the Director of Lands and Surveys.~~ The provisions in this Law are almost identical with the provisions regarding the imposition, charging, levying, assessment and collection of income tax.

In the result I come to the conclusion that the liability for the payment of income tax in respect of the applicant accrued in the year when the income was earned, which was prior

to the date when Cap.323 ceased to be in force; and once the liability accrued, I am of the view that it was not extinguished when Cap. 323 ceased to be in force, by virtue of the provisions of Article 188 of the Constitution, as I hold that, as a matter of construction, it was not the intention of the legislature to extinguish such liabilities as had already accrued in the past; but simply to clear the legislative field in those respects in which the provisions of Article 78, paragraph 2, were designed to apply, viz. the majority vote required in the passing of taxation and other laws by the House of Representatives. Needless to say that the provisions of Cap. 323 did not empower the imposition of income tax in respect of any period after the 31st March, 1961.

The Income Tax Law, Cap. 323, having ceased to be in force as a whole on the 31st March, 1961, there was no legislation in force after that date authorizing the making of any assessment until the 18th July, 1963, when the Taxes (Quantifying and Recovery) Law, 1963 (Law 53 of 1963), came into operation. Reading that Law as a whole I am of the view that, once it is held that under the legislation then in force, the tax was imposed and the liability accrued prior to 1960, as in the applicant's case, and that the liability has not been extinguished, the provisions of Law 53 of 1963 do not amount to retrospective taxation nor is that Law contrary to the provisions of Article 24, paragraph 3, of the Constitution and I agree with the reasons given in the judgment of the Court delivered by my brother Munir J.

I am, therefore, of the view that the provisions of Law 53 of 1963 were a sufficient authority for the Commissioner to make the assessment complained of, and I would dismiss the application.

*Application dismissed.
Applicant to pay part of Respondent's costs which are fixed at £10.—*

1965
Jan. 12
April 20

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DEMETRIS
PETROU CHRISTOU
and
THE REPUBLIC OF
CYPRUS
THROUGH THE
COMMISSIONER
OF INCOME TAX

—
Josephides, J.