[ZEKIA, P., VASSILIADES, TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH

1. THE ATTORNEY-GENERAL,

2. THE MINISTRY OF FINANCE, THROUGH THE DIRECTOR OF THE DEPARTMENT OF INLAND REVENUE,

Appellant (Respondent),

and

IOANNIS CHR. FRANGOS,

Respondent (Applicant).

(Revisional Jurisdiction Appeal No. 5).

Administrative Law—Revenue—Income Tax—Income Tax Law, Cap. 323, *section* 45 *and the Taxes (Quantifying and Recovery) Law,* 1963 *(Law* 53 *of* 1963*), sections* 2(1), 3 *and* 23*—Appeal against judgment declaring null and void additional assessments of income tax on Respondent made under sections* 3 *and* 23 *of Law* 53 *of* 1963 *(supra), in respect of years of assessment for which original assessments were made under Cap.* 323 *and paid before the expiry of such latter Law—Assessments valid as legally made—Appeal allowed.*

Constitutional Law—Constitution of Cyprus, Articles 24.3 *and the Taxes (Quantifying and Recovery) Law,* 1963 *(Law* 53 *of* 1963*)—Additional assessments of income tax on Respondent made under sections* 3 *and* 23 *of the Law, in respect of years of assessment for which original assessments were made and paid under the Income Tax Law, Cap.* 323, *before its expiry, do not amount to imposition of a tax with retrospective effect, contrary to Article* 24.3.

The tax-payer (respondent in this appeal) challenged by a recourse under Article 146 of the Constitution, the validity of a claim by the Director of Inland Revenue for the payment of income tax upon additional assessments made in December, 1963, and in March, 1964, under section 23 of the Taxes (Quantifying and Recovery) Law, 53/1963, in respect of the years 1957, 1958 and 1959.

The tax-payer's case, both in his original recourse, filed on 29.9.64, and in the appeal, is that the additional assessments in question, are illegal. It was conceded on his

behalf that Article 188.2 of the Constitution was not intended to "abolish all existing obligations to pay income tax under Cap. 323 which were not met by the cessation of the force of the said Law". But that "in the present case no obligation was existing for collection under Law 53/1963", as any such obligation "was met by (the tax-payer) on the basis "of assessment agreed upon between the tax-payer and the Authority according to the provisions of the Law".

Counsel for the tax-payer, at the hearing of the appeal, clearly stated in answer to repeated questions from the Bench on the point, that his client's case was that the additional assessment upon which the tax was being levied, was illegal; and not merely an assessment made in abuse of legal power.

The case, therefore, clearly turns on the question whether the additional assessments made on 31.12.63, for the year 1957 (56), and on the 17.3.64 for the two subsequent years, 1958(57) and 1959(58), could be legally made.

The taxing officer contended that they could be so made under section 23 of the Taxes (Quantifying and Recovery) Law, 1963 (No. 53/63) which was the law in force at the material time.

The applicant tax-payer, on the other hand, contended that these additional assessments could not be legally made, as his liability for the payment of income tax in respect of the years in question, had been fully met and discharged by payments of tax which he made in respect of his income as agreed between him and the taxing officer on the latter's original assessments.

Three separate judgments were delivered in the present appeal and all three arrived at the same conclusion, i.e. they allowed the appeal with costs and set aside the judgment of the trial Judge given in favour of the appellant tax-payer.

Held, I. Per VASSILIADES, J.:

(a) The Applicant tax-payer by his present recourse does not dispute the fact that his income was £1,420. Nor does he complain that the taxing - officer abused his powers in re-opening the investigation into his income in 1963, after he had agreed in 1958, that it was only £1,000. What

he complains of, is that such a re-opening amounts in effect to imposing a new tax on him. The fact, however, remains that his true income according to his own signed admission, for the year in question was £1,420; and not £1,000.

(b) Now this fundamental and paramount fact was, apparently overlooked by the learned trial Judge in deciding the merits of the present recourse. Because with that fact in the scales, there can be no doubt that the liability of the tax-payer for the payment of income tax for the year in question, as imposed upon him by the Income Tax Law in force at the time, was £111.750 mils; which was only been met to the extent of £53.750; leaving a balance of £58 which has not been met, and is, therefore, still outstanding. The same position likewise arises, in connection with the tax payable for the other two years in question.

(c) I am, therefore, clearly of the opinion that the recourse must fail; and be dismissed accordingly. And that the appeal must be allowed, with costs.

II. Per TRIANTAFYLLIDES, J.:

(a) Reading the record of this appeal one may be left with the impression that the essence of the tax-payer's —Respondent's in this appeal—complaint was that he had fully met, before the expiration of Cap. 323, all his liability thereunder, in respect of the years in question, and that, therefore, the additional assessments, which are the subject-matter of this appeal, amounted, in effect, to the imposition of a further liability on him. It must be this contention which led the learned Judge of this Court, who decided this Case, to find that such a step amounted to retrospective taxation contrary to Article 24(3).

(b) During this appeal the position has developed in such a way as to make the legal position adopted by the learned trial Judge—with which I am not prepared to say that I disagree entirely—inapplicable to the particular circumstances of this Case, as now known. I do agree, therefore, as I said already, with the outcome of this appeal.

III. *Per* JOSEPHIDES, J.:

(a) The fact that the tax-payer paid the full amount of tax assessed on him prior to the date on which Cap. 323 ceased to be in force does not, to my mind, exonerate him from the payment of the full measure of his liability which had already accrued but had not been quantified under the provisions of Cap. 323 owing to an omission—deliberate or accidental—on his part to declare his full income. In these circumstances it cannot be said that the tax-payer's liability, which accrued under the provisions of Cap. 323 in the year when the icome was earned, had already been met and discharged.

(b) On this view the additional assessments on the tax-payer do not amount to the imposition of a tax with retrospective effect and they were, consequently, validly made under the provisions of sections 3 and 23 of Law 53 of 1963.

(c) The question of *abuse of power* by the Director of the Department of Inland Revenue was not raised by the tax-payer nor argued before us, although the tax-payer's counsel was expressly invited by this Court to do so. It was the contention of the learned Attorney-General of the Republic, who argued the appeal on behalf of the Director, that if such question were raised he could have adduced evidence to prove that the Director had valid reasons for reopening the assessments in 1963 and 1964.

(d) I agree that the appeal should be allowed with costs, the decision of the trial Judge set aside and the tax-payer's recourse dismissed.

Appeal allowed with costs.
Decision appealed from set aside.
Respondent's (Applicant's) recourse dismissed.

Cases referred to:

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

Christou and The Republic (reported in this Vol. at p. 214 ante);

Rex v. The Bloomsbury Income Tax Commissioners [1915] 3 K.B. 768 at page 780;

Williams v. Trustees of W.W. Grundy [1934] 1 K.B. 524 at page 534;

Cenlon Finance Co. Ltd., v. Ellwood [1962] 1 All E.R. 854 (H.L.), at page 859.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Munir J.) given on the 30th June, 1965, (Revisional Jurisdiction Case No. 118/64) whereby three additional income tax assessments made upon the respondent in respect of the years of assessment 1957, 1958 and 1959 were declared *null* and *void*.

Cr. Tornaritis, Attorney-General of the Republic, with *L.G. Loucaides, Counsel of the Republic*, for the appellant.

G. Ladas for the respondent.

Cur. adv. vult.

The facts of this Appeal sufficiently appear in the judgment of Vassiliades, J.

ZEKIA, P.: Although the conclusion reached is the same, separate judgments will be delivered by my brother Judges, with which I agree.

VASSILIADES, J.: This is an appeal to the Court, under sub-section (2) of Section 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964, from the decision* of one of the Judges hereof, in the exercise of the Court's revisional jurisdiction, in a taxation case.

The tax-payer (respondent in this appeal) challenged by a recourse under Article 146 of the Constitution, the validity of a claim by the Director of Inland Revenue (hereinafter referred to as the taxing officer) for the payment of income tax upon additional assessments made in December, 1963, and in March, 1964, under Section 23 of the Taxes (Quanti-

*The decision appealed from appears at p. 658 *post*.

fying and Recovery) Law, 53/1963, in respect of the years 1957, 1958 and 1959.

The tax-payer's case, both in his original recourse, filed on 29.9.64, and in the appeal, is that the additional assessments in question, are illegal. It is conceded on his behalf that Article 188.2 of the Costitution was not intended to "abolish all existing obligations to pay income tax under Cap. 323 (the Income Tax Law) which were not met by the cessation of the force of the said Law" (Paragraph 1 of the grounds of law in the recourse No. 118/64; p.3 of the record herein). But that "in the present case no obligation was existing for collection under Law 53/1963, as any such obligation was met by (the tax-payer) on the basis of assessment agreed upon between the tax-payer and the Authority according to the provisions of the Law" (paragraph 2 of the tax-payer's grounds of law at p.3 of the record).

Indeed, learned counsel for the tax-payer, at the hearing of the appeal, clearly stated in answer to repeated questions from the Bench on the point, that his client's case was that the additional assessment upon which the tax was being levied, was illegal; and not merely an assessment made in abuse of legal power.

The relevant facts—(mainly undisputed)—are that the tax-payer, an occulist practising in Nicosia since 1928, submitted on the appropriate form to the Commissioner of Income Tax, statements of his income for the years of assessment 1957, 1958 and 1959 (years of income 1956; 1957 and 1958 respectively, which are, as usual, shown on the relevant papers in parenthesis next to the figure indicating the year of assessment: (1957 (56); 1958 (57); 1959(58)). The income so declared by the tax-payer in his statements, was: £480; £774; and £753, respectively.

These declarations of income were considered by the appropriate taxing officer as unacceptable; and the tax-payer's income was assessed under the Officer's statutory powers at £1,500; £1,420; and £1,100 respectively. (Evidence of witness Karakannas at p. 16 of the record). Objections to these assessments were duly lodged by the tax-payer, and eventually, were, presumably, considered and discussed between the latter and the appropriate officer, with the result that the assessments were reduced by the taxing officer (as they could be, under the relative statutory provision) to £1,000; £1,000;

and £1,100; respectively. (Evidence of witness Karakannas at p. 16). The tax payable on the income resulting from these reduced assessments, amounting to £53.750 mils; £43.750; and £53.950 mils respectively, was duly paid by the tax-payer, who, thereupon, treated the matter as finally closed. All that, took place before 1960; considerable time prior to the establishment of the Republic in August, 1960.

But the Income Tax Law (Cap. 323) contained in Section 45, provisions enabling the Commissioner—(on sufficient, of course, grounds, and in the proper exercise of his statutory powers)—to raise, within a period of time limited by the statute, additional assessments of a tax-payer's income, subject, always, to the latter's statutory right of objection.

At a later stage, the Income Tax Law (Cap. 323) expired; and other legislative provision had to be made for the recovery *inter alia*, of tax payable thereunder. As far as material to this case, The Taxes (Quantifying and Recovery) Law 1963 (No. 53 of 1963) was enacted; and duly came into operation on the 18th July, 1963.

Section 3 of this Law provided that "any tax, whether imposed before or after the date of coming into operation of this Law, shall be quantified and recovered under the provisions of this Law". And section 23, practically reproducing the provisions of section 45 of the Income Tax Law, provided that:—

> "23. Where it appears to the Director that any person on whom the tax has been imposed under any Law, whether before or after the coming into operation of this Law, has not been assessed or paid the tax imposed or has been assessed at or paid an amount less than that which ought to have been paid, the Director may, within the year of assessment or within six years after the expiration thereof, assess such person at such an amount of tax or additional amount of tax as was imposed and ought to have been assessed and recovered under the provisions of the Law imposing the tax, and the provisions of this Law shall apply to such assessment and to the tax assessed thereunder".

Purporting to act under these provisions of Law 53 of 1963, the taxing officer raised on the 31.12.63, the tax-payer's income for the year 1957 (56) to £2,000; and duly notified

the tax-payer accordingly. On the 26.2.64, the tax-payer lodged his objection to this additional assessment, exercising, apparently, his statutory right to that effect under section 20 of the same Law.

Pending the determination of that objection, the taxing officer, on the 17.3.64, raised the assessment of the tax-payer's income for the next two years, 1958 (57) and 1959 (58) to £2,000 each, as he had earlier done for the year 1957 (56). To these additional assessments, the tax-payer likewise, filed his objections on the 3.4.64.

Matters were apparently again discussed between the parties concerned, and eventually, on the 2nd September, 1964 the income of the tax-payer was agreed at £1,420; £1,420; and £1,220 respectively for the three years in question. And the tax-payer signed a statement to this effect. Acting upon this statement, the taxing officer determined, on the 8.9.64, the income of the appellant, at the figures in the latter's statement just referred to, signed six days earlier (2.9.64).

The tax payable, after the appropriate deductions, on the income agreed and determined as above, was £111.750 mils for the year 1957(56); £93.750 mils for the year 1958(57); and £53.750 mils for the year 1959(58). Deducting from these figures the tax already paid on the original assessments, the parties concerned found that the balance of tax still payable by the tax-payer in respect of the years in question, amounted to a total of £117.800 mils (i.e. £58 for 1957(56); £50 for 1958(57); and £9.800 for 1959(58) which was included in a total of £553.300 mils, covering appellant's income tax for the years 1957 to 1964 which the appellant tax-payer agreed to pay.

On second thoughts, however, the tax-payer this time, changed his mind. And before making payment, he took the stand that his undertaking to pay the tax resulting from the additional assessments in question, was of no legal effect as, in his view, such tax was not being legally raised. As put by learned counsel on his behalf: "The applicant is not precluded from raising the question of the legality of the additional tax imposed on him for the years 1957-1959 merely because he signed that undertaking......If at the time of the signing of the undertaking in question by the applicant, there was no obligation to pay the tax in question, such an

obligation cannot be created by the signing of the undertaking" (top of p. 11 of the record).

This was duly conceded on behalf of the appellant-Authority, as upon this proposition there can be no dispute. The tax is not being claimed by virtue of the tax-payer's undertaking to pay it. It is being claimed upon his signed declara*tion that his income in the years in question, amounted to the* figures therein stated. The undertaking to pay, is merely incidental; and cannot by itself create an obligation to pay tax, if such tax was not legally due.

The case, therefore, clearly turns on the question whether the additional assessments made on 31.12.63, for the year 1957(56), and on the 17.3.64 for the two subsequent years, 1958(57) and 1959(58), could be legally made?

The taxing officer contends that they could be so made under section 23 of The Taxes (Quantifying and Recovery) Law, 1963 (No. 53/63) which was the law in force at the material time. If such additional assessments could be legally made at the time, there is no dispute as to the extent of the tax-payer's liability; no dispute regarding the amount.

The applicant tax-payer, on the other hand, contends that these additional assessments could not be legally made, as his liability for the payment of income tax in respect of the years in question, had been fully met and discharged, he contends, by payments of tax which he made in respect of his income as agreed between him and the taxing officer on the latter's original assessments; i.e. by the payment of £53.750 for 1957 (56) and £43.750 for 1958 (57) made in 1958, as stated above; and the payment of £53.950 mils made in 1959.

The learned trial Judge who determined this case in the first instance, stated the position in these terms:—

> "The issue to be determined in the case now before me, is the specific question of the validity of the application, in this particular case, of the provisions of section 23 of Law 53/63. That is to say, whether the application of the provisions of the said section 23 in the circumstances, and having regard to all the facts of this particular case, amount to the imposition on the Applicant of the additional tax in question with retrospective effect, contrary to the provisions of paragraph 3 of

Article 24 of the Constitution".

(Page 3 of the judgment, at p. 21 of the record).

After discussing the effect of an interim decision of the Supreme Constitutional Court in the case of *Kyriakides* v. *The Republic* (4 R.S.C.C., p. 109) in conjunction with the judgment of this Court in *Christou* v. *The Republic* (reported in this Vol. at p. 214 *ante*) the learned trial Judge resolved the issue before him in these words: (top of p. 24 of the record).

> "Having come to the conclusion that the facts of this case do not, for the reasons I have explained, come within the principle laid down in *Kyriakides' case* (*supra*) and subsequently followed by this Court in the case of *Demetris Petrou Christou* (*supra*), I am of the opinion that the making of the additional assessments in question on the applicant, under sections 3 and 23 of Law 53/63 in respect of the years of assessment 1957, 1958 and 1959, having regard to all the circumstances of this particular case, amount, in effect, to the imposition on the applicant of a tax liability with retrospective effect, contrary to the provisions of paragraph 3 of Article 24 of the Constitution".

Upon these conclusions, the learned trial Judge gave judgment for the appellant tax-payer, declaring the assessments in question to be *null* and *void* and of no effect whatsoever; the judgment which is now the subject-matter of the present appeal.

With all respect, I fully share the view taken by my learned brother the trial Judge, that this, being a recourse against administrative action, must be decided on the facts and circumstances of the particular case. And, surely, the fundamental and paramount fact in this case, is the income of the tax-payer in the material years; the taxable income upon which, the Income Tax Law in force at the material time, imposed a definite tax determined by the statute. A pure question of fact, upon which the amount of the payable tax has to be ascertained according to the relative schedules in the statute.

Taking, for example, the year of assessment 1957(56) in this case; the applicant tax-payer, performing his statutory obligation under the Income Tax Law (Cap. 323) in force at the time, declared that his income in that year, amounted to

£480. If that were a true and correct statement of his income, his liability for the payment of income tax, would have to be measured upon that figure. But the appropriate *taxing officer (the Commissioner at that time)* exercising powers given to him by the legislature in the statute, questioned the correctness of the tax-payer's statement; investigated further into the matter; and, on the material in his hands at the time, found and assessed the appellant tax-payer's income at £1,500, always subject to the latter's statutory right to object to such assessment.

Apparently after discussing the taxing-officer's assessment and the tax-payer's objections thereto, the parties concerned, agreed that the correct income was not £480, as declared; but £1,000. Measured upon that income, the tax-payer's liability, imposed by the statute, was found to be £53,750; which the tax-payer duly paid.

Considerable time later, on the 31.12.63, the taxing-officer, again exercising powers given to him by the legislator (now under Law 53/63) discovered that the tax-payer's true income for the year in question, was much more than £1,000. And again exercising powers given to him by the statute (sections 3 and 23 of Law 53/63), the taxing-officer found and assessed the tax-payer's income for that year, at £2,000.

The tax-payer, now, again exercising his right of objection under the new statute, objected to this assessment on the 26.2.64. And eventually, after discussion agreed that his *true income for the year in question*, was not £1,000, but was in fact £1,420. Measured upon this income, the tax imposed on the appellant, by the Income Tax Law in force at the material time, was £111.750 mils.

The Applicant tax-payer by his present recourse does not dispute the fact that his income was £1,420. Nor does he complain that the taxing-officer abused his powers in re-opening the investigation into his income in 1963, after he had agreed in 1958, that it was only £1,000. What he complains of, is that such a re-opening amounts in effect to imposing a new tax on him. The fact, however, remains that his true income according to his own signed admission, for the year in question was £1,420; and not £1,000.

Now this fundamental and paramount fact was, apparently overlooked by the learned trial Judge in deciding the

merits of the present recourse. Because with that fact in the scales, there can be no doubt that the liability of the tax-payer for the payment of income tax for the year in question, as imposed upon him by the Income Tax Law in force at the time, was £111.750 mils; which has only been met to the extent of £53.750; leaving a balance of £58 which has not been met, and is, therefore, still outstanding. The same position likewise arises, in connection with the tax payable for the other two years in question.

I am, therefore, clearly of the opinion that the recourse must fail; and be dismissed accordingly. And that the appeal must be allowed, with costs.

TRIANTAFYLLIDES, J.: In this Case, I have had the benefit of perusing in advance the learned judgments of my brother Judges, Vassiliades, J. and Josephides, J., and I am in agreement with them concerning the outcome of this appeal.

I would like to add, however, a few words of my own in order to indicate my way of approach to the *sub judice* matter.

Reading the record of this appeal one may be left with the impression that the essence of the tax-payer's—Respondent's in this appeal—complaint was that he had fully met, before the expiration of Cap. 323, all his liability thereunder, in respect of the years in question, and that, therefore, the additional assessments, which are the subject-matter of this appeal, amounted, in effect, to the imposition of a further liability on him. It must be this contention which led the learned Judge of this Court, who decided this Case, to find that such a step amounted to retrospective taxation contrary to Article 24(3).

But during the hearing of this appeal, counsel for the tax-payer made it abundantly clear that the tax-payer is not disputing at all the correctness of the said additional assessments *in point of fact*; thus, in effect the said additional asssssments relate to parts of the same liabilities, in respect of which the tax-payer paid certain amounts of income tax before the expiration of Cap. 323, and which parts at the time of such expiration *had not been met*. Furthermore, counsel for Applicant has stated in unmistakable terms that no question of abuse of powers arises, in relation to the

action of the authorities in raising the additional assessments in question.

In the circumstances, I am of the opinion that during this appeal the position has developed in such a way as to make the legal position adopted by the learned trial Judge—with which I am not prepared to say that I disagree entirely—inapplicable to the particular circumstances of this Case, as now known. I do agree, therefore, as I said already, with the outcome of this appeal.

JOSEPHIDES, J.: The tax-payer's case was solely based on the alleged *illegality* of the additional assessments. He contended that by the payment of the income tax assessed on him in respect of the years 1957, 1958 and 1959 before the Income Tax Law, Cap. 323, ceased to be in force, he had *met* his liability which had accrued under the provisions of that Law, and that, consequently it could not be said that such liability continued to be accrued and remained undischarged under the principle laid down in the *Kyriakides*' case (4 R.S.C.C. 109).

The learned trial Judge was of the view that the principle laid down in the *Kyriakides*' case was intended to apply to liabilities which had accrued under Cap. 323 prior to the date on which it had ceased to be in force and which "had not already been met" by that date (page 114F-G of the Report); and he found that in the present case a liability which had been imposed and charged under that Law had been fully met and discharged to the satisfaction of the Commissioner of Income Tax at the time before Cap. 323 had ceased to be in force. On this finding the learned Judge, being of the view that the tax-payer's liability did not continue to be accrued nor remain undischarged under the principle laid down in the *Kyriakides*' case, held that "the making of the additional assessments in question on the Applicant, under sections 3 and 23 of Law 53 of 1963, in respect of the years of assessment 1957, 1958 and 1959, having regard to all the circumstances of this particular case, amount, in effect, to the imposition on the Applicant of a tax liability with retrospective effect contrary to the provisions of paragraph 3 of Article 24 of the Constitution".

But, with great respect, do the additional assessments amount to the imposition of a tax liability with retrospective

effect? It would seem that the Taxes (Quantifying and Recovery) Law, 1963 (No. 53 of 1963), under the provisions of which the additional assessments were made, regulates the *machinery* of assessments and appeals, and that the jurisdiction to *charge* the tax is derived from the Income Tax Laws, in this case Cap. 323.

The long title of Law 53 of 1963 is stated to be "A Law to provide for the *machinery* of quantifying and recovery of taxes and for matters connected therewith". The operative part of section 3 provides that "any tax whether imposed before or after the date of the coming into operation of this Law, shall be quantified and recovered under the provisions of this Law". And the expression "tax" is defined in section 2(1) as follows:

> '"tax' means a direct tax imposed by a law whether before or after the coming into operation of this Law, in respect of a period therein provided irrespective of whether such period relates to a period before the date of the coming into operation of this Law or not, the amount of which is ascertained on the basis of objective criteria laid down in the Law whereby the tax is imposed".

It will thus be seen that the provisions of Law 53 of 1963 can only operate after the tax has been imposed or charged under another law, in this case the Income Tax Law, Cap. 323. As was said by Lord Reading, C.J. in *Rex* v. *Bloomsbury Income Tax Commissioners* [1915] 3 K.B. 768, at page 780, in dealing with similar provisions:

> "The main question in this case depends not so much upon the Taxes Management Act, 1880, as upon the Income Tax Acts, for the jurisdiction to charge the tax is derived from the last mentioned statutes. The Act of 1880 consolidated various enactments relating to income tax and other taxes under the management of the Board of Inland Revenue. It conferred certain powers upon Commissioners to make assessments but did not give jurisdiction to charge a person who was not otherwise chargeable to income tax. Until 1880 the machinery for putting the Income Tax Acts into operation was provided by the statute 43 Geo. 3, c.99, and amending statutes, including the House Tax Act, 1803 (43 Geo. 3, c.161). These Acts were incorporated in the Income Tax Act, 1842, by s.3 and continued to

> govern the operation of income tax law until the Taxes Management Act, 1880. An examination of the two statutes of 1803 shows that when the assessing authorities of the district were empowered to assess persons chargeable, they were empowered to assess such persons as were "discovered" to be chargeable, i.e., such persons as the assessing authorities *bona fide* believed on the material before them to be chargeable. The person so charged had a right of appeal to the Commissioners, whose decision was final except in certain cases when the opinion of the judges might be required. (See ss. 9, 21, 24 to 27, and 29 of 43 Geo. 3, c.99, and ss. 63, 69, 70 and 73 of 43 Geo. 3, c.161). An examination of the Income Tax Act, 1842, shows that its provisions are to the same effect".

And at page 782:

> "The Taxes Management Act, 1880, now regulates the machinery of assessment and of appeals, and the surveyor may examine the returns and the first assessments and the additional Commissioners may make an additional first assessment as prescribed by ss. 51 and 52 of that Act. The Legislature has given jurisdiction to the Commissioners to determine the facts and to confirm the assessments".

The Income Tax Law, Cap. 323, created the liability, and the charging sections in Cap. 323 are the basis of the existence of the liability which was quantified under Law 53 of 1963. As was said in *Christou* and *The Republic of Cyprus* (reported in this Vol. at p. 214 *ante*) "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".

The question then arises was the full measure of liability of the tax-payer extinguished by the original assessment? Section 23 of Law 53 of 1963, *inter alia*, provides that where it appears to the Director of the Department of Inland Revenue that any person on whom the tax has been imposed under any Law "has been assessed at or paid an amount less than that which ought to have been paid", the Director may, within a fixed period, raise an additional assessment on the tax-payer to recover the amount of the tax undercharged. Once it is accepted, as it has been held in the *Christou* case,

that the liability to pay tax under Cap. 323 accrued in the year when the income was earned, irrespective of whether a notice of assessment has been served on the tax-payer or not, it is clear that if the Director of the Department of Inland Revenue finds out that there was income chargeable to tax which had been omitted from any previous assessment then he is empowered to apply the provisions of section 23 to raise an additional assessment within the period fixed therein; and it cannot be said that the income was omitted from any previous assessment with the sanction of the Director because he would have no power to sanction such an omission—at least in so far as the question of the *legality* of the assessment is concerned.

Finlay, J., in considering the provisions of section 125, subsection (1), of the English Income Tax Act, 1918, which are similar to the provisions of section 23 of our Law 53 of 1963, said in *Williams* v. *Trustees of W.W. Grundy* [1934] 1 K.B. 524 at page 534:

> "I do not think I can give effect to that argument, because nothing is better settled than the principle that there is no estoppel as against the Crown. I do not doubt that in some cases very real inconvenience might be caused by an additional assessment made five years after the event, but, as I have said, that is a matter which I am not entitled to take into account. The other thing which I would say is this: I have carefully considered the authorities, but, apart from the authorities, if one looks at s.125 itself, it is rather difficult to say that on the facts of this case the surveyor had not discovered, found out, that there were properties or profits chargeable to tax which had been omitted from the first assessments. He did, I think, find out that fact. The fact is, of course, that the properties or profits were chargeable to tax; they had been omitted from the first assessments and he found that out. The only answer made to this is that they had been omitted from the first assessment, so to speak, with the sanction of the inspector, because he, like those making the return, supposed that they were not properties or profits chargeable to tax. But of course an inspector would have no power to sanction such an omission. He discovers, he finds out, that they are chargeable, and I have difficulty in seeing why s.125 does not then precisely apply".

Recently, Viscount Simonds, in considering the provisions of section 41, subsection (1), of the English Income Tax Act, 1952, which reproduced substantially the provisions of section 125, subsection (1), of the 1918 Act, stated in *Cenlon Finance Co. Ltd.*, v. *Ellwood* [1962] 1 All E.R. 854 (H.L.), at page 859:

> "I can see no reason for saying that a discovery of undercharge can only arise where a new fact has been discovered. The words are apt to include any case in which for any reason it newly appears that the tax-payer has been undercharged and the context supports rather than detracts from this interpretation".

The fact that the tax-payer paid the full amount of tax assessed on him prior to the date on which Cap. 323 ceased to be in force does not, to my mind, exonerate him from the payment of the full measure of his liability which had already accrued but had not been quantified under the provisions of Cap. 323 owing to an omission—deliberate or accidental—on his part to declare his full income. In these circumstances it cannot be said that the tax-payer's liability, which accrued under the provisions of Cap. 323 in the year when the income was earned, had already been met and discharged.

On this view the additional assessments on the taxpayer do not amount to the imposition of a tax with retrospective effect and they were, consequently, validly made under the provisions of sections 3 and 23 of Law 53 of 1963.

The question of *abuse of power* by the Director of the Department of Inland Revenue was not raised by the tax-payer nor argued before us, although the tax-payer's counsel was expressly invited by this Court to do so. It was the contention of the learned Attorney-General of the Republic, who argued the appeal on behalf of the Director, that if such question were raised he could have adduced evidence to prove that the Director had valid reasons for reopening the assessments in 1963 and 1964.

For these reasons I agree that the appeal should be allowed with costs, the decision of the trial Judge set aside and the tax-payer's recourse dismissed.

Appeal allowed with costs.
Decision appealed from set aside.
Respondent's (Applicant's) recourse dismissed.

The judgment appealed from is as follows:

MUNIR, J.: By this recourse under Article 146 of the Constitution the Applicant seeks a declaration that the additional assessments of income tax made upon him under the provisions of the Taxes (Quantifying and Recovery) Law, 1963 (No. 53 of 1963) in respect of the years of assessment 1957, 1958 and 1959 of the respective amounts of £58.-, £50.- and £9.800, which were made on the 31st December, 1963, the 17th March, 1964, and the 17th March, 1964, respectively, are *null* and *void* and of no effect whatsoever.

The Taxes (Quantifying and Recovery) Law, 1963 (hereinafter in this judgment referred to as "Law 53/63"), having been enacted by the House of Representatives and published in the official Gazette, came into operation on the 18th July, 1963.

It is not in dispute that income tax, in accordance with original assessments which had been made on the Applicant under the Income Tax Law, Cap. 323, in respect of the years of assessment 1957, 1958 and 1959, had been paid by the Applicant before Cap. 323 ceased to be in force.

Relying on the provisions of sections 3 and 23 of Law 53/63 the Respondent made the following assessments of additional amounts of income tax on the Applicant in respect of the same three years of assessment in question:—

(1) In respect of the year of assessment 1957 (year of income 1956) an additional assessment of £58 was made on the 31st December, 1963.

(2) In respect of the year of assessment 1958 (year of income 1957) an additional assessment of £50 was made on the 17th March, 1964.

(3) In respect of the year of assessment 1959 (year of income 1958) an additional assessment of £9.800 mils was made on the 17th March, 1964.

On the 2nd September, 1964, the Applicant signed an undertaking to pay an amount of £553.300 in respect of the years of assessment 1957 to 1964 which sum included the £117.800, being the additional amounts assessed on the Applicant in respect of the three years of assessment 1957, 1958 and 1959, which are the subject-matter of this recourse.

It is against these additional assessments that the Applicant has now made recourse to this Court.

The provisions of Law 53/63 which are more particularly relevant to the determination of this recourse are sections 3 and 23 and it is convenient, for the purposes of this Judgment, to set out the provisions of these two sections in full.

Section 3 of Law 53/63 reads as follows:—

"3. Save where other provision is made in any other Law, any tax whether imposed before or after the date of the coming into operation of this Law, shall be quantified and recovered under the provisions of this Law".

Section 23 of Law 53/63, under which the additional assessments in question were more particularly made, reads as follows:—

"23. Where it appears to the Director that any person on whom the tax has been imposed under any Law, whether before or after the coming into operation of this Law, has not been assessed or paid the tax imposed or has been assessed at or paid an amount less than that which ought to have been paid, the Director may, within the year of assessment or within six years after the expiration thereof, assess such person at such an amount of tax or additional amount of tax as was imposed and ought to have been assessed and recovered under the provisions of the Law imposing the tax, and the provisions of this Law shall apply to such assessment and to the tax assessed thereunder".

The former Income Tax Law, Cap. 323, which has now ceased to be in force, also contained in its section 45 provisions similar to the provisions of section 23 of Law 53/63 whereby the Commissioner of Income Tax was likewise empowered to make assessments of additional amounts within six years after the expiration of the year of assessment in question.

It will be recalled that in the Interim Decision of the Supreme Constitutional Court of the 18th December, 1962, which was given in the well-known case of *Vasos Constantinou Kyriakides* and *The Republic*, 4 R.S.C.C., p. 109 (hereinafter referred to as "*the Kyriakides Case*") the question of the validity of provisions such as those contained in section 45 of Cap. 323 was left open by that Court. The Supreme

Constitutional Court in its aforesaid Interim Decision stated as follows on this point at p. 115:—

"The question, however, of the validity of the application in a given case of a provision such as section 45 of Cap. 323 does not have to be decided at this stage".

The issue to be determined in the case now before me is the specific question of the validity of the application, in this particular case, of the provisions of section 23 of Law 53/63. That is to say, whether the application of the provisions of the said section 23 in the circumstances, and having regard to all the facts, of this particular case amounts to the imposition on the Applicant of the additional tax in question with retrospective effect contrary to the provisions of paragraph 3 of Article 24 of the Constitution.

Counsel for Applicant has submitted that inasmuch as the Applicant had been assessed originally under the provisions of the old Income Tax Law, Cap. 323, prior to its ceasing to be in force, and that the full amounts with which he had originally been assessed were fully paid by him before Cap. 323 ceased so to be in force, then in his submission, the liabilities and obligations of the Applicant under Cap. 323 had been fully met and discharged by him before Cap. 323 ceased to be in force. No outstanding liability of the Applicant had, therefore, accrued under Cap. 323 on the date on which Law 53/63 came into operation. In support of this submission counsel for Applicant cited from the abovementioned Interim Decision of the Supreme Constitutional Court in the *Kyriakides Case*, at p. 114, where the said Court refers to "liabilities to pay income tax which had accrued ....*and had not already been met*". Counsel for Applicant submitted that as the liability under Cap. 323 had already been met prior to the ceasing to be in force of Cap. 323, then the principle laid down in the *Kyriakides Case* did not apply to this Case. In support of this argument counsel for Applicant also referred to the more recent judgment of this Court in the case of *Demetris Petrou Christou* and *The Republic*, (reported in this Vol. at p. 214 *ante*).

Counsel for Respondent, on the other hand, has submitted that the additional amounts in question were, like the original amounts assessed, also chargeable under Cap. 323 before it ceased to be in force and the fact that the full amounts which had been imposed and charged by the relevant sections of

Cap. 323 had not been correctly assessed at the time the original assessments were made did not preclude the subsequent making of new assessments, or of revising the original assessments, under the provisions of section 23 of Law 53/63. In the view of counsel for Respondent the making of the additional assessments in question did not amount to the imposition of taxation with retrospective effect contrary to paragraph 3 of Article 24 of the Constitution but amounted to the correction of an earlier assessment and the quantifying of certain outstanding liabilities which had already accrued before Cap. 323 ceased to be in force. Counsel for Respondent also submitted that when the Applicant had paid all the amounts originally assessed upon him before Cap. 323 ceased to be in force he was not in fact meeting all his liabilities because the original assessment had inadvertently been an assessment of only a part of his liabilities.

As stated above, the basic issue which is for determination in the case now before me is whether the application of the provisions of section 23 of Law 53/63 to the facts and circumstances of this case comes within the principle laid down in the *Kyriakides Case* or whether it amounts to the imposition of taxation on the Applicant with retrospective effect contrary to paragraph 3 of Article 24 of the Constitution.

In determining this issue it is useful to consider the whole tenor and spirit of the aforesaid Interim Decision of the 18th December, 1962, of the Supreme Constitutional Court in the *Kyriakides Case*. A perusal of that Decision makes it quite clear, in my view, that the principle laid down therein was intended to apply to liabilities which had accrued under Cap. 323 prior to the date on which it had ceased to be in force and which "had not already been met" (see p. 114 F - G of the Decision) by that date. The *Kyriakides Case* was further considered and applied by this Court in the case of *Demetris Petrou Christou* and *The Republic* (*supra*).

As previously stated, it is not in dispute that earlier assessments had been made on the Applicant by the Respondent in respect of the former's liability to pay income tax under Cap. 323 in respect of the three years of assessment in question. This liability, which had been imposed and charged under Cap. 323, had been assessed and determined by the Respondent under the relevant provisions of Cap. 323, at a time when Cap. 323 was still in force. Thus, whatever

liability the Applicant may have had to pay income tax under Cap. 323, in respect of the three years of assessment in question, as then believed by both the Applicant and the Respondent to exist at the time, had been fully met and discharged by the Applicant prior to the ceasing to be in force of Cap. 323.

In my opinion, where, as in the present case, a liability which had been imposed and charged under the provisions of Cap. 323 has been fully met and discharged to the then satisfaction of the Respondent before the ceasing to be in force of Cap. 323, it cannot be said that such liability continues to be accrued and remains undischarged, under the principle laid down in the *Kyriakides Case*, after the ceasing to be in force of Cap. 323.

Having come to the conclusion that the facts of this case do not, for the reasons I have explained, come within the principle laid down in *Kyriakides' Case* (*supra*) and subsequently followed by this Court in the Case of *Demetris Petrou Christou* (*supra*), I am of the opinion that the making of the additional assessments in question on the Applicant, under sections 3 and 23 of Law 53/63 in respect of the years of assessment 1957, 1958 and 1959, having regard to all the circumstances of this particular case, amount, in effect, to the imposition on the Applicant of a tax liability with retrospective effect contrary to the provisions of paragraph 3 of Article 24 of the Constitution.

Counsel for Applicant has not contended in this case that the provisions of section 23 of Law 53/63 are unconstitutional as a whole but has confined his arguments to the question of the validity of the application of the said provisions to the facts of this particular case. In the present circumstances, I do not consider it necessary to decide, at this stage and for the purposes of determining this case, on the question of the constitutionality of section 23 of Law 53/63 as a whole. I simply hold, for the reasons given above, that the application of the provisions of section 23 of Law 53/63 by the Respondent in the particular circumstances of this case is unconstitutional as being contrary to paragraph 3 of Article 24 of the Constitution.

With regard to the question of the written undertaking which the Applicant signed on the 2nd September, 1964, Counsel for Respondent has readily conceded, and quite

properly so in my opinion, that if the Court were to find that the additional assessments in question could not have been validly made then he would not contend that the signing by the Applicant of the undertaking in question would in itself validate such assessments. Having come to the conclusion that the assessments in question could not have been validly made, I agree with the submission made by Counsel for Applicant, which, as I have stated, was not challenged on this point by Counsel for Respondent, that the written undertaking in question, signed by the Applicant, to pay an amount which included the amounts of the additional assessments in question, does not, in itself, in all the circumstances, validate such invalid assessments.

For all the reasons given above, the three additional assessments, made upon the Applicant under the provisions of sections 3 and 23 of Law 53/63 in respect of the years of assessment 1957, 1958 and 1959 on the 31st December, 1963, 17th March, 1964, and 17th March, 1964, respectively, are hereby declared to be *null* and *void* and of no effect whatsoever.

Assessments complained of declared null and void.
No order as to costs.