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REPUBLIC
(COUNCIL
OF MINISTERS)
v.
CHRISTAKIS
VASSILIADES

[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, LOIZOU AND HADJIANASTASSIOU, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Appellant,

v.

CHRISTAKIS VASSILIADES,

Respondent.

(*Revisional Jurisdiction Appeal No.* 19).

Supreme Court—In its appellate Jurisdiction—Composition and quorum of the Supreme Court in appeals from the decision of a single Judge of the Supreme Court exercising original or revisional jurisdiction under section 11 (2) *of the Administration of Justice (Miscellaneous Provisions) Law,* 1964 (*Law No.* 33 *of* 1964)—*Such appeal lies to the Supreme Court as a whole, subject to any Judge thereof being incapacitated—That is to say to the full Bench, and not to three Judges as provided in section* 11 (3) *of the said Law—No matter whether or not a question of unconstitutionality is being at issue—A Judge or Judges so incapacitated do not sit on appeal in the particular case—And need not be substituted unless the Court thinks that it is so expedient—And the Judge who has heard a case in the first instance is so incapacitated from sitting on appeal in the said case—Sections* 2 (1), 3 (1) *and* (2), 7 (1), 9 (*a*) *and* (*b*), 11 (1) (2) *and* (3) *of the said Law No.* 33 *of* 1964, supra—*Meaning of "Court" in the proviso to section* 11 (2) *of the said Law—Constitution of Cyprus, Articles* 133.9, 146, 153.9, 155.1, 2 *and* 4. *and Article* 163.3.

Composition and Quorum of the Supreme Court—At hearings of appeals from decisions of a Judge of the Supreme Court exercising original or revisional jurisdiction—See above.

Appeals—Supreme Court—Composition and quorum of at hearings of appeals from decisions of a single Judge thereof—See above.

Judge—Judge of the Supreme Court—Incapacitated from sitting on appeals from decisions of a single Judge exercising original or revisional jurisdiction—Whether he should be substituted—The Judge from whose decision the appeal is made is so incapacitated from sitting on the appeal—See, also, above.

Statutes—Construction of—Canons of construction—See principles set out in Halsbury's Laws of England, 3rd Ed., Volume 36 *pp.* 387–388, *paras.* 578–580, *and at pp.* 394–395, *paras.* 593 *and* 594.

This is an appeal from a provisional order made by a Judge of the Supreme Court in a recourse under Article 146 of the Constitution.

At the commencement of the hearing of this appeal, in view of one of the Judges of the Supreme Court feeling incapacitated, for personal reasons, from sitting to hear this appeal—argument was heard on the following two preliminary issues:

(A) Whether the remaining Judges should proceed with the hearing of the appeal; or whether the Judge who feels incapacitated should be substituted;

(B) And, in any case, whether the Judge of the Supreme Court from whose order the appeal was made should sit on the appeal.

Germane to issue (A) was the question what is meant by the term "Court" in the proviso to section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964) (v. *infra*).

Section 9 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964), which defines the jurisdiction to be exercised under section 11 (*post*), vests in the Supreme Court the jurisdiction of the Supreme Constitutional Court and of the High Court of Justice. In particular, the Supreme Court is vested, *inter alia,* with the revisional jurisdiction of the Supreme Constitutional Court, under Article 146 of the Constitution, and with the appellate, original and revisional jurisdiction of the Hight Court of Justice, under Article 155 of the Constitution (appellate under paragraph 1, and original and revisional under paragraphs 2 and 4 thereof).

Section 11 of the said Law No. 33 of 1964 provides:

"11. (1) Any jurisdiction, competence or powers vested in the Court under section 9 shall, subject to sub-sections (2) and (3) and to any Rules of Court, be exercised by the full Court.

(2) Any original jurisdiction vested in the Court under

any law in force and any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority as being contrary to the law in force or in excess or abuse of power, may be exercised, subject to any Rules of Court, by such Judge or Judges as the Court shall determine:

Provided that, subject to any Rules of Court, there shall be an appeal to the Court from his or their decision.

(3) Any appellate jurisdiction vested in the Court shall, subject to any Rules of Court, be exercised by at least three Judges nominated by the Court.

Each such nomination shall be made in respect of a period of four months at the beginning of such period".

The Supreme Court, Josephides, J., partly dissenting:

Held, (1) (Josephides, J., *dissenting*): An appeal from the decision of a Judge exercising the original as well as the revisional jurisdiction of this Court under section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964) lies to this Court as a whole, subject to any Judge thereof being incapacitated, and not to three Judges as provided in sub-section (3) of the aforesaid section.

(2) A Judge or Judges of this Court so incapacitated do not sit on appeal in the particular case; and need not be substituted unless the Court thinks that it is so expedient.

(3) The Judge of this Court who has heard a case in the first instance is so incapacitated.

Cases referred to:

Rodosthenous and The Republic, 1 R.S.C.C. 127;

The Attorney-General v. *Ibrahim* 1964 C.L.R. 195;

The Tunnel Portland Cement Co. Ltd. v. *The Prince Line Ltd. and Another,* (1963) 2 C.L.R. 181;

Jadranska Plovidba v. *Photiades and Co.* (1965) 1 C.L.R. 58;

Pitsillos (No. 2) and The Republic (Water Board) (1966) 3 C.L.R. 884.

Appeal.

Appeal against the decision* of a Judge of the Supreme Court of Cyprus given on the 26.7.66 (Revisional Jurisdiction Case No. 171/66) whereby a provisional order was made restraining the Respondent from taking any steps in furtherance of the acquisition of immovable property of the Applicant, or of the requisition order affecting the same property, pending the determination of a recourse against such acquisition.

K. Talarides, Counsel of Republic, for the Appellant.

E. Odysseos, for the Respondent.

Cuv. adv. vult.

The following Judgments were read:

VASSILIADES, P.: I shall ask Mr. Justice Triantafyllides to deliver the first Judgment.

TRIANTAFYLLIDES, J.: At the commencement of the hearing of this appeal – in view of one of the Judges of the Supreme Court feeling incapacitated, for personal reasons, from sitting to hear this appeal–argument was heard on the following two preliminary issues:

"(A) Whether the remaining Judges should proceed with the hearing of the appeal; or whether the Judge who feels incapacitated should be substituted;

And, in any case,

(B) Whether the Judge from whose order the appeal was made should sit on the appeal".

The Court, having heard counsel, proceeded to hold, on the 22nd November, 1966, as follows:

"On the two preliminary questions on which we heard argument today, the prevailing opinion in the Court enables the case in hand to be proceeded with. We shall give our reasons for our decision later. The opinion of the Court, subject to the reservations which may appear in the Judgment, or Judgments, which will be given later, is as follows:

An appeal from the decision of a Judge, exercising the Revisional Jurisdiction of the Court under section 11 (2),

*Reported in (1966) 3 C.L.R. 708.

lies to the Court as a whole, subject to any Judge being incapacitated. A Judge or Judges, so incapacitated, do not sit in the particular case; and need not be substituted unless the Court think that it is so expedient. The Judge who has heard a case in the first instance is so incapacitated".

I shall now proceed to give, in this Judgment, my reasons for being of such an opinion, as above.

It is more convenient to deal, first, with preliminary issue (B).

I take the view that the Judge, who has made the Order appealed against, is legally incapacitated from sitting as a member of the Court for the hearing of the appeal from his own Order. In this respect, I see no reason to depart from the ratio decidendi of *Rodosthenous and The Republic*, (1961, 1 R.S.C.C. p. 127).

It might be observed, also, that once a Judge has dealt with a Case in the first instance, and has given a decision which, if not appealed against, would become a *res judicata*, he is *functus officio* and cannot revert on to the same matter, in a judicial capacity, on appeal from his own decision.

Furthermore, the Judge who, for personal reasons, finds himself unable to sit on this appeal, is, according to well-established principle, likewise legally incapacitated from so sitting, and he need not, and should not be asked to, take part in the hearing of this appeal.

Coming now to preliminary issue (A), it is necessary to decide, first, what is meant by the term "Court" in the proviso to section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law 1964 (Law 33/64).

Section 11 of Law 33/64 reads as follows:

"11. (1). Any jurisdiction, competence or powers vested in the Court under section 9 shall, subject to subsections (2) and (3) and to any Rules of Court, be exercised by the full Court.

(2). Any original jurisdiction vested in the Court under any law in force and any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person

exercising executive or administrative authority as being contrary to the law in force or in excess or abuse of power, may be exercised, subject to any Rules of Court, by such Judge or Judges as the Court shall de ermine:

Provided that, subject to any Rules of Court, there shall be an appeal to the Court from his or their decision.

(3). Any appellate jurisdiction vested in the Court shall, subject to any Rules of Court, be exercised by at least three Judges nominated by the Court.

Each such nomination shall be made in respect of a period of four months at the beginning of such period".

I have reached the conclusion that the term "Court" in the proviso to section 11 (2) means the full Court, subject, of course, always to any member thereof being incapacitated. My reasons are as follows:

The above-quoted section 11 must be read together with section 9 of the same Law and, also, against the background of the relevant constitutional provisions laying down the jurisdictions of the Supreme Constitutional Court and of the High Court of Justice, respectively:

Section 9, which defines the jurisdiction to be exercised under section 11, vests in the Supreme Court the jurisdictions of the Supreme Constitutional Court and of the High Court of Justice.

In particular, the Supreme Court is vested, *inter alia*, with the revisional jurisdiction of the Supreme Constitutional Court, under Article 146, of the Constitution, and with the appellate, original and revisional jurisdictions of the High Court of Justice, under Article 155 of the Constitution (appellate under paragraph 1, and original and revisional under paragraphs 2 and 4, thereof).

By virtue of sub-section (2) of section 11, the revisional jurisdiction of the Supreme Constitutional Court, under Article 146, and the original and revisional jurisdiction and of the High Court of Justice, under Article 155 (paragraphs 2 & 4) *may* be exercised, subject to any Rules of Court, by such Judge or Judges as the Supreme Court shall determine.

From the decision of a Judge or Judges, exercising jurisdiction

under sub-section (2) of section 11, an appeal lies to the "Court"; and the question arises as to whether the "Court" to hear such an appeal is the full Court – subject to any member thereof being incapacitated – or whether it may be a bench of three Judges, nominated by the Court under sub-section (3) of section 11 to exercise the appellate jurisdiction vested in the Supreme Court.

Bearing in mind:

(a) that the revisional jurisdiction of the Supreme Constitutional Court under Article 146 was being exercised always by the full bench of that Court;

(b) that an appeal from the Judgment of a Judge of the High Court of Justice, exercising original or revisional jurisdiction, under Article 155, had, by virtue of Article 163 (3), to be heard by the full bench of the High Court of Justice;

(c) that the jurisdiction exercised in the first instance by one or more Judges of the Supreme Court, under sub-section (2) of section 11 – instead of by the full Supreme Court – is so exercised only for obvious reasons of expediency;

and (d) that the jurisdiction exercised by a Judge or Judges of the Supreme Court under sub-section (2) of section 11, is vested in the *full Supreme Court, and not in the said Judge or Judges as such,* as is the case with the jurisdictions vested in Judges of District Courts and Assizes, from whose decisions an appeal lies to the Supreme Court;

I think that the only proper course is to construe the proviso to sub-section (2) as being intended to ensure to litigants the benefit of the opinion of the full membership of the Supreme Court in cases coming within the original or revisional jurisdictions which were vested in the Supreme Constitutional Court and the High Court of Justice, respectively; and to construe sub-section (3) as not applicable at all to an appeal under the proviso to sub-section (2), but as being only applicable to the appellate jurisdiction of the High Court of Justice under Article 155 (1), which is now vested in the Supreme Court under section 9 of Law 33/64; such apppellate jurisdiction being contradistinguished from an appeal arising in

the course of exercising the original and revisional jurisdictions of the Court in two instances (under sub-section (2) of section 11) instead of directly in one instance before the full bench of the Court (under sub-section (1) of section 11).

In my view sub-sections (2) and (3) of section 11 make separate and distinct provisions, for the sake of expediency, in the cases of distinct in character jurisdictions, which are both vested primarily in the full Supreme Court, under sub-section (1) of section 11, and it is not possible to construe sub-section (3) as suddenly intended to fuse into one, on appeal, the two specialized procedural courses.

The question that arises, next, is what is to be done in an appeal under the proviso to sub-section (2) of section 11, in order to meet the gap in the full bench of the Supreme Court created by the legal incapacity of the Judge of the Court who has dealt with the case concerned in the first instance, or in order to meet an additional gap in the full bench of the Court arising when a Judge thereof feels legally incapacitated to sit, for personal reasons; and in this appeal both the said two gaps in the full bench of the Court do exist together.

May the remaining Judges of the Court proceed to hear this appeal, as the "Court", or do the two legally incapacitated Judges have to be replaced through acting appointments for the purpose?

Unlike the constitutional provisions providing for the replacement of incapacitated Judges of the Supreme Constitutional Court and of the High Court of Justice – Articles 133 (9) and 153 (9), respectively – which are mandatory in nature, the relevant provision, in relation to the Supreme Court, section 7(1) of Law 33/64 is clearly an enabling one. A temporary appointment of a Judge of the Supreme Court may be made under section 7(1) by the President of the Republic if advised by the Court "that it is expedient" owing to, *inter alia*, the "temporary incapacity" of a Judge; and as "temporary incapacity" in section 7(1) is not limited to "mental or physical incapacity", as in section 9(b) of the same Law, we have to read "temporary incapacity" in section 7(1) as including legal incapacity, too.

Since, therefore, under section 7(1), above, a temporary appointment *may* be made, but does not *have* to be made, in case of temporary incapacity of a Judge, it follows that unless

in a particular case the Court does decide to advise the President that it is expedient – in the interests of Justice – to replace one or more temporarily incapacitated Judges, through temporary appointments for the purpose, the Court may proceed to sit without them.

Actually the solution provided in this respect by section 7 (1) is a usefully flexible one, lying half-way between mandatory provisions, such as those in Articles 133 (9) and 153 (9) of the Constitution, and the complete absence of provision for replacement of temporarily incapacitated members of a highest judicial organ, which is met with in the Constitutions of some other countries; it is a solution well-suited to the requirements of a measure of necessity, such as Law 33/64, which was enacted in order to enable the Judiciary to function in the circumstances of the anomalous situation which has rendered necessary its enactment. (See *The Attorney-General* v. *Ibrahim and others*, 1964, C.L.R. 195).

Temporary appointments to replace temporarily incapacitated Judges of the Court would become necessary, because of the very nature of things, if on any given occasion the number of temporarily incapacitated Judges were to be such as to prevent the Court from sitting with a proper quorum; and in my opinion, bearing in mind the principles governing the quorum of collective organs, and in view of the absence of any provision to the contrary in Law 33/64, such quorum would be more than half the number of the Judges of the Court holding office at any given time.

In relation to the proper quorum of the Court it has been suggested, during the argument, that it could not be less than five Judges; and reliance has been placed in this connection on section 3 (2) of Law 33/64, which provides that the Supreme Court shall consist of "five or more, but not exceeding seven Judges". In my view such a provision was only intended to prescribe the constitution of the Court and it cannot be construed as relating at all to the question of the quorum of the Court, especially if one bears in mind that there may be only five Judges appointed to the Supreme Court, and, nevertheless, section 16 of Law 33/64 provides that the Court "shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any member thereof".

As a matter of fact the existence of a provision such as

section 16 lends added weight to the already expressed view – on the basis of section 7(1) of the Law – that temporarily incapacitated Judges of the Court need not always be replaced by temporary appointees.

In the present case, we did not think that it was expedient in the interests of justice, to ask for temporary appointments in the place of the two Judges who are incapacitated – or of the one who has been absent for some time – and, therefore, the remaining four Judges of the Court proceeded to deal with this appeal under sub-section (2) of section 11.

JOSEPHIDES, J.: The following questions were set down for determination prior to the hearing, on the merits, of this appeal from an interlocutory order made by a single Judge of this Court exercising revisional jurisdiction in a recourse made against an administrative act:

(A) whether, in view of the incapacity (for personal reasons) of one of the Judges of this Court to sit as a member of the Court at the hearing of the appeal, the remaining Judges should proceed with the hearing of the appeal; or whether the Judge who feels incapacitated should be substituted; and,

(B) whether the Judge from whose order the appeal was made should sit on the appeal.

The following are the undisputed facts in this case. On the 20th January, 1966, a notice of acquisition under the provisions of section 4 of the Compulsory Acquisition Law 1962 (Law 15 of 1962) was published in the official *Gazette* by the acquiring authority, the Electricity Authority of Cyprus. Notice was thereby given that the Respondent's property, described in the schedule, was required for a purpose of public benefit and must be acquired "for the construction of an electric power sub-station and/or the extension of the existing power sub-station". The property proposed to be acquired, as described in the schedule, was of an area of 280 sq. ft., forming part of plot No. 252 at Morphou, belonging to the Respondent, and of a right of way over an area of 70 ft. long by 10 ft. wide.

On the 21st April, 1966, an order of acquisition, under the provisions of section 6 of the above Law, was published in the official *Gazette*; and on the 17th June, 1966, the Respondent in the present appeal filed a recourse under the provisions of

Articles 23, 25 and 146 of the Constitution, against such order of acquisition (Case No. 155/66).

On the previous day, *viz*. on the 16th June, 1966, an order of requisition made by the Council of Ministers, under the provisions of section 4 of the Requisition of Property Law 1962 (Law 21 of 1962), was published in the official *Gazette*. The object of that order was to enable the Electricity Authority of Cyprus to take immediate possession of the Respondent's property for the purpose of proceeding at once with the construction of the sub-station without waiting for the assessment and payment of the compensation to the Respondent in advance for the acquisition of his property, as required under the provisions of Article 23, paragraph 4 (c), of the Constitution.

On the 15th July, 1966, the Respondent filed a recourse (Case No. 171/66), under the provisions of Article 146, against such order of requisition, and on the same day he filed an application for a provisional order restraining the Appellants from in any way interfering with his property or putting into effect the aforesaid requisition order, pending the hearing and final determination of his recourse. A single Judge of this Court, exercising revisional jurisdiction under section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33 of 1964), after hearing argument on both sides, made a provisional order on the 26th July, 1966, restraining the Appellants from taking any steps in furtherance of the acquisition of the Respondent's property, or of the requisition order affecting the same property, for a period of 14 days; provided that on payment or deposit of the sum of £1,200 within that period the provisional order to be discharged and the requisitioning authority to be at liberty to proceed with the requisition order. It was further directed that in default of such payment or deposit as aforesaid, the provisional order to continue in force pending the hearing and final determination of the acquisition proceedings, or untill further order of the Court. It is against this provisional order that the Appellants lodged their appeal which is now before this Court.

Having stated the material facts I now revert to the two questions for determination.

As regards (B), I am of the view that the Judge who has made the order appealed against is legally incapacitated from sitting as a member of the Court of Appeal for the

purpose of hearing the appeal against his own order. For this view I rely on the reasoning in the case of *Rodosthenous and The Republic* (1961) 1 R.S.C.C. 127, which covers the point fully and I do not think it is necessary to elaborate on it.

In determining question (A), we are concerned with a matter of construction of the expression "Court" in the proviso to section 11 (2), and of section 11 (3) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (to which I shall refer as "Law 33 of 1964"). Section 11 of that Law reads as follows:

"11. (1) Any jurisdiction, competence or powers vested in the Court under section 9 shall, subject to subsections (2) and (3) and to any Rules of Court, be exercised by the full Court.

(2) Any original jurisdiction vested in the Court under any Law in force and any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority as being contrary to the law in force or in excess or abuse of power, may be exercised, subject to any Rules of Court, by such Judge or Judges as the Court shall determine:

Provided that, subject to any Rules of Court, there shall be an appeal to the Court from his or their decision.

(3) Any appellate jurisdiction vested in the Court shall, subject to any Rules of Court, be exercised by at least three Judges nominated by the Court.

Each such nomination shall be made in respect of a period of four months at the beginning of such period".

The material part of section 9 referred to in section 11 (1) reads as follows:

"9. There shall be vested in the Court:

(a) the jurisdiction and powers, which have been hitherto vested in, or capable of being exercised by the Supreme Constitutional Court and the High Court;"

It will be observed that in section 11 (1) express provision is made that the jurisdiction or powers vested in the Supreme

Court under section 9 shall be exercised by the "full Court", that is to say, all jurisdiction and powers except as otherwise provided in subsections (2) and (3) of section 11. In this case we are concerned with those two subsections.

Subsection (2) of section 11 reproduces substantially the provisions of Article 155, paragraph 2, of the Constitution, that is to say, the original jurisdiction of the High Court covering mainly Admiralty and Matrimonial cases, as well as prerogative orders (habeas corpus, certiorari etc.); and it also includes for the first time the "revisional" administrative jurisdiction originally exercised by the Supreme Constitutional Court under the provisions of Article 146 of the Constitution.

Article 155, paragraph 2, reads as follows:

"2. Subject to paragraphs 3 and 4 of this Article the High Court shall have such original and revisional jurisdiction as is provided by this Constitution or as may be provided by a law:

Provided that where original jurisdiction is so conferred, such jurisdiction shall, subject to Article 159, be exercised by such judge or judges of the High Court as the High Court shall determine:

Provided further that there shall be a right of appeal to the High Court from their decision".

Paragraph 3 of Article 163 expressly provided that "for the hearing of any appeal.....the High Court shall..... .....be composed of all its members". This provision was obviously a necessary one from the point of view of the framers of the Constitution, first, to ensure that the basic provision that the Court should invariably be composed of two Greek Judges, a Turkish Judge and a neutral President, should be adhered to, and, secondly, for practical reasons the President of the High Court, who had two votes (and not a second casting vote), should not sit with less than three other Judges because if he sat with two Judges his two votes could counterbalance the votes of the other two, and this would lead to an impasse. In fact, in conformity with the express provisions of Article 163, paragraph 3, the full High Court heard all appeals from the decisions of a single Judge of that Court exercising original jurisdiction under Article 155, paragraph 2, until the enactment of the new Law 33 of 1964, the trial Judge being substituted

by another Judge under the provisions of Article 153, paragraph 9: see *e.g. Rodosthenous* v. *The Republic*, 1961 C.L.R. 382 at page 392; *The Tunnel Portland Cement Co. Ltd.* v. *The Prince Line Ltd. and another*, (1963) 2 C.L.R. 181. Moreover, it is note worthy that since the enactment of the new Law 33 of 1964 an appeal from the decision of a single Judge of the High Court exercising original jurisdiction in an Admiralty case was heard and determined, under the provisions of section 11 (2) and (3) of the new Law, by a Bench of three on the 26th February, 1965, (Zekia, P., Triantafyllides and Josephides JJ. in *Jadranska Plovidba* v. *Photiades & Co.*, (1965) 1 C.L.R. 58).

It is significant to observe that in section 11 (3) of Law 33 of 1964 it is expressly provided that "any appellate jurisdiction vested in the Court" shall be exercised by " at least three Judges" of the Court, and *not* by "all its members", as provided in Article 163 (3) of the Constitution; and it should also be observed that this provision is not made subject to the provisions of subsection (2) of section 11, as in the case of subsection (1) of the same section, which is made expressly "subject to subsections (2) and (3)". In section 11 (3) the words "any appellate jurisdiction" are general and absolute and they are made expressly to override the provisions of section 11 (1) which provide for a hearing by the "full Court". If it was intended to have an appeal from a single Judge of this Court heard by the full bench this should have been expressly provided in the proviso to section 11 (2) as in the case of section 11 (1), *i.e.* express mention of the words "the full Court" should have been made in the proviso to section 11 (2), instead of the words "the Court" which now occur in the phrase "there shall be an appeal to the Court".

As already stated, here we are concerned with a pure matter of construction of the expression "Court" in the proviso to section 11 (2) and of section 11 (3). As a matter of construction I am of the view that section 11 (3) is applicable generally to all appeals, that is to say, at least three Judges are empowered to hear all appeals generally, *i.e.* both from subordinate Courts as well as from the decisions of a single Judge of this Court exercising original or revisional (administrative) jurisdiction under section 11 (2); and, as the present appeal is only an appeal from an interlocutory order of a single Judge of this Court, I am of opinion that three Judges may hear it. Naturally, there is nothing in the Law to preclude this Court from

nominating a bench of four or five or six to sit for the purpose of hearing a particular appeal from the decision of a single Judge of this Court, depending on the importance of the case; and in cases involving questions of constitutionality of public importance the full Court should sit in original jurisdiction under the provisions of section 11 (1), as was done in a number of cases over the past two years, without having the matter determined by a single Judge in the first instance under section 11 (2).

The provisions of section 11 (2) could be applied, as they are now applied, in Admiralty and Matrimonial cases, as well as in proceedings for prerogative orders, and in recourses in administrative matters under Article 146 of the Constitution, *e.g.* income tax cases, local administration, well permits, street widening schemes and recourses against decisions of the Public Service Commission; that is, a single Judge to hear the case in the first instance with a right of appeal to at least three Judges, under the provisions of section 11 (3), and not to the full Court. Otherwise, one would be faced with this paradox:

(a) If a question of the unconstitutionality of any law were raised in an appeal from a District Court or an Assize Court it could be heard by a bench of three under the provisions of section 11 (3), as in the case of *The Attorney-General of the Republic* v. *Ibrahim*, 1964 C.L.R. 195, which was heard by a bench of three (appeal from a District Judge). That appeal (to which I shall refer later in this Judgment) involved a question of great public importance, that is to say, the constitutionality of this very same Law (Law 33 of 1964), establishing the Supreme Court of the Republic;

(b) an appeal against the unanimous verdict and sentence of death imposed by an Assize Court in a murder case can now be heard by a bench of three Judges, under the provisions of section 11 (3) of the new Law 33 of 1964, and it is no longer necessary to be heard by a bench of four, as was required prior to the enactment, of that Law;

(c) while in an appeal from a single Judge of this Court, say, in (i) an Admiralty case with a claim of a few pounds for breach of contract to carry goods by sea,

or (ii) in an administrative case concerning an income tax dispute of a few pounds or, say, a complaint for an omission on the part of a public authority to deal with a request of a trifling nature within a period of thirty days (*e.g.* see *Pitsillos* v. *The Republic of Cyprus* (Water Board), Case No. 148/64, dated 31st December, 1966)*, none of these cases involving any question of the unconstitutionality of any law, the appeal would have to be heard by the full Court of five or six Judges.

In other countries the issue of the unconstitutionality of legislation, involving as it does questions of great public importance, has to be decided by the full bench of the Supreme Court, *e.g.* in the United States of America by a bench of nine Judges. If in Cyprus these questions of unconstitutionality may be decided by a bench of three Judges of this Court (see *Ibrahim's* case, below), would it be reasonable to construe section 11 of Law 33 of 1964 in such a way as to make it mandatory for appeals in administrative cases, including interlocutory appeals (as in the present case, for the deposit of a sum of money pending the determination of a case), as well as for appeals in Admiralty and Matrimonial cases, not involving any constitutional issues, to be heard by a bench of five or six Judges of the same Court? I do not think that these incongruous results were ever intended by the legislature in enacting section 11 of the aforesaid Law.

Reverting to the case of the *Attorney-General of The Republic* v. *Ibrahim* (quoted above), it should be borne in mind that this Court held that:

> "In view of the enactment of the law in question the procedure for a reference under Article 144 of the Constitution by any Court to the Supreme Constitutional Court, is no longer applicable or necessary; and all questions of alleged unconstitutionality should be treated as issues of law in the proceedings, subject to revision on appeal, in due course" (page 200).

In considering the provisions of sections 3 (1) and (2), 9 (a) and 11 (1) and (3) of Law 33 of 1964, Vassiliades J. (as he then was) said, at pages 205–206, of the report:

*Now reported in (1966) 3 C.L.R. 884.

"For the purposes of convenience, I shall refer hereafter to the Administration of Justice (Miscellaneous Provisions) Law, 1964, as the "new Law".

Mr. Berberoglou's objections, on the assumption that the new Law was duly enacted, may be summarised as follows:

> The Court is vested with 'the jurisdiction and powers' hitherto exercised by the Supreme Constitutional Court and the High Court, as defined in section 2 and as provided in section 9 (a). Such jurisdiction and powers, shall be exercised, according to section 11 (1), by the full Court; that is to say by the Court established under section 3 (2) consisting of five Judges. The Court as now constituted by three Judges, cannot deal with the matter before it.

Reminded that the Court, in this case, was exercising appellate jurisdiction under the provisions of section 11 (3), upon nomination by the full Court, not only in due course prior to the proceeding, but also after discussion in camera when the Court adjourned the case in view of the objection taken, Mr. Berberoglou submitted that there was no provision in the new Law authorising the full Court to nominate three of its Judges to hear and determine questions going to the constitutionality of legislation.

In this connection, the gist of the submission made by the Attorney-General is that, 'the jurisdiction and powers which have been hitherto vested in, or capable of being exercised by the Supreme Constitutional Court' in section 9 (a) of the new Law, must be sought in the Constitution, which, in different articles, conferred a variety of jurisdiction and powers to the Supreme Constitutional Court. And section 11 (1) of the new Law must be read and interpreted accordingly. Moreover, the procedural provisions in Article 144 (1) of the Constitution, obviously necessary when there was a clear-cut division between the fields of jurisdiction of the two branches of the judicial system, *viz.* the Supreme Constitutional Court on the one hand, and the High Court of Justice with the subordinate civil and criminal courts on the other, now, with the merger of the two superior Courts in the present Supreme Court under the new Law, become clearly inoperative. And,

therefore, both section 11 of the new Law, and Article 144 of the Constitution, must be read and applied accordingly.

We felt no difficulty whatever, in deciding this question. And we have announced our decision in our ruling of the 8th October, upon the conclusion of the argument before us. We unanimously now hold that the procedure for reference under Article 144.1 of the Constitution, by any court, to the Supreme Constitutional Court, is no longer applicable or necessary; and all questions of alleged unconstitutionality should be treated as issues of law in the proceedings, subject to revision on appeal, in due course. The procedure for reference introduced into our legal system by the Constitution, has caused in actual practice during the four-year period of its life, obstruction, delay and expense in ordinary litigation, of which parties are now relieved by the new Law.

We, moreover unanimously hold that the cumulative effect of sections 3 (1) and (2); and section 9 (a); and sections 11 (1) and (3), read together as parts of the new Law, is that this Court, as at present constituted by three of the five Judges of the Supreme Court, duly nominated by the full Court to exercise the Court's appellate jurisdiction at the material time, has the competence and jurisdiction to deal with all questions raised in the appeal".

See also the concurring Judgment of Triantafyllides, J. at pages 241-242 of the *Ibrahim* case.

Finally this is an extract from my Judgment in the *Ibrahim* case, supra, at page 269:

"*Question* 2 was that the present quorum of three Judges was not authorised to hear constitutional matters but only appeals. The wording of section 11 (3), read together with subsections (1) and (2) of the same section, makes it abundantly clear that a division of three Judges duly nominated, as the present one, is fully authorised to hear an appeal, including constitutional matters raised in the appeal. Moreover, in the present case it should, I think, be added that after the constitutional questions were raised the matter was again referred to the Full Bench for reconsideration of the nomination and the Full Bench affirmed the original nomination of three Judges, that is, the present quorum".

In the result, having regard to the construction I place on the expression "Court" in section 11 (2) and on the provisions of section 11 (3), I am of the view that, in this appeal from an interlocutory provisional order made by a single Judge, as a matter of law the Appeal Bench need not be composed of more than three Judges; but this Court may, if so minded, nominate a bench of four or more to hear the appeal. Consequently, the appeal may be heard either by a bench of three or four Judges and there is no necessity for the Judge who feels incapacitated to be substituted.

VASSILIADES, P.: I have had the advantage of reading in advance, both the Judgments which have just been delivered; and of discussing the matter with the Judges of the Court in consultation.

I agree with the decision reached and announced on November 22, 1966* and the result reached in the Judgment read by Mr. Justice Triantafyllides. But I would put my opinion in this way:

The jurisdiction of the Court, regarding the question under consideration, is statutory. It is prescribed in the Administration of Justice (Miscellaneous Provisions) Law, 1964, which as stated in its preamble, was enacted to remove difficulties arising from "recent events" impeding the administration of Justice; and to create a Judicial organ (a Court) vested with authority to exercise the judicial power "hitherto exercised by the Supreme Constitutional Court and by the High Court of Justice" both of which had become unable to function at the time, owing to the well known circumstances and conditions created by the "recent events" referred to in the preamble.

The origin of the Court and its jurisdiction must therefore, in my opinion, be sought in the constitutional provisions which created the two Courts, the competence of which was amalgamated and vested in the present Supreme Court by Law 33 of 1964. The circumstances which rendered the enactment of that Law necessary, are sufficiently stated in the Judgments in The *Attorney-General of the Republic* v. *Ibrahim* 1964 C.L.R. p. 195, which dealt with the constitutionality of the Law in question. The provisional and temporary nature of the statute, must, moreover, not be lost sight of.

With this approach, I now come to section 9 which vested

*Vide p.p. 85-86 *ante*.

the new Court with "the jurisdiction and powers, which had been "hitherto vested in, or capable of being exercised by, the Supreme Constitutional Court and the High Court". And from here, I go to section 11, which prescribes – as stated in the marginal note – "the manner of exercise of jurisdiction etc. by the Court".

The first part of section 11 (subsection (1)) provides that "any jurisdiction, competence or powers vested in the Court under section 9 shall,.....be exercised by the full Court". But this is made "subject to subsections (2) and (3) and to any Rules of Court".

No Rules of Court have, as yet, been made in this connection; and reading subsections (2) and (3), I understand them to provide:– the former (subsection (2)) that any "original jurisdiction" vested in the Court under any law, as well as any "revisional jurisdiction" thereof, may be exercised for the sake of expediency, by such Judge or Judges as the Court shall determine (and need not, in such case, be exercised by the full Court as provided in subsection (1)). But when the jurisdiction of the Court is so exercised, the decision of such Judge or Judges shall be subject to an appeal to the full Court, so that the litigant concerned may have the matter adjudicated upon, by the full Court, wherein the jurisdiction, in effect, lies.

The latter subsection, on the other hand (sub-section (3)) provides that any appellate jurisdiction vested in the Court, which was formerly exercised by the High Court as a Court of Appeal from decisions of other Courts of inferior jurisdiction, and is now rested in the new Court, need not always, be exercised by the full Court (wherein the jurisdiction in effect lies) but "shall (in such case) ..... be exercised by at least three Judges" nominated by the Court. So that again, in a way, the matter becomes the responsibility of the full Court, wherein the competence to exercise the jurisdiction of the High Court, was vested.

That the legislator made a distinction between appeals from the decision of one or more Judges of the Supreme Court to the full Court, on the one hand, and appeals from other courts with inferior jurisdiction (such as District Courts or Judges' thereof, or Assize Courts) or the other hand, it is clear, in my opinion, from the fact that the legislator provided for these two kinds of appeals, in two different subsections of the same section. And a sufficient reason for such distinction may,

I think, be found in the difference between the two jurisdictions; the one is the jurisdiction of the Court exercised by one or more (but not all) its Judges, while the other is the inferior jurisdiction of other courts.

I would now add a few words as to what may incapacitate a Judge from taking part in any proceeding; and as to the reference made to *The Attorney-General* v. *Ibrahim* (*supra*).

Regarding what may incapacitate a Judge to take part in a proceeding, we all agree that it was sufficiently settled in *Lefkios Rodosthenous* v. *The Republic* (1961) 1, R.S.C.C., 127, where the President and two of the Judges of the High Court acting in the place of the President and Judges of the Supreme Constitutional Court under Article 133.9 of the Constitution, considered the matter, after hearing argument from the Attorney-General and his Deputy on the one side, and Mr. Stelios Pavlides Q.C., on the other.

The President of the Court, Mr. Justice O'Briain in his Judgment at p. 130 F, put the matter in these words:

> "In my view, any matter which a reasonable man would consider as tending to make it difficult for a Judge to bring to the consideration of a case a mind entirely unaffected by personal interest in the result, or relationship to any party thereto, or by having expressed a concluded view upon the facts or law in the case, constitutes 'incapacity' in respect of that Judge within the meaning of Article 153.9. I would adopt the dictum of Lord Esher in *Allison* v. *The General Medical Council* quoted with approval by the Judicial Committee of the Privy Council in an appeal from Cyprus *Vassiliades* v. *Vassiliades* (18 C.L.R. p. 21): 'He (the Judge) must bear such relation to the matter that he cannot reasonably be suspected of being biassed' ".

Taking respectfully these tests as a correct statement of the law on the point, we decided this matter in the way stated in the Judgments just read.

As regards the reference to what was said in the *Attorney-General of the Republic* v. *Ibrahim* (*supra*) it is sufficient, I think, for the purposes of this Judgment, to point out that the *ratio decidendi* in that case was the constitutionality of Law 33 of 1964; and that that was an appeal from an order made by a single Judge of a District Court which came before

this Court in the exercise of the competence of the High Court, by a Bench of "at least three Judges" nominated by the Court, who, however, when the issue of constitutionality was raised, adjourned the proceedings for consultation with the full Court, in whom the jurisdiction in effect lay; and only proceeded to hear and determine the appeal, after such consultation, and directions of the full Court. This, in my opinion, is sufficient to indicate the view adopted by the Court in that case.

STAVRINIDES, J.: This is an appeal from an interim order made in a recourse under Article 146 of the Constitution. A few days before the date appointed for its hearing parties were given notice on behalf of the Court in the following terms:

"I am directed by the Supreme Court to refer to the above appeal, which is fixed for hearing on the 22nd November, 1966, at 10 a.m., and to inform you that as one of the Judges of the Supreme Court is incapacitated, for personal reasons, from sitting as a member of the court at the hearing of the above appeal, the full bench of the court on that day, before proceeding to the hearing of the appeal, will invite argument on the following issues:

(A) Whether the remaining judges should proceed with the hearing of the appeal; or whether the judge who feels incapacitated should be substituted; in any case

(B) whether the judge from whose order the appeal was made should sit on the appeal; in this connection it will have to be considered whether in view of the nature of the revisional jurisdiction the case of *Rodosthenous* v. *Republic*, 1961 C.L.R. 382, is applicable in the matter or not".

On the appointed date a bench consisting of all six serving members of the court heard argument on the questions raised by the notice. Then we retired and held a consultation; and on the sitting being resumed the learned President announced the result in the following words:

"On the two preliminary questions on which we heard argument today, the prevailing opinion in the court enables the case in hand to be proceeded with. We shall give our reasons for our decision later. The opinion of the court, subject to the reservations which may appear in the

judgment, or judgments, which will be given later, is as follows: An appeal from the decision of a judge exercising the revisional jurisdiction of the court under s. 11 (2), lies to the court as a whole, subject to any judge being incapacitated. A judge or judges so incapacitated do not sit in the particular case; and need not be substituted, unless the court thinks that it is so expedient. The judge who has heard a case in the first instance is so incapacitated".

That a judge, whether a member of this court or of a District Court, who made an order which is the subject of an appeal is legally "incapacitated" from sitting on the hearing of the appeal is agreed by both parties and indeed is clear from the decision of the former Supreme Constitutional Court in *Rodosthenous* v. *Republic*, 1 R.S.C.C. 127. "Incapacity", however, in the legal sense is a wider concept. O'Briain, Ag. P., said at pp. 129, 130:

> " 'By legal incapacity', in this context I understand that a judge may not act in any case where his so doing would be considered as wrong or improper or unfitting or undesirable tested by the criteria and standards prevailing, at the present time, in those countries which have legal systems akin to our own and in this country in particular".

Since a judge should be trusted to apply correctly the test laid down in the passage I have quoted it follows that if he feels that for personal reasons he should not sit in a particular case we may take it that he is "incapacitated" from doing so.

Two of us being thus incapacitated from hearing the appeal, we next had to consider whether it was necessary, in law, that two acting judges should be substituted for them or the hearing could proceed before the rest of us. It was thereupon argued on behalf of the Appellant that two provisions of the Administration of Justice (Miscellaneous Provisions) Law, 1964, were applicable, *viz.* s. 11 (2) and s. 3 (2), and that legally, on the true construction of those provisions, the appeal should be heard by a bench of five. On the other side it was argued that the position was governed by sub-s. (3) of s. 11, so that in law a bench of three was sufficient.

Section 11 is as follows:

> "(1) Ἡ δικαιοδοσία, αἱ ἁρμοδιότητες ἢ ἐξουσίαι ἅτινας τὸ Δικαστήριον κέκτηται δυνάμει τοῦ ἄρθρου 9, ἀσκοῦνται

ὑπὸ τὴν ἐπιφύλαξιν τῶν διατάξεων τῶν ἐδαφίων (2) καὶ (3) καὶ παντὸς διαδικαστικοῦ κανονισμοῦ, ὑπὸ τῆς ὁλομελείας τοῦ Δικαστηρίου.

(2) Ἡ πρωτοβάθμιος δικαιοδοσία δι' ἧς περιβέβληται τὸ Δικαστήριον δυνάμει τοῦ ἰσχύοντος δικαίου καὶ οἱαδήποτε ἀναθεωρητικὴ δικαιοδοσία, περιλαμβανομένης καὶ τῆς δικαιοδοσίας ἐπὶ ἐκδικάσεως προσφυγῆς γενομένης κατὰ πράξεως ἢ παραλείψεως οἱουδήποτε ὀργάνου, ἀρχῆς ἢ προσώπου ἀσκοῦντος ἐκτελεστικὴν ἢ διοικητικὴν λειτουργίαν ἐπὶ τῷ λόγῳ ὅτι αὕτη ἀντίκειται πρὸς τὰς διατάξεις τοῦ ἰσχύοντος δικαίου, ἢ ὅτι ἐγένετο καθ' ὑπέρβασιν ἢ κατάχρησιν ἐξουσίας, δύναται νὰ ἀσκηθῇ, τηρουμένου παντὸς διαδικαστικοῦ κανονισμοῦ, ὑπό τινος Δικαστοῦ ἢ Δικαστῶν ὡς ἤθελε τὸ Δικαστήριον ἀποφασίσει. Νοεῖται ὅτι, τηρουμένου παντὸς διαδικαστικοῦ κανονισμοῦ, χωρεῖ ἔφεσις ἐνώπιον τοῦ Δικαστηρίου κατὰ τῶν οὕτω ὑπὸ Δικαστοῦ ἢ Δικαστῶν ἐκδιδομένων ἀποφάσεων.

(3) Ἡ δευτεροβάθμιος δικαιοδοσία δι' ἧς περιβέβληται τὸ Δικαστήριον ἀσκεῖται, τηρουμένου παντὸς διαδικαστικοῦ κανονισμοῦ, ὑπὸ τριῶν τοὐλάχιστον Δικαστῶν ὁριζομένων ὑπὸ τοῦ Δικαστηρίου. Οὗτοι ὁρίζονται ὑπὸ τοῦ Δικαστηρίου διὰ περίοδον τεσσάρων μηνῶν καὶ εἰς τὴν ἀρχὴν ἑκάστης τοιαύτης περιόδου".

and s. 3 (2) reads:

"Τὸ Δικαστήριον σύγκειται ἐκ πέντε ἢ πλειόνων, οὐχὶ ὅμως πλέον τῶν ἑπτά, Δικαστῶν, εἷς τῶν ὁποίων ἀσκεῖ καθήκοντα Προέδρου".

Finally, s. 9, which is referred to in s. 11 (1), reads:

"Τὸ Δικαστήριον κέκτηται:-

(α) τὴν δικαιοδοσίαν καὶ ἐξουσίας δι' ὧν μέχρι τοῦδε περιεβέβληντο ἢ ἄτινας ἠδύναντο νὰ ἐνασκήσωσι τὸ Ἀνώτατον Συνταγματικὸν καὶ τὸ Ἀνώτατον Δικαστήριον (High Court)·

(β) τὰς ἁρμοδιότητας καὶ τὰς ἐξουσίας δι' ὧν περιεβέβληντο καὶ ἄτινας ἠδύνατο νὰ ἐνασκῇ τὸ Συμβούλιον πρὸς ἐπίλυσιν ἁπάντων τῶν θεμάτων τῶν ἀφορώντων εἰς τὴν ἀφυπηρέτησιν, ἀπόλυσιν ἢ ἄλλως πως ἀφορώντων εἰς Δικαστὴν τοῦ Ἀνωτάτου Συνταγματικοῦ Δικαστηρίου ἢ τοῦ Ἀνωτάτου Δικαστηρίου (High Court) λόγῳ τοιαύτης πνευματικῆς

ἢ σωματικῆς ἀνικανότητος, ἢ ἀναπηρίας ἥτις ἤθελε καταστήσει τοῦτον ἀνίκανον πρὸς ἐνάσκησιν τῶν καθηκόντων αὐτοῦ εἴτε μονίμως εἴτε ἐπὶ τοσούτῳ χρόνῳ ὥστε νὰ καθίσταται πρακτικῶς ἀνέφικτος ἡ παραμονὴ αὐτοῦ εἰς τὴν θέσιν τοῦ Δικαστοῦ ἢ λόγῳ παραπτώματός τινος".

From sub-s. (3) of s. 11 it is apparent that, if the position was governed by it, substitution was not legally required, since without the two incapacitated members we were still left with a bench of four.

In 36 Halsbury's Laws of England (3rd Edn.), title Statutes, pp. 387, 388, paras. 578 – 580, and at pp. 394, 395 paras. 593, 594, I find these propositions based on decided cases:

"578. Ascertaining the intention of Parliament. The object of all interpretation of a written instrument is to discover the intention of the author as expressed in the instrument. The dominant purpose in construing a statute is to ascertain the intention of the legislature as so expressed. *This intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself,* which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament.

579. Construction where statute is unambiguous. If the words of a statute are clear and unambiguous, they themselves indicate what must be taken to have been the intention of Parliament, and there is no need to look elsewhere to discover their intention or their meaning.

580. Construction where statute is ambiguous. *If the words of a statute are ambiguous, then the intention of Parliament must be sought first in the statute itself,* then in other legislation and contemporanous circumstances, and finally in the general rules laid down long ago, and often approved, namely, by ascertaining (1) what was the common law before the making of the Act; (2) what was the mischief and defect for which the common law did not provide; (3) what remedy Parliament hath resolved and appointed to cure the disease of the commonwealth; (4) the true reason of the remedy.

593. Meaning controlled by context. Although the words

of a statute are normally to be construed in their ordinary meaning, due regard must be had to their subject matter and object, and to the occasion on which and the circumstances with reference to which they are used, and they should be construed in the light of their context rather than in what may be either strict etymological sense or their popular meaning apart from that context. If the sense of a word can be so determined, then recourse need not be had to its use in other sections of the statute or in other statutes.

594. Statute to be construed as a whole. For the purposes of construction, the context of words which are to be construed includes not only the particular phrase or section in which they occur, but also the other parts of the statute.

Thus a statute should be construed as a whole so as, so far as possible, to avoid any inconsistency or repugnancy either within the section to be construed or as between that section and other parts of the statute. The literal meaning of a particular section may in this way be extended or restricted by reference to other sections and to the general purview of the statute. Where the meaning of sweeping general words is in dispute, and it is found that similar expressions in other parts of the statute have all to be subjected to a particular limitation or qualification, it is a strong argument for subjecting the expression in dispute to the same limitation or qualification.

It is sometimes said that where there is an irreconcilable inconsistency between two provisions in the same statute, the later prevails, but this is doubtful, and the better view appears to be that the courts must determine which is the leading provision and which the subordinate provision, and which must give way to the other.

Applying these principles, in order to determine whether sub-s. (3) of s. 11 was applicable one must ascertain the meaning of δευτεροβάθμιος δικαιοδοσία as used in it, and to do that one must read it in conjunction with the preceding sub-section, which makes provision for appeals from decisions of a judge or judges of this court sitting in the exercise of its πρωτοβάθμιος δικαιοδοσία. Having done this I came to the conclusion that δευτεροβάθμιος δικαιοδοσία in sub-s. (3) means appellate jurisdiction other than jurisdiction to hear appeals from

decisions (of a judge or judges of this court) in cases of ἀναθεωρητικὴ δικαιοδοσία and therefore the hearing of this appeal would not be an exercise of δευτεροβάθμιος δικαιοδοσία within the meaning of that provision. It may be that in its ordinary meaning the expression δευτεροβάθμιος δικαιοδοσία would include appeals from such decisions. Be that as it may, a restricted meaning results in this way. By definition δευτεροβάθμιος δικαιοδοσία means jurisdiction on appeal from πρωτοβάθμιος δικαιοδοσία. But in sub–s. (2) the expression ἀναθεωρητικὴ δικαιοδοσία is used in contradistinction to πρωτοβάθμιος δικαιοδοσία. Hence it is reasonable to deduce that in sub–s. (3) δευτεροβάθμιος δικαιοδοσία has no reference to cases of ἀναθεωρητικὴ δικαιοδοσία. Further if it was intended to include in the expression δευτεροβάθμιος δικαιοδοσία, as used in sub–s. (3), jurisdiction in the class of appeals referred to in the proviso to sub–s. (2), one would have expected the proviso to have indicated this by some such words as "ὡς ἐν τῷ ἑπομένῳ ἐδαφίῳ προνοεῖται". Incidentally from this a wider conclusion is derived, *viz.* that not only cases of ἀναθεωρητικὴ δικαιοδοσία are excluded from the operation of sub–s. (3) but all cases dealt with by sub–s. (2).

Thus in order to determine the question of substitution one is thrown back to sub–s. (2). The crucial words there are "the court". The expression "court" is defined by s. 2 (1) as meaning "the Supreme Court established by s. 3" (sub–s. (1)), which says:

> "Καθιδρύεται ἐν τῇ Δημοκρατίᾳ Ἀνώτατον Δικαστήριον ἵνα, τηρουμένων τῶν διατάξεων τοῦ παρόντος Νόμου, συνεχίσῃ τὴν ἄσκησιν τῆς μέχρι τοῦδε ὑπὸ τοῦ Ἀνωτάτου Συνταγματικοῦ Δικαστηρίου καὶ τοῦ Ἀνωτάτου Δικαστηρίου (High Court) ἀσκουμένης δικαιοδοσίας".

This, however, does not carry matters any further. Nor is s. 3 (2) of any assistance; for having regard to its wording it is apparent that what it is concerned with is *the constitution* of the court as distinct from the question of the minimum number of judges who must sit on the hearing of any particular proceedings. It may be added that that section occurs in Part II of the Law, entitled simply "Supreme Court"; that the ensuing Part is entitled "Jurisdiction and Powers"; and that the marginal note to s. 11 reads "Manner of exercise of jurisdiction etc. of the court".

Prima facie "the court" must mean all its members. However, since sub-s. (2) deals with appeals from decisions of one or more judges of this same court, one or more of its members is, or are, *ipso facto* incapacitated from sitting at the hearing of every such appeal. Need their places be filled *ad hoc*? In my opinion the answer is no and for two reasons. Section 7 (1) states:

> "Κατόπιν γνωμοδοτήσεως τοῦ Δικαστηρίου ὅτι, λόγῳ χηρευούσης τινος θέσεως καὶ μέχρις οὗ αὕτη πληρωθῇ, ἢ λόγῳ τῆς προσωρινῆς ἀνικανότητος ἢ ἀπουσίας Δικαστοῦ, ἐνδείκνυται ἡ διενέργεια προσωρινοῦ διορισμοῦ, ὁ Πρόεδρος τῆς Δημοκρατίας διορίζει πρόσωπον κατέχον τὰ ὑπὸ τοῦ ἄρθρου 5 προνοούμενα νόμιμα προσόντα ὡς Δικαστὴν διὰ τὴν ἐν τῷ ἐγγράφῳ τοῦ διορισμοῦ αὐτοῦ καθοριζομένην χρονικὴν περίοδον".

First, the wording of that provision – and it is the only provision in the Law for acting appointments to this court – is inapplicable in such a case; for ἀνικανότης in it, being qualified by the epithet προσωρινὴ and nothing else, cannot mean ἀνικανότης to sit at the hearing of any particular appeal, all the more so in view of the express requirement that acting appointments are to be made for a specified period. Secondly, it would appear unreasonable to suppose that the legislature in providing for the exercise of original jurisdiction by members of this court contemplated that every time their decisions were appealed from it would be necessary to set in motion the machinery of s. 7 (1). Further, it is to be noted that no appointment is required by that provision to be made in every case of vacancy, temporary incapacity, or absence, unless "the court" is of the opinion that such appointment ἐνδείκνυται.

For the foregoing reasons I reached the conclusion that "the court" in s. 11 (2) means all the members of the court with the exception of any member or members who is, or are, incapacitated or absent, and that no acting appointment is required in consequence of any such vacancy, temporary incapacity or absence unless "the court" thinks fit to set in motion the machinery of s. 7 (1); it being understood, in view at any rate of the requirement of a bench of "at least three judges" in connection with appeals under sub-s. (3), that the bench dealing with an appeal under sub-s. (2) must also consist of at least three judges.

LOIZOU, J.: I agree with the result announced on the 22nd November, 1966, and the reasons given in the judgments of the President of this Court and my brother Triantafyllides, J., which I had the advantage of reading in advance, and I have nothing that I wish to add.

HADJIANASTASSIOU, J.: I have had the opportunity of reading in advance the Judgments of Mr. Justice Vassiliades, the learned President of this Court, and Mr. Justice Triantafyllides, and I am in agreement with what has been said in both Judgments, which have been delivered. I need not, therefore, add anything myself.

Judgment in terms.