[VASSILIADES, TRIANTAFYLLIDES AND MUNIR, JJ.]

ANDREAS ANASTASI COSTI,

Appellant,

v.

THE DISTRICT OFFICER, FAMAGUSTA,

Respondent.

(*Criminal Appeal No.* 2737)

Criminal Law—Underground Water—The Government Waterworks Law, Cap. 341—*The offence of taking measures to obtain such water without the written permission of the District Officer, contrary to sections* 3 (1) *and* 28 (4) *and* (6) *of Cap.* 341 (supra)—*But under the proviso to the aforesaid section* 3 (1), *no such permission is required in respect of any water from any well or line of wells sunk or constructed in virtue of a permit issued under the Wells Law, Cap.* 351—*Correlation of the two aforesaid statutes* viz. *Cap.* 341 *and Cap.* 351—*However, the aforesaid exception in the proviso to section* 3 (1) *of Cap.* 341 (supra), *whereby the issue of a permission under that sub-section is dispensed with, does not cover the deepening* (*or otherwise extending*) *an existing dry well without having obtained the requisite permit under section* 5 *of the Wells Law, Cap.* 351, *notwithstanding that such well had been originally sunk or constructed in virtue of the requisite permit issued under the Wells Law, Cap.* 351—*Therefore, since a permit under the Wells Law, Cap.* 351, *section* 5 (supra) *had not been obtained for deepening etc. etc. the existing dry well, a permission ought to have been obtained under the former statute* i.e. *the Government Waterworks Law, Cap.* 341, *section* 3 (1) (supra).

Constitutional Law—Underground water—Underground water is deemed to be the absolute property of the State on certain conditions—The Government Waterworks Law, Cap. 341, *section* 3 (1)—*And whatever right is vested in the Republic in relation to underground water by the aforesaid provisions of section* 3 (1) *of Cap.* 341, *has been preserved by, and the said section* 3 (1) *is not contrary to Article* 23.1 *of the Constitution.*

Constitutional Law—Criminal Law—The Government Waterworks Law, Cap. 341 *section* 28 (6)—*Article* 12.3 *of the Constitution—The mandatory order for removal of the unauthorised*

works or measures as provided in section 28 (6) *is in the nature of a "punishment" in the sense of paragraph* 3 *of Article* 12 *of the Constitution—Therefore, the order for removal is no longer mandatory and became discretionary—In the instant case the trial Judge has properly exercised his discretion.*

The appellant was convicted by the District Court of Famagusta on a charge relating to the Government Waterworks Law, Cap. 341, which that he (appellant), between the 3rd August, 1963, and the 30th October, 1963, at Kontea village in the District of Famagusta, did take measures to obtain water without the permission of the District Officer, Famagusta, contrary to section 28 (4) and (6) of Cap. 341. The trial Court having found the appellant guilty on the charge, imposed a fine of £10 and further ordered under sub-section (6) of section 28 (*supra*) that "the measures taken by the accused (appellant) in order to obtain water from this well, *i.e.* the installation of a water pump and "Skoda" make engine should be removed forthwith at the expense of the accused (appellant) unless the consent in writing of the District Officer is otherwise granted". The appellant was also ordered to pay £6.500 mils costs.

Section 3 (1) of the Government Waterworks Law, Cap. 341, provides :

"3 (1) Notwithstanding anything to the contrary contained in any other law now in force in the Colony (*Note :* now read : Republic)—

(*a*) all underground water (including second water) for which no measures have hitherto (*Note : the* 12*th May*, 1928) been taken enabling such water to be brought or raised to the surface or to run on the surface ; and (*b*) .... (*c*) ...., shall be deemed to be the absolute property of the Government, and no person shall take or utilize or take measures to utilize such water without the written permission of the Commissioner (*Note : the District Officer concerned*) first obtained :

Provided that no permission under this sub-section shall be required in respect of any water from any well or line of wells sunk or constructed in virtue of a permit of the Commissioner (*Note : now the District Officer concerned*) issued under the provisions of the Wells Law". (*Note : now Cap.* 351). By Article 23.1 of the Constitution "the right of the Republic to underground water, minerals and antiquities is preserved."

Section 28 (4) of Cap. 341 (*supra*) reads as follows :

" 28 (4) Any person who takes or carries away or utilizes or takes any measures to obtain or utilize any water without the permission of the Commissioner first obtained shall, on conviction, be liable to a fine not exceeding ten pounds."

Section 28 (6) of the same Law Cap. 341 reads as follows :

" 28 (6) In addition to any penalty prescribed by this Law any measures taken to obtain or utilize any water without the permission of the Commissioner shall be ordered by the Court trying the offence to be removed or extinguished at the expense of the person responsible therefor, unless the consent in writing of the Commissioner is otherwise granted :

Provided that the Commissioner may in granting such consent in writing as aforesaid impose such terms and conditions as to the Commissioner seems necessary or desirable."

By the Wells Law, Cap. 351 a permit of the District Officer under that Law is required not only for sinking or constructing a well but also for " widening, deepening or otherwise extending any existing well " (section 5 of Cap. 351).

By Article 12.3 of the Constitution a " punishment " should be proportionate to the gravity of the offence.

In this case the appellant took measures to obtain water from an existing dry well and for so doing he did not have the requisite permit either under the Wells Law, Cap. 351 or under section 3 (1) of the Government Waterworks Law, Cap. 341—The well in question, which had existed since 1912, had originally been sunk or constructed lawfully under the requisite permit. The trial Court found that the drilling operation carried on by the appellant " was not the clearing of an existing borehole, but the deepening of an existing dry well ".

The appellant appealed against his said conviction and sentence.

It was argued on appeal by counsel appearing for the appellant that because the well in question had originally been sunk lawfully, it was an existing well thus covered by a permit (*viz.* that under which it had been originally sunk

in 1912) of the kind envisaged by the proviso to section 3 (1) of the Government Waterworks Law, Cap. 341, (*supra*). With regard to the sentence it was argued that the trial Court in ordering the removal of the unauthorised works and measures, had exercised wrongly its discretion in the matter.

Held, (1) *as to the conviction of the appellant :*

The appellant was properly convicted of the offence with which he was charged for the following reasons :

(*a*) Whatever right is vested in the Republic in relation to the underground water in question by the provisions of section 3 (1) of Cap. 341, (*supra*), has been preserved by, and such section 3 is not contrary to, Article 23.1 of the Constitution.

In re *District Officer, Nicosia and Georghios Ioannides*, 3 R.S.C.C. 107 at p. 110, *followed.*

(*b*) The relevant provisions of Cap. 341 (*supra*) under which the appellant was charged for committing the offence in question in sub-section (4) of section 28 of the said Law, Cap. 341, and the relevant wording of that sub-section namely, the taking or utilizing or the taking of any measures to obtain or utilize such water as is referred to in section 3 (1) of the same statute, is substantially the same in both sections 28 (4) and in section 3 (1). The fact that the proviso to section 3 (1) (*supra*) provides that no permission under that sub-section shall be required in respect of any water from any well or line of wells sunk or constructed in virtue of a permit under the Wells Law, Cap. 351, means, in our view, that in cases where such a permit under Cap. 351 is not obtained, permission must be obtained under Cap. 341. Conversely, where a permit has been obtained under Cap. 351, no permission is required under Cap. 341.

(*c*) The fact is that in this case the appellant took measures to obtain water from an existing dry well by deepening it and for so doing he did not have the requisite permit under section 5 of the Wells Law, Cap. 351 (*supra*). He, therefore, required the permission provided by section 3 (1) of the Government Waterworks Law, Cap. 341 (*supra*), which permission he never had, either.

(*d*) It is unnecessary to have to rely for the purposes of this case on the judgment of Bourke, C.J., in the *Pelendrides* case in view of the clear and express provisions of the

proviso to sub-section (1) of section 3 of Cap. 341 and it is, in our view, much simpler and proper to rely in interpreting section 3 (1) of Cap. 341, on the proviso in question contained in the section itself, than to have to rely in so interpreting the section on certain passages from a judgment in which the provisions of that section were interpreted in their application to a totally different case and to a totally different set of circumstances. *Pelendrides* v. *Her Britannic Majesty*, 24 C.L.R. 73, *distinguished.*

Held, (2) *As to the order made by the trial Court for the removal of the water pump and "skoda" make engine:*

(*a*) There, the order for removal of the unauthorised measures provided by section 28 (6) of Cap. 341 (*supra*), is no longer mandatory and became discretionary in view of the provisions in paragraph 3 of Article 12 of the Constitution.

In re—*The District Officer, Famagusta and Yiacoup Naim*, 2 R.S.C.C. 24, at p. 27, *applied.*

(*b*) But in this case, we consider that the exercise by the trial Court of this discretion to make the order in question was a proper exercise of such discretion and is not manifestly excessive or harsh when viewed in its correct light. We do not agree with learned counsel for the appellant that the effect of such an order means that it would result in the loss of up to £5,000. We are of opinion that reasonable compliance with the order of the trial Court would not result in a financial loss to the appellant amounting to £5,000.

Appeal dismissed. Order of the District Court for the removal of the water pump and "skoda" make engine to stand.

Cases referred to :

Pelendrides v. *Her Britannic Majesty*, 24 C.L.R. 73, *distinguished.*

In Re *District Officer, Nicosia and Georghios Ioannides* 3 R.S.C.C. 107, at p. 110, *followed.*

In Re—*The District Officer, Famagusta and Yiacoup Naim*, 2 R.S.C.C. 24, at p. 27, *applied.*

Appeal.

The appellant was convicted on the 3rd September, 1964, at the District Court of Famagusta (Criminal Case No. 5564/63) on one count of the offence of taking measures to obtain water without permission contrary to section 28 (4) (6) of the Government Waterworks Law, Cap. 341, and was sentenced by Loizou D.J. to pay a fine of £10 and he was further ordered to remove the measures taken by him in order to obtain water.

L. N. Clerides, for the appellant.

K. C. Talarides, counsel of the Republic, for the respondent.

Cur. adv. vult.

The judgment of the court was delivered by :

MUNIR, J.: The appellant (accused No. 1 at the trial) was charged before the District Court of Famagusta in Criminal Case No. 5564/63, along with two other persons, on five counts concerning various offences under the Wells Law, Cap. 351, and on one count of an offence under the Government Waterworks Law, Cap. 341.

The subject-matter of this appeal relates to the appellant's conviction on the count relating to Cap. 341(6th count of the Charge Sheet) which averred that the appellant, between the 3rd August, 1963, and the 30th October, 1963, at Kontea village in the District of Famagusta, did take measures to obtain water without the permission of the District Officer, Famagusta, contrary to section 28 (4) and (6) of Cap. 341. The District Court of Famagusta, having found the appellant guilty on the 6th count, imposed a fine of £10 on him and further ordered that " the measures taken by the accused (appellant) in order to obrain water from this well, *i.e.* the installation of a water pump and " Skoda " make engine should be removed forthwith at the expense of the accused (appellant) unless the consent in writing of the District Officer is otherwise granted ". The appellant was also ordered to pay £6.500 mils costs.

The appellant now appeals against his conviction and sentence on the 6th count. The grounds of his appeal against conviction as set out in the full Grounds of Appeal are as follows :—

" A.—(i) There was ample evidence from the prosecution that the well subject-matter of the proceedings was an old well and that in 1948 the then

owners of the well had installed an engine on the well and that there was a lot of water (evidence of P.W. 1 Georghia Nicolaidou).

(ii) P.W. 2 Evangelia Kyriakou also gave evidence that there was water inside the well.

B.—The fact that the water of the said well had dried up in 1960 and steps were taken to bring the water in the well to the surface again cannot invoke the provisions of Cap. 341 the Government Waterworks Law.

C.—Cap. 341 is never intended to apply to operations in respect of existing wells where water therefrom is brought again to the surface, but to the taking of measures to bring underground water to the surface for the first time.

D.—Since there was evidence that in 1948 there was a lot of water in the well which was brought up to the surface *by means of an engine*, the water in the well became the property of the accused, and the fact that it dried up again and fresh steps were taken to bring its water up to the surface it does not become property of the Republic any more.

E.—The Hon. Court failed to apply correctly the principles laid down in the case of *Pelendrides* v. *Her Britannic Majesty* C.L.R. vol. 24, p. 73 to the facts of the present case and particularly failed to distinguish the fact that in the case of *Pelendrides* no engine was ever installed to bring water up to the surface, that there was never a lot of water in the well but a trifling perculation from an old well, and that it was not the owner but the Army who drilled in the property and found water therein for the first time."

With regard to the order made for the removal of "the measures taken by the accused in order to obtain water" including the installation of the water pump and engine in question, the appellant submitted that "the court erroneously exercised its discretion" to direct such removal without hearing fresh evidence.

As to his appeal against sentence the appellant states in his grounds of appeal that "the sentence of the Honourable Court that appellant should remove the "skoda" engine and all pipes amounting to £5,000 was manifestly excessive".

The material facts of the case are set out in full in the careful and comprehensive judgment of the trial Court, and it is useful at this stage to quote the following passages from that judgment in which the trial Court has made its findings of fact and which findings of fact were not contested in this appeal.

> " Accused 2, P.W. 1 and P.W. 2 are sisters. They inherited from their father, who died in 1934, a field at locality ' Skaftos ' planted with olive trees of an extent of 8 donums. The said field was registered in their names jointly, up to 1944, when it was divided among them and separate registrations effected in their names for their respective share. In the said field, there existed an old well from which the olive trees were irrigated. This well existed since 1912 according to the testimony of accused 2 which remains uncontradicted on this point. In 1944 this well was registered in the name of accused 2, but the prosecution witnesses 1 and 2 continued thereafter to use the water from this well for the purpose of irrigating their olive trees. The water was taken by means of a wheel-well but in 1948 a water engine was also installed by prosecution witnesses 1 and 2 by which they continued taking water for the irrigation of their olive trees, whereas accused 2 continued taking water by means of a wheel-well as she did not want to contribute to the expenses for the installation of the water engine. In 1950 the water in the well decreased as a result of over-pumping, and the prosecution witnesses called a certain Andreas Patsalos, who deepened the well by a pick-axe and more water was found. In 1953 the well was deepened again by pick-axe, more water was found, and the olive trees were irrigated from this well until 1954 or 1955 when the well dried up.
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> In about 1958 or 1960 the husband of accused 2, called Kyriacos Pandeli, P.W. 3, a well-digger, and deepened it again. This witness found the well at the time dry, and of a depth of about 40–50 feet. He worked with his pick-axe for about 10 days and when he went to a further depth of 15 feet he found new water and stopped. A water engine was installed by the husband of accused 2 which was operated by a stationary tractor. P.W. 3, who had one of his eyes affected since boyhood, has been a well digger for the last 45 years. He has considerable experience in this work and he emphatically stated that had a borehole ever been drilled therein that had collapsed, he could not but

have noticed its existence. He found though no borehole in it and no signs whatsoever to suggest that there was an old borehole that had collapsed. Then water was taken from this well for some time, but it dried up again and for about three years thereafter, the well was completely dry. The said well is within the Kondea village Water Supply borehole Reserve area, and at a distance of about 1,800–1,900 feet from the village supply borehole. Unrestricted taking of water from it, will most certainly affect both the village water supply and other boreholes in the area. This area is for administration purposes reserved area considered but not declared under section 5.

By an agreement in writing dated the 28th June, 1963, accused 2 sold the said well to accused 1 for the sum of £120 together with a space of 15 ft. of field around the well. But the transfer of registration has not so far been effected in the name of accused 1 and the well and the surrounding space is still registered in the name of accused 2.

Accused 3 is a licensed driller and on the 27th July, 1963, he sent *exhibit* 3 to the Director of Water Development specifying therein that his object was to clear an existing borehole in the property of accused 2 under plot No. 665/3, sheet/plan 32/12 of Kondea. He erased the other alternatives. *Exhibit* 3 is an official Government form and it purports to be a notice given by a licensed driller under section 6 of the Wells Law, Cap. 351. Soon after this notice was given, and in fact on the 5th August, 1963, police constable Stylianou, P.W. 6, visited the said locality and in the field of accused 2 he found three persons operating a drilling machine in the said well. Soon after accused 1 arrived. He was told the reason of this witness's visit and accused 1 said that there was an old borehole in this field which he had bought and that his driller, accused 3, had arranged for a permit. The operation of the drilling of this borehole was completed a few days later, and it went down to a depth of 85 ft. from the bottom of the well, but water had in the meantime been found at a depth of 50–60 ft.

After the completion of this borehole, a water engine of ' Skoda ' make, 60 h.p. was installed. Its water pumping capacity is 15,000 gallons per hour, provided there is such an amount of water to be pumped. But

according to P.W. 9, Michalakis Antoniades, an Inspector of Works, of the Water Development Department, there is no such quantity of water in the area. Furthermore, pipes of about 6 inches in diameter were installed and laid, through which the water from this well is pumped to a distance of about two miles where accused 1 has 32 donums of garden, 20 of which were planted with old lemon trees, and water taken from the said well by means of this engine and pipes laid was used for the irrigation of this garden in August, 1963. Though evidence was adduced as to the use of water after October, I do not propose to rely on that evidence, as *ex post facto*, and I discard from my mind that part of the evidence of P.W. 8 altogether."

In examining the appellant's conviction on the 6th Count it is pertinent to observe here that the appellant was also found guilty by the trial Court on the second count (against which the appellant has not appealed) and the trial Court's finding in this connection, which appears on p. 19 of the transcript record of the proceedings, is as follows :—

" Count 2 is based on sections 5 and 13 (1) of Law, Cap. 351. It refers to the deepening of an existing well, without a permit from the appropriate authority. Having found as a matter of fact that the drilling operation carried on the 5th August, 1963, was not the clearing of an existing borehole, but the deepening of an existing dry well, and as it is not in dispute that no permit from the appropriate authority was obtained, I find accused 1 guilty of count 2."

The position, therefore, is that when the appellant took the " measures to obtain water without the permission of the District Officer " referred to in the 6th count, contrary to section 28 of Cap. 341, the appellant was in fact engaged in " the deepening of an existing dry well " without obtaining a permit so to do from the appropriate authority under Cap. 351.

This aspect of the case leads one to examine the relationship between Cap. 341 and Cap. 351 and to see how the two Laws are correlated. In this connection it is useful to repeat the text of sub-section (1) of section 3 of Cap. 341 and to note in particular the proviso to that sub-section. The text of the sub-section is as follows :—

" 3.—(1) Notwithstanding anything to the contrary contained in any other Law now in force in the Colony—

(*a*) all underground water (including second water) for which no measures have hithero been taken

enabling such water to be brought or raised to the surface or to run on the surface ; and

(*b*) all water running to waste from any river, spring stream or watercourse ; and

(*c*) all other waste water,

shall be deemed to be the absolute property of the Government, and no person shall take or utilize or take measures to utilize such water without the written permission of the Commissioner first obtained :

Provided that no permission under this sub-section shall be required in respect of any water from any well or line of wells sunk or constructed in virtue of a permit of the Commissioner issued under the provisions of the Wells Law."

It will be observed that a cross-reference is made in the proviso to the above quoted sub-section, which was inserted in Cap. 341 in 1945 many years after its enactment in 1928 by section 2 of Law 28 of 1945, to the provisions of Cap. 351 and in this way the two Laws are, as it were, dovetailed into one another.

It is not necessary, for the purposes of this judgment, to go into the whole complex history of the water problems of this Island or to examine in detail the complex and voluminous legislation on this subject. Suffice it to say that by section 3 of Cap. 341 underground water (including second water) and water running to waste from any river, etc. is deemed to be the absolute property of the Government with the exception of underground water for which measures had been taken enabling such water to be brought or raised to the surface or to run on the surface prior to the enactment of Cap. 341 on the 12th May, 1928. Such water, which is thus the absolute property of the Government, cannot be taken or utilized or measures cannot be taken to utilize such water " without the written permission of the Commissioner (now District Officer) first obtained ".

State ownership of underground and other public water has been expressly preserved by paragraph 1 of Article 23 of the Constitution of the Republic which provides that " The right of the Republic to underground water, minerals and antiquities is preserved ".

The constitutionality of section 3 of Cap. 341 has been considered by the Supreme Constitutional Court in the case

of *In* re *District Officer, Nicosia* v. *Georghios Ioannides* of *Morphou*, 3 R.S.C.C., p. 107. The Supreme Constitutional Court in its judgment on p. 110 held that—

> " whatever right was vested in the Republic in relation to underground water by means of the provisions of section 3 of Cap. 341 has been preserved and such section 3 is not contrary to Article 23 of the Constitution."

Counsel for the appellant has dwelt at some length in his arguments before this Court about the reliance which the trial Court appears to have placed on the case of *Pelendrides* v. *Her Britannic Majesty*, 24 C.L.R. p. 73 and submitted that the facts of the present case are quite different from the facts in the case of Pelendrides and complained that the trial Court had erred in failing to distinguish the present case from the case of *Pelendrides*.

In the opinion of this court it is unnecessary to have to rely for the purposes of this case on the judgment of Bourke, C.J., in the *Pelendrides* case, in view of the clear and express provisions of the proviso to sub-section (1) of section 3 of Cap. 341 and it is, in our view, much simpler and proper to rely, in interpreting section 3 (1), of Cap. 341, on the proviso in question contained in the section itself, than to have to rely in so interpreting the section on certain passages from a judgment in which the provisions of that section were interpreted in their application to a totally different case and to a totally different set of circumstances.

It will be observed that the relevant provision of Cap. 341, under which the appellant was charged for committing the offence in question, is sub-section (4) of section 28 and the relevant wording of that sub-section namely, the taking or utilizing or the taking of any measures to obtain or utilize such water, as is referred to in section 3 (1), is substantially the same in both section 28 (4) and in section 3 (1). It will be seen from this that the measures, etc., which are referred to in section 28 (4) are substantially the same as those mentioned in section 3 (1). The fact that the proviso to section 3 (1) provides that no permission under that sub-section shall be required in respect of any water from any well or line of wells sunk or constructed in virtue of a permit under Cap. 351, means, in our view, that in cases where such a permit under Cap. 351 is not obtained, permission must be obtained under Cap. 341. Conversely, where a permit has been obtained under Cap. 351, no permission is required under Cap. 341.

The fact is that in this case the appellant took measures to obtain water from an existing dry well and for so doing he did not have the requisite permit under Cap. 351. He, therefore, required permission under Cap. 341.

Learned Counsel for the appellant has argued that because the well in question, which had existed since 1912, had originally been sunk or constructed lawfully, it was an existing "well" within the definition contained in section 2 of Cap. 351 and that it was thus covered by a permit of the kind envisaged by the proviso to section 3 (1). Learned Counsel submitted, in effect, that "once a well, always a well".

This may be so in the purely physical sense of the existence of a hole in the ground, but when a well dries up or water cannot be obtained at a given level it is quite clear from the provisions of Cap. 351 that a new permit is required to deepen or widen an existing well and section 5 of Cap. 351, which was inserted in the Law by section 3 of Law 19 of 1951, expressly provides that "widening, deepening or otherwise extending any existing well shall be deemed to be an operation in respect of which a permit must be obtained under the provisions of" Cap. 351. In this case the trial Court found that the drilling operation carried on by the appellant, "was not the clearing of an existing borehole, but the deepening of an existing dry well".

The court having carefully considered the submissions made by learned Counsel in this case is of the opinion that the appellant was properly convicted of the offence of which he was charged in the 6th count because—

(*a*) the underground water in respect of which the appellant had taken measures to take or utilize, was water which became the absolute property of the Government by virtue of section 3 (1) of Cap. 341 and of Article 23 of the Constitution ;

(*b*) in so obtaining or utilizing such water the appellant did not have the required written permission of the District Officer, Famagusta, under section 3 (1) of Cap. 341 ; and

(*c*) his contravention of section 3 (1) and 28 (4) of Cap. 341 was not covered by the exception made in the proviso to section 3 (1) of Cap. 341, because he was not in possession of a valid permit under Cap. 351 for obtaining water from the dry well in question by way of deepening it.

We consider that such weight which might have been placed by the trial Court on the Chief Justice's judgment in the *Pelendrides case* does not affect the finding of the appellant guilty by the trial Court on the 6th count.

Coming now to the question of the order made by the trial Court for the removal, " at the expense of the appellant, of the water pump and ' Skoda ' make engine, unless the consent in writing of the District Officer is otherwise granted ". Learned Counsel for the appellant has submitted that the trial Court was wrong in exercising its discretion to make such an order under sub-section (6) of section 28 of Cap. 341 without hearing fresh evidence in view of the fact that the cost of the ' Skoda ' make engine and all pipes amounted to £5,000 and that in view of this great value of the engine and pipes learned Counsel for the appellant submitted that the sentence was manifestly excessive.

The Supreme Constitutional Court considered the constitutionality of sub-section (6) of section 28 of Cap. 341 in the case of *In* re *The District Officer, Famagusta* v. *Yiacoup Naim of Ayios Andronikos*, 2 R.S.C.C., p. 24, where the court held, at p. 27, " that the making of an order as provided for in sub-section (6) is substantially in the nature of ' punishment ' in the sense of paragraph (3) of Article 12 " and that the sub-section in question should be modified to turn the mandatory order provided for in the sub-section in question into a discretionary one.

We consider that the exercise by the trial Court of this discretion to make the order in question was a proper exercise of such discretion and is not manifestly excessive or harsh when viewed in its correct light. The court does not agree with learned Counsel for the appellant that the effect of such an order means that it would result in the loss of up to £5,000 to the appellant. This would have been so had the court ordered the removal and complete destruction of all the pipes and the " Skoda " engine in question. This is not in fact, however, what the trial Court has ordered. All that the trial Court has ordered is the removal of the installation in question *i.e.* of the " water pump and ' Skoda ' make engine ". In the opinion of this court there would be sufficient compliance with the order of the trial Court if the appellant removed the water pump and " Skoda " make engine in question from the well itself and if a reasonably short length of the piping leading from the well was also removed, a matter of feet. This would be sufficient

compliance with the trial Court's order and would mean that the piping installation and the pump and engine in the well will have been disconnected.

It will be seen, therefore, that reasonable compliance with the order of the trial Court would not result in a financial loss to the appellant amounting to £5,000 as implied by the appellant's ground of appeal against sentence.

It should be noted that the trial Court has allowed considerable latitude in the matter by making the order of removal subject to the consent in writing of the District Officer. It is, therefore, open to the appellant to apply to the District Officer for his consent under the Law, as provided in the trial Court's Order.

For all the reasons given above the appellant's appeal against conviction and sentence is dismissed and the order made by the District Court for the removal of the water pump and " Skoda " make engine to stand.

Appeal dismissed. Order as aforesaid.