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IN THE MATTER OF SEC. 39 OF THE INCOME TAX LAW.
and
IN THE MATTER OF MINOS GEORGHIADES
and
THE COMMISSIONER OF INCOME TAX

since the company was not trading in buying and selling premises, and the sale of the premises for £13,000 was an isolated transaction, it was not therefore a profit from trade or business which could be assessed as income of the company under section 5 (1) (a).

Quite apart from the legal point as to the meaning of the word "profits", it is difficult to see how the £10,756 could be distributed as dividends without detriment to the company's business or why the failure to so distribute it was an evasion of tax. The difference between the book value of the premises and their value when sold to reduce a bank overdraft is not the sort of wind-fall that a company, prudently administered, would distribute to shareholders.

In our opinion the District Judge's decisions both on the issue as to the onus of proof and on the construction of the expression "profits" in section 50 (1) are correct. The tax payer is entitled to the costs of the appeal; no order as to costs is made on the cross-appeal.

1956
May 30

EZEKIAS PAPA IOANNOU AND OTHERS
v.
THE SUPERINTENDENT OF PRISONS

[HALLINAN, C. J. and ZANNETIDES, J.]
(May 30, 1956)

EZEKIAS PAPA IOANNOU AND OTHERS, *Appellants*,

v.

THE SUPERINTENDENT OF PRISONS, *Respondent*.

(Civil Appeals Nos. 4173, 4174, 4175 and 4176).

Habeas corpus—Emergency Powers (Public Safety and Order) Regulations, 1955, Regulation 6 — Detention Orders — Powers of Administrative Secretary to sign order—Place of detention not specified in order—Instructions issued after orders—Reasons for orders stated in the alternative—Burden of proving that Governor had not applied his mind to each case — Application for detainees to give oral evidence — Application to call Governor for cross-examination on his affidavit.

Applicants were detained under a Detention Order made by the Governor and signed by the Administrative Secretary under Regulation 6 of the Emergency Powers (Public Safety and Order) Regulations, 1955. The applicants applied for a *habeas corpus* on four principal grounds:

First, the order should have been signed by the Governor, not by the Administrative Secretary:

Secondly, the place of detention should have been specified in the order and instructions as to the treatment of detainees should have been issued before the order was made:

Thirdly, the order was bad because the Governor had

stated in the alternative his reasons for making the order; and

Fourthly, the Governor had not applied his mind to the circumstances of each detainee's case.

The relevant part of Regulation 6 of the Emergency Regulations, 1955, reads:—

> "6 (1) If the Governor has any reasonable cause to believe any persons (*a*) to have been recently concerned in acts prejudicial to public safety or public order or in the preparation or instigation of such acts; (*b*) to have been or to be a member or to have been or to be active in the furtherance of the objects of an organization which is subject to foreign influence or control; (c) or to be an undesirable alien and that by reason thereof, it is necessary to exercise control over him, the Governor may make an Order against such person, directing that he be detained in such place as may be specified in the Order and in accordance with instructions issued by him."

The applicants also made three subsidiary applications, only two of which need be mentioned:—

First, that applicants should be brought up to give evidence upon the hearing of their application for a *habeas corpus*; and

Secondly, that the Governor should be called to be cross-examined on his affidavit filed in answer to the application for *habeas corpus*.

Upon Appeal,

Held: As regards the application for *habeas corpus*:—

First, Regulation 2 of the Regulations of 1955 applies the Interpretation Law to those Regulations, and under section 23 of that Law the Administrative Secretary had authority to sign the orders.

Secondly, the provisions in Regulation 6 that a Detention Order should specify the place of detention should have been complied with, but this provision was directive and not imperative and failure to comply with it did not invalidate the orders. Also since the instructions regarding the treatment of detainees were issued on the day following the order, the requirements of Regulation 6 had been substantially fulfilled and the orders were not invalid.

Thirdly, the order was not invalid merely because the grounds on which it was made were stated in the alternative. *King* v. *Secretary of State Home Affairs ex parte Lees* (1941) 110 L. J. K.B. 42 followed.

Fourthly, the burden of proof that the Governor had not applied his mind to the circumstances of each case was on the applicants, who, on the facts, had not discharged this burden.

As regards the subsidiary applications,

Held: The application that the applicants should be brought to testify was refused, there being no good reason or necessity for bringing up the detainees to give evidence. The application to call the Governor for cross-examination on his affidavit also refused. The Governor can be summoned as a witness; only the Sovereign and Ambassadors of Foreign States being exempted. However, the Court would only have considered allowing the Governor to be called if the applicants had established that the Governor had not applied his mind to the circumstances of each case.

Upon appeal to the Supreme Court the judgment of Zekia, J., dated the 18th April, 1956, on the hearing of the applications was upheld and the appeal dismissed.

D. N. Pritt, Q.C., *Y. Potamitis*, *Lefkos Clerides*, *Chr. Demetriades*, *A. Pouyouros* and *S. Georghallis* for the applicants.

R. R. Denktash, acting Solicitor-General, and *L. Loizou*, Crown Counsel, for the respondent.

ZEKIA, J.: Four separate applications for the issue of an order of *Habeas Corpus ad subjiciendum* have been made by four detainees, now interned in the Central Prisons, Nicosia, under section 6 of the Emergency Powers (Public Safety and Order) Regulations, 1955. All four applications were consolidated for the purpose of argument and hearing inasmuch as the grounds and facts on which all four are based are identical.

Apart from these four main applications, two subsidiary applications by each applicant were made. The one being an application for a writ of *Habeas Corpus ad testificandum* and the other an application seeking:

(*a*) an order enabling the applicant to cross-examine the Governor; and

(*b*) another order asking the respondent to produce the Governor before the Court at the hearing of the application.

Main as well as subsidiary applications have been opposed by the respondent.

Procedurally it might seem to be improper or irregular not to deal with these subsidiary or interlocutory applications before or during the hearing, but when the grounds on which these interlocutory applications are founded are examined it will appear that the grant or refusal of these applications depended more or less on the answers to be given to the issues in the main application. In other words, the main and subsidiary applications were closely bound up, and, since a decision on the major issues of the main application could not be arrived at before a complete argument and hearing, the decision on the subsidiary applications had to be delayed.

To obviate the difficulty thus faced, the Court intimated to the Counsel of the applicants that they should present their case on the main applications in full taking into account the probability of the subsidiary applications being refused. This intimation was received without objection and indeed, as a result, the Counsel produced further affidavits in support of the four applications and thus the Court had a full hearing on all matters involved. I believe this was the proper course to be followed because "upon the argument of a rule *nisi* for *habeas corpus*, the case is treated in the same manner as if the prisoner was brought up upon a *habeas* granted in the first instance, and the Court will look to the whole cause appearing upon the return" (Bull ex parte, 15 L.J. Q.B., 235).

On the 13th December, 1955, the Governor exercising his power under Regulation 6 (1) of the Emergency Powers (Public Safety and Order) Regulations, 1955, ordered the detention of the four applicants together with some other persons totalling 141. The detention order issued was not so called an omnibus order for all the persons involved, but each person including applicants was served with a separate order filled in with the name of each particular detainee.

The order issued was in the following terms:

"THE EMERGENCY POWERS (PUBLIC SAFETY AND ORDER) REGULATIONS, 1955 TO (No. 1) 1955.

Detention Order under Regulation 6 (1).

Whereas His Excellency the Governor has reasonable cause to believe Ezekias Papaioannou to have been recently concerned in acts prejudicial to public safety/public order or in the preparation or instigation of such acts and by reason thereof it is necessary to exercise control over him:

Now, therefore, in exercise of the powers vested in him by Regulation 6 of the Emergency Powers (Public Safety and Order) Regulations, 1955 to (No. 1) 1955, His Excellency the Governor has been pleased to order that the aforesaid Ezekias Papaioannou be detained at ..... under the provisions of the aforesaid Regulations.

Made this 13 day of December, 1955.

By Command of His Excellency
the Governor.
(Sgd) **J. W. Sykes,**
Administrative Secretary".

Each of the applicants was actually served with a similar order early in the morning of the 14th December, 1955, when taken into custody and conducted to Dhekelia Detention Camp where they had been detained up to the end of December. Since the 1st January, 1956, they have

been kept in the Central Prisons, Nicosia. As it will be observed no mention of the place of detention was made in these orders. On the 9th March, 1956, an amending order was issued by the Governor varying the place of detention with effect from the 1st January, 1956, of the applicants substituting the Central Prisons, Nicosia, for Dhekelia. They are still kept in the former place.

In an extraordinary issue of the *Cyprus Gazette* dated the 14th December, 1955, instructions issued by the Governor with regard to the detention of the applicants and other detainees have been published. In the Instructions the purpose and conditions of confinement have been explained and regulated. In para. 2 of these Instructions it is stated "so far as possible persons so detained will be accommodated in the Dhekelia Detention Camp, which has been set apart for persons so detained. When such persons are accommodated in any other establishment they will be kept apart from convicted and unconvicted prisoners". Likewise in a special issue of the *Gazette* published on the 10th March, 1956, the amendment to the previous Instructions is given. Para. 3 reads: "Any reference in the principal Instructions to the Dhekelia Detention Camp shall be deemed to include a reference to the Central Prisons, Nicosia". All relevant documents and publications have been exhibited.

Applicants filed these applications for a rule *nisi* on the 6th March, 1956, and summons for the writ was ordered to be issued on the 7th March. They were fixed for argument, on the request of the counsel of the applicants, to the 3rd April, 1956.

The accompanying affidavits, identical in all four applications, give five grounds on which the intervention of the Court is sought. It is contended that on these or any of the grounds their detention is unlawful, illegal and invalid. The five grounds are:

(*a*) The detention order was not made in law by the Governor;

(*b*) The detention order does not show which ground enumerated in the order and stated in Rule 6 (1) of the Regulations he believed for ordering the detention;

(*c*) It does not specify the place where the applicants should be detained;

(*d*) That the Governor did not bring his mind to bear on each individual case;

(*e*) There was no evidence before the Governor to give him reasonable cause to believe for any ground for their detention.

The fifth ground appears to have been dropped at

the hearing. In view of *Liversidge* and *Greene* cases this is not difficult to understand.

The application was opposed by the respondent, the Superintendent of Prisons. The opposition was supported by three affidavits; the one made by the Administrative Secretary who signed the detention order, the subject matter under discussion, by command of His Excellency. The return, in the form of affidavit, filed by the respondent disclosed in para. 2 that applicants are in his custody by virtue of an order dated the 13th December, 1955, made by the Governor, and which has been exhibited and contents of which have been given earlier in our judgment. Mr. Sykes, the Administrative Secretary, affirmed on oath that he signed each detention order by the command of the Governor. His Excellency the Governor Sir John Harding in para. 7 of his affidavit states that the Administrative Secretary signed each detention order on his command and in para. 4 and 5 deposed the following:

> "4. Before I made the said Order I received reports and information from persons in responsible positions who are experienced in investigating matters of this kind and whose duty it is to make such investigations and to report the same to me confidentially.
>
> 5. I carefully studied the reports and considered the information and came to the conclusion that there was clear cause to believe and I did in fact believe that the persons named in the Schedule to Document marked "A" including the applicant were persons who had been recently concerned in acts prejudicial to public safety or public order and had been concerned in the preparation or instigation of such acts and that by reason thereof it was necessary to control over them".

They are of the pattern sown by the Home Secretary in *ex parte Lees and Greene* v. *The Secretary of State for Home Affairs.*

Three further affidavits in the case of applicant Ezekias Papaioannou of Nicosia were made. The one by applicant himself, the other by a certain Androulla Christoforou of Limassol and the third by the respondent Together with the last affidavit of the said applicant a number of documents relating to the grounds and particulars of the detention of the applicants and other fellow detainees, members of the proscribed AKEL Organization, were produced. The whole lot was made available for the Court for the consideration of the main applications. Further sworn statements were made in connection with the subsidiary applications which might be necessary to refer to them at a later stage.

The main arguments for the applicants on the

consolidated four applications for the issue of orders of *Habeas Corpus ad subjiciendum* might be reduced to four:—

1. The orders were not made by the Governor, they should have been signed by him and were not so signed.
2. The orders are bad because they do not contain, and should have contained a direction that the applicant be detained in a place specified in the order and in accordance with instructions issued by the Governor.
3. The orders are bad because they do not show that the Governor believed any one of the matters stated in the alternative in Regulation 6 (1) (a), one of which he must believe before he could make a valid order.
4. The order is bad because it can be established by evidence that the Governor did not in fact bring his mind to bear on the matters on which it was necessary for him to bring his mind to bear in order to make a valid order.

Point 1:

Order of detention was signed by command by the Administrative Secretary, formerly styled Colonial Secretary, by virtue of section 23 of the Interpretation Law, Cap. 1. The substituted form of this section reads:

> "Where any Law confers upon the Governor power to make any public instrument or appointment, give any directions, issue any order, authorize anything or matter to be done .... it shall be sufficient if the exercise of such power by the Governor be signified under the hand of the Colonial Secretary, the Attorney-General or the Financial Secretary".
>
> (See Law 19 and 30 of 1954).

"Law" is defined by section 2 (c) of Law 36/53 as follows: "Law" means any enactment by the Competent Legislative Authority of the Colony but does not include an Act of Parliament extending expressly or by implication or applied by a Law to the Colony nor an Order of Her Majesty in Council, Royal Charter, Royal Letters Patent". In this definition "law" apparently comprises only enactments made by a Legislative Authority and it does not cover the Regulations. A Law is always prefaced with words *Be it enacted* which is not the case for Regulations which are made under an enabling law or Order in Council. It is also correct that the law enacted in this Colony is subject to disallowance by the Crown whereas this does not apply to Regulations. Regulation 2 (2) of the Emergency Regulations, 1955, however, makes the Interpretation Law applicable to these Regulations. It reads: "The Interpretation Law shall apply to the

interpretation of these Regulations and of any order made or direction given thereunder, as it applies to the interpretation of a law and for the purpose of the said law these Regulations shall be deemed to be laws". It has been argued also on behalf of the applicants that this part of the Regulations was *ultra vires*. In my view this submission is untenable. The Emergency Powers (Public Safety and Order) Regulations, 1955, were made under the Emergency Powers Orders in Council, 1939 and 1952. Section 6 (2) (d) of the Order in Council empowers the Governor to make Regulations providing for the application of any law.

The caption of the Interpretation Law reads: "A Law to consolidate the law relating to the construction of Laws and to make better provision for the definition and interpretation of certain words and expressions and matters incidental thereto". It is a piece of legislation which not only assists immensely a draftsman but also provides machinery for the implementation of the laws. The Governor was empowered under the Order in Council, 1399, to make Regulations for the purposes enumerated in section 6 (1) of the Order and no doubt he has got the power to supplement such Regulations by applying the provisions of the Interpretation Law so far as applicable to them. Indeed it may be taken for granted that the main body of the Interpretation Law is supplementary in nature.

Point 2:

The relevant part of regulation 6 of the Emergency Regulations, 1955, reads:

> "6.— (1) If the Governor has any reasonable cause to believe any persons (*a*) to have been recently concerned in acts prejudicial to public safety or public order or in the preparation or instigation of such acts; (*b*) to have been or to be a member or to have been or to be active in the furtherance of the objects of an organization which is subject to foreign influence or control; (c) or to be an undesirable alien and that, by reason thereof, it is necessary to exercise control over him, the Governor may make an Order against such person, directing that he be detained in such place as may be specified in the Order and in accordance with instructions issued by him."

The place of detention was not given in the detention order issued on the 13th December and served on the applicants on the following day, the 14th. No instructions appear to have accompanied the Order of detention. It is contended that the Order of detention was not valid in law because (*a*) omitted the place of detention and (*b*) the instructions relating to the detention which ought to have been issued along with the detention Order and at

the same time, but were issued only a day after the issue of the Order.

There is nothing in section 6 (1) (c) requiring the instructions regarding conditions of confinement to accompany the Order of detention or that they should be issued at the same time as the Order of detention. The detention Order was served and executed on the 14th December. The Instructions relating to the detention of the applicants were published in an extraordinary issue of the *Cyprus Gazette* of the same date, namely, the 14th December. In my opinion, as far as Instructions are concerned, there is sufficient and substantial compliance with section 6 (1) (c) of the Regulations. The question touching the omission of the place of detention in the Order and the effect of such omission is not, however, so simple to decide. No doubt the Governor had in his mind when he issued the Order of detention the place where the detainees were to be kept and indeed in the detention Order of one of the detainees other than the applicants taken into custody the same day, the place of detention is given as Dhekelia. Although the omission is an unfortunate and regrettable one, the point which falls for decision is whether such omission invalidates the Order. From the mere reading of the relevant sub-section I do not think I could answer the question. Whether the phrase "directing that to be detained in such place as may be specified in the Order" is capable of being read as "directing that to be detained in such place which might be specified in the Order" or as "directing that to be detained in such place which should be specified in the Order" is a matter which I am not prepared to commit myself one way or the other. I am inclined, however, to hold that the specification of the place in the Order is a requirement in the issue of the Order. On the other hand, I have come to the conclusion that the naming of the place of detention in the Order is not a *sine qua non* for the validity or legality of the Order. I proceed to give my reasons. I think certain passages from Maxwell on the Interpretation of Statutes, 10th Edition, might usefully be read: Page 374:

> "When a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, the question often arises: What intention is to be attributed by inference to the legislature? Where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other, no doubt can be entertained as to the intention".

Page 376:

"It has been said that no rule can be laid down for

determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence it its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment. It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and, when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the legislature. The whole scope and purpose of the statute under consideration must be regarded. The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially."

I agree with the Counsel of the applicants that the insertion of the place of detention is not a mere technicality. But is it a prerequisite for the legality of the Order? There I disagree. Reference was made to *Cobbett* v. *Grey* (154 English Reports, p. 1409) where it was decided that the removal of a person from one part of a prison to another in which he was not legally confined was a trespass. The applicant Cobbett sought relief by the issue of a writ of *Habeas Corpus* calling upon the gaoler and Home Secretary Sir George Grey to bring up applicant and to show cause why he, the plaintiff, was taken and placed on the criminal side of the Queen's Bench Prison being a prison for debtors remanded. In his declaration he stated that defendants compelled him to go from and out of a certain room in the Queen's Prison called No. 2 where he was of right lodged, to and along passages, etc., into another part of the prison, more confined, dark and insalubrious, being part of the said Queen's Prison limited by Law as a prison or place for the separate confinement of debtors remanded by the Commissioners of the Court for the Relief of Insolvent Debtors, on the ground of fraud or for refusing to file a schedule of their property, and which debtors were there called Class No. 1 and that defendants imprisoned the plaintiff amongst the said first class of prisoners separate and apart from his lawful fellows and friends. Parke B. (in page 1412) states: "The removal of a prisoner from one part of a prison to another in which by law he ought not be confined is *prima facie* a trespass". Sir George Grey, Principal Secretary of State, acting under 5 and 6 Victoria C. 22 and in compliance with the provisions of the said Act, effected a classification of prisoners and prisons. Cobbett was wrongly classified and placed in a wrong prison. It is clear in this case that

classification of prisons and prisoners was intended to be imperative.

On the applicants' side the *Queen* v. *Pinder* (1855 L. J., Vol. 24, page 148) might also relevantly be cited. There the omission to mention in a medical certificate the number and street of a house where an alleged lunatic was examined by a medical expert was found to be fatal and the writ of *habeas corpus* was granted. Coleridge Justice in page 150 said:

"This was an application, on the return to a writ of *habeas corpus*, for the discharge of William Greenwood from the custody of William Pinder, the occupier of a private house duly licensed for the reception of lunatics; and upon the reading of the return it was objected that the reception of him into this house and his subsequent detention there were unlawful, on account of a defect in the medical certificates under which he had been admitted; and this is the question which I have now first to determine. The certificates were granted in October last, and their validity depends upon the 16 & 17 Vict. c. 96. They state the examination to have been made at Blackburn, in the county of Lancaster, but omit to state the street and number of the house in which they were made or any other like particulars respecting it; and the affidavits shew that Blackburn is a large and populous place, with many streets bearing names; and from information and belief they state that the examination was, in fact, made in a house, numbered 1, in a street called Salford Street. The 16 & 17 Vict. c. 96, s. 4 prohibits, in express terms, the reception of any lunatic into any licensed house without the medical certificates, according to the Form in Schedule (A), No. 2, annexed to the Act; and the Form here referred to, as to this part of it, is as follows:—

'On the..... day of..... at .....
— and then in the parenthesis —

(here insert the street and number of house, if any, or any other like particulars) 'in the county of.....'

It is not agreeable to decide on a formal objection, where, under the circumstances of the particular case, the defect appears to have had no influence on the merits, and to have occasioned neither inconvenience nor injustice; and, so far as appears, that may be said in the present case. But decisions are precedents; and therefore in arriving at them, it is necessary to look at general principles rather than to the particular circumstances. Here the words are express. By the 4th section, to receive a lunatic except under an order

in one form and with medical certificates under another is expressly forbidden; and to break the prohibition is an indictable offence".

Here again appears that there was express prohibition not to receive a lunatic without a medical certificate in the prescribed form.

In Brenan's case (116 English Reports (K.B.) p. 188) the applicant, a convicted burglar, sought his discharge from the Millbank prison through a writ of *Habeas Corpus, inter alia*, on the ground that he was, pending his transportation to Van Diemen's Land, wrongly detained in the said prison. The clause 17 of 5 Geo. 4, C. 84, provides:

> "That, whenever any convict adjudged to transportation by any Court or Judge in any part of His Majesty's dominions not within the United Kingdom shall be brought to England in order to be trarnsported, it shall and may be lawful to imprison any such offender in any place of confinement provided under the authority of this Act".

Millbank Prison was not a place of confinement authorized by or under the Act. Notwithstanding Lord Denman C. J. in delivering the judgment of the Court said, "But we consider these enactments as directory, and that they do not interfere with the power asserted in general terms by the seventeenth section. The non-observance of these particulars may expose officers to censure: but it does not require the discharge".

As to recent cases I do not think we have been able to trace one on all fours. 14B of the Defence of the Realm (Consolidation) Regulations, 1914, the prototype of 18B contains a similar provision to the sub-section under consideration. The corresponding section of the Defence (General) Regulations, 1939, Regulations 18B (1) does not contain any provision as to specifying the place of detention in the Order of detention. It deals, however, with the place at a subsequent section 18B (8).

In *R.* v. *Brixton Prison (Governor) Ex parte Pitt Rivers* reported in 1942 (1) All E.R. p. 207 it was held that the detention order against the applicant was not invalidated by reason of the absence of a recital that the Secretary of State had reasonable cause to believe it to be necessary to exercise control over the detainee. Viscount Caldicote, L.C.J., in his judgment in the said case in page 210 states:

> "What was vital was that the Secretary of State should have had reasonable cause, and the Court, in my opinion, can properly find such cause to exist from the sworn statement of Sir John Anderson, which I have read. It makes no difference that this

statement was made more than a year after the date of the order. The important point is the fact stated".

Further down he said:

> "A right exercise of the powers must of course be made, but the exact form of the Order for detention is immaterial in my judgment, provided that enough clearly appears from the order of the Secretary of State to show what powers the latter was using. I ought to add that the Secretary of State's order for detention is clearly required to be in writing".

Since the accommodation of the detainees was a matter left entirely to the discretion of the Governor and no conditions are attached to such a discretion in respect of either the choosing of the locality or of the building it seems to me that such a defect in the order does not go to the substance and the ruling in Brenan's case applies with greater force to the present case although Brenan's case related not to an omission but to a wrongful place of detention.

At any rate it is out of question for the applicants of being prejudiced from this omission. Shortly after they had been placed in detention they were conducted to Dhekelia Detention Camp, and on the same day their place of detention as well as their conditions of internment were published in the official *Gazette* and were made known to them.

Point 3:

We pass to the third point. I do not think that it ought to take me as long as the previous one. It is complained that the order contains alternative allegations and that the Governor could not found his belief on anyone of the matters stated in the alternative. The grounds given in the order are "whereas His Excellency the Governor has reasonable cause to believe Ezekias Papaioannou of Nicosia to have been recently concerned in acts prejudicial to Public Safety/Public Order or in the preparation or instigation of such acts and by reason thereon it is necessary to exercise control over him".

There appears to be nothing incompatible or inconsistent in character for entertaining a belief on these alternative charges. In the case of *King* v. *Secretary of State for Home Affairs Ex parte Lee* (1941 L.J. page 42) the allegations contained in the detention order were in the alternative and it was held that it did not invalidate the order. We read from page 45:

> "The first ground of objection to the order is that it was and is bad upon the face of it. That part of the order which is material upon this point reads as

follows: 'Whereas I have reasonable cause to believe Aubrey Trevor Oswald Lees to have been or to be a member of or to have been or to be active in the furtherance of the objects of an organization', etc. etc.

The order, therefore, follows strictly the language of the regulation. It is argued that the order is bad for duplicity in that the two allegations of membership of and activity in connection with the objects of the organisation are stated in the alternative. It is said that they afford separate grounds for the making of an order and that one or other and not both of those grounds of belief should appear as the reason for making the order. In our opinion there is nothing in the point. The document in question is not a conviction nor an indictment nor even a charge. Grammatically, it may be perfectly correct to say that the Home Secretary had reasonable cause to believe that the applicant was either a member of or was active in the furtherance of the objects of the association, so as to justify the making of the order. It might, with equal force, be urged that the words 'to have been or to be' render the order bad upon the face of it. We find nothing in the statute or the regulations requiring that the order should be in any particular form and, in our judgment, the order is not invalid upon this ground".

This was a decision of the Divisional Court which was approved by Court of Appeal.

Point 4:

This is the last point taken in the main application with a view to demonstrate that the detention order of the 13th December was an illegal or invalid one. It is argued that the Governor did not in fact bring his mind to bear on the matters on which it was necessary for him to bring his mind to bear in order to make a valid order and that the applicants were in a position to establish by evidence this allegation. The greater part of the argument as well as the main portion of the facts given in the affidavits filed by and on behalf of the applicants related to this aspect of the case. After the decision by the House of Lords of the *Liversidge* v. *Anderson and Greene* v. *Home Secretary* relating to the interpretation of Regulation 18B defining the scope and limits of the powers conferred on the Home Secretary by the said Regulations the grounds which appeared to have been left open for judicial investigation concerning the validity of the Order, for persons detained under the relevant section of Emergency Regulations, were mainly the following:

(*a*) The *bona fides* of the Secretary of State;

(*b*) The genuineness of the detention order;

(c) The identity of the applicant with the person referred to in the order;

(d) Whether the Home Secretary or the Governor as the case may be has applied his mind to the circumstances necessitating the particular person's detention.

These are not exhaustive. Further points might conceivably be brought within the scope of a judicial inquiry.

The learned Counsel of the applicants frankly stated that he does not challenge the good faith of the Governor. He does not dispute the genuineness of the detention order and there is no doubt that the persons named in the detention orders are the applicants. Did the Governor bring his mind to bear on the case of each applicant?

These applications possess common features with the case of *Stuart* v. *Anderson and Morrison* reported in 1941 (2) A.E.L.R., p. 665. Indeed in the latter case it was strenuously argued that the Home Secretary in detaining the applicant Stuart did not apply his mind to the case of each detainee. There the order issue was omnibus in nature and affected not less than 344 persons, being members or past members of a suppressed organisation "British Union" and it was contended there that the matter was dealt with in a general kind of way and that the Home Secretary must have thought that it was sufficient for him to show that the person had some connection with the organisation in question in order to justify the detention order being made, without his having to consider whether it was necessary with regard to each particular case to exercise control. It is of significance that in Stuart's case the Home Secretary did not even file an affidavit as it was done in Budd's case or in the present case. Reading from page 674 of 1941 (2) A.E.R.:

> "Counsel for the plaintiff has relied upon *R.* v. *Home Secretary, ex parte Budd*, before the Divisional Court. He is certainly on stronger grounds on this point in the case than was counsel who appeared for Budd, because in Budd's case there was an affidavit by the Home Secretary swearing that he had, in fact, applied his mind to this particular point. In this case the Attorney-General has elected to stand on the case as it is, and the Home Secretary has not gone into the witness box to swear on oath that he did direct his mind to this point. None the less, for the reasons which I have stated, the evidence of counsel for the plaintiff has quite failed to satisfy me that that is the position, notwithstanding that there has been no denial upon oath by the Home Secretary".

In page 673 Lord Tucker (Tucker Justice at the time) states:—

"Therefore, I return to what counsel for the plaintiff really puts in the forefront of his case—namely, the question whether he has made out a *prima facie* case for showing that the Home Secretary has not directed his attention to this point. With regard to that, I have to consider the matters upon which he relies, and amongst the matters upon which he relies, it must not be forgotten that the document signed by Sir Alexander Maxwell giving the plaintiff notice of what had been done contains the statement that the Home Secretary had directed his mind to this point".

Further down in the same page it is stated:

"Apart from matters of this kind, however, I am invited to come to the conclusion that, in making an order to detain a man for five months, the Home Secretary did not apply his mind to the question whether it was necessary to exercise control over that man. I find it very difficult to think that such a state of affairs could exist. One would have thought that it was the first thing that anybody would think about before detaining a man for five months, and I find it inconceivable that the Home Secretary had not made himself sufficiently aware of the requirements of this order before making an order of this kind. Furthermore, there is evidence in this case by the plaintiff himself that several other members or officials of this union had not in fact been detained. The argument is that the Home Secretary appears to have thought that the mere fact that a man had at some time been a member of this organisation would justify him in detaining such a man. If he had thought so, I should imagine that everybody who had ever been a member of the union would have been detained, and there is evidence here that some were not".

In the present case it has been proved by affidavits that the Administrative Secretary who signed the detention orders pertaining to each applicant, did so under the instructions issued by His Excellency. (See paragraph 3 of the affidavit made by Mr. J. W. Sykes dated the 24th March). On the same day His Excellency filed also an affidavit describing the reasons and circumstances which led him to issue the detention order under review. In paragraph 5 of his affidavit he states:

"I carefully studied the report and considered the information and came to the conclusion that there was clear cause to believe and I did in fact believe that the persons named in the schedule including the applicant were persons who had been recently concerned in acts prejudicial to public safety" etc. etc.

We have got positive evidence that the Governor, whose good faith and truthfulness has not been challenged,

gave consideration to the case of the applicants together with many other members of the proscribed organisation AKEL, before he formed his belief and came to the conclusion that their detention was for the public safety and order necessary. Indeed it would appear in the circumstances attending the case, that the sworn statement of a person whose truthfulness and good faith is not impeached to be almost incontrovertible. When an honest man speaks about his state of mind, in other words swears that he has applied his mind to a particular point, and that it was after such application of his mind that he has come to certain conclusion to which he is lawfully entitled to, it seems to me that that is the end of the case. It has been suggested by the learned counsel that there is room for *bona fide* mistakes. Perhaps for inadvertence also. The applicants are entitled by any kind of evidence to establish that the Governor did not direct his mind to the prerequisites of the detention order for the case of each of the detainees. Assuming that the Court was at liberty to embark on investigations in the line suggested by the applicants' counsel, what have they succeeded by the various affidavits and exhibits produced to the Court to establish? A great part of the argument turned on the particulars given by the Chairman of the Advisory Council to the applicants and to their fellow detainees. I have great doubt whether the particulars given to the fellow detainees could be relevant to the cases of the applicants. Because each applicant has to show in the circumstances, if it is open to him to do so, that a mistake or inadvertence or to quote the counsel, slovenliness, has occurred which entitles him to seek the intervention of the Court through a writ of *habeas corpus*. What happened in the cases of other detainees who are not before the Court is a matter extraneous and irrelevant for consideration. However, the main argument turned on one point and one point only, namely, that the applicants as well as the other detainees have been detained, as the particulars of the Chairman disclosed, on account of their membership of AKEL organization which organization was quite a lawful one up to the date it was proscribed, that is up to the 14th December. The orders of the detention of the applicants were, however, issued before such a date and before AKEL was declared an unlawful organization. Therefore, it could not be argued that membership of this organization could constitute a ground for their detention by an order signed the previous day, that is the 13th December, before its proscription. In the first place I might mention that particulars given by the Chairman of the Advisory Committee need not be in the nature of particulars required to be given by the prosecution to a person charged with an offence. The regulations imposed a duty on the Chairman to furnish a detainee with grounds and particulars sufficient to enable him to file his objection before the committee. As

it was held in Greene's case such particulars, even when wrongly given, did not enable a detainee to attack the validity of the order. A detainee is not expected to receive more than a fraction of the information available to the authorities who ordered his detention. This argument, even if relevant, is based on a misconception.

AKEL was proscribed by Notification No. 778 of the *Cyprus Gazette* on the 14th December. The order of proscription was made simultaneously with the execution of the order for the detention of the applicants. Paragraph 2 of this order reads: "The organization commonly known as AKEL (Reform Party of the Working People) is hereby declared to be used for the promotion of disorder and of the spread of sedition within the Colony and to be proscribed within the Colony". The applicants were members of the said organization: Ezekias Papaioannou was the General Secretary of AKEL, Costas Christodoulides a member of the Central and District Committee of AKEL, Zacharias Philippides the Assistant General Secretary of Federation of Labour and Member of the District Committee of AKEL, Costas Partassides a member of the Central and District Committee of AKEL. It appears that all applicants are influential members of the organisation in question and if that organisation — according to the finding of the Governor — had indulged in the promotion of disorder in the island, surely the leaders of the organisation are necessarily involved in it. The charge or allegation against them, therefore, is not that they continued to be a member or take part, an active part, after the said organisation had been proscribed but because apparently they were held responsible for directing the activities of the organisation against public safety and order of the country before the date of proscription. As we have already said if these particulars were meant to support a charge of some kind of offence against the applicants, as they stand, they would be inadequate. They import, however, a reason to the affected persons for their detention. It has been mentioned that one of the persons for whom an order of detention had been issued was absent from the island for the last two years and according to an affidavit filed by his wife he is believed to be dead since. This was mentioned more than once during the argument and some other instances tending to show lack of care on the part of the officers concerned were cited in the last affidavit filed by Ezekias Papaioannou. I suppose this was intended to demonstrate that the Governor in issuing the orders of detention against over 130 people did not in fact direct his mind to each individual case. As we have already remarked this part of the argument avails little or nothing the present applicants inasmuch as in their case there is nothing to show that carelessness, inadvertence or slovenliness had taken part. As to similar allegations made in Budd's

case, Lord Greene M.P. had to say this: (page 377, A.E.R., 1942 (1)).

> "Humphreys, J., referred to a number of matters which it is not necessary to mention here and held that the appellant was entitled to be released because no sufficient care and attention was paid to his individual case by the Home Secretary. He added that he was unable to say on the evidence as a whole that the Secretary of State had reasonable cause to believe that it was necessary to exercise control over him, but, in view of the decision in Liversidge's case and Greene's case this was not a competent finding."

The applicant in Greene's case had put forward a similar objection in his affidavit. He had stated, "I deny that there is a clear cause to believe, or that the said Sir John Anderson *does in fact believe* that I am a person of such hostile association....." This allegation was apparently treated unworthy of any observation.

It has been directly proved that the Governor carefully considered and verily applied his mind to matters essential for the validity of the orders issued. The applicants failed even to establish a *prima facie* case for the alleged illegality or invalidity of the orders of detention under consideration. Unless the Court has got the power to probe into the reasonableness of what the Governor does under Emergency Regulation 6 (1), attempts to induce the Court indirectly to do so are bound to fail. Indeed I feel that I might say nothing more on the 4th point beyond citing *Stuart* v. *Anderson and Morrison* which in my view covers the whole argument as expounded at length by the learned counsel of the applicants.

It might not be out of place if I read as a general observation a passage from Wrottesly, J., in Pitt Rivers, page 214:

> "In his careful argument counsel for the applicant endeavoured to draw a comparison and effect an analogy with the process of the criminal law and with imprisonment for crime following upon conviction. In that sphere, conviction must be of a definite crime, and not of one or more alternatives. There, too, the standard is proof beyond reasonable doubt, but, under the regulations, the standard is not proof, but is reasonable suspicion. Under the regulation, duplicity is not a defect, but may well provide the more reason for taking action. In fact, generally, if these regulations are to protect the country against internal dangers of an insidious kind in a state of grave emergency, they must fall far short of the standards enforced by courts of law when trying persons charged with crimes with a view to their punishment. We are concerned not with punishment or imprisonment, but with detention."

For these reasons I am of opinion that the application of the *Habeas Corpus subjiciendum* should be refused.

I have to deal now with the subsidiary applications. The one is in the form of *Habeas Corpus ad testificandum*, seeking to bring up the applicant detainees before the Court to give evidence in support of their application. In *Clerk* v. *Smith* (3 C.B. 984) it was decided that "To entitle a prisoner to a *Habeas*, to bring him up to be present on the argument of rule in which he is interested, he must satisfy the Court that substantial justice cannot be done without his presence".

In *Ex parte Cobbett*, and in *re*, 3 H. & N. 155, 27 C.J. Ex. 199 it was held that if his evidence was necessary at the trial of a cause he is entitled to a *habeas corpus ad testificandum* for himself as much as for any other witness. This brings to the forefront the question whether at the hearing of an application for *Habeas Corpus subjiciendum* oral evidence is admissible. It is conceded by applicants' counsel as well that it would be a departure from the normal practice to hear evidence upon the argument of an order *nisi*. Order 59 r. 23 prescribes the procedure at the hearing for a writ of *habeas corpus*. It reads:

> "When a return to the writ is made, the return shall first be read, and motion then made for discharging or remanding the prisoner or amending or quashing the return, and where the prisoner is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the Crown, and then one counsel for the prisoner in reply".

Short & Mellor Crown Practice (1908 Edition) on page 323 dealing with writs of *Habeas Corpus* we find this:

> "Where the affidavits upon an application were of a conflicting character, the Court directed an issue to be tried before a jury to determine the question in dispute".

Further down it is stated: "But the Court is not bound to direct an issue."

On page 337 of the same book under the heading Issues, rule 231, the following is given:

> "Upon the argument of an Order *nisi* or summons at Chambers in any case or matters on the Crown side the Court or Judge may direct any issue or issues of fact in dispute to be referred to a master for his report thereon, or to be tried by a judge and jury or by a judge without jury in the same manner as other issues of fact are tried".

In view of Order 59 r. 23 which gives the present practice and procedure applicable to Cyprus I very much doubt if what I cited from Short and Mellor is of any

assistance. However, on account of the view I take in the matter this does not call on me for a decision. The application for *Habeas Corpus ad testificandum* should be refused for the following reasons:

1. The affidavit filed in support of the application is inadmissible because it does not disclose any reason or necessity for bringing up the prisoner to give evidence at the hearing. The affidavit is signed by an advocate clerk and his opinion as to the desirability of the oral evidence of the applicants cannot be heard.

2. Applicants were at liberty to make any relevant sworn statement by way of affidavit and as a matter of fact they made several. There appears to be no reason why they would insist on making oral statement.

3. For reasons I have stated in conjunction with the fourth point in the main application I find that there was no triable issue to justify the applicants to be heard orally on oath for matters mentioned in the accompanying affidavit of this subsidiary application or for those advanced by their counsel.

It would indeed constitute an unprecedented (at any rate in modern times) departure in practice to hear oral evidence on an application for *Habeas Corpus subjiciendum* of the kind and on points under consideration and I ought to have adequate good reasons for doing it. The applicants did not apply with a view to be present in Court to follow the argument of their case. Had they done so other considerations might be brought to bear on their request.

I therefore am of the opinion that application for *Habeas Corpus ad testificandum* should also be dismissed.

There is another subsidiary or interlocutory application by which applicants apply (*a*) to be at liberty to cross-examine the Governor; (*b*) that respondent produce him before the Court for this purpose.

Application is based on O.39 r. 1 which reads: "Upon an application evidence may be given by affidavit, but the Court or Judge may, on the request of either party, order the attendance of the deponent for cross-examination". The corresponding rule in England is O.38 r. 1.

There is no doubt that in a proper case the Governor might be ordered to attend the Court for cross-examination. All persons competent to give evidence in general are also compellable; only sovereigns and ambassadors of foreign states are exempted.

Paragraph 3 of the accompanying affidavit of the application gives grounds and reasons for submitting this application. They amount to this. They want to cross-examine the Governor as to how he formed his beliefs

leading to their detention and what was the nature and source of his information which led him to believe that applicants were recently concerned in acts prejudicial to public safety and order or in the preparation or instigation of such act.

It is firmly settled by authority that the Home Secretary exercising powers under 18B, the English counterpart of regulation 6 (1), is not bound to disclose beyond stating the grounds under which he exercised his power, his reasons, nature and source of information which led him to order the detention of a person. To order the attendance of the Governor for the purpose disclosed in the affidavit filed in support of the application would defeat the whole object of this part of the Regulations. It would indeed serve no purpose relevant to the application because in point of law he cannot be called upon to divulge information reaching him in confidence. It may not be inapposite if I quote a passage from Lord MacMillan in *Green* v. *Secretary of State for Home Affairs* (1942 A.C. p. 297):

> "The Secretary of State is not bound to disclose or to justify to any court the grounds on which he conceived himself to have reasonable cause to believe that the appellant was a person of hostile associations and that by reason thereof it was necessary to exercise control over him. The result, in my opinion, is that the production of the Secretary of State's order, the authenticity and good faith of which is in no way impugned, constitutes a complete and peremptory answer to the appellant's application".

As it will be seen on the notes of Order 38 r. 1 "There is no obligation on the Courts to make an order for cross-examination under this Rule upon an affidavit filed on a motion."

Anyhow, it is unprecedented with the kind of affidavits made by persons in authority ordering detention under Emergency Powers Regulations. It has been submitted that Schmuel case (*Rudolf Schmuel* v. *The Officer in command of Jewish Immigrants Camp, Karaolos,* XVIII C.L.R. p. 158) created a precedent. There, 239 men and 63 women were detained under section 3 of the Detention (Illegal Immigrants) Law, 1946, without naming the persons affected. They were identified in the order by a statement as persons brought to Cyprus in the s/s "Empire Rival" and who were certified and described in the same way as, without naming them, to be illegal immigrants. It appears that the cross-examination of the officer in command was made to show whether the applicant was one of the 239 men in the escorted boat. Furthermore, the case does not disclose whether cross-examination of the dependent was ordered after any objection. It can be argued, and I am not sure if it has

not been, that if the Governor appears before the Court for cross-examination he can claim privilege for not answering questions tending to disclose secret information and sources. I think in this connection I cannot do better than read a few lines from the judgment of Lord Wright in *Liversidge* v. *Sir John Anderson* (1942 A.C. p. 266):

> "That, it seems to me, would be the travesty of a trial. I can imagine the counsel for the plaintiff insisting that the case should be fully tried, that he was entitled to cross-examine the Secretary on a matter personal to himself, that part evidence might be edited and selected, that the judge could not decide the case unless he had all the evidence, and that the defendant (on whom the appellants allege rests the burden of justifying the detention) must fail in his defence if he refuses to disclose material evidence, even on the ground that to disclose it is against the national interest. In any case, neither the appellant nor the respondent was satisfied with the half-way house. However, on the construction of the regulation which I accept the question does not arise. These and other like considerations make Lord Finlay's observation which I quoted above, that no tribunal could be imagined less appropriate than a court of law for deciding these questions, at least as applicable to Reg. 18B as it was to Reg. 14B under the earlier statute. I might go further and say that the Court is not merely an inappropriate tribunal, but one the jurisdiction of which is unworkable and even illusory in these cases".

For these reasons I am of opinion that these applications should also be refused.

Appeal by applicants from the judgment of Zekia J. (Civil Application Nos 4, 5, 6 and 7/56).

Y. Potamitis, Lefkos Clerides, Chr. Demetriades and *S. Georgallis* for the appellants.

R. R. Denktash, Acting Solicitor-General, with *L. Loizou,* Crown Counsel, for the respondent.

The judgment of the Court was delivered by:

HALLINAN, C. J.: This is an appeal from the refusal of Mr. Justice Zekia to grant an application for a writ of *habeas corpus ad subjiciendum.* The object of the application is to secure the release of all four persons who were detained by an order of the Governor made under Regulation 6 (1) of the Emergency Powers (Public Safety and Order) Regulations, 1955. Two other subsidiary applications were disposed of at the same time as the main application, namely, an application for *habeas corpus ad testificandum* to bring up the applicants themselves to

testify at the hearing of the main application and second an application for an order that the Governor should attend the Court in order to be cross-examined on an affidavit which he made in the proceedings of *habeas corpus ad subjiciendum*. There is also an appeal against the refusal of the learned Judge to grant these subsidiary applications.

Upon the hearing of this appeal the appellants have abandoned their appeal against the refusal to issue a *habeas corpus ad testificandum*. On their behalf counsel has again argued the four grounds on which the application for *habeas corpus ad subjiciendum* was based and also has submitted that the refusal to direct the attendance of the Governor for cross-examination was wrong.

We may say at once that we agree with the conclusions reached by Mr. Justice Zekia in his lucid judgment where he has carefully considered the case that was presented fully and ably by Mr. Pritt, and where he has discussed the relevant authorities. It will be sufficient if we indicate briefly why we agree with the learned judge in rejecting each argument put forward on behalf of the appellants.

The first ground submitted by the appellants is that the detention order in each case was signed by the Administrative Secretary and should have been signed by the Governor himself. Regulation 2 of the Emergency Powers (Public Safety and Order) Regulations, 1955, provides that the Interpretation Law should apply to the Regulations and that for the purpose of that Law, the Regulations shall be deemed Laws. We are unable to accept the appellants' argument that this regulation is *ultra vires* the Emergency Powers Order in Council, 1949 and 1952, under which the regulations are made. Section 23 of the Interpretation Law (as later amended) authorizes the Administrative Secretary to sign on behalf of the Governor any order made under a Law. It follows that the Administrative Secretary had authority to sign the detention orders under which the appellants are detained.

The second ground relied on by the appellants is that the detention orders were invalid because each order failed to specify the place where the detainee was to be detained and also did not direct that he be detained in accordance with instructions issued by the Governor. Regulation 6 (1) provides that if the Governor has reasonable cause to believe concerning a person any of the matters mentioned in that regulation, "The Governor may make an order against such person directing that he be detained in such place as may be specified in the order and in accordance with instructions issued by him." As regards the issue of instructions Mr. Justice Zekia held that since instructions relating to the detention of the appellants were published in an extraordinary issue of the *Cyprus*

Gazette on the 14th December (the day on which the appellants were detained) he was of opinion that there was sufficient and substantial compliance with the Regulations. As regards the failure to specify the place of detention Mr. Justice Zekia said: "Although the omission is an unfortunate and regrettable one, the point which falls for decision is whether such omission invalidates the order.....I am inclined, however, to hold that the specification of the place in the order is a requirement in the issue of the order. On the other hand I have come to the conclusion that the naming of the place of detention in the order is not a *sine qua non* for the validity or legality of the Order....." The learned Judge then goes on to distinguish enactments which are directive and those which are imperative, and he cites passages from Maxwell on the Interpretation of Statutes to the effect that the general rule is that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. He comes to the conclusion after reviewing the authorities that the Provisions of Regulation 6 (1) concerning the place of detention and the issue of instructions were directive and that these provisions had been substantially fulfilled. Therefore their omission from the order did not affect its validity.

Upon this aspect of the appeal we agree with the reasoning and conclusions of the learned Judge. Since in the passage cited from Maxwell 10th edition at 376 it is stated that the fundamental rule in determining whether an enactment is imperative or directive is to consider the scope and object of the enactment, it is, we think, appropriate to consider the scope and object of Regulation 6 by comparing it with the regulation from which it derives, namely, Regulation 18B of the Defence (General) Regulations of the United Kingdom. This regulation contains eight paragraphs. Paragraph 1 provides that if the Secretary of State has reasonable cause to believe certain matters mentioned therein concerning any person "he may make an order concerning that person directing that he be detained". And paragraph 8 provides that "any person detained in pursuance of this regulation shall be deemed to be in lawful custody and shall be detained in such place as may be authorised by the Secretary of State in accordance with instructions issued by him." Concerning the nature of these instructions Goddard L. J. (as he then was) in *Arbon* v. *Anderson & Others*, *De Laessoe* v. *the same*, 1943 1 All E.R. 154 at 155 states:—

> "In my opinion, the White Paper contains nothing more than administrative departmental instructions which do not and are not intended to confer any rights on prisoners and cannot do so. There is no obligation on the Secretary of State to communicate

them to Parliament, still less to the prisoners. They can be altered or withdrawn at any time".

No doubt much the same comment could be made concerning the authorization by the Secretary of State of the place of detention. The United Kingdom regulations enabled and required the Secretary of State to authorize the place of detention and to issue instructions as to the treatment of detainees but these were administrative arrangements which had nothing to do with the validity of the detention order; once such order was properly made and executed the detainee was in lawful custody.

It is difficult to see what possible safeguard it can be to have a direction in the detention order that the person be detained in accordance with instructions issued by the Governor. What *is* important is that the Governor issue such instructions and that the person be detained in accordance with them; and that is precisely what paragraph 8 of the U.K. regulation 18B provides. Yet if the form rather than the substance of our regulation 6(1) is to be regarded, a detention order might be valid on its face if it contained a direction that the person be detained in accordance with instructions issued by the Governor, although, unlike the U.K. regulation, there is no duty expressly imposed on the Governor by our regulation 6 to issue any such instructions. Similarly as regards the place of detention, it is important that this be a place authorised by the Governor as provided in the U.K. regulation, but what additional safeguard is provided by having that authorisation inserted in the detention order?

In our opinion, comparing the U.K. regulation 18B with our Regulation 6, the scope and object of both regulations were in substance the same, namely, that the person making the regulations should order the person to be detained, should authorize the place of detention, and should issue instructions as to the treatment of the detainee. It would appear that the particular form of words used in our Regulation 6 (1) is nothing more than an attempt to condense paragraphs (1) and (8) of the U.K. regulation into one paragraph. As so often happens when short cuts are attempted in legal documents, the result is clumsy: the detention order has to be amended every time a new place of detention is authorised, and no duty is expressly imposed on the Governor to issue instructions.

We agree with the learned judge that the detention orders should have specified the place of detention and have directed that the detention be in accordance with instructions issued by the Governor, and we also agree that, having regard to the scope and object of regulation 6, the omission of these matters from the order does not

make it invalid provided that the requirements of regulation 6(1) were substantially fulfilled.

That they were substantially fulfilled there can be no doubt. On the same day as the appellants were detained the Governor issued instructions as to the mode of their detention, and provided that they be accommodated in Dhekelia Detention camp; and in further instructions issued on the 9th March a part of the Central Prison, Nicosia, was also authorised as a place for the detention of the appellants. Also on the 24th March the detention orders were varied by the insertion therein as the place of detention the Central Prison, Nicosia. This amendment of the detention order is mentioned not to establish the validity of the original order (for we have agreed with the learned Judge that this order was valid) but we refer to the amendment merely to show that the requirements of Regulation 6 (1) were substantially fulfilled.

The third ground upon which the validity of the detention orders was challenged is that the order contains alternative allegations and the Governor could not base his belief on any one of the matters stated in the alternative. We agree with the learned Judge that the case of *King* v. *The Secretary of State for Home Affairs ex parte Lees* (1941) 110 Law Journal K.B. 42 is clear authority for his conclusion that this ground is without substance.

The last ground was that the Governor had not applied his mind to the circumstances necessitating the detention of each person. *Prima facie* the production of a valid detention order throws the onus of proof on the appellants to show that the Governor had not applied his mind so as to have reasonable cause for his belief in the case of each person detained. In seeking to discharge this onus of proof the appellants have chiefly relied on the fact that in the case of some detention orders made on the same day as the orders detaining the appellants, the detainees could not have been recently concerned in acts prejudicial to public safety or order, or in the preparation or instigation of such acts. This evidence falls far short of discharging the onus of proof on the appellants: The Governor has stated in his affidavit that he formed his belief upon information and reports from responsible and experienced persons. The facts relied on by the appellants do not prove that such reports and information were not before the Governor or that he did not apply his mind to them; although such reports and information may have been inaccurate. Indeed it is difficult to imagine that the Governor would fail to apply his mind to such a serious matter as the liberty of an individual whereas it is quite possible that he may have been misled by inaccurate information. Nor does it follow, because the Governor received inaccurate information in certain cases concerning persons whose applications are not before the Court, that

therefore he had not reasonable cause to believe the information which he received concerning the appellants. In fact the appellants were all prominent members of a proscribed organisation. The first appellant was the General Secretary, the second appellant was a member of the Central Committee of Akel, the third appellant had organised a political strike, had recently made seditious speeches, and had stood for election (although he was not elected) as a member of a District committee of Akel; and the fourth appellant was a member of the Central and District Committee of Akel. We agree with the learned Judge that the appellants have not established a *prima facie* case that the Governor had not properly applied his mind to the circumstances of each detainee and therefore the detention orders cannot be invalidated on this ground.

The failure of the appellants to establish a *prima facie* case on the last ground referred to is fatal to their application to secure the attendance of the Governor for cross-examination on his affidavit. The decision of the House of Lords in *Liversidge* v. *Anderson* (1941) 3 A.E.R. 338, and *Green* v. *The Home Secretary* (1941) 3 A.E.R. 388 finally establish that the authority making the detention order cannot be questioned as to the sufficiency of the grounds on which he bases his belief. In the present case, only if the appellants had established *prima facie* that the Governor had not applied his mind to the circumstances of each detainee's case would the question then arise whether a further affidavit by the Governor or his attendance for cross-examination would be desirable.

The appeals against the refusal of the applications for writs of habeas corpus and of the applications that the Governor be required to attend for cross-examination on his affidavit must therefore be dismissed.

PRIVY COUNCIL

(July 12, 26, 1956)

Present:

VISCOUNT SIMONDS, LORD OAKSEY, LORD TUCKER, LORD COHEN and LORD SOMERVELL OF HARROW.

ANDREAS CHARILAOU ZAKOS AND ANOTHER, *Appellants*,

v.

THE QUEEN, *Respondent*.

(On appeal from the Supreme Court of Cyprus)

Cyprus — Criminal law — Emergency regulations — Charge of carrying and discharging firearms — Framed under relevant regulations read with sections of Criminal Code— Whether sections of Code applicable to the regulations—