1983 November 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

RE: *APPLICATION AFTER JUDGMENT, DATED* 22.10.1983

HEBE NISSIOTOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF EDUCATION AND/OR THE MINISTER OF EDUCATION,

Respondents.

(*Case No.* 311/83).

Constitutional Law—Recourse under Article 146.1 *of the Constitution —Judgment of Supreme Court in such a recourse—Compliance of administration with—Jurisdiction of the Court to take cognizance of an application with a view to inquiring whether the administration has implemented the judgment of the Court —Article* 146.5 *of the Constitution—Duties of the Administration consequent upon a judgment nullifying a decision.*

In the process of implementing a policy for separating secondary schools into two autonomous branches, the Minister of Education decided on 16.7.1983 to transfer a number of headmasters serving at Nicosia Secondary Schools. The applicant a Nicosia headmistress challenged the validity of these transfers by way of judicial review under Article 146.1 of the Constitution.

On the 14th October, 1983, the Supreme Court, in the exercise of its revisional jurisdiction, annulled the decision of the Minister, for three separate reasons. Because—

(a) The decision was taken in breach of the provisions of regulation 14(1), in that he omitted, contrary to the

provisions of the aforesaid rule, to take cognizance of the application of the applicant for transfer.

(b) The Minister abdicated his discretionary powers by confining his action to rubberstamping the decision of a subordinate, namely Mr. Leonidas Koullis, Director of Secondary Education, instead of exercising the discretionary powers vested in him under the law.

(c) The decision was vitiated for lack of proper inquiry and due reasoning.

On the day following the judgment of the Court, that is, on 15.10.1983, a new decision was taken respecting the transfer of Nicosia headmasters in the context of the schematic changes in secondary schools, identical in content to the one annulled.

On the 22.10.1983 the applicant filed an application seeking the review of administrative action following the decision of the Court and, a declaration that they failed to implement the decision of the Court, coupled with a direction to comply with the decision of the Court.

In support of this application Counsel for the applicant argued:

(a) That the Minister of Education, as well as his subordinates, refused or omitted to give effect to the decision of 14.10.1983, by failing to restore the factual situation obtaining prior to 16.7.1983;

(b) They arrived at the new decision without holding a new inquiry or heeding the material they failed to notice in the first place. And

(c) the new decision whatever its merits may be, was taken from the perspective of 15.10.1983 in contravention of the duty of the administration to face the situation from the perspective of 16.7.1983.

Counsel for the respondents contended that the legality of the decision of the Minister of Education of 15.10.1983, as well as matters precedent and consequent thereto, can only be reviewed in proceedings under Article 146.1, impugning the validity of the new decision; Article 146.5 confers no jurisdiction to review whether the Administration has complied with an order of the Court; and that such jurisdiction can only be

assumed or exercised, incidental to contempt proceedings under Articles 150 and 162 of the Constitution.

After finding:

(1) That the authorities refused to implement the decision by restoring the status quo ante;

(2) That a senior official of the Ministry of Education, namely Mr. Leonidas Koullis, actively strove to obstruct the implementation of the decision of the Court, by issuing directions to one of the Headmasters not to act in accordance with the decision of the Court.

(3) That the decision of 15.10.1983 was taken without factually restoring the situation that existed prior to 16.7.1983 and, without carrying out a new inquiry encompassing the facts omitted from consideration on 16.7.1983;

Held, (1) that there is jurisdiction to take cognizance of the present application with a view to inquiring whether the administration has implemented the judgment of the Court.

(2) That the administration is dutybound to restore the status quo ante, that is, the factual situation that existed at the time the abortive decision was taken; that the administration must restore legality first before attempting to issue a new act; that where a decision is annulled because of breach of a positive duty cast by law, as in this case, with respect to reg. 14(1) of the *Educational Service Regulations of* 1972, the restoration of the factual situation prevailing at the time the annulled decision was taken, is a condition precedent to the issue of a new act; that the second necessary step that must be taken, in compliance with the judgment of the Court must precede the issue of a new decision, is the holding of a new inquiry that should encompass consideration of all that the administration wrongly omitted to consider in the first place; that the Minister of Education and his subordinates failed to give effect to the judgment of the Court, in breach of their constitutional duty under Article 146.5; that instead of obliterating the results of the annulled decision in furtherance to their duty to comply with the judgment of the Court, they suffered them to continue under the guise of compliance; that their actions were directed towards circumventing the judgment of the Court, thereby subverting legality in the administration to the detriment of the rule of law; and that,

therefore, the administration failed to comply with the judgment of the Court of 14.10.1983; and that they are dutybound to give effect to it.

Order accordingly.

Per curiam: I consider it pertinent to administer this warning to everyone coming under a duty to implement and give effect to a judgment of an administrative Court. The power to punish for contempt, is not limited to immediate parties to the proceedings who wilfully disobey or flout a judgment of the Court, but extends to third parties aiding disobedience or disregard of such judgments.

Cases referred to:

Ioannides v. *Republic* (1971) 3 C.L.R. 8;

Frangoulides v. *Republic* (1982) 3 C.L.R. 462;

Attorney-General v. *Chaudry* [1971] 3 All E.R. 938 at p. 947 (C.A.);

Christofides v. *Attorney-General* (1981) 1 C.L.R. 18 at p. 21;

Thorne R.D.C. v. *Bunting (No. 2)* [1972] 3 All E.R. 657.

Application.

Application by applicant for a declaration that the respondents failed to implement the decision of the Court dated 14.10.1983 coupled with a direction to comply with the above decision whereby the decision of the respondents to transfer applicant was annulled.

A.S. Angelides, for the applicant.

A. Evangelou, Senior Counsel of the Republic with *R. Vrahimi* (*Mrs.*), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Constitutional questions of exceptional importance to the public pose for consideration. They involve the interpretation of Article 146.5 of the Constitution, its ambit, compass and effect, in relation to the remedial jurisdiction of the Supreme Court to review compliance with its decision.

So far as I am aware, it is the first time that need arises to examine para. 5 of Article 146 of the Constitution from a jurisdictional angle in order to decide whether it confers, apart from

defining the duties of the administration towards a judgment of an administrative Court, jurisdiction to review the discharge of this duty. In order to appreciate the issue in the correct perspective, it is necessary to make detailed reference to the factual background of the case, as well as evidence led with regard to the discharge or omission of the administration to carry out their duties under Article 146.5.

The Ministry of Education decided, in 1983, to introduce important changes in the structure of secondary schools of a schematic character. Henceforth, secondary schools would be separated into two autonomous branches, namely Gymnasiums, covering to first three-year cycle of secondary education and, Lyceums, covering the second three-year school cycle. In the process of implementing this policy, the Minister of Education decided on 16.7.1983 to transfer a number of headmasters serving at Nicosia secondary schools. Mrs. Nissiotou, a Nicosia headmistress of long standing, challenged the validity of these transfers by way of judicial review under Article 146.1 of the Constitution. In her contention, the decision was void in its entirety. In consequence, she joined as interested parties all headmasters who were affected by the decision.

On 14th October, 1983, the Supreme Court, in the exercise of its revisional jurisdiction, annulled the decision of the Minister, for three separate reasons. Because—

(a) The decision was taken in breach of the provisions of regulation 14(1), in that he omitted, contrary to the provisions of the aforesaid rule, to take cognizance of the application of Mrs. Nissiotou for transfer.

(b) The Minister abdicated his discretionary powers by confining his action to rubberstamping the decision of a subordinate, namely Mr. Leonidas Koullis, Director of Secondary Education, instead of exercising the discretionary powers vested in him under the law.

(c) The decision was vitiated for lack of proper inquiry and due reasoning.

By way of parenthesis, the Court doubted the wisdom of introducing such far ranging changes in secondary education

without resorting to legislative measures. As counsel for the applicant pointed out, it is not at all certain that the changes introduced are reconcileable with the definition of a secondary school supplied by s.3(b) of Law 60/70.

In virtue of the decision given on 14.10.1983, the decision of 16.7.1983 was annulled in its entirety.

It is common ground that the decision of the Court was communicated to the Ministry of Education at about noon of the same day. It is acknowledged that no action was taken by the Minister of Education or his subordinates to implement the decision by instructing the educationalists affected to report, as from the following day, to the schools where they served prior to 16.7.1983. Mr. Evangelou submitted, the administration was under no such duty. In his submission, the duties of the administration are confined to re-examining the matter and reaching a new decision. The Ministry of Education is, it seems to me, labouring under a gross misapprehension as to the duties of the administration following a decision of an administrative Court nullifying their action under the Constitution and general principles of administrative law. Article 146.5 enjoins the administration to positive compliance with the order of the Court. Not only they must restore the status quo ante, that is the factual regime that existed or prevailed at the time that the abortive decision was taken, but this restoration is a prerequisite to a valid re-examination of the matter. (see, inter alia, *Theocharopoulou* on the *Consequences of Annulment of Administrative Action*, p. 68, Honourary Tome; *Vassos Rotis* on the *Unwillingness of the Administration to enforce Decisions of Administrative Courts—Publication of the Greek Council of State*, Honourary Tome, 1959, pp. 343, 344; *Vegleris —Compliance by the Administration with Decisions of the Greek Council of State*, p. 29.

Contrary to the submission of the respondents, it was the duty of the Minister of Education and his subordinates to heed the judgment of the Court on 14.10.1983 and take, without any delay whatsoever, all necessary measures to restore the factual regime of 16.7.1983. Incontrovertibly, nothing was done in that direction.

On the day following the judgment of the Court, that is, on

15.10.1983, a Saturday, a new decision was taken respecting the transfer of Nicosia headmasters in the context of the schematic changes in secondary schools, identical in content to the one annulled. During the hearing of the present proceedings, it transpired that the new decision was taken without restoring the factual background that existed on 16.7.1983 and without carrying out in reality a new inquiry. As the evidence before me establishes, including the testimony of Mr. L. Koullis, judged on its face value, the principal concern of the Ministry of Education in arriving at the new decision, was to resolve the up-surge ("ἀναστάτωση") created by the nullification of the decision of 16.7.1983. Suffice it to say, the re-examination allegedly conducted by the Ministry of Education took place without examining afresh the files of the educationalists likely to be affected by the decision; certainly, they did not examine the file of the applicant still in the custody of the Court as an exhibit.

It is settled in administrative law that following the nullification of an administrative decision, a new decision can only emerge after holding a new inquiry extending to the evaluation of material not taken into account, in the first place—See, *Conclusions of the Greek Council of State*, p. 281. As the Court decided, the administration failed, in the first place, either to consider the application of Mrs. Nissiotou for transfer or, evaluate the merits of her claim to transfer, in the light of her educational record and educational needs in the context of the new structure of secondary schools.

On any view of what happened after the 14th October, 1983, the inescapable inference is that the first concern of the Ministry of Education was not the obliteration of the effects of the annulled decision, but the affirmation of the results in the context of a new decision. Whereas they showed marked disinclination to erase the results of the decision of 16.7.1983, they hurried to re-introduce them by a new decision. A communique was released on the same day and saw light in the press on the day following. The applicant first learned of the new decision through the press. A few days later she received a letter announcing the rejection of her application for transfer, dated 15.10.1983.

The applicant filed on 22.10.1983 the present application,

seeking the review of administrative action following the decision of the Court and, a declaration that they failed to implement the decision of the Court, coupled with a direction to comply with the decision of the Court. Mr. Angelides submitted that respondents not only failed to implement the decision of the Court, but ignored it in a manner contemptuous for the authority of the Court. The respondents opposed the application by a notice to that effect, accompanied by an affidavit of Mr. Leonidas Koullis, the Director of Secondary Education, alleging compliance with the decision of the Court. Mr. Koullis maintained in his affidavit that the Ministry of Education not only complied with the decision of the Court, but issued a new decision as expeditiously as possible after an inquiry and study of all material relevant to the decision. In the preamble to the decision itself, it is asserted the decision was arrived at after an exhaustive (ἐξονυχιστική) examination. Notwithstanding the contentions made in the opposition on the justiciability in law of the present application to the effect that it is ill founded, Mr. Evangelou acknowledged at the outset of his address, that the Court possesses power to compel organs of the State to observe the dictates of a decision of a revisional Court. In his supplementary address made after the adduction of evidence, he modified the effect of this submission, by adding that jurisdiction to review steps taken by the administration, is confined to contempt proceedings under Articles 150 and 162 of the Constitution.

For the applicant it was argued that the facts surrounding the new decision, as well as the contents of the decision itself, establish—

(a) That the Minister of Education, as well as his subordinates, refused or omitted to give effect to the decision of 14.10.1983, by failing to restore the factual situation obtaining prior to 16.7.1983;

(b) They arrived at the new decision without holding a new inquiry or heeding the material they failed to notice in the first place. And

(c) the new decision whatever its merits may be, was taken from the perspective of 15.10.1983 in contravention of the duty of the administration to face the situation from the perspective of 16.7.1983.

In support of the contention that the administration refused to implement the decision of the Court, evidence was given by one of the interested parties, namely Mr. G. Prodromou, bearing on the matter of the action of the administration after being apprised of the decision of the Court. The witness himself became cognizant of the decision of the Court at about noon of 14th October. Early the following morning, some time between 7.55 a.m. to 8 a.m., he rang up his superior, Mr. Koullis, and inquired whether he should, in view of the decision of the Court, report to the school where he served before the transfer of 16.7.1983. The answer of Mr. Koullis was in the negative, adding "And we shall see" (Και θα δούμε). Upon that, he observed to Mr. Koullis that his instructions were illegal in view of the decision of the Court. Mr. Koullis repeated he should report to the school whereto he was posted after 16.7.1983, adding a second time, "Go and we shall see" (Πήγαινε και θα δούμε). Mr. Prodromou intimated to Mr. Koullis he would renew his application to go back to his old school, in the name of legality, in writing, and seek a reply in writing from the authorities. A shortwhile later, at about 8.45 a.m., the same morning, he submitted his letter to Mr. Koullis who promised that an answer in writing would be given within the day. While at the office of Mr. Koullis, the telephone rang and Mr. Koullis had a conversation with someone on the 'phone'. When he hang up, he thought fit to inform Mr. Prodromou of who was on the 'phone', telling him it was the Minister of Education who wanted Mr. Koullis to report to the Minister with a view to examining the question of transfers. Mr. Koullis said, "We shall go upstairs" (meaning the office of the Minister) "to see what we shall do"—a statement suggesting, as the earlier answers of Mr. Koullis, that no decision had as yet been taken. Mr. Evangelou merely suggested to the witness in cross-examination, without disputing the contents of the evidence of Mr. Prodromou, that the directions of Mr. Koullis were meant to implement the new decision reached on 15.10.1983.

In evidence before me, Mr. Koullis alleged the decision of 15.10.1983 (exhibit B) was reached at a meeting of the Minister of Education, the Director-General of the Ministry and himself, sometime between 7.30 a.m. and 7.50 a.m. on the morning of 15.10.1983. Assuming his evidence to be correct, all that took

place at the aforesaid meeting was a consultation between the Minister and his subordinates, as to what should be done. Certainly, the decision (exhibit B) was taken later that day. According to Mr. Koullis, the preliminary decision reached on the morning of 15.10.1983, was taken without reference to the files of the parties, or the material that merited re-examination, or the application of Mrs. Nissiotou, as such. At best, it was a summary exchange of views.

The evidence of Mr. Koullis before me, is manifestly irreconcilable with the allegations made on oath in the affidavit accompanying the opposition that, the new decision was taken after a thorough examination and study of the relevant material. To my mind, the evidence given before me contradicts, in this respect, the contents of the affidavit of Mr. Koullis. That is not my only reservation about the evidence of Mr. Koullis. Had the decision been taken, as Mr. Koullis claimed, prior to 8 a.m. of the morning of 15th October, the natural thing to do would have been for Mr. Koullis to tell Mr. Prodromou he was to report to the school whereto he was transferred on 16.7.1983, because of the new decision. His failure to do so, casts grave doubts on the truth of his testimony, whereas the statements made to Mr. Prodromou are consistent with no decision having been taken. Moreover, the memory of Mr. Koullis cannot be trusted very well either. He was uncertain in his recollection as to who were present at the meeting he claimed to have taken place at 7.30 a.m. that morning. He remembered not whether the Legal Adviser of the Ministry, Mrs. Vrahimi, was present or not. I find the testimony of Mr. Koullis totally unreliable. It is without hesitation that I reject it.

From the testimony of Mr. Prodromou, as well as the circumstances surrounding the aftermath of the decision of 14.10.1983, I find the following:-

(1) The authorities refused to implement the decision by restoring the status quo ante.

(2) A senior official of the Ministry of Education, namely Mr. Leonidas Koullis, actively strove to obstruct the implementation of the decision of the Court, by issuing directions to Mr. Prodromou not to act in accordance with the decision of the Court.

(3) The decision of 15.10.1983 was taken without factually restoring the situation that existed prior to 16.7.1983 and, without carrying out a new inquiry encompassing the facts omitted from consideration on 16.7.1983.

The Jurisdiction of the Court under Article 146.5 *of the Constitution:*

Mr. Evangelou submitted that the legality of the decision of the Minister of Education, of 15.10.1983, as well as matters precedent and consequent thereto, can only be reviewed in proceedings under Article 146.1, impugning the validity of the new decision. Undoubtedly there is jurisdiction to review a decision reached on the same subject-matter as one annulled by a Court of revisional jurisdiction. Moreover, in his contention, as earlier noticed, Article 146.5 confers no jurisdication to review whether the Administration has complied with an order of the Court. Such jurisdiction can only be assumed or exercised, incidental to contempt proceedings. Specific jurisdiction vests in the Supreme Court by Articles 150 and 162 of the Constitution, to punish persons in contempt of Court orders—*Ioannides* v. *Republic* (1971) 3 C.L.R. 8. Mr. Angelides, on the other hand, submitted there is jurisdiction under Article 146.5 to inquire into whether the Administration complied with the decision of the Court and; if not, direct them to do so. The specific issue raised in the present proceedings was not resolved in any previous case.

It is instructive, in the first place, to notice that para. 5 of Article 146 of the Constitution is a provision encountered within the system of judicial control of administrative action established by the Constitution. The object of revisional jurisdiction is to ensure that the administration operates within the bounds of the law and in accordance with its provisions. The effectiveness of judicial review depends, to a large extent, on the machinery available for control of administrative actions. If the submission of Mr. Evangelou is sound, that compliance by the administration with Court decisions can only be reviewed by a new recourse or by contempt proceedings, the machinery provided would be inadequate. In *Ioannides*, supra, there are powerful dicta that the Court possesses inherent jurisdiction to declare the litigants' rights and obligations under the law. Possession of such jurisdiction is essential for the sustainance

of the rule of law. If action on the part of the administration to implement a Court judgment is only reviewable in a new recourse, a serious loophole would exist in the system of judicial control. For such inaction may not amount to contempt so as to give rise to proceedings under either Article 150 or Article 162, whereas a new recourse to challenge the act in itself would at best provide a circuitous as well as ineffective procedure for ensuring compliance with Court judgments. The administration would be at liberty to defy, in effect, indefinitely the discharge of its duties under a Court judgment to the detriment of legality and public revenue—*Frangoulides* v. *Republic* (1982) 3 C.L.R. 462. The efficacy of the whole system of administrative law would be imperilled if the Court was powerless to inquire into whether the administration has complied with the judgment of the Court and make a declaration accordingly. *Prof. Vegleris* takes the view that an administrative Court has jurisdiction, in the interests of legality, to pronounce on whether the administration has implemented a decision of an administrative Court. Not least, in order to exert moral pressure upon the administration to comply with the decision of the Court. The jurisdiction is especially useful where, as in this case, there is a dispute as to the duties of the administration under a Court judgment—*Compliance of the Administration with Decisions of the Greek Council of State*, p. 119. On behalf of the administration it was submitted, as mentioned earlier, that the obligations of the administration under the judgment of 14.10. 1983 were limited to reaching a new decision as early as possible. It is worthy of mention that inherent jurisdiction vests in superior Courts to make a declaration in the interests of law enforcement. This jurisdiction exists independently of remedial steps available for the enforcement of the law—see, *Attorney-General* v. *Chaudry* [1971] 3 All E.R. 938, 947 (CA), such as imprisonment and fines.

Proper judicial control over administrative action justifies the acknowledgment of jurisdiction to declare whether the administration has complied with a Court judgment. This view is also warranted by the wording of para. 5 of Article 146 and the object it is designed to serve within the framework of Article 146. Inaction on the part of the administration to resolve afresh matters affected by a nullifying decision of the revisional

Court, is justiciable under Article 146.1, as well as a new decision suffering from the same defects as the one discharged. Consequently, Article 146.5 would add little to the system of judicial control unless construed, as its wording suggests, as imposing a duty upon the administration to comply with the decision of the Court and conferring a corresponding right on the successful litigant to demand through judicial process the discharge of this duty. The right to demand compliance of the administration with the judgment of the Court, would be seriously muted if no jurisdiction existed to inquire into alleged failure or omission of the administration to comply with a judgment of the Court.

That jurisdiction resides with the Court to survey compliance and oversee enforcement of its judgments, is also implicit from and a corollary of our costitutional system of government based on the doctrine of separation of powers, importing autonomy and sovereignty of each power in its domain. The authority of the judiciary and the discharge of its constitutional mission in the field of administrative law, would be seriously impaired if it lacked jurisdiction to ensure enforcement of its judgments. Also, its role as the guardian of the rights of citizens under the law, would be diminished with grave consequences upon the rule of law. If compliance with its judgments rested with the discretion of the administration, the judiciary would lose its separateness in opposition to the system of government entrenched by the Constitution.

The jurisdiction is limited to ascertaining whether the administration has complied with the judgment of the Court that encompasses steps taken in the direction of erasing the consequences of the annulled act and restoring the factual regime prevailing at the time the decision was taken with a view to preparing the ground for the issue of a valid decision. To that extent there is jurisdiction under Article 146.5 to pronounce on the action of the administration. Certainly, there is no jurisdiction to review a new decision reached after restoring the status quo ante, a matter exclusively amenable to the revisional jurisdiction of the Supreme Court under Article 146.1 of the Constitution.

In the light of the above, I conclude there is jurisdiction to

take cognizance on the present application, with a view to inquiring whether the administration has implemented the judgment of the Court. What remains to decide, is whether, in the light of the findings of the Court noted earlier, the administration complied with the judgment of the Court.

The Duties of the Administration consequent upon a Judgment nullifying a Decision:

The administration is dutybound to restore the status quo ante, that is, the factual situation that existed at the time the abortive decision was taken—*Christofides* v. *Attorney-General* (1981) 1 C.L.R. 18, 21. The administration must restore legality first before attempting to issue a new act—see, *Theocharopoulou* supra, p. 68. Where a decision is annulled because of breach of a positive duty cast by law, as in this case, with respect to reg. 14(1) of the *Educational Service Regulations* of 1972, the restoration of the factual situation prevailing at the time the annulled decision was taken, is a condition precedent to the issue of a new act—see, *Conclusions from the Greek Council of State*, p. 281, and *Theocharopoulou*, supra, p. 68.

The second necessary step that must be taken in compliance with the judgment of the Court that must precede the issue of a new decision, is the holding of a new inquiry that should encompass consideration of all that the administration wrongly omitted to consider in the first place—see, *Conclusions from the Greek Council of State*, p. 281.

As *Tahos* observes in his work on *Modern Tendencies of the Principle of Legality in Administrative Law*, at p. 225, refusal to comply with the judgment of an administrative Court, is primarily expressed or signified by the refusal to implement the decision of the Court, by restoring the state of affairs pre-existing the annulled decision. In a footnote, the learned author makes reference to the observations of *Waline* on a review of French caselaw that principles of administrative law must be strictly adhered to by the administration if we are to uphold the rule of law.

Applying these principles to the facts of the case, it emerges that the Minister of Education and his subordinates failed to give effect to the judgment of the Court, in breach of their

constitutional duty under Article 146.5. In my judgment, instead of obliterating the results of the annulled decision in furtherance to their duty to comply with the judgment of the Court, they suffered them to continue under the guise of compliance. Their actions were directed towards circumventing the judgment of the Court, thereby subverting legality in the administration to the detriment of the rule of law. Therefore, I find that the administration failed to comply with the judgment of the Court of 14.10.1983. They are dutybound to give effect to it.

I consider it pertinent to administer this warning to veryone coming under a duty to implement and give effect to a judgment of an administrative Court. The power to punish for contempt, is not limited to immediate parties to the proceedings who wilfully disobey or flout a judgment of the Court, but extends to third parties aiding disobedience or disregard of such judgments —see *Ioannides*, supra, and *Thorne R.D.C.* v. *Bunting* (*No.* 2) [1972] 3 All E.R. 657.

Order accordingly.