IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

P. M. TSERIOTIS LTD. AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent.

(*Cases Nos.* 32/68, 47/68, 92/68, 97/68, 132/68, 169/68, 258/68, 260/68).

Customs duty—Foreign currency—Devaluation of sterling and Cyprus Pound (17 *and* 21 *November* 1967 *respectively*)—*Vehicles imported, or ordered and paid for, from countries outside the "sterling area", prior to such devaluation—Basis of ascertainment of their value for custom duty purposes before the repeal on December* 30, 1967 *of the Customs Management Law, Cap.* 315—*By converting into sterling (or Cyprus pound) the contract prices expressed in foreign currencies at the time of warehousing the goods and not at the time of the clearance from customs—Such practice consistent with, and reflecting, the proper construction, as a whole, of the Customs Management Law, Cap.* 315—*Position different after repeal of Cap.* 315 *on December* 30, 1967, *by the Customs and Excise Law* 1967 (*Law No.* 82 *of* 1967)—*Matter now regulated by section* 159 *of the said repealing Law No.* 82 *of* 1967—*Section* 79 *whereof is inapplicable—Consequently, the value of the vehicles involved in these recourses and cleared from the Customs for home use (either immediately on importation or on removal from approved warehouse) after December* 30, 1967, *shall be the equivalent in sterling or Cyprus pound (after their devaluation on November* 17 *and* 21, 1967 *respectively,* supra) *of the contract price of each such vehicle—There is nothing in this course repugnant to the provision in Article* 24.3 *of the Constitution excluding imposition of taxation with retrospective effect—Nor to the principle of equal treatment safeguarded under Article* 28 *of the Constitution—Or to the general rule under section* 10(2) *of the Interpretation Law, Cap.* 1 *to the effect that repealing legislation has only prospective effect unless the contrary intention appears in such repealing Law.*

Devaluation of sterling and Cyprus currency—Its impact on customs duties—See supra.

Taxation—Retrospective imposition of taxation—Prohibited under Article 24.3 *of the Constitution—But the Customs Management Law, Cap.* 315 *as well as the Customs and Excise Law,* 1967 (supra) *are not statutes imposing taxation, but customs management and administration legislation—Nor is section* 159 *of the latter Law (Law No.* 82 *of* 1967) *within the ambit of the said Article* 24.3 *of the Constitution—See also* supra.

Equality—Principle of equal treatment—Article 28 *of the Constitution—Does not exclude reasonable differentiations—Devaluation of sterling and Cyprus pound on November* 17 *and* 21, 1967, *respectively—Customs duty—Basis of ascertainment, for purposes of customs duty, of value of goods imported, or ordered and paid for, from countries outside the "sterling area", prior to the devaluation aforesaid—It involves no discrimination within Article* 28 (*or* 6) *of the Constitution.*

Constitutional Law—Articles 6, 24.3 *and* 28 *of the Constitution—See* supra.

Statutes—Repeal—Prospective effect—Section 10(2) *of the Interpretation Law, Cap.* 1—*See* supra.

All these eight recourses challenge decisions of the Director of the Department of Customs and Excise to impose on motor vehicles imported by the several Applicants from countries outside the "sterling area" custom duty which was calculated on the basis of the value of such vehicles in relation to the value of the Cyprus pound after its devaluation as from November 21, 1967 (which followed the equal devaluation of the sterling on November 17, 1967), even though the said vehicles were either imported prior to the 21st November 1967, or, in the case of those imported after that date, they had been ordered and paid for before such date.

Actually, the vehicles involved in cases 32/68, 47/68, 92/68, 97/68, 169/68, 258/68 and 260/68 were imported before November 21, 1967, but they were not cleared immediately for home use; they were placed in approved warehouses and they were cleared, later, on various dates, after November 21, 1967; the same applies to six vehicles involved in Case No. 132/68 whereas five other vehicles involved in the same case were ordered and paid for before November 21, 1967, but they were imported after that date.

It is common ground that customs duty became payable only on clearance of the goods for home use. It is also common ground that the position until December 29, 1967 was covered by the Customs Management Law, Cap. 315 and as from December 30, 1967, by the Customs and Excise Law 1967 (Law No. 82 of 1967) which repealed Cap. 315.

It is pertinent to point out that there was uncontradicted evidence on behalf of the Respondents that the invariable practice followed until the aforesaid devaluations in November 1967, was to calculate the customs duty on the basis of the value of the imported goods as ascertained at the time when the goods were placed in approved warehouses (described, also as "bonded" or "licensed" warehouses); and, at the time when warehousing entries were presented to Customs, prices expressed in foreign currencies were converted into sterling for internal accounting purposes and that in practice these values were accepted for duty purposes at the time of the clearance of the goods.

It was argued on behalf of the Applicants, *inter alia*, that the value of the vehicles involved in these recourses should have been determined by reference to the time when the vehicles were imported, or ordered and paid for, no matter whether such vehicles had been cleared from the Customs after the aforesaid devaluation; and that the course taken by the Respondent offends against the principle, safeguarded by Article 24.3 of the Constitution, excluding retrospective imposition of taxation; and, also, against the rule embodied in section 10(2) of the Interpretation Law, Cap. 1 (*infra*). It was, also, argued that the said course taken by the Respondent amounts to a breach of the principle of equal treatment (see Article 28 of the Constitution) in that it establishes a discrimination (a) as between importers who cleared from the Customs their vehicles prior to the date of devaluation (viz. November, 1967) and those who imported, or ordered and paid for, them prior to that date, but cleared them after it; (b) as between importers from sterling area countries and those from other countries.

Held, I. As regards the vehicles cleared from the Customs while Cap. 315 (supra) *was still in force, viz. until December* 29, 1967:

(1) Leaving aside the complicated question of principle as to whether or not, and to what extent, custom can be a

source of administrative law (see Kyriacopoulos on Greek Administrative Law, 4th edition, Vol I pp. 78–80; Dendias on Administrative Law, 5th edition, Vol. I pp. 51–52), it seems to be sufficiently clear that an administrative practice which is consistent with the correct construction of the relevant legislation is properly applicable (see Stasinopoulos, Lectures on Administrative Law, 1957, p. 127).

(2) There is no provision in Cap. 315 (*supra*) laying down expressly that the value of goods has to be ascertained by reference to the time of their clearance from the Customs. On the contrary, the conclusion may be drawn, when reading together provisions such as sections 148 (defining the time of importation of goods), 138 (regarding the determination of customs duties *ad valorem*) and 94 (providing about the re-valuation of warehoused goods), that the value being material for purposes of customs duty is to be the value assessed at the time the goods are imported and placed in an approved warehouse, if not cleared at once, for home use, on importation.

(3) I have, thus, reached the conclusion that the practice followed (*supra*) was consistent with, and reflected, the proper construction, as a whole, of the relevant legislation, Cap. 315 (*supra*); and that, therefore, it should have been followed in relation to all vehicles involved in the present proceedings and cleared from the Customs while the Customs Management Law, Cap. 315 was still in force, viz. until December 29, 1967.

(4) In the light of the foregoing I have decided that recourse 32/68 ought to suceed, and the relevant decision of the Respondent should be annulled, in so far as it relates to the vehicles, involved in that recourse, which were cleared from the Customs up to the 29th December, 1967; and the same applies in relation to the vehicles involved in recourses 47/68 and 92/68, which were cleared from the Customs up to the said date. To that extent, therefore, the *sub judice* decisions of the Respondent are declared to be *null* and *void* and of no effect whatsoever.

Held, II: As regards all other vehicles involved in these eight recourses, which were cleared from the Customs on or after the 30th December, 1967—when Law No. 82 of 1967 (supra) *came into force repealing Cap. 315* (supra):

(1) (a) With regard to those vehicles, I find that the matter is amply covered by section 159 of the aforesaid Customs and

Excise Law 1967 (Law No. 82 of 1967) enacted on December 30, 1967. Section 79 of the said Law is clearly inapplicable.

(*Note:* The material parts of section 159 i.e. sub-sections (1) and (2) are set out in full *post* in the judgment of the Court).

These two sub-sections are practically the same as the corresponding sub-sections of section 258 of the (English) Customs and Excise Act, 1952, the effect of which is set out in Halsbury's Laws of England, 3rd ed. Vol. 33, p. 147, para. 252, particularly foot-note (r) at p. 147: "Value for the purposes of duty chargeable *ad valorem*, of goods entered for home consumption on their removal from warehouse is thus their value at the time they are so entered."

(b) The now in force section 159 of our Law No. 82 of 1967 (*supra*) should be read together with the provisions of sections 24 and 77, the corresponding provisions of the English Act (*supra*) being sections 28 and 86, respectively.

(2) In the light of the foregoing, it follows that for the purposes of Customs duty, the value of each vehicle involved in these recourses, when entered for home use (either immediately on importation or on removal from warehouse) after December 30, 1967, was rightly taken to be the equivalent in sterling—after its devaluation in November 1967—of the contract price of each such vehicle (as such contract price is to be understood for the purposes of section 159, *supra*).

(3) (a) It was argued that in relation to vehicles which were either imported, or ordered and paid for, while Cap. 315 (*supra*) was in force (viz. until December 29, 1967), the provisions of the Law should have been applied and not those of the repealing Law No. 82 of 1967 (*supra*) in view of the provisions of Article 24.3 of the Constitution prohibiting the imposition of taxes with retrospective effect; and in view also of section 10(2) of the Interpretation Law, Cap. 1 to the effect that as a general rule a repealing statute has only prospective effect, unless the contrary intention appears in such Law.

(b) Regarding the argument based on Article 24.3 of the Constitution, I am of opinion that it has no application to the present cases for the very simple reason that the Customs and Excise Law 1967 (Law No. 82 of 1967)—like the Customs Management Law, Cap. 315—is not a statute imposing taxation

but Customs management and administration legislation; and a provision such as section 159 of Law No. 82 of 1967, laying down the method of ascertaining the value of goods for the computation of Customs duty, cannot, in my opinion, be held to be, in any sense, a provision within the ambit of Article 24.3 of the Constitution.

(c) Regarding the argument based on section 10(2) of Cap. 1 (*supra*), it cannot be said that any right or privilege exists vested in the Applicants under Cap. 315 in respect of the vehicles concerned. Once a Law such as the repealing Law No. 82 of 1967 (*supra*) was enacted, renovating as a whole, in accordance with modern concepts, the administration and management of Customs it cannot be reasonably inferred that it was intended to allow the continuance, in respect of any goods, of the earlier practice under Cap. 315, which practice was not even laid down by an express provision (*supra*).

(4) (a) It has, next, been submitted that the course taken by the Respondent—based on Law No. 82 of 1967 *supra*—involved discrimination as between importers who cleared from the Customs their vehicles prior to the date of devaluation and those who imported, or ordered and paid for, them prior, to such date, but cleared them after it; and further that there would be discrimination as between importers from sterling area countries and those from other countries.

(b) On any view I cannot find any discrimination being involved; because there is a difference in the material circumstances and in the essential nature of things in general. An importer who chose to keep imported vehicles in an approved warehouse, instead of clearing them at once from the Customs, took certain risks, including those of devaluation or of an increase in the meantime of the relevant Customs tariff, which those importers who cleared from the Customs their vehicles immediately on importation did not choose to take.

(c) Also, it is a well established distinction which is based on obvious reasonable factors and, thus, it cannot be regarded as involving discrimination, for importers who import from a group of countries to which the importing country belongs and deal on the basis of the currency applicable for the whole of such group, to be in a position which may, due to the nature of things, be different from that of those who import from outside that group or deal in foreign currencies.

(5) For all the foregoing reasons these recourses fail, except to the extent indicated by this judgment that they should succeed (see *supra* under I); there shall be, in the circumstances, no order as to costs.

Recourses dismissed except to the extent indicated in the judgment that they should succeed. No order as to costs.

Recourses.

Recourses against the decisions of the Respondent to impose on vehicles imported by the Applicants from countries outside the "sterling area", custom duty calculated on the basis of the value of such vehicles in relation to the value of the Cyprus pound after its devaluation on the 21st November, 1967, even though the said vehicles were either imported on the 21st November 1967, or in the case of those imported after that date, they had been ordered and paid for before such date.

A. Triantafyllides, for Applicants in cases 32/68, 47/68, 92/68, 97/68, 169/68, 258/68, 260/68.

N. Zomenis, for Applicant in case 132/68.

K. Talarides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:

TRIANTAFYLLIDES, J.: All these eight recourses, which were heard together in view of their involving common issues, challenge decisions of the Director of the Department of Customs & Excise, who comes under the Respondent Minister of Finance, to impose on vehicles imported by the several Applicants from countries outside the "sterling area", custom duty which was calculated on the basis of the value of such vehicles in relation to the value of the Cyprus pound after its devaluation as from the 21st November, 1967, (which followed the equal devaluation of the sterling, on the 17th November, 1967), even though the said vehicles were either imported prior to the 21st November, 1967, or, in the case of those imported after that date, they had been ordered and paid for before such date.

Actually, the vehicles involved in cases 32/68, 47/68, 92/68, 97/68, 169/68, 258/68 and 260/68 were imported before the 21st November, 1967, but they were not cleared, immediately, for home use; they were placed in approved warehouses and they were cleared, later, on various dates, after the 21st November, 1967; the same applies to vehicles under Nos. 1, 2, 3, 4, 10 and 11 in Schedule 'A' attached to the Application in case 132/68, whereas vehicles under Nos. 5, 6, 7, 8 and 9 in the said schedule were ordered and paid for before the 21st November, 1967, but they were imported after such date. It is common ground that customs duty became payable only on clearance for home use.

During the long and protracted hearing of these cases, counsel tried to base their opposing views, regarding the value be reference to which the customs duty ought to be imposed, by relying mainly on various provisions of the Customs Management Law (Cap. 315) and of the Customs and Excise Law, 1967 (Law 82/67), which repealed Cap. 315 as from the 30th December, 1967.

It is convenient to mention at this stage that there was, also, evidence given by a Customs & Excise Officer, 1st grade, Mr. G. Asprou—(who was called to testify by counsel for the Respondent)—to the effect that, during eighteen years when he had been dealing with valuation matters in his Department, it was always the practice in such Department to calculate the customs duty on the basis of the value of imported goods as ascertained, for accounting purposes, at the time when the goods were placed in approved warehouses (described, also, as "bonded" or "licensed" warehouses).

Subsequently, there was put in, by consent, as *exhibit* 13, a letter dated the 26th April, 1969, and addressed by the Department of the Director of Customs & Excise to counsel for the Respondent (with copy to the Director-General of the Ministry of Finance), by means of which the Director confirmed the evidence of Mr. Asprou and proceeded to state, *inter alia*, the following:-

> " At the time when warehousing entries were presented to Customs, prices expressed in foreign currencies were converted into sterling (a) for internal accounting purposes and (b) for compilation of trade statistics. In practice, these values were accepted for duty purposes at the time

of clearance. No cases can be traced in the Department in which these values were adjusted at the time of clearance.

There is no evidence by way of minutes, correspondence etc. indicating that the legal position or administrative practice were considered at the time of the several devaluation/revaluations during 1957–1961. In these cases, as well, values determined at the time of warehousing prevailed at the time of clearance for home use".

Of course, if the practice followed in the past by the Department in question was contrary to law, it cannot create a legal rule which would enable the Applicants to succeed in these recourses. But, leaving aside the complicated question of principle as to whether or not, and to what extent, custom can be the source of law for administrative law purposes (see Kyriacopoulos on Greek Administrative Law, 4th ed., Vol. I, p. 78–80 and Dendias on Administrative Law, 5th ed., Vol. I, p. 51–52), it seems to be sufficiently clear that an administrative practice which is consistent with the correct construction of the relevant legislation is properly applicable (see Lectures on Administrative Law by Stassinopoullos, 1957, p. 127).

There is no provision in Cap. 315 laying down expressly that the value of goods is to be ascertained by reference to the time of their clearance from the Customs. On the contrary, the conclusion may be drawn, when reading together provisions such as sections 148 (defining the time of importation of goods) 138 (regarding the determination of customs duties *ad valorem*) and 94 (providing about the revaluation of warehoused goods), that the value being material for purposes of customs duty is to be the value assessed at the time the goods are imported and placed in an approved warehouse, if not cleared at once, for home use, on importation.

I have, thus, reached the conclusion that the practice mentioned in *exhibit* 13 was consistent with, and reflected, the proper construction, as a whole, of the relevant legislation, Cap. 315; and that, therefore, it should have been followed in relation to all vehicles involved in the present proceedings and cleared from the Customs while Cap. 315 was still in force, viz. until the 29th December, 1967.

In the light of the foregoing I have decided that recourse 32/68 ought to succeed, and the relevant decision of the

Respondent should be annulled, in so far as it relates to the vehicles, involved in such recourse, which were cleared from the Customs up to the 29th December, 1967; and the same applies in relation to the vehicles involved in recourses 47/68 and 92/68, which were cleared from the Customs up to the said date. To that extent, therefore, the *sub judice* decisions of the Respondent are declared to be *null* and *void* and of no effect whatsoever.

As regards, however, all other vehicles involved in these eight recourses, which were cleared from the Customs on or after the 30th December, 1967—when Law 82/67 came into force, repealing Cap. 315—I find that the matter is amply covered by section 159 of Law 82/67, the first two sub-sections of which read as follows:-

"159.-(1) For the purposes of any enactment for the time being in force whereunder a duty of customs is chargeable on goods by reference to their value, the value of any imported goods shall be taken to be that laid down by the First Schedule and duty shall be paid on that value:

Provided that, in the case of goods imported under a contract of sale and entered for home use, duty shall be deemed to have been paid on that value if, before the goods are delivered for home use, duty is tendered and accepted on a declared value based on the contract price.

(2) For the purposes of the proviso to the foregoing sub-section -

(a) the declared value of any goods is their value as declared by or on behalf of the importer in making entry of the goods for home use;

(b) that value shall be deemed to be based on the contract price if, but only if, it represents that price properly adjusted to take account of circumstances differentiating the contract from such a contract of sale as is contemplated by the Schedule;

(c) the rate of exchange to be used for determining the equivalent in sterling of any foreign currency shall be the current selling rate in the Republic as last notified before the time when the goods are entered for home use".

These two sub-sections are practically the same as the corresponding sub-sections of section 258 of the English Customs and Excise Act, 1952; and the First Schedule referred to in sub-section (1) of our section 159 is substantially the same as the Sixth Schedule to the said English Act (see Halsbury's Statutes of England, 2nd ed., Vol. 32, p. 855, p. 909).

The effect of the aforesaid provisions of the English Customs and Excise Act, 1952, is set out in Halsbury's Laws of England, 3rd ed., Vol. 33, p. 147, para. 252; and, as it appears from foot-note (r), at p. 147, the "value, for the purposes of duty chargeable *ad valorem*, of goods entered for home consumption on their removal from warehouse is thus their value at the time they are so entered".

It is interesting to note that no such statement appears in the earlier, 2nd edition, of Halsbury's Laws of England (see Vol. 28), because in the legislation then in force in England, prior to 1952, there was not to be found a provision in the terms of section 258 of the Customs and Excise Act, 1952; and at the part of the text of the said Vol. 28, dealing with the valuation of goods for purposes of duties (see p. 314, para. 584) reference is made to section 10(1) of the English Finance Act, 1935 (see Halsbury's Statutes of England, 2nd ed., Vol. 21, p. 1155) which bears a significant similarity to our section 138 of Cap. 315. This is something which, in my opinion, strengthens the view, that, prior to the enactment in Cyprus of a provision such as section 159 of Law 82/67, it was lawful to treat the value of any goods, as it was ascertained on their importation, as being their value which was relevant to the matter of the imposition of customs duty in relation to the said goods, even if such goods were, before clearance from the Customs, placed in an approved warehouse.

The now in force section 159 of Law 82/67 should be read together with the provisions of section 24 of the same Law, about delivery by an importer to the proper Customs officer of an "entry" of imported goods and the possibility of entering such goods for, *inter alia*, warehousing or home use; and, also, with the provisions of section 77, regarding delivery of an "entry" of any goods removed from a warehouse (a warehouse, of course, duly approved under the Law) and the possibility of entering such goods for, *inter alia*, home use; the corresponding provisions of the English Customs and Excise Act, 1952, being sections 28 and 86.

In the light of the foregoing, it follows, from a proper application to the circumstances of these cases of section 159, that, for purposes of Customs duty, the value of each vehicle involved in these recourses, was rightly taken to be—when entered for home use, either on importation or on removal from a warehouse, on or after the 30th December, 1967—the equivalent in sterling—after its devaluation in November 1967—of the contract price of each such vehicles (as such contract price is to be understood for the purposes of section 159).

On the material before me it is clear that the vehicles in question are goods within the ambit of sub-section (1) of section 159, and particularly of the proviso thereto, and there are applicable in relation to them the provisions of sub-section (2) of section 159.

All such vehicles were imported from countries outside the sterling area and their values were contracted for, and paid in, foreign currencies (see paragraph 3 in the Applications in all these eight recourses). The facts that for banking transactions in Cyprus the said values may have been converted into sterling or that on some of the documents relevant to certain of the vehicles involved in Case 132/68 the dollar values are, also, expressed in terms of sterling, do not, in my opinion change, in the least, the foreign exchange nature of the transactions concerned.

It has been argued that in relation to the vehicles which were either imported, or ordered and paid for, while Cap. 315, and not Law 82/67, was in force, the provisions of the former, and not of the latter, enactment should have been applied; because the application of the provisions of Law 82/67 was excluded by Article 24.3 of the Constitution—which prohibits the imposition of taxation with retrospective effect—and by section 10 of the Interpretation Law (Cap. 1), which provides about the effect of a repeal of a statute.

Moreover, it has been submitted, that even if Law 82/67 were to be found to be properly applicable, then it is section 79 thereof which should provide the answer about the disputed issue regarding the value on the basis of which the Customs duty ought to have been computed.

It is convenient to deal with this last point at once, before dealing with those just mentioned earlier in this judgment:

In my opinion, on a proper reading of section 79, in the context of the whole Law 82/67, it is obvious that it refers to an account being taken of the quantity, weight, volume and the like of warehoused goods, and it has nothing to do with the ascertainment of their value for Customs duty purposes.

Regarding the argument based on Article 24.3, Law 82/67—like Cap. 315—is not a statute imposing taxation, but Customs management and administration legislation; and a provision, such as section 159 of Law 82/67, laying down the method of ascertaining the value of goods for the computation of Customs duty, cannot, in my opinion, be held to be, in any sense, a provision within the ambit of Article 24.3 of the Constitution.

In relation to the argument based on section 10 of Cap. 1, what I have to observe is that there cannot, in the circumstances, be said to exist any right or privilege vested in the Applicants, under Cap. 315, regarding the vehicles concerned; all that has happened is that, when Cap. 315 was repealed by Law 82/67, the approach to the question of the valuation for purposes of Customs duty was put, by express legislative provision, on a more realistic and precise basis, such provision being clearly intended to be applicable as from the 30th December, 1967. Once a Law, such as Law 82/67, was enacted, renovating as a whole, in accordance with modern concepts, the administration and management of Customs, it cannot be reasonably inferred that it was intended to allow the continuance, in respect of any goods, of the earlier practice, which was not even laid down by an express, for the purpose, provision in the repealed Cap. 315; so, the application of the provisions of section 10—even if they are at all relevant—is excluded by a contrary intention to be derived from the whole context and object of Law 82/67. Moreover, the valuation of the vehicles concerned, being an administrative act, had to be governed by the law in force at the time, viz. section 159 of Law 82/67.

It has, next, been submitted that the course taken by the Respondent—based on Law 82/67—involved discrimination as between importers who cleared from the Customs their vehicles prior to the date of the devaluation and those who imported, or ordered and paid for, them prior to such date, but cleared them after it; and, further, that there would be involved discrimination as between importers from sterling area countries and those from other countries.

On any view I cannot find any discrimination being involved; because there is a difference in the material circumstances and in the essential nature of things in general. An importer who chose to keep imported vehicles in an approved warehouse, instead of clearing them at once from the Customs, took certain risks, including those of devaluation or of an increase in the meantime of the relevant Customs tariff, which those importers who cleared from the Customs their vehicles immediately on importation did not choose to take. Also, it is a well established distinction, which is based on obviously reasonable factors and, thus, it cannot be regarded as involving discrimination, for importers who import from a group of countries to which the importing country belongs and deal on the basis of the currency applicable for the whole of such group, to be in a position which may, due to the nature of things, be different from that of those who import from outside that group or deal in foreign currencies.

For all the foregoing reasons these recourses fail, except to the extent indicated by this judgment that they should succeed; there shall, in the circumstances, be made no order as to costs.

Applications dismissed except to the extent indicated in the judgment that they should succeed; no order as to costs.