1986 January 28

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

KYRIACOS M. TYLLIS AND CO. LTD.,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(Case No. 7/83).

The Income Tax Laws 1961-1981—Depreciation of 100% on certain fixed assets (s. 12(2)(d))—Ss. 11(1) and 13(e)—Expenses of a capital, and not of a revenue nature, not deductable—Test to be applied for determination of the question whether an expense is of a capital or of a trading nature—Mortgage Fees—As such fees were paid once and for all they constituted in the circumstances an expense of a capital nature.

The Assessment and Collection of Taxes Laws 1978 to 1979—S.36(1) ("Artificial" or "fictitious" transaction)—Ss. 41 and 42(2) (Interest payable on the amount of the Income Tax).

The Special Contribution (Temporary Provisions) Law 34/78 as amended—Section 6 of said Law—Balancing Additions—The provisions of s.12(3) and (4) of the Income Tax Laws are applicable in the computation of income liable to Special Contribution.

Administrative Law—General Principles—Assessment of factual background by an administrative organ—The correctness of such assessment is subject to judicial scrutiny.

Administrative Law—General Principles—Principles of Fair

Administration—Income Tax—Treating a lease as valid, when taxing the lessor, and at the same time treating the same lease as "artificial" or "fictitious" when taxing the lessee, is contrary to such principles.

The applicants impugn by means of this recourse the Income Tax Assessments of the respondent Commissioner for the years of assessment 1979 to 1981, both inclusive and the Special Contribution Assessments for the quarters that ended in the years 1979 to 1981 both inclusive.

The present recourse presents five broad issues for consideration as follows, namely.

(a) A claim by applicants to the effect that they are entitled to 100% accelerated depreciation in respect of two offices purchased by them allegedly on 10.12.1979 for income tax and special contribution purposes. The applicants based their claim on s.12(2)(d) of the Income Tax Laws 1961 to 1981. Section 12(2)(d) allows of such accelerated depreciation in respect of certain fixed assets provided that the liability or expenditure thereof was "incurred until the 31.12.1979". By the sub judice decision the respondent Commissioner rejected the said claim on the ground that the applicants are not entitled to such accelerated depreciation as aforesaid, because they did not incur such a liability or expenditure before the 31.12.79 but after that date.

(b) A claim by applicants for deduction of £150 per annum in respect of rent allegedly paid for a building site at Larnaca. This claim was based on a contract of lease dated 1.6.79, whereby the managing director of the applicant company let to the applicant company a building site at Larnaca for a period of 33 years at £150.- per annum. The applicant, according to the agreement, would incur the costs of constructing a building on the site and would be entitled to collect rents from such a building for the said period. The respondent Commissioner found that the transaction was "artificial" or "fictitious" and relying on s. 36(1)*

* Section 36(1) is quoted at p. 412 post.

of the Assessment and Collection of Taxes Laws 1978 to 1979 disallowed the claim. It should be noted that the Commissioner has taxed the lessor under the same agreement for the income of £150.- per annum.

(c) A claim by applicants for £684.- mortgage fees paid on the raising of a loan. This claim was disallowed by the Commissioner on the basis of the combined effect of s. 11(1) and 13(e) of the above Income Tax Laws.

(d) Balancing Additions. The applicants in this respect complained that the respondent Commissioner erroneously included in the income assessed for Special Contribution for the years 1980 to 1981 an amount of £209.- and an amount of £3,879.- respectively, sums which are allegedly balancing additions made under the provisions of s. 12(3) and (4) of the said Income Tax Laws, and

(c) Interest claimed by the respondent for the year of Assessment 1980, i.e. 9% per annum as from 1.7.81. The applicants submitted that the claim is unfounded, because no unreasonable default can be found on their part. In particular they maintained that the points involved in this recourse are points of law and as they were under the honest belief that they were entitled to the said accelerated depreciation claimed it would be unfair to penalise them by imposing interest on the ground of unreasonable default.

Held, (A) *As to the First of the above issues:* The correctness of assessment of the factual background by an administrative organ, is undoubtedly, inter alia, within the scope of a judicial scrutiny. In the light of the evidence adduced as well as the other material in the file it was in the circumstances of this case reasonably open to the respondent Commissioner to make the finding he made, namely that the liability or expenditure in question was not incurred until the 31.12.79, but after that date.

(B) *As to the Second of the above issues:* It is against the principles of fair administration to treat the same lease

as valid one, when taxing the lessor, and at the same time treat that very same lease as "artificial or fictitious", when taxing the lessee, thus disallowing the relevant deduction from the latter's income. The Commissioner was greatly influenced by a single factor, namely the position of the lessor as Managing Director of the applicant company and failed to attach due weight to an equally important factor, namely the duration of the lease. The sub judice decision on this issue has to be annulled.

(C) *As to the Third of the above issues:* An expense which is of a capital nature and not of a revenue (trading) nature does not qualify as a deductable expense. The fees on the mortgage in question are an expense made once and for all, not of a reccurring nature and, therefore, of a capital and not of a revenue nature.

(D) *As to the Fourth of the above issues:* As it is clear from the wording of Law 34/78, as amended, the Income Tax Laws are applicable to the assessment of Special Contribution. Section 12(4) of the said Income Tax Laws dealing with "balancing additions" is also applicable in the computation of income, liable to special contribution.

(E) *As to the Fifth of the above issues:* The demand for interest is governed by ss. 41 and 42(2) of the Assessment and Collection of Taxes Laws, 1978 to 1979. As the dispute relating to the claim for accelerated depreciation was a pure factual issue the Commissioner's decision in respect of interest was reasonably open to him.

Sub judice decision annulled in part. No order as to costs.

Cases referred to:

Georghiades v. *The Republic* (1982) 3 C.L.R. 659;

HadjiEracles and Another v. *The Republic* (1984) 3 C.L.R. 604;

Georghiades v. *The Republic* (1972) 3 C.L.R. 157;

Kontos v. *The Republic* (1985) 3 C.L.R. 1137.

Recourse.

Recourse against the income tax assessments and the special contribution assessments raised on applicants for the years of assessment 1979 to 1981.

G. Triantafyllides, for the applicants.

M. Photiou, for the respondents.

Cur. adv. vult.

LORIS J. read the following judgment. The applicants, a company of limited liability, impugn my means of the present recourse:

A. The Income Tax Assessments of the respondent Commissioner for the years of assessment 1979 to 1981, both inclusive, set out in part (a) of the prayer.

B. The Special Contribution Assessments, for the quarters that ended in the years 1979 to 1981, both inclusive, set out in part (b) of the prayer,

praying that the aforesaid assessments be declared null and devoid of any legal effect.

The facts of the present case are very briefly as follows:

Applicant Company was incorporated in January, 1974, as a private company of limited liability, and derives its income from insurance business and it is the representative in Cyprus, of Cosmos Insurance Company of Greece.

Applicant company before submitting accounts for the year 1979, on 19.2.1980, sent a letter (ex. 2) to the respondent Commissioner requesting him to withdraw their return submitted on 25.1.1980 which was declaring a temporary assessable income of £15.000.- for the year of assessment 1980.

Applicant's audited accounts for 1979, 1980 and 1981 were submitted on 6th May, 1980, 18th April 1981 and 14th April, 1982, respectively, by their auditors Messrs

Timenides and Evangeli.

Upon examination of the accounts by the respondent Commissioner for the years 1979 to 1981 matters briefly set out in issues under Nos. 1, 2 & 3 stated herein below, arose; several letters were exchanged with applicants and matters stated at pages 3 to 9 of the opposition were examined by the respondent. who finally communicated his decision to the auditors of the applicant company by letter dated 17th November, 1981 (ex. 3) and the relative Notices of Assessment.

Applicant objected against the assessments raised by the respondent on grounds set out in their letter (exh. 4 to 6).

The respondent Commissioner after considering again the relevant facts and circumstances reached at the sub judice decision which was communicated to the applicants by letter dated 23.10.82 with the relevant Notices of Tax payable appended (ex. 7).

Hence the present recourse which was filed on 5.1.83.

The managing director of the applicant company gave evidence before me at the hearing as A.W. 1 and produced several documents (exhibits 9 - 14, both inclusive); another witness namely Christakis Makaritis (A.W. 2) was also called by applicants; he is the internal accountant of Skepi Ltd., the company which allegedly sold the two flats (subject matter of issue 1 below) to the applicants. This witness gave evidence viva voce and also produced exhibits 15, 16 and 17.

The applicants called no other witness; the respondents did not call any witnesses and finally counsel on both sides filed written addresses.

The present recourse presents five broad issues for consideration as follows:

(1) A claim by applicants to the effect that they are entitled to 100% accelerated depreciation in respect of two offices purchased by them allegedly on 10.12.1979, for income tax and special contribution purposes;

(2) A claim by applicants for deduction of £150.- per

annum in respect of rent allegedly paid for a building site at Larnaca.

(3) A claim by applicants for the deduction of £684.- in respect of mortgage fees paid.

(4) Balancing Addition. Whether the inclusion by the respondent Commissioner in the income liable to special contribution for the years 1980 and 1981 of the sums of £209.- and £3,879.- respectively, representing balancing addition, is justified or not.

(5) Interest claimed by the respondent for the year of assessment 1980.

I shall proceed to examine these issues in the sequence they are referred to above:

1. *The claim of applicants for 100% accelerated depreciation* in respect of an amount of £25,600.- allegedly paid to Skepi Ltd. on 13.12.79 against the sale price of two offices and a garage then under construction, is based on s. 12(2) (d) of the Income Tax Laws 1961 to 1981 whereby 100% accelerated depreciation is allowed in respect of certain fixed assets provided that the liability or expenditure thereof was "incurred until the 31st December 1979."

The respondent's finding on this issue is to the effect that the applicants did not incur such a liability or expenditure before the 31st December, 1979, but after that date and that therefore the applicants are not entitled to accelerated depreciation envisaged by the provisions of s. 12(2) (d) of the Income Tax Laws.

The salient facts on this issue are very briefly as follows:

The applicants on 25.1.80 submitted to the respondent Commissioner a return declaring a temporary assessable income of £15,000.- for the year of assessment 1980.

On 19.2.80 applicants addressed a letter to respondent (ex. 2) requesting him to withdraw their return submitted on 25.1.80 for the reasons stated in their said letter. It is

expendient to mention here what the applicants had stated inter alia verbatim in their letter of 19.2.80:

> «Τώρα δὲ ποὺ ἐθέσαμε τοῦτο ὑπ' ὄψιν τῶν ἐλεγκτῶν μας ὡς καὶ τὴν φορολογικὴν δήλωσιν εἰς ἣν προέβημεν, μᾶς πληροφοροῦν ὅτι ἡ ὡς ἄνω αναφερομένη ἀγορά τυγχάνει φορολογικῆς ἀπαλλαγῆς. Ὡς ἐκ τούτου θέλομεν ὡς προαναφέρεται νὰ ἀνακαλέσωμεν τὴν ἤδη σταλεῖσαν ὑμῖν φορολογικὴν δήλωσιν...».
>
> ("Now that we have brought to the attention of our auditors both the said purchase and the income tax return which we had submitted, the said auditors informed us that the said purchase is entitled to tax exemption. Consequently we would like to withdraw the income tax return which has already been sent to you....").

In connection with the aforesaid statement of the applicants in their aforesaid letter it must be borne in mind that in paragraph 15 of the statement of the facts on which the present recourse relies the following are stated inter alia: "As all the cheques in the last cheque book had been used and as the company could not apply to another banker for an overdraft of £25.000 *to enable it to purchase the two offices and thus secure the benefit of 100% on their cost for 1979*, Mr. Tyllis, the Managing Director called on....". (The underlining is mine).

The respondent Commissioner acceded to applicant's request contained in the letter of 19.2.80 and cancelled the temporary assessment raised for the year of assessment 1980.

As already stated earlier on in the present judgment, when applicants' audited accounts for the years 1979, 1980 and 1981 were submitted and examined by the respondent Commissioner, the present issue, inter alios arose; the respondent after enquiring further into the matter, as extensively stated at pages 3 to 9 of the opposition decided this issue against the applicants holding that the aforesaid liability or expenditure was not incurred prior to the 31st December, 1979, but after that date, and in consequence thereof the applicants were not entitled to accelerated

depreciation envisaged by the provisions of s. 12(2)(d) of the Income Tax Laws.

It is apparent from the sub judice decision itself, the correspondence that preceded it, between the applicants and the respondent Commissioner and the relevant material which was placed before the respondent (and which was also produced before me at the hearing of this case) that the respondent relied mainly on the following facts, in arriving at his decision:

I. Inspite of the fact that the contract (ex. 9) for the purchase by applicants of the aforesaid two offices and the garage under construction, is purported to have been executed on 10.12.1979, nothing to that effect is mentioned in their return submitted to the respondent Commissioner on 25.1.80 and it is only as late as the 19.2.80 when they submitted to the respondent a letter (ex. 2) applying to withdraw the return in question when reference is made for the 1st time to the purchase in question.

II. Inspite of the fact that in the Contract (ex. 9) it is stated inter alia:

A. that £25,000 out of the total sale price of £28.600 for the 2 offices under construction, will be paid "in advance upon signing the contract" (which is purported to have been signed on 10.12.1979).

B. that £600.- for the garage "have already been paid as per receipt No. 0034."

the applicants allege that they have paid both amounts i.e. a total of £25,600 on 13.12.1979 by means of a cheque of even date (vide the first portion of ex. 1).

As regards receipt issued allegedly by the vendor i.e. Skepi Ltd., under No. 0034 (for the amount of £600 in respect of the garage) whilst the Contract (ex. 9) refers to it "as having been paid on 10.12.1979 under Receipt No. 0034", the relevant receipt (third part of ex. 1) purports to have been issued on 13.12.79.

III. In connection with the cheque for £25,600 dated 13.12.79 (1st part of ex. 1) the following were observed:

(a) Inspite of the fact that on 10.12.79 (when ex. 9 was executed and the payment of £25,000 ought to have been made), the cheque book of applicant (ex. 10) had still few blank cheques, the applicant preferred to issue the cheque of £25,600 on 13.12.79, when his cheque book (ex. 10) had no more blank cheques, and he was obliged as he alleged to use an unnumbered cheque from the bank because he could not obtain another cheque book as allegedly there was a partial strike at Grindlays Bank on the 13th December, 1979 which continued up to 19.12.79.

(b) Inspite of the fact that the unnumbered cheque for £25,600 was allegedly issued on 13.12.1979 was not entered into applicant's cash book (ex. 13) on the same day, but as late as 31.12.1979.

Even so it is significant to note that the relevant entry (at p. 55 of ex. 13).

(i) is not in the same handwriting with entries of the same date made either before or after the relevant entry.

(ii) the relevant entry was made in ex. 13 over obvious deletions and obliterations.

(c) The unnumbered cheque of £25,600, purported to have been issued on 13.12.79, could not be cashed at any time during December 1979, as the applicants had no sufficient funds in their account with the Bank with a view to meeting it.

IV. As regards the 2 receipts issued by the Vendor, Skepi Ltd., under No. 0033 dated 13.12.79 for £25,000 (2nd part of ex. 1) and No. 0034 dated 13.12.79 for £600.- (3rd part of ex. 1) the following were observed:

These receipts were issued from a receipt booklet which is ex. 17 before me. Ex. 17 was produced by Mr. Christakis Makarites (A.W. 2) the internal accountant of Skepi Ltd., and it was described by him as "a casual receipt book; not an ordinary receipt book. An official receipt but an extraordinary one."

Only 36 receipts were issued out of it, commencing from 15.6.72 and ending on 1.11.82. The relevant receipts under Nos. 0033 and 0034 were purported to have been issued on 13.12.79. The previous receipt unconnected with the present case, under No. 0032 was issued on 20.12.1977.

V. The following facts which were before the respondent Commissioner are undisputed:

(a) The unnumbered cheque was cashed by Skepi Ltd., (the vendors) on 19.2.80.

(b) The letter of applicants addressed to the respondent Commissioner (ex. 2) mentioning the aforesaid purchase for first time is dated 19.2.80.

(c) The contract in question, ex. 9, which was not stamped at all upon execution was properly stamped after the expiration of more than 2 months from the purported day of execution (10.12.79).

As already stated the respondent Commissioner relying mainly on the facts enumerated under paragraphs 1 to 5 above reached at the sub judice decision, in respect of this issue (No. 1) rejecting the allegation of the applicants to the effects that they incurred that liability or expenditure before the 31st December, 1979.

The correctness of assessment of the factual background by an administrative organ, the respondent Commissioner in this case, is undoubtedly, inter alia, within the scope of a judicial scrutiny. (*Lilian Georghiades* v. *The Republic* (1982) 3 C.L.R. 659.)

I have considered the evidence adduced before me, the exhibits produced by the witnesses as well as the other material in the file and I hold the view that the finding of the respondent Commissioner on this issue was reasonably open to him.

The claim by applicants for deduction of £150.- rent allegedly paid for a building site at Larnaca.

The facts on this issue are very briefly as follows:

By virtue of a contract of lease dated 1.6.1979 (vide Appendix B attached to the opposition) Kyriakos M. Tyllis, the Managing Director of applicant Company, let to the applicant Company a building site at Larnaca for a period of 33 years i.e. from 1.6.79 up to September, 2012. The rent of the building site in question was agreed at £150.- per annum. The applicant company, according to the terms of the agreement in question, would incur the costs for constructing a building according to architectural plans envisaged by the agreement, and would collect rents from the building to be constructed, which could be let for residential or office purposes only, for the period of the 33 years of the lease. After the lapse of the said period the building to be so constucted as well as everything standing on the building site of the lessor, would become the property of the latter.

The respondent Commissioner after examining applicant Company's accounts submitted, the nature of the lease agreement, the position of the lessor in the applicant Company (he is the managing Director thereof and the main shareholder controlling applicant Company—he has 1,240 out of the 2,000 shares of the Company—) and other matters incidental to the present issue set out extensively at pages 7 to 9 of the opposition, decided to disallow the sum of £150.- as deductable expense from applicant's taxable income pursuant to the provisions of s. 36(1) of the Assessment and Collection of Taxes Laws 1978 to 1979 which reads as follows:

> "36(1) Where the Director is of the opinion that in respect of any year of assessment the object of the tax of any person is reduced by any transaction which in his opinion was artificial or fictitious, he may disregard any such transaction and assess the persons concerned on the proper object of the tax..."

The respondent Commissioner is thus empowered to disregard any transaction which is found by him after due examination to be "artificial" or "fictitious."

The principles governing this topic have been extensively dealt with in the recent case of *HjiEraclis and An-*

other v. *The Republic* (1984) 3 C.L.R. 604 and I need not repeat them again. Suffice it to lay stress on what is therein stated as well: "Each case must be considered according to its facts."

In the present instance it is important to note that whilst the respondent Commissioner has decided (vide ex. 3) to treat the lease agreement in question as "artificial or fictitious" in connection with the applicants (The lessees), has taxed the lessor under the same lease agreement for the income of £150.- rent per annum.

I hold the view that it is against the principles of fair administration to treat the same lease as a valid one, when the case of the lessor is being examined, because he will pay income tax on the rent emanating from such lease, and at the same time treat that very same lease as "artificial and fictitious" when the case of the lessee is being examined, thus disallowing to the latter the relevant deduction from his income.

Having given my best consideration to the respective facts examined by the respondent Commissioner and the inferences drawn by him therefrom, I hold, the view that the respondent was greatly influenced in reaching at his decision on this issue, by a single factor notably the position of the lessor with the applicant Company—the lessee, and failed to attach due weight to an equally important factor, notably the duration of the lease; the applicant company would under the said agreement enjoy a lease for 33 years, at the same rent per annum i.e. £150.-, during which period they would be at liberty to exploit the building to be constructed thereon by letting it either for office or for residential purposes at any rent they might agree to collect from a future lessee, within the next 33 years.

In the circumstances the sub judice decision on this issue must be annulled.

3. *A complaint that Mortgage Fees of £684 were disallowed.*

In this connection it is the submission of the applicants that the amount of £684.- representing mortgage fees paid by the applicants on the raising of a loan should have been allowed as a proper deduction from their profit for 1981, for as maintained, that is an expense wholly and exclusively incurred in the production of income.

The respondent Commissioner on the other hand submitted that his refusal to allow this sum as a deduction is based on the combined effect of s.11(1) and 13(e) of the Income Tax Laws 1961 - 1981.

In the case of *Lefkos Georghiades* v. *Republic* (1972) 3 C.L.R. 157 it was laid down that an expense which is of a capital nature and not of a revenue (trading) nature does not qualify as a deductable expense. As stated at p. 163 of the report "the test for such distinction is a difficult one and it can be found in the *Vallambrosa Rubber Co. Ltd* v. *Farmer* [1910] 5 T.C. p. 559 as well as in the *British Insulated and Helsby Cables Ltd* v. *Atherton* [1926] A.C. 205 at p. 213 where Lord Cave laid down as a general test that -

> "When an expenditure is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

I agree with learned counsel for respondent that the fees on an original mortgage, which is the present case, are an expense made once and for all, not of a recurring nature, therefore, of a capital and not of a revenue nature. Consequently the payment in question is not an allowable deduction.

4. *Balancing Addition*

The learned counsel for applicants submitted that the respondents have erroneously included in the income

assessed for special contribution for the years 1980 to 1981 an amount of £209.- and £3,879 respectively, sums which allegedly are balancing additions made under the provisions of s. 12(3) and (4) of the Income Tax Laws 1961 to 1981.

It was maintained in this connection that such sums are not "income" envisaged by the Income Tax Laws, but merely a "notional income" which is not taxable.

I had the opportunity to deal recently with "balancing addition" in the case of *Kontos* v. *The Republic* (1985) 3 C.L.R. 1137 which applies to the present case as well.

In connection with the submission of learned counsel for applicant in respect of the reference, in the case of *Commissioners of Inland Revenue* v. *Wood Bros (Birkenhead) Ltd.*, 38 Tax Cases 275, to the "balancing addition" as being "notional income", it may be observed that the aforesaid case related to surtax, which is a tax of a different nature than income Tax and there was no specific provision in that law making "balancing addition" chargeable.

In the present case the position is different; as stated in *Kontos* case (supra) at p. 1140:

> "From the clear and unequivocal wording of Law 34/78, as amended, it is abundantly clear that the provisions of the Income Tax Laws are applicable to the assessment of special contribution and there is nothing whatsoever in the Law of 1978 to indicate that the provisions of s. 12(4) of the Income Tax Laws ("balancing addition") are inapplicable; on the contrary, the exhaustive enumeration of the exemptions in section 6 of the law indicates that the "balancing addittion" clearly set out in the Income Tax Laws, is also applicable in the computation of income, liable to special contribution.
>
> In the result the decision of the respondent Commissioner on this issue cannot be faulted and the relevant complaint of the applicant is therefore unfounded.

5. *Interest claimed by the respondent for the year of assessment 1980.*

In the submission of applicants to demand for interest at 9% as from 1.7.81 for the year of assessment 1980 is unfounded as allegedly, no unreasonable default can be found on the part of the applicants. It is maintained that the points involved in the present recourse are points of law and as "applicants are under the honest belief that they are entitled to the accelerated depreciation claimed it would be unfair to penalise them by imposing interest on the ground of unreasonable default."

The demand for interest is governed by sections 41 and 42(2) of the Assessment and Collection of Taxes Laws 1978 to 1979; section 42(2) reads as follows:

"42(2) where the delay in making an assessment is due to the taxpayer's unreasonable default interest at the rate of 9 per centum per annum shall be payable from the 1st day of December of the year to which the assessment relates, irrespective of the year in which such assessment was actually made.

Provided

Provided further that as from the year of assessment 1979 and thereafter the interest which is at the rate of 9 per centum per annum is payable on the 1st July of the year next following the year of assessment to which the assessment relates."

Bearing in mind that the interest claimed by the respondent is for the year of assessment 1980, and that the matter in dispute for that year was dealt with extensively in issue No. 1 as summarised above, (i.e. the claim of the applicant for 100% accelerated depreciation in respect of the purchase of the offices and garage allegedly made on 10.12.79) which was a pure factual issue, I hold the view that the respondent's decision in respect of interest was reasonably open to him.

In the result the present recourse fails with the exception

of issue No. 2 (i.e. the claim of the applicant in respect of deduction of £150.- rent per annum paid for the building site in question) and is accordingly dismissed.

The sub judice decision is hereby annulled only in respect of the rent of £150.- per annum (Issue No. 2) paid by the applicants in connection with the lease under the contract of 1.6.79.

In the circumstances I shall make no order as to the costs hereof.

Sub judice decision partly annulled. No order as to costs.