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IN THE PRIVY COUNCIL

No.16 of 1957

INSTITUTE OF ADVANCED LEGAL STUDIES  
ON APPEAL FROM

THE SUPREME COURT OF CYPRUS

52083

B E T W E E N: ROBERT CHATTAN ROSS-CIUNIS  
COMMISSIONER OF LIMASSOL  
... .. Appellant

- and -

1. VASSOS PAPADOPOULLOS  
2. EVAGORAS C. LANITIS  
3. NICOS S. ROUSSOS  
4. ATHANASSIS LIMNATITIS  
all of Limassol  
... .. Respondents

C A S E FOR THE RESPONDENTS

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C A S E FOR THE RESPONDENTS

Record

1. This is an Appeal from a Judgment of the Court of Appeal of the Supreme Court of Cyprus dated 8th March, 1957, or 24th April, 1957 (the correct date being a matter in issue as hereinafter appears) pursuant to conditional leave granted by such Court on the 23rd April, 1957, which was made final by Order dated 11th June, 1957, whereunder such Court dismissed the Appeal of the Appellant from a Judgment of the Supreme Court of Cyprus dated 15th December, 1956.

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p. 68  
  
p. 71  
  
p. 33

2. On the 4th July, 1956, the Appellant, who was the Commissioner of Limassol, purporting to exercise powers alleged to be vested in him under Regulation 3 of the Emergency Powers (Collective Punishment) Regulations, 1955 - (No.1) 1955 (hereinafter called "the Punishment Regulations") made an Order that a fine of £35,000 be levied collectively on the assessable Greek-Cypriot inhabitants of Limassol. This Order is hereinafter called "the Collective Fine Order".

p. 1

3. An assessable inhabitant within the meaning of the Punishment Regulations means any male person living in the relevant area who is or appears to the Commissioner to be not less than 18 years of age. All four Respondents are

p.7 line 24

Record

assessable inhabitants of Limassol.

p. 3

4. On the 22nd November, 1956, the four Respondents applied to the Supreme Court, Cyprus, for leave to apply for an Order of certiorari to remove the Collective Fine Order into that Court for the purpose of its being quashed. On such date this leave was granted.

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5. On the 15th December, 1956, Mr. Justice Zekia removed the Collective Fine Order into the Supreme Court, Cyprus, and thereupon quashed such Order and further ordered the Appellant to pay the costs of the Respondents.

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6. The Appellant appealed and the proceedings in the Court of Appeal were heard before Mr. Justice Hallinan, and Mr. Justice Zannetides, on the 25th and 26th February, 1957, and were then adjourned for consideration of Judgment.

pp.38-52

7. On the 8th March, 1957, Hallinan, C.J. gave his reasons for proposing the Appeal should be allowed. On the same day, Zannetides, J. gave his reasons for proposing that the Appeal should be dismissed. In consequence of the difference of legal opinion, the Court of Appeal made no Order, and the Judgment of Zekia, J. in the Court below still bound the parties.

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PRELIMINARY ISSUE

8(a). The Respondents contend that the leave to appeal upon which the Appellant relies has not been granted in accordance with the provisions of the Cyprus (Appeal to Privy Council) Order in Council, 1927, hereinafter called "the Appeal Order in Council".

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8(b). Article 4 of the Appeal Order in Council makes express provision to enable either party to pursue an appeal in the event of the Court of Appeal making no Order because of a difference of judicial opinion. It is in the following terms:

"4. Where in any action or other proceedings no final Judgment can be duly given in consequence of a difference of judicial opinion between the Judges, the final Judgment may be entered pro forma on the application of any party to such action or other proceeding according to the opinion of the Senior Member of the Court or in his absence of the Member of Court next in seniority, but such Judgment will be deemed

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final for purposes of an appeal therefrom, and not for any other purpose".

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10 8(c). Article 5 of the Appeal Order in Council provides that application for leave to appeal shall be made to the Court of Appeal within 30 days from the date of the Judgment to be appealed from and further provides that the Applicant shall give the opposite party notice of his intended application. Article 3 provides for the circumstances in which leave to appeal may or should be granted. Article 6 provides that leave to appeal under Article 3 shall, in the first place, be conditional. This is merely to provide for proper security and other like matters.

20 8(d). The Respondents contend that leave to appeal in the circumstances of this case cannot legally be applied for or granted until one party has first obtained a final Judgment under Article 4, and has thereafter applied to the Court of Appeal within 30 days thereof.

30 8(e). At no time prior to the 24th April 1957, did either party make any application under Article 4; but on the 6th April, 1957, the Appellant applied to the Court of Appeal under Article 5 for leave to appeal against the Judgment of the Court of Appeal dated 8th March, 1957, a copy of which is stated to have been attached to the Notice of Motion. No such copy was attached. Instead there was attached a copy of the reasons of Hallinan, C.J. for proposing that the Appeal should be allowed and a copy of the reasons of Zannetides, J. for proposing that the Appeal should be dismissed.

p.63

40 8(f). On 16th April, 1957, the Motion was heard by the Court of Appeal and it was contended on behalf of the Respondents that the application should be dismissed because the Appellant had failed to comply with Article 4 of the Appeal Order in Council with the consequence that there was not at this date any Final Judgment from which to appeal.

p. 66

8(g). This argument was rejected and, on the 23rd April, 1957, Conditional Leave to Appeal was granted to the Appellant.

p. 67

8(h). On 24th April, 1957, the Appellant applied in accordance with Article 4 to have the final Judgment of the Court of Appeal in these proceedings entered pro forma for the purposes of Appeal;

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Record

p. 62

and on such date Zannetides, J. made an Order on behalf of the Court of Appeal dismissing the Appellant's Appeal from the Judgment of Zekia, J. on the 15th December, 1956. The Order, as finally drawn up, concludes with the following words:

"Given this 8th day of March, 1957,  
"Drawn up this 24th day of April, 1957"

p. 69

No application for leave to Appeal was made by the Appellant within 30 days of the 24th April, 1957; but on the 6th day of June, 1957 the Appellant applied for Final Leave to Appeal, and this was granted by Order dated 11th June, 1957.

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p. 71

8(j). In the premises it is contended that the Order of Her Majesty in Council admitting this Appeal should be revoked.

MAIN CASE

9. This Appeal first involves a consideration of the Emergency Powers Order in Council, 1939, hereinafter referred to as "the Order in Council" It then involves the consideration of the Punishment Regulations made in purported pursuance of the Order in Council. It then involves the consideration of the acts and/or omissions and the character of such acts of the Appellant which gave rise to the making of the Collective Fine Order. It lastly involves the consideration of the Collective Fine Order itself.

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10. The main questions which arise on this Appeal are :

Question 1

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- (a) Whether or not, upon its true construction, the Order in Council empowers the Governor of Cyprus to make regulations whereunder British subjects living under the Queen's peace may be punished without any judicial intervention.
- (b) If not, what principles of justice must be observed in any such judicial intervention.

Question 2

- (a) Whether or not the Collective Punishment Regulations on their true construction are intra vires.

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- (b) Whether or not the Collective Punishment

Regulations empower the Appellant to impose a fine without judicial intervention.

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- (c) If not, what principles of justice must be observed in any such judicial intervention

Question 3

10 Did the Appellant in fact hold an Enquiry complying with section 5 of the Punishment Regulations, it being common ground that the holding of the Enquiry was a condition precedent to the power of the Appellant to impose a fine under Section 3?

Question 4

Whether or not the Collective Fine Order is invalid because:

- (a) It is void for uncertainty, being levied on the Greek Cypriot inhabitants of Limassol?
- (b) It is made upon a section of a community of an area as opposed to the assessable inhabitants of an area?

Question 5

20 Whether or not the Respondents are disentitled to an Order of Certiorari because:

- (a) Section 13 of the Punishment Regulations enacts that there shall be no appeal from any Order made under Section 3 thereof which was the Section under which the fine was imposed?
- 30 (b) The Appellant in holding the Enquiry and/or making the Collective Fine Order was acting merely in an administrative capacity with the consequence that his acts could not be impeached by a writ of certiorari?
- (c) As a preliminary question to (b) above, ought the Appellant to be allowed to argue that point, having regard to the fact that it was not argued before the Trial Judge.

RESPONDENTS' CONTENTIONS ON  
QUESTION 1 (a) and (b)

11. The Respondents first set out the material parts of the Order in Council hereunder:

"(1) The Governor may make such Regulations as appear to him to be necessary or expedient for securing the public safety, the defence of the territory, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, the Regulations may, so far as appears to the Governor to be necessary or expedient for any of the purposes mentioned in that subsection -

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(a) Make provision for the detention of persons and the deportation and exclusion of persons from the territory;

(b) Authorize -

(i) the taking of possession or control, on behalf of His Majesty, or any property or undertaking

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(ii) The acquisition on behalf of His Majesty of any property other than land;

(c) Authorize the entering and search of any premises;

(d) Provide for amending any law, for suspending the operation of any law and for applying any law with or without modification;

(e) Provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the Regulations, such fee as may be prescribed by or under the Regulations;

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(f) Provide for payment of compensation and remuneration to persons affected by the Regulations;

(g) Provide for the apprehension, trial and punishment of persons offending against the Regulations:

Provided that nothing in this section shall authorize the making of provision for the trial of persons by Military Courts."

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QUESTION 1(a)

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10 12. As a matter of construction the Respondents contend that these words in the Order in Council are not wide enough to empower the Governor to make Regulations the effect of which is to permit British subjects living under the Queen's peace to be punished without judicial intervention. The Respondents rely upon general principles and upon Section 6 (2) (g) above and, in particular, upon the proviso which is a proviso to the Section as a whole. Having regard to the fact that there is a limitation on the power of the Governor to try persons (and by inference to punish persons) by the judicial intervention of military courts, the Respondents contend that it is impossible to construe that Section as empowering the Governor to make Regulations to punish persons without any judicial intervention whatsoever.

QUESTION 1(b)

20 13. The Respondents further contend that there must be such judicial intervention as is consonant with the principles of natural justice. In the first place, the Respondents contend that natural justice demands that no one shall be punished except in respect of an act or omission by himself or some other person or persons for whom he may be held responsible upon the above principles. The Respondents contend in particular  
30 that it is contrary to the principles of natural justice to punish someone under the doctrine of vicarious responsibility when the facts relied upon to establish such responsibility are no more than certain racial affinities of the parties concerned.

14. In the second place the Respondents contend that it is contrary to natural justice to punish any person without first giving to such person full particulars of the acts complained of and a reasonable opportunity to refute the same.

40 THE RESPONDENTS' CONTENTIONS  
ON QUESTION 2 (a) (b) and (c)

15. The Respondents first set out hereunder the material sections of the Punishment Regulations:

"1. These Regulations may be cited as Emergency Powers (Collective Punishment) Regulations 1955.



"2. (I) In these Regulations unless the context otherwise requires:

"Assessable Inhabitant" in relation to any area, means any male who lives in such area and who is, or appears to the Commissioner to be, not less than 18 years of age;

\* \* \* \*

"3. If an offence has been committed or loss of, or damage to property has occurred within any area of the Colony (hereinafter referred to as "the said area") and the Commissioner has reason to believe that the inhabitants of the said area have :- 10

(a) Committed the offence or caused the loss or damage; or

(b) Connived at or in any way abetted the commission of the offence or the loss or damage; or

(c) Failed to take reasonable steps to prevent the commission of the offence; or

(d) Failed to render all the assistance in their power to discover the offender or offenders, or to effect his or their arrest; or 20

(e) Connived at the escape of, or harboured, any offender or person suspected of having taken part in the commission of the offence or implicated in the loss or damage; or

(f) Combined to suppress material evidence of the commission of the offence or of the occurrence of the loss or damage; or 30

(g) By reason of the commission of a series of offences in the said area, been generally responsible for the commission of such offences

it shall be lawful for the Commissioner, with the approval of the Governor to take all or any of the following actions :-

(1) To order that a fine be levied collectively on the assessable inhabitants of 40

the said area, or any part thereof:

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(ii) .....

(iii) .....

(iv) .....

\* \* \* \*

"5. (1) No Order shall be made under Regulation 3 of these Regulations unless an enquiry into the facts and circumstances giving rise to such Order has been held by the Commissioner.

10 (2) In holding enquiries under these Regulations the Commissioner shall satisfy himself that the inhabitants of the said area are given adequate opportunity of understanding the subject matter of the enquiry and making representations thereon, and, subject thereto, such enquiry shall be conducted in such manner as the Commissioner thinks fit.

20 (3) A written report of the enquiry shall be submitted to the Governor as soon as possible after the completion thereof, and shall contain a certificate that the requirements of this Regulation have been complied with.

"6. The Commissioner may at any time after an Order under Regulation 3 of these Regulations has been made, in his absolute discretion, remit the whole of any fine or any part thereof or may order that any amount which has been paid by any assessable inhabitant shall be repaid to him or .....

\* \* \* \*

30 "8. Any fine ordered to be paid in pursuance of these Regulations shall be apportioned among the assessable inhabitants of the said area by the Commissioner in such manner as he may think fit and in particular he may order that each assessable inhabitant shall pay any amount which the Commissioner shall specify.

\* \* \* \*

"13. Save as provided in Regulation 6 of these Regulations an Order made by a Commissioner, under Regulation 3 of these Regulations shall

be final and no appeal shall lie from any such Order."

QUESTION 2 (a)

16. The Respondents contend that the question whether or not the Punishment Regulations are intra vires is inextricably interwoven with the answer to Question 1 above and also with their own interpretation; for the Respondents will concede that the principle of construction to follow is to give to the words of the Punishment Regulations a meaning which will make those Regulations intra vires, if the words, taken as a whole, are capable of having such a meaning. But if it be held, contrary to the Respondents' contention, that the Punishment Regulations empower the Governor of Limassol to punish British subjects living under the Queen's peace without judicial intervention, and/or such judicial intervention as is contended for in Paragraphs 13 and 14 hereof, the Respondents will in consequence contend that Section 3 of the Punishment Regulations is ultra vires.

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QUESTION 2 (b)

17. The Respondents contend that the provisions of Section 5 of the Punishment Regulations should be construed as providing for a judicial intervention and as imposing on a Commissioner the obligation to act judicially in holding any Enquiry under that Section.

QUESTION 2 (c)

18. The Respondents contend that Punishment Regulations must not be construed so as to offend against the principles of natural justice contended for in Paragraphs 13 and 14 hereof with the following consequences: In the first place, Section 3 must be construed as if it read (the underlined words not appearing in the Punishment Regulations) "If an offence has been committed .... and the Commissioner has reason to believe that the inhabitants of the said area or some of them have -

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(a) to (g)

it shall be lawful for the Commissioner, with the approval of the Governor, to take all or any of the following actions :

- 1. To order that a fine be levied collectively

on the (those) assessable inhabitants of the said area or any part thereof, whom he has reason to believe have, in relation to the offence or offences which have been committed done some act or acts within Regulation 3(a) to (g) immediately preceding;....."

19. In the second place, Section 5 must be construed as if it were to read:

"5 (1) ....

10 (2) In holding enquiries under these Regulations the Commissioner shall satisfy himself that the (those) inhabitants, whom he has reason to believe have, in relation to the offence or offences committed, done some act or acts within Regulations 3 (a) to (g) immediately preceding, are given adequate opportunity of understanding the subject matter of the enquiry and making representations thereon, that is to say, are informed  
20 that they will not be punished except in respect of acts committed by them or by those for whom they are responsible, and are further given particulars of the act or acts complained of against themselves and are afforded a reasonable opportunity to refute those allegations.

20. The evidence is referred to in the Respondents' contentions under Question 3 - post. On such evidence the Respondents will contend  
30 that it is apparent that the Appellant did not conduct an enquiry so as to satisfy the conditions of Section 5 of the Punishment Regulations on the special construction placed upon it above with the consequence that he had not jurisdiction to impose the Collective Fine Order which is, therefore, a nullity and void.

THE RESPONDENTS' CONTENTIONS  
ON QUESTION 3

40 21. For the purposes of these contentions, the Respondents nevertheless assume that the Punishment Regulations are intra vires and empower the Appellant to impose a collective fine on the assessable inhabitants of Limassol notwithstanding the fact that only a section of those inhabitants have been guilty of an act coming within Section 3 (a) to (g) of the Punishment Regulations. The Respondents still

Record

contend that it is a condition precedent to the exercise of such a power that the Appellant shall hold an enquiry satisfying the conditions of Section 5; and for the purpose of this contention, it is immaterial whether or not this enquiry is regarded as a judicial intervention or merely as an administrative proceeding.

22. In order to ascertain whether there has been such a compliance the Respondents are content to accept the evidence of the Appellant set out in his Affidavit dated 4th December, 1956. This is referred to in succeeding paragraphs hereof. 10

p.11 lines  
1-33

23. In Paragraphs 3 and 4 of his said Affidavit, the Appellant swore:

"3. In my official capacity I followed six murders, ten attempted murders, and a great number of bomb outrages, causing two deaths and damage to property, which took place in the Limassol town during the six or seven months prior to July, 1956, and came to know, through confidential reports and information, that a great many of the Greek inhabitants living and working within the municipal limits of Limassol were in a position to identify the person committing these outrages, but were wilfully abstaining from doing so and that a great number of the remaining Greek inhabitants were either actively or passively encouraging others to abstain from giving useful information to the authorities. I was convinced that, with the full co-operation of the Greek inhabitants of the town, such outrages would not have taken place or remained undetected." 20 30

"4. After due consideration of the situation I invited in writing the six Greek municipal councillors, including the Deputy Mayor, and nine Greek Mukhtars and 27 Azas of the various quarters of the town of Limassol to attend a meeting in my office on the 11th June, 1956, at 4 p.m. informing them that the enquiry would be under Regulation 5 of the Emergency Powers (Collective Punishment) Regulations, 1955. I should point out that these were the Greek authorities appointed and elected of the town of Limassol and there were no other persons qualified to represent its Greek inhabitants. In reply to the last sentence of Paragraph 8 of Dr. Papadopoulos's Affidavit, I say that the resignation of the persons therein mentioned has never been accepted." 40

24. The passage referred to in the Affidavit of Dr. Papadopoulos was as follows :

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10 "None of the above persons (that is, those at the meeting on the 11th June) represented or claimed to represent the Greek Cypriot assess- able inhabitants of the area of the Municipality of Limassol in the above matter nor have they undertaken or accepted to communicate anything conveyed to them at the above meeting to the assessable inhabitants of Limassol nor have they done so. Furthermore, according to information received from Haralandes Hadji Arabis of Limassol, one of the said Mukhtars, the great majority of the said Greek Mukhtars, (including the said Haralandes Hadji Arabis) and Azas of the town of Limassol had resigned their office as such and ceased to exercise their powers and duties under the Village Authorities Law long before the said meeting."

p.9  
lines  
18-32

20 25. The Appellant Commissioner deals with the Meeting of the 11th June in Paragraph 7 of his Affidavit :

p.12  
line 42  
to

30 "I informed the meeting that I was holding this public enquiry with a view to deciding whether I should recommend to His Excellency the Governor the levying of a fine on the Greek inhabitants of the town in respect of a long list of outrages which had occurred within the town since the 1st January, 1956. I invited them to show cause why a fine should not be imposed. After discussion, I came to the conclusion that no cause was shown and I accordingly told them that I was not satisfied with their representations and asked them to inform their co-inhabitants as widely as possible of what had transpired at the meeting and suggested that if there were any persons or group of persons wishing to make further representations, they could do so through their

40 elected municipal Councillors."

p.13  
line 10

26. In Paragraphs 8 and 9 the Appellant states that the meeting was reported in the local press and that on the following day he received representations from certain Associations in the area.

p.13  
lines  
11-20

27. The Respondents make the following complaint:

(a) In the first place, he stated to those

Record present that the enquiry was in respect of acts or omissions of the Greek inhabitants. This matter is further dealt with in Paragraph 29 hereof.

(b) In the second place, he did not take reasonable steps to communicate with all such persons as might be affected by the Order. It is contended that he should have offered a hearing to every person who might become affected by the Order.

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(c) The most important failure of the Appellant was that he gave to none of the inhabitants of Limassol any particulars of conduct coming within Section 3 (a) to (g) as would enable them to refute the allegations of that conduct which must be the basis of the Order.

28. In these circumstances the Respondents contend that the Collective Fine Order was made without jurisdiction through want of compliance with Section 5, and is, therefore, a nullity and void.

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RESPONDENTS' CONTENTIONS ON  
QUESTION 4

Question 4 (a)

29. The Respondents contend that the Collective Fine Order is void for uncertainty because it purports to be made on the assessable Greek Cypriot inhabitants of Limassol. The Respondents contend that the phrase "Greek Cypriot" is incapable of defining a class. The words clearly do not define a class distinguishable by nationality, domicile, religion or residence. The words are capable only of creating a class distinguishable by some undefined qualifications of racial origin; and because the qualifications are undefined, the class cannot be ascertained. The Respondents rely upon the reasoning in Clayton and Ramsden, 1943 A.C. p. 320.

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30. Question 4 (b)

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Regulation 3 (1) runs as follows :

"To order that a fine be levied collectively on the assessable inhabitants of the said area, or any part thereof";

A question of construction arises as to whether the phrase "any part thereof" refers to "any part of the assessable inhabitants" or "any part of the said area."

10 31. The Respondents contend that this question cannot be satisfactorily answered without ascertaining the meaning and effect of other parts of the Regulations. In setting out the Respondents' contentions on question 2, the Respondents contended that the only inhabitants who could be fined were inhabitants who were themselves guilty of misconduct. But if this contention be rejected and if the scope of the Regulations is to permit a fine to be levied collectively on the innocent as well as the guilty provided such persons are assessable inhabitants of a guilty area, then it follows that it is the inhabitants of an area who become liable to be fined and, in those circumstances, 20 it is contended that the phrase, "any part thereof" must relate to, "any part of the area thereof."

32. Accordingly, the Respondents contend that under Regulation 3 (1) the Commissioner cannot in the first place penalise a section of the assessable inhabitants of an area but must levy a collective fine on all assessable inhabitants in the area designated.

30 THE RESPONDENTS' CONTENTIONS  
ON QUESTION 5 (a) to (c).

Question 5 (a)

33. The Respondents summarise their contentions hereon by quoting and adopting the language of Zekia J. in these proceedings :

"The last point which falls for consideration is whether Regulation 13 of the Regulations under review excludes the jurisdiction of the Courts from questioning the validity of the order issued under Regulation 3 of the same Regulations.

p.31  
line 20  
to  
p.32  
line 2.

40 Regulation 13 reads: "Save as provided in Regulation 5 of these Regulations, an order made by a Commissioner under Regulation 3 of these Regulations, shall be final and no appeal shall lie from any such order.

I take the view that the words "order made



Record

under Regulations" mean order made in compliance with the provisions of the Regulations and consequently when such an order is made by overstepping the mandatory conditions attached to the making of the order its validity on account of excess of jurisdiction can be questioned. In Harts' Introduction to the Law of Local Government and Administration, 4th Edition, page 401 under the heading Exclusion of Judicial Control it is stated:

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'It is settled law that where an order of certiorari could be made at common law it can only be taken away by express negative words, though where the right to an order of certiorari is itself the creature of statute a clause making the decision final is sufficient to exclude the writ.....'.

p.32  
lines 38-42

The right to an order of certiorari in this Colony is derived from the Common Law of England which is applicable in this country by virtue of section 33 of the Courts of Justice Law, 1953."

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34. Question 5 (b)

The Respondents repeat their contention that the Appellant must act judicially when holding an enquiry under Section 5 of the Punishment Regulations or in imposing a fine under Section 3 thereof because the self-avowed object of the Punishment Regulations is to punish persons living under the Queen's peace; and it is contrary to the principles of English law to permit subjects to be punished without judicial intervention. Accordingly, the Respondents rely upon the statement of law by Atkin, L.J. in Rex -v- Electricity Commissioners, 1924, 1 K.B. on p.205. "But the operation of the writs [prohibition and certiorari] has extended to control the proceedings of bodies which do not claim to be, and would not be recognized as, Courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these Writs".

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35. Question 5 (c)

The Respondents contend that the Court of Appeal ought not to have granted leave to the

Appellant to amend his Notice of Appeal and/or to argue that the Respondents were not entitled to a Writ of Certiorari on the grounds that the Appellant (in holding the enquiry and/or in imposing the Collective Fine Order) was merely acting ministerially. The Respondents further contend that the Appellant should not be allowed to argue the above point in this Appeal. The Respondents concede that it is proper for Courts generally to permit an amendment if the effect of the amendment is to enable a Court to dispose of a point of substance between litigants. But in this case the effect of granting this particular amendment has the reverse effect. The point of substance between the parties is whether or not the Collective Fine Order was made without jurisdiction. If it was made with jurisdiction, the Appellant does not need to rely upon the above point. But if it was made without jurisdiction, then the Respondents are admittedly entitled to some remedy; for if the Respondents were not entitled to an Order of Certiorari because the acts impeached were ministerial, it would follow that they could commence an action for a declaration that the Collective Fine Order was made without jurisdiction.

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Further, at the date of the hearing in the Court of Appeal, the Punishment Regulations had been repealed and accordingly their validity and/or interpretation was irrelevant to anything which might subsequently be done in Cyprus. Furthermore, at that date the fines imposed under the Collective Fine Order had been remitted, so that all that was at stake between the parties when leave was granted to raise the above point was a matter of costs.

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36. There are set out in the paragraphs immediately succeeding, the conclusions of the Judges given in their reasons for judgment. For the sake of convenience these are arranged as Findings of the Judges on the Questions propounded in Paragraph 10 hereof.

THE FINDINGS OF ZEKIA J.

Question 1

37. Zekia J. held that the Order in Council empowered the Governor to make regulations providing for punishment without judicial intervention and that such punishment might be

p.18 line 30  
to  
p.19 line 18  
p.22 lines  
37-97

Record

collectively imposed on the innocent as well as the guilty.

Question 2

p.23 lines 9-13 38. Zekia J. accordingly held that the Punishment Regulations were intra vires. He further held that, upon their true construction, they did empower the Appellant to impose a collective fine, but only after judicial intervention, namely, an enquiry under Section 5 thereof; for it is implicit in his findings that this enquiry was a quasi judicial proceeding. 10

Question 3

p.28 lines 31-35 39. Zekia J. held that the Appellant had failed to hold an enquiry such as would satisfy Section 5 of the Punishment Regulations.

Question 4

p.16 lines 18-20 40. Zekia J. noted that the Respondents impugned the validity of the Collective Fine Order on three grounds, the third ground being:

"Ground 3: The Order imposing the fine generally on the Greek inhabitants of the town is bad in law". 20

p.29 lines 36-40 He later stated that he would not deal with this point.

Question 5.

41. Zekia J. held that Section 13 of the Punishment Regulations did not prevent the Respondents from obtaining an Order of Certiorari - see paragraph 33 hereof. Question 5 (b) was not argued. 30

THE FINDINGS OF HALLINAN C.J.

Question 1

p.40 lines 22-23 42. Hallinan C.J. agreed with Zekia J.

Question 2

p.47 line 40 to  
p.48 line 1 43. Hallinan C.J. held that, upon their true construction, the Punishment Regulations empowered the Appellant to impose a collective fine without judicial intervention.

Question 3

Record

10 44. Hallinan C.J. held that the Appellant had a ministerial duty to hold an enquiry under section 5 of the Punishment Regulations before imposing a fine under Section 3 thereof. After consideration of the evidence he held that there had been an enquiry such as to satisfy the conditions of Section 5. He differed from Zekia J. not so much as to the effect of the evidence, but in respect of the duties imposed on the Appellant by Section 5 in consequence of his other holding that such enquiry was not a quasi judicial proceeding.

p.41 lines 9-14 38-44  
p.52 lines 17-20

Question 4

45. Hallinan C.J. did not deal with these matters.

Question 5

20 46. Hallinan C.J. agreed with Zekia J. on Question 5 (a). He granted leave to the Appellant to amend his Notice of Appeal so as to raise Question 5 (b), but in fact no amendment thereof was effected. He then held that the Respondents were not entitled to obtain an Order of Certiorari in consequence of his conclusion that the Enquiry was not a quasi judicial proceeding.

p.39 lines 33-40  
p.43 lines 4-14  
p.43 lines 15-20

FINDINGS OF ZANNETIDES J.

Question 1

47. Zannetides J. agreed with Zekia J. and Hallinan C.J.

p.54 lines 14-30

Question 2

30 48. Zannetides J. agreed with Zekia J. but he expressly found that the enquiry under Section 5 of the Punishment Regulations was a judicial or quasi-judicial proceeding.

p.54 lines 28-30  
p.61 lines 5-10 and 22-26  
p.62 lines 8-14

Question 3

49. Zannetides J. agreed with the ultimate conclusions of Zekia J. but he said:

"As to the manner of the enquiry, I would not go so far as the Trial Judge did to say that it should be a public enquiry, or an enquiry

p.59 lines 20-43

Record

at which all the inhabitants would have the right to be present and follow it. The enquiry is to be conducted in the manner the Commissioner thinks fit. I would not also say that the knowledge he obtained through the confidential reports and information, as he states in Paragraph 3 of his Affidavit, is not part of the enquiry; that would be the beginning of the enquiry. At a later stage the District Commissioner, as he was perfectly entitled to do, called a meeting of the local and municipal representatives of the Greek inhabitants at his office which he called a Public Enquiry. It was not unreasonable for him to think that the Greek inhabitants were not inadequately represented. But where the Commissioner went wrong to my mind is that he failed at that meeting to enquire into the facts and circumstances of the case and thus give to those gathered there and consequently to the inhabitants adequate opportunity of understanding the subject matter of the enquiry and making representations thereon."

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Question 4

50. Zannetides J. did not deal with these matters.

Question 5

p.54 lines  
31-41

51. Zannetides J. agreed with Zekia J. and Hallinan C.J. on Question 5 (a). He agreed with Hallinan C.J. that the Appellant be allowed to raise Question 5 (b). Notwithstanding this, he held that the Respondents were entitled to obtain a Writ of Certiorari because, as has been stated above he held that the enquiry under Section 5 of the Punishment Regulations was a judicial or quasi-judicial proceeding.

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p.62 lines  
8-14

52. The Respondents, therefore, submit that this Appeal should be dismissed for the following (among other)

REASONS

1. BECAUSE the Punishment Regulations were ultra vires
2. BECAUSE the Appellant had no jurisdiction to make a Collective Fine Order regardless of whether or not the persons thereby

fined had been guilty of wrongful conduct.

Record

3. BECAUSE the Appellant had no jurisdiction to make the Collective Fine Order without first holding an Enquiry in accordance with the provisions of Section 5 of the Punishment Regulations, and no such Enquiry was ever held.
4. BECAUSE the Collective Fine Order was invalid, being void for uncertainty.
- 10 5. BECAUSE the Collective Fine Order was invalid because it was not collectively imposed on the assessable inhabitants of an area within the meaning of the Punishment Regulations.
6. BECAUSE Section 13 of the Punishment Regulations does not bar a remedy by way of an Order of Certiorari.
- 20 7. BECAUSE an Enquiry under Section 5 of the Punishment Regulations is a quasi-judicial proceeding entitling the Respondents to apply for and obtain an Order of Certiorari in respect of any acts done without jurisdiction in such proceeding.
8. BECAUSE the Appellant should not be allowed to contend that an Enquiry under Section 5 of the Punishment Regulations is not a quasi-judicial proceeding so as to entitle the Respondents to an Order of Certiorari.

IAN BAILLIEU

No.16 of 1957

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE SUPREME COURT OF  
CYPRUS

B E T W E E N:

ROBERT CHATTAN ROSS-CLUNIS  
COMMISSIONER OF LIMASSOL  
... .. Appellant

-- and --

1. VASSOS PAPADOPOULLOS  
2. EVAGORAS C. LANITIS  
3. NICOS S. ROUSSOS  
4. ATHANASSIS LIMNATITIS  
all of Limassol  
... .. Respondents

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C A S E FOR THE RESPONDENTS

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