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Judgment
1958

IN THE PRIVY COUNCIL

No. 16 of 1957

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

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.

Solicitors for the Appellant.

INCE & CO.,
10 and 11, Lime Street,
London, E.C.3.

Solicitors for the Respondents.

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RECORD OF PROCEEDINGS

No. 1.

ORDER BY THE COMMISSIONER OF LIMASSOL

No. 1.

Order by the Commissioner of Limassol.

4th July 1956.

THE EMERGENCY POWERS (COLLECTIVE PUNISHMENT) REGULATIONS, 1955 to (No. 1) 1955.

ORDER MADE UNDER REGULATION 3.

Whereas between 1st January, 1956, and 10th June, 1956, 6 murders, 10 attempted murders and about 70 other terrorist offences have been committed within the area of the Municipality of Limassol (hereinafter referred to as "the area") which offences, in my opinion, are offences the commission of which are prejudicial to the internal security of the Colony and to the maintenance of public order in the Colony (hereinafter referred to as "the offences");

And whereas I have reason to believe that a substantial number of the Greek Cypriot inhabitants of the area failed to take reasonable steps to prevent the commission of the offences and failed to render all the assistance in their power to discover the offenders;

No. 1.

Order by the Commissioner of Limassol.

4th July 1956.

And whereas I have held an enquiry into the facts and circumstances appertaining to the offences after giving adequate opportunity to the inhabitants of the area of understanding the subject-matter of the enquiry and making representations thereon;

And whereas I have submitted a written report of the enquiry to His Excellency the Governor and have certified that the requirements of Regulation 5 have been complied with;

Now, therefore I, the Commissioner of Limassol, in exercise of the powers vested in me by Regulation 3 of the Emergency Powers (Collective Punishment) Regulations, 1955 to (No. 1) 1955, and with the approval of His Excellency the Governor, do hereby order that a fine of £35,000 (thirty-five thousand pounds) be levied collectively on the assessable Greek Cypriot inhabitants of the area.

Made this 4th day of July, 1956.

R. C. ROSS-CLUNIS.
Commissioner of Limassol.

No. 2.

In the Supreme Court of Cyprus

No.2.

Application for leave to apply for Order of Certiorari.

22nd November 1956.

APPLICATION FOR LEAVE TO APPLY FOR ORDER OF CERTIORARI

IN THE SUPREME COURT

In the matter of an application by:

(a) VASSOS PAPADOPOULLOS OF LIMASSOL
(b) EVAGORAS C. LANITIS OF LIMASSOL
(c) NICOS S. ROUSSOS OF LIMASSOL
(d) ATHANASSIS LIMNATITIS OF LIMASSOL

for leave to apply for an order of certiorari and

In the matter of the Order made on the 4th July, 1956 by ROBERT CHATTAN ROSS-CLUNIS, Commissioner of Limassol and/or by the Commissioner of Limassol and published in Supplement No. 3 to the Cyprus Gazette No. 3957 of 12th July, 1956, Not. 655 under which a fine of £35000 was ordered to be levied collectively on the assessable Greek-Cypriot inhabitants of the area of the Municipality of Limassol in purported exercise of the powers vested in him by Regulation 3 of the Emergency Powers (Collective Punishment) Regulations 1955 to (No. 1) 1955.

EX PARTE:-

(a) VASSOS PAPADOPOULLOS OF LIMASSOL
(b) EVAGORAS C. LANITIS OF LIMASSOL
(c) NICOS S. ROUSSOS OF LIMASSOL
(d) ATHANASSIS LIMNATITIS OF LIMASSOL

Applicants

The above applicants apply for leave to apply for an Order of certiorari to remove into this Honourable Court and quash an Order made on the 4th July, 1956, by Robert Chattan Ross-Clunis, Commissioner of Limassol and/or by the Commissioner of Limassol and published in Supplement No. 3 to the Cyprus Gazette No. 3957 of 12th July, 1956 Not.655 under which a fine of £35000 was ordered to be levied collectively on the assessable Greek-Cypriot inhabitants of the area of the Municipality of Limassol in purported exercise of the powers vested

In the Supreme Court of Cyprus

No. 2.

Application for leave to apply for Order of Certiorari.

22nd November 1956.

in him by Regulation 3 of the Emergency Powers (Collective Punishment) Regulations 1955 to (No.1) 1955 and that all necessary and consequential directions be given And that all proceedings on the said Order be stayed until after the hearing of the motion or summons or further Order.

The application is based on the Courts of Justice Laws 1953 and 1955 Sections 20 (d) and 35 and on the English Rules of the Supreme Court 1883 Order 59 Rule 3.

The grounds and facts relied upon are set forth in the accompanying statement and affidavit by VASSOS PAPADOPOULLOS of Limassol dated 20th November, 1956, respectively.

This application is made by:

1. P.L. CACOYANNIS
2. JOHN F. POTAMITIS
3. CHRYSSES DEMETRIADES

Advocates for the applicants.

Address for Service: The Law Office of Messrs. John Clerides & Sons, Advocates, Angara Street, Nicosia.

Dated the 22nd day of November, 1956.

(Sgd) P.L. CACOYANNIS

(Sgd) JOHN F. POTAMITIS

(Sgd) CHRYSSES DEMETRIADES

Advocates for the applicants

Filed on the 22nd day of November, 1956

Fixed for hearing on the 22nd day of November, 1956 at the hour 9.30 in the forenoon.

(Sgd) Chr. Fysentzides,

Registrar.

No. 3.

STATEMENT OF GROUNDS OF APPLICATION

In the Supreme Court of Cyprus

No. 3

Statement of grounds of application.

20th November 1956.

STATEMENT filed pursuant to the English Rules of the Supreme Court 1883, Order 59, Rule 3(2).

1. The names and descriptions of the applicants are :-

(a) VASSOS PAPADOPOULLOS OF LIMASSOL
(b) EVAGORAS C. LANITIS OF LIMASSOL
(c) NICOS S. ROUSSOS OF LIMASSOL
(d) ATHANASSIS LIMNATITIS OF LIMASSOL

Applicant (a) is a Greek-Cypriot carrying on business at Limassol as a medical practitioner.

Applicant (b) is a Greek-Cypriot carrying on business at Limassol as a merchant and Company Director.

Applicant (c) is a Greek-Cypriot carrying on business at Limassol as a Civil Engineer.

Applicant (d) is a Greek-Cypriot carrying on business at Limassol as a Clerk.

2. The relief sought is :-

An Order of certiorari to remove into this Honourable Court and quash an Order made on the 4th July, 1956, by Robert Chattan Ross-Clunis, Commissioner of Limassol and/or by the Commissioner of Limassol and published in Supplement No. 3 to the Cyprus Gazette No. 3957 of 12th July, 1956 Not.655 under which a fine of £35000 was ordered to be levied collectively on the assessable Greek-Cypriot inhabitants of the area of the Municipality of Limassol in purported exercise of the powers vested in him by Regulation 3 of the Emergency Powers (Collective Punishment) Regulations 1955 to (No.1) 1955 and that all necessary and consequential directions be given and that all proceedings on the said Order be stayed until after the hearing of the motion or summons or further Order. (Copy of the order sought to be quashed is attached herewith).

The grounds on which the said relief is sought are as follows :-

In the Supreme Court of Cyprus

No. 3.

Statement of grounds of application.

20th November 1956.

(a) That the said Order is ultra vires, illegal, void and of no effect on the following grounds :-

(1) The Emergency Powers (Collective Punishment) Regulations 1955 to (No. 1) 1955, are, in so far as they purport to empower the Commissioner with the approval of the Governor to order that a fine be levied collectively on the assessable inhabitants of an area in the Colony of Cyprus or any part thereof, ultra vires, illegal, void and of no effect; and that all the Regulations contained in such Regulations and relating to the levying, apportionment and collection of the collective fine and of the enforcement of the order ordering the levying of such fine as well as Regulation 13 of the said regulations are ultra vires, illegal, void and of no effect.

(2) The requirements of Regulation 5 of the Emergency Powers (Collective Punishment) Regulations 1955 to (No. 1) 1955, if intra vires, have not been complied with and the said order was in excess of the jurisdiction of the Commissioner of Limassol. Also the rules of natural justice were not observed by the Commission in connection with the inquiry held under regulation 5.

(3) That the said Order was wrong in Law.

(4) That the said Order was contrary to natural justice.

Dated this 20th day of November, 1956.

(Sgd) P.L. CACOYANNIS

(Sgd) JOHN F. POTAMITIS

(Sgd) CHRYSSES DEMETRIADES

Advocates for the Applicants.

No. 4.

In the Supreme Court of Cyprus

No. 4

Affidavit by Vassos Papadopoullos in support.

20th November 1956.

AFFIDAVIT BY VASSOS PAPADOPOULLOS IN SUPPORT

I, VASSOS PAPDOPOULLOS of Limassol make oath and say as follows :-

1. I am one of the applicants in the above intituled application.

2. Robert Chatban Ross-Clunis is the person who, at the material time, has been holding the office of the Commissioner of Limassol and who on the 4th July 1956, made an Order under Regulation 3 of the Emergency Powers (Collective Punishment) Regulations 1955, to (No. 1) 1955, ordering that a fine of £35000 be levied collectively on the assessable Greek-Cypriot inhabitants of the area of the Municipality of Limassol in purported exercise of the powers alleged to be vested in the Commissioner of Limassol under the above Regulation. Such Order was published in Supplement No. 3 to the Cyprus Gazette No. 3957 of 12th July, 1956, Not. 655.

The Commissioner of Limassol claims that he made the above Order in purported exercise of powers alleged to be vested in him under Regulation 3 of the said Regulations.

3. The applicants are male persons of not less than 18 years of age who, at the material time, have been living within the area of the Municipality of Limassol and who are among the assessable Greek-Cypriot inhabitants of the said area on whom the said fine was ordered to be levied collectively.

4. The Emergency Powers (Collective Punishment) Regulations, 1955 to (No. 1) 1955, purport to have been made by the Governor in purported exercise of the powers conferred on him by Section 6 of the Emergency Powers Orders in Council, 1939 and 1956.

5. I am advised and verily believe that Section 6 of the Emergency Powers Orders in Council, 1939 and 1956, does not confer on the Governor any powers to make regulations providing for the levying of collective fines and therefore all provisions contained in the Emergency Powers (Collective Punishment) Regulations, 1955 to (No. 1) 1955 purporting to enable the Commissioner to make an Order for the levying of a fine collectively on the assessable

In the Supreme Court of Cyprus

No. 4.

Affidavit by Vassos Papadopoullos in support.

20th November 1956.

inhabitants of an area in Cyprus and for the apportionment and collection of such fine and for the enforcement of the Order imposing such fine are ultra vires, illegal, void and of no effect.

6. I am further advised and verily believe that Regulation 13 of the Emergency Powers (Collective Punishment) Regulations 1955 to (No. 1) 1955, providing that "Save as provided in Regulation 6 of such Regulations an Order made by the Commissioner under Regulation 3 of these Regulations shall be final and no appeal shall lie from any such Order" is ultra vires, illegal, void and of no effect on the ground that Section 6 of the Emergency Powers Orders in Council 1939 and 1956, does not confer on the Governor any power to make such regulation ousting the jurisdiction of the Court.

7. I am also advised and verily believe that the Order of the Commissioner of Limassol made on the 4th July, 1956, and published in the Supplement No. 3 to the Cyprus Gazette No. 3957 of 12th July, 1956, under which a fine of £35000 was ordered to be levied collectively on the Greek-Cypriot assessable inhabitants of the area of the Municipality of Limassol, is ultra vires, illegal, void and of no effect on the ground that the Regulations under which such Order purports to have been made are ultra vires, illegal, void and of no effect.

8. I am advised that, in the event of the Emergency Powers (Collective Punishment) Regulations, 1955 to (No. 1) 1955, being declared to be intra vires, the Order of the Commissioner referred to in the preceding paragraph is ultra vires, illegal, void and of no effect, on the ground that the requirements of Regulation 5 of the Emergency Powers (Collective Punishment) Regulations 1955 to (No.1) 1955, have not been complied with and that the rules of natural justice have not been observed. The facts relied upon for such non compliance and non-observance are :-

The defendants failed to hold such an inquiry into the facts and circumstances giving rise to the above Order as could reasonably satisfy the Commissioner that the inhabitants of the area of the Municipality of Limassol were given adequate opportunity of understanding the subject-matter of such inquiry and making representations thereon. In fact the Commissioner summoned a meeting at the

Office of the Commissioner of Limassol to which only the Greek Members of the Council of the Municipality of Limassol and the Greek Mukhtars and Azas of the Limassol town were invited to attend. Such meeting was held and attended by me, 5 Greek Municipal Councillors and the Greek Mukhtars and Azas of the town of Limassol to whom the Commissioner spoke about certain murders and other offences committed in Limassol and added that he was determined to impose a collective fine unless cause was shown to the contrary. Then all those present were asked by the Commissioner to show cause why a collective fine should not be levied on the assessable inhabitants of the area of the Municipality of Limassol and the reply was that the imposition of a collective fine would be unjustified, unwarranted and anachronistic. None of the above persons represented or claimed to represent the Greek-Cypriot assessable 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 Haralambos Hadji Arabis of Limassol, one of the said Mukhtars, the great majority of the said Greek Mukhtars (including the said Haralambos 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.

9. The said collective fine although ordered to be levied on the 4th July, 1956, it was not apportioned among, and imposed on, the Greek-Cypriot inhabitants of the Municipality of Limassol until lately when it was announced that it will be levied and collected in view of the murders which were committed recently in Limassol i.e. long after the 4th July, 1956.

The Affiant

(Sgd) Vassos Papadopoullos

Sworn and signed before me
this 20th day of November, 1956
at the District Court of Limassol

(Sgd) N. Aphamis,
Ag. Asst. Registrar.

In the Supreme Court of Cyprus

No. 5.

Order granting leave to apply by Notice of motion.

22nd November 1956.

No. 5.

ORDER GRANTING LEAVE TO APPLY BY NOTICE OF MOTION

Leave to apply by notice of motion granted. The granting of the leave will not operate as a stay of proceedings. Applicants at liberty to apply by summons for an order of stay of proceedings.

(Sgd) M. Zekia.

22.11.1956.

No. 6.

Notice of Motion.

26th November 1956.

No. 6.

NOTICE OF MOTION

TAKE NOTICE that pursuant to the leave of the Honourable Mr. Justice M. Zekia given on the 22nd day of November, 1956, the Supreme Court will be moved on the 7th day of December, 1956 at the hour of 9.30 in the forenoon, or so soon thereafter as Counsel can be heard, on behalf of Vassos Papadopoullos, Evagoras C. Lanitis, Nicos S. Roussos and Athanassis Limnatitis all of Limassol for an order of certiorari to remove into the Supreme Court and quash an order made on the 4th July 1956 by Robert Chattan Ross-Clunis, Commissioner of Limassol and/or by the Commissioner of Limassol and published in Supplement No. 3 to the Cyprus Gazette No. 3957 of 12th July, 1956 Not. 655 under which a fine of £35000 was ordered to be levied collectively on the assessable Greek-Cypriot inhabitants of the area of the Municipality of Limassol in purported exercise of the powers vested in him by Regulation 3 of the Emergency Powers (Collective Punishment) Regulations, 1955 to (No. 1) 1955 and that all necessary and consequential directions be given and that all proceedings on the said Order be stayed until after the hearing of the motion or summons or further order, upon the grounds set forth in the copy Statement served herewith and used on the application for leave to issue this Notice of Motion.

AND THAT the costs of and occasioned by this Motion be the Applicants.

In the Supreme Court of Cyprus

No. 6.

Notice of Motion.

26th November 1956.

AND TAKE NOTICE that upon the hearing of the said Motion the said Vassos Papadopoullos, Evagoras C. Lanitis, Nicos S. Roussos and Athanassis Limnatitis will use the affidavit of Vassos Papadopoullos and the said Order of the 4th July, 1956, therein referred to copy of which is attached to the said Statement.

Dated the 26th day of November, 1956.

(Sgd) P.L. CACOYANNIS
(Sgd) JOHN F. POTAMITIS
(Sgd) CHRYSSES DEMETRIADES

Advocates for the applicants.

To

(1) Robert Chattan Ross-Clunis
Commissioner of Limassol,
Limassol.

(2) The Commissioner of Limassol,
Limassol.

Filed this 26th November, 1956.

(sgd) Chr. Fysentzides,
Registrar.

No. 7

No. 7.

Affidavit of Commissioner of Limassol in Opposition and Exhibit "A" thereto.

4th December 1956.

AFFIDAVIT OF COMMISSIONER OF LIMASSOL IN OPPOSITION AND EXHIBIT "A" THERETO

I, ROBERT CHATTAN ROSS-CLUNIS of Limassol make oath and say as follows :-

1. I am the Commissioner of Limassol and respondent in the above application.

2. I have read the application in this case and the affidavit of Doctor Vassos Papadopoullos.

In the Supreme Court of Cyprus

No. 7.

Affidavit of Commissioner of Limassol in Opposition and Exhibit "A" thereto.

4th December 1956.

3. In my official capacity I followed six murders, ten attempted murders and a great number of bomb outrages, causing two other 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 persons 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 remain undetected.

4. After due consideration of the situation, I invited in writing the 6 Greek Municipal Councillors (including the Deputy Mayor) and 9 Greek Mukhtars and 27 Azas of the various quarters of the town of Limassol to attend a meeting in my office on the 11th of 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. Papadopoullos' affidavit I say that the resignation of the persons therein mentioned has never been accepted.

5. Publicity was given to the fact that such an enquiry was to be carried out on the 11th of June, 1956, through the local representatives of the Greek press.

6. On the 11th of June at the time and place appointed the above mentioned Councillors, Mukhtars and Azas appeared. All local representatives of the Greek press were also there.

7. 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 January the 1st,

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 was any person or group of persons wishing to make further representations they could do so through the elected Municipal Councillors.

8. The enquiry was fully reported in all Greek papers and the invitation for further representations was given full publicity. There is now produced and shown to me marked "A" the translation of an extract from the Greek paper Ethnos dated the 12th June, 1956.

9. In fact the following day I received petitions or representations submitted by groups of people representing the following localities, quarters and associations :-

(a) Ayios Ioannis Quarter.
(b) Katholiki Quarter.
(c) Ayios Nicolaos Quarter.
(d) Ayia Zoni Quarter.
(e) Kossarianis locality.
(f) The Committee of Shop-Keepers' Association.
(g) Male and Female Members of KEMN factory.
(h) Trade Union of the workers of LOEL.
(i) Pancyprian Labour Federation of Limassol (PEO).
(j) Twenty-four advocates of the Limassol town.

Of the above (g) was received on the 13th, (h) on the 15th, (i) on the 19th and (j) on the 16th of June, 1956. Other individual representations were also received until the end of the first week in July, but none of the above representations contained anything to convince me that a fine should not be levied as aforesaid. I hold the originals to the above petitions and representations.

10. Accordingly in compliance with the Emergency Powers (Collective Punishment) Regulations 1955 to (No. 1) 1955, I submitted a report on the enquiry

In the Supreme Court of Cyprus

No. 7.

Affidavit of Commissioner of Limassol in Opposition and Exhibit "A" thereto.

4th December 1956.

to His Excellency the Governor and certified that the requirements of Regulation 5 had been complied with and with the approval of the Governor I issued my Order dated the 4th of July 1956 which was published in the Gazette of 12th July, 1956.

11. None of the representations received between the 11th of June and the issue of my Order on the 4th of July have supplied material to make me change my decision.

12. In my view the inhabitants of the Limassol town were given adequate opportunity of understanding the subject-matter of the enquiry on the 11th of June, 1956, and of making representations thereon as laid down in Regulation 5.

13. The amount of the fine imposed was related to the amount of the compensation which could properly have been awarded for injury and damage under regulation 7 of the Regulations mentioned.

14. In conclusion I humbly submit that I am entitled to rely on regulation 13 of the Regulations above mentioned as applicable to a ministerial act on my part, alternatively I deny that I have acted in any way at variance with the rules of natural justice in exercising quasi-judicial functions (if any).

Sworn and signed before me this 4th day of December, 1956.

The Affiant

(Sgd) R.C. Ross-Clunis

(Sgd) Chr. Fysentzides,
Registrar.

Exhibit "A" to Affidavit of Commissioner of Limassol in Opposition.

12th June 1956.

EXHIBIT "A" - EXTRACT FROM "ETHNOS" OF THE 12th JUNE, 1956

On the conclusion of the public enquiry the Commissioner said that those who attended the public enquiry said nothing which could convince him not to suggest the imposition of a fine and he added that if there are citizens who wish to express their opinion why the collective fine should not be

imposed, they must submit it to the Town Authorities who will forward it to him.

In the Supreme Court of Cyprus

(Referred to in Mr. Ross-Clunis' affidavit of the 4th of December 1956, as Exhibit "A".)

(Sgd) Chr. Fysentzides,
Registrar.

No. 7.

Exhibit "A" to Affidavit of Commissioner of Limassol in Opposition.

12th June 1956.

No. 8.

JUDGMENT OF MR. JUSTICE ZEKIA

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

This is an application for the issue of the prerogative order of certiorari to bring up and quash an order made on the 4th July, 1956 by the Commissioner of Limassol imposing a collective fine of £35,000 on the assessable Greek Cypriot inhabitants of the municipal area of Limassol. This order was made on the strength and in exercise of the powers vested in the District Commissioner by Regulation 3 of the Emergency Powers (Collective Punishment) Regulations, 1955 to (No. 1) 1955 with the approval of the Governor. The said order which was published in the Gazette on the 12th July 1956, contains statements to the effect that between the 1st January 1956 and 10th June 1956 6 murders, 10 attempted murders and 70 other terrorist offences had been committed within the municipal area of Limassol and that the Commissioner had reason to believe that a substantial number of Greek Cypriot inhabitants of the said area (a) failed to take reasonable steps to prevent the commission of the offences (b) failed to render all the assistance in their power to discover the offenders and that (c) he held an inquiry into the facts and circumstances appertaining to the offence (apparently referring to an inquiry required under Regulation 5) after giving adequate opportunity to the assessable inhabitants of the area in question to understand the subject-matter of the inquiry and to make representations thereon. The respondent appears

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

to have based his order on Regulation 3(c) and (d). A fuller account of facts and reasons leading to the imposition of the collective fine as well as the procedure the Commissioner has adopted in holding an inquiry under Regulation No.5 appear in his affidavit dated the 4th December, 1956 attached to the file.

The applicants impugn the validity of the order under consideration mainly on three grounds:-

Ground 1: Regulation 3 of the Emergency Powers (Collective Punishment) Regulations 1955, on the strength of which the collective fine has been imposed is ultra vires.

Ground 2: Assuming the said Regulations to be intra vires, the order in question is null and void because the provisions of Regulation 5 have not been complied with.

Ground 3: The order imposing fine generally on the Greek inhabitants of the town is bad in Law.

Ground 1: The Governor exercising his powers conferred on him by section 6 of the Emergency Powers Orders in Council, 1939 and 1952, made the Emergency Powers (Collective Punishment) Regulations. It was contended that the Governor acted ultra vires in making the said Regulations. Arguments advanced for this contention may be summarised as follows :-

(a) That the enabling Order in Council was never intended to confer such a drastic power on the Governor to make regulations authorizing the imposition of unlimited amount of fine amounting to confiscation of property and punishing indiscriminately people who did not commit an offence and did not offend against any regulation and have not been tried for any contravention. Offences might be created but punishment without offence and offender could not be provided. If the Legislature intended to confer such an extensive power one would have expected to find specific provision in section 6(2) of the Emergency Powers Orders in Council 1939, similar to those contained in sub-section (a) to (g). Detention and Deportation Orders are made without trial but the enabling order confers specifically the power to make such Regulations.

(b) It has also been argued that section 6(2)(g) empowers the Governor to make Regulations providing for the apprehension, trial and punishment of persons offending against the Regulations. This is a strong indication that the Governor was not authorized to make Regulations providing punishment without trial and contravention of any Regulation. The unspecified general powers conferred on the Governor to legislate must be exercised within the scope and limits of section 6(2)(g).

(c) The Emergency Powers (Collective Punishment) Regulations, 1955 are contrary to the principles of Criminal Law and also contrary to the International Law. In Nuremburg trials eminent jurists, including some British and American, declared as against International Law the exaction of collective fines practised by Germany as occupying Power from communities in invaded countries and it is a rule of Construction that when there is an ambiguity in the Law it should be construed in such a way as not to clash with the principles of International Law.

The learned Attorney-General dealing with the 1st ground emphasized the fact that the Emergency Regulations were made to meet very special circumstances the ordinary process of the law being insufficient. That section 6(1) gave to the Governor very wide powers. The powers given were not for the making of provisions for the better carrying out the purposes expounded in sub-section 6(2)(a) to (g) of the enabling enactment. That the subjective element in the making of these Regulations was very important. The Governor was entitled to make any Regulations which appeared to him to be necessary or expedient for securing the public safety and the maintenance of public order. The Collective Punishment Regulations were intended to meet unusual and strained circumstances in the Island and unless the Court was ready to say the Regulations in question were quite outside the range of the powers given the natural and ordinary meaning of the section should prevail. Similar legislation could be found in other territories, such as in Malaya, Emergency Regulations Order 17 (A) (B) Imposition of Collective Punishment under Emergency Powers 1948 section 4. In Kenya Regulation 4 (H). In Palestine, Cap. 20 Collective Punishment Ordinance section 6 identical with our Regulation 3. The Collective Punishment Regulations

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

were neither contrary to International Law. What it has been ruled in Nuremburg Trials was that the imposition of collective fine in occupied territories without collective responsibility was contrary to the principles of the International Law and this was not the case here.

So far I have tried to recapitulate the substance of the arguments of both sides regarding the validity of the Emergency Powers (Collective Punishment) Regulations. I propose to deal now with this point. The enabling Act, that is the Emergency Powers Order in Council, 1939, section 6(1) reads :-

> "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 meeting 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 sub-section, Regulation may so far as appears to the Governor to be necessary or expedient for any of the purposes mentioned in that sub-section (a) (b) etc.
>
> Provided that nothing in this section shall authorize the making of provision for the trial of persons by Military Courts."

The powers conferred on the Governor by section 6 for making Regulations are indeed very wide and unrestricted. The Legislative Authority thought fit to restrict this power only in one respect and that is for the trial of persons by Military Courts. From the wording of section 6(1) it is clear that the enabling enactment was intended to authorize the Governor to make provisions by Emergency Regulations which were, no doubt, drastic and extraordinary in nature in order to restore and maintain peace, Law and order and suppress violence prevailing under abnormal and extraordinary conditions. If this is borne in mind the arguments advanced by the learned counsel of the applicants lose considerably of their weight. The submission that section 6(2)(g) should be taken as controlling

section 6(1) cannot in my view be supported. There is nothing to warrant the reading of section 6 (2) (g) as a restrictive proviso to section 6(1). On the contrary the words "without prejudice to the generality of the powers conferred by the preceding sub-section" in section 6(2) lead us to a contrary view. The language of the relevant section is clear and unambiguous. So long as it cannot be said that certain Regulations or part thereof lie altogether outside the object and range of section 6(1) and so long as the good faith of the legislative authority is not questioned the validity of such and similar Regulations cannot successfully be attacked. It is under this enabling enactment that persons could be detained or deported without trial and also offences which in peace time could only be punished with a short term of imprisonment now carry the death penalty. The basic and ordinary principles of Criminal Law no doubt when the vital interests of the State and public are at stake and Emergency Regulations are put in force cannot scrupulously be observed. In R. v. Comptroller-General of Patents, Ex Parte Bayer Products, Ltd. (1941) 2 A.E.L.R. page 677, Scott L.J. on page 682 commenting on the judgment of Bennett J., in Jones (E.H.) (Machine Tools) Ltd. v. Farrell and Muirsmith in connection with his interpretation of particular powers mentioned in section 1(2) of the Emergency Powers (Defence) Act, 1939 - which section runs parallel to section 6(2) of the Emergency Powers Orders in Council, 1939 - stated:-

> "In my view, the decision is open to the criticism that Bennett, J., there failed to give effect to the dominant words of the Emergency Powers (Defence) Act, 1939, s. 1(2) - namely, 'without prejudice to the generality of the powers conferred by' subsect. (1). He treated the question before him as solely arising under sect. 1(2) of that Act, which contained particular powers, inter alia, to authorise the taking possession or control of any property or undertaking. He held that those particular words did not authorise what had been done in regard to the 'undertaking' which was under 'control'. Had he considered the case also from the point of view of the general powers of subsect.(1), I do not think that he could have come to the conclusion to which he did."

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

Clauson, L.J. in his judgment in the same case on page 683 dealing with the contention that Regulations made under Emergency Powers were ultra vires, states :-

> "It was said: 'His Majesty has made a regulation which he was not authorised by the Act in question to make.' That makes it necessary that we should turn to the Act to see exactly what regulations he was authorised to make. It was argued that the regulation was not necessary or expedient for securing the public safety and so on, but, on turning to the Act, I think that, as a matter of construction of the Act, it is quite clear that the criterion whether or not His Majesty had power to make a particular regulation is not whether that regulation is necessary or expedient for the purpose named, but whether it appears to His Majesty to be necessary or expedient for the purposes named to make the particular regulation. As I construe the Act, Parliament has quite plainly placed it within the power of His Majesty to make any regulation which appears to him to be necessary or expedient for the purposes named.
>
> Accordingly, in my view, the validity of the Regulation in question, or of any other regulation of a similar type, can be investigated only by inquiring whether or not His Majesty considered it necessary or expedient for the purpose named, to make the regulation."

In a more recent case in Attorney-General for Canada and another v. Hallet and Carey, Ltd., and another reported in the Times Law Reports (1952) Part 1, page 1408, the validity of an order made by the Governor in Council providing for the compulsory acquisition of all oats and barley in commercial positions in Canada was questioned on the ground that the enabling Act namely the National Emergency Transitional Powers Act, 1945 of Canada did not confer on the Governor the particular power enabling him to make his Order in Council in dispute. The enabling Act provided by section 2(1) that:

> "The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as

he may, by reason of the continued existence of the national emergency arising out of the war against Germany and Japan, deem necessary or advisable for the purpose of - ..... (c) maintaining, controlling and regulating supplies and services, prices, rentals, employment, salaries and wages to ensure ecomonic stability and an orderly transition to conditions of peace; ....."

We may usefully read parts from the judgment of Lord Radcliffe who delivered the judgment of the Judicial Committee in the above case. In page 1415 stated :-

"The Act (referring to the enabling Act) is conceived in the most fluid and general terms, conferring deliberately the most extensive discretion. To import into such a measure a precise limitation (if so vague a phrase can itself be said to be precise) that no action can be taken that 'extends' a particular control of a particular commodity is, in their Lordships' view, a radical misunderstanding of the true nature of such legislation."

Further down in page 1417,

"Yet this is an enactment framed for the purpose of meeting an emergency that imperils the national life; it authorizes action over the whole economic field and extends to purposes outside the territory of Canada herself; it embraces purposes such as the maintenance, control and regulation of supplies, prices, transportation, the use and occupation of property, rentals, employment, salaries and wages, which have no meaning if they do not involve a deliberate and consistent interference with private rights, including private rights of property. And the power of the executive to pursue these purposes, whilst the national emergency continues, is conferred by Parliament without express reservation and in the amplest terms that statutory language can employ. There is nothing in the purposes themselves that makes it unlikely or unreasonable that expropriation would ever have to be resorted to.

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

It is fair to say that there is a well-known general principle that statutes which encroach upon the rights of the subject, whether as regards person or property, are subject to a 'strict' construction. Most statutes can be shown to achieve such an encroachment in some form or another, and the general principle means no more than that, where the import of some enactment is inconclusive or ambiguous, the Court may properly lean in favour of an interpretation that leaves private rights undisturbed. But in a case such as the present the weight of that principle is too slight to counterbalance the considerations that have already been noticed. For here the words that invest the Governor with power are neither vague nor ambiguous: Parliament has chosen to say explicitly that he shall do whatever things he may deem necessary or advisable. That does not allow him to do whatever he may feel inclined, for what he does must be capable of being related to one of the prescribed purposes, and the Court is entitled to read the Act in this way. But then, expropriation is altogether capable of being so related."

The following words of Chief Justice Duff were quoted in page 1414 with approval:

"I cannot agree that it is competent to any Court to canvass the considerations which have, or may have, led him to deem such regulations necessary or advisable for the transcendent objects set forth .... The words are too plain for dispute: the measures authorised are such as the Governor General in Council (not the Courts) deems necessary or advisable."

It has also been argued that (Collective Punishment) Regulations are contrary to the principles of International Law. In the first place it should be stated that the Regulations under discussion are not contrary to the principles of International Law because unlike the exaction of collective fines practised by the Germans during the last war in occupied territories these Regulations provide for collective responsibility for the imposition of such fines. This is what in effect is provided under Regulation 3(a) to (g). Blackborne J. in

page 170 in C.F.R. v. Anderson (1868) L.R.1 touching this point states:-

> "The judges may not pronounce an act ultra vires as contravening International Law, but may recoil, in case of ambiguity, from a construction which would involve a breach of the ascertained and accepted rules of International Law."

In the present case there is neither contravention of the principles of International Law nor ambiguity in the relevant section. I am, therefore, of opinion that the Regulations under discussion are not ultra vires.

I pass now to ground 2: This ground comprises also the interpretation to be given to Rule 13 of the Regulations so far it affects the outcome of the present proceedings. The second ground is based on the assumption that the Emergency Powers (Collective Punishment) Regulations, 1955 are intra vires. Having already found that the said Regulations were properly enacted it is necessary that the Court should examine and decide the second issue. The learned counsel of the applicants submitted that the order of the Commissioner imposing the collective fine on the assessable Greek inhabitants of Limassol is null and void and of no effect inasmuch as the requirements of Regulation 5 for holding an inquiry into the facts and circumstances giving rise to the order and the procedure envisaged by the succeeding paragraph of Reg.5 have not been complied with. That the assessable inhabitants of the municipal area of Limassol were neither invited nor informed of the holding of such an inquiry. That the enquiry in question was not conducted in a judicial manner and that the rules of natural justice were violated. The persons attending the meeting on the 11th June, 1956 did not represent the assessable Greek inhabitants of the town. The municipal councillors could not represent the people in matters other than municipal affairs. That the mukhtars invited were holding their post by appointment and not by election and they did not possess any representative capacity of the quarters they are posted. Moreover the mukhtars attending the meeting had already resigned their post as mukhtars and they could not represent anybody. The municipal councillors as well as the mukhtars

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

attending the meeting disclaimed any representative capacity on behalf of the assessable Greek inhabitants of Limassol. No inquiry could be considered as being held without the people being notified. In the meeting held no inquiry going into the facts and circumstances giving rise to the order under question had been held. The Commissioner simply informed persons attending the meeting that he was determined to impose a collective fine owing to murders and other outrages committed in the town and that they were invited to show cause why such a course should not be taken. Nothing else transpired in the meeting of the 11th June. That the statement of facts giving rise to the issue of the order as appearing in the Order published in the Gazette on the 12th July, 1956 differ considerably from his statement contained in his affidavit dated the 4th December 1956 filed in support of the opposition to this Application. On behalf of the respondent on the other hand it was argued that under Regulation 5 it was not required that a public inquiry should be held. The Commissioner might well hold or indeed must hold an inquiry that will first of all enable him to inform himself fully of all the facts and circumstances giving rise to the possible making of an order and secondly should hold an inquiry which would give in its course the inhabitants an opportunity of understanding the subject-matter of the inquiry and making representations thereon. It is not a public inquiry in the sense in which one would find such a thing but there must be a process to inform himself as a ministerial officer of the facts and circumstances on which he will make his report to the Governor, in connection with the making of an order for his approval. Regulation 5, para 2 starts with the words "in holding enquiries....." and not with the words "before holding enquiries....." Paragraph 2 of Regulation 5 gives wide powers to Commissioner as to the way he will hold his inquiry.

As to the allegation that there was no notice to the public stating in full what the subject matter of the inquiry was, the learned Attorney-General said that official notification is not provided for by the Regulations and was not therefore necessary to publish such a notice. The Commissioner collected persons either elected or appointed on an area basis and informed them of his intention. This was a proper thing to do. Sufficient publicity

was given to the fact that an enquiry was being held. Wide publicity was given to the inquiry through newspapers which are recognised as a channel of communication. There was no fixed determination on the part of the Commissioner to make the order in question. What he did say was, "I have considered this case and this is the state of affairs and I think you should show cause why this collective fine should not be imposed."

To a question from the Bench "What the Commissioner in this case had done as per Regulation 5(1) in the nature of an inquiry directed to the facts and statements, giving rise to the disputed order", the reply was "The inquiry was a sort of continuous process part of which may consist of an actual meeting at which persons are present. The enquiry as a whole need not necessarily involve the presence of all parties. He made his inquiry in his own way. His inquiry into the facts and circumstances might involve police reports. He looks into all facts and circumstances of the case as he, the Commissioner, thinks fit and in doing so he would give an opportunity to the people to understand the subject-matter and make representations."

The relevant parts of the Emergency Powers (Collective Punishment) Regulations, 1955 on the points under consideration are Regulations 3, 5(1) and 5(2) which read as follows :-

"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 -

(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
(e) connived at the escape of, or harboured,

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

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

(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:-

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

"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.

(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 inquiry and making representations thereon, and, subject thereto, such enquiry shall be conducted in such manner as the Commissioner thinks fit."

From a mere reading of Regulation 3 and 5 this is what I readily understand to convey: "The Commissioner of a District with the approval of the Governor can order the imposition of a collective fine on the assessable inhabitants of an area where offences have been committed if he, the Commissioner has reason to believe that such inhabitants failed to take reasonable steps to prevent the commission of such offences (for the sake of simplicity I took only one instance). The Commissioner however cannot make such order until and unless he holds an inquiry into the facts and circumstances giving rise to the order. That is facts and circumstances which constitute one or more of the grounds enumerated in Regulation 3, upon which only an order of collective fine can lawfully be based. In such

an inquiry he should satisfy himself that the inhabitants affected are given adequate opportunity to follow and understand the subject-matter of the inquiry and make representations thereon. The Commissioner is authorised to conduct the inquiry in the way he thinks fit." Regulation 5 (1) read in conjunction with Regulation 5(2) in my view leaves no room for doubt that the inquiry to be held under paragraph 1 of Regulation 5 is intended to be a public one or at any rate an inquiry in which the affected assessable inhabitants of the particular area would have a right to be present and follow it and take part in they wish to do so at some time or other in the proceedings. In my opinion Regulation 5(1) is not susceptible of another interpretation.

If it is desired and I have no hesitation that that it is so - that persons called upon to pay a fine under these Regulations shall be given a fair chance to understand the reason why they are to pay such a fine in order that they may be able to make their representations surely facts and circumstances giving rise to the imposition of fine should be disclosed to them. No evidence need be given. Facts and circumstances should be related to one or more of the grounds specified in Regulation 3. It is not sufficient and it does not amount to a statement of facts and circumstances giving rise to an order to simply mention that a number of murders and outrages have been committed between such and such a date and to invite the inhabitants to show cause why a fine should not be imposed on them. Paragraph 7 of the affidavit of the Commissioner gives an account of what transpired in the meeting held for an inquiry on the 11th June, 1956 under Regulation 6. In para 7 it is stated: "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 January the 1st, 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 was any person or group of persons wishing to make further

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

representations they could do so through the elected Municipal Councillors.

The corresponding paragraph in the affidavit filed on behalf of the applicants by one of them is in paragraph 8. The relevant part of the paragraph reads: "In fact the Commissioner summoned a meeting at the Office of the Commissioner of Limassol to which only the Greek Members of the Council of the Municipality of Limassol and the Greek Mukhtars and Azas of the Limassol town were invited to attend. Such meeting was held and attended by me, 5 Greek Municipal Councillors and the Greek Mukhtars and Azas of the town of Limassol to whom the Commissioner spoke about certain murders and other offences committed in Limassol and added that he was determined to impose a collective fine unless cause was shown to the contrary. Then all those present were asked by the Commissioner to show cause why a collective fine should not be levied on the assessable inhabitants of the area of the Municipality of Limassol and the reply was that the imposition of a collective fine would be unjustified, unwarranted and anachronistic. None of the above persons represented or claimed to represent the Greek-Cypriot assessable 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."

It is clear from the contents I quoted from the two affidavits that in the meeting of the 11th June, 1956 no inquiry whatsoever was held in the nature of one contemplated by Regulation 5(1). Nothing was said as to the facts and circumstances giving rise to the proposed collective fine order. The persons assembled were informed of the intention of the Commissioner to make such an order on account of the offences committed in Limassol and they were invited to show cause why this course should not be taken. This was contrary to the letter and spirit of Regulation 5(1) & (2).

In paragraph 3 of his affidavit the Commissioner states that through confidential reports and information he was satisfied that a great many of the Greek inhabitants living and working within the municipal area of Limassol were in a position to

identify the felons but were wilfully abstaining from doing so and a great number of the remaining were either actively or passively encouraging others to give information to the authorities. It appears that the Commissioner was convinced through such information independently of any inquiry, that there was a case for him to impose a collective fine on the assessable inhabitants of the town before the provisions of the Regulations have been satisfied. He was perfectly entitled to inform himself in the way he did and indeed it was one of his important duties to do it. There I can see nothing wrong. It is settled law that he is not bound to summon for and conduct an enquiry like a judge with an open mind so long as he has not got a foreclosed mind, and no doubt before holding an inquiry under Regulation 5 (1) he is expected tentatively to come to a decision for the necessity to call an inquiry. In other words it is only natural that he should be satisfied that there is a prima facie case for embarking on such enquiries. It is not the business of the Court to go into the merits and demerits of the case at all. But it is the paramount duty of the Courts to see that when ministerial powers coupled with absolute discretions are exercised they are done so in strict compliance with statutory provisions. Otherwise the body or person vested with such statutory powers is acting in excess of his jurisdiction. That is he assumes and exercises a power which he does not possess. Holding an inquiry as prescribed in Regulation 5 (1) is a prerequisite for a valid order. The condition imposed is a mandatory one. The Regulation 5 (1) starts with words "No order shall be made". There are some collateral points to be decided along with the non-compliance of the requirements of Regulation 5(1), that is the failure to notify the public of the inquiry. The persons invited to the meeting not being authorised representatives of the people and so forth but for the purposes of this application I do not think that I need go into them. I can only say that the Commissioner is entitled to a great latitude and unless in his methods he manifestly frustrates the object of the section under review his action cannot be challenged. Similarly I do not propose to examine ground 3 inasmuch as my examination of the case up to this point enables me, in my view, to dispose of this application. I feel it would not be amiss if I shortly deal with certain authorities bearing

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

on ground 2 and on the import and effect of Regulation 13 on proceedings of certiorari.

I start with a quotation from the judgment of Lord Greene M.R. in Carltona Ltd., v. Commissioner of Works (1943) 2 A.E.L.R. p.560 at p.564.

> "All that the Court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and to see that those powers are exercised in good faith. Apart from that, the courts have no power at all to inquire into the reasonableness, the policy, the sense or any other aspect of the transaction."

Lord Greene in another one of his judgments dealt with the principles governing the judicial control over the exercise of the statutory ministerial powers. It is the case of Robinson v. Minister of Town and Country Planning (1947) K.B. p. 702 at pages 716 and 717:

> "This is not the case of an appeal. It is the case of an original order to be made by the Minister as an executive authority who is at liberty to base his opinion on whatever material he thinks fit, whether obtained in the ordinary course of his executive functions or derived from what is brought out at a public inquiry if there is one. To say that in coming to his decision he is in any sense acting in a quasi-judicial capacity is to misunderstand the nature of the process altogether. I am not concerned to dispute that the inquiry itself must be conducted on what may be described as quasi-judicial principles. But this is quite a different thing from saying that any such principles are applicable to the doing of the executive act itself, that is, the making of the order. The inquiry is only a step in the process which leads to that result and there is, in my opinion, no justification for saying that the executive decision to make the order can be controlled by the courts by reference to the evidence or lack of evidence at the inquiry which is here relied on."

Further down he continues:

> "Different considerations, of course, apply in a case where a Minister can be shown to have overstepped the limits of his statutory powers, as for example, where the conditions in which they may be exercised are laid down in the statute and he purports to act in case where those conditions do not exist."

In Franklin and others v. Minister of Town and Country Planning (1947) 2 A.E.L.R, p.287, The House of Lords ruled that the Minister under New Town Act 1949, schedule 1, para.3 in holding a local inquiry into the objections was not discharging a judicial or quasi-judicial duty. All he was bound to do was not to approach matters with a foreclosed mind. His duties are purely administrative and the only question was whether he had complied with the statutory direction to hold the public inquiry and to consider the report of the person in charge.

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.

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 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:

> "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

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

clause making the decision final is sufficient to exclude the writ. (R.V. Hunt (1856) 6 E. & B. 408) many administrative decisions are in this way excluded from the scope of this remedy. One illustration will suffice.

The Acquisition of Land (Authorisation Procedure) Act, 1946, permits a person aggrieved by a compulsory purchase order to apply to the High Court to have it quashed on certain grounds and within a certain period after it becomes operative. But the Act proceeds:

> "Subject to the provisions of the last foregoing paragraph, a compulsory purchase order ..... shall not, either before or after it has been confirmed, ... be questioned in any legal proceedings whatsoever....."

"Again, the powers conferred may be so wide in their terms that, though the remedy by an order of certiorari may in theory not be taken away, yet in practice it is valueless. The most far-reaching form of power was perhaps contained in the Local Government Act, 1894. Under that section a parish council might obtain an order from the country council enabling it to purchase land compulsorily. The order required the confirmation of the Minister of Health, but the Act provided that:

> "upon such confirmation the order..... shall become final and have the effect of an Act of Parliament, and the confirmation of the (Minister) shall be conclusive evidence that the requirements of this Act have been complied with and that the order has been duly made and is within the powers of this Act."

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.

For reasons I have endeavoured to explain the motion succeeds and the order of certiorari applied

for is granted with costs.

(sgd.) M. Zekia.
J.

15th December, 1956.

In the Supreme Court of Cyprus

No. 8.

Judgment of Mr. Justice Zekia.

15th December 1956.

No. 9.

Order of Mr. Justice Zekia.

15th December 1956.

No. 9.

ORDER OF MR. JUSTICE ZEKIA

IN THE SUPREME COURT OF CYPRUS

ORIGINAL JURISDICTION

BEFORE: The Hon. Mr. Justice Zekia, Judge of the Supreme Court.

UPON READING the Notice of Motion on behalf of Vassos Papadopoullos and 3 others of Limassol, dated the 26th November 1956, together with a copy of the Statement used on the application for leave to issue the said Notice of Motion and the affidavit of Vassos Papadopoullos and the exhibits therein referred to filed in support of the said Motion and the affidavit of Robert Chattan Ross-Clunis filed in opposition thereto;

AND UPON HEARING Sir P. Cacoyannis, Mr. J. Potamitis and Mr. Chrysses Demetriades of Counsel for the applicants and Sir James H. Henry, Bart., M.C., Q.C., Attorney-General with Mr.R.R.Denktash, Crown Counsel of Counsel for the respondent;

IT IS ORDERED that a certain order under the hand and seal of Mr. Robert Chattan Ross-Clunis, Commissioner of Limassol, and bearing date on or about the 4th July, 1956, whereby Vassos Papadopoullos and other assessable Greek Cypriot inhabitants of the town of Limassol were ordered to pay

In the Supreme Court of Cyprus

No. 9.

Order of Mr. Justice Zekia.

15th December 1956.

a collective fine of £35,000 mils be removed into the Supreme Court of Cyprus and that the said Commissioner do send forthwith the said order or a copy of the same under the hand and seal of the said Robert Chattan Ross-Clunis Commissioner of Limassol, to the Supreme Court of Cyprus;

AND IT IS FURTHER ORDERED that thereupon the said order be quashed forthwith.

AND IT IS FURTHER ORDERED that the said respondent do pay to the said applicants or their advocates their costs of and occasioned by this Motion such costs to be taxed by the Chief Registrar of the Supreme Court. 10

Given this 15th day of December, 1956.

(Sgd) M. Zekia,
J.

In the Supreme Court of Cyprus (On Appeal)

No. 10.

Notice of Appeal

24th January 1957.

No. 10.

NOTICE OF APPEAL

IN THE SUPREME COURT — Civil Appeal 4210

On appeal from the Honourable Mr. Justice Zekia.

Civil Application No. 16/56

In the matter of an application by Vassos Papadopoullos and others of Limassol
For an Order of Certiorari — Applicants

- and -

The Commissioner of Limassol — Respondent

TAKE NOTICE that the Respondent hereby appeals from the judgment given in the above action on the 15th day of December 1956, whereof a copy is attached to this notice.

In the Supreme Court of Cyprus (On Appeal)

No.10.

Notice of Appeal.

24th January 1957.

AND TAKE NOTICE that his appeal is against so much of the said judgment (or order) as adjudged (or directed) that, the ground (described by the learned Judge as ground 2 of the appeal) which related to the interpretation of and compliance by the respondent with Regulation 5 and Regulation 13 of the Emergency Powers (Collective Punishment) Regulations, 1955 (hereinafter referred to as "the Regulations") should be determined against the respondent:

AND FURTHER TAKE NOTICE that his grounds of appeal and the reasons therefor respectfully submitted are as follows :-

(1) That the learned judge was wrong in holding

(i) that in the meeting of the 11th June 1956, at Limassol no enquiry whatever was held in the nature of one contemplated by regulation 5 (1) of the Regulations, and that nothing was said as to the facts and circumstances giving rise to the proposed collective fine order;

(ii) that the actions of the respondent at the said meeting were contrary to the letter and spirit of regulation 5 of the Regulations.

(2) That the learned judge failed to give due and sufficient weight to the sworn evidence of the respondent in paragraphs 3 to 9 inclusive of his affidavit filed in the proceedings in coming to the conclusion that the respondent had not complied with the requirements of paragraphs (1) and (2) of Regulation 5 of the Regulations as to the holding of an enquiry by the Commissioner;

(3) That the learned judge erred in law in determining that the enquiry to be held under paragraph (1) of regulation 5 of the Regulations is intended to be a public one or at any rate an enquiry in which the affected assessable inhabitants of the particular area would have a right to be present and follow it and take part if they so wished to do so at some

In the Supreme Court of Cyprus (On Appeal)

No.10.

Notice of Appeal.

24th January 1957.

time or other in the proceedings, and that the said regulation 5 (1) was not susceptible of another interpretation;

(4) That the learned judge erred in law in the construction placed by him upon regulation 13 of the Regulations;

(5) That the learned judge ought to have held

(a) that the respondent

(i) had held an enquiry into the acts and circumstances giving rise to the order aforesaid, and

(ii) in holding the said enquiry had satisfied himself that the assessable Greek Cypriot inhabitants of the municipal area of Limassol had been given adequate opportunity of understanding the subject matter of the enquiry and of making representations thereon, and

(iii) had complied with the requirements of paragraphs (1) and (2) of Regulation 5 of the Regulations;

(b) that in all the circumstances and having regard to regulation 13 of the Regulations the order of the Respondent dated the 4th July, 1956 was final and ought not to be brought up and quashed by this Honourable Court.

This appeal is based on section 21 of the Courts of Justice Law, 1953, Order 35 of the Civil Procedure Rules, and, so far as may be applicable, Orders 58 and 59 of the Rules of the Supreme Court of England.

And the respondent humbly prays that the judgment and order so far as is appealed against be set aside and that this honourable Court do order that

the order of certiorari be discharged with costs to the respondent.

(Sgd) James Henry,
Attorney-General
(for the Respondent)

Filed this 24th day of January, 1957.

(Sgd) Chr. Fysentzides,
Registrar.

Address for service: Attorney-General's Chambers,
Legal Department,
Nicosia.

In the Supreme Court of Cyprus (On Appeal)

No.10.

Notice of Appeal.

24th January 1957.

No. 11.

No.11.

NOTICE OF OPPOSITION

Notice of Opposition.

31st January 1957.

IN THE SUPREME COURT OF CYPRUS

(On Appeal) Civil Appeal No. 4210

In the matter of an application for an order of Certiorari.

The Commissioner of Limassol — Appellant-Respondent

- and -

Vassos Papadopoullos and others of Limassol, — Respondents-Applicants

To

(1) Commissioner of Limassol

(Address for service: Attorney-General's Chambers, Legal Department, Nicosia)

(2) The Registrar of the Court of Appeal, Nicosia.

TAKE NOTICE that the respondents Vassos Papadopoullos and others intend upon the hearing of the appeal against the judgment made in the above application to contend that the said judgment

In the Supreme Court of Cyprus (On Appeal)

No.11.

Notice of Opposition.

31st January 1957.

should be varied in the following respect viz:-

The decision of the learned judge that the Emergency Powers (Collective Punishment) Regulations 1955 to (No. 1) 1955, under which the Order of the Commissioner made on the 4th July 1956, and quashed by the judgment appealed against, were not, in so far as they purport to empower the Commissioner with the approval of the Governor to order that a fine be levied collectively on the assessable inhabitants of an area in the Colony of Cyprus or any part thereof, ultra vires, illegal and void is wrong in Law on the ground that the Emergency Powers Orders in Council 1939 & 1952 do not empower the Governor to make the said Regulations.

Dated this 31st January, 1957.

(Sgd) P.L. Lacoyannis
(Sgd) John Ph. Potamitis
(Sgd) Chrysses Demetriades

Advocates for the Respondents-Applicants.

Address for Service: of the Respondents-Applicants:-
The Law Office of Messrs. John Clerides & Sons, Nicosia.

Filed this 1st day of February, 1957.

(Sgd) Chr. Fysentzides,
Registrar.

No.12.

Judgment.

(a) Chief Justice Hallinan.

8th March 1957.

No. 12.

JUDGMENT

(a) Chief Justice Hallinan

This is an appeal from the decision of Mr. Justice Zekia quashing, upon an application for certiorari, an order made by the Commissioner of Limassol of the 4th July, 1955, that a fine of £35,000 be levied collectively on the assessable

Greek Cypriot inhabitants of Limassol.

The Commissioner made the order under the Emergency Powers (Collective Punishment) Regulations, 1955. These Regulations were made by the Governor under the Emergency Powers (Orders in Council), 1939 and 1952. Three issues were considered upon the hearing of the application for certiorari. The first two were submitted by the applicants and the third by the respondent. The first issue was whether the Regulations of 1955 were ultra vires the Emergency Powers (Orders in Council) 1939 to 1952. The second issue was whether the order of the Commissioner was bad because before making his order under Regulation 3 of the Regulations of 1955 he had failed to comply with the provisions of Regulation 5 as to the holding of an enquiry. And the third issue which was argued for the respondent was that under Regulation 13 any order made under the Regulations is final and not appealable and, therefore, a certiorari does not lie.

The learned trial Judge held that the provisions of Regulation 13 did not preclude the Supreme Court from controlling the order of the Commissioner by certiorari; and as regards the first and second issues he held that, although the Regulations of 1955 were not ultra vires the Emergency Powers (Orders in Council), the Commissioner had not held an enquiry in the nature of the one contemplated by Regulation 5(1) and that, since this enquiry was a condition precedent to the making of this order, an order of certiorari must issue to quash the Commissioner's order.

It is convenient to deal quite shortly with the first and third issues and then to consider at some length the much more difficult issue as to whether the Commissioner failed to hold the enquiry under Regulation 5(1). In my view the decision of the learned Judge that Regulation 13 is not a bar to proceedings for certiorari is correct. The Regulation bars the right of appeal but does not preclude the Supreme Court from reviewing and controlling the order of the Commissioner by certiorari if it was established that he was acting judicially. I also consider that the learned judge was correct in holding that the Regulations of 1955 were not ultra vires the Emergency Powers (Orders in

In the Supreme Court of Cyprus (On Appeal

No.12.

Judgment

(a) Chief Justice Hallinan.

8th March 1957.

Council). Section 6(1) of the Order of the Emergency Powers (Order in Council), 1939, provides: "The Governor may make such regulations as appear to him necessary and expedient for securing public safety, the defence of the country, the maintenance of public order and the suppression of mutiny, rebellion and riot and for maintaining supplies and services essential for the life of the community". Sub-paragraph 2 provides that, without prejudice to the generality of the powers conferred by the preceding sub-section, certain powers are expressly conferred on the Governor to make regulations including in paragraph 6 powers to provide for the apprehension, trial and punishment of persons offending against the Regulations. It was submitted by Counsel for the applicants that no Regulations under the Orders in Council can be made by virtue of sub-section 6 (1) which are inconsistent with the powers conferred under section 6 (2) and that it is contrary to sub-section 2 (g) that the inhabitants of Limassol should be punished without trial. I am unable to accept this submission. There is nothing in the paragraph which makes it necessary that the regulation must provide for trial as well as punishment for, if this was so, logically no person could be punished unless he was apprehended first as well as tried. The argument ultimately rests not on the provisions of paragraph (g) but on the fundamental rights of the British subjects under the Magna Charta and the British Constitutional Law. This matter was considered in R. v. Halliday, 1917 Appeal Cases, 260, where the power to make a regulation for the detention of persons without a charge or trial under the Defence of the Realm Consolidation Act 1914, was challenged as ultra vires. It was held in the House of Lords that the regulations were not ultra vires and that Parliament had the undoubted right to alter even the most fundamental laws of the constitution and had done so for the safety of the State. Under Regulation 7 of the Emergency Powers (Collective Punishment) Regulations, 1955, the proceeds of any fine must, under the Regulations, be paid to any person who suffered injury or loss or damage to his property unlawfully in the area; and Regulation 4 provides that after the payments of any such compensation the balance of the fine so levied shall be applied to such purposes in the district as the Governor may direct. The imposition of such a fine and the way in which they are to be applied is a

far less drastic interference with constitutional rights than the deprivation of the personal liberty under a detention order.

Before considering the second issue as to whether the Commissioner complied with the provisions of Regulation 5, I shall discuss a very important matter argued on this appeal which apparently was not argued before the learned judge.

The Attorney-General submitted for the appellant that the acts which the Commissioner is required to do when making an Order under the Regulations of 1955 are ministerial and not judicial acts and, therefore, certiorari cannot lie to control them. It is beyond question good law that certiorari does not issue to control ministerial acts and, in my view, the Commissioner when making an order under Regulation 3 was acting ministerially. The Regulations of 1955 are made to meet a grave threat to law and order occasioned by organized terrorism in Cyprus; and the circumstances giving rise to the making of the regulations are the same as those which require the making of the principal regulations, namely, the Emergency Powers (Public Safety and Order) Regulations, 1955. Under Regulation 6 of these principal regulations if the Governor has reasonable cause to believe certain facts concerning a person, he may issue an order for that person to be detained. It has been already held by the Supreme Court that, following the decision in the House of Lords in Liversidge v. Anderson, 1942 Appeal Cases, 206, such detention orders made by the Governor are ministerial acts. Taking Regulation 3 of the Emergency Powers (Collective Punishment) Regulations, 1955, by itself, apart from the provisions of Regulation 5, I am clearly of opinion that an order made under this regulation is purely ministerial. I also consider that where a power is given to an official to do a ministerial act and he fails to comply with the statutory provisions which are conditions precedent to the exercise of such power, then his order may not be challenged by certiorari but by an action for a declaration. I note in 11 Halsbury, 3rd edition, at p.54, para. 111, it is stated: "It is possible to bring before the Court by means of an action for a declaration the question whether any administrative or executive action or decision taken or given in purported pursuance of a power conferred by

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(a) Chief Justice Hallinan.

8th March 1957.

statute ..... was ultra vires". If the enquiry prescribed by Regulation 5 had been a lis between two parties, then the Commissioner might have to act judicially in considering the report of the enquiry before making his order. This is the type of case illustrated in Errington v. the Minister of Health (1935) 1 K.B., 249, referred to in 11 Halsbury, p. 56, para. 114, note "c". But the present case is of the type of cases referred to in the following note "d". In this latter type of case there is no lis between a local authority and an objector but the minister himself is the proposer; to cite from Halsbury's note: "The minister or other official who makes a decision in exercise of his statutory duty cannot be himself considered as 'quasi-litigant' vis-a-vis objectors." Since the Commissioner when making an order under Regulation 3 had not to consider judicially the report of the enquiry under Regulation 5 his order remained ministerial in character.

The learned judge cites a passage from the judgment of Lord Greene in Robinson v. The Minister of Town and Country Planning (1947), K.B.702, at p.716 and 717: I was at first puzzled by the fact that in Robinson's case the making of the order was held to be a ministerial act and yet in the citation from Lord Greene's judgment underlined by the learned Judge it was suggested that the Court could nevertheless control the minister if he had not complied with the statute in exercising his powers. On reading this passage I assumed, as I think the learned Judge must have done, that the application in Robinson's case and in the case of Franklin and others v. The Minister of Town and Country Planning (2) A.E.R., 287, was for certiorari. However, it is clear from Lord Greene's judgment that the application was under section 16 of the Town and Country Planning Act 1944. This section provides that any person aggrieved by an order made under the Act, that any requirement of the act or that any regulation made under it has not been complied with, may make an application to the High Court; and the Court, if satisfied that this is so may quash the order. This section 16 was incorporated by reference into the New Towns Act, 1946, and again the application in Franklin's case was under that section. Upon an application under this section, even though the act was ministerial, the order could be quashed if some statutory provision under

the Acts of 1944 or 1946 had not been complied with. But where the application is for certiorari, as I have already stated, this prerogative order cannot issue to control a ministerial act. The learned judge's failure to appreciate this distinction is all the more readily understood since the question of whether the Commissioner's order was a ministerial or judicial act does not appear to have been argued before him; nor indeed was it one of the grounds of appeal, but we consider that it is an issue which should be argued and we are prepared to allow the grounds of appeal to be amended as we have allowed this matter to be argued upon hearing of the appeal.

For the reasons I have stated, in my view, the application for certiorari in this case was misconceived as the order of the Commissioner under Regulation 3 was a ministerial act and the prerogative order of certiorari cannot issue to control it.

Although my conclusion that the order was a ministerial act disposes of the appeal, I am unable to agree with the learned judge that the Commissioner failed to comply with the provisions of Regulation 5 (1) as to his holding an enquiry, and would allow the appeal also on this ground.

Regulation 3 provides inter alia that if an offence is committed within a certain area and the Commissioner has reason to believe that all or any of the inhabitants of the area are in some way responsible for the commission of such offences (and the ways in which they may be responsible are enumerated) the Commissioner with the approval of the Governor may inter alia order that a collective fine be levied on the inhabitants of the area. Regulation 5, which is the regulation most in question on the present issue, is as follows :-

> "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.
>
> (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

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(a) Chief Justice Hallinan.

8th March 1957.

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.

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

The applicants' ground for submitting that there was non compliance with the provisions of Regulation 5(1) is contained in paragraph 8 of the affidavit of Mr. Papadopoullos of Limassol dated 20th November, 1956:

"The defendant failed to hold such an enquiry into the facts and circumstances giving rise to the above Order as could reasonably satisfy the Commissioner that the inhabitants of the area of the Municipality of Limassol were given adequate opportunity of understanding the subject-matter of such enquiry and making representations thereon. In fact the Commissioner summoned a meeting at the office of the Commissioner of Limassol to which only the Greek Members of the Council of the Municipality of Limassol and the Greek Mukhtars and Azas of the Limassol town were invited to attend. Such meeting was held and attended by me, 5 Greek Municipal Councillors and the Greek Muktars and Azas of the town of Limassol to whom the Commissioner spoke about certain murders and other offences committed in Limassol and added that he was determined to impose a collective fine unless cause was shown to the contrary. Then all those present were asked by the Commissioner to show cause why a collective fine should not be levied on the assessable inhabitants of the area of the Municipality of Limassol and the reply was that the imposition of a collective fine would be unjustified, unwarranted and anachronistic. None of the above persons represented or claimed to represent the Greek-Cypriot assessable 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 Haralambos Hadji Arabis of Limassol, one of the said Mukhtars, the great majority of the said Greek Mukhtars (including the said Haralambos 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."

What took place prior to the Commissioner's meeting with the Mukhtars and Azas is narrated in paragraphs 3 and 4 of the Commissioner's affidavit of the 4th December, 1956:

"In my official capacity I followed six murders, ten attempted murders and a great number of bomb outrages, causing two other 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 persons 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 remain undetected.

4. After due consideration of the situation, I invited in writing the 6 Greek Municipal Councillors (including the Deputy Mayor) and 9 Greek Mukhtars and 27 Azas of the various quarters of the town of Limassol to attend a meeting in my office on the 11th of 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

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(a) Chief Justice Hallinan.

8th March 1957.

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. Papadopoullos' affidavit I say that the resignation of the persons therein mentioned has never been accepted."

The Commissioner here refers to section 6 of the Village Authorities Law (Cap. 256) which provides that Mukhtars and Azas may resign their office with the consent in writing of the Governor. The opportunity given by the Commissioner to the inhabitants to understand the subject-matter of the enquiry and make representations thereon is described by the Commissioner in paragraphs 5 to 8 of his affidavit as follows :-

"5. Publicity was given to the fact that such an enquiry was to be carried out on the 11th of June, 1956, through the local representatives of the Greek press.

6. On the 11th of June at the time and place appointed the above-mentioned Councillors, Mukhtars and Azas appeared. All local representatives of the Greek press were also there.

7. I informed the meeting that I was holding this public inquiry 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 January 1st, 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 was any person or group of persons wishing to make further representations they could do so through the elected Municipal Councillors.

8. The enquiry was fully reported in all Greek papers and the invitation for further representations was given full publicity. There is now produced and shown to me marked

"A" the translation of an extract from the Greek paper ETHNOS dated the 12th June 1956."

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(a) Chief Justice Hallinan.

8th March 1957.

The Commissioner, however, also gives particulars of numerous representations which he received from groups of people representing localities, quarters and associations.

The decision and reasons of the learned Judge on this question of compliance or non-compliance with the provisions of the regulations are contained in the following passage of the judgment:

> "Regulation 5(1) read in conjunction with Regulation 5(2) in my view leaves no room for doubt that the enquiry to be held under paragraph 1 of Regulation 5 is intended to be a public one or at any rate an enquiry in which the affected assessable inhabitants of the particular area would have a right to be present and follow it and take part if they wish to do so at some time or other in the proceedings. In my opinion Regulation 5 (1) is not susceptible of another interpretation.
>
> If it is desired - and I have no hesitation that it is so - that persons called upon to pay a fine under these Regulations shall be given a fair chance to understand the reason why they are to pay such a fine in order that they may be able to make their representations, surely the facts and circumstances giving rise to the imposition of fine should be disclosed to them. No evidence need be given. The facts and circumstances should be related to one or more of the grounds specified in Regulation 3. It is not sufficient and it does not amount to a statement of facts and circumstances giving rise to an order to simply mention that a number of murders and outrages have been committed between such and such a date and to invite the inhabitants to show cause why a fine should not be imposed on them."

The first question that arises in considering Regulation 5 is whether this enquiry is a judicial act. Apart from the provisions requiring the Commissioner to give the inhabitants adequate opportunity of understanding the subject-matter of the enquiry and making representations I do not think

In the Supreme Court of Cyprus (On Appeal)

No. 12.

Judgment

(a) Chief Justice Hallinan.

8th March 1957.

he was discharging judicial functions. There is no lis between parties, and the enquiry requires a report but not a decision, for the decision is made under Regulation 3 which as I have stated is a ministerial act. In Patterson v. District Commissioner of Accra and another (1948) Appeal Cases, 341, a Peace Preservation Ordinance of the Gold Coast provided that the District Commissioner within whose district any portion of a proclaimed district is, shall, after inquiry, if necessary, assess the proportion in which such cost is to be paid by the said inhabitants according to his judgment of their respective means. This was held by the Privy Council to be a ministerial act even though Patterson had admittedly been deprived of part of his property without having had the opportunity of being heard. In the present case apart from the requirements of "adequate opportunity" already mentioned the Commissioner had merely to enquire into the facts and circumstances giving rise to the order and conduct an enquiry in such a manner as he thought fit. I would agree that when the Commissioner proceeds to give the inhabitants the adequate opportunity I have mentioned he is embarking on a judicial act, were it not for the phrase "The Commissioner shall satisfy himself". Unless this phrase is interpreted as supplying a subjective test of compliance, it is difficult to see what meaning it can have in paragraph 2; if the test is subjective then the Court cannot go behind the Commissioner's own statement that he has satisfied himself. However, I am prepared to assume that the phrase should be interpreted according to the objective test and that it is for the Court to say whether had in fact reasonable grounds for being satisfied that the inhabitants had the "adequate opportunity" required in that paragraph.

As I understand the learned judge's judgment, the Commissioner failed in two ways to comply with Regulation 5: First, because the enquiry should have been a public one at which the assessable inhabitants had the right to be present and take part if they wished to do so; and secondly, that he did not disclose to these inhabitants the facts and circumstances giving rise to the imposition of the fine.

As regards the first point I think the learned judge has misconceived the nature of the enquiry.

The Commissioner had a duty to enquire into the facts and circumstances giving rise to the order. In my view the confidential reports and information, to which the Commissioner refers in paragraph 3 of his affidavit, is part of his enquiry into the facts and circumstances and these reports and information need not be given to him publicly before the inhabitants. There is nothing in the regulations which prescribes that the enquiry shall be public. The very nature of the emergency which gave rise to the regulations may well make it necessary for the Commissioner's enquiries to be confidential. The decision in the House of Lords in the Local Government Board v. Arlidge, 1915 Appeal Cases, 120, is ample authority for the proposition that natural justice does not require an administrative officer when acting judicially to have the parties present before him. At page 138 Lord Shaw of Dunfermline said:

> "But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are "ex necessitate" those of Courts of Justice is wholly unfounded."

As regards the second way in which the Commissioner is alleged not to have complied with Regulation 5, the learned Judge appears to have considered that the phrase "subject-matter of the enquiry" means the same thing as "the facts and circumstances giving rise to the order". With respect I do not think this somewhat vague phrase should be stretched so wide. In the Shorter Oxford English Dictionary under the word "subject" in its third meaning there appears the following: "That which forms or is chosen as the matter of thought, consideration or enquiry; a topic, theme". Commissioners and Judicial Officers might differ as to what the brief statement of the subject-matter of an inquiry should contain but I am unable to hold that as a matter of law the Commissioner erred when he interpreted the phrase the "subject-matter of an enquiry" to mean that he was enquiring into a long list of outrages which had occurred within the town since the 1st of January, 1956, and that he proposed to hold the inhabitants of the town responsible and to levy a fine upon them under the Regulations of 1955, which had been published in the official

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(a) Chief Justice Hallinan.

8th March 1957.

Gazette and of whose provisions they presumably were aware.

In 25 Halsbury's Statutes, 2nd Edition, at p. 623, there is a note under section 104 of the Town and Country Planning Act, 1947, setting out the procedure of local enquiries. The inspector opens the local enquiry by making a brief statement as to the subject-matter of the enquiry. Where the minister is himself the promote of the proposal, the inspector or the representative of the minister then makes a brief explanatory statement with reference to the draft order after which the objectors and other interested parties put their case. In 11 Halsbury, p.65, paragraph 122, under the rubric "natural justice" at note (f), cases are cited where it was held that there was no obligation on the minister in considering objections to disclose to objectors the information obtained by him or material which came to his possession prior to the making of objections including information regarding the views of other Government departments. It must be remembered also that the Commissioner is complying with a specific statutory provision of a more restricted nature than the general consideration of natural justice. The learned judge's interpretation of the phrase "subject-matter" may, I think, have been induced by the judicial concept of natural justice which requires that a person acting judicially should give the parties a fair opportunity to correct the prejudicial statements made against them; but here we are not asked to say whether the procedure of the Commissioner was contrary to natural justice but whether he did what was required of him by the regulations.

The learned judge not only considered that the facts and circumstances that have given rise to the order should have been disclosed but that these should have been related to one or more of the grounds specified in Regulation 3. Again I would respectfully say that I am unable to agree. The learned trial Judge appears to have assumed that the subject-matter of the enquiry should have been stated to the inhabitants almost with the particularity of a criminal charge. This is certainly not what the regulation requires and in fact, when stating the subject matter of the enquiry to the inhabitants, the Commissioner need not in my view have made up his mind on which of the grounds specified in Regulation 3 his order would be based.

It is not entirely clear from the affidavit before the Court as to what precisely the Commissioner told the Mukhtars and Azas. The affidavit of Mr. Papadopoullos merely states that "The Commissioner spoke about certain murders and other offences committed in Limassol and added that he was determined to impose a collective fine unless cause was shown to the contrary". Neither the notice of motion or the facts stated in what respect the information given by the Commissioner fell short of what was required under Regulation 5(2) and it is not surprising that the Commissioner should give nothing more than a summary of what he said to the meeting in paragraph 7 of his affidavit. In Franklin v. The Minister of Town Planning (1947), 1 A.E.R.; 612, which was an application to quash an order made by the minister on the ground of bias, Tucker, L.J. at 620 states: "When applications of this kind are made to the Court, the notice of motion and the affidavits in support thereof should state with precision and particularity the matters which are going to be relied on as indicating bias." Moreover I think that if the inhabitants considered that the statement of the subject-matter of the enquiry was sufficient to give them an opportunity of making representations they should have asked the Commissioner for further information, which in his discretion he might have given. In this connection, I cite a passage from the judgment of Lord Oaksey, L.J., in Franklin's case at p. 617:

> "Another point was raised before us. It was argued that the public inquiry which was held was not a proper public local inquiry within the meaning of para. 3 of Schedule I to the Act of 1946 because there had been at the inquiry no representative of the Minister of Town and County Planning and no witnesses had been called on his behalf and the case for the designation of Stevenage had not been put. It was argued that in all analogous cases it had been held that the cases for both sides must be put forward before the inspector who held the public local inquiry. The point that the inquiry was not being properly held was not taken at the inquiry, as, in my opinion, it ought to have been taken if the point was going to be raised on appeal. All that was done was that it was suggested to the inspector at the inquiry that witnesses ought to be

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(a) Chief Justice Hallinan.

8th March 1957.

called in support of the draft order, but it was never suggested that, on the true construction of the New Towns Act, the inquiry was not being properly held."

It was also argued on behalf of the applicants for certiorari that the inhabitants of the area had not been properly notified of their right to make representations. As he based his finding that the Commissioner had not complied with Regulation 5 on other grounds, the learned judge did not consider it necessary to go into this question. He was content merely to make the following comment: "I can only say that the Commissioner is entitled to a great latitude and unless in his methods he manifestly frustrates the object of the section under review his action cannot be challenged."

In my view the measures taken by the Commissioner as disclosed by his affidavit to notify the inhabitants were sufficient to comply with the regulation and the Greek Cypriot Mukhtars and Azas who attended the meeting were, in my view, if not under a legal duty, at least had a civic duty to communicate and make public to the inhabitants the information given to them by the Commissioner. They failed to do their duty as citizens when they obstructed him in his endeavours to comply with the provisions of Regulation 5.

For the reasons stated in this judgment I consider that this appeal should be allowed, that the cross-appeal should be dismissed and that the order to bring up and quash the Commissioner's order should be set aside.

However, as my learned brother in his judgment, which he will now deliver, is of opinion that both the appeal and the cross-appeal should be dismissed, this Court stands evenly divided, and the decision appealed against must stand. There will be no order as to costs.

(Sgd) Eric Hallinan,

Chief Justice.

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(b) Zannetides, J.

8th March 1957.

(b) Zannetides, J.

The points which fall for consideration and decision in these two appeals - the appeal and the cross-appeal - are the following three. Two in the appeal and one in the cross-appeal. The two in the appeal are: First, whether the order made by the District Commissioner of Limassol is final and it cannot be brought up by certiorari in the Supreme Court and questioned in view of regulation 13 of the Emergency Powers (Collective Fine) Regulations 1952, which I will call hereafter "Regulations". Secondly, whether the District Commissioner in making that order complied with the requirements of the Regulations and particularly of regulation 5 and, if he did not, what would be the effect of the non-compliance. The point raised in the cross-appeal is whether the whole of the "Regulations" made by the Governor are ultra vires the Governor having regard to the powers given to him by the Emergency Powers (Orders in Council), 1939 and 1956, under which the said Regulations were made. A fourth point, although not taken before Zekia, J. and not contained in the Notice of Appeal, was put forward and argued before us by the Attorney-General on behalf of the appellant, namely, whether the District Commissioner in acting under the Regulations and making the order was performing a quasi-judicial act or a ministerial act.

For the sake of convenience I will take the four points in the following order: First the point in the cross-appeal, i.e. whether the whole of the Regulations are ultra vires the Governor. The answer to this point is given by the construction to be put and the scope of section 6 of the Emergency Powers (Orders in Council) 1939 and 1956. Section 6 runs as follows :-

> "(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 it

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(b) Zannetides, J.

8th March 1957.

appears to the Governor to be necessary or expedient for any of the purposes mentioned in that sub-section -

(a) make provision for the detention of persons .....
....

(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."

In my view sub-section 1 is comprehensive enough as to include the making of the Regulations under consideration within the powers given to the Governor by that sub-section. The only limitation to the powers of the Governor is the limitation by the proviso to the section, namely, that he is not authorised to make provision for the trial of persons by Military Courts. The argument put forward by the respondents that the powers given in subsection 1 are governed and limited by paragraph (g) of subsection 2 cannot stand: that paragraph, in my opinion, has nothing to do with and cannot help to construe nor does it limit the powers given in subsection 1: in my view the decision of the learned trial judge that the Regulations were not ultra vires the Governor is correct and the cross-appeal fails.

The second point, is whether the order of the District Commissioner is final and cannot be brought up by certiorari into the Supreme Court and questioned in view of regulation 13. On this point too I am of the opinion that the learned trial Judge came to the right conclusion that certiorari was not taken away by regulation 13. It is correct that the right of appeal is taken away by regulation 13, but the common law right of certiorari is never taken away except by express negative words and the appeal, therefore, fails on that point too.

The third point is as to whether the Commissioner in acting under the Regulations and making the order complied with the Regulations and

particularly with regulations 3 and 5. Regulation 3 of the Regulations runs as follows :-

> "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 - "

(and then it goes on to enumerate 7 acts or omissions by the inhabitants and proceeds as follows)

> "..... it shall be lawful for the Commissioner, with the approval of the Governor, to take all or any of the following actions:-
>
> (i) to order that a fine be levied collectively on the assessable inhabitants of the said area, or any part thereof;
>
> (ii) .....
>
> (iii) .....
>
> (iv) ....."

I need not mention the other actions because we are concerned only in this case with the levying of a collective fine. Regulation 5 is as follows :-

> "(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.
>
> (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."

The provision of these two regulations must be read together. Regulation 3 gives power to the District Commissioner and enumerates the cases in which he can take a certain action and make an order and regulation 5 prescribes what he is bound to do

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(b) Zannetides, J.

8th March 1957.

before he takes that action. To my mind the proper approach to the question is to try and give to these two regulations their proper construction and after doing that to try to apply them to the facts of the present case. For the District Commissioner to start taking action there must be first the commission of an offence as defined in regulation 2 or damage to property within his area. Then he must have reasons to believe that the inhabitants of the area have committed any of the acts or omissions enumerated in regulation 3, but he must under regulation 5 hold an enquiry into the facts and circumstances giving rise to the making of the order. In holding this enquiry he must make sure that the inhabitants of the area are given adequate opportunity of understanding the subject-matter of the enquiry and making representations thereon and subject to this condition the manner of the enquiry is left to his discretion. It is obvious that the enquiry is not at an end until after the consideration by the Commissioner of possible representations. What are the facts and circumstances giving rise to the making of the order for which the Commissioner is bound under regulation 5 (1) to hold an enquiry? To my mind they are: First, the fact of the commission of an offence as defined by regulation 2 or damage to property and also the facts from which the Commissioner will infer and on the strength of which he will have reasons to believe that the inhabitants of the area are guilty of one or more of the acts or omissions enumerated in section 3. Going now to regulation 5(2), what do the words "subject-matter of the enquiry" mean ? To my mind the words "subject-matter of the enquiry" mean the facts and circumstances giving rise to the making of the order. In other words the facts and circumstances of the commission of an offence or damage to property and the facts and circumstances fixing the inhabitants, in the belief of the Commissioner, with a collective liability; until the inhabitants are furnished with that information I fail to see how they will be able to make representations on the subject-matter of an enquiry as they are entitled to do by regulation 5(2). As to the manner in which the enquiry is to be held, that is left by regulation 5 (2) to the discretion of the Commissioner with one condition, that in holding the enquiry he shall be satisfied that the inhabitants are given adequate opportunity of understanding the subject-matter of the enquiry

and making representations thereon. It is clear that the holding of the enquiry is a condition that must precede the making of the order.

Having thus endeavoured to construe the relevant regulation I must now see what the District Commissioner did in the present case. I take the material from his own affidavit (paragraphs 3 to 7) and from the affidavit of Mr.Vassos Papadopoullos, one of the respondents, at paragraph 8.

In paragraph 3 of his affidavit the Commissioner states :-

> "In my official capacity I followed six murders, ten attempted murders and a great number of bomb outrages, causing two other 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 persons 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 remain undetected."

In paragraph 4 he says that he invited in writing the Greek local and municipal authorities in the town to attend a meeting at his office on the 11th June, 1956, at 4 p.m., informing them that there was to be held an enquiry under regulation 5 of the Regulations. In paragraph 6 he states that they all appeared at the appointed day and time and in paragraph 7 he goes on to give a description of what had taken place at that meeting. This paragraph runs as follows :-

> "I informed the meeting that I was holding this public inquiry with a view to deciding whether I should recommend to His Excellency the Governor the levying of a fine on the

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(b) Zannetides, J.

8th March 1957.

Greek inhabitants of the town in respect of a long list of outrages which had occurred within the town since January the 1st, 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 was any person or group of persons wishing to make further representations they could do so through the elected Municipal Councillors."

It is clear from this paragraph that what the Commissioner did was to inform them that he was holding a public enquiry with a view to deciding whether to levy a fine on the Greek inhabitants of Limassol collectively in respect of a long list of outrages which had occurred and he invited them to show cause why a fine should not be imposed. And he goes on to say that after discussions he came to the conclusion that no cause was shown. It is not stated by the Commissioner what the discussions were about but it may be reasonably inferred from paragraph 8 of Mr. Papadopoullos's affidavit that the discussion was not about the subject-matter of the enquiry but on the disclaimer by them of any representative capacity of the Greek inhabitants and in fact they were unco-operative. They did not even undertake to convey to the Greek inhabitants what the Commissioner had told them at this meeting as it is stated in paragraph 8 of his affidavit.

With regard to the subject-matter of the enquiry Mr. Papadopoullos states that "..... the Commissioner spoke about certain murders and other offences committed in Limassol and added that he was determined to impose a collective fine unless cause was shown to the contrary....." It is clear from paragraph 7 of the Commissioner's affidavit and paragraph 8 of Mr. Papadopoullos's affidavit that nothing was said about the facts and circumstances of the outrages and the facts and circumstances of the acts or omissions of the inhabitants making them collectively liable. The Commissioner states in his paragraph 9 of his affidavit that after the enquiry he received some representations from various people but there is nothing to show

whether they were representations regarding the subject-matter of the enquiry or whether they were complaints of a general character, regarding the propriety and justice of the Order. The Commissioner eventually submitted his report with the statutory certificate and with the Governor's approval issued his order dated the 4th July 1956, in which he ordered that a fine of £35,000 be levied collectively on the Greek assessable inhabitants of Limassol. In this order he is fixing the inhabitants with a collective liability for having failed to take reasonable steps to prevent the commission of offence and as having failed to render all the assistance in their power to discover the offenders, bringing them within paragraphs (c) and (d) of regulation 3. These are the facts.

Having stated the facts, it is appropriate now to see whether the Regulations and particularly regulation 5 as construed applies to the facts of the case. 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 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 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. It is true that in his affidavit, paragraph 12, he states that he did so. Had he been stating about the state of his own mind I may grant that this statement of paragraph 12 might be conclusive evidence as to the facts in the absence of mala fides, but here the Commissioner is stating about the state of mind of other people

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(b) Zannetides, J.

8th March 1957.

and the position is not analogous to the position of the Governor when making a detention order under regulation 6 of the Emergency Powers (Public Safety and Order) Regulations, 1955, in which as it was decided by this Court, in Civil Appeals No. 4173-4176 that when the good faith of the Governor was admitted a statement by him that he brought his mind to bear on the circumstances of the case and that in his opinion a detention order should be made was the end to the whole thing and the facts and circumstances that made him act could not be enquired into.

As I said in dealing with the construction of regulation 5 (2) I take the words "subject-matter of the enquiry" to mean the facts and circumstances giving rise to the making of the order as provided in regulation 5(1). Here the Commissioner did not tell them anything about it. What he told them is contained in paragraph 7 of his affidavit and paragraph 8 of Mr. Papadopoullos's affidavit. This is far from giving them adequate opportunity of understanding the subject-matter of the enquiry. I do not propose for a moment to hold that he was bound to give them all details and disclose to them confidential information and its source but I think that he ought to give them sufficient facts and circumstances of the outrages committed and sufficient facts and circumstances showing that they were collectively liable. They would then, and then only, be able to make representations on the enquiry. This the Commissioner did not do and I am of the opinion that he did not comply with regulation 5; and, though I am deeply sorry that my opinion will have to differ from the opinion of My Lord the Chief Justice on this point, I am of the opinion that the order of the Commissioner was bad and the appeal must fail also on this point.

I will finally deal with the point raised by the Attorney-General before this Court for the first time, that is, whether the District Commissioner in acting under regulations 3 and 5 of the Regulations and making the order was performing a quasi-judicial or a ministerial act, it being conceded that if it was a ministerial act certiorari did not lie. The proper approach of the question is, in my opinion, to consider the circumstances of the case and the construction of regulations 3 and 5, assisted by the principle enunciated in

numerous English cases that if a person has legal authority to determine questions affecting the rights of the subject and has a duty to act judicially his determination will be a judicial act.

In our case the District Commissioner had legal authority under regulation 3 to determine whether to levy a fine collectively on the inhabitants, in other words, to impose a penalty on them thus affecting not only their property but also their character.

Before making the order for the fine he was duty bound by regulation 5 to hold an inquiry into the facts and circumstances giving rise to the making of the order and, in holding the inquiry, give adequate opportunity to the inhabitants of understanding the subject-matter of the inquiry and making representations. He would then, and then only, make the order. The inquiry is a condition precedent to the order and throughout the process the District Commissioner, in my opinion, was bound to act judicially if he were to comply with what regulation 5 prescribes. His order under regulation 3, which was to come after the requirements of regulation 5 had been complied with, cannot be regarded as a ministerial act done as a matter of policy but it is a judicial act. The cases of Robinson and others v. Minister of Town and Country Planning (1947) 1 A.E.L.R., p. 851, and Franklin and others v. Minister of Town and Country Planning (1948) Law Reports, Appeal Cases, p.87, cannot help us in our case.

The Court of Appeal in the former and the House of Lords in the latter decided that the order of the Minister was a ministerial act made as a matter of policy but the wording of the relevant sections of the Town and Planning Act, 1944, and the New Towns Act, 1946 was completely different from that or our regulations 3 and 5. The inquiry to be held under those statutes was not into the facts and circumstances giving rise to the making of the order by the Minister; the order was drafted beforehand as a matter of general policy and the inquiry was into possible objections.

The case nearer to our case is the case of Patterson v. the District Commissioner of Accra (1948) Law Reports, Privy Council, 341. But in

In the Supreme Court of Cyprus (On Appeal)

No.12.

Judgment

(b) Zannetides, J.

8th March 1957.

in this case also the circumstances of the case and the wording of section 9 of the Peace Preservation Ordinance, which they were dealing with, were completely different and the decision of the Privy Council that the assessment by the District Commissioner was a ministerial act was mainly based on the wording of section 9.

Considering the circumstances of the present case and the wording of regulations 3 and 5, I have come to the conclusion that I will have to differ on this point too from the opinion of my Lord the Chief Justice and hold, as I have stated above, that the order made by the District Commissioner is a judicial or quasi-judicial act.

For all the reasons stated above both the appeal and the cross-appeal must, in my opinion, fail and must be dismissed.

(Sgd) C. Zannetides,
J.

8.3.57.

No.13.

Order Dismissing Appeal.

8th March 1957.

No.13.

ORDER DISMISSING APPEAL

Upon the appeal of the above-named appellant from the judgment of the Hon. Mr. Justice Zekia, dated the 15th December, 1956, coming on for hearing before this Court and upon hearing Sir James H. Henry, Bart., Q.C., Attorney-General, of Counsel for the appellant and Sir Panayiotis L. Cacoyannis with Mr. J. Potamitis and Mr. Chrysses Demetriades of Counsel for the respondents, THIS COURT DOTH ORDER that the appeal be and it is hereby dismissed.

Given this 8th day of March, 1957.

Drawn up this 24th day of April, 1957.

(Sgd) C. Zannetides,
Judge of the Supreme Court.

No.14.

MOTION FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

In the Supreme Court of Cyprus (On Appeal)

No.14.

Motion for leave to Appeal to Her Majesty in Council.

6th April 1957.

TAKE NOTICE that this Honourable Court will be moved by the Attorney-General on behalf of Robert Chattan Boss-Clunis Commissioner of Limassol (hereinafter called "your Petitioner") for leave to appeal to Her Majesty in Council against the judgment of this Honourable Court dated the 8th day of March, 1957, a copy of which is attached hereto, upon the following grounds :-

1. On the 26th day of November, 1956, pursuant to leave granted by the Honourable Mr. Justice Zekia on the 22nd day of November 1956, an application was made to this Honourable Court by Vassos Papadopoullos, Evagoras C. Lanitis, Nicos S. Roussos and Athanassis Limnatitis of Limassol (hereinafter called "the Applicants") upon the grounds set forth in a statement and an affidavit by the said Vassos Papadopoullos served therewith on your Petitioner for an order of certiorari to remove into this Honourable Court and quash the Order made on the 4th day of July, 1956, by your Petitioner and published in Supplement No.3 to the Cyprus Gazette, No. 3957 of the 12th July, 1956, Notification 655, under which a fine of £35,000 (thirty-five thousand pounds) was ordered to be levied collectively on the assessable Greek Cypriot inhabitants of the area of the Municipality of Limassol in the exercise of the powers vested in him by Regulation 3 of the Emergency Powers (Collective Punishment) Regulations, 1955 to (No. 1) 1955.

2. The facts relied upon in opposition were set forth in affidavit by your Petitioner dated the 4th day of December, 1956.

3. The application was taken by this Honourable Court on the 7th day of December, 1956, when Sir Panayotis Cacoyannis on behalf of the Applicants and the Attorney-General on behalf of your Petitioner of Counsel were heard.

4. The judgment of the Honourable Mr. Justice Zekia was delivered on the 15th day of December,

In the Supreme Court of Cyprus (On Appeal)

No.14.

Motion for Leave to Appeal to Her Majesty in Council.

6th April 1957.

1956, and it was adjudged thereby that the order of certiorari applied for should be granted with costs against your Petitioner.

5. On the 24th day of January, 1957, your Petitioner filed a notice of appeal humbly praying that the said judgment of the Honourable Mr.Justice Zekia, so far as appealed against, be set aside for the reasons therein stated and that the order of certiorari be discharged. On the 1st day of February, 1957, the Applicants gave notice of a cross appeal.

6. The appeal and cross appeal were heard by the Honourable the Chief Justice, Sir Eric Hallinan and the Honourable Mr. Justice Zannetides on the 25th and 26th days of February, 1957, the same counsel being heard on behalf of your Petitioner and the Applicants.

7. On the 8th day of March 1957, this Honourable Court delivered judgment. The Court stood evenly divided, the Honourable the Chief Justice considering that your Petitioner's appeal should be allowed and the cross appeal of the Applicants dismissed, and the Honourable Mr.Justice Zannetides being of opinion that both the appeal and the cross appeal should be dismissed. As the Court stood evenly divided, the decision appealed against stood, no order being made as to costs.

8. Your Petitioner craves leave to refer to the application and to all affidavits and exhibits thereto and other documents filed in the proceedings, to the judgment of the Honourable Mr.Justice Zekia and the notice of appeal of your Petitioner therefrom, and to the judgments of this Honourable Court on appeal, and generally to all other proceedings in the said application and appeal.

9. Your Petitioner feels himself aggrieved by the judgment of the Honourable Mr.Justice Zekia on questions of law and the construction of Emergency Regulations, and the dismissal of his appeal from such judgment by this Honourable Court and is desirous of appealing to Her Majesty in Council.

10. The proceedings before the Honourable Mr. Justice Zekia and in this Honourable Court on Appeal involve the question of the legality of the

imposition of a collective fine of £35,000, and is therefore one of great general and public importance and gives rise to difficult questions of law, which have not been clearly or finally determined.

YOUR PETITIONER THEREFORE PRAYS -

(1) That this Honourable Court may be pleased to grant your Petitioner leave to appeal from the said judgment dated the 8th day of March, 1957, to Her Majesty in Council.

(2) That this Honourable Court may fix the time or times within which your Petitioner shall take the necessary steps for the purpose of procuring the preparation of the record for despatch to England and give the necessary directions accordingly.

(3) That this Honourable Court may make such further or other order in the premises as may seem just in accordance with the Cyprus (Appeal to Privy Council) Order in Council, 1927.

AND YOUR PETITIONER WILL EVER PRAY

Dated this 6th day of April, 1957.

(Sgd) James Henry
ATTORNEY GENERAL
On behalf of the Commissioner of Limassol.
PETITIONER.

Filed the 6th day of April, 1957.

(Sgd) N. Stylianakis,
Chief Registrar.

Address for service: Attorney-General's Chambers, Nicosia, Cyprus.

The Chief Registrar,
Her Majesty's Supreme Court,
Nicosia, Cyprus.

To be served on Messrs. Sir Panayotis Cacoyannis, John P. Potamitis and Chrysses Demetriades, Advocates for the Applicants, whose address for service is Messrs. John Clerides & Sons, Advocates, Ankara Street, Nicosia.

In the Supreme Court of Cyprus (On Appeal)

No.15.

Affidavit of the Attorney-General in Support.

6th April 1957.

No.15.

AFFIDAVIT OF THE ATTORNEY-GENERAL IN SUPPORT

I, JAMES HOLMES HENRY, Bart, Attorney-General of Cyprus, Counsel for the above named Petitioner, make oath and say as follows :-

1. I have received instructions from the Petitioner to apply for leave to appeal to Her Majesty in Council from a judgment of the Supreme Court of Cyprus dated the 8th March, 1957.

2. I have read over the notice of motion lodged herewith and the evidence received and the judgments delivered in the Supreme Court and from such perusal and from the said instructions I verily believe that the facts stated in the said notice of motion are true.

(Sgd) James Henry
The Affiant.

Sworn and signed before me
this 6th day of April 1957,
at the Supreme Court,
Nicosia.

(Sgd) N. Stylianakis,
Chief Registrar.

No.16.

Proceedings - Respondents Opposition.

16th April 1957.

No.16.

PROCEEDINGS - RESPONDENTS OPPOSITION

Opposition taken by Sir Panayiotis L. Cacoyannis on behalf of the respondents on the 1st day of the hearing (16th April, 1957) to the motion of the Attorney-General for leave to appeal to Her Majesty in Her Privy Council

SIR PANAYIOTIS L. CACOYANNIS:

May it please Your Lordships. I shall oppose the motion on two grounds: First, because they

failed to comply with Article 4 of the Cyprus (Appeal to Privy Council) Order in Council, 1927.

....

..... I withdraw my second point.

In the Supreme Court of Cyprus (On Appeal)

No.16.

Proceedings - Respondents Opposition.

16th April 1957.

No.17.

NOTE OF APPLICATION BY ATTORNEY-GENERAL

No.17.

Note of Application by Attorney-General.

24th April 1957.

The Attorney-General (through the Solicitor-General, Mr. Munir) applied orally, to-day, in accordance with article 4 of the Cyprus (Appeal to Privy Council) Order in Council, 1927, to have the final judgment of the Supreme Court in Civil Appeal No. 4210, entered pro forma for the purposes of Special leave to appeal to Her Majesty in Her Privy Council.

(Sgd) N. Stylianakis,
Chief Registrar.

Nicosia, 24/4/1957.

No.18.

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

No.18.

Judgment on Application for Leave to Appeal to Her Majesty in Council.

23rd April 1957.

We are of the opinion that there are no merits in the arguments put forward on behalf of the respondents; we think this is a case not only in which we have power to grant leave but in which we should properly do so under Article 3 (a) and (b) of the Cyprus (Appeal to Privy Council) Order in

In the Supreme Court of Cyprus (On Appeal)

No.18.

Judgment on application for Leave to Appeal to Her Majesty in Council.

23rd April 1957.

Council, 1927. The order will be in the usual terms allowing three months to prepare the record.

Costs in cause.

A formal order will be drawn up in the usual way.

(Sgd) Paget J. Bourke,
C.J.

(Sgd) C. Zannetides,
J.

23.4.57.

No.19.

Order granting Conditional Leave to Appeal to Her Majesty in Council.

23rd April 1957.

No.19.

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

Upon the petition of the above-named appellant filed in this Court on the 6th day of April, 1957, praying for leave to appeal to Her Majesty in Her Privy Council from the judgment of the Supreme Court pronounced herein on the 8th day of March, 1957, coming on to be heard before This Court and upon hearing what was alleged by Sir James H. Henry, Bart., Q.C., Attorney-General, and Mr. R. Grey, Crown Prosecuting Counsel, of counsel for the petitioner, and Sir Panayiotis L. Cacoyannis, Mr. John F. Potamitis and Mr. Chrysses Demetriades of Counsel for the respondents herein, THIS COURT DOTH GRANT the Petitioner conditional leave to appeal from the said judgment to Her Majesty in Her Privy Council, subject to the Petitioner taking the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within 3 months from the date hereof.

AND THIS COURT DOTH FURTHER ORDER that the

costs occasioned by this petition shall be costs in cause.

Dated the 23rd day of April, 1957.

Drawn up this 30th day of May, 1957.

(Sgd) Paget J. Bourke,
Chief Justice.

In the Supreme Court of Cyprus (On Appeal)

No.19.

Order granting Conditional Leave to Appeal to Her Majesty in Council.

23rd April 1957

No.20.

No.20.

PETITION FOR FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

Petition for final leave to Appeal to Her Majesty in Council.

8th June 1957.

To the Honourable Court:

The humble petition of Robert Chattan Ross-Clunis Commissioner of Limassol, the appellant (hereinafter referred to as the Petitioner) showeth as follows :-

(1) On the 23rd day of April 1957, your petitioner obtained from this Hon. Court conditional leave to appeal from the judgment of this Hon.Court in the above numbered appeal dated the 8th March 1957, upon condition of your petitioner taking the necessary steps for the purpose of procuring the preparation of the record and the dispatch thereof to England within three months from the date thereof.

(2) The petitioner intends to have the record printed in England (vide affidavit sworn by M. N. Munir, Solicitor-General, marked "A") in accordance with Order 14 of the Cyprus (Appeal to Privy Council) Order-in-Council, 1927.

And your petitioner humbly prays that this Hon.Court do take this petition into consideration and do grant your petitioner final leave to appeal

In the Supreme Court of Cyprus (On Appeal)

No.20.

Petition for final leave to Appeal to Her Majesty in Council.

8th June 1957.

to Her Majesty in Her Privy Council, from the judgment of this Hon. Court, dated the 8th day of March, 1957, and do give such other directions as this Hon. Court shall think fit.

This petition has been prepared in accordance with Order 21 of the Cyprus (Appeal to Privy Council) Order-in-Council, 1927.

AND YOUR PETITIONER WILL EVER PRAY.

Dated this 8th day of June, 1957.

(Sgd) M.N. Munir,
Solicitor-General,
For Attorney-General
On behalf of the Commissioner of Limassol,
PETITIONER.

Filed the 8th day of June, 1957.

(Sgd) Chr. Fysentzides,
Registrar.

Address for service: Attorney-General's Chambers, Nicosia, Cyprus.

The Chief Registrar,
Her Majesty's Supreme Court,
Nicosia, Cyprus.

To be served on Messrs. Sir Panayotis Cacoyannis, John F. Potamitis and Chrysses Demetriades, Advocates for the Applicants, whose address for service is Messrs. John Clerides & Sons, Advocates, Ankara Street, Nicosia.

No.21.

No.21.

AFFIDAVIT IN SUPPORT OF PETITION FOR FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

(Not printed)

No. 22.

In the Supreme Court of Cyprus (On Appeal)

No.22.

Order granting final leave to Appeal to Her Majesty in Council.

11th June 1957.

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN HER PRIVY COUNCIL

Upon the application of the above-named appellant for final leave to appeal to Her Majesty in Her Privy Council, from the judgment of the Supreme Court pronounced on the 8th day of March, 1957, coming on for hearing before This Court and upon hearing Mr. M. N. Munir, Q.C., Solicitor General, of Counsel for the appellant, Sir Panayotis L. Cacoyannis of Counsel for the respondents not opposing the application, THIS COURT being satisfied that the conditions contained in an order of This Court, made on the 23rd day of April, 1957, granting conditional leave to appeal to Her Majesty in Her Privy Council, have been complied with, DOTH GRANT final leave to appeal to Her Majesty in Her Privy Council.

Given this 11th day of June, 1957.

Drawn up this 11th day of June, 1957.

(Sgd) Paget J. Bourke,
Chief Justice

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. IANITIS
3. NICOS S. ROUSSOS
4. ATHANASSIS LIMNATITIS
all of Limassol.
Respondents

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Appellant.

INCE & CO.,
10 and 11, Lime Street,
London, E.C.3.
Solicitors for the Respondents.