therefore he had not reasonable cause to believe the information which he received concerning the appellants. In fact the appellants were all prominent members of a proscribed organisation. The first appellant was the General Secretary, the second appellant was a member of the Central Committee of Akel, the third appellant had organised a political strike, had recently made seditious speeches, and had stood for election (although he was not elected) as a member of a District committee of Akel; and the fourth appellant was a member of the Central and District Committee of Akel. We agree with the learned Judge that the appellants have not established a *prima facie* case that the Governor had not properly applied his mind to the circumstances of each detainee and therefore the detention orders cannot be invalidated on this ground.

The failure of the appellants to establish a *prima facie* case on the last ground referred to is fatal to their application to secure the attendance of the Governor for cross-examination on his affidavit. The decision of the House of Lords in *Liversidge* v. *Anderson* (1941) 3 A.E.R. 338, and *Green* v. *The Home Secretary* (1941) 3 A.E.R. 388 finally establish that the authority making the detention order cannot be questioned as to the sufficiency of the grounds on which he bases his belief. In the present case, only if the appellants had established *prima facie* that the Governor had not applied his mind to the circumstances of each detainee's case would the question then arise whether a further affidavit by the Governor or his attendance for cross-examination would be desirable.

The appeals against the refusal of the applications for writs of habeas corpus and of the applications that the Governor be required to attend for cross-examination on his affidavit must therefore be dismissed.

PRIVY COUNCIL

(July 12, 26, 1956)

Present:

VISCOUNT SIMONDS, LORD OAKSEY, LORD TUCKER, LORD COHEN and LORD SOMERVELL OF HARROW.

ANDREAS CHARILAOU ZAKOS AND ANOTHER, *Appellants,*

v.

THE QUEEN, *Respondent.*

(On appeal from the Supreme Court of Cyprus)

Cyprus — Criminal law — Emergency regulations — Charge of carrying and discharging firearms — Framed under relevant regulations read with sections of Criminal Code— Whether sections of Code applicable to the regulations—

1956
July 12, 26

ANDREAS CH. ZAKOS AND ANOTHER
v.
THE QUEEN

Charge valid — Emergency Powers (Public Safety and Order) Regulations, 1955, regs. 52 (a) (c), 72—Criminal Code (Laws of Cyprus, 1949, c. 13), ss. 20, 21 — Interpretation Law (Laws of Cyprus, 1949, c. 1), s. 2.

Privy Council — Jurisdiction — Criminal matter — Essential principle of justice.

The appellants were charged with and convicted of discharging and carrying firearms contrary to paragraphs (a) and (c) of regulation 52 of the Emergency Powers (Public Safety and Order) Regulations, 1955, and sections 20 and 21 of the Criminal Code of Cyprus. Section 20 of the Code made aiders and abettors guilty of the offence charged, and section 21 related to common intent, and the appellants, alleging that they were not found guilty of themselves discharging or carrying firearms and that their "offence" lay in the application to their case of section 20 or 21 of the Code, contended that those provisions did not apply to regulation 52 and that they had therefore been charged with and convicted of offences unknown to the law of Cyprus. They submitted that in the Criminal Code an "offence" was defined in section 4 as meaning an act punishable by law, that section 2 of the Interpretation Law of Cyprus defined "law" as "any enactment by the competent "legislative authority of the Colony," that regulations made by the Governor under the Emergency Powers Orders in Council of 1939 and 1952 were made by him in his executive, not his legislative, capacity and did not fall within the definition of "law," that therefore an offence against the regulations was not an offence punishable by law, and that therefore sections 20 and 21 of the Code had no application to such an offence.

They contended secondly that if the regulations did fall within the definition of "law," yet sections 20 and 21 of the Code did not apply to their case because section 2 (a) of the Code provided that "nothing in the Code shall affect the liability, trial or punishment of a person for an offence against any law in force in the Colony other than the Criminal Code." They further submitted that sections 20 and 21, or at any rate section 20, of the Code had been impliedly repealed by other regulations made under the Emergency Powers Orders in Council, and particularly regulation 72, which substantially repeated many of the provisions of sections 20 and 21 of the Code:

Held: (1) that the regulations themselves, in providing in paragraph 2 (2) that "the Interpretation Law shall apply to the interpretation of these regulations.....as it applies to the interpretation of a law and, for the purposes of the said law, these regulations shall be deemed to be laws," meant that where in the relevant sections of the Criminal Code the word "law" was used it should be deemed to cover the regulations. Apart from that consideration, the word "law" as used in the definition of "offence" in the Criminal Code more appropriately meant the whole body of law for the infraction of which penalties were imposed.

(2) That there was no validity in the appellants' second contention. The purpose and effect of section 2 (a) of

the Code was merely to provide that the Criminal Code should not be regarded as exhaustive; and it must have been contemplated that further legislation dealing with particular offences might be passed. Section 2 (a) could not reasonably be construed as excluding the operation of the Code where it was not inconsistent with the provisions of a particular legislation.

(3) The duplication of provisions in sections 20 and 21 and regulation 72 did not involve the repeal of the Code or any part of it.

Judgment of the Supreme Court of Cyprus affirmed.

Note: As the points of law referred to in the above head-note were only taken in the Privy Council and not at the trial or upon appeal to the Supreme Court and since the report of the Privy Council's judgment is self-contained, it has not been thought necessary to report the judgments of the trial Court or the Supreme Court on appeal.

APPEAL (No. 13 of 1956), by special leave, from a judgment of the Supreme Court of Cyprus (Hallinan C. J., Zekia and Zannetides, JJ.) (April 6, 1956) dismissing the appellants' appeals from a judgment of the Special Court of Nicosia (Shaw J., sitting without a jury) (February 28, 1956) whereby they were convicted of discharging and carrying firearms and were sentenced to death.

Each of the appellants was charged in the following form:

"Statement of Offence
First Count

Discharging firearms, contrary to regulation 52 (a) of the Emergency Powers (Public Safety and Order) Regulations, 1955, and the Criminal Code, Cap. 13, sections 20 and 21.

Particulars of Offence

The accused on the 15th day of December, 1955, at Galini, in the District of Nicosia, did discharge firearms at Major Brian Jackson Coombe of the 37 Field Squadron Royal Engineers.

Statement of Offence
Second Count

Carrying firearms, contrary to regulation 52 (c) of the Emergency Powers (Public Safety and Order) Regulations, 1955, and the Criminal Code, Cap. 13, sections 20 and 21.

Particulars of Offence

The accused at the time and place in count 1 hereof mentioned, did carry firearms."

The relevant parts of regulation 52 were as follows:

"52. Any person who shall without lawful authority, the burden of proof of which shall lie upon him, (*a*) discharge any firearm at any person or any group or body of persons, or at any place where persons may be, ... (*c*) carry any firearm or ammunition or any bomb or grenade; ..... shall be guilty of an offence and shall on conviction be liable to be sentenced to death or to imprisonment for life or for such lesser term as the court may see fit to impose."

Sections 20 and 21 of the Cyprus Criminal Code, to which the charge also referred, were as follows:

"20. When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say — (*a*) every person who actually does the act or makes the omission which constitutes the offence; (*b*) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence; (c) every person who aids or abets another person in committing the offence; (*d*) any person who counsels or procures any other person to commit the offence.

In the fourth case he may be charged either with himself committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment as if he had himself done the act or made the omission; and he may be charged with himself doing the act or making the omission.

21. When two or more persons form a common intention to prosecute an unlawful purpose in connexion with one another, and in the prosecution of such purpose an offence is committed of such nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

The main point raised in the appeal was whether sections 20 and 21 of the Criminal Code had any application to the regulations; it was contended for the appellants that those sections had no application to the regulations

and that therefore they had been convicted of offences which were unknown to the law of Cyprus.

The argument for the appellants giving three reasons for the submission that sections 20 and 21 of the Code had no application to charges of offences created by the regulations appears from the judgment of the Judicial Committee.

1956. July 11, 12. *D. N. Pritt*, Q.C., and *D. A. Grant* for the appellants.

Gerald Howard, Q.C., and *J. G. Le Quesne* for the Crown.

The following cases were referred to in argument: *Watson* v. *Winch*[1]; *N. A. Subramania Iyer* v. *King-Emperor*[2]; *Knowles* v. *The King*[3]; *Meek* v. *Powell*[4]; *Rex* v. *Taylor*[5].

July 12. Viscount Simonds announced that their Lordships would humbly advise Her Majesty that the appeals should be dismissed and that they would give their reasons later.

July 26. Their Lordships' reasons for dismissing the appeals were delivered by Viscount Simonds. This is an appeal from a judgment of the Supreme Court of Cyprus dismissing the appellants' appeal from a judgment of the Special Court of Nicosia whereby the appellants were convicted of discharging and carrying firearms and were sentenced to death.

The appeal was brought (as such appeals can only be brought) by special leave, which was granted upon the allegation that the appellants had been tried for, and convicted of, offences unknown to the law of Cyprus. Upon an appeal recently brought from the Supreme Court of Cyprus their Lordships thought fit to state once more the nature of the jurisdiction which is exercised by the Board in criminal matters and to refer to some of the cases in which the principle had been asserted or applied. To such citations may be added a passage from the judgment of the Board delivered by Lord Dunedin in *Mohinder Singh* v. *King-Emperor*[6]:

"Their Lordships have frequently stated that they do not sit as a Court of Criminal Appeal. For them to interfere with a criminal sentence there must be something so irregular or so outrageous as to shock the very

(1) [1916] 1 K.B. 688, 690; 32 T.L.R. 244.
(2) [1901] L.R. 28 I.A. 257.
(3) [1930] A.C. 366, 370; 46 T.L.R. 276.
(4) [1952] 1 K.B. 164; [1952] 1 T.L.R. 358; [1952] 1 All E.R. 347.
(5) [1924] 40 T.L.R. 836.
(6) [1932] L.R. 59 I.A. 233, 235.

basis of justice," and a passage from the judgment of the Board delivered by Viscount Simon, L.C., in *Muhammad Nawaz* v. *King-Emperor*[1]: "Broadly speaking, the Judicial Committee will only interfere where there has been an infringement of the essential principles of justice."

It is possible that such an allegation as that which has been mentioned and which in fact is the first of the appellants' reasons in their formal case, viz. that they have been convicted of offences unknown to the law of Cyprus, might be supported by facts which would justify interference by the Board upon the principle above stated. But so general an allegation may cover defects of a trivial or technical character which would by no means justify either special leave to appeal or, if leave was granted, the allowance of the appeal. It is, therefore, necessary to examine carefully the facts of each case, and their Lordships proceed to do so in this case.

As has already been said, the appellants were convicted of the offence of discharging firearms and carrying firearms, and it must be at once stated that the judgment of the trial judge, Shaw J., was conspicuously careful, accurate and moderate. Their Lordships have no doubt that counsel for the appellants was right in conceding that, if he failed upon the points of law on which he relied, he had no valid ground of attack upon the facts. It must be stated, too, that neither before the trial judge nor on appeal to the Supreme Court were such points of law taken. The latter court was invited to reverse the judgment of the trial judge solely on grounds which raised questions of fact. Their Lordships, therefore, have not the advantage of the opinions upon the matters now raised of the courts below, to which they would naturally attach great weight. Nor, assuming that the points now taken had been well founded, do they know whether, if such points had been taken before the trial judge, an amendment might not have been made under section 81 of the Criminal Procedure Law with the consequence for which section 150 of that Law provides. Nor, again, do they know what course the Supreme Court might have taken under section 142 of the same Law, which authorizes the court to convict an accused person of any offence of which he might have been convicted on the evidence adduced at the trial. These are considerations which illustrate the mischief and inconvenience (to repeat the words of the Board in *Attorney-General for New South Wales* v. *Bertrand* [2] that may arise from an intervention in the administration of the criminal law.

Nevertheless, having said so much, their Lordships must examine the contention that the appellants have been

(1) [1941] L.R. 68 I.A. 126,128.
(2) [1867] L.R. 1 P.C. 520.

convicted of an offence unknown to the law of Cyprus. It will appear that this contention is not well founded.

Each of the appellants was charged in the following form: (His Lordship stated the terms of the charges and of sections 20 and 21 of the Criminal Code as set out above, and continued:) Upon these charges the submission of the appellants was that sections 20 and 21 of the Code had no application to the regulation and that therefore they were charged with offences unknown to the law of Cyprus. They were not, it was said, found guilty of themselves discharging or carrying firearms: their "offence" lay in the application to their case of one or other of the provisions of section 20 or section 21 of the Code: if these provisions did not apply to regulation 52, then there was no offence of which they could lawfully be convicted.

The argument proceeded thus. In the Criminal Code an "offence" is defined in section 4 as meaning an act, attempt or omission punishable by law: the Criminal Code does not contain a definition of law, but by section 2 of the Interpretation Law (Chapter 1 of the Laws of Cyprus, 1949) as amended by Law No. 30 of 1953, "Law" is defined as meaning "any enactment by the competent legislative authority of the Colony, but does not include.... an Order of Her Majesty in Council, Royal Charter, or Royal Letters Patent": Regulations made by the Governor under the Emergency Powers Orders in Council of 1939 and 1952 are the act of the executive authority and do not fall within the definition of "Law": therefore an offence against the regulations is not an offence punishable by "law": therefore sections 20 and 21 have no application to such an offence.

In their Lordships' opinion the answer to this contention is supplied by the regulations themselves, which by paragraph 2 (2) provide that "the Interpretation Law shall apply to the interpretation of these regulations and of any order made or direction given thereunder, as it applies to the interpretation of a Law and, for the purposes of the said Law, these regulations shall be deemed to be Laws." It was urged on behalf of the appellants that the sole effect of this provision was to provide that the provisions of the Interpretation Law as to the proper interpretation of laws should apply to the interpretation of the regulations. But this is the meaning and effect to be given to the first part of the sub-paragraph: the latter part of it appears to their Lordships precisely to meet the present case and to provide that, where, as for instance in the relevant sections of the Criminal Code, the word "law" is used, it shall be deemed to cover the regulations. But, apart from this consideration, it is by no means clear to their Lordships that the word "law" where it is used in the definition of

"offence" in the Criminal Code has the meaning ascribed to the word "Law" by the Interpretation Act. In its context it more appropriately means the whole body of law for the infraction of which penalties are imposed.

It was then urged that if, contrary to the appellants' contention, the regulations fall within the definition of "law", yet sections 20 and 21 of the Criminal Code do not apply to their case because it is provided by section 2 (a) of that Code that "nothing in the Code shall affect the liability, trial or punishment of a person for an offence against any Law in force in the Colony other than the Criminal Code." There is no validity in this argument. At the time when the Criminal Code came into operation, other legislation creating offences remained in force and it must have been contemplated that further legislation dealing with particular offences might be passed. The purpose and effect of section 2 (a) was merely to provide that the Criminal Code should not be regarded as exhaustive. It cannot reasonably be construed as excluding the operation of the Code where it is not inconsistent with the provisions of particular legislation. This is equally true whether sections 20 and 21 are under consideration or sections such as sections 16 and 17, which are for the benefit of accused persons. This view is emphasized by the further provisions of section 2 itself, and in particular by the proviso which provides that, if a person does an act which is punishable under the Code and is also punishable under another Law of any of the kinds mentioned in the section, he shall not be punished for that act under both Laws.

Finally, it was urged that sections 20 and 21, or at any rate section 20, of the Code had been impliedly repealed by other regulations made under the Emergency Powers Orders in Council and particularly by regulations 72 and 73. This contention also fails. It is true that many of the provisions of sections 20 and 21 of the Code are repeated (some of them verbatim) in regulation 72, but this duplication does not involve the repeal of the Code or any part of it. This is clearly recognised by regulation 76 (the counter part of the proviso to section 2 of the Code) which provides that "Nothing in these regulations shall affect the liability of any person to trial and punishment for any offence otherwise than in accordance with these regulations: Provided that no person shall be punished twice for the same act or omission."

In their Lordships' opinion, therefore, this appeal fails on all the points of law which have for the first time been raised before them. But the contention last referred to, that the relevant sections of the Code had been impliedly repealed by the regulations, leads them to make a final observation.

Whatever be the correct view with regard to sections 20 and 21 of the Code, a study of the careful judgment of Shaw J. indicates that a conviction under regulations 52 and 72 must have resulted if the charge had been so framed without reliance on these sections.

Their Lordships have, for the reasons herein appearing, humbly advised Her Majesty that this appeal should be dismissed.

Solicitors: Bischoff & Co.; Charles Russell & Co.

[HALLINAN, C. J. and ZANNETIDES, J.]
(September 18, 1956)

MUSTAFA HAMZA of Ayios Theodoros, *Appellant*,

v.

KYRIACOS A. VLACHOS of Ayios Theodoros, *Respondent*.

(Civil Appeal No. 4183).

Action for strict liability—Tort—Rule in Rylands v. Fletcher—Occupier liable for acts of his children—Non-supervision of children—Quaeve: negligence.

In the month of June the defendant left his flock of sheep in charge of his children, aged 11 and 9. The boys on the defendant's land lit a fire to cook birds they had caught. The fire spread and damaged the crops of the plaintiff.

The trial Court held the defendant liable for negligence. Under section 49 of the Civil Wrongs Law, the children had committed the tort of negligence and the defendant was negligent in not taking reasonable precautions to prevent the children committing this tort.

Upon appeal,

Held: (1) It was doubtful whether, on the facts, the want of supervision by the defendant of his children amounted to the tort of negligence.

(2) The provisions of the Civil Wrongs Law (sections 48, 49 and 50, in particular) did not exclude the application of the Common Law action for strict liability (the rule in *Rylands* v. *Fletcher*), and to start a fire on agricultural land in Cyprus in the month of June is to introduce a dangerous thing giving rise to strict liability.

(3) The defendant as occupier of the land from which the fire escaped was, under the rule in *Rylands* v. *Fletcher*, liable for the acts of his children.

Appeal dismissed.

Appeal by defendant from the judgment of the District Court of Larnaca (Action No. 658/55).

K. Halil for the appellant.

E. Emilianides for the respondent.