[ZEKIA, J.]

(December 15, 1956)

IN THE MATTER OF AN APPLICATION BY VASSOS PAPADOPOULLOS AND OTHERS of Limassol,

Applicants,

For an order of *certiorari,*

v.

THE COMMISSIONER OF LIMASSOL,

Respondent.

(Civil Application 16/1956).

Certiorari—Emergency Powers (Collective Fine) Regulations, 1955—Ultra vires Emergency Powers Orders in Council, 1939 and 1952—Provisions of Regulation 5 (Inquiry by Commissioner) not complied with—Upon certiorari Order under Regulation 3 quashed.

The District Commissioner, Limassol, on the 4th of July, 1956, made an order imposing a collective fine of £35,000 on the inhabitants of Limassol under Reg. 3 of the Emergency Powers (Collective Fine) Regulations, 1955. Regulation 5 of these Regulations reads 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 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 applicants applied for *certiorari* to quash the order on two principal grounds:

First, that the Regulations of 1955 were *ultra vires* the Emergency Powers Orders in Council, 1939 and 1952; and, secondly, the order was bad because Regulation 5 had not been complied with.

Held: (1) The Emergency Powers (Collective Fine) Regulations, 1955, were not *ultra vires* the Emergency Powers Orders in Council, 1939 and 1952:—

(*a*) Paragraph 6 (1) of the Emergency Powers Order in Council, 1939, enables the Governor to make such Regulations as appear to him to be necessary or expedient for securing the public safety. The provisions of paragraph (2) do not limit the generality of the powers conferred by paragraph (1) and what is expedient or necessary for securing the public safety is a matter for the Authority making the Regulation even where the Regulation provides for the imposition of collective fine.

(*b*) The Emergency Powers (Collective Fine)

Regulations, 1955, are not contrary to the principles of International Law. Even if they were, only in cases of ambiguity would the Court lean in favour of a construction consonant with International Law. (cf. *R.* v. *Anderson* (1868) L.R. 1).

(2) The order of the 4th of July, 1956, was bad and *certiorari* granted to quash it:—

(*a*) The holding of an inquiry under Reg. 5 was a necessary condition precedent before making an order under Regulation 3 and if not held in accordance with Regulation 5 the order is bad. The inhabitants on whom a fine is imposed have a right to be present and follow and take part in the proceedings of the inquiry. They must 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. Upon the facts as disclosed by the affidavits no inquiry was held in the nature of the one contemplated by Regulation 5 (1).

(*b*) The provisions of Regulation 13 of the Emergency Powers (Collective Fine) Regulations, 1955, that an order made by the Commissioner under Reg. 3 shall be final and no appeal shall lie, does not preclude the Supreme Court from quashing an order upon an application for *certiorari*.

Application for a *certiorari* from the order of the Commissioner of Limassol.

Sir Panayiotis Cacoyannis with *J. Potamitis* and *Chr. Demetriades* for the applicants.

Sir James Henry, Bart., Attorney-General, with *R. R. Denktash*, Crown Counsel, for the respondent.

The facts sufficiently appear in the judgment delivered by:

ZEKIA, J.: 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 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 authorising 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 of 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 were neither contrary to International Law. What 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 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 sub-section, the Regulations 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 All E.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."

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 of expedient for the purposes named.
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> 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 economic 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 it is 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.
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> 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 as 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 inquiry. That the inquiry 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 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 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 it 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 inquiry 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, 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 enquiry 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 Regulations 3 and 5 this is what I readily understand them 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 para. 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 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 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-habitants 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."

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 a 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 pre-requisite 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 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 All E.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 All E.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 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.
