[HALLINAN, C. J., ZEKIA, J. and ZANNETIDES, J.]
(December 29, 1956)

NEARCHOS HAJI SOTERIOU & OTHERS of Famagusta, *Appellants,*

v.

B. J. WESTON, Commissioner of Famagusta, *Respondent.*

(Civil Appeal No. 4198)

Jurisdiction — Courts of Justice Law, 1953, section 20 (d) — Powers of High Court of Justice in England to control quasi-judicial Tribunals — Exclusive jurisdiction of Supreme Court — Includes declarations and injunctions— Not merely prerogative orders.

The plaintiffs instituted an action in the District Court of Famagusta claiming a declaration that an order for a collective fine made by the District Commissioner under the Emergency Powers (Collective Punishment) Regulations, 1955, was *ultra vires* and illegal. Upon a preliminary issue as to the jurisdiction of the District Court to make such declaration, the District Court held that the Supreme Court had exclusive jurisdiction to make such a declaration.

Upon appeal to the Supreme Court against this ruling,

Held: the Supreme Court has exclusive jurisdiction to grant declarations and injunctions when exercising such control over decisions of quasi-judicial tribunals and ministerial authorities as is exercised by the High Court of Justice in England under the Courts of Justice Law, 1953, section 20 (d).

Appeal by plaintiffs from the judgment of the District Court of Famagusta (Action No. 916/56).

Stelios Pavlides, Q.C., *John Clerides*, Q.C., and *A. Bouyouros* for the appellants.

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

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C. J.: These proceedings arose out of an order made by the Commissioner, Famagusta, imposing a fine on that town under the Emergency Powers (Collective Punishment) Regulations, 1955. The plaintiffs sued the Commissioner in the District Court, Famagusta, and asked for declarations that these Regulations and also the order of the Commissioner made under these Regulations were *ultra vires* and illegal. The defendant raised certain preliminary issues and it was decided that one of these issues should be determined before proceeding further with the action. The defendant pleaded that

under the provisions of section 20 (d) of the Courts of Justice Law (No. 40 of 1953) the District Court had no jurisdiction to grant the declarations and other reliefs sought in this case. The learned President upheld this plea of the defendant and from his decision the plaintiffs have now appealed.

The relevant part of section 20 of the Courts of Justice Law, 1953, is as follows:—

> "The Supreme Court shall have exclusive original jurisdiction—
>
> > "(d) to issue prerogative orders and exercise, in all matters where the proceedings of a quasi-judicial tribunal or of a ministerial authority are called in question, the powers of the High Court of Justice in England."

It is contended for the plaintiffs firstly that under section 20 exclusive jurisdiction of the Supreme Court conferred in paragraph (d) only extends to prerogative orders and that that part of the paragraph which follows the words "prerogative orders" is only intending to define the manner in which the Court shall exercise its powers in issuing such orders. Secondly, since the District Court has under section 45 of the Courts of Justice Law, 1953, the power to make declaratory judgments, in the submission of the plaintiffs, it is contended that section 20 (d) does not preclude the District Court from making declaratory judgments where the proceedings of a quasi-judicial tribunal or of a ministerial authority are called in question.

The second half of the plaintiffs' submission is undoubtedly correct: if the Supreme Court is not given exclusive jurisdiction to make declaratory judgments where proceedings of a quasi-judicial tribunal or of a ministerial authority are called in question, then the District Court would have jurisdiction to make such declaratory judgments even though an alternative remedy by way of prerogative order was open to the plaintiffs. However, it is the first submission of the plaintiffs which we, like the learned President, are unable to accept.

The Law is well established to-day that the proceedings and orders of quasi-judicial tribunals and ministerial authorities can within certain limits be controlled not only by the prerogative orders of *mandamus*, prohibition and *certiorari* but also by declarations and injunctions. For example, Denning, L. J., in *Bernard and others*, v. *National Dock Labour Board and another* (1953) 1 All E.R., 1113, at p. 1120 said:

> "In modern times proceedings by *quo warranto* have been abolished and replaced by a declaration

and injunction: see s. 9 of the Administration of Justice (Miscellaneous Provisions) Act, 1938."

The case of *Cooper* v. *Wilson* (1937), 2 All E.R., 726, is an example of relief being given by way of declaratory judgments rather than by *certiorari*. Greer, L.J., at p. 733 said:

> "nor do I think that the power which he undoubtedly possessed of obtaining a writ of *certiorari* to quash the order for his dismissal prevents his application to the court for a declaration as to the invalidity of the order of dismissal."

And, furthermore, counsel for the plaintiffs in this appeal have referred us to several cases decided between 1941 and 1943 on the validity of detention orders made under the Defence Regulations, 18B, of the United Kingdom where it was sought to obtain the release of a detained person by means of a declaratory judgment rather than by a writ of *habeas corpus*. In other words there has been an increasing tendency in recent years to ask for declarations and injunctions when seeking to control quasi-judicial tribunals or ministerial authorities rather than by proceedings for writs of *habeas corpus* or for prerogative orders. In this setting the meaning of that portion of section 20, paragraph (d), which follows the words "prerogative orders", is clearly intended to embrace proceedings for declarations and injunctions, which are now in common use in the High Court of Justice in England.

Counsel for the appellants has adduced two arguments in support of his submission: First, that the part of paragraph (d) which follows the words "prerogative orders" is merely inserted to confer on the Supreme Court such auxiliary and supplementary powers as are exercised by the High Court of Justice in England when issuing prerogative orders and in this connection he compared paragraph (d) with paragraph (b) of the same section.

This argument is easily disposed of. Counsel for the appellant has relied on the words which occur in section 20, paragraph (b) "and such other powers as belong to the High Court of Justice in England." In that paragraph of course these words are clearly used to confer on the Supreme Court such powers as are consequential on the making of decrees in matrimonial causes. If that was the intention in paragraph (d) it would be only necessary to provide in that paragraph power to issue prerogative orders and in the exercise of that jurisdiction to exercise such other powers as pertain to the High Court of Justice in England.

The appellants' second argument is this: that that part

of section 20 (d) which follows the words "prerogative orders" is inserted to emphasize the fact that according to the modern practice of the High Court these prerogative orders are issued not only to inferior tribunals but to quasi-judicial tribunals and ministerial authorities.

Counsel for the appellants has referred to the modern development of the law in England which permits orders of *certiorari* and prohibition (as is stated in 11 Halsbury's, 3rd Edition, 55)—

> "to lie to bodies and persons other than courts '*stricto sensu*' ".

But such an interpretation is surely strained and unnatural. For it is too well settled in modern English Law that prerogative orders issue to tribunals and authorities not Courts "*stricto sensu*" to require any express provision to that effect. The real difficulty is not to determine the tribunal or authority to which such orders go, but to decide what acts are judicial and what are purely ministerial; on this question paragraph (d) is silent and (very properly in our view) leaves us to find the law in the decided cases — for such questions do not lend themselves to statutory definition.

It is easily understood why the appellants should try to put this construction on paragraph (d), for that part which follows the words "prerogative orders" must have some meaning. In our view that meaning is plain, and it is not the meaning for which the appellants contend. That part of the paragraph is not enacted merely to give power to make orders consequential on the issue of prerogative orders, or to define the tribunals and authorities to which such orders will issue, but is enacted so as to effect what it plainly states, namely, to confer an exclusive jurisdiction on the Supreme Court to control the proceedings of quasi-judicial and ministerial authorities in the manner in which such control is exercised by the High Court in England. To-day that control is exercised by the High Court as often by means of declarations and injunctions as by *habeas corpus* and prerogative orders. It is, therefore, to be expected that the legislative authority in giving to the Supreme Court the jurisdiction of the High Court of Justice in such matters should confer on the Supreme Court the exclusive power to grant declarations and injunctions when exercising control over the decisions or orders of such tribunals and authorities. That in our view is the plain meaning and intendment of paragraph (d).

For these reasons we consider that the decision of the learned President on the preliminary point was correct and this appeal is dismissed with costs.