[LORD MORTON of Henryton, LORD SOMERVELL of Harrow, LORD DENNING]

ROBERT CHATTAN ROSS-CLUNIS

Appellant,

v.

VASSOS PAPADOPOULOS AND OTHERS

Respondents.

(Privy Council Appeal No. 16 of 1957)

1958
March, 17

ROBERT CH.-ROSS CLUNIS
v.
VASSOS PAPADOPOULOS AND OTHERS.

Emergency Powers (Collective Punishment) Regulations 1955—Collective fine—Order of District Commissioner imposing Collective fine—Regulation 3—Inquiry by D. Commissioner—Requisites—Conduct of inquiry—Regulation 5—Regulations intra vires the Emergency Powers Orders in Council 1939 and 1952.

Certiorari—Whether it lies either in view of Regulation 13—Or in view of the nature (ministerial or quasi—judicial) of the functions of D. Commissioner.—Failure to comply with statutory provisions.

Evidence—Fresh affidavit evidence adduced before the Privy Council.

Practice—Leave to appeal to the P.C.—Judgment of Supreme Court—Appeal heard by two judges—Judges differing in opinion whether appeal should be allowed—Judgment of the Court should stand—The Courts of Justice Law, 1953, Sect. 23 (1)—It superseded Article 4 of the Cyprus (Appeal to Privy Council) Order in Council, 1927.

Note : The relevant parts of the Regulations and Orders in Council referred to above, as well as the aforementioned order of the District Commissioner of Limassol imposing the fine, are set out in the judgment of the Privy Council *(post)*.

On the 4th of July 1956 the District Commissioner of Limassol made an order imposing a collective fine in the sum of £35,000 on the Greek Cypriot inhabitants of Limassol under Regulation 3 of the Emergency Powers (Collective Punishment) Regulations 1955. Upon an application for certiorari Zekia, J., on the 15th December 1956 quashed the order on the broad ground that, before making his order, the District Commissioner failed to comply with the provisions of Regulation 5. (see: Civil Application No. 16 of 1956, *In the matter of Vassos Papadopoulos and Others* v. *The Commissioner of Limassol*, 21 C.L.R. 193). The Commissioner appealed to the Supreme Court with the result that, as the Court (consisting of *Hallinan, C.J.*, and *Zannetides, J.*) stood evenly

divided, the aforementioned decision of *Zekia, J.*, stood. In the Supreme Court (see : *The Commissioner of Limassol* v. *Vassos Papadopoulos and Others,* 22 C.L.R. 38), Hallinan, C.J. and Zannetides, J. concurred in holding that, contrary to the argument put forward on behalf of the Respondents, Regulations 3 and 5 (*post*) were not *ultra vires* the Emergency Powers Orders in Council 1939 and 1952. They held also that Regulation 13 (*post*) did not preclude the appropriate remedy before the Courts. But they differed in respect of the other points in issue ; *Hallinan, C.J.* holding (loc. cit. pp. 43—44) that: (1) the order of the Commissioner and his functions with reference thereto, were of a ministerial nature, and, therefore, *certiorari* did not lie, the only relief available in the circumstances being an action for the appropriate declaration, (2) that in any event the Commissioner had complied with the requirements of Regulation 5. On the contrary, Zannetides J., (loc. cit. at pp. 58—60) held : (1) that the Commissioner was acting in the matter in a quasi judicial capacity and, therefore, *certiorari* does issue to control his order, (2) that the Commissioner failed to comply with the requirements of Regulation 5 and, consequently, *certiorari* must issue. On the 11th June 1957, the Supreme Court granted the Commissioner leave to appeal to the Privy Council. Thereafter the Appellant applied successfully, by Petition to the Privy Council, to use two further affidavits at the hearing of the appeal. (The affidavits are set out in the judgment of the P.C.). It would seem that, but for this fresh evidence, the Privy Council would have affirmed the order of *Zekia, J.* (ante) and the judgment, on appeal, of *Zannetides, J.* (ante).

It is to be noted that counsel for the Appellant did not rely before the Privy Council on the argument put forward in the Supreme Court that by reason of Regulation 13 and of the nature of the order made by the Commissioner, the remedy by certiorari was not available to the Respondents. It was argued by the Appellant that the District Commissioner complied with the provisions of Regulation 5. On the other hand it was submitted by the Respondents that : (1) Regulation 3 under which the Commissioner's Order was made went beyond the powers vested in the Governor by Section 6 (1) of the Order in Council—(supra) : (2) the Commissioner's Order was bad for uncertainty ; (3) the Commissioner failed to comply with the provisions of Regulation 5 (1) and (2) ; (4) the manner in which the Commissioner conducted his inquiry into the facts and circumstances of the case was objectionable. Counsel for the Respondents took also a preliminary point to the effect that no valid leave to appeal had ever been given by the Supreme Court, basing his argument upon the fact that the two Judges of the Supreme Court differed in opinion and the wording of articles 4 and 5 of the Cyprus (Appeal to the Privy Council) Order in Council, 1927 (*post*). Their Lordships rejected this argument on the ground that article 4 was superseded by the Courts of Justice Law, 1953, Section 23 (1).

Held: 1. (a) Regulation 3 is *intra vires* Section 6 (1) of the Emergency Powers Order in Council 1939. It is clearly related to the purposes prescribed by Section 6 (1).

Attorney - General of Canada v. *Hallet and Carey Ltd.*, (1952) A.C. 427. *referred to.*

Dictum of Duff C.J., in *Reference* re *Chemical Regulations* (1943) S.C.R. 1 at p. 13. *approved.*

(b) The argument that Section 6 (2) (g) of the Order in Council indicates that no Regulation could be made enabling persons to be punished without trial was briefly and conclusively answered by *Zekia, J.* as follows : "There is nothing to warrant the reading of Section 6 (2) (g) as a restrictive proviso to Section 6 (1). On the contrary the word "without prejudice to the generality of the powers conferred by the preceding sub-section" in Sect. 6 (2) leads us to a contrary view. The language of the relevant Section is clear and unambiguous.". (see : *Civil Application No. 16, In the matter of Vassos Papadopoulos and Others* v. *The Commissioner of Limassol (ante)* at p. 197).

(2) The order of the Commissioner was not bad for uncertainty.

(3) The only question of substance arising under the contention that the District Commissioner failed to comply with Regulations 5 (1) and (2) is the question whether the Appellant discharged the positive duty cast upon him to "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". There were ample grounds upon which the Appellant could "feel" satisfied of the matters mentioned in Regulation 5 (2) and the Appellant had ample reasons for being satisfied that the inhabitants of Limassol had adequate opportunity of understanding the subject - matter of the enquiry and of making representations thereon. If the matter had rested only upon the Appellant's affidavit of 4th December 1956 (*post*), their Lordships would have felt considerable doubt on the matter, for it would appear from paragraph 7 of that affidavit that at the relevant meeting of the 11th June 1956, the Appellant said nothing which would convey to the inhabitants of Limassol the reasons why *they* as distinct from the persons who had actually committed the murders and other outrages. should be held blameworthy. It was this aspect of the matter which so strongly impressed *Zekia, J.*, and, on appeal, *Zannetides, J.* The information in this paragraph is however, greatly amplified by the affidavit of the Appellant sworn on the 27th December 1957. (Note : it is the one of the two affidavits constituting the fresh evidence adduced before the P.C.).

(4) There is no substance in the objections of the Respondents to the manner in which the Appellant conducted his "inquiry into the facts and circumstances". Regulation 5 (2) provides that, subject to the positive duty already mentioned, which was fully discharged, "such enquiry shall be conducted in such manner as the Commissioner thinks fit". The manner in which the enquiry shall be conducted, if in fact an enquiry has been held, is thus a matter for the Commissioner and not for the Court ; but their Lordships think it only fair to say that the careful steps taken by the appellant, as set out in his two affidavits, seem to them adequate and sensible.

(5) The Appellant has been ordered to pay the costs of his Petition for leave to file further evidence. Having regard to the course which the proceedings have taken, as already described, their Lordships do not think that the Respondents, though unsuccessful in their attack upon the Appellant's order, should be required to pay his costs.

Appeal should be allowed. Order of the Appellant of 4th July 1956, should be restored and order of ZEKIA, J., dated the 15th December 1956, should be set aside. No further order as to costs.

Cases referred to :

Attorney - General of Canada v. *Hallet and Carey Ltd.* (1952) A.C. 427 ;

Reference re Chemical Regulations (1943) S.C.R.1.

Mackenna Q.C. for the Appellant.

Sir David Cairns Q.C. for the Respondents.

The judgment of the P.C. was delivered on the 17th March 1958, by LORD MORTON OF HENRYTON :

The question for decision in this appeal is whether an order made by the appellant, as Commissioner of Limassol, Cyprus, on the 4th July, 1956, was valid or invalid.

This Order imposed a fine of £35,000 on the assessable Greek-Cypriot inhabitants of the area of the Municipality of Limassol, and was made under Regulation 3 of the Emergency Powers (Collective Punishment) Regulations 1955 to (No. 1) 1955. These Regulations will hereafter be referred to as "the Regulations". They were made in exercise (or purported exercise) of the powers conferred on the Governor by section 6 of the Emergency Powers Order in Council 1939 (hereafter referred to as "the Order in Council").

It is convenient to set out at once the relevant provisions of the Order in Council and the Regulations. They are as follows :—

"EMERGENCY POWERS ORDER IN COUNCIL 1939.

PART I.—GENERAL.

* * * * * *

2.—(1) In this Order, unless the context otherwise requires-

"territory" means any territory mentioned in the First

Schedule hereto and its dependencies, and includes the territorial waters, if any, adjacent thereto;

"Governor" includes any person administering the Government of the territory;

"law" includes any Order of His Majesty in Council except this Order, and any Ordinance, order, rule, regulation, by-law, or other law for the time being in force in the territory.

* * * * * *

PART II.—REGULATIONS.

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

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

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

(*b*) authorise—

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

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

(*c*) authorise the entering and search of any premises;

(*d*) provide for amending any law, for suspending the operation of any law and for applying any law with or without modification:

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

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

(*g*) provide for the apprehension, trial and punishment of persons offending against the Regulations;

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

Cyprus is mentioned in the First Schedule to this Order. The relevant portions of the Regulations are as follows:—

"2.—(1) In these Regulations, unless the context otherwise requires—

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

* * * * * *

"offence" means an offence the commission of which is, in the opinion of the Commissioner, prejudicial to the internal security of the colony or to the maintenance of public order in the Colony.

* * * * * *

3. If an offence has been committed or loss of or damage to property has wilfully and unlawfully been caused within any area of the Colony (hereinafter referred to as "the said area") and the Commissioner has reason to believe that all or any of 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;

(ii) to order that all or any of the shops in the said area shall be closed until such order be revoked or shall open only during such times and under such conditions as may be specified in the order;

(iii) to order the seizure of any movable or immovable property of any inhabitant of the said area;

(iv) to order that all or any dwelling house in the said area be closed and kept closed and unavailable for human habitation for such period or periods as may be specified:

Provided that where the Commissioner has reason to believe that paragraphs (*a*) to (*g*) of this Regulation are applicable only to any particular section, class, group or community of the inhabitants of the said area, it shall be lawful for the Commissioner, with the approval of the Governor to take all or any of the actions specified in paragraphs (i) to (iv) of this Regulation in respect of only such section, class, group or community of the inhabitants of the said area.

* * * * * *

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.

(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 that the requirements of this regulation have been complied with.

6. The Commissioner may at any time after an order under regulation 3 of these Regulations has been made, in his absolute discretion, remit the whole of any fine or any part thereof or may order that any amount which has been paid by any assessable inhabitant shall be repaid to him or may return to any inhabitant all or any of the property seized from any such inhabitant or may generally revoke or vary any order made by him under regulation 3 of these Regulations.

7.—(1) It shall be lawful for the Commissioner to order that out of a fine levied in pursuance of Regulation 3 of these Regulations compensation shall be paid to any person who has suffered injury, or loss of, or damage to, his property unlawfully in the area in which the fine was levied.

(2) Application for compensation shall be made in writing by the person aggrieved or his representative within two months from the date upon which the fine has been levied.

(3) Where the injury, for which compensation is being sought, is a death, a dependant of the deceased may be deemed to be a person aggrieved.

(4) No application for compensation shall be granted if it appears that the applicant, or in the case of a death, the deceased participated in the offence or offences in respect of which fines have been levied or was blame-

worthy in connection with such offence or offences.

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

* * * * * *

13. Save as provided in regulation 6 of these Regulations, an order made by a Commissioner, under regulation 3 of these Regulations, shall be final and no appeal shall lie from any such order.".

The Regulations were revoked on 19th December, 1956, by the Emergency Powers (Collective Punishment) (Revocation) Regulations, 1956, but this fact is immaterial for the present purpose.

The Order made by the Appellant on the 4th July, 1956 (hereafter referred to as "the Order"), was in the following terms:—

"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 is 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;

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 thousands 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."

It is necessary, for reasons which will appear later, to set out in some detail the events which followed upon the making of the Order.

On the 22nd November, 1956, the respondents applied for, and obtained from Zekia, J., leave to apply for an Order of Certiorari to remove the Order into the Supreme Court of Cyprus and quash it. In the "Statement of grounds of application" filed by the respondents each of them describes himself as a "Greek-Cypriot carrying on business at Limassol" and the grounds were stated as follows:—

"(*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 Commissioner 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."

In support of the second ground in the respondents' application the first respondent alleged in his affidavit as follows :

"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."

In paragraphs 3 to 14 inclusive of his affidavit of 4th December, 1956, the appellant replied to the first respondent's affidavit as follows :—

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 representative of the Greek Press.

6. On the 11th of June at the time and place appointed the abovementioned 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 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) Kessarianis locality.
(f) The Committee of Shop-Keepers' Association.
(g) Male and Female Members of KEAN 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 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).

Exhibit "A", mentioned in paragraph 8 of this Affidavit, was as follows:—

"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."

It is to be observed that paragraph 7 of the appellant's Affidavit contained only a very brief account of what was said by the appellant at the meeting of 11th June, 1956, and Exhibit "A" adds little to that paragraph.

Zekia J. gave judgment on 15th December, 1956. He rejected the respondent's contention that the Regulations exceeded the powers of the Governor under section 6 of the Order in Council, but he allowed the respondent's application, made an Order of Certiorari, and quashed the Order of 4th July, 1956, on the ground that the appellant had not complied with Regulation 5 of the Regulations. In the course of his judgment the learned Judge observed "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."

The learned Judge then read paragraph 7 of the appellant's affidavit and paragraph 8 of the first respondent's affidavit and observed "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) and (2)."

The appellant appealed from the order of Zekia, J. and the respondents applied for a variation of that order in regard to the Judge's decision that the order was not *ultra vires*. The appeal was heard by Hallinan, C.J. and Zannetides, J. Both

members of the Court rejected the respondents' contention that the Regulations were *ultra vires*, but they differed on the question whether or not the Commissioner had complied with Regulation 5. The Chief Justice was of opinion that the Commissioner had complied with this Regulation, and Zannetides, J., was of the contrary opinion. The appeal was therefore dismissed in accordance with section 23 (1) of the Courts of Justice Law, 1953, which is as follows :— "Whenever an appeal is heard by two Judges of the Supreme Court, and the two Judges differ in opinion as to whether the appeal should be allowed, the judgment of the court below shall stand."

On the 11th June, 1957, the Supreme Court granted the appellant final leave to appeal to Her Majesty in Council. Thereafter the appellant applied successfully, by Petition, for leave to use two further affidavits at the hearing of the appeal. They were an affidavit by the appellant sworn on the 27th December, 1957, and an affidavit of Mr. Papadouris sworn on the 28th December, 1957. The former affidavit gives a full account of what was in fact said by the appellant at the meeting on the 11th June, 1956, and the latter affidavit exhibits extracts or translations of extracts from four newspapers, "The Times of Cyprus", "The Cyprus Mail", "Eleftheria" and "Ethnos", all published on the 12th June, 1956. Each newspaper gave an account of what was said at the meeting on 11th June, 1956, and in substance confirms the statements contained in the appellant's Affidavit.

It is indeed regrettable that this evidence was not before Zekia, J., as it might have led that Judge to a different conclusion at the original hearing. Again, if it had been before the Supreme Court on appeal, it might well have affected the result, for Zannetides, J., said :

> "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 that the appeal must fail also on this point".

and the Chief Justice said :

"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."

Their Lordships have found it necessary to set out this somewhat lengthy history for two reasons, first because the events thus set out have an important bearing on the costs of this appeal, and secondly because they feel it is only fair to make it quite clear that the evidence before their Lordships differed very materially from the evidence before the Courts in Cyprus. They will later set out in some detail the evidence contained in the affidavit of the appellant dated 27th December, 1957, already mentioned.

Before the argument began at the hearing of the appeal before the Board, Sir David Cairs for the respondents stated that he desired to take a preliminary point and their Lord-

ships thought it convenient to hear the point argued at once. Sir David submitted that no valid leave to appeal had ever been given by the Supreme Court of Cyprus. He based his argument upon the provisions of the Cyprus (Appeal to Privy Council) Order in Council, 1927, and particularly upon Articles 4 and 5 of that Order, which are as follows :—

> 4. Where in any action or other proceeding no final judgment can be duly given in consequence of a difference of opinion between the Judges, the final judgment may be entered pro forma on the application of any party to such action or other proceeding according to the opinion of the senior member of the Court or in his absence of the member of Court next in seniority, but such judgment shall only be deemed final for purposes of an appeal therefrom, and not for any other purpose.
>
> 5. Applications to the Court for leave to appeal shall be made by motion or petition within thirty days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application.

Their Lordships find it unnecessary to set out Sir David's argument in detail for the short answer to his preliminary objection is that Article 4, so far at least as it applies to a case where an appeal is heard by two Judges of the Supreme Court and the two Judges differ in opinion, is superseded by section 23 of the Courts of Justice Law, 1953, already quoted, and the result is that the judgment of Zekia J. stood. This being so, the thirty days mentioned in Article 5 of the Order in Council of 1927 began to run from the date when the judgment on appeal, dismissing the appeal, was pronounced. That date was the 8th March, 1957, and the motion for leave to appeal to Her Majesty in Council was dated the 6th April, 1957.

Their Lordships now turn, at last, to consideration of the questions arising on this appeal.

Mr. MacKenna for the appellant relied upon the wide words of section 6 (1) of the Order in Council, and submitted that these words entirely justified the Regulations which were made by the Governor. He further submitted that on the true construction of Regulation 5 (1) and (2), and on

the facts as set out in the evidence, there had been no breach by the appellant of the provisions of Regulation 5 (1) and (2). He cited several authorities in support of these submissions. He did not, however, rely upon one argument put forward in the Supreme Court, namely that by reason of Regulation 13 and of the nature of the order made, the remedy by *certiorari* was not available to the respondents. Counsel for the respondents first submitted that Regulation 3 went beyond the powers vested in the Governor by section 6 (1) of the Order in Council. They submitted that the specific powers set out in section 6 (2) were illustrative of the type of regulation covered by the general words in section 6 (1), and these general words should not be construed so widely as to cover a regulation such as Regulation 3. The imposition of a collective fine, they said, resulted in the punishment of the innocent for the crimes of the guilty and was contrary to British ideas of justice. They also relied upon section 6 (2) (g) of the Order in Council, and the proviso thereto, as indicating that no regulation could be made enabling persons to be punished without any trial.

Similar arguments were addressed to both Courts in Cyprus, and were rejected, and in their Lordships' opinion rightly rejected, by all the three judges there concerned. Words substantially identical with the words of section 6 (1) of the Order in Council were recently considered by the Board in *Attorney-General for Canada* v. *Hallet & Carey Ltd.* (1952) A.C. 427. Lord Radcliffe, delivering the opinion of the Board quoted with approval the words of Duff C.J. *Reference re Chemical Regulations* (1943) S.C.R. 1 at page 13 :—

> "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 transcedent objects set fort . . . 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."

Later, Lord Radcliffe said :—

> "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 thing 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.".

In their Lordships' opinion Regulation 3 is clearly "related to the purposes prescribed" by section 6 (1) of the Order in Council. There can be no doubt as to the purpose of imposing a collective fine in a case where crimes have been committed in a particular area, and some or all of the inhabitants of the area have "failed to take reasonable steps to prevent the commission of the offence", or have "failed to render all the assistance in their power to discover the offenders or to effect their arrest". Clearly the purpose is to ensure, so far as possible, that in future the inhabitants of the area will adopt a different attitude, more helpful to "securing the public safety" and to "the maintenance of public order", two of the purposes specified in section 6 (1) of the Order in Council. A further purpose is served by Regulation 3, namely the purpose of providing, out of the fine, for compensation to persons who have suffered injury by the crimes committed in the area. See Regulation 7.

Counsel's argument, already mentioned, based on section 6 (2) (*g*) was briefly and conclusively answered by Zekia, J., as follows :— "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."

Counsel next sought to contend that the Commissioner's Order of 4th July, 1956, was void for uncertainty because the phrase "Greek Cypriot" had no clear meaning. This was not one of the grounds stated in the respondents' application for an order of *certiorari,* but Counsel asked the Board to admit this contention, in the exercise of its discretion. Their Lordships did not think it right to admit this contention at this stage, since it had never been considered by the Courts in Cyprus, and if it had been raised in these Courts the appellant might well have wished to file evidence in answer to it. As matters stand, their Lordships are not assisted by any evidence on the subject, save the fact that each of the respondents described himself as "a Greek-Cypriot" in the "Statement of Grounds", which seems to indicate that to them, at least, the phrase had a definite meaning.

The last contention of counsel for the respondents was that the Commissioner had failed to comply with Regulation 5 (1) and (2). In their Lordships' opinion the only question of substance arising under this contention is the question whether the appellant discharged the positive duty cast upon him to "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". Mr. MacKenna for the appellant submitted that the only duty cast upon the appellant was to satisfy *himself* of these facts; that the test was a subjective one, and the statement in paragraph 12 of the appellant's affidavit of 4th December, 1956 (already quoted), was a complete answer to the argument of counsel for the respondents, unless it could be shown that the statement in the affidavit was not made in good faith, and bad faith was not alleged.

Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds upon which the Commissioner could be so satisfied, a Court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts. In the present case, however, there were ample grounds upon which the appellant could feel

"satisfied" of the matters mentioned in Regulation 5 (2). If the matter had rested only upon the appellants's affidavit of 4th December, 1956, their Lordships might have felt considerable doubt on the matter, for it would appear from paragraph 7 of that affidavit that at the meeting on 11th June, 1956, the appellant said nothing which would convey to the inhabitants of Limassol the reasons why *they*, as distinct from the persons who had actually committed the murders and other outrages, should be held blameworthy. It was this aspect of the matter which so strongly impressed Zekia, J., and, on appeal, Zannetides, J. The information in this paragraph is, however, greatly amplified by the affidavit of the appellant sworn on the 27th December, 1957, already mentioned, which contained the following full account of the proceedings at the meeting of 11th June, 1956.

"I explained to the meeting that since the 1st January there had been six assassinations, ten woundings and attempts to assassinate and seventy bomb outrages which from my own knowledge of the facts and circumstances and the investigations made by the Police, led me to believe :—

(*a*) that the outrages were attributable to Greek terrorist activity;

(*b*) that in the majority of the cases mentioned members of the Greek community were eye witnesses and in a position to assist the Police in tracing the perpetrators and in giving evidence before the Court, but without exception they had concealed their knowledge and obstructed the process of law;

(*c*) that there had been instances in which the perpetrators had made good their escape through the failure of Greek onlookers to assist in their capture.

In regard to (*c*) I quoted two instances as follows :—

(i) On the 6th June, an English teacher, Mr. A. T. Mylrea, was assassinated as he arrived at the Lanition Gymnasium to conduct certain school examinations. It was estimated there were about 35 pupils at the actual scene of the assassination who should have been in position to recognise the assassins and to effect their arrest, but no attempt was made to hinder the criminals and no

one had come forward with information to the Police.

(ii) On the 7th June, Andreas Serghides, an Assistant District Inspector of my office was murdered as he arrived outside the office for his morning's work, in the presence of a fair number of persons, many of them believed to be persons of good standing. Here again no attempt was made to hinder the assassins and the persons believed to have been present have all denied knowledge of the incident.

I went on to explain that under the terms of Regulation 3 of the Emergency Powers (Collective Punishment) Regulations, 1955, which I cited at the meeting in detail I had reason to believe that the inhabitants of Limassol town had rendered themselves liable to a collective punishment and that unless they could show cause to the contrary, it was my intention to recommend to His Excellency the Governor that a fine should be imposed on the inhabitants of Limassol town in accordance with the Collective Punishment Regulations. I then invited them to make their representations. After hearing their representations I came to the conclusion that no cause had been shown why a fine should not be imposed and I accordingly told those present at the meeting that I was not satisfied with their representations but asked them to inform their co-inhabitants as widely as possible as to 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.

In conclusion I beg to state that in my affidavit dated the 4th December, 1956, which was filed in opposition to that of Mr. Vassos Papadopoullos dated the 20th November, 1956, I did not enter upon a full narrative of the meeting held on the 11th June, 1956, and in particular did not recount the matters set forth in this my present affidavit, for the following reasons, that is to say—

(i) because in paragraph 8 of the said affidavit of Mr. Papadopoullos, it was stated that I had spoken about the murders and other offences committed in Limassol and there was no indication that it would be contended

that I had done so in such terms as not to make it clear why I held the inhabitants responsible;

(ii) because, as stated in paragraph 10 of my said affidavit I had already made my report to the Governor, and having done so and deposed on oath in paragraph 12 my belief that I had complied with Regulation 5, I considered that I had sufficiently dealt with the matter."

As has already been stated, this account of the meeting was confirmed by the contemporary accounts of the meeting in four Cyprus newspapers, set out in the affidavit of Mr. Papadouris.

When these affidavits are read in conjunction with the appellant's affidavit of 4th December, 1956, it is manifest that the appellant had ample reason for being satisfied that the inhabitants of Limassol "had adequate opportunity of understanding the subject-matter of the enquiry and of making representations thereon". And it is to be noted that the opportunity given of making representations had the widespread results set out in paragraph 9 of the appellant's affidavit of 4th December, 1956.

Counsel for the respondents submitted other objections to the manner in which the appellant conducted his "inquiry *into the facts and circumstances*", but in their Lordships' opinion there is no substance in any of these objections. Regulation 5 (2) provides that subject to the positive duty already mentioned, which was fully discharged, "such enquiry shall be conducted in such manner as the Commissioner thinks fit". The manner in which the enquiry shall be conducted, if in fact an enquiry has been held, is thus a matter for the Commissioner and not for the Court; but their Lordships think it only fair to say that the careful steps taken by the appellant, as set out in his two affidavits, seem to them adequate and sensible. For these reasons the arguments on behalf of the respondents fail, and the appeal succeeds.

There remains only the question of the costs of the proceedings. The appellant has already been ordered to pay the costs of his Petition for leave to file further evidence. Having regard to the course which the proceedings have taken, as already described, their Lordships do not think it

right that the respondents, though unsuccessful in their attack upon the appellant's Order, should be required to pay his costs.

Their Lordships will humbly advise Her Majesty that this appeal should be allowed; that the Order of the appellant of 4th July, 1956, should be restored, and that the Order of Zekia J., dated 15th December, 1956, should be set aside. They do not think fit to make any further order as to the costs of these proceedings.

Appeal allowed.