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[JOSEPHIDES, J.]

THE REPUBLIC
v
PRESIDENT
DISTRICT
COURT OF
FAMAGUSTA
EX PARTE
LOUKIA K
MAROULETTI

THE REPUBLIC,

v

PRESIDENT DISTRICT COURT OF FAMAGUSTA,
EX PARTE LOUKIA K MAROULETTI

(Civil Application No. 3/1970)

Certiorari—Law applicable to proceedings for certiorari—Restitution order made under section 171 of the Criminal Procedure Law, Cap 155 in respect of immovable property—Partly quashed

Criminal Procedure—Order made by a criminal Judge under section 171 of Cap 155 (supra) (1) cancelling fraudulent registration of immovable property, and (2) directing registration of such immovable property in the name of the Republic of Cyprus—Second part of such order quashed as being an order not authorized by section 171 of Cap 155 in the circumstances of this case viz because the Land Registry records did not show the Government or the Republic of Cyprus as the owners of the said property—And on the prima facie evidence of the Land Registry Books, the recorded owners thereof being the successors of one John Langdon (and not the Government or the Republic of Cyprus)—The Government of the Republic and the said successors of John Langdon should have been left to take such action in the Civil Courts or the proper forum as they may be advised

Statutes—Construction—“ Any property whatever ” in section 171 of the Criminal Procedure Law, Cap 155—It includes both movable and immovable property

Statutes—Construction—The rule generalia specialibus non derogant—Not applicable to section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap 224, and section 171 of Cap 155, supra—Because those two sections are not in conflict with each other and both therefore can stand

Restitution order—Purpose served by a restitution order as prescribed in section 171 of the Criminal Procedure Law, Cap 155, in the case of a conviction of any offence—Such restitution order is a useful piece of administrative machinery whereby a person, who has been deprived of any property fraudulently

or illegally, may be provided with a short-cut remedy—Whereby such property may be restored to him without his being called on to institute civil proceedings to secure this—Cf. section 45 (1) of the (English) Larceny Act, 1916.

Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, section 80—Not applicable to a case where the person is convicted of an offence by a criminal Court—Applicable only to the Director's of Lands and Surveys decisions, orders or notices made or given under the provisions of Cap. 224.

In these *certiorari* proceedings the Court left undisturbed the first part of the order made on October 4, 1969, under section 171 of the Criminal Procedure Law, Cap. 155 (*infra*), by the President, District Court of Famagusta (sitting as a criminal Judge and upon conviction of the present applicant of certain offences, *infra*) and directing cancellation of the registration in her name of a piece of land under Plot 92 (*infra*); but the Court quashed the second part of that order whereby the President District Court directed the registration of the Plot 92 in question in the name of the Republic of Cyprus. The salient facts of the case are as follows :

This is an application for an order of *certiorari* removing into this Court and quashing the following order made by the President of the District Court of Famagusta on the 4th October, 1969, in criminal case No. 9093/68, The Police against (1) Loukia Kyriacou Christou Marouletti (the present applicant) and (2) Neophytos Pantelides :

“ I further order that the existing registration No. 8257 dated 20.4.60 of the Lands Office of Famagusta, in the name of accused (1) — be cancelled forthwith, and that this property, *i.e.* Plot 92, Block “ B ” Ayios Ioannis quarter, Famagusta, be registered in the books of the Lands Office of Famagusta in the name of the Government of Cyprus *i.e.* now the Republic of Cyprus.”

The grounds upon which this application for an order of *certiorari* is based are that the President of the District Court had no jurisdiction to make the said order in a criminal case, and that there was an error on the face of the record.

In the above mentioned criminal case the present applicant (first accused) was convicted on three counts as follows :

- (1) for conspiring on April 20, 1960, with another person, that is, the District Land Officer of Famagusta

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(the second accused) to commit a misdemeanour, that is, to obtain registration of a piece of land under plot 92 of Block " B " of Ayios Ioannis Quarter, Famagusta, (*supra*) by false pretences, contrary to sections 372 and 35 of the Criminal Code, Cap. 154 ;

- (2) for obtaining registration of the aforesaid plot by false pretences, that is to say, that " she had acquired it by inheritance from her mother who possessed it from *ab antiquo* possession ", contrary to section 305 of the Criminal Code, Cap. 154 ; and
- (3) for conspiring with the second accused to defraud the Government of Cyprus, that is, obtaining registration of the plot in question, the property of the Government of Cyprus, valued at £16,500, contrary to section 302 of the Criminal Code, Cap. 154.

It appears that the said property Plot 92 (*supra*) was recorded in the year 1913 in the Tax Register of the District Lands Office, Famagusta, in the name of the " Succession of John Langdon " ; and that on April 20, 1960, it was registered in the name of the present applicant (accused No. 1) by way of gift from her mother. The prosecution evidence was to the effect that no person ever exercised any right of possession over that plot, and that until April, 1960, no one paid immovable property tax or road construction charges.

On the 29th of November, 1967, the Director of Lands and Surveys sent a notice to the present applicant under the provisions of section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, stating that the said registration No. 8257 of the 20th April, 1960, was in error made in her name and informing her that he intended correcting such error by cancelling the said registration. After protesting to the Director, the present applicant lodged on the 18th January, 1968, an appeal from the Director's said decision with the District Court of Famagusta, under the provisions of section 80 of Cap. 224 (*supra*) (*Note* : the full text of section 80 is quoted *post* in the judgment of the Court). The Director filed his opposition to the appeal on June 6, 1968, but nothing more was done until the 28th September, 1968, when the Attorney-General instituted action No. 1934/1968 in the District Court of Famagusta

against the present applicant for a declaration that the said plot was and still is the property of the State. He further claimed, in the alternative, declarations that the said property belonged to the Succession of John Langdon (*supra*); that the heirs of the said John Langdon, if any, had died in the year 1942 without leaving any heirs and that, consequently, this plot devolved on the State under the relevant provisions of the Wills and Succession Law. It was further claimed that the registration of the plot in the present applicant's name should be cancelled together with other consequential reliefs.

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Some twelve days after the filing of the said action, that is, on October 10, 1968, the present applicant was formally charged in the police station in respect of the counts of which she was eventually convicted on October 3, 1969, by the President of the District Court of Famagusta (*supra*), and sentenced on the following day, the 4th October, 1969, when the order challenged in the present *certiorari* proceedings was also made (*supra*) under the provisions of section 171 of the Criminal Procedure Law, Cap. 155.

Section 171 of Cap. 155 reads as follows :

“ Where any person is convicted of any offence by which any other person has been deprived of *any property whatever*, the Court may order that such property or any part thereof be restored to the person who appears to it to be the owner thereof, either without payment or on payment by such owner to the person in whose possession such property or a part thereof then is, of any sum named in such order :

Provided that.....”

(Note : The full text of section 171 is quoted *post* in the judgment of the Court).

It was submitted by counsel for the applicant that the provisions of section 171 of Cap. 155 (*supra*) referred exclusively to movable property and that, consequently, the trial Judge did not have power to make the order he made in respect of the immovable property in question (Plot 92, *supra*) on October 4, 1969 (*supra*). Applicant's counsel further submitted that the Criminal Procedure Law, Cap. 155, was a general later law (it came into force on December

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15, 1948) and that it did not, therefore, abrogate the provisions of the earlier special law Cap. 224 (*supra*) (it came into operation on September 1, 1946) by mere implication. Section 80 of Cap. 224, already referred to, provides that any person aggrieved by any decision of the Director of Lands and Surveys may, within the prescribed period, appeal to the District Court (in which such property is situated) which Court may make such order thereon as may be just, but, save by way of appeal as provided in that section 80, no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of Cap. 224. It follows, counsel went on, that on the true construction of section 80 of Cap. 224 (*supra*), the President of the District Court, sitting as a criminal Court, had no jurisdiction to order the cancellation of the registration in the applicant's name and order a new registration, all the more so that there was a pending appeal before the District Court of Famagusta under the provisions of section 80 of Cap. 224 (see *supra*).

Applicant's counsel went on to submit that the criminal jurisdiction conferred on a President of a District Court under the provisions of section 24 (1) of the Courts of Justice Law, 1960, included the power to imprison, fine and order compensation up to the sum of £500; and that, as in the present case, the value of the immovable property involved exceeded the sum of £16,000 (*supra*), the President, District Court, acted in excess of jurisdiction in making an order involving a sum exceeding £500.

Quashing the second part of the said order of the President of the District Court of Famagusta (dated October 4, 1969) sitting as a criminal Judge and leaving undisturbed the first part thereof *i.e.* that part whereby the learned President set aside registration No. 8257 dated April 20, 1960 in the name of accused (1) (the present applicant), the Court:—

Held, (1). Dealing first with the last point, I have no difficulty in holding that the order made by the President District Court, in the criminal trial under consideration was not an order for the payment of "compensation" within the meaning of section 24 of the Courts of Justice Law, 1960. Consequently, that argument fails.

(2) (a) With regard to the other point taken by counsel for the applicant, to the effect that the Criminal Procedure

Law was a general later law which should not abrogate the provisions of an earlier special law (section 80 of Cap. 224, *supra*) by mere implication, and that the provisions of that section 80 should prevail, there again, I am of the view that that rule of construction which is known as “*generalia specialibus non derogant*”, is not applicable to these statutes. Section 171 of the Criminal Procedure Law, Cap. 155 (*supra*) does not conflict with the provisions of section 80 of Cap. 224 (*supra*) and both therefore can stand. Their objects are different and the language of each is restricted to its own object or subject.

(b) Here, section 171 of the Criminal Procedure Law, Cap. 155 (*supra*) expressly confers on the criminal judge the power, where any person is convicted of any offence by which any other person has been deprived of *any property whatever* (be it movable or immovable), to order that such property be restored to the owner. It would be inconceivable that in the case of immovable property, after the conviction of an offender, the machinery provided under section 80 of the Immovable Property (Tenure etc. etc.) Law, Cap. 224 (*supra*) would have to be set in motion. To my mind the procedure laid down in that section 80 is expressly restricted to the Director's of Lands and Surveys decisions, orders or notices made or given under the provisions of Cap. 224 only ; and it cannot apply to a case where the person is convicted of an offence by a criminal Court.

(3) (a) In the case of the *Attorney-General v. Panayiotis Christou*, 1962 C.L.R. 129, I had occasion to deal with the law applicable to proceedings for *certiorari*. The law may be found summarised at pp. 134-135. See also *Rex v. Northumberland Compensation Appeal Tribunal Ex parte Shaw* [1952] 1 K.B. 338, C.A. at pp. 347, 348 and 357.

(b) With the exception of a number of instances where *certiorari* issues as a matter of course, its issue is within the discretion of this Court. The discretion is exercised more liberally (*ex debito justitiae*) when the applicant is an aggrieved person, as opposed to a person whose *locus standi* rests on an interest common to the public at large (Halsbury's Laws of England, 3rd ed., Vol. 11 pp. 139-141, paragraphs 263 to 266).

(4) In construing section 171 of our Criminal Procedure Law, Cap. 155, which provides for the restitution of property

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I had occasion to look up cases construing the corresponding English provision embodied in section 45 of the Larceny Act, 1916 : see *Barclays Bank Ltd. v. Milne* [1963] 3 All E.R. 663, at p. 666, per Edmund Davies, J. (see this passage *post* quoted in the judgment of the Court).

Although the wording of our section 171 is different from that of its English counterpart, I respectfully agree that the purpose served by a restitution order in the case of a conviction of any offence, as described in our section 171, is a useful piece of administrative machinery whereby a person, who has been deprived of any property fraudulently, may be provided with a short-cut remedy whereby such property may be restored to him without his being called on to institute civil proceedings to secure this.

(5) (a) But section 171 of Cap. 155 (*supra*) does not confer a power on the criminal Judge to order registration of immovable property in the name of a person or the State, whose name did not appear in the Official Land Register or other public records. Such section confers a power on the criminal Judge to preserve the *status quo ante*, that is, to order the rectification of the falsification of the Land Register or other public records, and the cancellation of the fraudulent registration of immovable property in the name of a convicted person who is not entitled to such registration.

(b) However, I am of the view that the Criminal Court has no power to go further than that and order registration of such property in the name of the person who appears to be the owner thereof, save only in the clearest cases where there can be no doubt that a particular person is the owner thereof. It is only in those cases that a registration order in his favour should be made under section 171 of Cap. 155. Otherwise such an order might cause the gravest injustice to a third party ; because such third party, to whom the immovable property may belong, has no *locus standi* to appear before a Criminal Court. The Civil Courts are the correct forum for deciding matters of this kind.

(6) (a) Now, on the findings of fact and on conviction of the present applicant by the Criminal Court in this case it is manifest that she was not entitled to be registered as owner of the said Plot 92 in April, 1960 (*supra*) and the President, District Court had power to order and he rightly ordered the cancellation of such registration in her name ; but, for

the reasons stated above, I had the view that, under the provisions of section 171 of Cap. 155 (*supra*), the President in such a criminal trial did not have the power to go behind the Land Registry records (which did not show the Government or the Republic of Cyprus as the owner), and make the order which he did make for the registration of the said property Plot 92 in the name of the Republic.

(b) In the present case, on the *prima facie* evidence of the Land Registry Books, the "recorded" "owners" were the successors of John Langdon and not the Government or the Republic of Cyprus (*supra*). The Government of the Republic and the said successors of John Langdon should have been left to take such action in the Civil Courts or the correct forum as may be advised.

(7) In the result, having regard to the construction of section 171 of the Criminal Procedure Law, Cap. 155, I hold that, although the President, District Court, had power under that section to order—as he did—the cancellation of the fraudulent registration of Plot 92 in the appellant's name (then accused No. 1), he did not have power to order in the circumstances of this case the registration of that property in the name of the Republic of Cyprus.

Consequently, the second part of his order directing such registration, was an order which was not authorised by law and that part of the order is bad on its face and should be brought up to this Court to be quashed.

Order accordingly. Applicant to pay half of the costs of the respondent in the present proceedings.

Cases referred to :

The Attorney-General v. Panayiotis Christou, 1962 C.L.R. 129, at pp. 133-134 ;

Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw [1952] 1 K.B. 338, C.A., at pp. 347, 348 and 357 ;

Barclays Bank, Ltd. v. Milne [1963] 3 All E.R. 663, at p. 666.

Application.

Application for an order of *certiorari* to remove into this Court and quash an order of the President of the District Court of Famagusta (Georghiou, P.D.C.) made in Criminal

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Case No. 9093/68, whereby upon convicting the *ex parte* applicant, *inter alia*, of obtaining registration of a plot of land by false pretences, he ordered the cancellation of the registration of the said plot in applicant's name and the registration thereof in the name of the Republic.

L. Papaphilippou, for the *ex parte* applicant.

A. Frangos, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment* was delivered by :—

JOSEPHIDES, J. : This is an application for an order of certiorari removing into this Court and quashing the following order made by the President of the District Court of Famagusta on the 4th October, 1969, in criminal case No. 9093/68, The Police against (1) Loukia Kyriacou Christou Marouletti (the present applicant) and (2) Neophytos Pantelides :

“ I further order that the existing registration No. 8257, dated 20.4.60, of the Lands Office of Famagusta, in the name of accused No. 1, to wit, *exhibit* 4 in the Land Register, *exhibit* 9, be cancelled forthwith, and that this property, *i.e.* plot 92, Block “ B ” Ay. Ioannis Qr., Famagusta, be registered in the books of the Lands Office of Famagusta in the name of the Government of Cyprus *i.e.* now the Republic of Cyprus.”

The grounds upon which this application is based are that the President, District Court, had no jurisdiction to make the said order in a criminal case, and that there was an error of law apparent on the face of the record.

In the above-mentioned criminal case the present applicant (first accused) was convicted on three counts as follows :

(1) for conspiring on the 20th April, 1960, with another person, that is, the District Lands Officer of Famagusta (the second accused), to commit a misdemeanour, that is, to obtain registration of a piece of land under plot No. 92 of Block “ B ” of Ayios Ioannis Quarter, Famagusta, by false pretences (contrary to sections 372 and 35 of the Criminal Code, Cap. 154) ;

(2) for obtaining registration of the aforesaid plot by false pretences, that is to say, that “ she had acquired it

* For final judgment on appeal see (1973) 12 J.S.C. 1715 to be reported in due course in (1972) 1 C.L.R.

by inheritance from her mother who possessed it from *ab antiquo* possession" (contrary to section 305 of the Criminal Code, Cap. 154); and

(3) for conspiring with the second accused to defraud the Government of Cyprus, that is, obtaining registration of the plot in question, the property of the Government of Cyprus, valued at £16,500 (contrary to section 302 of the Criminal Code).

Along with the present applicant the said District Lands Officer (second accused) was also convicted on the first and third counts, in addition to other counts. The present applicant was sentenced to pay a fine of £300 on the third count plus costs, but no sentence was passed on her on the first and second counts. The District Lands Officer was fined £500 plus costs. After imposing these sentences the learned trial Judge went on to make the order challenged in the present proceedings, which has already been quoted. No appeal was lodged by either accused and the time for such appeal expired long ago.

The agreed facts in this case were as follows :

"(a) That the property in question, now covered by Registration No. 8257 dated the 20th January, 1970, Famagusta town, is also identified as plot 92 of Block 'B' of Sheet/XXXIII, Plan 12.3.II., Famagusta town.

That the said property is described in the books of the District Lands Office, Famagusta, as a field of 1 donum and 2,839 square feet.

"(b) That the said property was recorded in the year 1913 in the Tax Register of the District Lands Office, Famagusta, in the name of the 'Succession of John Langdon'; that the said property was registered on the 20th April, 1960 in the name of Loukia Kyriakou Chr. Marouletti, by way of gift from her mother and that the said property was on the 20th January, 1970, registered in the name of the Republic of Cyprus, by an order of the District Court, Famagusta, in the name of which it stands registered to the present day."

The history of this plot, which appears in the reasoned decision of the trial Judge (consisting of 48 pages) and the statement and affidavits filed by both sides, is briefly as follows : The registration previous to the present registration 8257 (dated 20.4.1960) was registration No. 178, which was an incomplete registration or an undated record

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appearing in the Land Register. This was effected in the year 1913, presumably under the provisions of the Immovable Property Registration and Valuation Law, 1907 (Law 12 of 1907) under the general registration of Famagusta ; and its plot number at the time was 299. There was no name or any entry opposite the printed word "holder" in the Land Register. The Field Record Book is one of the missing Land Registry records connected with this case and it was not produced at the trial. In the Tax Register, however, at page 853, this plot, together with four other plots, were recorded in the name of the "Succession of John Langdon". The present plot No. 92 was given to the said plot under the registration of the "Block" system in 1936. In the year 1931 the four other plots were compulsorily acquired by Government for the purposes of the Famagusta port, and there is a Court Order and a notice published in the *Cyprus Gazette* of the 13th February, 1931, pages 78-79, made under the provisions of the Land Acquisition Laws, 1899 and 1928, referring to the owners of the four plots compulsorily acquired as "the Succession of John Langdon, late of Varosha and now of unknown residence". The present plot 92 (old No. 299), remained in the Tax Register in the name of the "Succession of John Langdon".

It appears that this plot 92 was occupied as a store by the British Army Authorities between the years 1939 and 1956 and that it was fenced round with wire fencing. In March, 1952, the owners of plot 92 could not be traced by the British Army Hirings Office, and so no rent was paid by them. The prosecution evidence was to the effect that no person ever exercised any rights of possession over that plot, and that until April, 1960, no one paid immovable property tax or road construction charges. I could not trace in the record of this case the category of the land in question prior to the year 1946 when the categories of immovable property were abolished.

On the 20th April, 1960, on the directions of the District Lands Officer of Famagusta (the second accused), the following alterations were made in the District Lands Office records :

- (a) the old registration 178 in the *Land Register* was cancelled and carried to a new registration No. 8257 in the name of the present applicant ;
- (b) the entry in the *Tax Register* (page 853), in respect of the old registration 178, in the name of the

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“ Succession of John Langdon ” was cancelled ;
and a new page (6578) given in the new Tax Register
in the name of the present applicant ;

- (c) the references in the *Street Construction Charges Book* to the old registration 178, the “ Succession of John Langdon ”, and the old Tax Register page, were crossed out and substituted with the name of the present applicant and the new Registration No. 8257 and the new Tax Register page 6578 ; and
- (d) a title-deed in respect of the plot in question was issued by the District Lands Office in the name of the present applicant.

On the 29th November, 1967, the Director of Lands and Surveys sent a notice to the applicant under the provisions of section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, stating that the said registration No. 8257, dated 20th April, 1960, was in error made in her name and informing her that he intended correcting such error by cancelling the said registration.

On the 14th December, 1967, Mr. Mitsides, advocate on behalf of the applicant, replied objecting to such correction, and asking the Director to state what was the error alleged. The Director replied on the 22nd December, 1967, stating that neither the applicant nor her mother ever possessed or owned the said property, and that he intended proceeding with the correction of the error. The applicant thereupon lodged an appeal (No. 6/1968) from the Director's decision with the District Court of Famagusta on the 18th January, 1968, under the provisions of section 80 of Cap. 224. The Director filed his opposition to the appeal on the 6th June, 1968, but nothing more was done until the 28th September, 1968, when the Attorney-General of the Republic instituted Action No. 1934 of 1968 in the District Court of Famagusta against the present applicant for a declaration that the said plot was and still is the property of the State. He further claimed, in the alternative, declarations that the said property belonged to the Succession of John Langdon ; that the heirs of the said John Langdon, if any, had died in the year 1942 without leaving any heirs and that, consequently, this plot devolved on the State. It was further claimed that the registration in the present applicant's name should be cancelled together with other consequential reliefs.

Some twelve days after the filing of the said action, that is, on the 10th October, 1968, the present applicant was

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formally charged in the police station in respect of the counts of which she was eventually convicted before the District Court of Famagusta on the 3rd October, 1969, and sentenced on the following day, the 4th October, 1969, when the order challenged in the present proceedings was also made.

On the 29th January, 1970, the above mentioned Action No. 1934 of 1968 was discontinued by the Attorney-General of the Republic and on the same day the Director of Lands and Surveys applied to the District Court of Famagusta to strike out the appellant's Appeal No: 6 of 1968, which was filed on the 18th January, 1968. Finally, the plot in question (plot 92) was registered in the name of the Republic of Cyprus on the 20th January, 1970, by virtue of the order made by the President of the District Court in the aforesaid criminal proceedings, on the 4th October, 1969. Thereupon, on the 12th February, 1970, the present applicant applied to this Court for leave to apply for an order of certiorari, which was granted on the 19th February, 1970.

The following is an extract from the reasoned decision of the President, District Court, in the criminal trial containing his findings of fact with regard to the present applicant :

“ On the 20.4.1960, accused No. 1 is found to be the registered owner of a very valuable piece of land in the town of Famagusta, which is plot 92 on *exhibit* 20. The evidence of the prosecution is that in the morning of the 20.4.60 she presented herself at the counter of the application section of the District Lands Office, Famagusta, and filed the relevant application, which is now known as TA. 175/60 (Evidence of P.W. Yiannakis). Evidence has been adduced that the property had never been possessed or rights of ownership had ever been exercised, either by accused No. 1 or her mother, in relation to this property. Moreover, there is evidence stated by P.W. Ladas that accused No. 1 was seen by him to have paid several visits at the office of accused No. 2, at a time connected with the commission of this offence ; and P.W. Yiannakis said that he saw her going towards the office of accused 2.

What is the defence of accused No. 1? One of complete lack of knowledge in the matter. She maintained all along that her father was exclusively instrumental in procuring this registration. She propounded this defence, without supporting it on oath.

From the whole evidence, I find as a fact that the person who presented the application in the morning of the 20.4.1960, for filing at the application section was no other than accused No. 1 and that that application though supported by a village authority certificate, signed by newly appointed mukhtar Mr. Zachariades and two Azas, was false within the knowledge of accused No. 1. During a relevant period to the commission of the alleged offences, accused No. 1 actually paid visits on accused No. 2 at his office. Ladas is an independent witness, related to accused No. 1 and I have no doubt that he spoke the truth. From the evidence it is abundantly clear that accused No. 1 had no right whatsoever to such registration because neither she and/or her mother ever possessed it, or exercised rights of ownership over it. The property was always vacant and unoccupied until it was occupied by the Army Authorities first during the second world war.”

The learned President, District Court, further found that the Government of Cyprus was the owner of plot 92 on the ground that it had devolved on it as *bona vacantia* under the provisions of section 47 (2) of the Wills and Succession Law, Cap. 195, and under the provisions of section 3 (6) of the Immovable Property etc. Law, Cap. 224. He stated in his judgment that there was no evidence that any person exercised dominion rights over this property, and that the evidence was that it was vacant and abandoned for all purposes since at least the year 1913.

Pausing there, it may be observed that as the successors of John Langdon never had any notice of the criminal proceedings, it would be unlikely that any evidence would be forthcoming so far as their rights over this property were concerned ; and, in any event, they had no *locus standi* in the criminal case.

Counsel for the applicant in addressing the criminal Court in mitigation of punishment asked the Court to take into account that the property in question would be restored to its owner ; and the Court took this into account in passing sentence. This is the relevant extract from the judgment of the trial Judge : “ Accused No. 1 has shown greediness in acquiring by fraudulent means, with the collaboration of accused No. 2, a valuable piece of land belonging to the Government of Cyprus, but it is fortunate that the spoils of her unlawful deed may be restored to the lawful owner ”.

Counsel for the applicant in addressing me on the questions of want of jurisdiction and error on the face of the record,

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submitted that the provisions of section 171 of the Criminal Procedure Law, Cap. 155, referred exclusively to movable property and that, consequently, the trial Judge did not have power to make the order which he made in respect of immovable property. Section 171 of Cap. 155 reads as follows :

“Where any person is convicted of any offence by which any other person has been deprived of any property whatever, the Court may order that such property or any part thereof be restored to the person who appears to it to be the owner thereof, either without payment or on payment by such owner to the person in whose possession such property or a part thereof then is, of any sum named in such order :

Provided that this section shall not apply to—

- (a) any valuable security which has been *bona fide* paid or discharged by any person liable to pay or discharge the same ;
- (b) any negotiable instrument which shall have been *bona fide* received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that it had been stolen or otherwise feloniously taken ;
- (c) any goods or documents of title entrusted to, or under the control of, by documents of title or otherwise, any trustee, banker, merchant, attorney, factor, broker or other agent convicted as such of any offence in respect of the same ;
- (d) any movable property purchased in good faith in an open market from a person dealing in such market in this kind of property or in any shop where property of the same kind as the one in question is usually sold and from the person usually in charge thereof .”

Counsel for the respondent, on the other hand, submitted that the words “ *any property whatever* ”, occurring in the opening paragraph of section 171, were very wide to include both movable and immovable property. In this connection he referred to the definition of the expression “property” in section 3 of the Criminal Code, Cap. 154. I agree with the submission of respondent’s counsel that the words “any property whatever” in section 171 have a very wide meaning, and I construe those words to include

both movable and immovable property. In my judgment those words remain unaffected by the specific provisos to that section which refer to valuable securities, negotiable instruments, goods or documents of title and movable property purchased in a market overt. Our section 171 is differently worded from the corresponding English provision, namely, section 45 of the Larceny Act, 1916 ; but the expression " property " is defined in section 46 (1) as including " any description of real and personal property ".

In the present case the applicant was convicted of an " offence by which any other person has been deprived " of the immovable property under plot 92. Therefore, the Court had power to order that such property " be restored to the person who appears to it to be the owner thereof ", as provided in section 171 of Cap. 155. Later in this judgment I shall be dealing with the construction to be placed on these words.

On the findings of fact and conviction of the applicant by the criminal court it is manifest that she was not entitled to be registered as owner of plot 92 in April, 1960, and the President, District Court, had power to order and he rightly ordered the cancellation of such registration in her name ; but (for the reasons which I shall state later) I hold the view that, under the provisions of section 171, the President in such a criminal trial did not have the power to go behind the Land Registry records (which did not show the Government or the Republic of Cyprus as the owner), and make the order which he did make for the registration of the property in the name of the Republic of Cyprus. I do not think that that was the intention of the legislative authority in enacting section 171.

The second point taken by applicant's counsel was that on the true construction of section 80 of the Immovable Property etc. Law, Cap. 224, the President, District Court, sitting as a Criminal Court, had no jurisdiction to order the cancellation of the registration in the applicant's name and order a new registration ; and that the competent court empowered to do this was the one defined in section 2 of Cap. 224. Section 80 of Cap. 224 reads as follows :

" 80. Any person aggrieved by any order, notice or decision of the Director made, given or taken under the provisions of this Law may, within thirty days from the date of the communication to him of such order, notice or decision, appeal to the Court and the

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Court may make such order thereon as may be just but, save by way of appeal as provided in this section, no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of this Law.

Provided that the Court may, if satisfied that owing to the absence from the Colony, sickness or other reasonable cause the person aggrieved was prevented from appealing within the period of thirty days, extend the time within which an appeal may be made under such terms and conditions as it may think fit ”.

The expression “ Court ” in section 2 of Cap. 224, in connection with any matter connected with immovable property, “ means the District Court of the District in which such property is situate .”

Cap. 224 came into operation on the 1st September, 1946, and it is a “ law to consolidate and amend the law relating to tenure, registration and valuation of immovable property ”, as stated in its long title. The Criminal Procedure Law, Cap. 155, came into operation on the 15th December, 1948, and, as stated in its long title, it is a law to amend and consolidate the law relating to procedure in criminal proceedings. The learned President, District Court, made the order challenged relying on the powers conferred on him under section 171 of Cap. 155.

Applicant’s counsel submitted that the Criminal Procedure Law, Cap. 155, was a general later law and that it did not, therefore, abrogate the provisions of the earlier special law, Cap. 224, by mere implication. Section 80 of Cap. 224, already referred to, provides that any person aggrieved by any decision of the Director of Lands and Surveys may, within the prescribed period, appeal to the District Court which Court may make such order thereon as may be just but, save by way of appeal as provided in that section, no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of Cap. 224. Counsel further argued that if the provisions of section 171 of the Criminal Procedure Law, Cap. 155, were in conflict with the provisions of section 80 of the Immovable Property Law, Cap. 224, the provisions of the latter law should prevail ; and that, consequently, the President, District Court, sitting as a criminal Court, had no jurisdiction to make the order challenged as there was a pending appeal before the District Court under the provisions of section 80.

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Applicant's counsel went on to submit that the criminal jurisdiction conferred on a President District Court, under the provisions of section 24, subsection (1), of the Courts of Justice Law, 1960, included the power to imprison, fine and order compensation up to the sum of £500 ; and that, as in the present case, the value of the immovable property involved exceeded the sum of £16,000, the President, District Court, acted in excess of jurisdiction in making an order involving a sum exceeding £500.

Dealing with the last point first, I have no difficulty in holding that the order made by the President, District Court, in the criminal trial under consideration, was not an order for the payment of "compensation" within the meaning of section 24 of the Courts of Justice Law, 1960. Consequently, that argument must fail.

With regard to the first point taken by learned counsel for the applicant, to the effect that the Criminal Procedure Law was a general later law which should not abrogate the provisions of an earlier special law (section 80 of Cap. 224) by mere implication, and that the provisions of section 80 should prevail, there again, I am of the view that that rule of construction, which is known as *generalia specialibus non derogant*, is not applicable to these statutes. Section 171 of Cap. 155 does not conflict with the provisions of section 80 of Cap. 224, and both therefore can stand. Their objects are different and the language of each is restricted to its own object or subject. Here, section 171 of the Criminal Procedure Law expressly confers on the criminal judge the power, where any person is convicted of any offence by which any other person has been deprived of any property whatever, to order that such property be restored to the owner. It would be inconceivable that in the case of immovable property, after the conviction of an offender, the machinery provided under section 80 of Cap. 224 would have to be set into motion. To my mind, the procedure laid down in that section is expressly restricted to the Director's decisions, orders, or notices made or given under the provisions of Cap. 224 only ; and it cannot apply to a case where the person is convicted of an offence by a criminal Court.

In the case of *The Attorney-General v. Panayiotis Christou*, 1962 C.L.R. 129, sitting in the High Court of the Republic, I had occasion to deal with the law applicable to proceedings for *certiorari*. The law may be found summarised at pages 133-134 of the report. *Certiorari* lies to correct error of law where revealed on the face of an order or decision,

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or irregularity, or absence of, or excess of, jurisdiction where shown. The control is exercised by removing an order or decision, and then quashing it. *Certiorari* will not issue as the cloak of an appeal in disguise, and it does not lie to bring up an order or decision for rehearing of the issue raised in the proceedings (see also *Rex v. Northumberland Compensation Appeal Tribunal ex parte Shaw* [1952] 1 K.B. 338 (C.A.), at pages 347, 348 and 357).

Where application is made at the suit of the State, or in a number of limited cases in connection with proceedings in inferior courts of record, *certiorari* issues as a matter of course ; otherwise, its issue is within the discretion of this Court. The discretion is exercised more liberally (*ex debito justitiae*) when the applicant is an "aggrieved" person, as opposed to a person whose *locus standi* rests on an interest common to the public at large (11 Halsbury's Laws of England, third edition, pages 139-141, paragraphs 263 to 266).

Mr. Frangos for the respondent submitted that no individual benefit could be derived by the applicant by granting the order and that, consequently, the Court should not exercise its discretionary power to grant *certiorari*. He further submitted that the applicant's title was based on fraud, which was a void title, and he went to argue that, even without a Court Order, rectification of the Land Registry records could have been made. However, while supporting the order of the President, District Court, directing the cancellation of the registration of plot 92 in the applicant's name, Mr. Frangos expressed doubts whether the learned President could go behind the entries in the Land Registry records immediately prior to their falsification by the District Lands Officer (the second accused) on the 20th April, 1960, and order the registration of such property in the name of a person or the State, which did not appear in the official public records on that date as the owner thereof.

In construing section 171 of our Criminal Procedure Law, which provides for the restitution of property, I had occasion to look up cases construing the corresponding English provision embodied in section 45 of the Larceny Act, 1916. With regard to the purpose served by a restitution order, this is what Edmund Davies, J., said in the course of his judgment in *Barclays Bank, Ltd. v. Milne* [1963] 3 All E.R. 663, at page 666 :

" It is simply a useful piece of administrative machinery. It does not reconstitute the legal title in the stolen property in its owner, for that title has never left him and he

is free to assert it in the civil courts, regardless of whether or not a restitution order has been made in his favour (see *Scattergood v. Sylvester* [1850] 15 Q.B. 506). In general, nothing that the thief may have done meanwhile will have divested the owner of his title for '*nemodati quod non habet*'.

Section 45 (1) of the Larceny Act, 1916, provides merely that on conviction for theft, '...the property shall be restored to the owner or his representative'. The expression 'property' here connotes simply the subject matter of the theft.

Apart from sales in market overt to a purchaser in good faith (Sale of Goods Act, 1893, section 22), the most that certain statutory provisions have done is to provide a barrier whereby the victim of theft cannot effectively assert his title against third parties who have come into possession of the stolen property in circumstances which do not reflect on their honesty. The effect of the various remedial enactments, culminating in section 45 (2) of the Larceny Act, 1916, is that, where there are no statutory barriers to recovery of possession, the owner of stolen property may (at the discretion of the criminal court of trial) be provided with a short-cut remedy whereby possession of that property may be restored to him without his being called on to institute civil proceedings to secure this."

Although the wording of our section 171 is different from that of its English counterpart, I respectfully agree that the purpose served by a restitution order in the case of a conviction of any offence, as described in our section 171, is a useful piece of administrative machinery whereby a person, who has been deprived of any property fraudulently, may be provided with a short-cut remedy whereby such property may be restored to him without his being called on to institute civil proceedings to secure this. But section 171 does not confer a power on the criminal judge to order registration of immovable property in the name of a person or the State, whose name did not appear in the official Land Register or other public records. Such section confers a power on the criminal Judge to preserve the *status quo ante*, that is, to order the rectification of the falsification of the Land Register or other public records, and the cancellation of the fraudulent registration of immovable property in the name of a convicted person who is not entitled to such registration. However, I am of the view that the Criminal Court has no power to go further than that and order registration of such property in the

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name of the person who appears to be the owner thereof, save only in the clearest cases where there can be no doubt that a particular person is the owner thereof. It is only in those cases that a registration order in his favour should be made. Otherwise such an order might cause the gravest injustice to a third party because such third party, to whom the immovable property may belong, has no *locus standi* to appear before a Criminal Court. The Civil Courts are the correct forum for deciding matters of this kind.

For the purposes of the criminal trial it was sufficient for the Court to find that the present applicant was not entitled to be registered as owner and that she was fraudulently registered as such. That was the issue before the trial Court. Rights of third persons, regarding the ownership of such property, might be prejudiced if they were determined without notice to such persons or if the correct procedure was not followed under the law. At the trial the applicant would be entitled to be acquitted if the Criminal Court found that she was entitled to be registered as owner ; but the Court found as a fact that she was not so entitled and that she was fraudulently registered.

In the present case, on the *prima facie* evidence of the Land Registry books, the "recorded" "owners" were the successors of John Langdon and not the Government of Cyprus or the Republic of Cyprus. The Government of the Republic and the successors of John Langdon should have been left to take such action in the Civil Courts or the correct forum as they may be advised.

Having regard to the construction I place on section 171 of the Criminal Procedure Law, I hold that, although the President District Court had power under that section to order the cancellation of the fraudulent registration of plot 92 in the applicant's name, he did not have power to order the registration of that property in the name of the Republic of Cyprus. Consequently, the second part of his order, directing such registration, was an order which was not authorized by law and that part of the order is bad on its face and should be brought up to this Court to be quashed.

In the result, I hold that the first part of the order of the President, District Court, dated the 4th October, 1969, to the following effect, shall stand :

"I further order that the existing registration No. 8257, dated 20.4.60, of the Lands Office of Famagusta, in the name of accused No. 1, to wit, *exhibit 4* in the Land Register, *exhibit 9*, be cancelled forthwith."

And I further order that the second part of the aforesaid order of the President, District Court, to the following effect, be removed into this Court, and that thereupon such part of the said order be quashed.

“and that this property, *i.e.* plot 92, Block ‘B’ Ay. Ioannis Qr., Famagusta, be registered in the books of the Lands Office of Famagusta in the name of the Government of Cyprus *i.e.* now the Republic of Cyprus.”

In the circumstances of this case I direct that the applicant shall pay half of the costs of the respondent in the present proceedings.

Order accordingly.

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