1979 June 2

[TRIANTAFYLLIDES, P.]

THE ATTORNEY-GENERAL OF THE REPUBLIC AND ANOTHER (No. 2),

*Applicants,*

*v.*

GEORGE SAVVIDES,

*Respondent.*

(*Application No.* 18/79).

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*Jurisdiction—Territorial jurisdiction of District Courts in Civil matters —"Action" which "relates to ..... any other matter relating to immovable property" within section* 21(2) *of the Courts of Justice Law,* 1960 (*Law* 14/60)*—Action for a declaration regarding,* inter alia, *occupation and/or possession of immovable property situated within the District of Limassol—In so far as it relates to the said immovable property it is an action which the District Court of Nicosia had no jurisdiction to entertain for any purpose at all—And it had no jurisdiction to make an interim order in relation to such immovable property—Order of certiorari quashing interim order to the extent to which it relates to the said immovable property.*

*Certiorari—Jurisdiction—In a proper case certiorari lies to quash an order made without jurisdiction—Interim order relating to immovable property—Quashed by certiorari for lack of jurisdiction—Section* 21(2) *of the Courts of Justice Law,* 1960 (*Law* 14/60).

*Civil Procedure—Interim order—It can be made* ex parte*—Section* 9(1) *of the Civil Procedure Law, Cap.* 6*—Whether or not it should have been made* ex parte *a matter involving the exercise of the judicial discretion of the Court below and not its jurisdiction to make it—Said exercise of discretion cannot be controlled or interfered with by means of an order of certiorari.*

*Civil Procedure—Interim order—Applied for* ex parte*—All facts must be laid before the Court and nothing suppressed—Otherwise*

*the order made may be set aside without regard to the merits—Interim order not obtained by "fraud" due to the non-disclosure of existence of previous proceeding.*

*Civil Procedure—Interim order—Restraining interference with immovable property and movables found thereon—Whether amounting to an injunction which will have practical effect of granting the sole relief claimed.*

*Civil Procedure—Interim order made without notice—Duration—Section 9(3) of the Civil Procedure Law, Cap. 6—Interim order made on April 3, 1979 and made returnable on April 17, 1979—Such period was not, in the circumstances of this case, a longer period than was "necessary for service" of notice of the interim order "on all persons affected by it ....." in the sense of the said section 9(3).*

*Civil Procedure—Interim order—Obedience to—Non compliance with interim order of a kind disentitling applicants to apply for an order of certiorari for the purpose of quashing it not established in the circumstances of this case.*

By means of an action (No. 1539/79), which was filed on April 3, 1979, at the District Court of Nicosia, the plaintiff in the action (respondent in these proceedings) claimed*, *inter alia*, against the defendants (applicants in these proceedings) a declaration of the Court that he "is the lawful contractual tenant and/or tenant and/or he is entitled to continue occupying and/or possessing the factory situated at No. 1 Gutemburg Road Limassol". On the same day the District Court of Nicosia, on the *ex parte* application of the plaintiff, made an interim order which, so far as relevant, reads as follows:

> "This COURT ..... DOTH ORDER that the above defendants 1 and 2 ..... be restrained and are hereby restrained from:-
>
> (1) Entering and/or interfering in any way with the immovable property situate at No. 4 Gutemburg Road, in Limassol, and comprising an ice-cream factory, machinery and/or movables therein, leased by the applicant by virtue of a written contract of lease,

* See full particulars of the claim at pp. 358-59 *post*.

(2) Depriving in any way the applicant of the possession and/or use of the said property,

(3) Trespassing on the above property and/or using and/or threatening directly or indirectly the use of any kind of force or assault against the applicant, his servants or agents for the purpose of evicting the applicant and/or depriving him of the possession and/or use of the said property without resorting to the Court and/or without obtaining the necessary order of the Court and/or Writ of Possession.

AND THIS COURT DOTH FURTHER ORDER the above defendants to remove the lock and chains as well as the police guard placed on the said property.

The above order shall remain in force till the hearing and final disposal of the present action unless the defendants appear before this Court on 17.4.79 and show cause why the present order should not continue to be in force".

Upon an application* by the defendants in the action for an order of certiorari quashing the above interim order counsel for the applicants contended:

(1) That the District Court of Nicosia in granting the said interim order acted without jurisdiction, in view of the provisions of section 21** of the Courts of Justice Law, 1960 (Law 14/60) and because of the fact that the action

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* An appeal was also made against the said interim order but it was abandoned following the decision of this Court on May 9, 1979 that the reserved judgment in this application would not be delivered until the appeal would have been disposed of—vide p. 323 *ante*.

** Section 21 reads as follows:

"21.—(1) A district Court shall, subject to the provisions of section 19, have original jurisdiction to hear and determine any action in accordance with the provisions of section 22 where—

(a) the cause of action has arisen either wholly or in part within the limits of the district in which the Court is established;

(b) the defendant or any of the defendants; at the time of the institution of the action, resides or carries on business within the district in which the Court is established;

.....

(2) Where the action relates to the partition or sale of any immovable property or any other matter relating to immovable property, such action shall be taken in the District Court of the district within which such property is situate.

.....".

in which such interim order was made, related to immovable property situate in the District of Limassol.

(2) That the said order was wrong in Law in that in the circumstances of the case, as they appear from the record of the proceedings, it was wrongly made (a) *ex parte* (b) in terms amounting to mandatory injunction and/or amounting to a great extent to an injunction which will have the practical effect of granting the sole relief claimed by the action (c) without the Court having before it all the material facts and (d) for a period longer than that prescribed by section 9(3) of the Civil Procedure Law Cap. 6.

Contention 2(c) above was based on the fact that, in applying for the interim order in question the respondent failed to disclose to the District Court of Nicosia that there was pending before the District Court of Limassol rent Control Application No. 53/79, by means of which there was being sought relief similar to that claimed by means of action No. D.C.N. 1530/79, and that in relation to such application there had been applied for an interim order in terms similar to those of the interim order made on April 3, 1979, in the aforesaid action; and that the application for an interim order in the District Court of Limassol had been adjourned as it had been agreed between the parties to have a hearing on the merits of rent control application No. D.C.L.I 53/79 itself.

*Held*, (1) that inasmuch as subsection 2 of section 21 of Law 14/60 makes specific provision about an "action" which "relates to", *inter alia*, "any other matter relating to immovable property", it excludes from the jurisdiction granted under paragraphs (a) and (b) of subsection (1) of the same section any such action, and, consequently, action D.C.N. 1530/79, in so far as it is an action relating to the immovable property referred to in the claim indorsed on the writ of summons in the said action D.C.N 1530/79 and the interim order which is the subject matter of the present proceedings, is an action which the District Court of Nicosia had no jurisdiction to entertain for any purpose at all (*Cyprus Hotels Co. Ltd.* v. *Hotel Plaza Enterprises Ltd. and Others* (1968) 1 C.L.R. 423 distinguished); that, therefore, the District of Nicosia had no jurisdiction to make the interim order in relation to such immovable property in the said action;

that an interim order made without jurisdiction can, in a proper case, be quashed by means of certiorari; that, consequently, those parts of the interim order which are challenged in the present proceedings, and which were made without jurisdiction, have to be quashed by means of an order of certiorari; and that, accordingly, paragraphs (1) and (2) of the first part of the said interim order to the extent to which they relate to the immovable property concerned, as well as the second mandatory part of the interim order which, again, relates to such immovable property, must by quashed.

(2) That subsection (1) of section 9* of the Civil Procedure Law Cap. 6 clearly empowered the making of the interim order dated April 3, 1979, *ex parte*; that whether or not it should have been made *ex parte* in the present instance is a matter involving the exercise of the judicial discretion of the District Court of Nicosia, which made the said order, and not its jurisdiction to make it; that the said exercise of judicial discretion cannot be controlled or interfered with by means of the present proceedings for an order of certiorari; and that, therefore, contention (a), above, in ground (2) in support of this application for an order of certiorari cannot be upheld as being valid.

(3) That there does not remain any significance in the first part of contention 2(b), above, because the mandatory parts of the interim order in question have already been quashed for lack of jurisdiction together with paragraphs (1) and (2) in the first part of such order to the extent to which they relate to the immovable property concerned; that it cannot be said, either, that paragraph (3) of the said first part and paragraphs (1) and (2) of the same part, to the extent to which they are not relating to the aforementioned immovable property, amount "to a great extent to an injunction which will have the practical effect of granting the sole relief claimed" by action No. D.C.N. 1530/79; and that, accordingly, contention 2(b) has to be discarded, too.

(4) That though, when applying for an injunction, all the facts must be laid before the Court and nothing suppressed, otherwise the order may be set aside without regard to the merits, in the

* Section 9(1) provides as follows:

"9(1) Any order which the Court has power to make may, upon proof of urgency or other peculiar circumstances, be made on the application of any party to the action without notice to the other party".

present instance at the time when the application for an interim order was applied for in action No. D.C.N. 1530/79 there was not, strictly speaking, pending any similar proceeding anywhere else in Cyprus as the Limassol proceedings had already been discontinued; and that though it would have been the better course to have disclosed the existence of the past Limassol proceedings it cannot be held that the interim order was obtained in Nicosia on April 3, 1979 "by fraud" due to the non-disclosure of the previous proceedings; that therefore an order of certiorari cannot be granted on this ground, and that, accordingly, contention 2(c) must fail

(5) That there was no excess of jurisdiction or contravention of subsection (3) of section 9* of Cap. 6 resulting in an error of law on the face of the relevant record, due to the fact that the interim order in question was made on April 3, 1979, and April 17, 1979, was fixed as the date on which cause could have been shown why it should not be allowed to remain in force, that it cannot be held that the period between April 3, 1979, and April 17, 1979, was, in the circumstances of the present case, a longer period than was "necessary for service" of notice of the interim order "on all persons affected by it and enabling them to appear before the Court and object to it", in the sense of subsection (3) of section 9; that, therefore, there is no merit in contention (d) above, and that, in the result, there will be granted an order of certiorari quashing in part the interim order dated April 3, 1979, to the extent indicated above

(6) (*On the contention of counsel for the respondent that the applicants are not entitled at all to an order of certiorari because they are not acting in good faith, in view, especially, of a relevant advice given by the Attorney-General of the Republic and, also, since, allegedly, the applicants have not complied with the interim order of April* 3, 1979). That from a perusal of the aforesaid advice of the Attorney-General, who is actually an applicant in the present proceedings for an order of certiorari, it appears that neither the Attorney-General nor his co-applicants can be

* Section 9(3) reads as follows.

'(3) No such order made without notice shall remain in force for a longer period than is necessary for service of notice of it on all persons affected by it and enabling them to appear before the Court and object to it, and every such order shall at the end of that period cease to be in force, unless the Court, upon hearing the parties or any of them, shall otherwise direct, and every such order shall be dealt with in the action as the Court thinks just".

treated as not acting in good faith in relation to the course of events which has led to the present application for an order of certiorari; that, in the light of the history of the relevant proceedings before the District Court of Nicosia in action No. D.C.N. 1530/79, there has not been established non-compliance with the interim order dated April 3, 1979, of a kind disentitling the applicants to apply for an order of certiorari for the purpose of quashing it, especially as the applicants have already, earlier on, tried to have such interim order set aside by means of applications made *ex parte*, on April 5 and April 6, 1979, and when such applications were refused they have filed an appeal against the relevant decision of the District Court of Nicosia; and that, accordingly, the contention of the respondent must fail.

*Application partly granted.*

Cases referred to:

*R.* v. *Postmaster-General. Ex parte Carmichael* [1928] 1 K.B. 291 at p. 299;

*Cyprus Hotels Co. Ltd.*, v. *Hotel Plaza Enterprises Ltd. and Others* (1968) 1 C.L.R. 423 at pp. 434-436;

*R.* v. *Judge Sir Shirley Worthington—Evans. Ex parte Madan and Another* [1959] 2 Q.B. 145 at p. 152;

*R.* v. *Judge Sir Donald Hurst. Ex parte Smith. R.* v. *Oxford Electoral Registration Officer. Ex parte Smith* [1960] 2 Q.B. 133 at p. 142;

*R.* v. *Leyland Magistrates, ex parte Hawthorn* [1979] 1 All E.R. 209 at p. 210;

*Boyce v. Gill* [1891] 64 L.T. 824 at p. 825;

*R.* v. *The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington. Ex parte Princess Edmond de Polignac* [1917] 1 K.B. 486 at pp. 504-505;

*Mavrommatis and Others* v. *Cyprus Hotels Co. Ltd* (1967) 1 C.L.R. 266.

**Application for an order of certiorari.**

Application for an order of certiorari to remove into the Supreme Court and quash the interim order made in Civil Action No. 1530/79 in the District Court of Nicosia (Stylianides P.D.C.) on the 3rd April, 1979.

*K. Kallis*, for the applicants.

*Ant. Lemis* with *D. Savvides* (*Mrs.*), for the respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following judgment: The applicants are seeking an order of certiorari for the purpose of quashing an interim order made *ex parte* in civil action No. 1530/79, in the District Court of Nicosia, on April 3, 1979; in the said action the applicants are the defendants and the plaintiff is the respondent to the present application.

On May 9, 1979, I decided* that—for the reasons expounded in a Decision given on that date—the reserved judgment regarding the fate of the present application for an order of certiorari would not be delivered until a civil appeal, No. 5945, which had been made against the aforesaid interim order, would have been disposed of.

The said appeal was abandoned and, consequently, dismissed on May 12, 1979, and it is, therefore, now appropriate to deliver the reserved judgment in the present proceedings.

There exists no rule in regard to certiorari that it will lie only where there is no other equally effective remedy, and, so, it will lie, also, in a case in which, such as the present one, a right of appeal has been conferred by statute (see Halsbury's Laws of England, 4th ed., vol. 11, p. 805, para. 1528).

In this respect, Avory J. said the following in *R.* v. *Postmaster-General. Ex parte Carmichael*, [1928] 1 K.B. 291 (at p. 299):-

> " I have also entertained considerable doubt whether any practical advan age is to be gained by the applicant in this case if this rule is made absolute, in view of the provisions as to appeal in s. 43, sub-s. 1(f), of the Workmen's Compensat.on Act, 1925. I have, throughout the argument, certainly entertained the view that the section gives the applicant all the relief which she can require, and that she might under that appea' section have the matter determined by the medical referee, whose decision would be final as to whether she is in fact suffering from this disease. But even if that remedy is open to her, it is undoubtedly good law that if the application for a certiorari is made by a party aggrieved, then it ought to be granted ex debito justitiae, and the Court has not the general discretion which it would have when the application is made by one of the public who is not personally concerned. That was

* See p. 323 in this Part *ante*.

decided long ago in the case of *Reg.* v. *Surrey Justices*[1], and on that principle, even although she has the remedy by appeal in this case, I am prepared to agree that the certiorari should go, seeing that the application is being made by the applicant as the party aggrieved."

The grounds on which an order of certiorari is being applied for in order to quash the aforementioned interim order of April 3, 1979, which was made in the said action, D.C.N. 1530/79, are set out in the Statement dated April 13, 1979.

The first ground is that the District Court of Nicosia in granting the said interim order acted without jurisdiction, in view of the provisions of section 21 of the Courts of Justice Law, 1960 (Law 14/60) and because of the fact that the action, D.C.N. 1530/79, in which such interim order was made, relates to immovable property situate in the District of Limassol.

The material parts of section 21 of Law 14/60 are paragraphs (a) and (b) of subsection (1) and the first paragraph of subsection (2), and they read as follows:-

"21.—(1) A District Court shall, subject to the provisions of section 19, have original jurisdiction to hear and determine any action in accordance with the provisions of section 22 where—

(a) the cause of action has arisen either wholly or in part within the limits of the district in which the Court is established;

(b) the defendant or any of the defendants, at the time of the institution of the action, resides or carries on business within the district in which the Court is established;

. . . . . .

(2) Where the action relates to the partition or sale of any immovable property or any other matter relating to immovable property, such action shall be taken in the District Court of the district within which such property is situate.

. . . . . ."

1. [1870] L.R. 5 Q.B. 466.

The writ of summons in action D.C.N. 1530/79, which was filed on April 3, 1979, was indorsed with the following claim:-

"The plaintiffs claim is against the defendants and/or either of them their servants or agents jointly and/or severally for:-

(a) A Declaration of the Court that the plaintiff is the lawful contractual tenant and/or tenant and/or he is entitled to continue occupying and/or possessing the factory situated at No. 4 Gutemburg Road Limassol and/or the movables therein hereinafter ref.rred to as the property. Alternatively and without prejudice to the above a declaration of the Court that the plaintiff is a statutory tenant of the above property and/or he is entitled to continue occupation and/or possession respectively of the above property as such.

(b) An Order or Injunction of the Court restraining the defendants or either of them, the Government and/or Republic of Cyprus and/or the Minister of Interior and Defence and/or the District Officer Limassol and/or the Police and/or their servants or agents from interfering in any way with the possession and/or peaceful enjoyment of the said property by the plaintiff.

(c) An Injunction preventing the defendants or either of them the Government and/or the Republic of Cyprus and/or the Minister of Interior and Defence and/or the District Officer Limassol their .ervants or agents, from using and/or threatening directly or indirectly any kind of violence against the plaintiff his servants or agents for the purpose of evicting the same and/or depriving the plaintiff of the possession and/or use of the said property, without obtaining the necessary valid order of the Court and/or without the issue of Writ of Possession in respect of the said property.

(d) A Declaration of the Court that the action of the defendants or either of them their servants or agents in placing locks and/or chains on the said property and/or in trespassing and/or using forcible entry in the said property and/or in assaulting the Plaintiff and/or placing the said property under police guard

against the will of the plaintiff and without an order of the Court, is unlawful and/or illegal and/or wrong and/or ultra vires and/or arbitrary.

(e) An Order of the Court ordering the defendants or either of them their servants or agents to remove the said locks and chains placed on the said property and/or to remove the police guard placed on the same and/or to cease preventing the plaintiff from entering into and/or having lawful and/or peaceful enjoyment of the said property.

(f) Any other order or remedy which the Court will consider just and equitable.

(g) Damages for trespass

(h) Damages for assault

(i) Damages for damage sustained by the plaintiff as a result of the above unlawful acts of the defendants or either of them their servants or agents and/or for the loss of use of the said property by the plaintiff as a result of the above acts.

(j) Legal interest and costs".

The interim order of April 3, 1979, which was made in the said action and which the applicants seek to quash by an order of certiorari, reads as follows:-

" 'Επὶ τῇ αἰτήσει τοῦ κ. Α.Ν. Λεμῆ, δικηγόρου δι' ἐνάγοντα, ΤΟ ΔΙΚΑΣΤΗΡΙΟΝ ΤΟΥΤΟ ἀναγνὸν τὴν ἔνορκον ὁμολογίαν τὴν κατατεθεῖσαν ὑπὸ ἢ ἐκ μέρους τοῦ ἐνάγοντος καὶ ὅστις συνάμα κατέθεσεν ἐγγύησιν £1,000.—ἵνα διὰ τοῦ ποσοῦ τούτου καλυφθῶσι οἱαιδήποτε ζημίαι καὶ ἔξοδα ἅτινα ἤθελον προκύψει εἰς τοὺς ἐν λόγῳ ἐναγομένους διὰ τῆς ἐκδόσεως τοῦ παρόντος διατάγματος, ΔΙΑΤΑΤΤΕΙ ὅπως οἱ ὡς ἄνω ἐναγόμενοι 1 καὶ 2, οἱ ὑπηρέται καὶ ἀντιπρόσωποι τούτων, συμπεριλαμβανομένων ἁπάντων τῶν ὀργάνων τῆς Δημοκρατίας, ἐμποδισθῶσι καὶ δὴ διὰ τοῦ παρόντος ἐμποδίζονται ἀπὸ τοῦ νὰ:-

(1) Εἰσέρχωνται καὶ/ἢ καθ' οἱονδήποτε τρόπον ἐπεμβαίνουν ἐπὶ τῆς ἀκινήτου περιουσίας τῆς κειμένης εἰς τὴν ὁδὸν

Γουτεμβεργίου ἀρ. 4, εἰς Λεμεσὸν, καὶ περιλαμβανούσης ἐργοστάσιον παγωτοῦ, μηχανήματα καὶ/ἢ κινητὰ ἐντὸς τούτου, ἐνοικιασθείσης ὑπὸ τοῦ αἰτητοῦ δυνάμει ἐνοικιαστηρίου ἐγγράφου,

(2) Ἀποστεροῦν καθ' οἱονδήποτε τρόπον τὸν αἰτητὴν τῆς κατοχῆς καὶ/ἢ χρήσεως τῆς ρηθείσης περιουσίας,

(3) Ἐπεμβαίνουν ἐπὶ τῆς ἀνωτέρω περιουσίας καὶ/ἢ ἀπὸ τοῦ νὰ χρησιμοποιοῦν καὶ/ἢ ἀπὸ τοῦ νὰ ἀπειλοῦν ἀμέσως ἢ ἐμμέσως τὴν χρῆσιν μὲ οἱουδήποτε εἴδους βίας ἢ ἐπιθέσεως ἐναντίον τοῦ αἰτητοῦ, τῶν ὑπηρετῶν ἢ ἀντιπροσώπων τούτου πρὸς τὸν σκοπὸν ὅπως ἐξώσωσι τὸν αἰτητὴν καὶ/ἢ ἀποστερήσωσι τοῦτον τῆς κατοχῆς καὶ/ἢ χρήσεως τῆς ρηθείσης περιουσίας ἄνευ προσφυγῆς εἰς τὸ Δικαστήριον καὶ/ἢ ἄνευ τῆς λήψεως τοῦ ἀναγκαίου διατάγματος τοῦ Δικαστηρίου καὶ/ἢ Ἐντάλματος Ἀναλήψεως Κατοχῆς.

ΚΑΙ ΤΟ ΔΙΚΑΣΤΗΡΙΟΝ ΤΟΥΤΟ ΠΕΡΑΙΤΕΡΩ ΔΙΑΤΑΤΤΕΙ τοὺς ὡς ἄνω ἐναγομένους ὅπως μετακινήσωσι τὴν κλειδαριὰν καὶ τὰς ἀλύσους καθὼς καὶ τὸν τοποθετηθέντα εἰς τὴν ὡς ἄνω περιουσίαν ἀστυνομικὸν φρουρόν.

Τὸ ὡς ἄνω διάταγμα θὰ ἰσχύῃ μέχρις ἀκροάσεως καὶ τελείας ἀποπερατώσεως τῆς παρούσης ἀγωγῆς ἐκτὸς ἐὰν οἱ ἐναγόμενοι ἐμφανισθῶσι ἐνώπιον τοῦ Δικαστηρίου τούτου κατὰ τὴν 17.4.79 καὶ δείξουν λόγον διατὶ τὸ παρὸν διάταγμα νὰ μὴ ἐξακολουθήσῃ ἰσχῦον."

(" Upon the application of Mr. A.N. Lemis, counsel for the plaintiff, THIS COURT, on reading the affidavits filed by or on behalf of the plaintiff, who has, at the same time, furnished security of £1,000 for his being answerable to the said defendants in damages and costs that may be occasioned to them by the making of the present order, DOTH ORDER that the above defendants 1 and 2, their servants and agents, including all organs of the Republic, be restrained and are hereby restrained from:-

(1) Entering and/or interfering in any way with the immovable property situate at No. 4 Gütemburg Road, in Limassol, and comprising an ice-cream factory, machinery and/or movables therein, leased by the applicant by virtue of a written contract of lease,

(2) Depriving in any way the applicant of the possession and/or use of the said property,

(3) Trespassing on the above property and/or using and/or threatening directly or indirectly the use of any kind of force or assault against the applicant, his servants or agents for the purpose of evicting the applicant and/or depriving him of the possession and/or use of the said property without resorting to the Court and/or without obtaining the necessary order of the Court and/or Writ of Possession.

AND THIS COURT DOTH FURTHER ORDER the above defendants to remove the lock and chains as well as the police guard placed on the said property.

The above order shall remain in force till the hearing and final disposal of the present action unless the defendants appear before this Court on 17.4.79 and show cause why the present order should not continue to be in force.")

What has to be decided is whether or not the District Court of Nicosia had, in view of the relevant provisions of section 21 of Law 14/60, jurisdiction to make the interim order in question:

It is common ground that the immovable property referred to in the claim which is indorsed on the writ of summons in action D.C.N. 1530/79, and in the interim order in question which was made in the said action, is situate in the District of Limassol, and not in the District of Nicosia.

Having perused all relevant material before me, and having considered what is the proper construction of the relevant provisions of section 21 of Law 14/60, I have reached the conclusion that, inasmuch as subsection (2) makes specific provision about an "action" which "relates to", *inter alia*, "any other matter relating to immovable property", it excludes from the jurisdiction granted under paragraphs (a) and (b) of subsection (1) of the same section any such action, and, consequently, action D.C.N. 1530/79, in so far as it is an action relating to the immovable property referred to in the claim indorsed on the writ of summons in the said action D.C.N. 1530/79 and the interim order which is the subject matter of the present proceed-

ings, is an action which the District Court of Nicosia had no jurisdiction to entertain for any purpose at all..

The present case is, clearly, distinguishable from that of *Cyprus Hotels Co. Ltd.* v. *Hotel Plaza Enterprises Ltd. and others* (1968) 1 C.L.R. 423, where it was held, by majority, that an action commenced in the District Court of Nicosia, by means of which there was claimed (a) an injunction restraining the defendants from taking any further steps for the purposes of arbitration proceedings between the parties to that action under an arbitration clause in a written agreement concerning immovable property in Limassol, (b) a declaration that the matters contained in a "notice for arbitration" served by the said defendants on the plaintiffs in that action did not fall within the arbitration clause in question, and (c) a declaration that the aforementioned agreement was valid, subsisting and binding, was an action within the jurisdiction of the District Court of Nicosia under the provisions of subsection (1) of section 21 of Law 14/60 and that such jurisdiction was not excluded by the provisions of subsection (2) of the same section.

In the *Cyprus Hotels Co. Ltd.* case, *supra*, the following were stated (at pp. 434-436):-

> " I have to treat, therefore, claims (a) and (b), on the basis of the material on record at this stage, as involving only questions of interpretation and applicability of the arbitration clause (clause 14) in the agreement of the 19th March, 1966.
>
> Subject to the exact scope of claims (a) and (b) becoming more definite, in the framework of the pleadings—which are yet to be exchanged between the parties—I take the view that such claims, as they appear to stand now, could not be held to amount to an action relating to a matter relating to immovable property, in the sense of sub-section (2) of section 21 of Law 14/60.
>
> It is not in dispute by either side that the said sub-section (2) is a provision laying down the territorial—and not the substantive—jurisdiction of District Courts, for reasons of convenience; I cannot construe it so widely as to bring within its ambit claims (a) and (b), as generally endorsed at present; to do so would amount to extending the ambit of

sub-section (2) into realms too remotely away from its true object.

In this respect it is to be derived from the case of *R.* v. *Shoreditch County Court Registrar Ex parte Saxon Finance Corporation Ltd.*, [1937] 4 All E.R. 231, which was cited before us, that in construing a provision regarding territorial jurisdiction one must look to the real object of such a provision; and I do not think that claims (a) and (b), as at present presented, could be found to be within the ambit of the object of subsection (2) of section 21 of Law 14/60.

. . . . . .

Claim (c) appears to have been brought about because of the notice given by the respondents on the 2nd of September, 1968, terminating the said agreement and claiming possession of the hotel. But it is to be noted that, once the appellants refused to surrender possession, the respondents themselves did not go on to file an action for recovery of possession, but they proceeded to initiate arbitration proceedings, by their notice of the 10th September, 1968, thus treating the agreement as being still in force; therefore, it could not be said, for the present, that what is in substance in issue is the recovery of possession of the hotel or not, on the basis of the agreement having come to an end.

Even if claim (c) might be taken, at first sight, to amount to a claim for a declaration that the appellants are entitled to possession of the hotel, and it might be argued that such a claim is within the ambit of sub-section (2) of section 21, when one does bear in mind the nature of the agreement between the parties (namely, a lease coupled with an option to acquire the majority shareholding in the company owning the subject-matter of the lease) as well as the generality of claim (c), as framed, it cannot be said that, at the present stage of the proceedings, either the District Court, or this Court, would be entitled to hold definitely that this claim is excluded from the territorial jurisdiction of the Court below by virtue of sub-section (2); a lot will depend on the contents of the pleadings, before one can form a view in this respect with sufficient certainty."

In the present case, however, the exact nature of the claim of

the respondent—the plaintiff in action D.C.N. 1530/79—is abundantly clear from the indorsement on the writ of summons and it is not necessary to wait for the pleadings to clarify the position, as in the *Cyprus Hotels Co. Ltd.* case, *supra.*

Since, as was aready pointed out in this judgment, the District Court of Nicosia had no jurisdiction to entertain action No. 1530/79 in so far as it relates to the immovable property concerned, it seems to me that it is inevitable to hold that the District Court of Nicosia had no jurisdiction to make the interim order dated April 3, 1979, in relation to such immovable property, in the said action.

It is well settled that if an order is made without jurisdiction it can, in a proper case, be quashed by means of certiorari (see, *inter alia*, Halsbury's Laws of England, 4th ed., vol. 11, p. 805, para. 1528, *R.* v. *Judge Sir Shirley Worthington—Evans. Ex parte Madan and another*, [1959] 2 *Q.B.* 145, 152, and *R.* v. *Judge Sir Donald Hurst. Ex parte Smith R.* v. *Oxford Electoral Registration Officer. Ex parte Smith* [1960] 2 Q.B. 133, 142).

Consequently, those parts of the interim order which are challenged in the present proceedings, and which were made without jurisdiction, have to be quashed by means of an order of certiorari which is hereby granted for this purpose; therefore, there are accordingly quashed paragraphs (1) and (2) of the first part of the said interim order to the extent to which they relate to the immovable property concerned, as well as the second mandatory part of the interim order which, again, relates to such immovable property.

The second ground on which an order of certiorari has been applied for in the present case is " (2) That the said order was wrong in Law in that in the circumstances of the case, as they appear from the record of the proceedings, it was wrongly made (a) *ex parte* (b) in terms amounting to mandatory injunction and/or amounting to a great extent to an injunction which will have the practical effect of granting the sole relief claimed by the action (c) without the Court having before it all the material facts and (d) for a period longer than that prescribed by section 9(3) of the Civil Procedure Law Cap. 6."

It is necessary to examine the above contentions which are contained in the second ground on the basis of which an order

of certiorari is being sought, because I have not quashed by means of such an order, for lack of jurisdiction, paragraph (3) of the first part of the interim order in question and paragraphs (1) and (2) of such part to the extent to which they do not relate to the immovable property concerned.

Section 9 of Cap. 6 reads as follows:–

"9. (1) Any order which the Court has power to make may, upon proof of urgency or other peculiar circumstances, be made on the application of any party to the action without notice to the other party.

(2) Before making any such order without notice the Court shall require the person applying for it to enter into a recognizance, with or without a surety or sureties as the Court thinks fit, as security for his being answerable in damages to the person against whom the order is sought.

(3) No such order made without notice shall remain in force for a longer period than is necessary for service of notice of it on all persons affected by it and enabling them to appear before the Court and object to it; and every such order shall at the end of that period cease to be in force, unless the Court, upon hearing the parties or any of them, shall otherwise direct; and every such order shall be dealt with in the action as the Court thinks just.

(4) Nothing in this section shall be construed to affect or apply to the powers of the Court to issue writs of execution."

Subsection (1) of section 9, above, clearly empowered the making of the interim order dated April 3, 1979, *ex parte*; and whether or not it should have been made *ex parte* in the present instance is a matter involving the exercise of the judicial discretion of the District Court of Nicosia, which made the said order, and not its jurisdiction to make it; and the said exercise of judicial discretion cannot be controlled or interfered with by means of the present proceedings for an order of certiorari; therefore, contention (a), above, in ground (2) in support of this application for an order of certiorari cannot be upheld as being valid.

I do not think that there remains any significance in the first part of contention (b), above, because the mandatory parts of

the interim order in question have already been quashed for lack of jurisdiction together with paragraphs (1) and (2) in the first part of such order to the extent to which they relate to the immovable property concerned; and it cannot be said, either, that paragraph (3) of the said first part and paragraphs (1) and (2) of the same part, to the extent to which they are not relating to the aforementioned immovable property, amount "to a great extent to an injunction which will have the practical effect of granting the sole relief claimed" by action No. D.C.N. 1530/79; thus, contention (b) has to be discarded, too.

Contention (c), above, is based on the fact that, in applying for the interim order in question, the respondent failed to disclose to the District Court of Nicosia that there was pending before the District Court of Limassol rent control application No. 53/79, by means of which there was being sought relief similar to that claimed by means of action No. D.C.N. 1530/79, and that in relation to such application there had been applied for an interim order in terms similar to those of the interim order made on April 3, 1979, in the aforesaid action; and that the application for an interim order in the District Court of Limassol had been adjourned as it had been agreed between the parties to have a hearing on the merits of rent control application No. D.C.N. L1 53/79 itself.

In this respect I have been referred to the case of *R.* v. *Leyland Magistrates, ex parte Hawthorn*, [1979] 1 All E.R. 209, where (at p. 210) Lord Widgery C.J. said:–

> " In Halsbury's Laws of England[1] this is said of the capacity of the Court to order certiorari against justices:
>
> > 'An order of certiorari is the appropriate remedy where the jurisdiction of justices is impugned, or where a conviction or order has been obtained by collusion, or, it would seem, by fraud, or where an error appears on the face of the proceedings, or where there has been a failure to comply with the statutory requirements that the defendant be asked whether he pleads guilty or not guilty. The issue of the order of certiorari in such a case is discretionary.'
>
> Nothing is there said about breach of the rules of natural justice. There is no doubt that an application can be made

1. 11 Halsbury's Laws (4th Edn.) para. 1529.

by certiorari to set aside an order on the basis that the tribunal failed to observe the rules of natural justice."

My attention has, also, been drawn to the principle that, when applying *ex parte* for an injunction, all the facts must be laid before the Court and nothing suppressed, otherwise the order made may be set aside without regard to the merits (see The Supreme Court Practice 1979, vol. 1, p. 477).

In *Boyce* v. *Gill*, [1891] 64 L.T. 824, Kekewich J. stated (at p. 825):-

" What the Court would have done if all the facts had been known I cannot say. In such a case I should not think of doing so; but possibly the Court would have come to a different conclusion, and said that the interim order was not necessary. If I had had the knowledge I now have that no serious practical inconvenience was likely to arise, I might have come to that conclusion. But, according to my view, on *ex parte* motions the Court should be in a position to weigh all matters which might influence it, so as to decide whether it is a case to give notice of motion rather than that an injunction should be granted. At best the Court runs the risk of making an order which may do harm, and the undertaking in damages given by a plaintiff is not satisfactory. It is of the utmost importance that the Court should be able to rely upon the statement of counsel, and the affidavits. It is of the utmost importance that there should be a full disclosure of the facts."

In *R.* v. *The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington. Ex parte Princess Edmond de Polignac*, [1917] 1 K.B. 486, Lord Cozens-Hardy M.R. said (at pp. 504-505):-

" It is a case in which it seems to me there was plainly a suppression of what was material, and we cannot be too strict in regard to that which to the best of my belief has been a long established rule of the Court in applications of this nature and has been recognized as the rule. The authorities in the books are so strong and so numerous that I only propose to mention one which has been referred to here, a case of high authority, *Dalglish* v. *Jarvie*[1], which was decided by Lord Langdale and Rolfe B. The

1. 2 Mac. & G. 231, 238.

headnote, which I think states the rule quite accurately, is this: 'It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward.' Then there is an observation in the course of the argument by Lord Langdale: 'It is quite clear that every fact must be stated, or, even if there is evidence enough to sustain the injunction, it will be dissolved.' That is to say he would not decide upon the merits, but said that if an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted, but that he must come again on a fresh application. Then there is a passage in Lord Langdale's judgment[1] which is referred to in the head-note. It is this: 'There is, therefore, a question of law, whether having regard to the facts thus appearing, the plaintiffs are entitled to the protection they ask; and there is also a question of practice, whether the facts stated in the answer being material to the determination of the question, and being within the knowledge of the plaintiffs by whom the case was brought forward, and who obtained an *ex parte* injunction upon their own statement, whether the omission of the statement of these facts in the bill does not constitute a reason why the *ex parte* injunction so obtained should be dissolved.' They held that the injunction ought not to be granted although there might be materials apart from this question upon which the injunction might have been granted. Rolfe B. says this: 'I have nothing to add to what Lord Langdale has said upon the general merits of the case; but upon one point it seems to me proper to add thus much, namely, that the application for a special injunction is very much governed by the same principles which govern insurances, matters which are said to require the utmost degree of good faith, 'uberrima fides.' In cases of insurance a party is required not only to state all matters within his knowledge, which he believes to be material to the question of the insurance, but all which in point of fact are so. If he conceals anything that he

1. 2 Mac. & G. 241, 243.

knows to be material it is a fraud; but, besides that, if he conceals anything that may influence the rate of premium which the underwriter may require, although he does not know that it would have that effect, such concealment entirely vitiates the policy. So here, if the party applying for a special injunction, abstains from stating facts which the Court thinks are most material to enable it to form its judgment, he disentitles himself to that relief which he asks the Court to grant. I think, therefore, that the injunction must fall to the ground.' That is merely one and perhaps rather a weighty authority in favour of the general proposition which I think has been established, that on an *ex parte* application uberrima fides is required, and unless that can be established, if there is anything like deception practised on the Court, the Court ought not to go into the merits of the case, but simply say 'We will not listen to your application because of what you have done.' "

Also, in the same case, Scrutton L.J. stated (at pp. 513–515):

" Now that rule giving a day to the Commissioners to show cause was obtained upon an *ex parte* application; and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an *ex parte* statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement. This rule applies in various classes of procedure. One of the commonest cases is an *ex parte* injunction obtained either in the Chancery or the King's Bench Division. I find in 1849 Wigram V.—C. in the case of *Castelli* v. *Cook*[1] stating the rule in this way: 'A plaintiff applying *ex parte* comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the

1. (1849) 7 Hare, 89, 94.

Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go.' The same thing is said in the case to which the Master of the Rolls has referred of *Dalglish* v. *Jarvie*[1]. A similar point arises in applications made *ex parte* to serve writs out of the jurisdiction, and I find in the case of *Republic of Peru* v. *Dreyfus Brothers & Co.*[2] Kay J. stating the law in this way: 'I have always maintained, and I think it most important to maintain most strictly, the rule that, in *ex parte* applications to this Court, the utmost good faith must be observed. If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when *ex parte* applications are made.' A similar statement in a similar class of case is made by Farwell L.J. in the case of *The Hagen*[3]: 'Inasmuch as the application is made *ex parte*, full and fair disclosure is necessary, as in all *ex parte* applications, and a failure to make such full and fair disclosure would justify the Court in discharging the order, even although the party might afterwards be in a position to make another application.' "

In the present instance, however, it has to be noted that at the time when the application for an interim order was made in action No. D.C.N. 1530/79 there had already been filed, earlier on the same day, a notice of discontinuance of application No. D.C.L1 53/79 "without prejudice to file a new action or application"; therefore, strictly speaking, there was not pending, at the time when the interim order was applied for *ex parte* in action No. D.C.N. 1530/79, any similar proceeding anywhere else in Cyprus; and though it would, in my opinion, have been the better course to have disclosed, in applying in the said action for an interim order, the existence of the past proceedings in application No. D.C.L1 53/79, I cannot go so far as to hold—as I have

1. 2 Mac. & G. 231.
2. 55 L.T. 802, 803.
3. [1908] P. 189, 201.

been invited to do by counsel for the applicants in the present case—that the interim order was obtained in Nicosia on April 3, 1979, "by fraud" due to the non–disclosure of the previous proceedings in application No. D.C.L1 53/79, and to grant an order of certiorari quashing the said interim order on this ground.

Whether or not, due to the said non–disclosure, the interim order in question ought to be discharged, by the trial Court in Nicosia in the exercise of its relevant judicial discretionary powers, is not a matter on which I should, or can, pronounce in the course of the present proceedings for an order of certiorari.

Lastly, regarding contention (d), above, I find no merit in it inasmuch as there was no excess of jurisdiction, or contravention of subsection (3) of section 9 of Cap. 6 resulting in an error of law on the face of the relevant record, due to the fact that the interim order in question was made on April 3, 1979, and April 17, 1979, was fixed as the date on which cause could have been shown why it should not be allowed to remain in force; I cannot hold that the period between April 3, 1979, and April 17, 1979, was, in the circumstances of the present case, a longer period than was "necessary for service" of notice of the interim order "on all persons affected by it and enabling them to appear before the Court and object to it", in the sense of subsection (3) of section 9, above.

I, therefore, refuse to make an order of certiorari quashing, on the basis of the second ground relied on by the applicants, those parts of the interim order dated April 3, 1979 which have not already been quashed by the order of certiorari granted today in the present proceedings for lack of jurisdiction of the Nicosia District Court which has made such interim order.

Before concluding I think that I should deal with the contention of counsel for the respondent that the applicants in the present case are not entitled at all to an order of certiorari because they are not acting in good faith, in view, especially, of a relevant advice given by the Attorney–General of the Republic on February 22, 1979, and, also, since, allegedly, the applicants have not complied with the interim order of April 3, 1979.

Having perused carefully the aforesaid advice of the Attorney–General, who is actually an applicant in the present proceedings

for an order of certiorari, I am of the view that neither the Attorney-General nor his co-applicants, the Central Committee for the Protection and Administration of Turkish Cypriot Properties, can be treated as not acting in good faith in relation to the course of events which has led to the present application for an order of certiorari.

Nor am I satisfied that, in the light of the history of the relevant proceedings before the District Court of Nicosia in action No. D.C.N. 1530/79, there has been established non-compliance with the interim order dated April 3, 1979, of a kind disentitling the applicants to apply for an order of certiorari for the purpose of quashing it; especially, as the applicants have already, earlier on, tried to have such interim order set aside by means of applications made *ex parte*, on April 5 and April 6, 1979, and when such applications were refused they have filed an appeal against he relevant decision of the District Court of Nicosia (see civil appeal No. 5946).

The position in the present case is clearly distinguishable from the situation in *Mavrommatis and others* v. *Cyprus Hotels Co. Ltd.*, (1967) 1 C.L.R. 266.

In the result, for the reasons set out hereinbefore, there is granted an order of certiorari quashing in part the interim order dated April 3, 1979, to the extent already indicated in the present judgment.

Of course, the order of certiorari which I have issued today does not prevent the District Court of Nicosia from dealing further with that part of the interim order in question which has not been quashed, in order to decide whether to continue it in force or not, or from making, if moved for the purpose, a new interim order within the ambit of its territorial jurisdiction.

As regards the costs of these proceedings, I have decided to make no order in relation to them.

*Application partly granted. No order as to costs.*