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UNIVERSITY OF LONDON
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INSTITUTE OF
LEGAL STUDIES

No. 16 of 1957

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF CYPRUS

52084

B E T W E E N

ROBERT CHATTAN ROSS-CLUNIS,
COMMISSIONER OF LIMASSOL Appellant

- and -

10 (1) VASSOS PAPADOPOULLOS
(2) EVAGORAS C. LANITIS
(3) NICOS S. ROUSSOS
(4) ATHANASSIS LIMNATITIS
all of Limassol Respondents

C A S E F O R T H E A P P E L L A N T

RECORD

1. This is an Appeal from an Order, dated the 8th March, 1957, of the Supreme Court of Cyprus in its appellate jurisdiction (Hallinan, C.J. and Zannetides, J.), dismissing an Appeal from an Order, dated the 15th December, 1956, of the same Court in its original jurisdiction (Zekia, J.), ordering that an order made by the Appellant on the 4th July, 1956, under the Emergency Powers (Collective Punishment) Regulations 1955 to (No.1) 1955, be removed into the Supreme Court and quashed. On the hearing of the Appeal the Court was evenly divided, the learned Chief Justice holding that the Appeal ought to be allowed and Zannetides, J. that it ought to be dismissed. p.62 pp.33-34
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2. The legislative provisions relative to this Appeal are set out in the Appendix to this Case.
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3. On the 4th July, 1956, the Appellant made an Order under Regulation 3 of the Emergency Powers (Collective Punishment) Regulations 1955

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pp.1-2

to (No.1) 1955 (hereinafter called "the Regulations"). This Order recited that between the 1st January, 1956, and the 10th June, 1956, six murders, ten attempted murders and about seventy other terrorist offences had been committed within the municipality of Limassol; the commission of these offences, in the Appellant's opinion, was prejudicial to the internal security of Cyprus and the maintenance of public order; he had reason to believe that a substantial number of the Greek Cypriot inhabitants of the area failed to take reasonable steps to prevent the offences and failed to give assistance in their power to discover the offenders; he had held an enquiry into the facts and circumstances appertaining to the offences, after giving the inhabitants of the area an opportunity of understanding the subject of the enquiry and making representations, and had submitted to the Governor a written report of the enquiry. The Order then went on to impose a fine of £35,000 to be levied equally on the assessable Greek Cypriot inhabitants of the area.

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pp.3-4

4. On the 22nd November, 1956, the Respondents filed an application in the Supreme Court of Cyprus for leave to apply for an Order of Certiorari to remove into the Supreme Court and quash the Order made by the Appellant. The grounds of the application were contained in a Statement dated the 20th November, 1956, and were as follows:-

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pp.5-6

"(a) That the said Order is ultra vires, illegal, void and of no effect on the following grounds:-

- (1) The Emergency Powers (Collective Punishment) Regulations 1955 to (No.1) 1955, are, in so far as they purport to empower the Commissioner with the approval of the Governor to order that a fine be levied collectively on the assessable inhabitants of an area in the Colony of Cyprus or any part thereof, ultra vires, illegal, void and of no effect; and that all the Regulations

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contained in such Regulations and relating to the levying, apportionment and collection of the collective fine and of the enforcement of the order ordering the levying of such fine as well as Regulation 13 of the said regulations are ultra vires, illegal, void and of no effect.

- 10 (2) The requirements of Regulation 5 of the Emergency Powers (Collective Punishment) Regulations 1955 to (No.1) 1955, if intra vires, have not been complied with and the said order was in excess of the jurisdiction of the Commissioner of Limassol. Also the rules of natural justice were not observed by the Commissioner in connection with the inquiry held under
- 20 regulation 5.
- (3) That the said Order was wrong in Law.
- (4) That the said Order was contrary to natural justice."

30 5. It was not alleged in the Respondents' Statement either (i) that the Appellant, before making the Order of the 4th July, 1956, had not informed the inhabitants of Limassol that he had reason to believe that they had failed to take reasonable steps to prevent the commission of the offences referred to in the Order and had failed to give all the assistance in their power to discover the offenders, or (ii) that he had not informed the inhabitants of his reasons for thinking that they had failed in these respects, or (iii) that it was not known to the inhabitants that these were the grounds of complaint against them.

40 6. In support of the second ground in the Respondents' application the First Respondent alleged in his affidavit as follows:-

" The defendants failed to hold such an inquiry into the facts and circumstances giving rise to the above Order as could reasonably satisfy the Commissioner that

RECORD

the inhabitants of the area of the Municipality of Limassol were given adequate opportunity of understanding the subject-matter of such inquiry and making representations thereon. In fact the Commissioner summoned a meeting at the Office of the Commissioner of Limassol to which only the Greek Members of the Council of the Municipality of Limassol and the Greek Mukhtars and Azas of the Limassol town were invited to attend. Such meeting was held and attended by me, 5 Greek Municipal Councillors and the Greek Mukhtars and Azas of the town of Limassol to whom the Commissioner spoke about certain murders and other offences committed in Limassol and added that he was determined to impose a collective fine unless cause was shown to the contrary. Then all those present were asked by the Commissioner to show cause why a collective fine should not be levied on the assessable inhabitants of the area of the Municipality of Limassol and the reply was that the imposition of a collective fine would be unjustified, unwarranted and anachronistic. None of the above persons represented or claimed to represent the Greek-Cypriot assessable inhabitants of the area of the Municipality of Limassol in the above matter nor have they undertaken or accepted to communicate anything conveyed to them at the above meeting to the assessable inhabitants of Limassol nor have they done so. Furthermore, according to information received from Haralambos Hadji Arabis of Limassol, one of the said Mukhtars, the great majority of the said Greek Mukhtars (including the said Haralambos Hadji Arabis) and Azas of the Town of Limassol had resigned their office as such and ceased to exercise their powers and duties under the Village Authorities Law long before the said meeting."

7. It was not alleged in the first Respondent's affidavit either (i) that the Appellant had not informed those present at the meeting that he had reason to believe that

the inhabitants of Limassol had failed to take reasonable steps to prevent the commission of the said offences and had failed to give all the assistance in their power to discover the offenders, or (ii) that he had not informed them of his reasons for thinking that the inhabitants had failed in these respects, or (iii) that it was not known to them that these were the grounds of complaint against them.

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8. The Appellant swore an affidavit in answer to that of the first Respondent. Paragraphs 7 and 12 of this affidavit were as follows:-

pp.11-14

"7. I informed the meeting that I was holding this public enquiry with a view to deciding whether I should recommend to His Excellency the Governor the levying of a fine on the Greek inhabitants of the town in respect of a long list of outrages which had occurred within the town since January the 1st, 1956. I invited them to show cause why a fine should not be imposed. After discussion I came to the conclusion that no cause was shown and I accordingly told them that I was not satisfied with their representations and asked them to inform their co-inhabitants as widely as possible of what had transpired at the meeting and suggested that if there was any person or group of persons wishing to make further representations they could do so through the elected Municipal Councillors".

p.12,1.42-
p.13,1.10

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"12. In my view the inhabitants of the Limassol town were given adequate opportunity of understanding the subject-matter of the enquiry on the 11th of June, 1956, and of making representations thereon as laid down in Regulation 5."

p.14,11.10-14

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9. The Appellant in his said affidavit did not state whether or not he had informed those present at the meeting that he had reason to believe that the inhabitants of Limassol had failed to take reasonable steps to prevent

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the commission of the said offences and had failed to give all the assistance in their power to discover the offenders, or whether or not he had told them of his grounds for thinking that they had failed in these respects.

10. In his judgment on appeal in the Supreme Court of Cyprus the Chief Justice dealt with the matters stated in paragraphs 5, 7 and 9 of this Case in the following words:-

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p.51,11.1-14

" It is not entirely clear from the affidavit before the Court as to what precisely the Commissioner told the Mukhtars and Azas. The affidavit of Mr. Papadopoulos merely states that 'The Commissioner spoke about certain murders and other offences committed in Limassol and added that he was determined to impose a collective fine unless cause was shown to the contrary'. Neither the notice of motion or the facts stated in what respect the information given by the Commissioner fell short of what was required under Regulation 5(2) and it is not surprising that the Commissioner should give nothing more than a summary of what he said to the meeting in paragraph 7 of his affidavit."

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11. It appears from the following passage of Mr. Justice Zekia's judgment, summarising the Respondents' contentions before him, that the Respondents then contended that the Appellant had failed to inform those present at the meeting of the grounds of complaint against them:-

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p.24,11.5-14

" In the meeting held no inquiry going into the facts and circumstances giving rise to the order under question had been held. The Commissioner simply informed persons attending the meeting that he was determined to impose a collective fine owing to murders and other outrages committed in the town and that they were invited to show cause why such a course should not be taken. Nothing else transpired in the meeting of the 11th June."

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The learned Judge, erroneously it is submitted, held that these allegations of fact were established by the first Respondent's affidavit and by the Appellant's affidavit. After quoting the two affidavits he stated in his judgment as follows:-

p.28,11.31-42

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" It is clear from the contents I quoted from the two affidavits that in the meeting of the 11th June, 1956 no inquiry whatsoever was held in the nature of one contemplated by Regulation 5(1). Nothing was said as to the facts and circumstances giving rise to the proposed collective fine order. The persons assembled were informed of the intention of the Commissioner to make such an order on account of the offences committed in Limassol and they were invited to show cause why this course should not be taken. This was contrary to the letter and spirit of Regulation 5(1) & (2)."

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The learned Judge stated his understanding of the effect of Regulation 5 in these terms:-

p.27,11.6-31

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" Regulation 5(1) read in conjunction with Regulation 5(2) in my view leaves no room for doubt that the inquiry to be held under paragraph 1 of Regulation 5 is intended to be a public one or at any rate an inquiry in which the affected assessable inhabitants of the particular area would have a right to be present and follow it and take part if they wish to do so at some time or other in the proceedings. In my opinion Regulation 5(1) is not susceptible of another interpretation.

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" If it is desired and I have no hesitation that that it is so - that persons called upon to pay a fine under these Regulations shall be given a fair chance to understand the reason why they are to pay such a fine in order that they may be able to make their representations surcly facts and circumstances giving rise to the imposition of fine should be

RECORD

disclosed to them. No evidence need be given. Facts and circumstances should be related to one or more of the grounds specified in Regulation 3. It is not sufficient and it does not amount to a statement of facts and circumstances giving rise to an order to simply mention that a number of murders and outrages have been committed between such and such a date and to invite the inhabitants to show cause why a fine should not be imposed on them."

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On the grounds stated above the learned Judge allowed the Respondents' application and made the order of certiorari asked for.

p.18,1.30-
p.23,1.13.

12. Mr. Justice Zekia rejected the Respondents' contention that the Regulations were beyond the powers of the Governor under Section 6 of the Emergency Powers Order in Council, 1939 (hereinafter called "the Order in Council"). He said that section 6 conferred on the Governor very wide powers restricted only in regard to trial by military courts. The words "without prejudice to the generality of the powers conferred by the preceding sub-section" in section 6(2) showed that that sub-section did not restrict section 6(1). So long as regulations were not altogether outside the object of section 6(1), and so long as the good faith of the Governor was not questioned, the validity of such Regulations could not be attacked.

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p.31,1.20-
p.32,1.41.

13. Mr. Justice Zekia, in allowing the application, also rejected a contention by the Appellant that Regulation 13 prevented the Court from entertaining the application.

pp.38-52

p.41,1.9-p.43,
1.20.

14. The Appellant appealed from the Order of Mr. Justice Zekia. The judgment of the Chief Justice was for allowing the appeal. He held that the making of an Order by a Commissioner under the Regulations was a ministerial, and not a judicial, act, and was therefore not subject to certiorari. Under Regulation 3 alone, apart from Regulation 5, an order would clearly be ministerial. If the enquiry required by Regulation 5 had been a *lis*, the

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Commissioner might have been under the obligation to act judicially in considering the report of the inquiry before making his order. Here there was no lis, since the Commissioner himself made the proposal considered at the inquiry, and since he did not have to consider judicially the report of the enquiry.

10 15. The Chief Justice further dissented from the finding of Mr. Justice Zekia that there had been a failure to comply with the provisions of Regulation 5. He drew attention to the provisions of Regulation 5(2) which provide that in holding inquiries under these regulations "the Commissioner shall satisfy himself" that the inhabitants are given adequate opportunity of understanding the subject-matter of the enquiry and making representations thereon. He was inclined to think that the quoted words prescribed a subjective test and that the Court could not go behind the Commissioner's own statement that he had satisfied himself. The Chief Justice was however prepared to deal with the case on the assumption that it was for the Court to say whether the Commissioner had reasonable grounds for being satisfied that the inhabitants had the "adequate opportunity" required. He thought that the Commissioner had such grounds. He differed from Mr. Justice Zekia's view that the enquiry should have been a public one, and that the Commissioner was bound to tell the inhabitants more than that he was inquiring into a long list of outrages which had occurred within the town since the 1st January, 1956, and that he proposed to hold the inhabitants responsible and to levy a fine upon them under the Regulations. The Chief Justice also rejected an argument of the Respondents (which it had been unnecessary for Mr. Justice Zekia to consider) that the inhabitants had not been properly notified of their right to make representations. He also rejected the Appellant's argument that Regulation 13 excluded the remedy of certiorari.

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p.43,1.21-
p.52,1.4.

p.52,II.5-27.

p.39,11.38-44.

16. Mr. Justice Zannetides' judgment was for pp.53-62.

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- p.59,11.20-26. dismissing the appeal. While not accepting Mr. Justice Zekia's view that the enquiry should be a public one or one at which all the inhabitants would have the right to be present, he held, as did Mr. Justice Zekia, that there had for other reasons been a failure to comply with Regulation 5:-
- p.60,11.12-22. " As I said in dealing with the construction of regulation 5(2) I take the words 'subject-matter of the enquiry' to mean the facts and circumstances giving rise to the making of the order as provided in regulation 5(1). Here the Commissioner did not tell them anything about it. What he told them is contained in paragraph 7 of his affidavit and paragraph 8 of Mr. Papadopoulos's affidavit. This is far from giving them adequate opportunity of understanding the subject-matter of the enquiry." 10 20
- p.60,1.38-
p.62,1.14. He rejected the Appellant's arguments that his order was a ministerial act and certiorari did not lie. He also rejected the argument that Regulation 13 excluded the remedy of certiorari.
- p.54,11.31-41.
- p.39,1.45-
p.41,1.3.
p.53,1.30-
p.54,1.30. 17. Both the Chief Justice and Mr. Justice Zannetides rejected the Respondents' contention that the Regulations were beyond the powers of the Governor. 30

18. The Appellant respectfully submits that the Order of the Supreme Court in its appellate jurisdiction was wrong and ought to be reversed, and that this appeal ought to be allowed, for the following (among other)

R E A S O N S

- (1) BECAUSE there was no evidence that the Appellant had failed to give the inhabitants of Limassol an adequate opportunity of understanding the subject-matter of the enquiry and making representations thereon. 40

- (2) BECAUSE on the true construction of Regulation 5(2) it was for the Appellant to satisfy himself that the inhabitants were given an adequate opportunity of understanding the subject-matter of the enquiry and making representations thereon, and because the Appellant was so satisfied.
- 10 (3) BECAUSE the Appellant complied with the requirements of Regulation 5.
- (4) BECAUSE the making by the Appellant of his Order was a ministerial act and for that reason the Order could not be removed into the Supreme Court by certiorari.
- (5) BECAUSE the judgment of the Chief Justice was right.
- 20 (6) BECAUSE the judgments of Mr. Justice Zekia and of Mr. Justice Zannetides (except in so far as they were in the Appellant's favour) were wrong.

B. MacKENNA

J.G. Le QUESNE

APPENDIX

A P P E N D I X

Emergency
Powers Order
in Council
1939.

EMERGENCY POWERS ORDER IN COUNCIL
1939

PART I. - GENERAL.

* * * *

2.- (1) In this Order, unless the context otherwise requires - "territory" means any territory mentioned in the First Schedule hereto and its dependencies, and includes the territorial waters, if any adjacent thereto;

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"Governor" includes any person administering the Government of the territory, and in the case of Zanzibar means the British Resident or the person lawfully discharging his functions;

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

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* * * *

PART II - REGULATIONS.

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

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

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

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APPENDIX

Emergency
Powers Order
in Council
1939 -
(continued)

(b) authorise-

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

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

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

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

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

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

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

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

NOTE: Cyprus is mentioned in the First Schedule to this Order.

APPENDIX

THE EMERGENCY POWERS (COLLECTIVE
PUNISHMENT) REGULATIONS, 1955.

Emergency Powers
(Collective
Punishment)
Regulations, 1955,
as amended

As amended by the Emergency Powers
(Collective Punishment) Amendment Regulations,
1955.

- * * * *
- 2 - (1) In these Regulations, unless the
context otherwise requires -
"assessable inhabitant" in relation
to any area, means any male who lives
in such area and who is, or appears
to the Commissioner to be, not less
than eighteen years of age; 10
- * * * *
- "offence" means an offence the
commission of which is, in the opinion
of the Commissioner, prejudicial to
the internal security of the Colony or
to the maintenance of public order in
the Colony.
- * * * *
3. If an offence has been committed or loss
of or damage to property has wilfully and
unlawfully been caused within any area of
the Colony (hereinafter referred to as
"the said area") and the Commissioner has
reason to believe that all or any of the
inhabitants of the said area have :- 20
- (a) committed the offence or caused the
loss or damage; or
- (b) connived at or in any way abetted the
commission of the offence or the loss
or damage; or 30
- (c) failed to take reasonable steps to
prevent the commission of the
offence; or
- (d) failed to render all the assistance
in their power to discover the
offender or offenders, or to effect
his or their arrest, or
- (e) connived at the escape of, or
harboured, any offender or person
suspected of having taken part in
the commission of the offence or
implicated in the loss or damage; 40
or

APPENDIX

Emergency Powers
(Collective
Punishment)
Regulations, 1955
as amended -
(continued)

- (f) combined to suppress material evidence of the commission of the offence or of the occurrence of the loss or damage; or
- (g) by reason of the commission of a series of offences in the said area, been generally responsible for the commission of such offences,

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it shall be lawful for the Commissioner, with the approval of the Governor, to take all or any of the following actions:-

(i) to order that a fine be levied collectively on the assessable inhabitants of the said area, or any part thereof;

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

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

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

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

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APPENDIX

Emergency Powers
(Collective
Punishment)
Regulations, 1955
as amended -
(continued)

5 - (1) No order shall be made under regulation 3 of these Regulations unless an enquiry into the facts and circumstances giving rise to such order has been held by the Commissioner.

(2) In holding enquiries under these Regulations the Commissioner shall satisfy himself that the inhabitants of the said area are given adequate opportunity of understanding the subject-matter of the enquiry and making representations thereon, and subject thereto, such enquiry shall be conducted in such manner as the Commissioner thinks fit.

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(3) A written report of any enquiry shall be submitted to the Governor as soon as possible after the completion thereof, and shall contain a certificate that the requirements of this regulation have been complied with.

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

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

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

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(3) Where the injury, for which compensation is being sought, is a death, a

dependant of the deceased may be deemed to be a person aggrieved.

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

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

APPENDIX
Emergency Powers
(Collective
Punishment)
Regulations, 1955
as amended -
(continued)

No. 16 of 1957.

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF CYPRUS

B E T W E E N

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COMMISSIONER OF LIMASSOL

... ... Appellant

- and -

(1) VASSOS PAPADOPOULLOS
(2) EVAGORAS C. LANITIS
(3) NICOS S. ROUSSOS
(4) ATHANASSIS LIMNATITIS
all of Limassol Respondents

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