[ BOURKE, C.J., ZEKIA, J. and ZANNETIDES, J. ]

1. MEHMET NEDJATTI OZCAN
2. TORGUT NEDJIM AVKIRAN

*v.*

*Appellants*

1. THE HIGH COUNCIL OF EVCAF,
2. THE VILLAGE MOSQUE COMMITTEE OF NICOSIA AREA C

*Respondents.*

**(Civil Appeal No. 4252)**

1958
May 22,23,
July 9

MEHMET NEDJATTI OZCAN AND ANOTHER v. THE HIGH COUNCIL OF EVCAF AND ANOTHER

*Jurisdiction—Exclusive jurisdiction of Supreme Court to control ministerial authorities—Meaning of "ministerial authority"—Courts of Justice Law, 1953, Section 20 (d).*

*Evkaf and Vakfs Law, 1955—Assessment of religious tax under s. 59—High Council of Evcaf and Village Mosque Committees—"Ministerial authorities".*

The appellants brought an action in the District Court of Nicosia seeking a declaration that the assessment of religious tax on the Moslem inhabitans of certain areas, made by the respondents, was *ultra vires* and contrary to the provisions of the Evcaf and Vakfs Law, 1955.

On an application by the respondents to set aside the service of the writs of summons for want of jurisdiction,

*Held :* (confirming the decision of the District Court)

(1) that the High Council of Evcaf and the Village Mosque Committees when acting under the provisions of Sec. 59 of the Evcaf and Vakfs Law, 1955, to assess religious tax, were "ministerial authorities" within the meaning of Sec. 20 (d) of the Courts of Justice Law, 1953 ; and

(2) that, consequently, jurisdiction to make the declaration sought rested exclusively with the Supreme Court.

*Nearchos Hajisoteriou* v. *B. J. Weston,* (1956) 21 C.L.R. 211, *followed.*

*Appeal dismissed.*

Cases referred to :

(1) *Nearchos Hajisoteriou* v. *B. J. Weston*, (1956) 21 C.L.R. 211.

(2) *Littlewood* v. *British Overseas Airways Corporation*, (1953) 1 All E.R. 583.

(3) *Greenwood* v. *Atherton*, (1938) 4 All E.R. 686.

(4) *Griffiths* v. *Smith*, (1941) 1 All E.R. 66.

(5) *The Queen* v. *The London County Council*, (1893) 2 Q.B. 454; (1894) 63 L.J. Q.B. 4.

(6) *The Attorney-General* v. *Garner*, (1907) 2 K.B. 480.

(7) *R.* v. *Westminster Assessment Committee, ex parte Grosvenor House (Park Lane) Ltd.*, (1940) 4 All E.R. 132.

(8) *Carltona Ltd.* v. *The Commissioner of Works*, (1943) 2 All E.R. 560.

**Appeal.**

Appeal by the plaintiffs against an order of the Full District Court of Nicosia (Dervish, P.D.C. and Feridun, D.J.), dated 11th March 1958, setting aside the service of the writs of summons in action No. 1468/57. The facts sufficiently appear in the judgment of the Court.

*J. Clerides, Q.C.* for the appellants.

*Osman Orek* for the respondents.

*Sir James Henry, Q.C.*, Attorney-General with *G. Summerfield* for the Crown.

*Cur. Adv. Vult.*

The following judgments were read :

BOURKE, C.J. : The appellants together with another person who has not appealed commenced proceedings in the District Court of Nicosia by writ of summons seeking a declaration (a) against the first respondent that their notice calling upon the second respondent and another Village Mosque Committee which is not a party to this appeal to assess the amount of Religious Tax specified therein on the Moslem inhabitants of their area, is *ultra vires*, irregular and against the Evcaf and Vakfs Law, 1955; (b) against the second respondent that the assessment of Religious Tax made by them in compliance with the aforesaid notice whereby the first appellant was assessed for £20 and the second

appellant for £12 is contrary to the same Law; and (c) against the other Village Mosque Committee that an assessment similarly made upon the plaintiff who has not appealed was also contrary to law.

The provisions as to delivery of a notice by the High Council and the assessment of the amount of tax by a Village Mosque Committee in pursuance of such notice are contained in section 59 and 60 constituting Part XI of the Evcaf and Vakfs Law, 1955.

The jurisdiction of the District Court to grant declaratory relief is provided for by section 45 of the Courts of Justice Law, 1953, which is as follows:

"45. Every Court in the exercise of its civil jurisdiction shall have power to make binding declarations of right whether any consequential relief is or could be claimed or not.".

By section 20 (d) of the same Law the Supreme Court has exclusive original jurisdiction:—

"to issue prerogative orders and exercise, in all matters where the proceedings of a quasi-judicial tribunal or of a ministerial authority are called in question, the powers of the High Court of Justice in England".

In *Nearchos Hajisoteriou v. Weston*, 21 C.L.R., 211, it was held that under section 20 (d) just quoted the Supreme Court has exclusive jurisdiction to grant declarations and injunctions when exercising such control of decisions of quasi-judicial tribunals and ministerial authorities as is exercised by the High Court of Justice in England. In Halsbury Vol. 11, 3rd Edn., p. 54 at paragraph 111, after reference to the three orders of mandamus, prohibition and certiorari, the following occurs concerning proceedings for declaration and injunction:

"Furthermore, it is possible to bring before the Court, by means of an action for a declaration the question whether any administrative or executive action or decision taken or given in purported pursuance of a power conferred by statute, delegated legislation or other lawful authority, was *ultra vires*; this procedure is not limited

to judicial or quasi-judicial functions, but in proper cases where persons would otherwise be without a remedy for injustice the Court has a discretionary power to intervene by way of declaration and injunction in the decisions of statutory tribunals".

I would make reference also to the following passage from Wade & Phillips, On Constitutional Law, pp. 305—6 :

"An injunction may be claimed against a public authority by any individual who can show that he will suffer special A declaratory judgment may serve to restrain both the damage as the result of contemplated illegal action.... Crown and public authorities generally from illegal conduct".

The question that arises for determination in this appeal is whether the District Court was right in coming to the conclusion that it did not have jurisdiction to make the declarations sought and that such jurisdiction rested exclusively with the Supreme Court under section 20 (d) because, as was held, the High Council and the Village Mosque Committee acting under section 59 of the Evcaf and Vakfs Law, 1955, respectively to calculate and assess the total amount and individual amounts of tax were coming to decisions as being "ministerial authorities".

On the hearing of this appeal the Court had the benefit of listening to the address of the learned Attorney-General who, with the consent of all concerned, was invited to attend in view of the question arising as to whether a ministerial authority was affected by the proceedings.

Before the Lower Court the respondents obtained leave to enter a conditional appearance and then under Order 16, rule 9, moved to set aside the service of the writ for want of jurisdiction. In this application they were successful since the District Court came to the conclusion that the High Council and a Village Mosque Committee was each a ministerial authority and as such its proceedings were being called in question before the wrong Court. It is evident from the judgment that the Court was much exercised as to what was meant by the words "ministerial authority" in section 20 (d) and the difficulty felt is expressed in the following words :—

"The phrase used by section 20 (d) of Law 40/53 is 'ministerial authority' and of this unfortunately the same law gives no definition. Neither have we been able to trace any definition of it in our Cyprus Laws probably because we have no Ministers in this Island. We think, however, after carefully studying quite a number of authorities some of which will appear here below, that an act done on behalf of a public body or authority created or regulated by statute or by an Act of Parliament in due execution of a public duty or authority then that act is a ministerial Act".

The Court examined a number of cases arising since the enactment in England of the Public Authorities Protection Act, 1893, and arrived at the conclusions as stated in the following excerpts from the judgment: —

"We believe that the acts of a public body or authority created by an Act of Parliament or by statute, which acts are done in the execution of a public duty, are ministerial acts and therefore the phrase 'ministerial authority' in section 20 (d) may be read to mean 'public authority'... acts done by public authorities may also be regarded as acts done under ministerial authority... One is left with no doubt that the Evcaf Office and High Council have more the characteristics of a statutory body.... They are created by statute and carry out duties imposed upon them by statute... Having found that the High Council of Evcaf and the Village Mosque Committee are statutory bodies exercising public functions, we now come to the acts which form the subject matter of the present action and this application.... the High Council and Village Mosque Committees are bound to do these acts because they are directed by section 59 (of the Evcaf and Vakfs Law, 1955). The acts of giving notice and assessment are proceedings in our opinion of a statutory and ministerial authority and therefore they come under section 20 (d) of Law 40 of 1953 (The Courts of Justice Law, 1953".

As was held in *Ncarchos Hajisoteriou v. Weston* (*supra*) the object of the section was to give the same jurisdiction to the Supreme Court as that resting with the High Court in England for the purpose of exercising control over proceedings. I have had the advantage of reading the judgment of Zekia, J., and I think for the same reasons that the respon-

dents are properly to be regarded as public bodies and "ministerial authorities" within the meaning of the section under consideration. I would dismiss the appeal with costs.

ZEKIA, J.: Appellants No. 1 and 2 were assessed £20 and £12 respectively as religious tax by defendants 2 and 3, Village Mosque Committees of Nicosia, under section 59 (2) of the Evcaf and Vakfs Law, 1955.

Appellants filed an action in the District Court of Nicosia by which they claimed a declaration of the Court that the assessment by the said Committees of a specified amount on the Moslem inhabitants of Turkish race of their area was *ultra vires* and irregular and/or contrary to the provisions of the Evcaf and Vakfs Law. Respondents (defendants) entered a conditional appearance and in due course they applied for setting aside the service of writs of summons upon them for want of jurisdiction. They contended that they (defendants) were ministerial authorities within the meaning of section 20 (d) of the Courts of Justice Law, 1953, and since plaintiffs (appellants) by their claim were calling in question proceedings of such an authority, by virtue of the said section they could not institute an action in a District Court as the matter involved falls within the exclusive jurisdiction of the Supreme Court. The District Court considered the application and ruled that it did not possess jurisdiction to entertain this action and set aside the service of the writ of summons accordingly. In a well considered ruling the Court examined carefully the points raised at some length. The phrase "ministerial authority" was taken to be of the same import as "Public Authority" and applied authoritative decisions which expounded the meaning of the latter phrase, occurring in the Public Authorities Act, 1893, and the subsequent amendments of the Act, to the former phrase. The District Court found common features between Defendants, Council and Committee, on one hand and the British Overseas Airways Corporation and the management of a non-provided voluntary school, which received a grant under the Education Act, 1921, on the other hand, in respect of the performance of the public duty cast on such bodies. *Littlewood* v. *British Overseas Airways Corporation* (1) and *Greenwood* v. *Atherton* (2) were the main cases relied upon in this con-

(1) (1953) 1 All E.R. 583.
(2) (1938) 4 All E.R. 686.

nection. The Court below rejected the submission also that the Evcaf and Vakfs Law was in the nature of a private statute and not a public Act.

An attempt to give briefly the main points argued as they appear to me before this Court might not perhaps be out of place.

The learned counsel for the appellants contended that (a) whether a person or body of persons is to be considered as public authority or not does not depend on the consideration whether the person or its members strive for personal profit. By section 20 of the Companies Law, 1951, (which corresponds to the English Company Act, 1948) Companies might be registered for promoting commerce, art, science, religion, charity. Their members derive no profit. They are statutory bodies but not public authorities. (b) The Public Officers Protection Law in Cyprus corresponds to the Public Authorities Protection Act in England. There is also a definition of Public Officer in the Interpretation Law. The High Council of Evcaf or the Village Mosque Committee clearly are not within the protection of our laws. What is more in the Evcaf Order of His Majesty in Council, 1928, it was expressly stated that the Delegates of Evcaf and the personnel of the Evcaf Office were not to be considered as public officers in the service of the Colony. (c) The word "proceedings" occurring in section 20 (d) of the Courts of Justice Law, 1953, contemplates more than a mere administrative act, it implies the hearing of objection and evidence. (d) Heads of Departments employed in the Public Service of the Colony are ministerial authorities but not their subordinates. The words "ministerial authority" did not mean any administrative body, either statutory or non-statutory, but were only used in relation to the public administration of the Colony. (e) The Respondent Council and Committees are comparable to the Committees of Irrigation Divisions established under the Irrigation Divisions Law and also to committees of Trade Unions under Cap. 172 and the bodies administering Trust property under the Charities Law, Cap. 59. The Committees elected under those laws are undoubtedly not public authorities. (f) The Evkaf and Vakfs Law is not a public statute and the bodies created by it therefore could not be considered

as public authorities. It relates to the administration of Vakf properties and mosques in which only a particular community is concerned.

Mr. Orek's (respondents' Counsel) main points were: (a) The Assessment on the respondents were the result of proceedings envisaged by the Law. It could not be described as a mere act of the respondent Council or Committee. (b) The phrase "ministerial authority" is synonymous with "executive power". When a statute delegates certain powers to a Government or independent authority to carry out certain duties, that authority or statutory body must carry out the functions according to the law. The power given is an executive power and therefore subject to judicial control under section 20 (d) of the Courts of Justice Law. (c) It is part of the duty of the Government to maintain mosques for the benefit of the Moslem population in the Island. Vakf properties include the creation and maintenance of hospitals, fountains, bridges, etc., in which everybody regardless of race and religion is interested. The duties of Evcaf Council are comparable to the duties of the local Country Council Authorities in England and also to those of municipalities.

The learned Attorney-General, who joined the present proceedings on the invitation of this Court (and from his address I must acknowledge that I derived much help), based his argument on three propositions.

1st Proposition: Ministerial authority means an authority carrying out duties under a public statute. The exclusive jurisdiction given to the Supreme Court under section 20 (d) is in substance the jurisdiction which the High Court has in the United Kingdom. As it appears from authorities (Vol. 11 Halsbury Laws of England) the remedies (whether by the issue of the prerogative orders or by way of declaration) are available to a wide range of bodies.

The High Council carrying out duties under section 59 of the Evcaf Law, 1955, is carrying out duties under a public statute and any person who calls in question its proceedings would be entitled to any of the appropriate prerogative orders or to a declaration.

2nd Proposition: In deciding whether any authority is a ministerial authority it is necessary to look at the actual duties performed under the law and not the status conferred upon it in general.

3rd Proposition: The duty of any given authority may be altered from ministerial duty to a quasi-judicial one and because for certain purposes an authority carries with it a quasi-judicial responsibility it would not alter the fact that it was a ministerial authority.

The task of this Court is considerably alleviated by the assistance rendered by the learned counsel appearing in this case and also by the carefully prepared lengthy ruling of the District Court appealed from.

The issue is one, namely, whether the High Council of Evcaf and the Village Mosque Committees elected under the Evcaf and Vakfs Law, 1955, are to be considered as ministerial authority within the meaning of section 20 (d) of the Courts of Justice Law, 1953, when such council and committee are performing their duties of assessing religious tax on the Moslem inhabitants of an area by virtue of section 59 of Evcaf Law.

The answer depends on the construction to be placed upon section 20 (d) of the Courts of Justice Law, 1953, which reads: "The Supreme Court shall have exclusive original jurisdiction— ... (d) to issue prerogative orders and exercise in all matters, where the proceedings of a quasi judicial tribunal or of a ministerial authority are called in question, the powers of the High Court of Justice in England".

The phrase "ministerial authority" which is the subject matter of interpretation is composed of two words. The second word in the phrase affords no difficulty. The word "ministerial" in the Concise Oxford Dictionary is given as its first meaning "concerned with the execution of law". Neither the phrase itself nor the context justify one to limit the expression to bodies engaged in the public service administration.

It was decided in *Nearchos Haji Soteriou and Others* v. *B. J. Weston, Commissioner of Famagusta* (1) that the Supreme Court

(1) 21 C.L.R. 211.

had exclusive jurisdiction to grant declarations and injunctions in matters enumerated in para. (d). The clue lies first in the fact that the legislative authority in this Island intended that matters falling within the scope of para. (d) which are dealt with by the High Court in England should come within the exclusive jurisdiction of the Supreme Court. Apart from the wording of the paragraph itself *Nearchos* v. *The Commissioner* just cited confirms this view. If the matter under consideration therefore is one which falls within the jurisdiction of the High Court in England then we get nearer to an answer. The first part of para. (d) relates to matters where the proceedings of a quasi-judicial tribunal are called in question. Here there is no reference as to by what kind of authority such quasi-judicial tribunal is to be held. The gap again is to be filled by examining similar matters which fall within the jurisdiction of the High Court.

If the High Council of Evcaf and the Village Mosque Committees can properly be held to be public bodies or authorities with statutory duties to discharge then in the absence of a provision for a statutory appeal in the law creating such public authority, they are amenable to prerogative orders as well as to actions for injunctions and declarations all of which fall within the jurisdiction of the High Court in England and within the exclusive jurisdiction of the Supreme Court in this Island. What are the characteristics of a public authority ? We quote Lord Porter in *Griffiths and another* v. *Smith and others* (1) :—

> "As Sir Gorell Barnes, P., says in the *Johannesburg* (1907) P. 65, the phrase is not confined to municipal corporations. There are many other bodies which perform statutory duties and exercise public functions, and examples of such bodies are given by him at p. 79. The distinction which he draws is between a body carrying out transactions for private profit and those working for the benefit of the public. Profit they may undoubtedly make for the public benefit (*The Ydun*, (1899) P. 236, and *Lyles* v. *Southend-on-Sea Corporation* (1905) 2 K.B. 1), but they must not be a trading corporation making profits for their corporators (*A. G.* v. *Margate Pier & Harbour Co. of Proprietors*) (2). That the managers of a public elementary school, however, whether provided

(1) (1941) 1 All E.R. 66 at p. 89.
(2) (1900) 1 Ch. 749.

or non-provided are a public authority, I cannot doubt. They form part of the machinery whereby elementary education is provided for in this country, and a school which the managers provide is maintained and kept efficient by means of public rates, even though the building is provided and repaired by the managers themselves. In carrying on the school they are undoubtedly exercising a public function".

The High Council of Evcaf is established by section 43 (1) of the Evcaf Law which reads: "For the purpose of controlling the Evcaf Office and superintending and administering the Vakf property there shall be established a Council, to be called the 'High Council'.....". In the same manner the Village Mosque Committees are created by section 46 (1). The duties of the High Council of Evcaf and of the Village Mosque Committees in preparing the annual estimates and accounts is to be found in section 58. The duties are cast on them in mandatory terms: "The annual estimates of the Village Mosque Committees shall be prepared and submitted to the High Council for approval in accordance.....". Coming to the levying of religious tax, section 59 (1) reads:

> "The High Council shall, from the approved annual estimates of the Village Mosque Committees, calculated after taking into consideration any grants to be made to such Committees, the total amount required to make good any overall excess of expenditure over income, and by the end of October in each year shall cause to be delivered to the Chairman of each Village Mosque Committee a notice calling upon the Committee to assess the amount therein specified, being such proportion of the total overall excess expenditure as the High Council considers that each Committee shall bear.
>
> (2) Within thirty days of the receipt of the notice the Village Mosque Committee shall assess the said amounts on the moslem inhabitants of Turkish race of the town or village according to the means of each person.".

There is no doubt that the members of the High Council and the Village Mosque Committee do not derive any profit in performing their duties under the Law. There remains

whether what they perform is for the public benefit or was a public duty. It was strongly argued by the learned Counsel of the appellant that this depends upon whether the Evcaf and Vakfs Law, 1955, is a public or private Law.

Indeed the Evcaf and Vakfs Law, 1955, might not be a general Act or statute but I have no doubt that it is a public Law. Bowen, L.J. in the case *Queen* v. *The London County Council* (1893) 2 Q.B. 454, 462; (1894) 63 L.J. Q.B. 4, 8—9, said:

> "There was a time when public and general Acts were distinguished from private and special Acts, but that is no longer a division which has obtained in later times, and the more modern distinction has been between public and general acts and local and personal acts, for it is to be observed—and this is essential for recollecting the point of our decision in the present case—that it is 'general' and not 'public' which is opposed to 'local and personal'. It may be termed general as opposed to local and personal, and the division therefore lies between public and general Acts on the one side, and public local and personal Acts on the other; because a local and personal Act may be public without losing its character of local and personal. The question therefore really is not so much whether section 4 of 10 Anne, c. 11, is a public section, or whether that Act to which it belongs is a public Act, but whether it is of a public and general Act. A general Act is, *prima facie*, that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament or some legislation which is unlimited both in its area and as regards the individuals whom it affects; and as opposed to that, there are statutes which may be public because of the subjects with which they deal and their general interest to the community, but which are limited in respect of area (a limitation which makes them local), or limited in respect of individuals (a limitation which makes them personal".

I have no doubt that the Evcaf and Vakfs Law, 1955, is a public Law. It constitutes part of the Moslem Sacred Law which the Courts of this Colony specifically are required to apply under section 33 of the Courts of Justice Law, 1953. There is no local limitation; its application is Island-

wide. It mainly applies to the Turkish community but by no means the members of this community are the only persons interested. I consider the Turkish community by itself to constitute a public. Vakf properties comprise public trusts such as those dedicated to Hospitals, water installations and poor houses, bridges, etc., and in this category of Vakfs no distinction is drawn between Moslem and non-Moslem inhabitants. The water supplies of Larnaca and Nicosia for instance were secured and maintained originally by Bekir Pasha Vakf, Silihtar and Arab Ahmed Vakfs for centuries; these were in the form of public trusts of which all inhabitants of the towns benefited indiscriminately. Apart from it the greater bulk of the Vakf properties are of Mazbuta category. These were vested in the head of the State, the Sultan, in trust for the beneficiaries of some of which were the public (Moslem and non-Moslem). Through the Delegates of Evcaf, the Crown held in trust Mazbuta Vakfs and by the Evcaf and Vakf Laws, 1955, transferred them and their administration to the High Council and other bodies. The Governor under section 62 retained the power to make Rules of Court prescribing fees under the Evcaf Law. The Attorney-General is expected to take action in a case when a breach of trust in the management of Vakf is alleged or the High Council is to embark on an action of a speculative nature detrimental to Moslem religious properties (*see* section 55 (1) & (2) of the said Law).

Books and accounts kept by the High Council are subject to audit by the Director of Audit. These and similar provisions of the Law indicate the public character of the Law itself. Channer, J. in *Attorney-General and Spalding Rural District* v. *Garner* (1) said:

> "The Attorney-General takes proceedings as the representative of the public for he represents the Crown and the Crown represents the public".

Scott, L.J., dealing with the duties of the Assessment Committee under the Rating and Valuation Act, 1925, in *R.* v. *Westminster Assessment Committee ex parte Grosvenor House (Park Lane) Ltd.* (2) stated:

(1) (1907) 2 K.B. 480, at p. 485.
(2) (1940) 4 All E.R. 132, at p. 139.

"The Assessment Committee except when performing the quasi-judicial function of determining an objection either to a provisional list or to a valuation list, is an executive or ministerial body of an expert character".

The High Council has got analogous duties to those of the assessment Committee and it may be said that it is an executive or ministerial body when not hearing an objection.

In the present proceedings we are not concerned with judicial or quasi-judicial functions by Courts or Public Bodies where the normal remedies would lie in the issue of prerogative orders. We are dealing with a matter involving proceedings by a ministerial authority which proceedings are called in question. It may serve a test whether respondents are ministerial authority for the purpose of the section under consideration, if one considers whether a prerogative order of mandamus would be an appropriate remedy to force the High Council of Evcaf and the Village Mosque Committees to perform their duties to levy religious tax on Moslem inhabitants in order to make up the deficit contemplated by section 59 (1) of the Evcaf and Vakfs Law, 1955. The following extract from Halsbury's Laws of England (Vol. 11, third edition, p. 90) is of great help :—

"Enforcement of statutory duties. An order of mandamus will be granted ordering that to be done which a statute requires to be done, and for this rule to apply it is not necessary that the party or corporation on whom the statutory duty is imposed should be a public official or an official body. In order, however, for an order of mandamus to issue for the enforcement of a statutory right, it must appear that the statute in question imposes a duty, the performance or non-performance of which is not a matter of discretion, and if a power or discretion only, as distinct from a duty, exists an order of mandamus will not be granted by the Court. Accordingly, the Court will refuse a mandamus directing a railway company to lay down and reinstate a certain piece of railway line when the Company's Act only enables, and cannot be shown to contain anything to compel it, to maintain the line, so that there is no obligation or duty on the company to reinstate, that is to say, to maintain the line.

*Prima facie* the words 'it shall be lawful' occurring in a statute are permissive and enabling only, and will not therefore impose a duty in respect of which mandamus will lie.".

In the light of the distinction drawn in the above statement of the law it is easy to distinguish between Trading Corporation, Committee of Irrigation Division, Companies for promoting of commerce, art, religion, charity, not involving acquisition of gain, and trustees of any charity for educational or public charitable purposes, registering themselves as a corporate body. It will be noticed that the laws giving effect to incorporation are unlike the Evcaf and Vakf Law an empowering law. Such corporate bodies are permitted under the provisions of the various laws to be incorporated and registered. Thus begins for instance section 2 of the Charities Law, Cap. 59 :—

"It shall be lawful ..... body ".

Section 3 of the Irrigation Divisions (Villages) Law begins with the words "It shall be lawful for the Commissioner ... to call a meeting ... for the purpose of determining whether an irrigation division shall be found.".

It is clear from what we quoted from Halsbury that respondents are liable for a default in their ministerial duties to the prerogative order of mandamus. In this connection it was argued that an action of mandamus as a statutory remedy is equally available for the purpose. The following extract from Halsbury (same volume and edition as above, p. 110) does not support this :—

"When action available ..... It will not lie for the purpose of enforcing a duty arising merely from a personal contract nor will it be allowed to supersede the prerogative remedy by mandamus in case where it has been the appropriate and effective remedy, as where there is a right but a right in respect of which no action will lie.".

Our Mandamus Law (Cap. 23) is of the year 1890, passed at a time when prerogative writs were not, probably, available in Cyprus Courts. Section 2 of the Law reads : "An order of Mandamus means .... sitting alone." Section 4 provides as to when an order of Mandamus could be claimed by Writ of Summons in a District Court. One of

the conditions is that the plaintiff should have a legal right to the performance by the public body or persons having public duties to perform. Here, appellants are not contesting the fairness or reasonableness of the amount assessed on them but they contest the legality of the assessment. In that their right or interest is nothing more than that of any assessable inhabitant of the area.

This law recognises the issue of the order of mandamus by the Supreme Court and an action in the District Court is only allowed under certain conditions when the legal right or the private right of a person is infringed. It is questionable (a) whether the jurisdiction of the District Court under Mandamus Law, 1890, is left unaffected altogether after section 20 para. (d) of the Courts of Justice Law was enacted in 1953, and (b) whether appellants have a legal right peculiar to their person in contesting the legality of assessment by an action for mandamus. The remedy provided through the District Court under the Mandamus Law appears to correspond to the instances where an action of mandamus would lie in England.

The matter complained of by the appellants is the failure of the respondents to comply with statutory provisions, namely, section 59 (1), prior to the assessment made on them. The validity of such assessment is therefore challenged and a declaration to that effect is sought. Assuming that the statutory appeal provided under section 59 (7) and (8) and also the mode of redress of any injustice and irregularity by the High Council under sub-section (9) of the same section could not be made available to the appellants for the matters they complained of undoubtedly they are entitled to an action of declaration and/or injunction. When public bodies including government authorities come to a decision in performing ministerial duties, their decision is not appealable on any other ground than of being (1) *ultra vires* and (2) of bad faith. In *Carltona Ltd.* v. *Commissioner of Works* (1) Lord Greene, M.R., said:

"All that the Court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and

(1) (1943) 2 All E.R. 560, p. 564.

to see that those powers are exercised in good faith. Apart from that, the courts have no power at all to inquire into the reasonableness, the policy, the sense, or any other aspect of the transaction.".

However, proceedings in the nature of such actions are brought in the divisions of the High Court in England and as we have already pointed out the legislature intended by section 20 (d) of the Courts of Justice Law to assimilate the original jurisdiction of the Supreme Court in matters like the one under review to the jurisdiction of the High Court.

I am of the opinion therefore that the appeal should be dismissed with costs.

ZANNETIDES, J.: The decision of this Court in the case of *Nearchos Haji Soteriou and others* v. *B. J. Weston, Commissioner of Famagusta,* 21 C.L.R. 211, made the following point very clear, namely that the Supreme Court of Cyprus has, under section 20 (d) of the Courts of Justice Law, 1953, exclusive original jurisdiction not only to issue prerogative orders but also to grant injunctions and make binding declarations of right "where the proceedings of a quasi-judicial tribunal or of a ministerial authority are called in question", to use the wording of section 20 (d). It follows from that decision that the powers of District Courts to make binding declarations of right in the exercise of their civil jurisdiction as provided by section 45 of the Courts of Justice Law, 1953, must necessarily be confined to cases where the declarations are not sought against a quasi-judicial tribunal or a ministerial authority, for instance against a private individual or a body whether corporate or incorporate which is not a quasi-judicial tribunal or a minesterial authority; and indeed section 26 of the same Law, which defines the jurisdiction of the District Courts, saves the jurisdiction under section 20 of the Supreme Court. Section 26 is as follows :—

"26 (1) Save as provided in sections 20 and 34 the President of a District Court sitting with one or two District Judges shall have jurisdiction to hear and determine in the first instance any action".

In the present case if the High Council of Evcaf and

the Mosque Committee, which were established by the Evcaf and Vakfs Law, 1955, are found to be either a quasi-judicial tribunal or a ministerial authority then the appeal must fail; if not, the appeal must succeed. A quasi-judicial tribunal they are undoubtedly not, as far as their proceedings for which the complaint are concerned. It remains to be decided whether they are "ministerial authority". As to this I had the opportunity of reading the judgment of my brother, Judge Zekia, and I concur with his finding that the respondents are a "public authority" which is the same as ministerial authority and I also concur with the grounds and reasons on which he based his findings and I think that there is nothing more I can usefully add.

I agree that the appeal should be dismissed with costs.

*Appeal dismissed with costs.*