

*Injunction—Interlocutory injunction—Discretion of the Court—
Section 32 of the Courts of Justice Law, 1960 (Law 14
of 1960)—Action for infringement of provisions of the
Motor Transport (Regulation) Law, 1964—Appeal against
5 refusal to grant interlocutory injunction—Defendant not
denying that he was breaking the law—And declaring
his intention to continue doing so—Finding by trial
Court that plaintiffs will almost certainly be successful
in the action, unless defendant granted, in the meantime,
10 a road service licence, with retrospective effect—Mis-
direction in law by trial judge in approaching aspect of
status quo—What had to be preserved was not the status
quo created by any complained of illegal course of
action of the defendant, but status quo existing when
15 defendant embarked upon the activity sought to be
restrained—Undue regard paid to mere possibility that
a road service licence, if granted, would be granted with
retrospective effect—Difficult, if not impossible, to
assess the damages payable to plaintiff at the end of
20 the trial—Trial judge wrong in refusing the injunction—
Appeal allowed—Grant of interlocutory injunction to
take effect within 30 days—Article 29 of the Consti-
tution.*

*Court of Appeal—Discretion of trial judge—Reviewing exer-
25 cise of—Principles governing intervention by Appellate
Court.*

The appellants (plaintiffs) who were owners of motor
vehicles licensed to carry passengers on the transurban
Nicosia - Limassol route, brought an action against the
30 respondent (defendant) claiming damages and an in-
junction restraining the latter from continuing to use

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his vehicle for the transportation of passengers, on such route, without a service licence.

On the same day the appellants, by an application under s. 32 of the Courts of Justice Law, 1960 (quoted in full in the judgment *post*) applied for an interlocutory injunction prohibiting the respondent from using his said vehicle for the aforementioned purpose pending the outcome of the action. 5

The right of action of the appellants was based on an alleged infringement by the respondent of the relevant statutory provisions of the Motor Transport (Regulation) Law, 1964 (Law 16 of 1964). 10

The respondent opposed the application. The trial judge, having reviewed the relevant facts, and having, in the course of doing so, taken judicial notice, as he was entitled to do, of the fact of the Turkish invasion and of the foreign occupation of a considerable part of our country, brought about by the said invasion, as well as of the facts that many persons who were licensed operators in respect of other routes are now prevented by the said occupation from operating on such routes and they have to try to earn their living by operating on other routes, such as the transurban Nicosia - Limassol route, which is a very much more busy route than it was in normal times, proceeded to refuse the interlocutory injunction, in order, as he has put it, to preserve the *status quo* pending the trial of the action. The trial judge has, moreover, found that the appellants will almost certainly be successful in their action, unless the respondent is granted, in the meantime, a road service licence, with retrospective effect, for the route concerned. The respondent did not deny that he was breaking the law, and he, furthermore, declared his intention to continue doing so. 15 20 25 30

Held, 1. The granting of an interlocutory injunction, of this nature, is a matter of judicial discretion; the onus is on the appellant to satisfy the appellate tribunal that the trial Court's discretion was wrongly exercised. (See *Ioannis Kotsapas and Sons Ltd. v. Titan Construction and Engineering Company*, 1961 C.L.R. 317 at p. 322). 35 40

2. If the discretion of the Court below has been properly exercised this Court will not interfere even if it would have made a different order had it been dealing with the matter in the first instance. (See *Efstathios Kyriacou and Sons Ltd. v. Mouzourides* (1963) 2 C.L.R. 1 and *In re Eleni Michael HjiPetri* (1973) 1 C.L.R. 166, 169, where reference was made to the English case of *Evans v. Bartlam* [1937] 2 All E.R. 646 at p. 654).

3. The trial judge misdirected himself in law in approaching the aspect of the *status quo*; what had to be preserved was not the *status quo* created by any complained of illegal course of action of the respondent, but the *status quo* existing when the respondent embarked upon the activity sought to be restrained. (See *Fellowes and Another v. Fisher* [1975] 2 All E.R. 829 at p. 843 where the principles expounded in *American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All E.R. 504 are summarized).

4. In view of the respondent's admission that he was breaking the law and his declared intention to continue doing so, the trial judge by refusing the interlocutory injunction allowed him to continue, pending the final outcome of the action, the contraventions of the relevant legislation; and, in this connection, the judge paid undue, in our opinion, regard to the mere possibility (which under the relevant principles of administrative Law we consider to be somewhat remote) that a road service licence, if granted to the respondent, would be granted with retrospective effect, so as to cover the period in respect of which the appellants complain in their action against him.

5. Another relevant consideration ought to be whether any damages payable to the appellants can be assessed with sufficient certainty at the end of the trial of the action, assuming an interlocutory injunction is not granted. In the circumstances of this case, and especially in view of the present day heavy traffic on the route in question, it would be very difficult, if not impossible, to assess, eventually, what damage has been suffered by the appellants, due to the transportation, by the respondent, of passengers along such route, till the final determination of the action.

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6. Looking at the case before us as a whole, we have reached, without difficulty, the conclusion that the trial judge was wrong in refusing the interlocutory injunction and that this Court should grant such injunction, as applied for by the appellants. 5

7. In view of the very special situation in this case and the fact that respondent has already applied for a road service licence, we have decided to adopt the exceptional course of not granting the interlocutory injunction with immediate effect; having taken into account the thirty days' period prescribed under Article 29 of the Constitution, during which there must be given a reply by the appropriate authority to the respondent's request for a licence, we have decided to allow this period to run from to-day before the interlocutory injunction takes effect. 10
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Appeal allowed.

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Cases referred to :

Ioannis Kotsapas and Sons Ltd. v. Titan Construction and Engineering Company, 1961 C.L.R. 317 at p. 322; 20

Efstathios Kyriacou and Sons Ltd. v. Mouzourides (1963) 2 C.L.R. 1;

In re Eleni M. Hji Petri (1973) 1 C.L.R. 166, at p. 169;

Evans v. Bartlam [1937] 2 All E.R. 646 at p. 654; 25

Ward v. James [1965] 1 All E.R. 563 at p. 570;

Re O (infants) [1971] 2 All E.R. 744 at p. 748;

Thompson v. Park [1944] 2 All E.R. 477;

Hubbard and Another v. Vosper and Another [1972] 2 Q.B. 84 at pp. 96 and 98; 30

Evans Marshall and Co. Ltd. v. Bertola S.A. and Another [1973] 1 All E.R. 992 at p. 1004;

Midland Cold Storage Ltd. v. Steer and Others [1972] 3 All E.R. 941 at p. 954;

J. T. Stratford & Son, Ltd. v. Lindley and Another [1964] 3 All E.R. 102 at p. 116; 35

Fellowes and Another v. Fisher [1975] 2 All E.R. 829
at p. 839;

American Cyanamid Co. v. Ethicon Ltd. [1975] 1 All
E.R. 504;

5 *Peristeronopighi Transport Co. Ltd. v. Toumazou* (1970)
1 C.L.R. 196 at p. 205.

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Appeal.

10 Appeal by plaintiffs against the order of the District
Court of Nicosia (Artemides, D.J.) dated the 12th
September, 1975 (Action No. 3203/75) dismissing plain-
tiffs' application for an injunction restraining the defend-
ant from continuing to use his vehicle, GJ699, for the
transportation of passengers on the transurban Nicosia -
Limassol route without a road service licence.

15 *S. Erotokritou (Mrs.)*, for the appellants.

A. Skordis, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment delivered
by :

20 TRIANTAFYLIDIS, P.: The appellants, being the own-
ers of motor vehicles licensed to carry passengers on the
transurban Nicosia - Limassol route, have brought an
action, against the respondent, claiming damages and an
injunction restraining the respondent from continuing to
25 use his vehicle, GJ699, for the transportation of pas-
sengers, on such route, without a road service licence.

30 On the same day when the action was filed, that is
on July 17, 1975, the appellants applied for an inter-
locutory injunction prohibiting the respondent from using
his said vehicle for the aforementioned purpose pending
the outcome of the action.

Their application was based on, *inter alia*, section 32
of the Courts of Justice Law, 1960 (Law 14/60), which
reads as follows :-

35 "32.-(1) Subject to any Rules of Court every court,
in the exercise of its civil jurisdiction, may, by order,
grant an injunction (interlocutory, perpetual or man-
datory) or appoint a receiver in all cases in which

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it appears to the court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith :

Provided that an interlocutory injunction shall not be granted unless the court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage.

(2) Any interlocutory order made under subsection (1) may be made under such terms and conditions as the court thinks just and the court may at any time, on reasonable cause shown, discharge or vary any such order.

(3) If it appears to the court that any interlocutory order made under subsection (1) was applied for on insufficient grounds, or if the plaintiff's action fails, or judgment is given against him by default or otherwise, and it appears to the court that there was no probable ground for his bringing the action, the court may, if it thinks fit, on the application of the defendant, order the plaintiff to pay to the defendant such amount as appears to the court to be a reasonable compensation to the defendant for the expense and injury occasioned to him by the execution of the order.

Payment of compensation under this subsection shall be a bar to any action for damages in respect of anything done in pursuance of the order; and any such action, if begun, shall be stayed by the court in such manner and on such terms as the court thinks just."

The respondent opposed the application and, eventually, on September 12, 1975, a District Judge refused to grant the interlocutory injunction applied for by the appellants.

This appeal has been made against such refusal.

What is stated in section 32 of Law 14/60, as regards the making of interlocutory injunctions, is to be applied

in accordance with relevant principles expounded in England, which are consistent with the said section 32.

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5 It is well-settled that the granting of an interlocutory injunction, of this nature, is a matter of judicial discretion; and as was held in, *inter alia*, *Ioannis Kotsapas and Sons Ltd. v. Titan Construction and Engineering Company*, 1961 C.L.R. 317, 322, the onus is on the appellant to satisfy the appellate tribunal that the trial court's discretion was wrongly exercised.

10 Also, as was held by this Court in *Efstathios Kyriacou and Sons Ltd. v. Mouzourides* (1963) 2 C.L.R. 1, if the discretion has been properly exercised this Court will not interfere even if it would have made a different order had it been dealing with the matter in the first instance.

15 The approach to the matter of the interference by an appellate court with the exercise, at first instance, of judicial discretion has been considered in a number of cases; a recent decision of this Court is that in *Re Eleni M. Hji Petri* (1973) 1 C.L.R. 166, 169, where reference
20 was made to the English case of *Evans v. Bartlam* [1937] 2 All E.R. 646, 654.

It is useful to note that the *Evans* case, *supra*, was followed in *Ward v. James* [1965] 1 All E.R. 563, 570, and, later on, in *Re O (infants)* [1971] 2 All E.R. 744,
25 where (at p. 748) Davies L.J. said the following :-

30 "I, with respect, entirely agree with those observations and would follow them. In my considered opinion the law now is that if an appellate court is satisfied that the decision of the court below is wrong it is its duty to say so and to act accordingly. This applies whether the appeal is an interlocutory or a final appeal, whether it is an appeal from justices to a Chancery judge or from justices to a
35 Divisional Court of the Divorce Division. Every court has a duty to do its best to arrive at a proper and just decision. And if an appellate court is satisfied that the decision of the court below is improper, unjust or wrong, then the decision must be set aside. I am quite unable to subscribe to the view that a
40 decision must be treated as sacrosanct because it

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was made in the exercise of 'discretion'; so to do
might well perpetuate injustice."

We have, of course, not lost sight of the fact that
in *Thompson v. Park* [1944] 2 All E.R. 477, Goddard
L.J., as he then was, observed that if the interim injunction 5
is not granted at first instance it is very seldom that an
appellate court grants one; but, it should, also, be noted
that, having said this, the learned Lord Justice proceeded
to treat that case as an exceptional one and he granted
an injunction which had been refused by the trial judge. 10

In *Hubbard and Another v. Vosper and Another* [1972]
2 Q.B. 84, Lord Denning, M.R. observed (at p. 96) that
the remedy by interlocutory injunction is so useful that
it should be kept flexible and discretionary and that it
must not be made the subject of strict rules; and Megaw 15
L.J. observed, in this connection (at p. 98) that: "Each
case must be decided on a basis of fairness, justice and
"common sense in relation to the whole issues of fact
and law which are relevant to the particular case".

The above view of Denning M.R. was referred to with 20
approval in *Evans Marshall and Co. Ltd. v. Bertola SA
and Another* [1973] 1 All E.R. 992, 1004, and *Midland
Cold Storage Ltd. v. Steer and Others* [1972] 3 All E.R.
941, 954.

An earlier case, where the law in relation to interlo- 25
cutory injunctions was reviewed, is *J.T. Stratford & Son,
Ltd. v. Lindley and Another* [1964] 3 All E.R. 102,
116; and that case was cited recently with approval in
Fellowes and Another v. Fisher [1975] 2 All E.R. 829,
839. In the report of the *Fellowes* case there is made 30
reference to the case of *American Cyanamid Co. v.
Ethicon Ltd.* [1975] 1 All E.R. 504, which was decided
by the House of Lords, and its effect is very lucidly
summarized in such report (at p. 843) as follows by
Sir John Pennycuick :- 35

"Lord Diplock set out the principles to be applied¹.
The other learned Lords gave consenting judgments.
Lord Diplock's speech must be read in full. Very
summarily, unless I have misunderstood it, he laid

1. [1975] 1 All E.R. at 510, 511.

5 down the following procedure as appropriate in principle: (1) Provided that the court is satisfied that there is a serious question to be tried, there is no rule that the party seeking an interlocutory injunction must show a *prima facie* case. (2) The court must consider whether the balance of convenience lies in favour of granting or refusing interlocutory relief. (3) 'As to that' the court should first consider whether, if the plaintiff succeeds, he would be adequately compensated by damages for the loss sustained between the application and the trial, in which case no interlocutory injunction should normally be granted. (4) If damages would not provide an adequate remedy the court should then consider whether if the plaintiff fails the defendant would be adequately compensated under the plaintiff's undertaking in damages, in which case there would be no reason on this ground to refuse an interlocutory injunction. (5) Then one goes on to consider all other matters relevant to the balance of convenience, an important factor in the balance, should this otherwise be even, being preservation of the *status quo*. By the expression '*status quo*' I understand to be meant the position prevailing when the defendant embarked on the activity sought to be restrained. Different considerations might apply if the plaintiff delays unduly his application for relief. (6) Finally, and apparently only when the balance still appears even, 'it may not be improper to take into account in tipping the balance the relative strength of each party's case as revealed by the affidavit evidence...'"

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The right of action of the appellants in the case before us is based on an alleged infringement by the respondent of the relevant statutory provisions of the Motor Transport (Regulation) Law, 1964 (Law 16/64); and as was held in *Peristeronopighi Transport Co. Ltd. v. Toumazou* (1970) 1 C.L.R. 196, 205, by this Court, an infringement of such provisions, by one person, which affects the interests of another person so as to render him a person aggrieved, confers on such person a right of action for breach of statutory duty. Moreover, the trial judge has

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1. [1975] 1 All E.R. at 511.

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found that the appellants will almost certainly be successful in their action, unless the respondent is granted, in the meantime, a road service licence, with retrospective effect, for the route concerned.

It has been contended before us (though this was not the reason for which the trial judge refused the interlocutory injunction) that a good defence to the action had been put forward by the respondent by means of an allegation, in the affidavit filed in opposition to the application for the injunction, to the effect that at a meeting at the office of the appropriate Licensing Authority the appellants had waived any possible right of action by agreeing that displaced persons, such as the respondent, could use their taxis on the Limassol - Nicosia route. We are of the view that the affidavit, on which the contention as regards the alleged waiver is based, is so vaguely framed as not to merit any really serious consideration for the purposes of this appeal; and we do think that rightly the trial judge did not attribute any weight to this aspect of the case. Whether such a defence may be established later on, during the trial of the action, is an altogether different matter depending on whether more cogent and clear evidence, than the affidavit in question, can be adduced.

In refusing to grant the interlocutory injunction the judge referred, *inter alia*, to the *Fellowes* case, *supra*, and appears to have taken a correct view as regards the law applicable. Then, having reviewed the relevant facts, and having, in the course of doing so, taken judicial notice, as we think he was entitled to do, of the fact of the Turkish invasion and of the, as a result of it, foreign occupation of a considerable part of our country, as well as of the facts that many persons who were licensed operators in respect of other routes are now prevented by the said occupation from operating on such routes and they have to try to earn their living by operating on other routes, such as the transurban Nicosia - Limassol route, which is a very much more busy route than it was in normal times, proceeded to refuse the interlocutory injunction, in order, as he has put it, to preserve the *status quo* pending the trial of the action.

We are of the opinion that the learned trial judge

misdirected himself in law in approaching the aspect of the *status quo*; what had to be preserved was not the *status quo* created by any complained of illegal course of action of the respondent, but the *status quo* existing
5 when the respondent embarked upon the activity sought to be restrained; this is abundantly clear from the passage, cited above, from the *Fellowes* case, *supra*, where the principles expounded in the *American Cyanamid* case, *supra*, are summarized.

10 The respondent did not deny that he was breaking the law, and, furthermore, he declared his intention to continue doing so; thus, by refusing the interlocutory injunction the trial judge allowed the respondent to continue, pending the final outcome of the action, the
15 contraventions of the relevant legislation; and, in this connection, the judge paid undue, in our opinion, regard to the mere possibility (which under the relevant principles of administrative law we consider to be somewhat remote) that a road service licence, if granted to the
20 respondent, would be granted with retrospective effect, so as to cover the period in respect of which the appellants complain in their action against him.

Another relevant consideration ought to be whether any damages payable to the appellants can be assessed
25 with sufficient certainty at the end of the trial of the action, assuming an interlocutory injunction is not granted. We think that, in the circumstances of this case, and especially in view of the present day heavy traffic on the transurban Nicosia - Limassol road, it would be
30 very difficult, if not impossible, to assess, eventually, what damage has been suffered by the appellants, due to the transportation, by the respondent, of passengers along such route, till the final determination of the action.

Looking at the case before us as a whole, we have
35 reached, without difficulty, the conclusion that the trial judge was wrong in refusing the interlocutory injunction and that this Court should grant such injunction, as applied for by the appellants, on condition, however, that the appellants shall furnish, within one month from
40 today, security in the sum of £200, with a surety to the satisfaction of the Chief Registrar, in respect of any

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damages to which the respondent may be found to be entitled under section 32(3) of Law 14/60.

Also, having duly in mind the exceptional circumstances prevailing in our country today, and all that has been judicially noticed, as aforementioned, in this respect, by the trial judge, as well as the fact that the respondent has already applied for a road service licence, we have decided, in view of the very special situation in this case, to adopt the exceptional course of not granting the interlocutory injunction with immediate effect; having taken into account the thirty days' period, prescribed under Article 29 of the Constitution, during which there must be given a reply by the appropriate authority to the respondent's request for a licence, we have decided to allow this period to run from today before the interlocutory injunction takes effect; therefore, it will take effect as from December 15, 1975.

In the meantime it is open to the appropriate authority, if it so deems fit in the course of exercising, in accordance with the relevant legislation, its discretionary powers, to grant or to refuse to the respondent a road service licence in respect of the transurban Nicosia - Limassol route.

This appeal is allowed with costs against the respondent.

Appeal allowed with costs.