1951 *Present :* **Dias S.P.J.**

In re AGNES NONA

S. C. 459—In Revision, M. C. Colombo South, 29,720

Criminal Procedure Code—Sections 328; 350 (2) 356—Interference by the Executive with the Judiciary—Jurisdiction of the Supreme Court to revise proceedings in such a case—Subjection of executive officers to jurisdiction of the Courts—Administrative law—" Court "—Judges of " Minor Courts ", when acting judicially, only subject to Supreme Court, Privy Council and provisions of Statute Law—Judicial v. Administrative functions of a Court—Rule of Law.

A Magistrate's Court convicted an accused and sentenced her to imprisonment and fine. She appealed to the Supreme Court which affirmed the conviction and sentence ; and the order of the Supreme Court, duly certified under the seal of the Court, was transmitted to the Magistrate's Court for execution in terms of section 350 (1) of the Criminal Procedure Code. In the meantime, the convict had petitioned the Governor-General for the remission of her sentence. The Governor-General intimated to her and the Minister of Justice that he was pleased to order her sentence to be remitted on the condition that she entered into a bond in a certain sum to be of good behaviour for a certain period.

Before the Magistrate's Court could carry out the order of the Supreme Court in terms of section 350 (2) of the Criminal Procedure Code, the Ministry of Justice addressed a communication to the Magistrate forwarding a copy of the order of the Governor-General (a) for the favour of " necessary action " and (b) requested the Magistrate to inform the Minister when the bond had been executed.

[1] *(1915) 18 N. L. R. 229.*
[2] *(1897) 3 N. L. R. 77.*
[3] *(1902) 6 N. L. R. 338.*
[4] *(1908) 4 A. C. R. 8.*

Held, (i) that this action by the Minister was irregular, and could be revised by the Supreme Court under section 356 of the Criminal Procedure Code.

(ii) that the word " Court " in section 350 (2) does not mean " Judge," and that a " Court " when exercising powers under section 350 (2) can only act judicially and not administratively.

(iii) that, unless a Statute provides to the contrary, every executive officer who acts *unlawfully* is subject to the jurisdiction of the Courts of law which have power to determine what is the extent of his lawful power, and whether the orders under which he purported to act are legal and valid.

(iv) that there is no distinction between a " slight " interference by the executive with the judiciary, and a " major " interference. In either case the independence of the judiciary would be affected, and the interference must be condemned.

(v) that the " Minor Courts " in the performance of their *judicial* duties are subject only to the Supreme Court, the Privy Council, and the provisions of the Statute law.

(vi) that as the Governor-General's order had been communicated to the accused there was no need for the Minister to take any action in the matter.

THIS was a matter which was dealt with in revision under section 356 of the Criminal Procedure Code.

R. R. Crossette-Thambiah, K.C., Solicitor-General, with *T. S. Fernando* and *A. Mahendrarajah*, Crown Counsel, as *amicus curiae*.

M. M. Kumarakulasingham, with *M. A. M. Hussein*, for the accused.

Cur. adv. vult.

September 13, 1951. DIAS S.P.J.—

The accused, D. M. Agnes Nona, was convicted by the Magistrate of Colombo South on November 22, 1950, under section 354 of the Penal Code with kidnapping a child from lawful guardianship. The Magistrate, being of the view that " girls of tender age require protection from such enticement " and that an " adequate penalty should be imposed ", sentenced the accused to undergo 5 months' rigorous imprisonment and to pay a fine of Rs. 100, and in default of payment of the fine to undergo rigorous imprisonment for one month more.

The accused appealed against her conviction, and on April 24, 1951, the Supreme Court dismissed the appeal. The order of the Supreme Court, duly certified under the seal of the Court, was transmitted to the Magistrate's Court in terms of section 350 (1) of the Criminal Procedure Code.

The duty of the lower court in such circumstances is provided by section 350 (2) which reads:

" The Court to which such order is certified shall thereupon make such orders as are conformable to the order so certified, and, if necessary, the record shall be amended in accordance therewith."

The Magistrate's Court received the record and the order of the Supreme Court in appeal on May 10, 1951. It thereupon ordered that the convict and her surety should be noticed for May 24. On that day the woman and her surety were absent, and the notices had not been served.

The Court thereupon issued a warrant on her returnable on June 8, and on that date she being still absent the warrant was reissued for June 22. On June 22 the Court issued an open warrant.

On August 11, 1951, the Court received a communication from Mr. N. L. Jansz purporting to be acting for " S/J ", who I assume is the Permanent Secretary of the Minister of Justice. This communication reads as follows:

No. R. 235/51.

Mag., Colombo South—

M. C., Colombo South, No. 29,720

I forward herewith a copy of a memorandum *for favour of necessary action.*

Please inform me when the accused D. M. Agnes Nona has entered into the bond.

(Sgd.) N. L. JANSZ,
for S/J.

Colombo, 9.8.51.

To this communication was appended a memorandum signed by Mr. A. C. M. Hingley, the Secretary to His Excellency the Governor-General, which reads as follows:

9th August, 1951.

Reference No. M/J—R. 235/51.

Memorandum

With reference to her petition dated 15th May, 1951, in which she prayed for the remission of the sentence of imprisonment imposed on her in Magistrate's Court Colombo South Case No. 29,720, *Mrs. D. M. Agnes Nona of Grero Place, Wellawatta, is informed* that His Excellency the Governor-General has been pleased to order that the sentence of imprisonment and fine be remitted on the condition that she enters into a bond in Rs. 250, to be of good behaviour for a period of one year.

By His Excellency's Command,

(Sgd.) A. C. M. HINGLEY,
Secretary to the Governor-General.

On receipt of this communication the Court noticed the convict to appear to enter into the bond on August 28, 1951. Before that date, on August 13, the lady whose presence hitherto on process could not be secured, either on notice or warrant, appeared and the Court recorded " Order communicated. Accused will enter into the bond. Inform S/J after bond is entered into."

Having seen a report of these proceedings in the daily press I considered that this was a case in which I should call for and examine the record of the proceedings under the powers which are undoubtedly vested in every Judge of the Supreme Court by section 356 of the Criminal Procedure Code.

On a perusal of the record it appeared to me that this was a case in which it was desirable that the relative legal position which the executive government as represented by the Minister of Justice bears towards the Courts should be clarified. The accused lady and the Attorney-General were therefore noticed, and the matter has been fully argued.

The learned Solicitor-General argued that the Supreme Court has issued notice on the Attorney-General and the accused under a misconception that there was here an interference by the executive government with the functions of the Magistrate's Court. He also argued that this Court had no jurisdiction to deal with this matter because what was done by the Minister of Justice was " an executive act " performed by his subordinate in the course of the Minister's powers to " administer " the minor Courts, and was, therefore, not justiciable by the Supreme Court under Chapter XXXI of the Criminal Procedure Code. He further submitted that in the present case there was an executive act by His Excellency the Governor-General. There was no doubt that His Excellency had power to make the order he did make. On making such order certain administrative procedure had to be followed, viz: the Governor-General's order had to be communicated to the proper authority. If the accused was in gaol the Minister would have to communicate with the gaoler. If the prisoner was in the Mental Home, the Minister would have to communicate with the Superintendent of the Mental Home. If the accused had not been committed to gaol, the Minister would have to communicate His Excellency's order to the Court concerned. In this case it was the last situation that arose, and, therefore, the Minister was justified in communicating with the Magistrate. The learned Solicitor-General argued that, therefore, what was done was something done in the course of " administrative procedure ". For matters concerned with administration the minor Courts are under the control of the Minister of Justice. Therefore, the Minister was acting lawfully.

I will deal with the question of jurisdiction first. I entirely disagree with the learned Solicitor-General's argument that a Judge of the Supreme Court has no jurisdiction under section 356 to examine the record in a criminal case where there is reason to believe that there has been improper executive interference with the functions of a District Court or a Magistrate's Court. The argument of the Solicitor-General is that the jurisdiction of the Supreme Court is confined to considering the legality or otherwise of a judicial order of a minor court. The submission is that there is no judicial order in this case which can be revised. The Magistrate's Court at this time was *functus officio*, and in giving effect to the communication of the Minister the Magistrate's Court was not acting *judicially* but only in a *ministerial* capacity. Therefore, the jurisdiction of the Supreme Court to act under section 356 in this case is ousted. The Solicitor-General admits that, assuming what the Minister did was improper or *ultra vires*, there would be no authority in this Island to correct that error. If that argument is right, then the Dominion of Ceylon would be the only place in the Commonwealth where a superior Court cannot consider whether an executive officer has exceeded his powers in regard to a directive communicated to a minor Court.

As the jurisdiction of this Court has been challenged it is necessary to consider this submission closely.

In section 356 the expression " Supreme Court " includes every Judge of the Supreme Court. Section 356 empowers a Judge of the Supreme Court to call for and examine the record of *any case*. The section empowers a Judge of the Supreme Court to call for a record whether *already tried*, or *pending trial* in any Court. The purpose for which the record may be called for is to enable a Judge of the Supreme Court to satisfy himself as to the legality or propriety of *any sentence or order* passed therein, or as to *the regularity of the proceedings of such Court*. The section does not place any limitation with regard to the kind of sentences, orders or proceedings which can be revised.

The learned Solicitor-General argued that the order of the Magistrate in this case was a purely " administrative " act, since the Magistrate has merely to carry into effect the judgment and decree of the Supreme Court, and is *functus officio* in the sense that he no longer has any " judicial " duties to perform. Apparently then, on this argument, if the order is " judicial ", the Supreme Court has jurisdiction to exercise its powers under section 356 to revise that order ; but not if the order is " administrative ". The whole force of this argument, however, would depend on the dividing line that must be drawn between the " judicial " and " administrative " powers and duties of Magistrates. In England, an attempt was made to define " judicial functions " in the Report of the Committee on Ministers' Powers [1] but it is now recognized that the Committee's definition was formal and unsatisfactory. In fact, the Chairman of the Committee, Sir Leslie Scott (later Scott, L.J.), found it difficult to apply his own definition in *Cooper v. Wilson* [2]. " The definition is based almost entirely on procedure " and " on a formal theory of the separation of powers ".[3]

In drawing such a distinction in Ceylon it is quite possible to draw the contrast, in some other way, without resort to English experience, as the learned Solicitor-General apparently did, for he seems to classify the acts of a Magistrate as being " administrative " or " judicial " according to whether the acts are ministerial or discretionary. Such a distinction however is untenable because it is arbitrary and has no warrant for its use, and moreover it is incorrect in the light of our own statute law.

Section 2 of the Criminal Procedure Code defines the expressions " District Court " and " Magistrate's Court " so that they bear the same meaning as the word " Court " in section 2 of the Courts Ordinance, while the words " District Judge " and " Magistrate " are separately defined. In my opinion, the Legislature intended to contrast the meaning of these two sets of words by separate definitions, so that the words " District Judge " and " Magistrate " refer to the person who occupies the office—*irrespective of the nature of his powers and duties*, while the words " District Court " or " Magistrate's Court " refer to

[1] *(1932) Cmd. 4060.*
[2] *(1937) 2 K. B. 309. See Jennings : " The Law and the Constitution ", pp. 274—280.*
[3] *Jennings : The Law and the Constitution, p. 277.*

the District Judge or Magistrate—*when the powers and duties which he exercises are judicial in character.* In his book " The Law and the Constitution " (3rd edition), p. 277, Sir Ivor Jennings makes the following comment: " If the functions of a Criminal Court are judicial, they remain judicial in spite of the power of the Crown to issue a free pardon, or of the House of Lords after a certificate from the Attorney-General to reverse the decision on appeal ". Thus, where the Criminal Procedure Code confers statutory powers and duties upon a " District Court " or " Magistrate's Court ", it follows that the powers and duties conferred must necessarily have a judicial character and nothing else; although if on the other hand the powers and duties had been conferred by the Code on a " District Judge " or " Magistrate ", it is possible that they may be " administrative " in some cases.

The word " Court " in section 350 (ii) of the Criminal Procedure Code must necessarily refer to a District Court or as in this case to a Magistrate's Court, and must therefore mean that the Legislature intended the Judge or Magistrate to exercise " judicial " powers and duties under this section. Even if the powers of the Supreme Court acting in revision are limited to " judicial " orders only—a proposition which I cannot accept—I would hold on the very argument of the learned Solicitor-General that the Supreme Court has jurisdiction and the power to revise the order of the Magistrate in this case.

It is a characteristic feature of modern democratic government in the Commonwealth that unless a statute provides to the contrary, officials or others are not exempted from the jurisdiction of the ordinary tribunals. As the late Professor Dicey puts it [1]—" There can be with us nothing really corresponding to the ' administrative law ' (*droit administratif*) of France ". He says: " With us every official from the Prime Minister down to a constable or a collector of taxes is under the same responsibility for every act done *without legal justification* as any other citizen. The minister or servant of the Crown who takes part in giving expression to the Royal will is legally responsible for the act in which he is concerned; and he cannot get rid of his liability by pleading that he acted in obedience to royal orders. Now—*supposing that the act done is illegal,* the minister concerned in it becomes at once liable to . . . proceedings in a Court of law. Hence indirectly, but surely, the action of every servant of the Crown, and, therefore, in effect of the Crown itself, is brought under the supremacy of the law of the land. Behind Parliamentary responsibility lies legal liability, and the acts of ministers no less than the acts of subordinate officials are made subject to the Rule of Law. . . . *and the ordinary Courts have themselves jurisdiction to determine what is the extent of his legal power, and whether the orders under which he acted were legal and valid.*" [2].

I, therefore, hold that this Court has jurisdiction to deal with this matter, and I will jerform that duty fairly and impartially.

Turning to the second question as to whether there has been any improper interference by the executive with the Magistrate's Court of Colombo South, I would recall the words of Scrutton, L.J., in *R v.*

[1] *The Law and the Constitution (9 th Edition), p. 203.*
[2] *See Dicey, pp. 193, 326, 389.*

Superintendent of Chiswick Police Station, ex parte Sacksteder [1]: "I approach the consideration of this case with the anxious care which His Majesty's Judges have always given, and I hope will always give, to questions where it is alleged that the liberty of the subject according to the law of England has been interfered with . . . This jurisdiction of His Majesty's Judges was of old the only refuge of the subject against the unlawful acts of the Sovereign. It is now frequently the only refuge of the subject against the unlawful acts of the Executive, the higher officials, or more frequently the subordinate officials . . ." These words were quoted with approval by Abrahams, C.J., in the case *In re Bracegirdle* [2] when he said "I conceive that it is no less the duty of His Majesty's Judges in this Island to afford the same protection, but I think it is not out of place to bear in mind that we must proceed with the utmost impartiality and caution lest we unduly fetter the *legitimate* action of the Executive." It must also be remembered that in the last resort it is the Courts which are the final bulwark of the independence of this Dominion. It is furthermore the duty of the Supreme Court, while not fettering the legitimate action of the Executive, to uphold, maintain and protect the independence of the minor Courts which in the performance of their duties should only be subject to the Supreme Court, the Privy Council and the provisions of the Statute Law.

If we turn to The Ceylon (Constitution) Order in Council, 1946 (hereafter referred to as the "Order in Council") it will be found that the Government of Ceylon is dealt with under four heads: (*a*) The Governor General—sections 4-6; (*b*) The Legislature—sections 7-44; (*c*) The Executive—sections 45-51; and (*d*) the Judicature—sections 52-56.

The powers of the Governor-General are to be found in the Letters Patent issued to him, in the Royal Instructions, in section 4 of the Order in Council, and in the Statute Law which may impose duties which he is to perform. The powers of the Legislature are to legislate "for the peace, order and good government of the Island" subject to what is stated in section 29 of the Order in Council. The powers of the Judicature are not defined by the Order in Council. These powers are to be gathered from various statutes like the Courts Ordinance, the Civil and Criminal Procedure Codes, and from the established practice of the Courts. The powers of the Executive are likewise not defined by the Order in Council. All that one can say is that the powers of the "Executive" are the residue of the functions of government after the legislative and judicial functions of the government have been taken away—see 6 Hailsham art. 432, p. 385, and Jennings: Law and The Constitution, p. 273.

With regard to the judiciary, the Courts can come into contact with the "executive" in various ways. In regard to the appointment, transfer, dismissal and disciplinary control of Judges of the minor Courts, these functions are exclusively vested in a body designated "The Judicial Service Commission"—section 55 of the Order in Council. In order to ensure that Judges of the Minor Judiciary will be perfectly independent and free to perform their lofty duties without fear, the

[1] *(1918) 1 K. B. at p. 589.* [2] *(1937) 39 N. L. R. at p. 205.*

Order in Council provides that the three Commissioners of the Judicial Service Commission shall be the Chief Justice and two others, one of whom shall be a Judge of the Supreme Court, and the other " who shall be, or shall have been a Judge of the Supreme Court ". Therefore, in all matters connected with the appointment, transfer, dismissal and disciplinary control of the District Judges, Commissioners of Requests and Magistrates, the Minister of Justice has no control or concern whatever. In section 6 of the Minute of the Judicial Service Commission (see Civil List for 1951—p. 396) it is stated: " For the purposes of leave and general administration the Service will be under the general control of the Judicial Service Commission ". I am unaware whether the functions of the Minister of Justice and of his Ministry have been clearly defined [1]. The generally accepted view is that *inter alia* he controls the " administrative " functions of the various legal departments. The various Courts for purposes of administration are independent departments whose official head is the individual who for the time being is at the head of that department, except in the case of the Supreme Court. The Registrar of the Supreme Court is the departmental head of the Supreme Court Registry. If the Minister is of opinion that an additional Judge should be appointed to a particular minor Court, his decision will be communicated to the Judicial Service Commission whose duty it will be to make the requisite appointment. In the case of acting appointments, by a construction of the law the Minister of Justice claims to have the right to appoint such officers. The appointment of the subordinate staff of a Court, the emoluments to be paid to judicial officers, the hours during which the office of the Court should be open, &c., would fall within the powers of the Minister. These " administrative " powers are difficult to define, and there may arise cases in which the Minister may inadvertently overstep the bounds and encroach either on the functions of the Judicial Service Commission on the one hand, or on the judicial functions of the Court on the other. In cases where there is ground to believe that the Minister has improperly encroached on the judicial functions of a Court, it is the undoubted right of the Supreme Court to examine the position, and fearlessly to say so, if there has in fact been any illegal encroachment.

Applying these principles to the case before me we find that D. M. Agnes Nona, as she was entitled to do, sent a petition dated May 15, 1951, to His Excellency the Governor-General praying for the remission of her sentence. Under section 10 of the Letters Patent His Excellency has the right to " remit the whole or any part of the sentence passed on her " subject to the requirement in section 3 of the Royal Instructions that before he does so, His Excellency must first receive " the advice of one of his Ministers ", in this case, obviously, the Minister of Justice—see also section 328 Criminal Procedure Code. That His Excellency received such advice appears to be clear from the reference made to " No. M/J—R. 235/51 " in the memorandum dated August 9, 1951, addressed by His Excellency's Secretary to the Ministry.

[1] *See* Ceylon Government Gazette Extraordinary *No. 9,780 of September 29, 1947, where the Prime Minister has assigned to various Ministers certain subjects and functions. One of the subjects and functions assigned to the Ministers of Justice is the " Administration of the Courts of Justice (other than the Supreme Court) ".*

His Excellency's order is that " Mrs. D. M. Agnes Nona is informed that His Excellency the Governor-General has been pleased to order that the sentence of imprisonment and fine be remitted on the condition that she enters into a bond in Rs. 250 to be of good behaviour for a period of one year ". If I may say so with respect, that appears to be a lawful order. *But, one must observe what His Excellency did not say. He did not direct before whom that bond was to be executed by the convict.*

Let us assume that at the time the intimation was received by the Ministry, the Magistrate's Court acting under section 350 (2) of the Criminal Procedure Code had committed the lady to gaol in accordance with the order of the Supreme Court. The learned Solicitor-General admits that in such a case, the Minister would address the gaoler who had custody of the prisoner, who would communicate to her the terms of the order of the Governor-General.

Before whom is that bond to be executed? I am unaware of any provision of the Criminal Procedure Code or of any other law, nor was any authority cited, which under such circumstances would justify the lady being taken before any Court for the execution of the bond which was the condition imposed by His Excellency the Governor-General for the remission of the imprisonment and fine. Section 82 of the Criminal Procedure Code empowers a Magistrate to order a person to enter into a bond to be of good behaviour under the circumstances described in that section. This is not that case. The same applies to section 83. Section 325 (1) of the Criminal Procedure Code empowers the Magistrate in a case which is *being* summarily tried before him *without proceeding to conviction* to order the prisoner to enter into a recognizance with or without sureties to be of good behaviour and to *appear for conviction and sentence* when called upon at any time during the period stated in the bond. Obviously section 325 cannot apply to a convicted person. The Governor-General did not direct that the bond should be executed before any particular person or officer, *and it is open to question whether he had power to make such an order. A fortiori* the Minister of Justice has no such power, nor would the gaoler be justified in taking the lady before the Magistrate and demanding his assistance to carry out the condition imposed by His Excellency. The fact that the Magistrate's Court had not yet committed the prisoner to gaol in my opinion makes no difference.

It will be seen that whenever the assistance of a Court is required by the executive, the law is careful to make it the duty of the Court to render such assistance. Section 3 of the Royal Instructions provides " Where any offender shall have been condemned to suffer *death* by the sentence of any Court, the Governor-General shall cause a report to be made to him by the Judge who tried the case, and he (the Governor-General) shall forward such report to the Attorney-General with instructions that after the Attorney-General has advised thereon, the (Judge's) report shall be sent, together with the Attorney-General's advice, to the Minister whose function it is to advise the Governor-General on the exercise of such powers." Section 309 (*b*) of the Criminal Procedure Code imposes a statutory duty on the trial Judge to make that report to the executive. The sub-section reads: " So soon as conveniently may be after sentence of death has been pronounced, the Judge who

presided at the trial . . . shall forward to the Governor-General a copy of the notes of evidence taken on the trial, with a report in writing signed by him setting out his opinion whether there are any and what reasons why the sentence of death should or should not be carried out. " With these provisions should be contrasted two other cases where the judiciary and the executive often come into contact.

Except in the case of a juvenile offender who has been sentenced to be birched, the proviso to section 316 (1) of the Criminal Procedure Code provides that no sentence of *whipping* " shall be inflicted until the Governor-General has made order thereon, and the execution of the sentence shall be subject to, and in accordance with such order." Unlike in the case of a death sentence, there is no statutory duty cast on the judiciary to make a report in the case of a sentence of whipping to the executive. Therefore any General Order or direction by the executive government calling for such a report would be irregular and improper. Until recently it had been the practice for Judges of the Supreme Court to report cases of whipping to the executive, but its legality was questioned, and although the Legal Secretary thought that it was a convenient practice, it was dropped.

There is also the case of a prisoner who is found incapable of pleading to the charge owing to *unsoundness of mind*, and also the case of the person who is acquitted on the ground that he was *insane* at the time the alleged criminal act was committed—see sections 369 (2) and 374. In both these instances there is a statutory obligation imposed on the trial Judge to report the case to the Governor-General. I believe that by some regulation or rule in such cases the Judge, including Judges of the Supreme Court, is now expected not to report such cases to the Governor-General but to the Minister. It is unnecessary to express an opinion as to the legality or otherwise of this procedure.

The point to be noted, however, is that whenever on grounds of public policy it is considered expedient that the Judge should render assistance to the executive, the law provides for it in unmistakable terms by imposing a statutory duty on the judge to do so.

In the present case when an officer of the Ministry addressed a memorandum to the Magistrate's Court forwarding a copy of His Excellency's order " for favour of *necessary action* " and also demanded that the Magistrate's Court should " *inform me* when the accused Agnes Nona has entered into the bond ", I am of opinion that the Minister, probably inadvertently, exceeded his powers and was acting unlawfully. I do not agree with the learned Solicitor-General that the Minister under his powers of " administering " the government office known as the Magistrate's Court of Colombo South, had any power to give directions to the Magistrate's Court which was exercising statutory powers under section 350 (2) of the Criminal Procedure Code [1]. This Magistrate's Court as a Court was not under the administrative control of the Minister. All that the Minister could legitimately do was to forward the Governor-General's memorandum to be communicated to her. He had no lawful power either to direct the Magistrate's court to " take necessary action,",

[1] *See the Law and the Constitution (3rd Edition) by Sir Ivor Jennings, pp. 270—284.*

or to ask that Court to intimate to him when the bond was executed. It was for the convict or her legal advisers to fulfil the conditions imposed. *Furthermore, it appears that the Secretary to His Excellency the Governor-General addressed to the lady a communication similar to the one addressed to the Minister of Justice.* It was therefore for the convict or her legal advisers, without any further intimation from the Minister of Justice, to have brought His Excellency's communication to the notice of the Court and to have asked for time to fulfil the conditions. *There was no need for the intervention of the Minister of Justice.*

I therefore pronounce to be illegal that part of the Minister's memorandum which required the Magistrate's Court to perform such acts. The Solicitor-General concedes that if the Minister has, in fact, acted illegally, there is no distinction between a slight interference by the executive with the Judiciary and a major interference. In either case the independence of the Judiciary would be affected and must be condemned.

The question as to what order must be made in these circumstances causes difficulty. The Governor's lawful order has been illegally carried out. The normal procedure would be to quash all the proceedings and to restore the *status quo ante* which existed before the Minister's communication reached the Magistrate's Court. I do not think I should so order in this case, because the person whose sentence has been remitted is now lawfully at liberty. The principles applicable to this case having now been clarified, I therefore think that no further order is called for in the circumstances of this case.

No further order.