Bandaranaike

v.

Weeraratne and Two Others

COURT OF APPEAL
WIMALARATNE J. (PRESIDENT C/A). VYTHIALINGAM J.
AND COLIN – THOME J.,
APPLICATION NO. 1/78
OCTOBER 16, 17, 18 AND 19, 1978

Writ of Prohibition – Special Presidential Commission – Ss. 2 and 9 of Special Presidential Commissions of Inquiry Law No. 7 of 1978 – Is the Special Presidential Commission of Inquiry amenable to the writ jurisdiction of the Appeal Court ? – Is Warrant establishing Commission ultra vires ? – Retrospectivity – Collective responsibilitiy.

The Special Presidential Commissions of Inquiry Law No. 7 of 1978, was certified on 10.2.1978. By warrant dated 29.3.1978 the President appointed the three respondents to inquire into and report whether between 28.5.1970 and 23.7.1977 there had been misuse or abuse of power, interference, fraud, corruption or nepotism, political victimization of any person, any irregularity in the making of any appointment or transfer, granting of any promo-

tion to or the termination of the services of any person or contravention of any written law by or on the part of the Prime Minister, any Minister or any Public Officer or other person and the extent to which he is so responsible and to make recommendations as to whether any person should, in terms of s. 9 of the said Law be made subject to civic disability and to make such other recommendations with reference to any of the matters that have been inquired into under the terms of the warrant. The petitioner was the Prime Minister and Head of the Cabinet of Ministers during the period specified in the Warrant. As a person implicated or concerned in the matters under inquiry she moved for a Writ of Prohibition on the ground that section 9 of the Special Presidential Commissions of Inquiry Law does not empower the respondents to make a recommendation that the petitioner shold be made subject to civic disability by reason of any act or omission or in respect of conduct during a period anterior to the said Law, and the said Law has not been made retrospective in its operation and hence the warrant is ultra vires the said Law.

The other grounds argued at the hearing relate to:

(i) The principle of the collective responsibility of the Cabinet

(ii) The petitioner being responsible for her conduct solely to the parliament of Ceylon and National State Assembly which were the supreme instruments of State power under the 1972 Constitution.

(iii) Infringements of certain provisions of the 1972 Constitution — Articles 4 — (Sovereignty of the People) and 106(5)).

Held:

1. The Special Presidential Commission of Inquiry is amenable to the writ jurisdiction of the Court of Appeal.

2. The Special Presidential Commission Law does not contain provisions expressly stated or implying by necessary inference that it is to operate retrospectively. Nor are the surrounding circumstances sufficiently strong to rebut the presumption against retrospectively. The law is prospective only and meant to apply to future events. The Warrant empowering the Commission to inquire into and report (with recommendations) on the coduct of persons during a period prior to the date of the enactment of the Law is ultra vires the Law and a Writ of Prohibition will lie against the Commissioners.

3. The principle of collective responsiblity of the Cabinet as a defence should properly be addressed to the Commission.

4. The validity of a Law when once it is passed and endorsed with the Speaker's certificate cannot be questioned. The Law is therefore valid even if

it be in some way inconsistent with the Constitution.

Cases referred to:

1. *Rex v. The Electricity Commissioners [1924] 1 K.B. 171, 204.*
2. *R. v. Criminal Injuries Compensation Board, ex parte Lain [1967] 2 All ER 770, 784.*
3. *Fernando v. Jayaratne (1974) 78 NLR 123.*
4. *De Mel v. M. W. H. de Silva (1949) 51 NLR 105.*
5. *Estate & Trust Agencies (1927) Ltd. v. Singapore [1937] 3 All ER 324 (PC).*
6. *Nakkuda Ali v. Jayaratne (1950) 51 NLR 457.*
7. *Re Athlumney [1898] 2 QB 547, 551.*
8. *Phillips v. Eyre (1870) L. R. 6 Q.B. 1.*
9. *Q v. Ipswich Union L. R. Q.B.D. Vol. 11 (1876 – 77) 269.*
10. *Turnbull v. Foreman (1885) 15 Q.B.D. 234, 236.*
11. *Reid v. Reid (1886) L. R. Ch. D. 402, 408.*
12. *Starey v. Graham (1899) 1 Q.B. 406, 411.*
13. *Attorney-General v. Vernazza (1960) 3 All ER 97.*
14. *R. v. Inhabitants of St. Mary, Whitechapel [1848] 12 Q.B. 120.*
15. *Master Ladies Taibors Organisation v. Minister of Labour [1950] 2 All ER 525.*
16. *West v. Gwynne [1911] 2 Ch. D. 1.*
17. *Inre a Solicitor's Cleark [1957] 1 WLR 1219.*
18. *Moon v. Durden [1848] 2 Ex. 22.*
19. *Re School Board Election for the Parish of Pulborough [1894] 1Q.B.D. 725.*
20. *The Sunshine Forcelain Potteries Case [1961] AC 927.*
21. *D. P. P. v. Lamb [1941] 2 K. B. 89.*
22. *Buckman v. Button [1943] 1 K. B. 405.*
23. *R. v. Oliver [1944] K. B. 68.*
24. *Williams v. Williams [1971] 2 All ER 764. 772.*

APPLICATION for a Writ of Certiorari

H. L. de Silva with *E. D. Wickramanayake* and *Gomin Dayasiri* for the petitioner.

S. Pasupathy, Attorney-General, with *V. C. Goonetilleke, Solicitor-General, K. M. M. B. Kulatunge, Additional Solicitor-General* and *S. Ratnapala State Counsel* for the repondents.

Cur. adv. vult.

November 9, 1978.

WIMALARATNE J. (President, Court of Appeal) read the following judgment of the Court.

The Special Presidential Commissions of Inquiry Law, No. 7 of 1978, was certified on 10.2.1978. Section 2(1) of that Law empowers the President of the Republic, whenever it appears to him to be necessary that an inquiry should be held and information obtained as to :

(a) the administration of any public body or local authority;

(b) the administration of any law or the administration of justice;

(c) the conduct of any public officer;.or

(d) any matter in respect of which an inquiry will, in his opinion, be in the public interest or be in the interest of public safety or welfare,

to establish by warrant under the Public Seal of the Republic, a Special Presidential Commission of Inquiry consisting of members each of whom is a Judge of the Supreme Court or of any other Court not below a District Court, to inquire into and report upon such administration, conduct or matter.

By warrant dated 29.3.1978, His Excellency appointed the three Respondents to be his Commissioners to inquire into and obtain information, in respect of the period commencing 28.5.1970 and ending 23.7.1977, relating to :

(1) the administration of any public body, any local authority or any society registered or deemed to be registered under the Co-operative Societies Law, No. 5 of 1972, or the Janawasa Law, No. 25 of 1976;

(2) the administration of any written law with special reference to the written laws specified in schedule A thereto;

(3) the admnisitration of Justice in Sri Lanka;

(4) the conduct of any public officer as defined in the aforesaid Law, No. 7 of 1978;

(5) the matters specified in schedule B thereto which, in his opinion, in the public interest, public safety and welfare required inquiry and report,

and to report on whether there had been :

(a) misuse or abuse of power, interference, fraud, corruption or nepotism;

(b) any political victimization of any person;

(c) any irregularity –

(i) in the making of any appointment or transfer of,

(ii) the granting of any promotion to,

(iii) the termination of the services of, any person,

(d) contravention of any written law,

by or on the part of the Prime Minister, any Minister, or any public officer or other person, and the extent to which he is so responsible, and to make recommendations as to whether any person should, in terms of section 9 of the said Law, be made subject to civic disability, and to make such other recommendations with reference to any of the matters that have been inquired into under the terms of the warrant.

Schedule A contains a list of 37 written laws, whilst schedule B specifies four matters, including the administration of two newspaper companies, the functioning of the Constitutional Court, and the investigation into the killing of one Premawathie Manamperi of Kataragama, which had been the subject matter of Case No. S.C. 623/71 – Magistrate's Court Hambantota 65988.

Section 9 of the Law, which has been the subject of much argument, is in the following terms :–

"9(1) Where a commission finds at the inquiry and reports to the President that any person has been guilty of any act of political victimization, misuse or abuse of power, corruption or any fraudulent act, in relation to any court or tribunal or any public body, or in relation to the administration of any law or the administration of justice, the commission shall recommend whether such person should be made subject to civic disability, and the President shall cause such finding to be published in the Gazette as soon as possible, and direct that such report be published.

(2) Any report, finding, order, determination, ruling or recommendation made by a commission under this Law, shall be final and conclsusive, and shall not be called in question in any court or tribunal by way of writ or otherwise.

(3) For the purpose of this section civic disability shall mean the disqualification of a person –

(i) from being an elector and from voting at any election of the

President of the Republic, or at any election of a member of the National State Assembly or of any local authority;

(ii) from being nominated as a candidate at any such election;

(iii) from being elected or appointed as the President of the Republic or from being elected as a member of the National State Assembly or of any local authority, and from sitting and voting as such member; and

(iv) from holding office, and from being employed as a public officer.

The Petitioner was the Prime Minister and Head of the Cabinet of Ministers during the period specified in the warrant. She avers that from reports appearing in the newspapers and from broadcasts of proceedings held before the Special Presidential Commission by the Sri Lanka Broadcasting Corporation, it is manifest that the Petitioner is a person whose conduct is the subject of the inquiry held before the Respondents and/or that she is a person who is implicated or concerned in the matters under inquiry and that she is accordingly a person against whom the Respondents will be reqired to make a recommendation in terms of Section 9. She prays for an order in the nature of a Writ of Prohibition against the Respondents from proceeding to inquire into acts and/or omissions of the Petitioner as Prime Minister or as a Minister during the aforesaid period, from making findings of guilt in respect of the said acts or omissions, and from making recommendations as to whether she should be subject to civic disabilities by virtue of such findings of guilt.

The grounds upon which a Writ of Prohibition is asked for are five in number. They appear in the following order in the Petition:—

(1) Section 9 of the Special Presidential Commissions of Inquiry Law does not empower the Respondents to make a recommendation that the petitioner should be made subject to civic disability by reason of any act or omission or in respect of her conduct during a period **anterior to the said Law,** and the said Law has not been made retrospective in its operation. By reason of the fact that the warrant authorises the Respondents to inquire intoi, report upon and make recommendations in respect of acts and conduct during a period anterior to the Law, which would make the Petitioner subject to the penalties, disabilities and disqualifications with reference to such past conduct, **the warrant is ultra vires the said Law** and consequently the Respondents would be acting unlawfully, illegally and without legal authority and in excess of their jurisdiction in purporting to make any such recommendation.

(2) In purporting to make any finding of guilt and recommendations

for the imposition of penalties, the Respondents would be acting in violation of the Constitional guarantees stipulated in Article 13(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka(1978).

(3) In so far as the Special Presidential Commissions of Inquiry Law at the time of its enactment authorised inquiry into her conduct as a Cabinet Minister during the said period, it is inconsistent with section 46(1) of the Ceylon (Constitution) Order in Council, 1946, and section 92 of the Constitution of Sri Lanka (1972) in terms of which the petitioner was solely responsible to the Parliament of Ceylon and the National State Assembly, and is accordingly void protanto, as it is not a law which was duly passed in accordance with the aforesaid constitutions.

(4) As Prime Minister and Head of the Cabinet of Ministers she was responsible and answerable solely to Parliament and the National State Assembly, being the supreme instruments of State power under section 5 of the 1972 Constitution. In so far as the warrant authorised the Respondents who were not members of the National State Assembly to inquire into her conduct, it infringed section 4 of the 1972 Constitution in terms of which the Sovereignity of the people is exercised through the National State Assembly, and is accordingly void.

(5) The warrant, in so far as it authorises the Respondents to inquire into and report whether there had been any irregularity in making and effecting transfer of, granting promotions to, and terminating the services of State Officer is contrary to Section 106(5) of the Constitution of 1972, and is therefore invalid in law.

Article 140 of the Democratic Socialist Republic of Sri Lanka (1978) empowers the Court of Appeal to grant and issue, according to law, orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against the Judge of any Court of First Instance or tribunal or other institution or any other person.

Logically the first question that arises is whether the Special Presidential Commission of Inquiry is a body of persons amenable to the supervisory jurisdiction of this Court.

The Respondents filed no objections to the present application; and although the learned Attorney-General did not at the hearing contest the position that the Special Presidential Commission of Inquiry is a tribunal subject to the supervisory jurisdiction of this Court, we consider it necessary to give our own reasons for the view we take.

In **Rex v. The Electricity Commissioners**[1] Atkin J., stated that certiorari and prohibition may issue "whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially" act in excess of their jurisdiction.

"Having legal authority" generally means having statutory authority, as distinct from a body deriving its authority from contract or agreement, such as a voluntary associaton or a domestic tribunal. The legal authority must be an authority "empowered to affect the legal rights of individuals." In this context the term "right" has been given a broad interpretation in Administrative Law. The right affected may appertain to personal liberty or status or may be of a proprietory or fiscal nature. They are not necessarily rights in the jurisprudential sense as being co-relative to duties, but rights in the wider sense, including liberties, previleges etc., The word "right" has indeed received such a wide meaning, so much so that in **R. v. Criminal Injuries Compensation Board, ex parte Lain**[2] *Ashworth J., suggested that it was* sufficient if the determination "affected subjects."

In the case of **Fernando v. Jayaratne**[3] **Sharvananda,** J., has taken the view that a Writ of Certiorari does not lie to quash the findings in the report made by a Commissioner appointed under the Commissions of Inquiry Act (Cap. 393) inasmuch as the Act does not show that the report of the Commissioner was intended to be a step in a process which may in law have the effect of altering the legal rights or liabilities of persons named in the report. In the course of his judgment he stated:– (at page 125)

> "This question was considered in the case of **de Mel v. M. W. H. de Silva.**[4] There the Court held that as the Commissioner did not make an order affecting the legal rights of persons, his function could not be properly described as judicial or quasi-judicial and that hence, no writ could lie against him."

But a reading of the judgment in that case, which was a judgment of a Divisional Bench, shows that the Commissioner was a person having legal authority to determine a question affecting the rights of the petitioner, and having the duty to act judicially and that a writ would, in appropriate circumstances lie against him. Sharvananda J., appears, therefore, to be mistaken in his interpretation that a writ could not issue against the Commissioner in **de Mel v. M. V. H. de Silva.**[4] (supra).

Although the writs will not normally issue to a body having no power to make a binding determination, they have issued to persons and bodies making reports and recommendations that acquire legal force only after adoption or confirmation or other consequential action by another body. See **Estate & Trust Agencies (1927) Ltd., v. Singapore Improvement Trust**[5] As stated in **Halsbury's Laws of England** (4th Edition) Vol: I page 105 para. 83 note 9,:–

"It seems that the orders (and particularly Prohibition) will issue more readily when the act in question will have effect, subject to confirmation, of its own force or is an intergral and necessary part of a proceeding which will, when complete, have prejudicial effects on the civil rights of individuals."

Another requirement is that the body must have a duty to act judicially. The Privy Council, in **Nakkuda Ali v. Jayaratne**[6] held that the main criterion is the nature of the process by which the decision is reached and that "when it is a judicial process or a process analogous to the judicial, certiorari (and accordingly Prohibition) can be granted." If the general characteristics or trappings of a tribunal closely resemble those of a court, even when it is exercising functions of a wide discretionary nature, then that tribunal can be said to have a duty to act judicially. The several provisions of Law No. 7 of 1978 leave no room for doubt that a duty has been vested in the Commission to act judicially. We are, therefore, convinced that the Special Presidential Commission of Inquiry is a body subject to the supervisory jurisdiction of this Court.

We have now to consider the grounds on which Prohibition can be granted. Of the several grounds, one which is well recognised by Administrative Law is "Lack of Jurisdiction." "Jurisdiction may be lacking if the tribunal is imcompetent to adjudicate in respect of the parties, the subject matter or the locally in question; or if the tribunal, although having jurisdiction in the first place, proceeds to entertain matters of make an order beyond its competence." **Judicial Review of Administrative Action** by **S. A. de Smith** (2nd Ed: p. 407). The same author goes on to state :

"A tribunal does not go beyond its jurisdiction merely by making a decision that is erroneous in law or fact or even one that is wholly unsupported by evidence. But if the trubunal's error relates to a collateral or preliminary matter upon which its jurisdiction depends, then certiorari may issue to quash its decision or prohibition may issue to prevent it from proceeding futher." (at page 408).

Learned Cousel for the Petitioner did not press the objection outlined in ground 2 above. In regard to ground 3 he did not contend that Law No. 7 of 1978 is pro tanto void. He conceded that the Law is a valid law. Its constitutional validity cannot indeed be challenged before us. What he contended was that in the interpretation of that law this court should apply the well recognised principles of statutory interpretation, and implement it so that it does not conflict with the Constitution of 1972, which was the basic law when legislation was enacted.

The basis of the 1st ground is that the warrant establishing the Commission is ultra vires the enabling law because it authorises an investigation into, and empowers the Commission to make findings of guilt and

recommendations for civic disability in respect of acts and conduct of the petitioner during a period anterior to the law, which recommendations would make her subject to penalties, disabilities and disqualifications with reference to such past conduct. The Special Presidential Commission of Inquiry Law does not expressly state that it is to have retrospective operation; nor could it be implied from surrounding circumstances that it was meant to be retrospective. Therefore the warrant establishing the Commission to inquire into such past conduct is bad, and the Commission would be acting unlawfully and without legal authority and in excess of its jurisdiction.

He supported his argument by reference to several text books and judicial decisions mainly concerned with the interpretation of statutes, and with the meaning Courts have placed on 'retrospectivity.' The contention of the learned Attorney-General is that the question of retrospectivity does not arise in this instance and that the law was meant to operate not only in the future, but also to embrace past wrong doings.

Perplexing analytical problems arise when the jurisdiction of a tribunal set up by Statute is challenged on the ground that the subject matter does not fall within a statutory description delienating its area of competence. The construction of the meaning of the statutory description then becomes all important. That meaning can best be understood after a brief reference to the machinery for inquiry and investigation that prevailed earlier. There was the Commissions of Inquiry Act (Cap. 393) in operation from 8th September, 1948 and which had been invoked for manifold purposes from time to time. That Act empowered the Governor General, and subsequently the President, to appoint a Commission of Inquiry to inquire into and report on various matters, including the conduct of members of the Public Service. Ministers of the Government and Members of the House of Representatives or of the National State Assembly did not come within the definition of members of the Public Service. There was, therefore a doubt as to whether that Act could be utilised to probe the conduct of Ministers and Members of Parliament. Although the Act did not specifically enable an inquiry to be held regarding the administration of any law or the administration of Justice, as is possible under the new law, yet if the administration of any law or the administration of Justice gave rise to a matter of public interest or public welfare, which in the opinion of the President merited an inquiry by a Commission, that Act may still have been invoked. The Act imposed no requirement, unlike the new law, that the members of the Commission should be Judges of Courts not below the rank of a District Court; yet there was no inhibition from appointing only judicial officers as members of a Commission. Lastly, the Act contained no provision similar to Section 9 of the new Law. As we see it, therefore, the Special Presidential Commissions of Inquiry Law was intended to fill a lacuna in the Commissions of Inquiry Act and to empower a Commission of Inquiry consisting of Judges of Courts not below that of a District Court, to inquire into, report upon, make findings of guilt and make recommendations imposing civic disabilities on not only members of the

Public Service, but on all Public Officers, including Ministers, Members of the National State Assembly, as well as State Officers, which term would inlcude Judges, by virtue of Article 105 of the Constitution of 1972. It will be seen, therefore, that new categories of persons whose conduct could be probed came within the purview of the Commission; new categories of misconduct, such as abuse of power, political victimisation and corruption could form the basis of findings of guilt; and a new type of disqualfication, namely, civic disability, could be recommended in the Report of the Commission. Finally, this Report, together with the recommendations, has to be published in the Gazette. The problem we are called upon to decide is whether, in the absence of express terms, we should construe the new law to apply retrospectively so as to embrace past misdeeds of former public officers, or whether we should construe it to apply to the future only.

There is in English jurisprudence a definite leaning against, though there is no constitutional limitation upon, legislation which is made expost facto or is retrospective in its effect. This is based on the well known maxim of law "Omnis nova constitutio futuris formam imponere debet, et non praeteritis" (Coke 2 Inst. 95 – 292) meaning – "that except in special cases the new law ought to be construed so as to interfere as little as possible with vested rights." Or as **Maxwell** has stated: "It is a fundamental rule of English Law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. The statement of the law contained in the preceding paragraph has been 'so frequently quoted with approval that it now enjoys almost judicial authority.' " – **Interpretation of Statutes** (12th Ed. 215 – 216.)

But it is clear that new law cannot always be solely prospective in its operation; it is almost certain to affect existing rights, and still more existing expectations. Although it may be intended to operate in the future it may infringe upon rights and duties which existed long before it came into being. This is particularly true of immovable property, which at some time or other must come within the ambit of every change in the law relevant to it. The rule of construction is, therefore, limited to this "a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless the effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation it ought to be interpreted as prospective only." – Per Wright J., **in re Athlumney**[7]

Numerous judicial expressions from distinguished judges can be cited to the same effect. We reproduce below just a few of them:–

"Retrospective laws are prima facie of questionable policy and contrary to the general principle that legislation by which the conduct of mankind

is to be regulated ought, when introduced for the first time, to deal with future acts and ought not to change the character of past transactions carried on upon the faith of the then existing law. Accordingly the court will not ascribe retrospective force to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature."

Willes J., in **Phillips v. Eyre** —(8)

"It is a general rule that where a statute is passed altering the law, unless the language is expressly to the contrary it is to be intended to apply to a state of facts coming into existence after the Act."

Cockburn C.J., in **Q. v. Ipswich Union**(9)

"There is an old and well known rule with regard to the consttuction of enactments affecting rights . . . . it is that unless the language is clear to the contrary, an enactment affecting rights must be construed prospectively only, and not retrospectively so as to affect rights acquired before the Act passed."

Sir Balliol Brett M. R., in **Turnbull v. Foreman**(10)

"It seems to me that even in construing an Act which is to a certain extent retrospective, and in construing a section (S.5 of the Married Women's Property Act, 1882) which is to a certain extent retrospective, we ought nevertheless to bear in mind that maxim (of Lord Coke) as applicable whenever we reach the line at which the words of the section cease to be plain. That is a necessary and logical corollary of the general proposition that you ought not to give a larger retrospective power to a section even in an Act which is to some extent tended to be retrospective, than you can plainly see the Legislature meant."

Bowen L.J., in **Reid v. Reid**(11)

One problem is, what are the rights and obligaitons to which the presumption applies? Attempts have been made to limit the doctrine to purely penal statutes which are concerned with crime and punishment. See **A. L. Goodhart** in (1950) 66 L.Q.R., 314. But this appears to be to place too narrow a construction on the principle. Even in the United States eminent Judges have enunciated the same rule of construction as is accepted in Englsih Courts. A reading of the law reports would show that the true rule of both English and American law is as stated by Maxwell :

"The rule has been applied chiefly in cases in which the statute in question, if it operated retrospectively, would prejudicially affect vested rights or the legality of past transactions or would impair contracts or

would impose new duties or attach new disabilities in respect of past transactions." p. 218.

The right impaired must be a "vested right" or an "acquired right" in the strict sense in order to raise the presumption. In **Starey v. Graham**[12] Channel J., defined a "right acquired" as "some specific right which in one way or another has been acquired by an individual and which some persons have got and others not."

The Attorney-General argued that Law No. 7 of 1978 is a law relating to procedure only, and that therefore the presumption against retrospectivity does not arise. He also submitted that this law does not have the effect of impairing any vested rights or of imposing any new disability. Thirdly, he contended that in any event there are strong circumstances indicating that the Legislature intended the law to have retrospective operation.

The question arises as to what is a procedural Statute? The Attorney-General referred us to the various provisions of the law to show that it has only established machinery for the investigation into conduct of persons, as well as administration of government departments and other bodies. Nowhere, he says, is there a statement of substantive law incorporated in the statute.

Mr. H. L. de Silva arguing contra contended that Section 9, defining disqualifications, is part of the substantive law, not found anywhere else in any other statute. Even in the Constitution of 1978 "civic disability" is interpreted as having the same meaning as in Law No. 7 of 1978. He, therefore, submitted that this law deals both with substantive law and with procedure.

Scott, L.J., defined a procedural statute thus : "as a general rule when one speaks of a procedural Act, one means it as an Act relating to proceedings in litigation." **(1939) 2 All E.R. 154 – 159.**

" . . . . . rules defining the remedy may be as much a part of the substantive law as are those which define the right itself. No one would call the abolition of capital punishment, for instance, a change in the law of criminal procedure. The substantive part of the criminal law deals, not with crime alone, but with punishment also. So in the civil law, the rules as to the measure of damages pertain to the substantive law, no less than those declaring what damage is actionable; and rules determining the classes of agreements which will be specifically enforced are as clearly substantive as are those determining the agreements which will be enforced at all. To define procedure as concerned not with rights, but with remedies, is to confound the remedy with the process by which it is made available.

What then, is the true nature of the distinction? The law of procedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions – jus quod ad actiones pertinet – using the term action in a wide sense to include all legal proceedings, civil or criminal. All the residue is substantive law, and relates, not to the processes of litigation, but to its purposes and subject matter."

Salmond, Jurisprudence – (11th Ed.) 503.

In **Attorney-General v. Vernazza**[13] Vernazza who was a vexatious litigant was prohibited from continuing litigation instituted by him even prior to the Supreme Court of Judicature (Amendment) Act 1959 which empowered the High Court to make an order that any legal proceedings instituted by a vexatious litigant in any court before the making of the order shall not be continued by him without the leave of the High Court because the amending Act was only a procedural law. Lord Denning observed that "the new Act does not prevent him from continuing proceedings which it is proper for him to carry on. It only prevents him from continuing proceedings which are an abuse of the process of the Court . . . . . This is no interference with a substantive right." at p. 100.

An Act which was held to be procedural as well as substantive is the Law of Property Act, 1969, which came into force on 1.1.1970; by Section 11 of that Act, Section 37(1) of the Landlord and Tenant Act, 1954, was amended to give the tenant a right to compensation notwithstanding the absence of an application to the Court for a new tenancy. The Act of 1969 did not state that section 11 had any retrospective operation. The tenants application for compensation made after 1.1.1970 was refused on the ground that landlords had an indefeasible right to recover possession without payment of compensation when the time limit for giving a counter notice under the 1954 Act had expired before the 1969 Act came into force. The Act of 1969 was not merely procedural, for it extinguished conditions which previously had to be fulfilled as a pre requisite to the emergence of a right to compensation, and if it were given a retrospective operation it would burden landlords with a claim to compensation which the tenants had lost. **(1971) 1 All E.R.** – 1.

We have no difficulty in reaching the conclusion that Law No. 7 of 1978 is not a merely procedural law. Section 9 deals with substantive rights. The Statute, therefore, deals both with procedural as well as substantive rights.

Both Mr. H. L. de Silva and the Attorney-General took us through a large number of decided cases in supporty of their respective positions on the second question we have to decide, namely, whether the new law has the effect of impairing any vested rights or attaching new disabilities in respect of past transactions. Cases on the construction of other Acts generally give very little help to the Court, but if there are any principles laid down by them, we ought not to disregard them in construing a different Act. We need, therefore,

only summarise the decisions in some of the more relevant cases cited before us.

In **R. v. Inhabitants of St. Mary, Whitechapel**[14] Denman, C.J., stated that a statute "is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its action." He said this in the course of interpreting section 2 of the Poor Removal Act, 1846, which provided that no woman residing in any parish with her husband at the time of his death shall be removed from such parish for 12 calendar months next after his death, if she so long continue a widow. It was sought to remove a widow whose husband had died before the Act was passed. The right to remove, it was argued, was a vested right which had accrued on the husband's death. It was held otherwise, for the clause, though prospective as to removals, might be construed retrospectively as to the conditions under which removals should or should not be lawful. Although the Attorney-General relied much on this decision, we do not think it is of much help in interpreting the present law by which disqualifications are sought to be attached not merely because certain conditions had been fulfilled prior to the law being enacted, but by virtue of past conduct, acts and omissions which may have been lawful at the time of their commission.

The case of **Master Ladies Tailors Organisation v. Minsiter of Labour**[15] was concerned with an order made under a schedule to an enabling Act making provision for holiday remunerations to employees, calculated on the basis of the normal wage to accrue from 1.5.1948, whereas the enabling Act provided for the making of a wage regulation order as from such date as may be specified in the order. The order came into force on 15.8.1949. It was argued that a provision for the accrual of remunerations before the order came into force made the order retrospective, and hence ultra vires the statute under which it was made. But Somerville L.J., held that the order was good. The fact that a prospective benefit is to be measured by antecedent facts did not make the provision for the benefit retrospective. Relying on the observation of Denman C.J., in the case referred to above, he said, "not every matter which is retrospective 'in a sense' is retrospective in the sense in which I have to apply the words in the present case." — at p. 528. It should be mentioned that a different section of the enabling Act expressly authorised order of a retrospective character.

In **West v. Gwynne**[16] the Court of Appeal had to construe section 3 of the Conveyancing Act, 1892, to determine whether the Act was of general application or whether its operation should be confined to leases executed after the commencement of the Act. The section provided that "in all leases" containing a covenant against assigning or undertaking without the license or cosent of the lessor, such covenant shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a provisio to the effect that no fine shall be payable for or in respect of such license or consent. It was held that the section was of general application applicable to all leases,

whether executed before or after the date the Act came into operation. In the first place the language of the section was perfectly general – the words used being "all leases." The other sections were also plainly general. Section 3 did not amend or make void any existing contract; it only provided that in the future, unless there is found an express provision authorising it, there shall be no right to exact a fine. In the Chancery Division, Joyce J., thought that the section did not take away any accrued right, nor was there any interference with past transactions, nor did it effect anything which may aptly be termed a vested right at all. The exacting of the fine for giving consent may correctly be called a 'privilege.'

Another statute which was held "not in truth retrospective" is the Solicitors (Amendment) Act, 1956. In **Re A Solicitor's Clerk**[17] a Solicitor's clerk had been convicted in 1953 on four charges of larceny of property not belonging to his employer or employer's clients. Section 16 of the Solicitor's Act, 1941, did not disqualify him from being employed as a solicitor's clerk by virtue of such conviction. The amending Act of 1956 amended Section 16 so as to include convictions for larceny irrespective of ownership. Goddard C.J., said "it enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future, and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect." What is important to note is that the Solicitor's clerk had no claim or right in the strict sense of that term, in the sense that there was a co-relative duty on the part of the employer to employ him, and there was, therefore, no impairing of any accrued right vested in the employee.

On the other side of the line is the case of **Moon v. Durden**[18]. By section 18 of the Gaming Act, 1845, "*all contracts or agreements* . . . . . by way of gaming or wagering, shall be null and void, and no suit shall be brought or maintained . . . . . for recovering any sum of money . . . . alleged to be due on a wager . . . . . " The question was whether its operation was retrospective, so as to affect past transactions and existing suits. Holding that the law applied only to the future, despite the use of the word "maintained," Baron Parke observed "This rule (of Lord Coke) . . . . . is deeply founded in good sense and strict justice." – p. 43. Said Baron Alderson in the same case: "In construing statutes, the general rule, as it seems to me, which ought to guide us in their construction, is that which has been stated. They are not to be supposed to apply to the past but to a future state of circumstances." – p. 40.

In **Re School Board Election for the Parish of Pulborough**[19] it was held that section 32 of the Bankruptcy Act, 1833, which provided that "Where a debtor is adjudged bankrupt" he shall be subject to certain disqualifications specified therein, had not a retrospective operation, and that therefore the disqualifications created by it did not attach to a person made a bankrupt before the passing of the Act.

Repeating, once again, that cases such as those cited above are of little help in construing our own Law No. 7 of 1978, except where they have laid down any general principles, we shall consider how the Law "impairs vested rights" or "attaches a new disability." By virtue of the Petitioner's election as a member of Parliament she acquired a right to sit and vote in Parliament. That gave her a right to participate in the proceedings in Parliament. She enjoyed all the privileges, immunities and powers of a member as are vested in a member by the Parliament (Powers & Privileges) Act (Cap. 383). They all form part of the general and public law of Ceylon, which have to be judicially noticed, in terms of Section 9 of the Act. All these rights, powers privileges and immunities, are rights in the larger sense, and which **Salmond** defines as "advantages or benefits which are in any manner conferred upon a person by a rule of law." – **Jurisprudence** (11th Ed) 270. They are interests protected by the law, and are therefore "vested rights" in the true sense of that term. If the disqualification contemplated in section 9 of the Law is imposed on the Petitioner there could be no doubt that these vested rights will be impaired.

A new disability is a disability which did not exist under the earlier law. The loss of civic rights for types of conduct such as are laid down in the new Law was not imposed by any existing law. This law has the effect of attaching such a new disability. In terms of section 36 of the 1972 Constitution, the seat of a member of Parliament became vacant only if he became subject to any of the disqualifications stipulated in sections 68 and 70. Section 68 dealt with the disqualification to be an elector; and section 70 dealt with the disqualification from being a member of Parliament. None of these sections comtemplated, as a disqualification, any recommendation by a Special Presidential Commission of Inquiry. So then, a new disability, a disability which the law did not recognise earlier, may be attached to a person against whom a finding of guilt on the basis of past conduct is reached, and a recommendation is made by the Commission that such person should be subject to a civic disability by reason of such past conduct.

The Attorney-General's next argument was that the finding of the Commission, and its recommendation, can never impair any acquired rights or attach any new disability without Parliament passing the necessary resolution under Article 81 of the Constitution of 1978.

In terms of that Article Parliament may or may not pass the resolution. The Cabinet of Ministers has to approve the resolution; thereafter it has to be introduced in Parliament by the Prime Minister, and it has to be passed by not less than two thirds of the whole number of Members (including those not present) voting in its favour. It is only then that civic disabilities become attached. The recommendation of the Commission, by itself, does not impose disability.

It was also his submission that the question as to whether Article 81

empowers Parliament to impose a disqualification by reason of any act done or omitted to be done by any person before or after the commencement of the Constitution, is a question involving the interpretation of the Constitution, which question has, by reason of Article 125, to be determined only by the Supreme Court.

Mr. de Silva's answer to this argument is that the combined effect of section 9 of the Law and Article 81 of the Constitution is to place a new jeapordy, to create a new hazard, a new risk, and thus seriously impair the legal rights vested in her by injuriously affecting those rights and weakening them. Section 9 is the first step in the process of attaching a new disability, whilst Article 81 is intended to be the final blow. Once a recommendation is made under Section 9, the judicial process cannot be invoked to prevent the complete extinction of rights and the infliction of a new disability by the machinery provided in Article 81. Section 9 therefore, has not merely threatened the extinction of the Petitioner's vested rights, but also threatened the creation of a new disability.

A finding of guilt and a recommendation for the imposition of civic disabilities constitute conditions precedent for action by the executive and the legislature under Article 81. If there is no finding of guilt and no recommendation under section 9 no action can be taken under Article 81. As stated by Halsbury, prohibition will more readily issue when a report is an integral and necessary part of a proceeding which will, when complete, have prejudicial effects on the civil rights of individuals (4th Ed. Vol I p. 105 para 83 note 9.) The Report of the Commission is a step in consequence of which legally enforceable rights may be extinguished, and new disabilities attached. We are, therefore, in agreement with Mr. de Silva on the effect of the Law read with the Constitution, and we take the view that it not only "impairs vested rights" but also "attaches a new disability."

The third plank of the Attorney-General's argument, on the question of one illustration. A Workers Compensation Act, first enacted in 1946, gave a rebutted by the surrounding circumstances under which the law was enacted. The rule against retrospectivity is a presumption only, and like all presumptions it can be rebutted. The presumption may be rebutted not only by express words but also by circumstances sufficiently strong to overcome it. **Craies on Statute Law** – (7th Ed.) says thus: "if it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation." (p. 392). The Attorney-General drew our attention to the definition of a "public officer" in Section 22 to include "a person who **was a public officer** at any time during the period specified in the terms of reference of the commission." By the use of these words did the Legislature intend to include within the ambit of the warrant the conduct of those public officers who were such before the date the law came into effect? Could not the words also be read as intended to apply to persons who were public officers during the

period between the date of the new law and the date of the issue of the warrant? Necessary intendment, in this context, has been said, in an Australian case, to mean "that the force of the language in its surroundings carries such strength of impression in one direction, that to entertain the opposite view appears wholly unreasonable." – **24 CLR 28 at 32.** Bearing in mind also the words of Wright J., in **re Athlumney**[7](above) that: "if the enactment is expressed in language which is fairly capable of either interpretation it ought to be interpreted as prospective only," we take the view that the language used in section 22 does not lead to the necessary inference of an intention that the law should apply retrospectively.

Although *Craies refers to the presumption being rebutted by necessary* implication from the language employed, Maxwell gives instances of rebuttal by the circumstances of the case. **The Sunshine Porcelain Potteries Case**[20] is one illustration. A workers Compensation Act, first enacted in 1946, gave a workman a right to compensation if a medical practitioner certified that he was suffering from a disease which was due to the nature of the employment in which he was employed at any time prior to the date of the disablement. The workman left employment in 1938 and developed symptoms of a disease known as silicosis in 1950. If the presumption against retrospectivity applied, then the workman would not have been entitled to compensation. The Privy Council held, however, that the presumption had been displaced by the circumstances. Silicosis was said to be a disease of slow onset and that a long period elapsed before the disease manifested itself. Therefore, said Lord Reid, (at page 938) "it cannot be supposed that the legislature intended that every worker disabled by this disease after 1946 must porve that the disease was contacted or that the damage was done to him after 1946, because that would involve there being a period of many years of uncertainity." We are in respectful agreement with the view; the circumstances of that case necessarily rebutted the presumption. It was necessary to do so to enable a workman who had contacted a serious disease to obtain statutory compensation. But when the presumption is sought to be rebutted to inflict a new disability, different considerations must necessarily prevail.

The decisions dealing with the imposition retrospectivelv of higher penalties for offences committed earlier, such as **D.P.P. v. Lamb,**[21] **Buckman v. Button**[22] and **R. v. Oliver,**[23] were decisions made during the War, on occasions involving the safety of the State (see (1960) 3 All E.R. 97 at 100 – Lord Denning.) Even so , they have been subject to criticism by jurists – vide **59 L.R. 199.**

The Attorney-General drew our attention to the fact that the Bill presented in Parliament by the Prime Minister on 30.1.1978 contains an endorsement, under Section 55(1) of the Constitution of 1972, that the Cabinet of Ministers had decided that the Bill was urgent in the national interest. It was passed in the Assembly and received the certificate of the Speaker on 10.2.1978. Supposing, argued the Attorney-General, the President

decided to issue a warrant under Section 2 on the next day, such a warrant would clearly embrace inquiry into the conduct of public officers during a period prior to 10.2.1978, and not after. He invited us to draw the inference from these circumstances that Parliament intended that the law should operate, not merely for the future, but also retrospectively. The answer to this argument, we think, is that the intention of the legislature cannot be inferred either from the view the Cabinet of Ministers had taken, or from any decision the President may have taken to establish a Commission the very day after the Law was passed. The intention of the legislature has to be gathered without recourse to the views or conduct of the executive branch of the Government, for very often the legislature may intend something different from what the executive desired. In this very Bill was a clause (clause 3) to the effect that no prerogative writs shall be granted or issued against the Commission, but the legislature had deleted that clause.

The Attorney-General referred us also to the background in which the legislation was enacted. The Commissions of Inquiry Act did not provide for any disqualification to flow from the findings of a Commission to set up under that Act. The Reports of those Commissions had to be given effect by independent Acts imposing disqualifications. The Attorney-General referred us to a statement made by the Prime Minister when introducing the Bill in Parliament, that effect would be given to the recommendations of the Special Presidential Commissions of Inquiry by making necessary provision in the new Constitution. Accordingly, Article 81 was incorporated in the Constitution promulgated on 7.9.1978. Does this background to the legislation provide us material sufficient to gather an intention on the part of the legislature that the law should apply to events which had occured prior to the law? Should we from these circumstances, infer an intention to impose new disqualifications for past wrong doing? We think not. Nor are we convinced that there is precedent to be found in the warrant establishing what was known as the "M. W. H. de Silva Commission." Although the warrant empowered that Commission to inquire into allegations of bribery against members of the Colombo Municipal Council made "at any time after 2.12.1943", that is during a period before the Commission of Inquiry Act of 1948 came into operation, the Colombo Municipal Council (Special Provisions) Act, No. 39 of 1949, which came into force on 5.8.1949 even before the Commission commenced its inquiry, empowered the Commission to inquire into allegations made during the period of the warrant. The Act of 1949, therefore, by express words made the warrant retroactive.

In the absence of express words or even of language from which an intention that the law should apply to past transactions could be gathered, the surrounding circumstances must point distinctly and unmistakably to an intention that the law should have that effect. We are unable to say that the combined effect of the language employed and the circumstances surrounding

this legislation point distinctly and unmistakably to an intention that the law should have retrospective operation.

We may now summarise our conclusions on the first ground relied on by the Petitioner. The Special Presidential Commissions of Inquiry Law does not contain express provision that it is to operate retrospectively. The language employed does not lead to the necessary inference that the legislature intended it to have a retrospective operation. Nor are the surrounding circumstances sufficiently strong to rebut the presumption against retrospectivity. Applying the well known canons of interpretations, we have to take the view that the Law is prospective only, meant to apply to future events, and conduct. The warrant empowering the Commission to inquiry into, report and make recommendations on the conduct of public officers and other persons prior to the date of the enactment of the Law is ultra vires the Law. The Respondents would thus be acting unlawfully, and without legal authority, in holding an inquiry and making recommendations against the Petitioner in respect of her conduct during the period specified in the warrant. The Petitioner is, therefore, entitled to a mandate in the nature of a Writ of Prohibition directed against the Respondens.

Before concluding this part of the Judgment we think it apt to reproduce the words of Lord Simon, President of the Probate, Divorce and Admirality Division, spoken when he had occasion to interpret certain provisions of the Matrimonial Proceedings and Property Act, 1970, as they succinctly apply to the legislation under consideration :

> "I hope that it will not be thought presumptous, if I suggest that it is desirable that whenever possible a statute should indicate in express and unmistakable terms whether (and, if so, how far) or not it is intended to be retrospective. The expenditure of much time and money would be thereby avoided."
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> **Williams v. Williams**[24]

Although the above finding on the first ground relied on by the Petitioner would suffice to dispose of this Application, we consider it necessary to deal with the other grounds as well. As stated earlier, the Counsel for the Petitioner did not press the second ground, which has as its foundation the Constitutional guarantee embodied in Article 13(6) of the new Constitution.

The third ground on which the Petitioner seeks relief, as explained by Counsel at the hearing, does not challenge the constitutional validity of Law No. 7 of 1978. Counsel's submission has been that in the application and interpretation of that law regard should be had to the provisions of Section 46 of the Ceylon (Constitution) Order-in-Council, 1946, and Section 92 of the Constitution of 1972, which were the basic laws during the period specified in the warrant.

Section 46(1) of the Order-in-Council was in the following terms :—

"There shall be a Cabinet of Ministers who shall be appointed by the Governor-General and who shall be charged with the general direction and control of the government of the Island and who shall be collectively responsible to Parliament."

Section 92 of the 1972 Constitution was in the following terms :—

"(1) There shall be a Cabinet of Ministers charged with the direction and control of the government of the Republic which shall be collectively responsible to the National State Assembly and answerable to the National State Assembly on all matters for which they are responsible.

(2) Of the Ministers, one who shall be the Head of the Cabinet of Ministers shall be the Prime Minister. The President shall appoint as Prime Minister the Member of the National State Assembly who, in the President's opinion, is most likely to command the confidence of the National State Assembly."

These provisions engrafted into our Constitutions the concept of "Collective Responsibility of the Cabinet," which in England yet rests on convention alone. Cabinet Ministers were chosen by the Prime Minister from the leading members of the party in power, or in the case of a coalition, from two or more parties forming the coalition. The Cabinet of Ministers was charged with the direction and control of the Government, and was made collectively responsible to, and answerable to, Parliament or the National State Assembly, on all matters for which they were responsible. The Cabinet was, therefore, the directing body of the National policy, and it forwarded that policy because of its majority in Parliament or the National State Assembly.

At the concept of collective responsibility is a concept drawn from the English Law, certain features of that concept as applicable to the Constitutions of 1946 and 1972 may be set out here. The Cabinet was to decide on the policy it was to pursue. It was a policy formulating body and "when it had decided on a policy, the appropriate department carried it out, either by administrative action within the law, or by drafting a Bill to be submitted to Parliament so as to change the law." — ***Jennings*** on **"Cabinet Government."** — (3rd Edition) p. 233.

The Cabinet was also a general controlling body. It is clear that where a real political issue was involved, the Cabinet's authority had to be obtained. It was not only the right of a Minister to consult the Cabinet on major matters but also his duty to do so. The Cabinet took decisions by a majority when it could not reach an agreed conclusion. The Cabinet deliberated in

secret, and its proceedings were confidential. On the basis of Cabinet papers submitted and as a result of the discussions amongst its members, the Cabinet came to a conclusion. "Two things follow: first, the decision is carried out by departments; secondly, the Members of the Cabinet and the Ministers and Junior Ministers outside the Cabinet who accept the decision, may be called upon to defend it." **Jennings** – p. 276.

"Collective responsibility" is formulated in the following terms : "for all that passes in Cabinet (said Lord Sailsbury in 1878) each member of it who does not resign is absolutely and irretrievably responsible, and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues . . . . . It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet, who after a decision is arrived at remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld, and one of the most essential principles of parliamentary responsibility established." – **Jennings** – p. 277.

A Minister who was not prepared to defend Cabinet decisions had, therefore, to resign. If a Minister did not resign, then he was responsible. From the Minister's point of view, it meant only that he had to vote with the Government, speak in defence of it if the Prime Minister insisted, and that he could not afterwards reject criticism of his act, either in Parliament or in the constituencies, on the ground that he did not agree with the decision. Cabinet Ministers were expected not merely not to oppose a Cabinet decision, but also to support it.

The concept of collective responsibility is different from the concept of individual responsibility of a Minister to Parliament. "The individual responsibility of a Minister to Parliament is more positive in character. Each in his own sphere bears the burden of speaking and acting for the Government. When a Minister announces that Her Majesty's Government has decided that they are prepared to take a certain course of action, it does not follow that the decision had to be referred to the Cabinet. No doubt it would have been on an important issue of policy; but if the decision related exclusively to the sphere for which the Minister is responsible, it must be at his discretion whom he chooses to consult beforehand; it is in the exercise of that discretion that he may decide to act without previous reference to his Cabinet colleagues." – **Wade & Phillips – Constitutional Law** – (7th Edition) pages 86 and 87.

The submission of Counsel has been that in the interpretation and application of Law No. 7 of 1978 regard should be had to the provisions of the Constitutions of 1946 and 1972, for "If the language used in a statute is reasonably susceptible of two construtions, one rendering it constitutional and the other not, the former must be adopted although the other is the more natural." – **Cooley** on **'Constitutional Limitations.'** p. 376.

This, really, is an argument that should be adduced before the Commission which has been empowered to decide on the conduct of persons specified in the warrant. It is not our function, at this stage, to decide whether a particular act or omission was conduct for which only one member of the Cabinet was responsible, or whether the Cabinet of Ministers was entirely responsible, or whether such conduct was justified under the basic laws then prevailing.

The basis of challenge set out in grounds 4 and 5 of the Petition is that the warrant is inconsistent with certain provisions of the Constitution of 1972, mainly sections 4, 5 and 106.

(a) In terms of section 4, the sovereignity of the people was exercised by the National State Assembly of elected representatives of the People: and by section 5, the Naitonal State Assembly was the Supreme Instrument of State power. The Warrant, by authorising the Commissioners who were not members of the Assembly to inquire into her conduct as a member of the Assembly, infringed on sections 4 and 5 of the Constitution.

(b) In terms of section 106, the Cabinet of Ministers was responsible for the appointment, transfer, dismissal and disciplinary control of state officers, and answerable only to the National State Assembly, and no institution administering justice had the power or jurisdiction to inquire into or in any manner call in question any decision of the Cabinet. The Warrant, by authorising the Commissioners to report on whether there have been irregularities in respect of appointments, transfers etc., infringed on section 106 of the Constitution.

Whereas the basis of challenge set out in ground 1 is that the Warrant is ultra vires the enabling law, the basis of challenge in grounds 4 and 5 is that the Warrant infringed certain provisions of the Constitution. Now, the warrant derives its authority from the enabling Law. The enabling Law was enacted by a sovereign Legislature by virtue of its legislative powers. The Supremacy of the National State Assembly was enshrined in section 44 of the Constitution which ordained that "the legislative power is supreme" and included the power to repeal or amend the Constitution or to enact a new Constitution to replace it. There was thus no legislative measure that the Assembly could not have taken, if it had the majority necessary to amend the Constitution. Section 52 provided that the Assembly could enact a law which in some particulars or respects was inconsistent with any provision of the Constitution without amending or repealing such provision, provided that such law was passed by the majority required to amend the Constitution.

The Bill to enable the establishment of Special Presidential Commissions of Inquiry was presented in the National State Assembly by the Prime Minister on 30.1.1978. If the Bill or any provision of it was inconsistent with

the provisions of Sections 4, 5 or 106 of the Constitutions, there was provision in Section 54 to refer it to the Constitutional Court. The decision of the Constitutional Court was to be conclusive for all purposes. If the decision of that Court was that there was no inconsistency, it was open to the National State Assembly to pass it with a bare majority; if its decision was that there was inconsistency, the Assembly yet had the power to pass it with the required special majority. In either event, when it received the Speaker's Certificate under Section 49, no institution administering justice had the power or jurisdiction, by virtue of the prohibition contained in Section 48, to inquire into, pronounce upon or in any manner call in question the validity of such law.

This law, therefore, is a valid law even if it be in some way inconsistent with certain provisions of that Constitution. It had gone through the machinery provided by the Constitution before it became law. Its validity cannot be questioned before us, even if the warrant issued under it infringes on certain provisions of that Constitution. Grounds 4 and 5 must therefore fail.

As the Petitioner has succeeded on the first ground set out in the Petition, we make order issuing a Writ of Prohibition on the Respondents, prohibiting the Respondents from proceeding to inquire into acts and omissions of the Petitioner during the period commencing May 29th 1970 and ending July 23rd 1977, from making findings of guilt in respect of the said acts and omissions, and from making recommendations under Section 9 of Law No. 7 of 1978 as to whether the Petitioner should be subject to civic disabilities by virtue of such findings of guilt.

The Petitioner will also be entitled to costs, which we fix at Rs. 1,500/-.

Before we conclude, we have to express our indebtedness to Counsel on both sides, whose assistance was invaluable in the difficult task we have had to perform.

Writ of Prohibition issued