MALCOLM PERERA, J.

At the outset I shall deal with the question as to whether this Bench of nine Judges has the jurisdiction to hear and determine the matters that are before it. The question of jurisdiction has been raised by Mr. Jayewardene and he contended that there have been certain irregularities in the manner in which these cases have come up before this Court by way of revision. He submitted, therefore, that all subsequent steps that have been taken leading up to the constitution of the present Bench were illegal.

An examination of the record shows that on the 14th of June, 1974, an application has been made by Mr. Jayewardene and Mr. Thiruchelvam before Alles, A.C.J., Vythialingam, J. and Gunasekera, J. for the exercise of the powers of the Chief Justice under section 14(3) (c) of the Administration of Justice Law No. 44 of 1973 in regard to S.C. Applications GEN/1 to 16 for the constitution of a Bench of five or more Judges since the matters referred to therein are of public and general importance.

On the 18th of June, after hearing Mr. Jayewardene, Mr. Thiruchelvam and Mr. Siva Pasupathi, Acting Solicitor-General, Alles, A.C.J. directed that these cases be listed for hearing on the 8th July, 1974, before a Bench of nine Judges as the matters in dispute are of general and public importance.

Since the direction of the learned Acting Chief Justice is proper and valid, I hold that the jurisdiction of this Bench to hear and determine the matters before it cannot be challenged.

In this situation, I think it is a fruitless exercise to examine the question of the alleged irregularities referred to by the learned Attorney. However in the course of his submissions, Mr. Jayewardene, amongst other matters, did advert to section 7 of the Administration of Justice Law which reads as follows:

> "The sittings of every Court shall be held in public, and all persons shall be entitled freely to attend such sittings. A Judge may, however, in his discretion, whenever he considers it desirable –
>
> (a) in any proceedings relating to family relations,
> (b) in any proceedings relating to sexual offences, or
> (c) in the interests of order and security within the Court premises exclude therefrom such persons as are not directly interested in the proceedings therein."

It is the duty of Court that its sittings shall ordinarily be held in public and all persons shall freely have access to attend such sittings, except in cases

where the Court, for good reasons, exclude from it those persons who are not directly interested in the proceedings.

The calling for records and examining them are matters ancillary to the exercise of judicial power. They do not themselves constitute judicial acts which ought to be performed at public sittings of Court.

The next question that I have to determine is whether, by virtue of the provisions of section 24 of the Interpretation Ordinance Amendment Act, No. 18 of 1972, an injunction would not be available under all circumstances against a Minister of State or an officer of State. It has been contended most strenuously by learned Attorneys for the Plaintiffs/Petitioner in these Applications that the preclusive provision does not apply to any act which has been done in bad faith. Mr. Jayewardene, who spearheaded the arguments submitted that the preclusion contained in section 24 is limited in its application to only such acts as are described in the words, "... in respect of any act done or intended or about to be done by any such person or authority in the exercise of any power or authority vested by law in any such person or authority", in section 24. He submitted that this "limitation clause" requires close examination.

On the other hand, the learned Acting Solicitor-General who appeared for the Honourable Minister submitted that the language in section 24 precludes the Court from granting an injunction, either permanent or interim, against the Minister whatever in law be the nature of his act.

Section 24 reads as follows:

> "24. (1) Nothing in any enactment, whether passed or made before or after the commencement of this Ordinance, shall be construed to confer on any Court, in any action or other civil proceedings, the power to grant an injunction or make an order for specific performance against the Crown, a Minister, a Parliamentary Secretary, the Judicial Service Commission, the Public Service Commission, or any member or officer of such Commission, in respect of any act done or intended or about to be done by any such person or authority in the exercise of any power or authority vested by law in any such person or authority.
>
> Provided, however, that the preceding provisions of this subsection shall not be deemed to affect the power of such Court to make, in lieu thereof, an order declaratory of rights of parties.
>
> (2) No Court shall in any civil proceeding grant any injunction or make an order against an officer of the Crown if the granting of the injunction or the making of the order would be to give relief against the Crown which could not have been obtained in proceedings against the Crown."

In interpreting an enactment, I think "the safer and the more correct course of dealing with a question of construction is to take the words themselves and arrive, if possible, at their meaning without, in the first place, reference to cases" – vide *Barrell v. Fordree,* [22] per Warrington, L.J.

The rule of construction is "to intend the Legislature to have meant what they have actually expressed". (Maxwell Interpretation of Statutes, 11th edition, page 4) Said Jervis, C.J. in *Mattison v. Hart* [23] "We ought ... give an Act of Parliament the plain, fair, literal meaning of its words. Where we do not see from its scope that such meaning would be inconsistent or would lead to manifest injustice." (vide Maxwell page 6).

An accepted rule of interpretation with regard to preclusive clauses and exclusionary provisions of which I am ever mindful is that they must be very strictly construed. In the case of *Hirdaramani v. Ratnavale* [24] Silva, S.P.J. (as he then was) stated: "It is a well established rule of construction that statutes as well as subsidiary legislation, which have the effect of infringing on the liberty of the subject must be very strictly construed. It behoves the Court, therefore, in interpreting the above provisions, to examine very carefully whether, in the final form in which they appear, precluded inquiry by the Court. It is beyond argument that the Courts can inquire into a complaint by an aggrieved party, in the first instance, that any particular rule, regulation or by-law is *ultra vires,* or that an enactment or rule has been misapplied in his case. It is also undoubtedly the duty of the Court, after such inquiry, either to pronounce on the validity of the rule or regulation, or, where the validity is not in doubt, to decide, *inter alia,* whether any power conferred on the executive by such rule or regulation has been exercised in terms of such provision strictly construed. In this case, Counsel for the appellant does not even contend that the Permanent Secretary, in terms or regulation 18(1) has no power to make an order of detention, nor does he contend that the Court's powers to question an order are not taken away by regulation 18(10) and regulation 35. His only contention is that such an order should be validly made, and when made, only then will the provisions contained in regulation 18(10) and regulation 55 preclude a Court from calling such order in question. For such an order to be validly made, the Permanent Secretary must, in my view, form an opinion on good faith, as he appears to have done in this case; and in forming such an opinion he may even take an incorrect decision by reason of wrong judgment on his part; but such an incorrect decision is not justiciable by reason of the provisions of section 8 of the Public Security Ordinance and regulation 18(10), and in the instant case,

[22] (1932) A.C. 676 at 682.
[23] (1854) 23 L.J.C.P. 108.
[24] (1971) 75 N.L.R. 67 at 104.

also by reason of regulation 55. If, of course, he acts in bad faith in making an order under regulation 18(1), the provisions taking away the right of the Court to call the order in question would not apply. On a very simple analysis of the language involved in this regulation, it seems to me that in such an event the Court's jurisdiction to interfere remains untouched because, when the Permanent Secretary acts in bad faith, he has obviously not made the order for detention because he is of the opinion that the person in respect of whom the order is made is likely to act in a manner prejudicial to the public safety and that he should be prevented from so acting because the Permanent Secretary has some other obvious reason. Many such reasons can be imagined, the simplest of which is that the officer is actuated by a personal motive." These words, I think, are apposite to the present case.

Further, in construing enactments which contain preclusive provisions like the one found in section 24, there are certain implied exceptions which must be considered with great care by the Court. In the case of *Anisminic Ltd. v. Foreign Compensation Commission and Another,* (supra) Lord Wilberforce said; "In every case whatever the character of a tribunal, however wide the range of questions remitted to it, however great the permissible margin of mistake, the essential point remains that the tribunal has a derived authority, derived, that is from statute, at some point, and to be found from a consideration of the legislation the field within which it operates is marked out and limited. There is always an area narrow or wide which is the tribunal's area, a residual area wide or narrow in which the legislature has previously expressed its will and into which the tribunal may not enter. Equally, though this is not something that arises in the present case, **there are certain fundamental assumptions which,** without explicit restatement in every case, necessarily underlie the remission of power to decide such as (I do not attempt more than a general reference, since the strength and the shade of these matters will depend on the nature of the tribunal and the kind of question it has to decide) the requirement that a **decision must be made in accordance with the principles of natural justice and good faith.**

In the case of *Hirdaramani v. Ratnavale* (supra at 106) Silva, S.P.J. stated: **"It will thus be that *mala fides* be an implied exception to any exclusionary provisions of this nature which, on the face of it, precludes a court from questioning the validity of an order made thereunder.** When the subject complains to Court of an order restraining his liberty therefore a court is obliged not merely to take a look at the face of the order, but to go behind it and satisfy itself whether it has been validly made. It will be most uncharitable to the legislature of a country in any part of the world

for a court to hold that, in enacting provision similar to those under consideration, its intention was to preclude a court from examining an order made under circumstances such as those I have endeavoured to illustrate. So to do would expose the courts to the criticism of interpreting the provision not in accordance with a reasonable intention of the legislature, but in the teeth of it."

Thus, the Court will imply limitations into an ostensible unfettered grant of power. Corruption, fraud or absence of good faith, though they may not be specifically stated in the enactment, are always deemed to be implied exceptions. It is stated in Maxwell: "**Enactments which confer powers are so construed as to meet all attempts to abuse them,** either by exercising them in cases not intended by the statute or by refusing to exercise them when the occasion for their exercise has arisen. Though the act done was ostensibly in the execution of statutory power and within its letter, **it would nevertheless be held not to** come within the power **if done otherwise** than honestly and in the spirit of the enactment. (Pages 116-117).

It was submitted by the learned Solicitor-General that no statute can be interpreted in the abstract without considering the surrounding circumstances. He submitted that the intention of Parliament must be ascertained, for which purpose he invited Court to examine the speech made by the Honourable Felix R. Dias Bandaranaike, much of which he read out in Court, and the speech of the Honourable Dr. Colvin R. de Silva.

I must confess that I am unwilling to embark on a hazardous voyage of discovery on the tempestuous sea of Parliamentary speeches seeking to ascertain the intention of the legislature. "Intention of the legislature is a common but very slippery phrase which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably could have meant, although there has been an omission to enact it. In a Court of Law or equity what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication." *Saloman v. A. Saloman & Co. Ltd.* [25].

Says Caries: "The meaning which words ought to be understood to bear is not to be ascertained by any process akin to speculation; the primary duty of a court of law is to find a natural meaning of words used in the context in which they occur, that context including any other phrase in the Act which may throw light on the sense in which the makers of the Act used the words in dispute." (Statute Law, 7th Edition, page 66).

[25] (1897) A.C. 22 at 38.

I think the duty of the Court is to interpret strictly the words that Parliament has used. Even if the words are ambiguous, Court's power to travel outside those words on a voyage of discovery is strictly restricted. I do not think it is desirable for a court to attempt to ascertain what Parliament intended by examining the Parliamentary speech of a Minister, for what a Minister intended may not always be what the Parliament intended. What the Parliament intended should be gathered from the plain words of the Act. In the case of *Magor and St. Mellons Rural District Council v. New Port Corporation,*[26] Lord Simonds said: "... nor should I have thought it necessary to add any observation of my own were it not that the dissenting opinion of Denning, L.J. appears to invite some comment.

My Lords, the criticism which I venture to make of the judgment of the learned Lord Justice is not directed at the conclusion that he reached. It is after all a trite saying that on question of construction different minds may come to different conclusions, and I am content to say that I agree with my noble and learned friend. But, it is on the approach of the Lord Justice to what is a question of construction and nothing else that I think it desirable to make some comment, for, at a time when so large a proportion of the cases that are brought before the Courts depend on the construction of modern statutes, it would not be right for this house to pass unnoticed the propositions which the learned Lord Justice lays down for the guidance of himself and, presumably, of others. He said:

> "We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis." [26a]

The first part of this passage appears to be an echo of what was said in Heydon's case three hundred years ago, and, so regarded, is not objectionable. But, the way in which the learned Lord Justice summarises the broad rules laid down by Sir Edward Coke in that case may well induce grave misconception of the function of the Court. The part which is played in the judicial interpretation of a statute by reference to the circumstances of its passing is too well known to need restatement. It is sufficient to say that the general proposition that it is the duty of the Court to find out the intention of Parliament – and not only of Parliament but of Ministers also – **cannot by any means be supported.** The duty of the Court is to interpret the words that the legislature has used."

[26] (1951) 2 All E.R. 839 at 841.

[26a] (1950) 2 All E.R. 839 at 1236.

Mr. Jayewardene, on the other hand, requested Court to scrutinize the corresponding provisions contained in the Interpretation (Amendment) Bill. I am not inclined to follow this course either. I am not unmindful that in the case of *de Costa v. Bank of Ceylon* [27], Court departed from the rule that resort to a Statement of "Objects and Reasons should not ordinarily be made when interpreting a statute. In that case Fernando, C.J. stated: "The legislature in enacting the Ordinance of 1927 stated in the long title its purpose 'to declare the law relating to bills of exchange, cheques, banker's drafts and promissory notes'. A statement of the same purpose was contained in the Statement of Objects and Reasons which was appended to the draft Ordinance in the Gazette No. 7539 of July 30, 1926 (Part II). This Statement included as a reason for introducing the draft Ordinance the fact that Judges of our Courts did not readily have available copies of the English Bills of Exchange Act, which, at that stage, was the law which those Judges had to apply. So unusual a reason for the introduction of a draft Ordinance which professed to declare the law would justify a departure from the rule that resort to a Statement of Objects and Reasons should not ordinarily be made when constructing a statute; but I reply on the Statement in this instance only for the lesser purpose of underlining the legislature's intention to declare the law". But, in the present case, I think the language of the section is simple, plain and crystal clear. Hence, I prefer to be guided by the words of Lord Halsbury: "I very heartily concur in the language of Fitz Gibbon, L.J. that we cannot interpret the Act by any reference to the Bill, nor can we determine its construction by any reference to its original form" – (*Herron v. Rathmines Commissioners* [28]) and Rathgar Improvement.

On an analysis of section 24, it appears to me that the key words in the limitation clause are **"in the exercise** of any power or authority". For the preclusive clause to take effect the exercise of a power by the Minister must be real or genuine as opposed to a purported exercise of power. Mr. Pullenayagam, in his forceful though concise submissions, stated that the exercise of power by the Minister must be genuine and not mere ostensible use of power. It was his submission that an ostensible exercise of power has overtones of *mala fide*. He contended that the Court must be vigilant to ascertain whether the Minister's exercise of power was real. He drew attention to section 22 where the words, "in the exercise of apparent exercise of the power ...", occur. It was his contention that if the legislature intended to cover purported exercise of power in section 24, the legislature would have explicitly stated so as it has done in section 22. Neither the brevity of his submissions nor the frugal consumption of the time of Court by him lessened the force or the persuasiveness of Mr. Pullenayagam's arguments. I am inclined to assent to his submission.

[27] (1969) 72 N.L.R. 457 at 470.

[28] (1892) A.C. 498 at 501.

"In the case of *Anisminic Ltd. v. The Foreign Compensation Commission and Another* (supra), the following words of section 4 (iv) of the Foreign Compensation Act 1950 came up for consideration. "The determination by the Commission of any application made to them under this Act shall not be called in question in any Court of Law". The Commission maintained that the above words are plain and capable of having only one meaning. "Here is determination which is apparently valid; there is nothing on the face of the document to cast any doubts on its validity. If it is a nullity that could only be established by raising some kind of proceedings in Court. But that would be calling the determination in question, and that is, expressly prohibited by the statute". On the other hand, it was the contention of the Appellants that 'determination' meant a real determination and did not include an apparent or, purported determination which, in the eyes of the law, has no existence because it is a nullity. "Or, putting it in another way, if one seeks to show that the determination is a nullity, one is not questioning the purported determination – one is maintaining that it does not exist as a determination". On an analysis of section 4(iv) of the Foreign Compensation Act, Lord Pearce had this to say... "It has been argued that Your Lordships should construe 'determination' as meaning anything which is on its face a determination of the Commission including even a purported determination which has no jurisdiction. It would seem that on such an argument, the Court must accept and could not even inquire whether a purported determination was a forged or inaccurate order which did not represent that which the Commission had really decided. Moreover, it would mean that however far the Commission ranged outside their jurisdiction, or that which they were required to do, or however far they departed from natural justice, their determination could not be questioned. **A more reasonable and logical construction is that by 'determination', Parliament meant a real determination, not a purported determination.** On the assumption, however, that either meaning is a possible construction and that therefore the word 'determination' is ambiguous, the latter meaning would accord with a long established line of cases which adopted that construction. One must assume that Parliament in 1950 had cognizance of these in adopting the words used in section 4(iv)".

The learned Solicitor-General submitted that section 22 removed the jurisdiction of the Court, whereas in section 24, there was only the removal of one remedy. That being so, he submitted that when the legislature used the words "in the exercise of any power or authority" in section 24, it also covered purported exercise of power. It was his submission that the word 'purported' is implied in section 24. I am of

the view that a literal reading of section 24 does produce an intelligible result and there can be no ground for reading any words or altering words or changing words according to what may be the supposed intention of Parliament. "It is but a corollary to the general rule of literal construction that nothing is to be added to or to be taken from a statute, unless there are similar adequate grounds to justify the inference that the legislature intended something which it omitted to express". (Maxwell, page 12) "It is a wrong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is **wrong thing to do".** (*Thompson v. Goold* [29]) "We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself". (*Vickers v. Evans* [30]) I do not see any good reason within the four corners of the Act, No. 18 of 1972 to read words into it. "Words plainly should not be added by implication into statute unless it is necessary to do so to give the language sense and meaning in its context.

To read in any word to the crystal clear language of section 24, "it appears to me a naked usurpation of the legislative function under the thin guise of interpretation".

To assent to the submission of the learned Solicitor-General would involve me in the unhallowed task of usurping the function of the legislature. I must confess that I shrink from interposing my hand to fill in gaps that are supposed to exist in section 24. If, in fact, such a gap is discovered, the remedy is solely in the hands of the legislature by way of an amending Act.

The learned Solicitor-General most strongly relied on the majority decision in the case of *Smith v. East Elloe Rural District Council and Others,* (supra). In that case, "The appellant was the owner of land and a dwelling-house in respect of which a compulsory purchase order was made and confirmed in 1948. In 1954 the appellant commenced an action against the Rural District Council who made the order against P, the clerk to the Rural District Council, and against the Ministry of Health who confirmed the order, and, the Ministry's successors, the Ministry of Housing and Local Government, claiming against the Council and the Ministry declarations that the compulsory purchase order was made or confirmed wrongfully and in bad faith, and against P, a declaration that he wrongfully and in bad faith procured compulsory purchase order and its confirmation and damages. The defendants applied to have the writ and all subsequent proceedings set aside for lack of jurisdiction on the ground that under the Acquisition of Land (Authorisation Procedure) Act, 1946, Sch. I, Part 4, para 16

[29] (1910) A.C. 409 at 420. [30] (1910) A.C. 444.

which reads: "Subject to the provisions of the last foregoing paragraph, a compulsory purchase order or a certificate under Part 3 of this Schedule shall not, either before or after it has been confirmed, made or given be questioned in any legal proceedings whatsoever, and shall become operative on the date on which notice is first published as mentioned in the last foregoing paragraph".

Viscount Simonds said: "In this House a more serious argument was developed. It was that as the compulsory purchase order was challenged on the ground that it had been made and conferred wrongfully and in bad faith, paragraph 16 had no application. It was said that that paragraph, however general its language, must be construed so as not to oust the jurisdiction of the Court where the good faith of the Local Authority or the Ministry was impugned and put in issue. Learned Counsel for the appellant made his submission very clear. It was that where the words "compulsory purchase order" occur in these paragraphs they are to be read as if the words made in good faith" were added to them.

My Lords, I think that anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting jurisdictions of the courts whether in order that the subject may be deprived altogether of remedy, or in order that his grievance may be remitted to some other tribunal. But, it is our plain duty, to give the words of an Act their proper meaning, and, for my part, I find it quite impossible to qualify the words of the paragraph in the manner suggested. It may be that the legislature had not in mind the possibility of an order made by a Local Authority in bad faith, or even the possibility of an order made in good faith being mistakenly, capriciously or wantonly challenged. This is a matter of speculation. What is abundantly clear is that the words which are used are wide enough to cover any kind of challenge which any aggrieved person may think fit to make. I cannot think of any wider words. Any addition would be mere tautology. But, it is said, let those general words be given their full scope and effect, yet they are not applicable to an order made in bad faith. But, My Lords, no one can suppose that an order bears on its face the evidence of bad faith. It cannot be predicated of any order that it has been made in bad faith until it has been tested in legal proceedings, and it is just that test which para 16 bars. How, then, can it be said that any qualification can be introduced to limit the meaning of the words? What else can "compulsory purchase order" mean but an act apparently valid in the law, formally authorised, made and confirmed?

It was urged by learned Counsel for the appellant that there is a deep-rooted principle that the legislature cannot be assumed to oust the jurisdiction of the Court, particularly where fraud is alleged, except by clear words, and a number of cases were cited in which the Court has

asserted its jurisdiction to examine into an alleged abuse of statutory, power, and if necessary, correct it. Reference was made too to Maxwell on Interpretation of Statutes (10th Edition) to support the view, broadly stated, that a statute is, if possible, so to be construed as to avoid injustice. My Lord, I do not refer in detail to these authorities only because it appears to me that they do not override the first of all principles of construction that plain words must be given their plain meaning. There is nothing ambiguous about para 16: there is no alternative construction that can be given to it; there is, in fact, no justification for the introduction of limiting words such as "if made in good faith", and there is the less reason for doing so when these words would have the effect of depriving the express words "in any legal proceedings whatsoever" of their full meaning and content.

Lord Reid, in his dissentient judgment, quoted with approval the dictum of Lord Greene in the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation:* [31] **"The exercise of such discretion must be a real exercise of discretion".**

Lord Reid went on to say: "In my judgment para 16 is clearly intended to exclude, and does exclude, entirely all cases of misuse of power in *bona fide.* **But, does it also exclude the small minority of cases where deliberate dishonesty, corruption or malice is involved?** In every class of case that I can think of the Courts have always held **that the general words are not to be read as enabling a deliberate wrongdoer to take advantage of his own dishonesty.** Are the principles of statutory construction so rigid that these general words must be so read here? Of course, if there were any other indications in the statute of such an intention beyond the mere generality of the words that would be conclusive; but I can find none.

In his dissentient judgment, Lord Somervell of Harrow said: *Ultra vires* and *mala fides* are, *prima facie,* matters for the courts. **If the jurisdiction of the courts is to be ousted, it must be done by plain words.**

'*Mala fides*' is a phrase often used in relation to the exercise of statutory powers. It has never been precisely defined as its effects have happily remained mainly in the region of hypothetical cases. It covers fraud or corruption. As the respondents have moved before the bad faith has been particularised, one must assume the worst. It has been said that bad faith is an example of *ultra vires* and observations to this effect are relied on by the respondents in support of their submission

[31] (1947) 2 All E.R. 680.

that the words "not empowered to be granted" in para 15 of Schedule 1 to the Act cover cases where fraud or corruption is relied on, although, on the face of it, there is no irregularity. The following passages from Warrington, L.J. in *Short v. Poole Corporation*[32] is perhaps the most favourable to this argument:

> "My view then is that the only case in which the Court can interfere with an act of a public body which is, on the face of it, regular and within its powers, is when it is proved to be in fact *ultra vires,* and that the references in the judgments in the several cases cited in argument to bad faith, corruption, alien and irrelevant motives, collateral and indirect objects and so forth are merely intended when properly understood as examples of matters which, if proved to exist, might establish the *ultra vires* character of the act in question".

This way of describing the effect of bad faith should not be used to blur the distinction between an *ultra vires* act done *bona fide* and an act on the face of it regular but which will be held to be null and void if *mala fides* is discovered and brought before the court. The division in law is clear and deep.

In the Anisminic case (supra) Lord Reid stated that the East Elloe case (supra) gave most difficulty. He, however, expressed the view that he "cannot regard it as a satisfactory case". Lord Reid went on to say: "I would have expected to find something more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly, such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word 'determination' as including everything which purports to be a determination but which is in fact no determination at all and there are no degrees of nullity. There are a number of reasons why the law will hold a purported decision to be a nullity ... I have come without hesitation to the conclusion that in this case we are not prevented from inquiring whether the order of the Commission was a nullity.

Sometimes anterior to the House of Lords decision of the Anisminic case, the Supreme Court of India in the case of *Somawanti v. The State of Punjab* [33], declined to be persuaded by the decision of the East Elloe case. The Indian case was one in regard to acquisition proceedings under their Land Acquisition Act. The question arose whether the declaration of the Government under section 6(1) of the Act that the land was required

[32] (1926) 6 Ch. 66 at 91.

[33] (1963) A.I.R. S.C. 151.

for a public purpose was final. It was pointed out that it was for the Government to be satisfied in a particular case that the purpose for which the land was needed was a public purpose and the declaration of the Government under section 6(1) of the Act will be final, subject, however, to one exception, namely – **In the case of colourable exercise of the power, the declaration is open to challenge at the instance of the aggrieved party.** The Power conferred on the Government by the Act is a limited power in the sense that it can be exercised only where it is for a public purpose ... **If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all, the action of the Government would be colourable as being outside the power conferred upon it by the Act and its declaration under section 6 of the Act will be a nullity.** "The question whether a particular action was the result of fraud or not is always justiciable. The condition for the exercise of the power by the State Government is the exercise of a public purpose, and if the Government makes a declaration under section 6(1) in fraud of the powers conferred upon it by that section, the satisfaction on which the declaration is made is not about a matter with respect to which it is required to be satisfied by the provision and therefore its declaration is open to challenge as being without any legal effect". (Vide also *Raja Anand v. The State of Uttar Pradesh* [34]).

I have quoted extensively from the East Elloe case and the Anisminic case as Counsel on both sides have made repeated reference to those cases in the course of their arguments. I find myself unable to regard the East Elloe case as a reliable solvent of the question that arises in the present case, nor is that case a very satisfactory one as stated by Lord Reid.

S. A. de Smith says: "If a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. But, where the Courts have disclaimed jurisdiction to determine whether the prescribed purposes have in fact been pursued, because the relationship between the subject-matter of the power to be exercised and those purposes is placed within the sole discretion of the competent authority (as where a power is exercisable if it appears to that authority, or expedient for the furtherance of those purposes), they have still asserted jurisdiction to determine whether the **authority has in good faith endeavoured to act in accordance with the prescribed purposes".** (Judicial Review of Administrative Action, 2nd Edition, page 315).

[34] (1967) A.I.R. Vol. 54.

In the case of *Carltona Ltd. v. Commissioners of Works and Others* [35], Regulation 51(1) of the Defence (General) Regulations came up for consideration. The said Regulation reads as follows: "A Competent Authority, if it appears to that Authority to be necessary or expedient so to do in the interests of public safety, the defence of the realm, or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may take possession of any land and may give such directions as appear to the Competent Authority to be necessary or expedient in connection with the taking of possession of land". The court of Appeal held that Parliament has committed to the executive discretion of deciding when an order for the requisition of premises should be made under the regulation, and with the discretion, if *bona fide* exercised, no Court could interfere. Lord Greene M. R. stated: "It has been decided as clearly as anything can be decided that where a regulation of this kind commits to an executive authority the decision of what is necessary or expedient and that authority makes that decision, it is incompetent to the Courts to investigate the grounds or the reasonableness of the decision **in the absence of an allegation of bad faith.** If it were not so it would mean that the Courts would be made responsible for carrying the executive government of this country on these important matters, Parliament, which authorises these regulations, commits to the executive the discretion to decide, and with that discretion, if *bona fide* exercised, no Court can interfere. All that the Court does is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and to see that those powers are exercised in good faith".

In the case of *David v. Abdul Cader* [36], the Privy Council held that an applicant for a statutory licence is entitled to damages if there has been a malicious misuse of the statutory power to grant the licence. Viscount Radcliffe stated: "In Their Lordships' opinion, it would not be correct today to treat it as establishing any wide general principle in this field; certainly it would not be correct to treat it as sufficient to found the proposition, as asserted here, that an applicant for a statutory licence can in no circumstances have a right to damages if there has been a malicious misuse of the statutory power to grant the licence. much must turn in such cases on what may prove to be the facts of the alleged misuse and in what the malice is found to consist. The presence of spite or ill-will may be insufficient in itself to render actionable a decision which has been based on unexceptionable grounds of consideration and has not been vitiated by the badness of the motive. But a 'malicious'

[35] (1943) 2 All E.R. 560.

[36] (1965) 65 N.L.R. 253 at 257.

misuse of authority, such as is pleaded by the appellant in his plaint, may cover a set of circumstances which go beyond the presence of ill-will, and in Their Lordships' view it is only after the facts of malice relied upon by a plaintiff have been properly ascertained that it is possible to say in a case of this sort whether or not there has been any actionable breach of duty.

In Canadian case of *Roncarelli v. Duplessis*, (supra) Rand J. said: "The field of licensed occcupations and business of this nature is steadily becoming of greater concern to citizens generally. It is a matter of vital importance that a public administration that can refuse to allow a person to enter or continue a calling which, in the absence of regulation, would be free and legitimate, should be conducted with complete impartiality and integrity; and that the grounds for refusing or cancelling a permit should unquestionably be such and such only as are incompatible with the purposes envisaged by the statute; the duty of a Commission is to serve those purposes and those only. A decision to deny or cancel such a privilege lies within the 'discretion' of the Commission; but, that means that decision is to be based upon a weighing of considerations pertinent to the object of the administration.

In public regulation of this sort there is no such thing as absolute and untrammelled 'discretion', that is, that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no Legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes, but they are always implied as exceptions. 'Discretion' necessarily implies good faith in public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption".

In the case of *Hirdaramani v. Ratnavale* (supra), Samarawickrema, J. considered regulation 5 of the Emergency Regulations which reads thus:

> "Section 45 of the Courts Ordinance shall not apply in regard to any person detained or held in custody under any Emergency Regulation".

He said "Clause 55 refers to a 'person detained in custody'; it does not state 'purported to be detained' or 'detained in custody under colour of any Emergency Regulation' ". This takes away the right to habeas corpus. This is a valuable right for safeguarding individual liberty. A provision which restricts rights of this kind must be given no greater effect than the plain

meaning of the words require. In *A.G. for Canada v. Hallet & Carey Ltd.*[37], the Privy Council construed a provision and held that it did empower the taking away of a right, but at page 450 Lord Radcliff stated the general principles thus; "It is fair to say that there is a well-known general principle that statutes which encroach upon the rights of the subject, whether as regards person or property, are subject to a strict construction. Most statutes can be shown to achieve such an encroachment in some form or another, and the general principle means no more than that; where the import of some enactment is inconclusive or ambiguous, the Court may properly lean in favour of an interpretation that leaves private rights undisturbed . . .".

"I am, therefore, of the view that Regulation 55 will not apply to the case of a person unlawfully detained under an invalid detention order made in abuse of the powers conferred by Regulation 18(1)".

In the case of *Gunasekera v. Ratnavale*[38], Wijayatilake, J. stated . . . For instance, if the Permanent Secretary has been misled by some subordinate officer and in the result he makes an order which is clearly not in the public interest but to satisfy some private grudge, **could it be said that the Court has no jurisdiction to even look into an allegation of *mala fide*?** I do not think the East Elloe case stands in the way of arriving at the conclusion that this Court is not precluded from entertaining an application of this nature". ". . . In my opinion, the rules of interpretation in that case should not be extended to a case such as this where the right to question the order is challenged and there is no question of prescription. On the other hand, the Anisminic case appears to be more in point although they were dealing with the determination of a tribunal".

In the Indian case of *Pratap Singh v. State of Punjab*[39], the Supreme Court remarked: "The two grounds of *ultra vires* and *mala fides* are thus most inextricably mixed. To regard it as a question of *ultra vires,* the question is. what is the nature of the power which has been granted to achieve a definite object? in which case **it would be conditioned by the purpose for which it is vested. . .** The nature of the power thus discloses the purpose. In this context, the use of that power for achieving an alien purpose — wreaking the Minister's vengeance on the officer would be *mala fide* and a colourable exercise of that power and would therefore be struck down by the Courts".

[37] (1952) A.C. 427.
[38] (1972) 76 N.L.R. 316 at 345.
[39] (1964) 51 A.I.R. 72.

In the South African case of the *Minister of Justice and Law and Order and Attorney-General v. Masarurwa and Others*[40], Quenet, J.P. said: "In a word in exercising the first power the 1st respondent was not influenced simply by a desire to give effect to the purposes of section 50, subsection 1(b). The desire was to achieve a result not contemplated by that section.

The only limitation upon the power which section 51 confers upon the Minister is that he will exercise it honestly and *bona fide* and without regard to any ulterior motive . . . In the present case it is conceded that the 1st appellant acted in good faith. Nor is it alleged that there was a want of serious and honest consideration of the matter, but it is said, and I think rightly, that there was an **ulterior motive which substantially affects his position** — a desire to bring about a result not contemplated by section 50 of the Act". In the case of the *African Reality Trust Ltd. v. Johannesburg Municipality*[41], the following words quoted by Wessels, J. in his judgment are very helpful: "If a public body or an individual exceeds its powers, the court will exercise a restraining influence. And if, while ostensibly confining itself within the scope of its powers, it nevertheless acts *mala fide* or dishonestly, or for ulterior reasons which ought not to influnce its judgment, or with an unreasonableness so gross as to be inexplicable, except on the assumption of *mala fides* or ulterior motive, then again the court will interfere. But, once a decision has been honestly and fairly arrived at upon a point which lies within the discretions of the body or person who has decided it, then the court has no functions whatever. It has more power than a private individual would have to interfere with the decision merely because it is not one at which would have itself arrived.

Mr. Jayewardene submitted that the language used in section 88 of the Police Ordinance is almost identical with the limitation clause in section 24(1). Section 88 of Cap. 53 reads as follows:

> "88. All actions and prosecutions against any person which may be lawfully brought for anything done or intended to be done under the provisions of this Ordinance, or under the general police powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the principal officer of the district in which the act was committed, one month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant".

[40] (1964) 4 S.A.L.R. 209 at 224.

[41] (1906) T.L.R. 908 at 913.

In the case of *Perera v. Hansard,* (supra), page 1, it was held that as the defendant did not act *bona fide* in obtaining a warrant, therefore his act was not anything done or intended to be done under the provisions of the Ordinance, and in the result the defendant was not entitled to notice. A similar view was taken in the cases reported in 4 C.W.R. 258, 23 N.L.R. 192, and 29 N.L.R. 139. Mr. Jayewardene further submitted that section 461 of the Civil Procedure Code gives protection to the State as well as public officers in respect of acts done by them in their official capacity, as the Civil Procedure Code insists that notice of action must be given. Section 461 reads as follows:

> "461. No action shall be instituted against the Attorney-General as representing the Crown, or against a Minister, Parliamentary Secretary, or public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of one month next after notice in writing has been delivered to such Attorney-General, Minister, Parliamentary Secretary, or officer (as the case may be), or left at his office, stating the cause of action and the name and place of abode of the person intending to institute the action and the relief which he claims; and the plaint in such action must contain a statement that such notice has been delivered or left".

It was the submission of Mr. Jayewardene that the Supreme Court has interpreted the qualifying words. "in respect of an act purported to be done by him in his official capacity", in the same manner as section 88 of the Police Ordinance which excluded malicious acts. The cases of *Appu Singho v. D. Aaron* (supra); *Abraham Appu v. Banda*[42]; *Saranankara v. Kapurala Aratchi* [43], were cited in support of his contention. However, I find that in *de Silva v. Ilangakoon,* (supra) Basnayake, C.J. held that the section, in using the word 'purport' was made applicable to malicious acts as well. This view was followed by Basnayake, C.J. in *Ediriweera v. Wijesuriya*[44]. In the case of *Ratnaweera v. The Superintendent of Police*[45] , Wijewardena, C.J. stated (*Obiter*): "I wish to place on record my opinion that *Appu Singho v. Don Aaron* (supra), 138, and *Abraham Appu v Banda,* (supra) have taken too restricted a view of the scope of 461 when they laid down that the section did not apply to a public officer acting *mala fide*".

The learned Solicitor-General submitted that in construing a word in an Act, caution is necessary in adopting the meaning ascribed to the word in other Acts. He relied on a passage from Craies on Statute Law, 7th Edition, page 164, which reads as follows: "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act, which is not incorporated or referred to, such an interpretation is given to it for the purposes of the Act alone".

[42] 60 N.L.R 49.
[43] 3 C.W.R. 121.
[44] (1958) 59 N.L.R. 447.
[45] (1949) 51 N.L.R. 217.

A review of all the above-mentioned authorities clearly support the proposition that the powers conferred on the executive by statute must be exercised *bona fide* and for the public purpose for which the power was conferred. The learned Solicitor-General did not seek to contend against it. It was his position that the legislature, far from rejecting this proposition, recognized when it provided the aggrieved party the right to have a declaration in lieu of an injunction. It was his contention that any exercise of powers by the executive, be it *bona fide* or be it *mala fide*, was covered by section 24 of the Interpretation (Amendment) Act. He strenuously argued that this was the intention of Parliament as there was no explicit limitation of the exercise of power. He went on to submit that during the past years a large number of acquisition proceedings were brought to a halt by the issue of interim injunctions obtained from our Courts on the ground that such proceedings have been initiated by the *mala fide* exercise of power in the hope of delaying them. He stated that it was the intention of Parliament to put a stop to unfounded and frivolous applications for injunctions. He lamented that there were at the moment some sixty applications for injunction awaiting disposal by the respective Courts. Our Courts generally do not grant injunctions merely because a party has made an application. As far back as 1929 our Supreme Court held: "A party must have very strong grounds and put all necessary facts before the Court to obtain an interim injunction on an *ex parte* application, and, even if granted, it should as a general rule only be to a certain date to allow notice to the other side." (*Jinadasa v. Weerasinghe*,[46] per Dalton, J.)

In Ceylon, an injunction has been a cherished remedy available to a citizen. It is a remedy sought when a perpetration of wrong resulting in irreparable damage or mischief is imminent. This remedy is obviously efficacious because the threatened wrong is prevented from taking place. The Civil Courts of our land, in the exercise of their ordinary jurisdiction, have the power to grant the remedy of an injunction (interim or permanent) in cases where there is sufficient material before them to arrest a wrong that is threatened. In the case of *Buddadasa v. Nadarajah* (supra) it was held that an injunction was available to a petitioner "to restrain a public officer from threatening to do a wrongful act which purports to be within his statutory powers, but is in fact outside them". (Vide also *Government Agent, Northern Province v. Kanagasunderam.*[47] Thus, an injunction is a valuable remedy available to a citizen to prevent the abuse of power by the executive. In the case of *Ratwatte v. Minister of Lands*, (supra) Samarawickreme, J. said: "Upon the matters placed before this Court by the petitioners, the question arises whether in giving directions for these acquisitions, the 1st respondent,

[46] (1929) 31 N.L.R. 33 at 34.

[47] (1928) 31 N.L.R. 115.

wittingly or unwittingly, gave effect to a design or plan by a political opponent of the petitioners which was calculated to protect the interests of himself and his relatives and cause loss and detriment to the petitioners; and if the 1st respondent did so, but acted unwittingly, whether the petitioners are entitled to relief. In order that an interim injunction may issue it is not necessary that the Court should find a case which would entitle the plaintiff to relief at all events: it is quite sufficient if the Court finds a case which shows that there is a substantial question to be investigated, and that matters should be preserved in status *quo* until that question can be finally disposed of."

There is a strong leaning that exists against construing statutes so as to oust or restrict jurisdiction of Courts. Very clear words will be required to oust altogether or restrict the jurisdiction of Courts in matters concerning the rights of citizens. A distinct, unequivocal and positive Legislative Enactment is necessary for the purpose of taking away the jurisdiction of Courts. One of the vital functions of our Courts is to safeguard the citizens from any abuse of power by the executive under the colour of official acts. "*Vide Clinch v. Inland Revenue Commissioner*[48]". Enactments are not presumed to interfere with the Court's jurisdiction unless the Act expressly declares so. Acts of Parliament ought to be interpreted so as in no manner to interfere with or prejudice the clear right of the citizen unless such right is taken away by explicit language.

In my view such language is not found in section 24 of the Interpretation (Amendment) Act.

I like to remind myself of the words of Dias, A.C.J. in *re* Agnes Nona,[49]

> "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** . . . Behind Parliamentary responsibility lies legal liability and the acts of ministers no less than the acts of subordiante 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 order under which he acted were legal and valid".

In view of my findings I hold that section 24 of the Interpretation (Amendment) Act does not clothe the executive with a garment of immunity from being restrained in appropriate cases by injunction

[48] (1973) 1 All E.R. 977.

[49] (1952) 53 N.L.R. 106 at 111.

from interfering with the rights of the individuals. I think that the acquisition orders made by the Hon. Minister if they have not been done by him in due and proper exercise of power and in good faith in terms of the Land Acquisition Act are not orders made in the real or genuine exercise of authority vested in him by law. In such circumstances section 24 does not apply and the Courts are not precluded in any way from protecting the individual's rights from being invaded by the executive. In such a situation the citizen is entitled to the remedy by way of an injunction.

Mr. Jayewardene submitted that the restrictions placed in subsection 2 of section 24 is subject to the limitations contained in subjection 1. I agree with this submission. A public officer can be restrained by an injunction when he acts outside the scope of the limitations contemplated in subsection 1 of section 24.

Mr. Tiruchelvam submitted that on an examination of section 24 it would be seen that only a permanent injunction is contemplated as the proviso in section 24 deals with the granting of a declaratory order in lieu of the award of an injunction. In view of the above conclusions that I have arrived at I do not think it necessary to consider the submissions of Mr. Tiruchelvam.

I hold that the orders made by the subordinate Courts are valid. The notices issued on the plaintiff-petitioners must be discharged and the Records should be sent back to the respective Courts for inquiry or trial as the case may be.