UDALAGAMA, J.

In terms of Section 354(1) of the Administration of Justice Law No. 44 of 1973, Pathirana, J., Wijesundara, J., and I, having perused the records in the above cases, in order to satisfy ourselves as to the legality or propriety of the orders made by the learned Judges of the High Court and the District Court and having formed the opinion that the said orders on the face of the records appear to be illegal, issued notices on the petitioners-plaintiffs to show cause, as to why the said orders should not be set aside in the exercise of our powers of revision. On 14.6.74 when the matters came up before the three of us, Counsel appearing for the petitioners-plaintiffs informed us that as the matters arising from these cases were of general and public importance, an application had been made to the Honourable The Acting Chief Justice, that these cases be heard by a Bench of five Judges. In view of this statement by Counsel, the hearing of these cases were adjourned. The Acting Chief Justice thereafter, nominated a Bench of nine judges and that is how these cases now come up before us.

Broadly, the matter in issue in these cases is whether section 24 of the Interpretation (Amendment) Act, No. 18 of 1972 took away the power of Court to issue injunctions "both interim and permanent," against the persons or bodies mentioned therein "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."

Section 24 of the Interpretation (Amendment) Act No. 18 of 1972 reads as follows:

> "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, 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 by any such person or authority in the exercise of any power or authority vested by law in any such person or authority."

Mr. H. W. jayewardene, Counsel appearing for peitioners-plaintiffs in case Nos. S.C. APN/GEN 6/74 to 11/74, 13/74, 14/74, 19/74 and 20/74 in a very long and exhaustive argument, submitted to us that where any act done or intended or about to be done, is tainted with *mala fides* an exclusion clause, would not be a bar and a Court would have jurisdiction to entertain such an application and to have the act of the person or body, examined: and for this purpose, until the matter is finally disposed of, have the right to stay proceedings on the act of the person or body concerned, by way of interim injunction. Mr. Jayewardene cited to us cases decided in various countries

of the commonwealth for the proposition that, power conferred by a statute should be exercised *bona fide* and that where an allegation of *mala fide* or fraud is made, the Courts have acted despite exclusion clauses. The leading english cases on the subject are *Smith v. the East Elloe Rural District Council* (supra) *and Anisminic Ltd., V. Foreign Compensation Commission* (supra). In the East Elloe case, the House of Lords by a majority judgment held that the order (made under the Acquisition of Land (Authorisation Procedure) Act of 1946) could not be questioned in a Court of law on any ground whatsoever. Viscount Simmonds taking the view that the language in the statute covered every possible ground of challenge including bad faith. Lord Reid who took the minority view held that if *mala fides* were protected, then the subject who was given a legal remedy to be availed of within 6 weeks would be deprived of any relief if fraud was discovered after expiry of such period. The preclusion clause in the Acquisition of Land (Authorisation Procedure) Act 1946 read that where an order is made under the Act it "shall not either before or after it has been confirmed, made or given, be questioned in any legal proceedings whatsoever." In the Anisminic case (supra) the preclusion clause stated "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 House of Lords by a majority decision took the view that these words did not preclude the examination of a determination which had been arrived at on a consideration of a factor which the Commission had no right to take into consideration. It is pertinent to note that both these cases deal with the ouster of jurisdiction of Courts in the exercise of powers over tribunals and courts of inferior jurisdiction. The question, therefore, arises whether the principle laid down in these cases would equally apply to administrative and/or executive acts and orders. Clearly the acts contemplated in section 24 of the Interpretation (Amendment) Act No. 18 of 1972 are administrative acts or executive orders. When a tribunal or court of inferior jurisdiction decides a matter submitted to it, it is expected to follow certain procedures and rules of evidence. On the other hand when administrative acts and executive orders are made they may not be based on strict procedures and rules of evidence such as are followed by tribunals and inferior judicial bodies. But still, they may be necessary and for the good of the State. If every administrative act and executive order has to be based on strictly legal procedures and rules of evidence as known to the law the machinery of Government could never function smoothly. It is my view that in interpreting section 24 of the Interpretation (Amendment) Act, the East Elloe case (supra) and the Anisminic case (supra) are of little or no help. One has to interpret section 24 of the Interpretation (Amendment) Act as it appears in the enactment, following the normal rules of interpretation as found in textbooks and decided cases. The best approach to my mind is to be found in the words of

Turner L.J. in *Jawkings v. Gather Cole 6 de G. M. & G 20.*, cited in Craies on Statute Law & 7th Edition (supra) page 125 where he stated, "the dominant purpose in construing a statue is to ascertain the intent of the legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts and from foreign circumstances so far as they can justly be considered to throw light upon the subject." We must therefore, try to find out what was the purpose of the legislature when section 24 of the Interpretation (Amendment) Act No. 18 of 1972 was enacted, and whether it achieved that purpose.

Their could be no doubt that section 24 was brought in with special reference to land acquisition matters, although the section itself does not say so, it was contended by the petitioners and it was common ground that in land acquisition matters when the Minister in charge of the subject moved to acquire a land for a public purpose and the owner was against it, it took a number of years to have the dispute settled and finality reached. In the resulting position, the inconvenience to the State and a *fortiori* to the public was so very great that it completely outweighed the rights of the individual. Furthermore it was also common ground that in a large majority of these cases the owners had dismally failed to establish *mala fides* for the acquisition. In the result the people of a particular locality or town who were urgently in need of a hospital, an agrarian centre, a dispensary or a road, had to be deprived of it for a number of years causing social and economic distress. It has sometimes even happened that the money voted by the legislature for the purpose, had lapsed by the time the case was over. So one cannot escape the conclusion that a formula had to be evolved to get over this inordinate delay. In 1969 by Act No. 20 of 1969 an attempt was made to get over this by requiring courts to give priority to the disposal of land acquisition cases. It is common knowledge what a failure this provision turned out to be. It was submitted to us that the problem of delay could be overcome by State Counsel insisting on strict compliance with section 2 of Ordinance 20 of 1969. However much State Counsel may insist on a strict compliance of section 2 and however much the intention of a particular Judge may be, there are certain procedural steps and matters beyond the control of a Court which could stall and prevent the final determination, as expeditiously, as one would like it to be. Hence something more effective had to be found by the legislature. The solution the legislature evolved was the enactment of section 24 of the Interpretation (Amendment) Act No. 18 of 1972. What has section 24 attempted to achieve? A paraphrase of the section would read as follows: "Where in any enactment a power is conferred on a Court prior to or after the enactment of section 24, 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, that power is taken away, by the section and a right to ask for a declaration given in lieu thereof. In simpler language, section 24 has stripped the courts of the power it possessed under the Courts Ordinance and the Civil Procedure Code to grant injunctions or make orders for specific performance in respect of any act done or intended or about to be done by the Crown, a Minister, a Parliamentary Secretary, the Judicial Service Commission, the Public Service Commission or any member or officer of such Commission, in the exercise of any power or authority vested in such person or body. The words "any act" are very wide and should be read as "every act." It will be seen that the section deals with purely administrative acts and executive orders of the persons and bodies referred to therein. It is my view therefore, that the question of *mala fides* and *bona fides* really do not enter into the discussion at all. As Viscount Simmonds said in *Smith v. East Elloe Rural District Council* (supra) "there was no justification for the introduction of limiting words such as 'if made in good faith' in the relevant provision." The argument that a declaratory act is useless if the *status quo* is not maintained, is not tenable, because, one must presume and presume confidently that if a declaration is made against the Crown, a Minister, a Parliamentary Secretary, the Judicial Service Commission, the Public Service Commission or any member or officer of such Commission, for any acts of such persons or bodies, ample amends will be made by the State, if action had already been taken on such acts and it is not possible to restore the *status quo*. One must also not forget that these persons and bodies are highly responsible ones and it would only be in a rare case that one could expect acts of such persons and bodies to be tainted with fraud or malice. Under the present constitution the judicial power of the people is exercised by the National State Assembly through the courts and if the State proceeds to ignore a solemn declaration by a Court of competent jurisdiction, it will only stultify itself and bring itself to ridicule. Moreover, as contended by the Acting Solicitor-General, immediately notice of a declaratory action is given to the Attorney-General, as it must, the law officers of the State would advise the Minister or body concerned, the course of action that should be taken in regard to the act of the Minister or body. From experience, one cannot dismiss the statement of the Acting Solicitor-General as an empty one or a poor consolation for a person who is to be deprived of his home and hearth. To interpret section 24 in any other way, to my mind, would result in the Court passing into the role of a legislator. The Great Francis Bacon, Lord Verulam, in his **Verba Legis** *wrote "non est interpretatio divinatio, quae recedit a litora. Cum receditur a litera, iudex transit in legislatorem"* – it is not interpretation but speculation when it departs from the text. When there is a departure from the text, the judge passes into the role of a legislator.

Again in his essay on **Judicature** he wrote "Judges ought to remember that their office is *iun dicere* and not *ius dere*" – to interpret law, and not to make law or give law. These views of Bacon is part of the GOLDEN RULE of interpretation enunciated in the judgments of the Courts of England. It is not the duty of a Judge to modify the plain meaning of words. His duty is to expound the law. On the interpretation I have sought to give, section 24 has, to my mind, achieved the purpose the legislature had intended.

I would therefore, hold that section 24 of the Interpretation (Amendment) Act No. 18 of 1972 took away from the courts the power to grant injunctions (both interim and permanent) or make orders for specific performance against the persons or bodies referred to therein, irrespective of whether such acts or orders were motivated by *mala fides* or *bona fides*, or other ground whatsoever.

Mr. Thiruchelvam for the petitioners in case Nos. S.C. APN/GEN/12/74 and 16/74 while concurring with the submissions of Mr. H. W. Jayewardene raised two matters which called for our consideration. Firstly it was contended that what section 24 of the Interpretation (Amendment) Act took away was the power of the courts to issue injunction under "an enactment" and the inherent power of the court to issue an injunction to prevent any mischief or irreparable damage, remained. The answer to this submission is found in the case of *Mohammadu v. Ibrahim* (supra) where it was held that there is no inherent power in the Supreme Court to issue injunctions. Section 839 of the Civil Procedure Code or section 40 of the Administration of Justice Law has not altered the *ratio decidendi* laid down in this case. The Supreme Court has no inherent power to issue injunctions. If so, could it be said that the High Courts and the District Courts have got this power? The obvious answer is "no."

The other point taken up by Mr. Thiruchelvam is that section 24 applies only to permanent injunctions and not to interim injunctions and therefore the remedy by way of interim injunctions was available to the subject despite section 24 of the Interpretation (Amendment) Act. If this construction is to be put on section 24, the whole intention of the legislature would be brought to nought and section 24 would have no meaning. In *Nokes v. Doncaster Collieries* (supra) Viscount Simonds observed "if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

In *Rambukpota v. Jayakody*[126] and *Thambypillai v. Thambypillai*[127] our courts have held that the term injunction in sections 86 and 87 of the Courts Ordinance and sections 662 and 663 of the Civil Procedure Code referred to interim injunctions, so when section 24 speaks of "any enactment" it must of necessity refer to sections 86 and 87 of the Courts Ordinance and sections 662 and 663 of the Civil Procedure Code. In my view section 24 applies both in interim injunctions as well as permanent injunctions.

In regard to the objections taken by Mr. H. W. Jayewardene as to the legality of the proceedings that were adopted to bring this matter before this bench, I regret I am unable to see any merit in the arguments placed before us. Under section 14(1) of the Administration of Justice Law No. 44 of 1973 the jurisdiction of the Supreme Court can be exercised by several Judges sitting separately. It is therefore, patent, that any single Judge of the Supreme Court could exercise the jurisdiction of the Supreme Court subject to the proviso to section 14 (1). In the present case when my brothers Pathirana, J. and Wijesundera, J. called for the record now under review, they were acting within section 14(1) of the Administration of Justice Law and when order was made under section 354(1) of the same law noticing the petitioners-plaintiffs to appear and show cause as to why the said orders should not be set aside in the exercise of our powers of revision, we were doing so still under section 14(1). In regard to the submission that orders under section 14(1) and section 354(1) should have been made at sittings of the Court held in public, we are unable to agree. Section 7 of the Administration of Justice Law applies to actual hearings of parties and arguments and not to acts ancillary to the exercise of judicial power. The calling for and examining a record for the purpose of making of an order to issue notice on a party giving him an opportunity of being heard on his behalf, do not involve the exercise of judicial power. In regard to the comment that the present cases have come up before this bench not as a result of any application by the aggrieved parties, all I wish to state is that the Supreme Court is not governed in the exercise of revisionary powers by the wishes of parties. The object at which the court aims is the due administration of justice–vide in the matter of the insolvency of *Haymen Thornhill*[128] at 106.

I hold that the interim injunctions issued in the above cases are illegal and are of no force or avail. In the circumstances of these cases I make no order as to costs.

[126] (1929) 29 N.L.R. 383.
[127] (1974) 77 N.L.R. 97.
[128] (1895) 2 N.L.R. 105.