WEERARATNE, J.

This Bench was constituted by the Chief Justice on the ground that questions of general and public importance were involved in several cases in which interim injunctions were issued by the relevant High Courts and District Courts on the Honourable H. S. R. B. Kobbekaduwa, Minister of Agriculture and Lands, restraining him from taking any further steps towards the acquisition of the relevant petitioners' properties and from evicting the petitioners' servants and agents from the lands or buildings standing thereon. The injunctions were to be valid and operative for a stipulated period of time, during which the petitioners were to seek their appropriate relief from the relevant Courts.

At a stage when the petitioners were taking necessary steps to obtain relief from the said Courts, as undertaken by them, this Court issued notices signed by a Bench of Three Judges of the Supreme Court, to the petitioners, to appear and show cause as to why the orders of the said High Courts and District Courts should not be set aside in the exercise of the powers of revision. The Respondents-Defendants and the Attorney-General were also noticed to appear.

When the present matter was taken up for hearing Counsel for the Petitioners as well as the Attorney-General agreed that the matters which arise for decision by this Bench are similar in all the cases in which the said parties were noticed, except certain cases which concerned the Land Reform Commission. Consequently, the remaining appeals were consolidated for hearing before this Bench of Judges.

A resume of the course this matter took leading up to the questions discussed before us would indeed be helpful. It was the case for the petitioner that the respondent as Minister of Agriculture and Lands sought to acquire 70 perches of land called 'Nithamaluwa' which is altogether 82 acres in extent as described in the schedule 'A' and schedule 'B' in the petition. In this case it would be relevant to state that after the notices under section 2 and section 4 of the Land Acquisition Ordinance were issued stating that the land was required for a "public purpose," the declaration under section 5 was published. Thereafter an order under proviso (a) of section 38 of the Act was made, and if all the relevant prerequisites in terms of the Act were legally and validly attended to, not only would the declaration of the Minister under section 5 of the said Act have been conclusive but also would the order made under the proviso to section 38 of the Act have been conclusive evidence of the title of the State to the land so acquired. In short, the whole of the acquisition proceedings, by 11th December, 1973 were attended to except that the order to take possession of the said land was communicated to the petitioners by letters P1 dated 12th February, 1974.

In this connection it would be relevant to mention that the Minister had the power to revoke the relevant vesting orders until such time actual possession of the said land was given to the State as set out in section 39 of the said Acquisition Act. Consequent to an application filed in the District Court of Bandarawela an interim injunction was granted on the 24th April, 1974 restraining the defendant Minister from taking any further steps in the said acquisition.

On the 11th March, 1974 the petitioners moved the High Court for an injunction and on the 14th March, 1974 the Judge granted the injunction valid until the 25th April, 1974 restraining the respondent Minister from taking any further steps towards the said acquisition within which time the petitioners as stated by him would seek their relief from the District Court. Then on the 28th

March, 1974 the respondent Minister had made an application in the High Court stating the steps taken to acquire the said property. The allegation made by the petitioners that the respondent Minister was influenced by false and malicious representation made to him by S. D. Delungahawatte, Member of the National State Assembly for Uva-Paranagama, was denied, but, it was further averred that the said acquisition was made in furtherance of the land policy of the Government, solely for the public purpose of village expansion. An affidavit of the Minister was also filed. The learned High Court Judge in his order dated 9.4.74 gave his reasons for rejecting the submissions made by the Deputy Solicitor-General who appeared on behalf of the respondent Minister and said, *inter alia*, that the petitioners were entitled to question the validity of the said acquisition proceedings and to show that they were void *ab initio* and, therefore, a nullity. He further stated that the basis of the petitioners' complaint is that the said acquisition was done *mala fide* and for an ulterior purpose, and if so proved the proceedings would be a nullity. It was indeed significant that there was no appeal or an application in revision made thereafter from the order of the High Court, and in the meantime the six weeks' period given in respect of the injunction had elapsed.

Thereafter the notices referred to earlier were issued on the petitioners signed by three Judges of this Court to show cause why the said orders of the High Court should not be set aside, since the orders "on the face of the record appeared to be illegal in view of the provisions of section 24 of the Interpretation Ordinance as amended by Act No. 18 of 1972."

Mr. H. W. Jayewardene appearing on behalf of the petitioners before this Bench submitted that there was no live issue for this Court to consider in regard to the injunction since it has expired; secondly, that neither party nor the Attorney-General moved in this matter invoking the jurisdiction of this Court; and, thirdly, that the respondent Minister had acted in bad faith in making orders under section 5 and section 38 of the Land Acquisition Ordinance in that he was influenced by the said Member of the National State Assembly. Counsel for both sides very strenuously argued the question relating to the applicability of section 24 of the Interpretation Ordinance as amended by Act No. 18 of 1972. Counsel for the petitioners contended that section 24 of this Act has no application in the granting of an interim injunction in this case, if it can be shown that the act of the authority invested with the power to acquire the said land was done for an ulterior purpose and consequently *mala fide*. Several Senior Counsel who made their submissions thereafter associated themselves with the arguments advanced by Mr. Jayewardene and raised their points in support of the petitioners' claim for a temporary injunction. I shall, however, deal with any other points made by them later in the course of this judgment.

The learned Solicitor-General, on the other hand, argued that the Legislature in framing section 24 of the Interpretation Act has thought that it

would not be in the public interest that injunctions should be granted, and, he posed the question as to why the words set out in section 24 should only apply to *bona fide* acts also.

Before I deal with section 24 of the Interpretation Ordinance it would be helpful to consider shortly some of the legal implications of an injunction. An injunction is a judicial process, which is an order, to refrain from doing an act. A temporary injunction, also known as an interim or an interlocutory injunction as referred to in section 21 and section 42 of the Administration of Justice Act No. 44 of 1973 and Chapter 48 of the Civil Procedure Code, has a history of equitable relief. The Courts would not permit any person within its reach to do what is contrary to its notion of equity. In the case of *Ratwatte v. The Minister of Lands* (supra) Samarawickrame, J. referring to a passage from Halsbury's Laws of England (Simonds Ed.) Vol. 21, page 365 stated that in order that an interim injunction may issue it is not necessary that a 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 ought to be preserved in *status quo* until that question can be finally disposed of.

In regard to the scope of the injunction inquiry one of the special circumstances which the Court must consider in granting an injunction is that irremediable damage would ensue from the acts sought to be restrained. It was argued that in a case such as this an injunction should be granted because, otherwise, the defendant would proceed with its unlawful act and the petitioners would be deprived of their property.

In short, it was submitted that when there is an allegation of *mala fide* one cannot wait for the case to be over for the reason that irremediable damage could be done by one who bears malice.

The Legislature in section 24 of the Interpretation (Amendment) Act No. 18 of 1972 has indeed taken away from the Courts the power to grant an injunction against a Minister of State ". . . in respect of any act done or intended to be done or about to be done by any such person in the exercise of any power or authority vested by law in any such person . . . " The important question, however, which arises in the present matter is whether the taint of *mala fides*, if established, would reduce to a nullity the act involving the exercise of power by the authority invested with the right to acquire any land under the Land Acquisition Act; or if one poses the question differently, does section 24 take within its sweep even *mala fide* exercise of power by the relevant authority, and consequently no injunction lies?

Seeking as we are to interpret a section of the Statute it would be helpful to bear in mind, in this connection, the words of Viscount Simon:–

> "The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. We must not shirk from an interpretation which will reverse the previous law, for the purpose of a large part of our

> Statute law is to make lawful that which would not be lawful without the Statute, or conversely prohibit the results which would otherwise follow," in the case of *Abrahams v. Mac Fisheries Ltd.*[135] Frazer, J. stated:– "In order to ascertain the true meaning (of the Legislature) it is necessary to ascertain the circumstances with reference to which the words were used and what was the object appearing from those circumstances which the Legislature had in view."

The language of the Act, it was submitted by Counsel, is clear and unambiguous. The Draftsman has not used any words which would be colourable in the slightest degree, such as for instance "ostensible" or "purported" or "apparent," which might involve spurious exercise of power. In short, section 24 of the Interpretation (Amendment) Act refers to an act done or intended or about to be done in the exercise of any power or authority vested in law . . . ," and not any act done in the "purported" exercise of power, or "ostensible" exercise of power or "apparent" exercise of power. This phrasing indicates that the Legislature implied, as Mr. Pullenayagam submitted, "ex-hypothesis" that an act could not be done *mala fide*, in which event the act is not covered in section 24. On a plain reading of the provision it is indeed clear that no other rule of interpretation can be applied so as to modify the plain meaning. As was stated by Lord Symonds, "to do so would be to amend the enactment, and thereby participate in a naked usurpation of the legislative function under the thin guise of interpretation."

In this connection a matter discussed at some length by Counsel on both sides was the question whether speeches made by Honourable Ministers and Members of the House are permissible as an aid to interpreting the Interpretation (Amendment) Act in question. Craies in his work on Statute Law refers to the words of Lord Wright in the Privy Council:

> "It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible . . . because it does not follow that those recommendations were accepted." [136] Craies goes on to state:–
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> "The same rule is adopted in Canada . . ." It would appear, however, that the same considerations that apply to speeches in the Assembly would not apply to matters such as the history of the Legislature or the objects and reasons or other matters in a Bill presented before the Legislature."

[135] 2 KB 18 at 34.

[136] (1935) A.C. 448 at 458.

Lord Halsbury stated:–

> "The subject matter with which the Legislature was dealing and the facts existing at the time with respect to which the Legislature was legislating would be relevant matters in interpreting the Act." (Vide *Herron v. Rathmines and Rathgar Improvement Commissioners,* (supra).

Our Courts have considered as admissible the history of legislation and even the statement of objects and reasons set out in a "Bill" in order to determine whether an Act was declaratory of the pre-existing law (vide Weeramantry, J.) in *Costa v. Bank of Ceylon,* (supra).

In the case of *Liyanage v. Queen,*[137] the Privy Council even examined a White Paper issued prior to legislation in order to decide the question of *ultra vires* in regard to certain legislation. The Courts in England have indeed been conservative in regard to reports of Commissions and White Paper. In fact, Lord Denning stated:–

> "We do not refer to legislative history as they do in America. We do not look at explanatory memoranda which preface a Bill before Parliament and we do not have recourse to objects in Hansard."[138]

On the question of memorandum prefaced to Bills, however, Craies states that they are of considerable importance but has not so far been adopted in construing an Act. (vide Craies on Statute Law, 7th Edition at page 131). Craies certainly does regard the draft Bill as an important aid to Courts in construing a Statute, although the English Courts have been as I have stated conservative about it, and many other such aids which have been found acceptable in Sri Lanka and other countries.

The point is that whilst a sound reasoning is advanced by English Courts for regarding parliamentary speeches as inadmissible no such reasons are adequately given in respect of Draft Bills which our Courts have certainly accepted as a satisfactory aid.

In the case of *Rathmines and Rathgar Improvement Commissioners,* (supra) which was referred to by the learned Solicitor-General, Lord Halsbury at the appeal did not appear to agree with the Justice's observation at the trial that the plans and sections were prepared for the construction of a reservoir "with substantially different objects and represent designs **from which substantial departures were intended to be sanctioned by amendments**

[137] 68 N.L.R. 265.

[138] Letang v. Cooper (1965) 1 QB 232.

made in the Bill, during its passage through Parliament . . . or that a complicated set of work were enacted to be executed for one purpose . . . according to a set of plans **designed for another purpose**. (I confess I am wholly unable to discover)." Lord Halsbury took the view that there was no disharmony in respect of the Act sought to be interpreted and held that the plain meaning of the Act arising obviously from the grammatical construction of the words and sentences that it contains should be given. In this view of the matter the question of this learned Judge interpreting the Act by references to the Bill does not arise.

I have been at pains to deal at some length on the question of admissibility of Draft Bills proposed in the State Legislature in this matter for the reason that on an examination of the "Bill" which was referred to by Counsel on both sides we find in the draft section 24 the following words:—

> ". . . in respect of an act done or **purported** to be done by any such person or authority in the exercise or **purported** exercise of power . . . vested by law in any such person or authority."

Whereas, in the Act passed by the legislature the word "purported" was removed altogether. This might be regarded as a significant departure from the Draft Bill and shows the intention of the legislature which was indeed circumspect in this matter. The question then arises as to what indeed are the legal implications of the allegations of *mala fides* made by the petitioners in relation to the words "any **act done** . . . in the exercise of any power or authority vested by law in any such person." In short, would *mala fides* if alleged and established reduce the act of any authority under the Statute to a nullity in those circumstances?

I have shown that the legislature never intended under the cover of section 24 to protect any authority that does any palpably illegal acts amounting to *mala fides* by making such an act not justiciable in a Court of Law. The principle is also well established that **no public body or authority can be regarded as having statutory authority to act in bad faith** or from corrupt motives, and any actions purporting to be that of the body but proved to be in bad faith would certainly be held to be inoperative (Warrington, L.J. in 134 Law Times at page 115).[139]

> Halsbury states in the 4th Edition, para 60 at page 67:—
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> "The exercise of Statutory power is invalid unless the repository of the power has acted honestly and in good faith."
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> "However, when fraud is alleged the Court will decline to quash unless satisfied that the fraud was clear, manifest and was instrumental in

[139] Short v. Borough of Poole.

procuring the order impugned" (vide De Smith — Judicial Review of Administrative Action — 2nd Edition, page 421).

"When *prima facie* case of misuse of power has been made out it is open to the Court to draw the inference that unauthorised purposes have been pursued if the competent authority fails to adduce grounds supporting the validity of its conduct" (vide Halsbury, 4th Edition, page 67).

In the case of *Lazarus Estates v. Bearely*, (supra) Denning, L. J stated:—

"No judgment of Court, no order of a Minister can be allowed to stand if it had been obtained from fraud. **Fraud unravels everything."**

Counsel for the Petitioners discussed the cases under section 88 of the Police Ordinance and section 461 of the Civil Procedure Code and stated that the words "done or intended to be done" in section 24 appear in section 88 of the Police Ordinance. These words have been interpreted over the years as referring to **acts done *bone fide*** and not *mala fide*. It was submitted that when the Legislature subsequently used almost the identical phraseology in section 24 of the Interpretation (Amendment) Act it implies legislative adoption of the interpretation given by Courts to such language.

In the case of *Perera v. Jayawardene*[140] a Divisional Bench of the Supreme Court held that:—

"It is a well-established principle that when a word has received judicial interpretation and the same word is re-enacted, it must be deemed to have been re-enacted in the meaning given to it . . . ."

Counsel for the Petitioners submitted that the authorities on section 88 of the Police Ordinance and section 461 of the Civil Procedure Code show that a Public Officer acting maliciously cannot be said to be purporting to exercise power. In the Hirdaramani case (supra) the Court held that a public authority vested with the power to do an act must act *bona fide* — it could not exercise such power with an ulterior object, in which event the intention of the Public Servant is to defeat the Statute. Counsel for the Petitioners submitted that section 24 of the Interpretation Act is not worded to create a complete ouster in the manner it was suggested that section 45 of the Courts Ordinance was affected by Regulation 55 of the Emergency Regulations in the case reported in 76 N.L.R. page 316 (supra).

In the case of *David v. Abdul Cader* (supra) the Privy Council stated, *inter alia*:—

[140] (1947) 49 N.L.R. 1 at 9.

" . . . but, a malicious misuse of authority as pleaded may cover a set of circumstances which go beyond the mere presence of ill will and it is only after the fact of malice relied on by the plaintiff has been properly ascertained that it is possible to say in a case of this sort whether there has been any actionable breach of duty."

In the Canadian case of *Roncarelli v. Duplessis,* (supra) Rand, J. stated:—

"The act of the defendant through the instrumentality of the commission brought about the breach of an implied statutory duty towards the plaintiff. There can be no question of good faith when an act is done with improper interest and for a purpose alien to the very Statute."

In the South African case reported in 1947, Volume II, South African Law Reports, page 984, (supra) the Court held that when a public body or an individual exceeds its powers, the Court will exercise restraining influence, and if while ostensibly confining itself within the scope of its powers, it nevertheless acts *mala fide* or dishonestly for ulterior reasons which ought not to influence the judgments, or with unreasonableness so gross as to be inexplicable except on grounds of *mala fides* or ulterior motive, Court will interfere.

It will be seen that the view of the Courts in England and the Roman Dutch Law Jurisprudence coincides with the opinion of our Courts of Law. The Indian Supreme Court too takes a similar view in regard to the impact of *mala fide* in relation to the exercise of power under a Statute. In the case of *Somawanti v. State of Punjab* (supra) the Supreme Court of India held that :—

"If the purpose for which a land is being acquired by the State is within the legislative competence of the State a declaration of the Government will be final, **subject to the exception that if there is colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party.** If what the Government is satisfied about is not a public purpose but, for instance, a private purpose or no purpose at all, the action of the Government would be colourable. . . . . and the **declaration would be a nullity . . . . for the question whether a particular act is a fraud or not is always justiciable.** An acquisition could be set aside not only because it is motivated by *mala fides* but even when a fact is taken into consideration which was irrelevant." (*Raja Anand v. Uttar Pradesh* (supra)).

From what I have stated earlier it would appear that the legislature with much circumspection used the language in section 24 of the Interpretation (Amendment) Act which indicates that fraud or *mala fides* is not removed from the purview of the Courts. Fraud or *mala fides* need not be mentioned

in the Statutes because they are regarded as exceptions. The situation however would be different if, as in Roncarelli's case referred to earlier, the authority is declared by a Statute entitled to protection although he has exceeded his powers or jurisdiction and acted clearly contrary to law.

Mr. Tiruchelvam, in support of the petitioners, contended that the primary intention of the legislature when it enacted section 24 was to confer on the subject the benefit of a declaratory decree. Such a decree would become futile unless an interim or a Stay Order is made. He submitted that temporary injunctions were not affected by section 24 of the Interpretation Ordinance. He also argued that the Supreme Court has the inherent power to issue a Stay Order in an appropriate case.

In regard to section 24 providing for a declaratory decree it was argued that a meaning consonant with the object of the legislature, and if not futile, should be given unless there is express unambiguous provision. Therefore, says Counsel, a necessary counterpart to the proviso inferentially would be a permanent injunction accompanying a declaration. Counsel stated that the demolishing of a house, for instance, would make a declaration of the District Court factually and/or legally inoperative and futile. One of the principles in regard to declarations is that they will not be granted if the declaration would be of no practical use, as for instance, the demolishing of the subject-matter of the acquisition as illustrated earlier. It is for that reason that interim injunctions were not removed from the purview of the Courts in section 24 of the Interpretation Ordinance.

It was further argued by Counsel that if the Court is not empowered to issue an interim injunction having regard to section 24, then, nevertheless, the Court has the inherent power to grant interlocutory relief in declaratory proceedings.

Now, the proviso to section 24 (1) of the Interpretation (Amendment) Act sets out that the provisions of section 24 shall not be deemed to affect the power of the Court to make order declaratory of the rights of parties "in lieu thereof". The words "in lieu thereof" could only refer to ". . . the power to grant an injunction or make order for a specific performance against the Crown." The latter words "in lieu thereof" seem clearly referable to only permanent injunctions, if one considers the plain meaning which must be given to the provision. When subsection (1) sets out the two alternatives of "the power to grant an injunction," or "make order for a specific performance" it would appear that what was intended by this juxtaposition of words constituting that phrase is only referable to a permanent injunction. In the light of this argument the provisions of section 24(1) do not cover temporary or interim injunctions and the Courts would not be fettered in their power to grant interim injunctions in appropriate cases under the existing provisions for granting such equitable relief. If this be so it would be

unnecessary to deal with the question of inherent powers of the Court advanced by Counsel.

The Solicitor-General in his reply submitted that section 24 deals with cases where the legislature intended that orders of Tribunals and other such authorities are taken out of the purview of the Courts in respect of remedies which persons were hitherto entitled to obtain. He further submitted that the words "any act" cover both *bona fide* as well as *mala fide* "acts," and that if the State withdraws the remedy no one could complain since nobody has a vested right in such a remedy.

In this connection Mr. H. W. Jayewardene submitted that the legislature could take away the jurisdiction of Courts to review any matters completely, just as Courts were abolished and new Courts set up. The question, however, is whether the legislature did really intend to remove the protection afforded by injunctions even in those instances where there is *mala fides*. As was posed by Lord Reid in the Anisminic Case (supra):–

> "It may have given its decision in bad faith. It may have given a decision which it had no power to make. It may have failed. . . to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act, so that it failed to deal with the questions remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account."

All these were illustrated as instances which could well result in proceedings being a nullity.

It seems to me that having regard to the cases in which allegations of the sort envisaged above are made the Legislature was indeed circumspect in section 24 not to use language which might even give a hint that the Courts are ousted when it comes to dealing with such allegations. The fact that the State Assembly with deliberate care felt advised to omit the word "purported" from the words "a purported exercise of power" in the Draft Bill is indeed a clear indication as to what the Legislature had in mind when amending the draft legislation in that manner. It is indeed manifest that the State Assembly never intended to remove from the purview of the Courts *mala fide* acts and leave public officials free to act both *mala fide* or *bona fide* in the manner suggested by the Solicitor-General.

In this connection it is perhaps relevant to state that it is most unlikely that the Legislature which is the repository of all judicial power ever intended to invest the power in a statutory authority to act *mala fide* or *bona fide* in Statutes such as this. The authorities show that "no public body can be regarded as having statutory authority to act in bad faith or from corrupt

motives . . . . and any actions purporting to be from that body would certainly be held to be inoperative." If the Legislature did intend that such bodies could act even *mala fide* it certainly must be stated in no uncertain terms. It is indeed a well-known rule of interpretation of statutes that where a Court is seeking to interpret legislation by which it is sought to create rights such legislation must be strictly resolved in favour of the subject. On the contrary we find here section 24 not stating anything to that effect. On the other hand we find that the Legislature has reassured the "people" from whom it derived its own judicial power that it would not jeopardise the trust imposed by the "people," by even including a word like "purported" which might be a prop to an argument that *mala fide* acts of public officials would be outside the jurisdiction of courts of law.

The Solicitor-General in arguing that the power which is exercised by the relevant authority could be exercised either *mala fide* or *bona fide* sought to reinforce his argument by submitting that it was the duty of the Court to ascertain the purpose for which the legislation was passed, and that the disease which it intended to cure could be drawn from the speech of the Minister in the House which showed that the intention of the legislature was to bar the grant of injunctions because a number of acquisition proceedings were stayed when *mala fides* were alleged, resulting in considerable delay. The consideration of any delay could not be adequate reason in this instance, since, the State could act under section 46 of the Administration of Justice Act and nominate a special Court for the hearing of land acquisition cases expeditiously. This method has indeed been found to be exceptionally satisfactory in respect of bribery cases.

Further, as submitted by opposing Counsel a prosecution for swearing a false affidavit is not the only means of meeting a false and inaccurate statement in a petition supporting an affidavit. The State could move Court to dissolve the interim injunction obtained on such an affidavit, having regard to section 666 of the Civil Procedure Code, and even obtain compensation from the petitioner under section 667 of the Civil Procedure Code. It was argued that in any event the fact that the legislature did not accept the Bill in its original form in regard to section 24 was some indication that there was rethinking on this question by the legislature.

I have already adverted to the legal implications of the impact of *mala fides* in respect of the said provision earlier in this judgment. Hence, I do not think it necessary to say anything more on that point. The Solicitor-General further raised the question whether it could ever be contended that the Parliament, having provided in section 24 for a declaration of the right of parties, withdrew the remedy by way of injunction only in respect of *bona fide* and valid acts, when in the same breath the Parliament provided in section 22, where there was an ouster of the jurisdiction of the Court, whereby no order, decision, determination, discretion or finding could be

questioned save on the two grounds set out therein. It seems to me that if the Solicitor-General's contention is that *mala fides* were sought to be excluded in section 22 in the manner that the provision was drafted, the Legislature if it so intended would quite obviously have provided for an ouster in section 24 too in the same manner. The fact that the Legislature did not choose to do so is indeed an indication that an ouster in respect of section 24 was not what was intended.

The Solicitor-General further submitted that section 24 which might have amounted to an ouster clause later became, by reason of the amendment, a provision which merely substituted one remedy for another.

It seems to me that the proviso to section 24(1) merely emphasises that a declaratory action which was hitherto available is indeed still available thus removing any doubt on that point. There is indeed no substitution of a remedy here as suggested, but, a mere reassertion of an existing remedy.

The Solicitor-General then argued that regard must be had to the principle of State policy found in Art. 16(2) of the Constitution, which provides for the rapid development of the whole country. If this aspect of the matter was foremost in the mind of the Legislature it seems to me that the Legislature would have unhesitatingly included the ouster clause in section 24 of the said Act.

I have discussed earlier in the judgment the point urged by the Solicitor-General that nowhere in the Act was it necessary that the "public purpose" should be set out. Reasons can be given why it is indeed necessary and important for the Minister to set out the "public purpose." The fact that the "public purpose" is required to be set out by Statute in other countries implies that it is indeed a necessary requirement to set out the purpose and it is most likely that such countries have inserted that provision out of an abundance of caution.

Affidavits were filed by the petitioners in the respective Courts on this matter supporting applications for interim injunctions as required by the relevant provisions of the Civil Procedure Code. As I have stated earlier the only question for consideration in regard to the grant of an interim injunction **is whether there is a triable issue for decision by the Courts.**

When a petitioner files an affidavit in support of an application for an interim injunction it would be necessary for the respondent to controvert that affidavit and lead counter-affidavits and any evidence necessary for that purpose. In the absence of such material being placed, the Court would have to judge the allegations merely on tests of probability with nothing more substantial in reply.

As was mentioned by Ayanger, J. in the case of *Rowjee v. Andhar Pradesh,* (supra)—

> "It is no doubt true that allegations of *mala fides* and of improper motives on the part of those in power are frequently made and that frequency has increased in recent times. . . consequently it has become the duty of the Court to scrutinize these allegations with care so as to avoid being in any manner influenced by them in cases where they have no foundation, in fact. **In this task which is thus cast on the Court it would conduce to a more satisfactory disposal and consideration of them if those against whom allegations are made came forward to place before the Court their version of the matter so that the Court may be in a position** to judge. . ."

It would be helpful to examine the material that could be placed before the Court by the authority vested with the power under a Statute to act under the Land Acquisition Ordinance, in regard to such acquisition, in order to meet an allegation of bad faith:—

(a) The respondent it is alleged by the petitioners has not stated the public purpose for which the land is required. The petitioners would thus be in an unfavourable position in regard to raising any objections. In Somawanti's case cited earlier the Supreme Court of India held that such a declaration should not be arbitrarily made by the Government. The respondent's affidavit does not contain the material upon which such a decision was taken which, considering the manner in which public affairs are conducted, would be on record. The public purpose was not even specified in either of the section 2, section 4 or section 5 notices of the respondent made under the Acquisition Act. This aspect of the matter is, perhaps, important since the Act sets out that a declaration under section 5 "shall be conclusive evidence" that the land is needed for a "public purpose."

    If there has been a colourable exercise of power in regard to the question of the "public purpose" such an exercise would be open to challenge at the instance of the aggrieved party, and if so held the declaration would be a nullity.

(b) It is alleged by the petitioners that the proposed acquisition plan has been initiated by the respondent who had been influenced by malicious and false representations made to him by the Member for Uva-Paranagama who is personally and politically antagonistic towards the petitioner as alleged in para 6 (c) of the petition in the High Court. In this connection the respondent should perhaps have

been able to produce material to satisfy the Court that he has sought the advice and assistance of reliable and knowledgeable persons and that even though he may have heard the views of the Member for the area he could satisfy the Court, having regard to the nature of the advice given, that he acted responsibly and with good reason in respect of the said acquisition. The material on which the respondent acted in a public and official matter like this should and would normally have been entered in departmental files. The respondent, therefore, should have had no difficulty in placing such material before Court in order to assist it, and thus stave off the interim injunction in that way by meeting the allegation of *mala fides* at the very inception of Court proceedings. In this way even unnecessary delay which may be of importance to the State could be avoided. There are other matters generally which may be relevant in regard to acquisitions, as for instance if the respondent could show that plans were drawn and lands surveyed which, if done, would indeed be helpful material to satisfy a Court on the issue of bad faith alleged against the respondent. One finds that no such material is set out in the affidavits of the respondent Minister and of the public officials beyond a bare negation of the facts alleged in the petition.

When, therefore, the Court had to decide on the grant of the interim injunction, which as I have stated earlier only raises the question whether there is a triable issue for a decision by the Courts or not, it is not surprising that, in the absence of helpful material which the respondent may well have been possessed of, the Court has granted the said interim injunctions. It is indeed significant that the Attorney-General did not make an appeal from the said order of the Court nor had he applied by way of revision even though his Deputy Solicitor-General had appeared and presented arguments on this matter. The Solicitor-General's main contention as shown earlier rested on the argument that the words "any act" in section 24 applies to both *bona fide* as well as *mala fide* acts and consequently the Courts would not have jurisdiction to restrict such an act.

I have already in some detail dealt with this aspect of the Solicitor-General's argument earlier in this judgment and for the reasons already given and authorities cited hold that "*mala fide* unravels everything" and that the Courts do have jurisdiction in this matter having regard to the proper construction that should be placed in respect of section 24 of the Interpretation (Amendment) Act.

It was further argued for the petitioners that the interim injunctions issued in certain of the cases which came up before us had expired and consequently there was no live issue to be decided upon.

Once the time has passed for making orders in regard to the question of the interim injunction can we now proceed to lay down what correct law is on this matter? In short, the case is dead and consequently there would be no further judicial act to be done. Section 354 of the Administration of Justice Law No. 44 of 1973 provides for the Supreme Court to call for and examine the record of any case for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such Court. The Supreme Court, adopting such procedure as it thinks fit, could then exercise its revisionary powers and pass any judgment or make any order **"which it might have made had the case been brought before it in due course of appeal.** Section 11 of the said Act, which deals with the powers of the Supreme Court in respect of appeals from any subordinate Court, provides that the Supreme Court, *inter alia*, "may in accordance with law affirm, reverse or vary any judgment or order or give directions to such subordinate Court or . . . order a further hearing."

In the case under review nothing further possibly could be done by the Supreme Court since the injunction, which is the issue involved before us, applies no more.

The word "Court" as defined in the Civil Procedure Code "means a Judge empowered by law to act judicially." Once the period of the interim injunction has elapsed there is no judicial act to be performed by the Court. The word "action" is defined as proceedings for the prevention or redress of a wrong. There is no such "proceeding" once the injunction has expired.

If under section 353 referred to earlier the Supreme Court can exercise in revision only such powers as it could exercise in an appeal there is clearly no power which the Supreme Court could exercise by way of revision to do anything further in respect of the issue of an interim injunction which has expired. Any pronouncement, therefore, which we make in respect of any of the cases in which the interim injunctions have expired would be purely an academic adventure which the Supreme Court has no power to indulge in. There is no provision for the Supreme Court to make declarations as to what is the correct law in a situation like this. If the Supreme Court presumes to do so it would not be acting judicially. The provisions of the Civil Procedure Code and the Administration of Justice Act, which I have adverted to earlier, show that the Supreme Court can only determine live issues for otherwise it would be exercising its revisionary powers to correct matters where the issue is dead. If the Supreme Court does so it would be acting without jurisdiction and any pronouncements made by it would be consequently without jurisdiction.

In the case of *Ex Parte* Morris[141]— Roper, J. cited with approval a passage from the judgment of Greenberg, J. in the case of *Ex parte* Ginsberg[142] who stated:—

> "The common law in South Africa as to declaratory orders were discussed in *Geldenhuis and Meethling v. Beuthim* (1918 A.D. 426) by Innes, C.J. who said in the course of his judgment that Courts of Law exist for the settlement of concrete controversies of rights, not to pronounce upon abstract questions or to advise upon differing contentions, however important."

Greenberg, J. goes on to state:—

> "This limitation of the functions of a Court of Law has been fundamental in our conception of the function of the Court . . . The legislature must have been aware of the fact that there is no dearth of Advocates and Attorneys competent to advise upon legal problems and there is no reason to think that it intended to set up the Courts as consultative or advisory bodies in competition with the members of these respected professions."

In the Annotated Constitution of the United States of America, published in 1952 it is stated (at page 549):—

> "Perhaps no portion of constitutional law pertaining to the judiciary has evoked such unanimity as a rule that the Federal Courts will not render advisory opinions."

It seems clear that in a civil matter such as this it is not open to the Court to decide upon any matter which is not a live issue. If the Court proceeds to do so it seems clear that it would be acting without jurisdiction.

There remains a submission made by Mr. Jayewardene that it is not open to a single Judge, sitting in chambers or even in open Court, acting by way of revision, to call upon a party to show cause, which, according to him, is an exercise of judicial power. A single Judge, he submitted, finds no place in the Court structure provided by the Administration of Justice Act; he, therefore, cannot sit alone or in chambers when he acts judicially.

The question raised by Mr. Jayewardene could be largely resolved by considering whether calling upon a party to show cause involves an exercise of "judicial power" or not. In the case of *Queen v. Liyanage* (supra) the question arose as to whether the Minister had the power to direct a Trial-at-Bar and nominate Judges. The Court in its order stated:—

[141] *Ex parte* Morris (1954) 3 S.A.L.R. 154.

[142] *Ex Parte* Ginsberg (1936) T.P.D. 155.

"For the purpose of this case we are content to accept the broad classification of judicial power attempted by the Learned Attorney-General himself."

He stated that the judicial power is used is three senses:—

(1) In the sense of the essence of judicial power; the strict judicial power.

(2) In the sense of the power of judicial review.

(3) In a loose sense, has the meaning, the powers of a Judge, e.g.. . . the powers ancillary to the judicial power.

A concise statement of Griffiths, C.J. was accepted by the Privy Council in the case of *Labour Relations Board* of *Saskatchewen v. John East Iron Works Ltd.*[143]:—

". . . the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects whether the right relates to life, liberty or propriety. The exercise of this power does not begin until some Tribunal which has the power to give a binding authoritative decision (whether subject to appeal or not) is called upon to take action."

It would appear that the calling for a record or noticing a party to appear, as was done in this case, certainly does not involve a strict exercise of "judicial power." Such acts do not involve a decision relating to any controversy between a sovereign authority and the subject. Acts such as those referred to above are merely at the best powers ancillary to "judicial power" given to those persons performing judicial functions. A Judge noticing a party to appear merely invites the party to come before him in order to satisfy himself in regard to some matter. An inquiry in respect of such a matter commences when he appears and is heard. The Judge "is called upon to take action," if I were to re-echo Griffiths, C.J.'s words, "only at the stage such party appears and is heard." The calling for the record and the notices directed to be served on the parties are therefore merely incidents in the exercise of "judicial power." One cannot say, as was said by the Court in the Liyanage case, that such incidents of "judicial power" are "so much incidental to the exercise of that power or incident in the exercise of that power **as to form a part of that power itself.**

This is indeed a function which is inconsistent with the judicial action involving exercise of "judicial power." There is in short no "ascertainment of the existing rights by the judicial determining of the issue of fact or law"

[143](1949), A. C. 149.

involved here. The test provided by Holmes, J. in the case of *Prentis v. Atlantic Coast Line Co.*[144] that "the nature of the final act determines the nature of the previous inquiry," would not perhaps apply here because there was no "previous inquiry" here; the real and substantive inquiry in the present matter appears to me to have commenced only once the parties appeared and the inquiry commenced after notice was served.

If the acts of calling for a record or issuing a notice on a party, as was done here, do not involve an exercise of "judicial power," on the tests referred to by me above, then such acts could be performed by a single Judge sitting in chambers. It seems to me that if an application for leave to appeal and the granting or rejecting of such leave to appeal could be performed by a Judge sitting in chambers as provided in section 326 of the Administration of Justice Act, then it would indeed be strange that the act of calling for a record or merely noticing a party to appear, which I have contrived to show, do not involve the real exercise of "judicial power," could not have been contemplated by the Legislature to have been done by a single Judge in chambers, provided the substantial question involved is attended to in open Court once the parties have appeared.

Mr. Jayewardene submitted that this is not a case in which the powers of revision should be exercised since the respondent has not exercised his right of appeal or applied by way of revision to the Supreme Court.

It would appear that the provisions of section 354 give the widest powers to the Supreme Court to "call for the record of any case, whether tried or a pending trial, in any Court for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such Court, and may having adopted such procedure as it may consider fit upon revision. . . . pass any judgment or make any order which it might have made had the case been brought before it in due course of appeal."

The Learned Solicitor-General has referred us to the case of *Hyman v. Thornhill* (supra) reported at page 106 in which Bonser, C.J. stated:—

"But the Supreme Court is not to be governed in these cases by the wishes of parties. The object at which this Court aims, in exercising its power of revision is the due administration of justice. . . "

In the case of *Perera v. Agidahamy*[145] Nagalingam, A.J. stated that the words, "pass any judgment or make any order which it might have made had the case been brought before it in due course of appeal instead of revision (which is the identical wording in the present section 354 of the

[144] (1908) 211 U.S. 210.

[145] (1946) 48 N.L.R. 87 at 88

Administration of Justice Act) can only lead to the conclusion that they do not prescribe the scope or put a limitation on the powers of this Court to deal with an application in revision."

Accordingly I take the view that there is no irregularity in the manner in which these proceedings were initiated and brought up before this Court.

For the reasons given I hold:—

(a) that the provisions of section 24 of the Interpretation (Amendment) Act No. 18 of 1972 have no application if it can be established that the act of the respondent Minister was *mala fide*, in the manner alleged by the Petitioners.

(b) that once the period of the interim injunction has elapsed there is no live issue for the Court to adjudicate upon the question raised in this case, and if the Court proceeds to do so it would be acting without jurisdiction and consequently could not exercise its revisionary powers.

(c) that assuming there is a live issue for this Court to adjudicate upon, there is no irregularity in the manner in which these proceedings were initiated and brought up before this Court.

The Notice issued on the Petitioners must, accordingly, be discharged and the records returned to the relevant Courts.