WIJESUNDERA, J.

Notice was issued in terms of section 354(1) of the Administration of Justice Law No. 44 of 1973 at the instance of Pathirana, J., Udalagama, J. and myself on the Attorney-General and on the parties to these cases to show cause why the orders granting injunctions against the defendant, H. S. R. B. Kobbekaduwa, Minister of Agriculture and Lands, restraining him from proceeding with the acquisition of certain lands should not be set aside. When these cases came up for hearing before the same three Judges, the Attorney-at-law for the landowners took several objections and intimated to that Court that an application was being made under section 14(3) (c) of the Administration of Justice Law to have these cases referred to a Bench of five Judges and moved for an adjournment. By Order dated 14th June 1974 the adjournment was granted. Thereafter Alles, J., who was acting for the Chief Justice, referred these cases to a Bench of nine Judges. It is unnecessary to go into the details of each of these cases. They are all from the High Courts or the District Courts. They all relate to acquisition of land under the Land

Acquisition Act, in various stages of acquisition. In all the cases from the District Courts, action is pending against the defendant to have all the steps taken declared null and void as the defendant was motivated, *inter alia*, by political revenge or *mala fides*.

The two questions that arise for decision, and argued at great length, may be broadly stated as:—

(a) whether this Court has jurisdiction to revise the Orders in question;

(b) whether, in view of the provisions of the Interpretation (Amendment) Act No. 18 of 1972, any injunction should have been granted against the defendant, a Minister of State, in these cases.

The Administration of Justice Law sets out *inter alia* the jurisdiction of the Supreme Court and the powers and functions of the Judges. Section 14(1) of this law provides that the jurisdiction of the Supreme Court may be exercised in different matters at the same time by the several Judges of the Court sitting separately. The two provisos to the subsection say that jurisdiction in respect of judgments and orders of the Magistrates shall be exercised by at least two Judges and similarly jurisdiction in respect of judgments and orders of the District Judges and the Judges of the High Court shall be exercised by at least three Judges. The ordinary meaning of the word "several," Oxford Dictionary — Vol. IX, 568, when preceded by the definite articles is "each and all." Hence section 14(1) of the Administration of Justice Law permits the jurisdiction of the Supreme Court to be exercised by any Judge subject to the two provisos. Such a view is consistent with the other provisions permitting a single Judge to exercise powers under the law, e.g. in sections 326 & 327 a single Judge is given the power to grant leave to appeal.

In section 354(1) of the Law are embodied several powers given to the Court:— it empowers the Supreme Court to call for a record, to examine it and then to exercise its jurisdiction. When a record is called for there is no exercise of the jurisdiction in respect of a judgment or order of a subordinate Court as contemplated in the provisos to section 14(1) of the Law. Then the authority of the number of Judges stated in the proviso is not necessary to call for a record. Hence any one or more of the Judges of this Court is empowered to call for any record from a subordinate Court. This is only one section. There are two other sections, viz; section 13 and section 40 which empower, upon similar examination, anyone or more of the Judges of this Court to call for a record from a subordinate Court.

It was submitted that steps can be taken to act in revision under section 354(1) only if an aggrieved person moves under subsection 2 of section 354. Subsection 2 provided another method but not the only method by which the

Court can be moved to exercise its powers under section 354. Where a person moves under subsection 2 the leave of the Supreme Court has to be first obtained as "prescribed in this Chapter." The only method prescribed in this Chapter is leave to be granted by a single Judge under section 326. The Court itself, however, is empowered to take steps, as it has done in these cases, be it a civil or a criminal matter, whether or not any party has complained. Whether it is proper to do so or not is a matter only for the Court. Its object is the due administration of justice and the correction of all errors of the subordinate Courts.

When notices were issued on the landowners and the defendant in these cases, there was no requirement that the cases should have been considered in open Court. Section 7 of the law requires that the sittings in every Court shall be held in public and all persons shall be entitled to freely attend such sittings. When the records have been called for, section 354 (1) further enacts "The Supreme Court may having adopted such procedure as it may consider fit, upon revision of the case so brought before it, pass any judgment or make any order which it might have made had the case been brought before it in due course of appeal." At the stage the notice is issued, after the examination of the records called for by the Court itself, there is no hearing of any arguments or submissions by any party. Notice issued is only a step taken for the purpose of holding a sitting to inquire into the legality of the judgments or the orders made. It is such a sitting where arguments are advanced, parties are represented that has to be held in public. This distinction is illustrated in section 327. It permits the Judge to deal with an application for leave to appeal in Chambers but if he wants to hear arguments to sit in open Court. The Sinhala words of section 7 "නඩු විභාග ප්‍රසිද්ධියේ පැවැත්විය යුතුයි. . ." only confirm this view.

An objection was taken before the first Bench when these cases came up for review, viz. that in as much as the Registrar and not the acting Chief Justice nominated the three Judges that Bench was not legally constituted. It was argued that as the first Bench was not legally constituted this Bench of nine Judges has no power to review these cases. This is factually wrong as demonstrated by the relevant paragraph of the Order dated 14th June, 1974 of that Bench:—

> "The Registrar of this Court is present before us and he states that the normal practice is that the Benches for the day are suggested by him and sent up for approval to the Chief Justice. The practice is also that where Judges have ordered notices in a case that they constitute the Bench for hearing the case. He further brings it to our notice that last morning the acting Chief Justice sent for him and he was asked as to how this present Bench came to be constituted. The Registrar then told the acting Chief Justice that he followed the normal practice of proposing the Judges who had ordered notices to constitute the

> Bench. The Registrar then met the acting Chief Justice, who approved that this Bench should sit and dispose of these cases. The Registrar also brings it to the notice of this Court that he took the responsibility of proposing the composition of this Bench as that is the practice."

Then there is no doubt that the acting Chief Justice inquired about these cases, was made aware of the cases and approved of that Bench as is the practice. But such approval or nomination is not a legal requirement. A copy of the Order dated 14th June 1974 was also given to the respondents.

Section 5 of the Constitution enacts that the National State Assembly exercises the judicial powers of the people through the Courts and other institutions created by law. The National State Assembly created, by the Administration of Justice Law, *inter alia*, a new Supreme Court and provided for the appointment of the Judges of that Court and defined their jurisdiction. Judges have been appointed by the President under the Administration of Justice Law and no further mandate is necessary for them to perform their functions. The Administration of Justice Law nowhere provides that the nomination of the Judges by the Chief Justice is necessary for them to hear a case. The only bar is under section 48 of the Law which has no application here. With great respect to the Chief Justice, if three Judges decide to hear a case from a High Court or a District Court — I am not saying for a moment that it happened here — there is nothing in any law to prevent them from hearing it except a reference of that case under section 14(3) of the Law. The words used in this subsection are ". . . direct that any case pending before the Supreme Court be heard by a Bench of five Judges or more." It does not say the Chief Justice shall be a member. It does not say that he shall name the Judges. On the other hand under section 51(1) of the Courts Ordinance the Chief Justice was empowered to refer to three or more Judges "named in the order." The Court of Criminal Appeal Ordinance gave specific powers to the Chief Justice in respect of the Benches of that Court. Perhaps, the power given under section 14(3) carries with it the power to nominate in that instance. It has been the practice, a longstanding practice, for the convenience of the Judges and depending on the lists, the Registrar proposes the names of the Judges to hear the different cases in the day's list and Chief Justice approves or alters them. When a Judge had called for a record and issued notice on the parties it has invariably been the practice that that Judge should be a member of the Bench to hear that case. The Registrar proposes the names with the tacit approval of all the Judges. The Chief Justice is only acting for and on behalf of all the Judges of this Court with each of whom the power of nomination lies. In *The Queen v. Liyanage* (supra), one of the questions considered was whether the power of nominating Judges under an amending Act to the Criminal Procedure Code given to and exercised by the Minister was valid. The Court held that it was not because that power had

hitherto been vested in the Supreme Court or in the Chief Justice, ibid. p. 360. This case has no application here as no outside agency nominated the Judges. This objection is based on wrong facts, unsupported in law and without any merit. Let me not be misunderstood. Let the present practice of nomination, which is not contrary to law, continue.

In the case from the High Court of Bandarawela, the petition was filed on the 11th of March, 1974 and an injunction granted for a period of six weeks on the 14th of March, 1974. The application for the dissolution of the injunction supported by an affidavit of the Minister, filed on the 28th March, 1974, was refused on the 9th of April, 1974, and the Minister ordered to pay costs. So that on the day records were called for, the injunction had been dissolved by effluxion of time. It is, therefore, submitted that this Court has no jurisdiction to review that case. Even if this be correct there is still the order for costs. The Court has the power to call for the record of a case that has been tried, and this case has been tried. This Court can, upon revision, **pass any Judgment or make any order** which it might have made, **had the case been brought before it in due course in appeal.** Had an appeal been brought within the time limit from that order refusing the cancellation of the injunction, an appropriate order could have been made by this Court.

Nagalingam, J. in *Perera v. Agidahamy*, (supra), in the course of reviewing section 753 of the Civil Procedure Code which is in the same terms as section 354 of the Law, has said that the words "pass any judgment or make any order" lead one 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. The only limitation is that the order made must be one which the Court could have made if the case was brought up in appeal. It is then open to this Court, if it so concludes, to say that the order made by the Judge of the High Court is wrong and consequently the order to pay costs is wrong. In all these cases this Court has jurisdiction in the exercise of its powers in revision to determine whether or not the injunctions should have been issued on the Minister.

This brings me to the second question in the reference: whether an injunction lies against a Minister of State under section 24 of the Interpretation (Amendment) Act No. 18 of 1972. The amendment came into operation on 11th May, 1972. Section 24(1) of the Amending Act reads:—

> "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."

The contention on behalf of the landowners is that this section has no application, according to the plain meaning of the words, in respect of acts done or power exercised *mala fide* or with an ulterior purpose. To consider the meaning of this section it is necessary to go back to the history of this legislation. What was the mischief the legislature intended to remedy? I do not think it was disputed that, whatever Government is in power, acquisition of land had always been challenged in the Courts with the result that on various grounds injunctions have been issued at various stages to stay the acquisitions thereby delaying them. Cases in these Courts show that. Injunctions were granted where land was required in very urgent matters. There were also numerous instances where injunctions have been issued in several courts in this country against the members of the Public Service Commission in respect of disciplinary action taken against Public Servants. With the result the work of the State was hampered. An answer to this may be to expedite the acquisition proceedings as it was done by Act No. 20 of 1969. Apparently that Act was found ineffective. It was in this situation that this amending legislation was enacted. It is a matter for the legislature to choose the remedy and in the remedy chosen the question is whether its terms are adequate to meet the situation.

A number of speeches of Ministers and Members of Parliament have been referred to in the course of the arguments. "It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law. . . is inadmissible . . . as evidence of intention . . . of the legislature." *Assam Railway Trading Co v. I.R.C.*, (supra). Said Lord Reid, "The rule is firmly established that we may not look at Hansard and in general I agree with it for reasons which I gave last year in *Beswick v. Beswick* (supra). This is not a suitable case to reopen the matter but I am bound to say that this case seems to show that there is room for an exception when examining the Hansard would almost certainly settle the matter one way or other" *Warner v. Metropolitan Police Commissioner* (supra). An examination of the debate would necessarily lead us to the examination of other debates on a like question on other occasions. This will in my view involve the Court in sitting in judgment over a political debate when the function of this Court is to say what the enacted words of the statute mean as they finally stand.

Many arguments were advanced based on what happened during the passage of the Bill in Parliament. The Bill itself, as it was originally

presented, differs from the Act. Words may be altered, added or omitted for various reasons with which a Court should not be concerned. It has been said that the Parliamentary history of a statute is "wisely inadmissible to explain it." *Rex v. Hertford College.*[146] The same view has been expressed in *Rex v. West Riding of Yorkshire Country Council.*[147] It is then only the final product in print that a Court should be concerned with.

Prior to the 11th May, 1972, no injunction was granted against the Crown (The State) or against a Public (State) Officer. But a method has been found to get over this by saying a Public Officer could be restrained in his individual capacity. *Buddhadasa v. Nadarajah* (supra). The judgment of Basnayake, C.J. cited in support of the proposition that an injunction was available against a Public Officer, *Ladamuttu Pillai v. A.G.* (supra) has been set aside in **62 N.L.R. 169** (supra) by the Privy Council. Although the Privy Council was silent on this question that case is not a satisfactory authority for that proposition. The position in England appears to be the same **(De Smith: Judicial Review of Administrative Actions, 2nd Edition, p. 339.)** In *Ratwatte v. Minister of Lands* (supra) an interim injunction was issued on the Minister of Lands. It was in this background that the Interpretation (Amendment) Act No. 18 of 1972 was passed.

What the Amending Act in this section has done is to (a) reiterate the law as regards the non-availability of injunctions against the State and State officials, (b) prohibit the grant of injunctions against four categories of persons, and (c) instead give relief by way of a declaratory action as section 23 barred the declaratory action in certain cases. The right to damages is preserved. An injunction is pre-eminently a discretionary remedy. **(De Smith, p. 331.)** The discretion must, of course, be judicially exercised. There is no right as such to an injunction. A restriction is placed, undoubtedly an important one, on the relief available. Hence this is insufficient reason for a strict interpretation.

Section 24(1) enacts "Nothing in any enactment, whether passed or made before or after the commencement of this . . . " The word "enactment" is defined in section 2(g) as "shall include an Ordinance as well as an Act of Ceylon." The Act became law on the 11th May, 1972, a few days before the New Constitution was promulgated. I cannot conceive of an amendment so close to that date without the Legislature intending that the Act should apply to all laws passed in the future. Says **Craies on Statute Law, 7th Edition, p. 213,** "when the word defined is declared to include so and so, the definition is extensive." Hence the word "enactment" is wide enough to include the laws passed by the National State Assembly.

Comparison of this section with sections in two other enactments, section 461 of the Civil Procedure Code and section 88 of the Police Ordinance does

[146] (1878) 3 Q.B.D. 693 at 707.

[147] (1906) 2 KB 676 at 716.

not help in the interpretation. Section 461 of the Civil Procedure Code reads, "No action shall be instituted in respect of an act purporting to be done. . . " It was the view taken in *Appu Singho v. Don Aron* (supra) and *Abaran Appu v. Banda* (supra), that notice was necessary in the case of *bona fide* acts. Wijeyewardena, C.J. in *Ratnaweera v. Superintendent of Police.* C.I.D. (supra) said at 222, "The view that section 461 does not apply to *mala fide* acts of public officers is too restricted a view" and said again at 224, "The motive with which an act was done does not enter into the question at all." Pulle, J. agreed with him. This was also the view taken in *De Silva v. Illangakoon* (supra) by Basnasyake, A.C.J. and Pulle, J. A notice contemplated to be given is only a step in the procedure to claim relief. In that process I do not think that *mala fides* or *bona fides* of the act has any bearing on that requirement. This was the view of two of the Judges in *Roncarelli v. Duplessis* (supra) in interpreting a section very similar to section 461. That section is at p. 157:—" . . . any act done in the exercise of functions. . . ". The view of Wijeyewardene, C.J., with respect, then appears to me to be the better view.

Section 88 of the Police Ordinance says that "all actions and prosecutions. . . . . for anything done or intended to be done. . . . . shall be commenced within three months after the act complained of shall have been committed, and not otherwise. . . . ." This has been interpreted not to apply to *mala fide* acts. This is really a section in a Statute of Limitations. After three months there shall be no action and one month before action there shall be a notice. If sufficient amends be made there shall be no action. It bars any action. Then in that situation it was said, to cite one of the cases, in *Ismalanne Lokka v. Haramanis* (supra), "A Police Officer found to have acted maliciously and not *bona fide* is not entitled to rely on the limitations of actions provided for . . . " Hence caution is necessary in adopting the meaning ascribed to the words in section 88 of the Police Ordinance to the words in section 24 of the Amending Act, as said in **Craies on Statute Law, 7th Edition, p. 164.**

It was argued that in section 22 of the Amending Act there was a distinction made between the genuine and the spurious exercise in the use of the words "in the exercise or the apparent exercise." Consequently the words in section 24 being "in the exercise of any power" what was meant is only the genuine exercise of power. But to my mind it was so enacted in section 22 because of the proviso to that section providing a remedy for the exercise of power, *inter alia*, without jurisdiction. Then that is no reason for limiting the meaning of the word "exercise" to mean only a "'genuine exercise." For any genuine exercise there is no necessity of prohibiting the grant of an injunction. It is for the spurious that safeguards have to be provided. What is contemplated is "any act done." It is not "an act done." The word **any** imparts the widest possible meaning to the word **act.** It must be given the normal wide meaning and there is no reason for introducing any additional

limiting word. Similarly to the phrase "exercise of any power" the normal wide meaning has to be given. The words that have to be construed are "any act done, intended or about to be done in the exercise of any power." They are very wide words and must be given their full meaning and content.

Section 24(1) must be read with the proviso. The two have to be read together. The principal part provides that no injunction shall be available. The proviso preserves the jurisdiction of the subordinate Courts over tribunals while it takes away one of the remedies, viz. injunctions. The declaratory action is given in lieu of injunctions which in plain language means "instead of." It was said once a declaratory action was made available the injunction should be available till the determination of the action. Such a construction will be to treat the proviso as an enacting clause independent of the principal part which is contrary to the accepted principles. **Craies on Statute Law, 7th Edition, p. 218, 219.** It was repeatedly urged that the availability of the declaratory action without the injunction will render the declaratory action of no force or avail. No doubt there can be hard cases, but that is no reason for saying, when there is an express prohibition, the injunction should be available. That will be to legislate and not to interpret and to give effect to the language of the law.

Section 24(2) prevents any Court from granting an injunction against a State Officer if the granting of it is to give relief against the State which could not otherwise be obtained. This prohibition applies to all acts done as State Officer. Then it is unthinkable, as the learned acting Solicitor-General submitted, that the Legislature intended that an injunction should be available to restrain the acts of a Minister done under statutory powers. Section 24(1) prohibits any injunction being granted "in any action or other civil proceedings," whereas in section 24(2) it says no Court shall "in any civil proceedings" grant an injunction. There is no difference between the two phrases "any action or civil proceedings" and "civil proceedings." Both mean the same thing. Perhaps the words "any action" were included in section 24(1) in view of the proviso which speaks of a declaratory action.

Section 22 prohibits Courts fron examining the validity of decisions of tribunals and authorities where there are "ouster clauses." The Legislature in this section has excluded the power of review in all cases other than these instances spelt out in the proviso. So then if the Legislature intended to confine section 24(1) to a certain class of acts, as contended on behalf of the landowners, the Legislature would have in some definite terms done so. To conclude then, according to the plain meaning of the words of the section, the limitations advanced on behalf of the landowners cannot be placed on the section.

No enactment in this country refers to a permanent injunction or to an interim injunction. The reference is always to an injunction. The context in

which the word is used throws light as to whether the interim injunction is meant. In section 21 of the Administration of Justice Law the injunction is granted in contemplation of an action in the District Court or in the Magistrate's Court. So it is for a limited period. But in section 24(1) of the Amending Act the words are "the power to grant an injunction or to make order for specific performance. . . " and according to their plain meaning deals with the grant of permanent and interim injunctions. The proviso does not alter the position because of the words "in lieu thereof." This is a section in an Interpretation Act and, unless otherwise stated, must apply to all laws providing for temporary and permanent relief. The English Court of Appeal decided that it is impossible to grant anything which corresponds to interim injunctions in proceedings against the Crown. *International Electrical Co. of New York v. Commissioner of Customs and Excise* (supra). In so deciding the Court followed *Underhill and Waywell v. Ministry of Food* (supra), where in considering section 21 of the Crown Proceedings Act of England, Romer, J. said "Accordingly, he (Counsel) says that, just as I cannot grant an interlocutory injunction against the defendants in this case . . . ., I cannot as an alternative make an interim declaration. In my judgment that submission is right." Hence the prohibition in section 24(1) is not only to the grant of perpetual injunctions, as submitted on behalf of the landowners, but also to the grant of interim injunctions.

Argued Mr. Tiruchelvam that this Amending Act does not touch the inherent powers of the Courts to grant an injunction. The power to grant interim relief by way of injunction, and the procedure, are set out in section, 21 and 42 of the Administration of Justice Law and the Civil Procedure Code respectively. Once provided for the only power is that which is given under the statutes which have to be interpreted with due regard to the Interpretation Ordinance. Support for this view is had from the decision of Bonser, C.J. in *Mohamadu v. Ibrahim* (supra) where it was said that the power of granting an injunction was a limited one to be exercised on special grounds and restricted to cases referred to in the Courts Ordinance and that there was no inherent power in the Supreme Court to grant injunctions. See also **Walter Pereira, Laws of Ceylon, p. 95.** A case relied on by the learned Attorney-at-law was *Victor de Silva v. Jinadasa de Silva,*[148] Manickavasagar, J. said "I have no doubt at all that the Court has the power to make order . . . where it believes justice . . . demands the order, though there be no provision in the statute . . ." The learned Judge made the remarks on the basis that there was no provision in the Civil Procedure Code regarding the stay of execution where application in revision was made. This dictum supports the view that the inherent power is invoked in a sphere or situation which legislation has not provided for. I then do not see the necessity of looking into the other authorities submitted. Section 40 of the Administration of Justice law, *inter alia,* provides for making orders as may be necessary to do justice but not for

[148] (1964) 68 N.L.R. 45.

encroaching upon a subject or a sphere that has been provided for by the Legislature. Section 839 of the Civil Procedure Code provides for the exercise of the inherent power but it cannot be for a case provided for by statute.

It was the submission on behalf of all the landowners that where the act of the Minister was motivated by *mala fides* the act is a nullity or where the Minister is motivated by *mala fides* in exercising a power, the exercise of that power and all the steps taken subsequently are a nullity and so in either event, the main part of section 24(1) of the Amending Act does not apply. The Courts today are precluded from, subject to the provisions of section 24, entertaining a declaratory action in respect of matters mentioned in section 23 of the Amending Act. The declaratory actions in the cases under review fall within the category prohibited in section 23. Hence these actions could not have been filed but for the proviso to section 24(1) and have been entertained because the proviso to section 24(1) permitted it. If then the landowners take advantage of the proviso to file the actions complaining of bad faith of the defendant, they cannot be heard to say that the main part of section 24(1) does not apply to acts done in bad faith by the defendant. The proviso depends on the principal part. This can be stated in another way. If the main part of the section prohibits the grant of the injunction only in the case of *bona fide* acts, a curious result follows. The proviso gives the declaratory action "in lieu thereof," that is, instead of the injunction that is prohibited. Hence the declaratory action is available only in the case of *bona fide* acts. In the present actions the basis is the allegation of *mala fides* and consequently they are outside the scope of the proviso. Can then these actions be maintained otherwise? Section 23 of the Amending Act prohibits such actions ". . . upon any ground whatsoever arising out of or in respect of . . . a decision . . . which any person . . . is empowered to make under any written law." These are the widest possible words indeed. Even where the complaint is that the decision is motivated by bad faith, it is still a ground arising in respect of "a decision empowered to be made under a law." Hence every one of these actions under review fall within the prohibitions in section 23 and these actions cannot be maintained in spite of the proviso to section 24(1). Such is the result of the application to section 24(1) **and its proviso** of this submission. Such a result was never intended and never envisaged by the Legislature. Hence this submission must fail. Consequently section 24(1) read with its proviso cannot in any way be limited in its application as submitted on behalf of the landowners.

It has been said that there are no degrees of nullity. But there are degrees of malice. Malice alleged is political revenge. Such allegations can be made easily in the field of politics. May even be unfounded, exaggerated and even instigated. Motive is double edged. Till there is a finding that the act is motivated by *mala fides* it is *bona fides* and valid. There can be a finding of

mala fides only on evidence elicited after both parties have been given at least an opportunity of being heard and never only on the affidavit of an applicant. If then, according to the submissions, section 24(1) prohibits the grant of an injunction only regarding *bona fide* acts is correct, no injunction can be granted till there is a finding that the act is *mala fide*. Then in all these cases injunctions have been granted before there was such a finding. It may appear that section 662 et seq. of the Civil Procedure Code or section 42 of the Administration of Justice Law will be the answer as these sections provide for issue of injunctions on affidavits. It is not so. Every law must be read, construed and applied with due regard to the Interpretation Act and section 24(1) is a section in that Act. For instance take section 42 of the Administration of Justice Law. It says ". . . on its appearing by the affidavit of the plaintiff that sufficient grounds exist therefor, grant an injunction . . . " This must be read subject to section 24(1) of the Amending Act. Sufficient grounds to grant can exist or can appear to exist only on proof of *mala fides*, in view of the submission advanced. But there has been no such proof. Hence the injunctions have been issued in contravention of the section upon the submission advanced.

In this connection it is interesting to note that in the *Underhill* case (supra) where the plaintiff applied for an order to restrain the defendants from publishing a certain notification until the final disposal of the action, Romer J. at page 732 said ". . . evidence by affidavit is insufficient. The want of good faith on the part of the defendants quite clearly cannot be gone into on affidavit evidence and will have to be pursued, if pursued at all, at the trial when it can be gone into in the light of such oral evidence as may be awarded." That appears to me to be the correct position here as well.

Before examining the numerous cases we must remember what this section is. Section 24(1) of the Amending Act is not what is called an ouster or a no certiorari or a preclusive clause. By that clause, the power of review of the Court is not taken away. Only a relief is curtailed in one respect. Hence the principles applied in the construction of ouster clauses may not be strictly applicable here. We are considering actions arising out of an administrative decision of a Minister under statutory powers and not the jurisdiction or the decision of a tribunal required to make a decision judicially. Cases dealing with this later category are still less applicable. Great reliance was placed on the case of *Anisminic v. Foreign Compensation Commissioners* (supra).

What Lord Reid in the passage, now daily quoted at 170: "But there are many cases where although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature it is a nullity. It may have given its decision in bad faith . . . ; I do not intend this list to be exhaustive. In such events the

finding of a tribunal is a nullity." This was a decision relating to the finding of a Judicial Tribunal in a claim involving a sum of £4 1/2 million. It did not deal with any question of *mala fides* at any stage of the proceedings of the tribunal or of any member of it; it did not deal with any questions on restrictions placed on relief granted by a Court. The essence of that decision was that an ouster clause does not prevent the determination of a tribunal acting judicially being set aside if it was outside the tribunal's jurisdiction. There is no ouster clause under consideration in these cases.

In the *Anisminic case* (supra) what Lord Reid said was that *mala fides* in giving a decision renders that decision a nullity. He did not say that all the steps taken thereafter are a nullity or anything that flows therefrom is a nullity. In all these cases after the decision to acquire, definite steps have been taken towards the acquisition, lands surveyed, orders to take possession published, state officers taken over the possession of the lands on behalf of the State. All these steps are pregnant with legal consequences. Even if the decision be declared to be motivated there is no meaning in calling the subsequent steps a nullity. Supposing in the *Anisminic case* (supra), or in such a case, the claim of the company in a sum of £4 1/2 million was entertained but before the decision was declared or found to be a "nullity," the company was paid money which was distributed among the shareholders. Suppose a Police Officer who has statutory powers of search in certain circumstances searches a house *mala fide*. There is no meaning in calling these acts a nullity. They have been done. It may be an illegal payment or search. The act being illegal, there may be a cause of action, and damages. Instances can be multiplied. In *Nakudda Ali v. Jayaratne* (supra) Lord Radcliff said referring to an order of the Controller of Textiles, "No doubt he must not exercise the power in bad faith . . . " But with great respect he did not say it was a nullity if bad faith was established. In fact in 1956, in the *Smith case* (supra) referred to later he said that the argument that the decision was a nullity was only a play on the meaning of the word "nullity."

This brings me immediately to the examination of the case of *Smith v. East Elloe Rural District Council* (supra). It dealt with the validity of a compulsory purchase order of land and bad faith was proved. The House of Lords considered an ouster clause and held that the jurisdiction of the Courts was ousted. At page 871 Lord Radcliff said, "At one time the argument was shaped into the form of saying that an order made in bad faith was in law a nullity and that all references to compulsory purchase of land in paras 15 and 16 must be treated as references to such orders only as had been made in good faith. But this argument in reality is a play on the meaning of the word "nullity." An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken to establish the question of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

We were repeatedly reminded of *Roncarelli v. Duplessis* (supra). It was a case where a bar-keeper sued the Prime Minister and Attorney-General of Ontario for damages for maliciously instructing the licensing authority to cancel, without legal authority, a licence. There was proof of fraud and corruption. That case only illustrates that "an action for damages lies for deliberate abuse of public authority". **Halsbury 4th Ed. Vol. 1, p. 187.** There was neither an ouster clause nor anything equivalent to our section 24 which was considered in that case. The Privy Council in *David v. Abdul Cader* (supra), said per Viscount Radcliffe, "A malicious misuse of authority may cover a set of circumstances which go beyond the presence of mere ill will and it is only after the facts of malice have been properly ascertained is it possible to say that there has been an actionable breach of duty." That does not help in the interpretation of the section in question or the proposition advanced on behalf of the landowners. Similarly several other cases from various countries cited dealt with the abuse of power or public authority and for such abuse actions lay. These have no application.

The two Australian cases cited as the forerunners of the *Anisminic case* (supra) considered ouster clauses. In *The King v. Hickman, et al*[149] an ouster clause in the Coal Mining Industry Regulation to the effect that "a decision of a Local Reference Board shall not be appealed against . . . . be subject to Prohibition, Mandamus or Injunction . . . " Section 75 of the Australian Constitution enacted (relevant portion) "In all matters in which a Writ of Mandamus or Prohibition or an Injunction is sought, the High Court shall have jurisdiction." In view of the provision a Writ of Prohibition was issued in respect of a decision of the Board on an erroneous finding that the matter was within the ambit of the Industry. Dixon, J. enunciated the additional requirement of *bona fides* for its validity though that was never in issue. This case was cited in *The Queen v. Members of the Sugar Cane Prices Board et al.*[150] The Court considered an ouster clause in the Regulations of Sugar cane Prices Act and refused a Writ of Prohibition. The whole Court said that although section 12 did not permit the making of a new award (by the Central Board) its validity was not open to challenge in view of the preclusive clause. It was said there, (p. 252) that the decision of the Central Board was not open to challenge as it was within jurisdiction and *bona fide*, by Dixon, C.J., who presided over that Bench and two others. If I may say so, I am reminded of what Lord Radcliff said in *Nakudda Ali v. Jayaratne* referred to earlier. However, two of the Judges said at p. 261 that the award cannot be questioned on any account whatsoever and its validity is put beyond challenge. Certainly some of the dicta do not appear to support the argument on behalf of the landowners. If section 22 of the Amending Act or the ouster clauses in the Acquisition Act were being considered, these cases may be of relevance. The submission on behalf of the landowners must therefore, fail.

[149] (1945) 70 C.L.R. 598.

[150] (1959) 101 C.L.R. 246.

In conclusion there is one paragraph in the *Smith case* (supra) which I must quote in the present context. Lord Radcliff said at p. 871, '. . . and that brings us back to the question that determines this case: Has Parliament allowed the necessary proceedings to be taken. I am afraid that I have searched in vain for a principle of construction as applied to the Acts of Parliament which would enable the appellant to succeed. On the other hand it is difficult not to recall in the respondent's favour the dictum of Lord Bacon, "*Non est interpretatio, sed divinatio, quae recedit a litera.*" That to my mind settles the question in these cases. The English translation of the Latin quotation reads, "What there is a departure from the text, it is not an interpretation but a prophecy." I will ask the same question Lord Radcliffe asked, "Q. Has Parliament allowed the necessary proceedings to be taken? A. Only a declaratory action but not an injunction." Any other answer in my judgment is a departure from the text and can only be on the assumption of the role of a legislator.

Accordingly in all these cases section 24(1) of the Interpretation (Amendment) Act No. 18 of 1972 precluded the Courts from granting the injunction against the defendant. All the orders granting injunctions are set aside and all the injunctions as are still in force will stand dissolved. The Order of the Judge of the High Court, Badulla, requiring the defendant to pay costs is set aside.