1957 *Present:* Basnayake, C.J., Pulle, J., and K. D. de Silva, J.

LADAMUTTU PILLAI, Appellant, *and* THE ATTORNEY-GENERAL and others, Respondents

S. C. 457—D. C. Colombo, 288/Z

Interpretation of statutes—Statute which encroaches on property rights of the subject—Strict construction necessary—Decision of a public functionary—Provision in statute that it should be "final"—Effect of expression "final" or "final and conclusive" on jurisdiction of Courts—Words in the singular number include the plural—Interpretation Ordinance, s. 2 (x).

Land Redemption Ordinance, No. 61 of 1942—Sections 2, 3 (1) (b), 3 (4), 3 (5)—Land Commissioner—Liability to be sued in his official capacity for acquiring land illegally—His status as a corporation—Injunction may be issued against him—Quasi-judicial functions vested in him—Control of Minister—Civil Law Ordinance, s. 3—Land Development Ordinance, ss. 2, 3—Crown Lands Ordinance, s. 90—Civil Procedure Code, ss. 5, 6, 8, 217 (2), Chapter 31—Courts Ordinance, ss. 42, 86—Certiorari—Does not exclude other remedies—Joint and several creditors—Effect of institution of action by one of them.

Where a statute encroaches upon the property rights of the subject and its language admits of more than one construction, that which is in favour of the subject and not one against him must be preferred.

A statutory functionary like the Land Commissioner may be sued *nomine officii*.

When a statute provides that a decision made by a statutory functionary shall be "final" or "final and conclusive", the words "final" and "final and conclusive" do not have the effect of ousting the jurisdiction of the Courts to declare in appropriate proceedings that the decision of the public functionary, when he has acted contrary to the statute, is illegal.

When one of joint and several creditors institutes an action to recover a debt, payment to the other co-creditors does not extinguish the debt.

Certiorari does not exclude a regular action when both the remedies are available.

Subsections 1 and 4 of section 3 of the Land Redemption Ordinance, No. 61 of 1942, read as follows:—

3. (1) The Land Commissioner is hereby authorised to acquire on behalf of Government the whole or any part of any agricultural land, if the Land Commissioner is satisfied that that land was, at any time before or after the date appointed under section 1, but not earlier than the first day of January 1929, either—

(a) sold in execution of a mortgage decree, or

(b) transferred by the owner of the land to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was, immediately prior to such transfer, secured by a mortgage of the land.

(4) The question whether any land which the Land Commissioner is authorised to acquire under subsection (1) should or should not be acquired shall, subject to any regulations made in that behalf, be determined by the Land Commissioner in the exercise of his individual judgment; and every such determination of the Land Commissioner shall be final.

Held (K. D. DE SILVA, J., dissenting), that, under section 2 (*x*) of the Interpretation Ordinance, words in the singular number include the plural. Accordingly, section 3 (1) (*b*) of the Land Redemption Ordinance applies only to a transfer of the entire land where only one land is mortgaged or to a transfer of all the lands where more than one land is mortgaged. Where several lands are mortgaged as security for a debt, the section would not apply to a transfer of undivided shares in a land or lands. Inasmuch as the Land Redemption Ordinance constitutes a serious intrusion on the property rights the subject, it should be strictly construed and its scope should be strictly confined by preferring a construction in favour of the subject and against the acquiring authority.

Held further (*per* BASNAYAKE, C.J., and PULLE, J.), (*i*) that where there are joint and several mortgagees and one of them institutes action on the mortgage bond, a subsequent transfer of the mortgaged property by the mortgagor in favour of any of the other co-mortgagees cannot come within the ambit of section 3 (1) (*b*).

(ii) that the Land Commissioner may be sued *nomine officii*. Section 2 of the Land Redemption Ordinance, section 90 of the Crown Lands Ordinance and section 2 of the Land Development Ordinance make it clear that the Land Commissioner is regarded as a corporation in regard to his statutory duties and functions. The fact that the Minister has "general direction and control" does not absolve the Land Commissioner in the performance of his duties.

(iii) that section 3 (4) of the Land Redemption Ordinance does not preclude a person from challenging in a regular action the legality of the determination of the Land Commissioner to acquire a land.

(iv) that an injunction under section 86 of the Courts Ordinance can be issued against the Land Commissioner restraining him from taking steps to acquire a land unlawfully.

(v) that the right to institute a regular action to obtain a declaratory decree and an injunction is not excluded by the fact that a writ of *certiorari* also may be available.

APPEAL from a judgment of the District Court, Colombo. The facts appear from the judgment of Basnayake, C.J.

H. V. Perera, Q.C., with *H. Wanigatunga* and *S. L. D. Bandaranayake*, for Substituted-Plaintiff, Appellant.

Walter Jayawardena, with *V. Tennekoon*, Senior Crown Counsel, and *A. Mahendrarajah*, Crown Counsel, for 1st and 2nd Defendants, Respondents.

H. W. Jayawardene, Q.C., with *S. C. E. Rodrigo* and *W. G. N. Weeratne*, for Added-Defendant, Respondent.

Cur. adv. vult.

January 31, 1958. BASNAYAKE, C.J.—

Many questions of great public importance arise on this appeal which has been very ably argued by learned counsel.

The facts are not in dispute. Briefly they are as follows:—Warnakula Aditha Arsanilaitta Don Elaris Perera, the 3rd added defendant-respondent (hereinafter referred to as Elaris Perera), was the owner of four lands known as (*a*) Keeriyankalliya Estate, (*b*) Dangahawatta *alias* Thalgahawatta, (*c*) Siyambalagahawatta Mukalana and Thalawewa

Mukalana, Siyambalagahawatta, and (*d*) Angunuwila Estate situated in the Chilaw and Puttalam Districts. They are 42 acres, 6 acres, 9 acres, and 65 acres respectively.

By Bond No. 391 of 30th September 1925 (P 1) Elaris Perera mortgaged as security for a loan of Rs. 50,000 the eleven allotments of land referred to in the schedule thereof of a total extent of about 150 acres to M. S. V. S. Sockalingam Chettiar, M. S. U. Subramaniam Chettiar and A. R. M. K. Arunasalam Chettiar. The condition of the bond was that money was repayable to any one of the mortgagees or their attorneys or heirs. By Bond No. 533 of 8th April 1930 (P 2) Elaris Perera executed a secondary mortgage of the same lands for Rs. 25,000 in favour of M. S. O. Muttiah Chettiar, M. S. O. Velayuthan Chettiar, M. S. O. Suppramaniam Chettiar, M. S. O. Sockalingam Chettiar and S. K. N. S. Sekappa Chettiar. This loan also was repayable to any one of the mortgagees or their attorneys or heirs.

On 8th March 1931 Elaris Perera executed tertiary Bond No. 2339 (P 3) for Rs. 20,000 in favour of Warnakulasuriya Elaris Dabarera Appuhamy of Marawila over the same and other lands.

Sockalingam Chettiar put Bond P 2 in suit in D. C. Negombo case No. 7365 and added the tertiary mortgagee as a party to the action. Decree was entered on 22nd June 1933 in favour of Sockalingam Chettiar for a sum of Rs. 32,625 with further interest on Rs. 25,000 at 15 per cent. per annum from 7th February 1933 till the date of decree with further interest on the aggregate amount of the decree at 9 per cent. per annum till payment in full with costs of the action within four months of decree. By deed No. 4010 of 4th May 1935 (P 5) Elaris Perera transferred to Sockalingam Chettiar and Sekappa Chettiar for a sum of Rs. 75,000 undivided shares in the lands mortgaged on P 1 and P 2 in the proportion of $\frac{2}{3}$ share to Sockalingam and the remaining $\frac{1}{3}$ to Sekappa Chettiar. It would appear from the attestation clause in the deed that the full consideration was set off in full satisfaction of the claim and costs due in case No. 7365 D. C. Negombo and the principal and interest due on Bond P 1. Elaris Perera also appears to have undertaken to release the lands from Tertiary Bond P 3. Sockalingam Chettiar by deed No. 1375 of 10th October 1940 (P 6) transferred an undivided $\frac{1}{3}$ share of the lands to Velayuthan Chettiar and by deed No. 1387 of 13th October 1940 (P 7) he transferred his remaining $\frac{1}{3}$ share to Kalyani Atchi, administratrix of the Estate of Muttiah Chettiar, and to Meyappa Chettiar, the son of Muttiah. By deed No. 761 of 24th February 1945 (P 8) Sekappa Chettiar, Velayuthan Chettiar, Kalyani Atchi and Meyappa Chettiar transferred to the plaintiff, Muthuwairen Sittambalam Pillai, also known as Muthuwairen Ladamuttu Pillai, for a sum of Rs. 75,000 the lands undivided shares of which were transferred by Elaris Perera on P 5. The plaintiff thereafter entered into possession of them.

On 7th February 1949 the Land Commissioner informed the plaintiff that he was taking steps to acquire under the Land Redemption Ordinance No. 61 of 1942 four of the lands purchased by him under P 8. The plaintiff challenged the Land Commissioner's right to acquire the lands and instituted this action against the Attorney-General as the

1st defendant and the Land Commissioner as the 2nd defendant in which he prays for an injunction restraining the defendants jointly or in the alternative from taking steps under Ordinance No. 61 of 1942 to acquire the lands described in the schedule to the plaint.

The plaintiff died on 8th April 1951 and Ladamuttu Pillai Kathirkamam Pillai, his eldest son and administrator of his Estate, was substituted as party plaintiff.

The Attorney-General and the Land Commissioner in their joint answer filed on 2nd March 1950 stated that on 16th May 1945 Elaris Perera applied to the Land Commissioner for the redemption of the lands described in the schedule to the plaint and that on 12th May 1947 the Land Commissioner acting under section 3 (4) of the Land Redemption Ordinance No. 61 of 1942 made his determination that Keeriyankalliya Estate be acquired and that notification of his determination was conveyed to the plaintiff on 7th February 1949. The defendants further asserted—

(*a*) that the land is land of the description contained in section 3 (1) (*b*) of the Ordinance,

(*b*) that the Land Commissioner's determination to acquire Keeriyankalliya Estate under the provisions of the Land Redemption Ordinance was final and conclusive and could not be questioned in this action and that the District Court had no jurisdiction to entertain it.

Elaris Perera petitioned the Court that his presence before it was necessary in order that it may effectively and completely adjudicate on all matters arising in the trial, and was added as the 3rd defendant. In his answer he raised substantially the same objections of law as the Attorney-General and the Land Commissioner.

The following issues were framed at the trial :—

1. Is the land in question capable of acquisition under section 3 of the Land Redemption Ordinance No. 61 of 1942 ?
2. Did the Land Commissioner on or about 12.5.47 make a determination under section 3 (4) of the Land Redemption Ordinance No. 61 of 1942 that Keeriyankalliya Estate be acquired ?
3. Was the said Estate on or about 12.5.47 a land of the description contained in section 3 (1) (*b*) of the Land Redemption Ordinance No. 61 of 1942 ?
4. Is the Land Commissioner's determination with regard to the acquisition of Keeriyankalliya Estate final ?
5. If so can the correctness of the said determination be questioned in these proceedings ?
6. Is the plaintiff entitled to proceed against the 1st defendant as representing the Crown to obtain an order of injunction against the Crown ?
7. Can plaintiff maintain this action against the 2nd defendant as the Land Commissioner without suing the officer who made the order in question by name ?
8. Is the plaintiff a bona fide purchaser for value from the original transferees of the said lands from the 3rd defendant ?
9. If so, is the 2nd defendant empowered to acquire lands from him ?

The learned District Judge dismissed the plaintiff's action. He answered the first, second, third, seventh, eighth, and ninth issues in the affirmative, the sixth issue in the negative. In answer to the fourth and fifth issues he held that the Land Commissioner's decision on facts is final and that the question of law whether he had authority to acquire a particular land is subject to review by the Court.

He held that—

(*a*) the Land Commissioner can be sued *nomine officii*,

(*b*) the Court was entitled to consider whether he had acted within the powers granted by the section,

(*c*) the action taken by the Land Commissioner was covered by sections 3 (1) (*b*) and (4) of the Ordinance.

It appears from the judgment of the learned District Judge that in the course of the final addresses of counsel for the plaintiff it was conceded that the Attorney-General could not be sued, and that the action as against him should be dismissed.

Learned counsel for the appellant challenged the findings of the learned trial Judge on those issues which were decided against him. He submitted that the Land Commissioner's construction of section 3 of the Ordinance was wrong and that upon a wrong construction of the statute he had arrogated to himself a jurisdiction which he did not have.

Section 3 of the Ordinance in the form in which it stood on 12th May 1947 reads as follows :—

3. (1) The Land Commissioner is hereby authorised to acquire on behalf of Government the whole or any part of any agricultural land, if the Land Commissioner is satisfied that that land was, at any time before or after the date appointed under section 1, but not earlier than the first day of January 1929, either—

(*a*) sold in execution of a mortgage decree, or

(*b*) transferred by the owner of the land to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was, immediately prior to such transfer, secured by a mortgage of the land.

(2) Every acquisition of land under sub-section (1) shall be effected in accordance with the provisions of sub-section (5) and shall be paid for out of funds provided for the purposes of this Ordinance under section 4.

(3) No land shall be acquired under sub-section (1) until the funds necessary for the purpose of such acquisition have been provided under section 4.

(4) The question whether any land which the Land Commissioner is authorised to acquire under sub-section (1) should or should not be acquired shall, subject to any regulations made in that behalf, be determined by the Land Commissioner in the exercise of his individual judgment ; and every such determination of the Land Commissioner shall be final.

(5) Where the Land Commissioner has determined that any land shall be acquired for the purposes of this Ordinance, the provisions of the Land Acquisition Ordinance, subject to the exceptions,

modifications and amendments set out in the First Schedule, shall apply for the purposes of the acquisition of that land ; and any sum of money which may, under such provisions be required to be paid or deposited by the Land Commissioner or by Government by way of compensation, costs or otherwise, shall be paid out of funds provided for the purposes of this Ordinance under section 4.

The lands which the Land Commissioner is seeking to acquire in the instant case are admittedly agricultural lands. It is common ground that they are not lands sold in execution of a mortgage decree. The question then is — Are they lands " transferred by the owner of the lands to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was, immediately prior to such transfer, secured by a mortgage of the lands " ? Learned counsel for the Land Commissioner contended that they were, while learned counsel for the appellant contended that they were not. The latter submitted that section 3 (1) (*b*) applies only to a case where the lands transferred by the owner are the very lands which were security for the debt due from the owner. He submitted that the section does not apply to a case in which the lands transferred are, as in this case, some only of the lands secured by the mortgage. Where several lands are given as security for a debt, the section would not apply unless all the lands are transferred. He further submitted that in a case where only one land is given as security for a debt due from its owner the section would apply only if the entirety of that land was transferred by the owner in satisfaction or part satisfaction of his debt, and not if only a part of the land was transferred. He submitted that in applying the rule of interpretation in section 2 (*x*) of the Interpretation Ordinance words in the singular number shall include the plural where the plural is read and in the instant case the word " land " should be read as " lands " throughout. According to that view he submitted that the section should be rendered " that the lands were transferred by the owner of the lands so transferred to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was, immediately prior to such transfer, secured by a mortgage of (all) the lands transferred ". He also submitted that statutes such as the Land Redemption Ordinance which encroach on the rights of the subject, should be strictly construed. I am in entire agreement with the view submitted by learned counsel.

Doubtless all statutes must be construed with due regard to their language and if the words of a statute are precise and unambiguous they must be expounded in their natural and ordinary sense. But where a statute encroaches on the rights of the subject and its language admits of more than one construction, that which is in favour of the subject and not against him must be preferred. In a statute which interferes with the person or property of the subject the Court should not supply the defects of language or eke out against the subject by a strained construction the meaning of an obscure passage. The rule of strict construction also requires that the benefit of a doubt created by any equivocal words or ambiguous sentence should be given to the subject.

It must be presumed that the Legislature does not intend to encroach upon the rights of the subject except where it says so plainly and that where it intends to do so it will manifest its intention, if not in express words, at least by the clearest implication and beyond all doubt. The Land Redemption Ordinance is an enactment which constitutes a serious intrusion on the property rights of the subject. It should therefore be strictly construed and its scope should be strictly confined by preferring a construction in favour of the subject and against the acquiring authority.

Learned counsel bases his contention that the transfer P5 does not fall within the ambit of section 3 (1) (*b*) on the following considerations :—

(*a*) What was transferred was not the lands themselves but undivided shares in the lands. The transfer of a land and of an undivided share in a land is not the same. The section contemplates transfer of a land or lands and not undivided shares in a land or lands.

(*b*) The transfer to Sekappa was not in satisfaction or part satisfaction of a debt which was due from Elaris Perera to Sekappa. It was in satisfaction of the debt due on bond P1 in favour of Sockalingam, Subramaniam and Arunasalam.

The submission that the section applies only to the transfer of the land securing the debt and not to the transfer of an undivided share in it, is sound. The section refers to land and not to undivided shares in land. An undivided share in a land is not the same as the land itself and the transfer of an undivided share in a land is not a transfer of the land. Learned counsel for the Crown did not seriously resist this argument.

Learned counsel also submitted that once Sockalingam instituted action for the recovery of the money due on bond P 2, Sekappa who was party to that bond lost his right to proceed against Elaris Perera, the obligation created thereby being joint and several.

It is correct that when one of joint and several creditors institutes an action to recover a debt, payment to the other co-creditors does not extinguish the debt. The moment Sockalingam instituted the action on the bond Elaris Perera's right to choose the co-creditor to whom he would pay the debt ceased and his debt became payable to Sockalingam alone.

There is no presumption that where there are a number of creditors the obligation is joint and several. The obligation must, as in Bonds P 1 & P 2, be expressly created (Voet Bk XLV, Tit. 2, Sec. 2—Gane, Vol. 6, p. 657).

On this topic of the rights of joint and several creditors Voet states :—Voet Bk XLV, Tit. 2, Sec. 1—Gane, Vol. 6, p. 655) ;

> There are two parties to a stipulation or credit when two or more persons stipulate as principals each in whole for the same thing at one and the same time, with the intention of each indeed collecting the whole thing, yet all of them collecting only one such thing.

Where a correal obligation has been created—

> It is in the power of the stipulator to say which of a number of promisors of the same thing he prefers to sue for the whole. Likewise

on the other hand it is in the discretion of the debtor to say which of a number of joint and several creditors he prefers to pay and to favour in such wise that he is himself freed from all of them. This he can do until one of a number of parties to the stipulating has started to sue and to safeguard his interests, for after that time a promisor effects nothing by tendering the money to another. (Voet Bk XLV, Tit. 2, Sec. 3—Gane 6, p. 659).

Again Voet says—

But whatever one of the parties to a stipulation has collected, he is not held liable to treat it proportionally as common with another, unless there was partnership between them. Surely the one who has obtained his due in full holds nothing beyond what was due to him. Hence it comes about that a promisor, when already sued by one creditor, effects nothing by tendering the money to another. (Voet, Bk XLV, Tit. 2, Sec. 7—Gale 6, p. 663).

In support of his contention that after judgment was entered in favour of Sockalingam, no debt was due to Sekappa on P 2, learned counsel cited paragraphs 258 and 260 of Pothier on Obligations (Vol. I, p. 144—Evan's translation). The former paragraph (258) reads :

Regularly, when a person contracts the obligation of one and the same thing in favour of several others, each of these is only creditor for his own share, but he may contract with each of them for the whole when such is the intention of the parties, so that each of the persons in whose favour the obligation is contracted is creditor for the whole, but that a payment made to any one liberates the debtor against them all. This is called Solidity of Obligation. The creditors are called *correi credendi, correi stipulandi.*

and the latter paragraph (260) reads :

The effects of this solidity amongst creditors are, 1st. That each of the creditors being creditors for the whole, may consequently demand the whole, and, if the obligation is executory, constrain the debtor for the whole. The acknowledgment of the debt made to any one of the creditors, interrupts the prescription as to the whole of the debt, and consequently enures to the benefit of the other creditors, *l. fin. cod. de duobus reis.* 3rd. The payment made to any one of the creditors extinguishes the debt, for the creditor being such for the whole, the payment of the whole is effectually made to him, and this payment liberates the debtor as against all, for although there are several creditors, there is but one debt, which ought to be extinguished by the entire payment made to one of the creditors.

It is at the choice of the debtor to pay which of the creditors he will, as long as the matter is entire ; but, if one of them has instituted a process against him, he cannot make an effectual payment, except to that one ; *Ex duobus reis stipulandi, si semel unus egerit, alteri promissor offerendo pecuniam nihil agit. l.* 16 *ff de duob. reis.* 4. Each of the creditors being such for the whole may, before a process instituted by any of the others, make a release to the debtor, and liberate him, as against them all.

For in the same manner as a payment of the whole, to any one of the creditors, liberates the debtor against all, a release by one, which is equivalent to a payment, ought to have the same effect. *Acceptilatione unius tollitur obligatio, 1. 2 ff de duob. reis.*

The foregoing citations support learned counsel's contention that Sekappa's right to claim the debt from Elaris Perera ceased on the institution of the mortgage action by Sockalingam and that the transfer to Sekappa was not therefore a transfer in satisfaction or part satisfaction of a debt due from Elaris Perera to Sekappa. Clearly then the transfer, apart from it being a transfer of undivided shares, does not for this additional reason, come within the ambit of section 3 (1) (*b*).

The Land Commissioner had therefore no authority in law to acquire the land and the plaintiff's prayer that he should be restrained from doing so must be granted.

The other questions which arise for decision on this appeal are as follows :—

(*a*) that the plaintiff is not entitled to ask for the relief he has sought in this action against either the Attorney-General or the Land Commissioner,

(*b*) that as sub-section (4) of section 3 declares that every determination of the Land Commissioner under sub-section (1) is final his determination cannot be questioned in an action of this nature,

(*c*) that in any event the action is bad as it had been brought against the Land Commissioner *nomine officii* and not in his personal name against the officer who made the determination in question,

(*d*) that an injunction cannot be granted against the Crown or the officers or servants of the Crown,

(*e*) that as the Land Commissioner exercises under section 3 (1) a quasi-judicial function his determination can be canvassed only by certiorari and not by a regular action.

I shall now proceed to deal with the points as far as is convenient in their order as set out above.

Points (*a*) and (*c*) are best dealt with together. Learned Crown Counsel's contention is that an action can be brought against a person natural of juristic and that as there is no juristic person known as the Land Commissioner an action cannot be brought against the Land Commissioner by that name. It can only be brought against the natural person appointed to that office.

The office of Land Commissioner was created by the Land Development Ordinance. Section 2 of the Ordinance defines the expression Land Commissioner thus :—

" Land Commissioner " means the officer appointed under section 3 of this Ordinance, and includes any officer of his Department authorised by him in writing in respect of any particular matter or provision or this Ordinance.

Section 3 of the Ordinance provides :—

(1) There may be appointed a Land Commissioner who shall be responsible—

(*a*) for the due performance of the duties and functions assigned to him as Land Commissioner under this Ordinance ;

(*b*) for the general supervision and control of all Government Agents and Land Officers in the administration of Crown land and in the exercise and discharge of the powers and duties conferred and imposed upon them by this Ordinance.

(2) In the exercise of his powers and in the discharge of his duties under this Ordinance, the Land Commissioner shall be subject to the general direction and control of the Minister.

The Ordinance vested in the Land Commissioner a number of statutory functions to be performed by the person for the time being holding the office. Other statutory functions are vested in the Land Commissioner by the Land Redemption Ordinance and the Crown Lands Ordinance. The former Ordinance (section 2) provides :—

The Land Commissioner shall be the officer of Government responsible for and charged with the administration of this Ordinance and shall in the exercise, performance or discharge of any power, duty or function conferred or imposed upon or assigned to him by or under this Ordinance be subject to the general direction and control of the Minister.

The latter Ordinance provides (section 90)—

(1) The Land Commissioner shall be the officer of Government responsible for and charged with the administration of this Ordinance.

(2) In the exercise of his powers and in the discharge of his duties under this Ordinance, the Land Commissioner shall be subject to the general direction and control of the Minister.

The Ordinances I have referred to above make it clear that the Land Commissioner, as regards his functions under them, is a statutory functionary who while the Ordinances are in force has a continued existence, though the holders of the office may change from time to time. Statutory functions commenced during the tenure of the office by one officer are continued by his successor or successors as if the functionary had a continued and uninterrupted existence despite the change of individuals holding the office. The enactment under which the office is created and the other enactments under which he has functions and duties to perform indicate that the Land Commissioner is regarded as a corporation in regard to his statutory duties and functions. It is true that none of the Ordinances referred to above declare him in so many words to be a corporation sole. But no particular words are necessary in the creation of a corporation (*Sutton's Hospital* case [1], *Tone Conservators v. Ash* [2]). The intention to incorporate though not established by express words of creation can be gathered from the statute having regard to the nature of the functions and duties entrusted to the functionary. Such corporations are corporations by implication.

[1] *(1912) 10 Rep. 32 b.* [2] *(1829) 10 B. & C. 349 at 384.*

Our law on the subject of corporations is the English law. It is so declared by section 3 of the Civil Law Ordinance. The material portion of it reads as follows :—

> In all questions or issues which may hereafter arise or which may have to be decided in this Island with respect to the law of . . . . corporations . . . . the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any Ordinance now in force in this Island or hereafter to be enacted.

It is therefore necessary that we should turn for assistance to authoritative English treatises on the subject. I have consulted Grant on Corporations, a treatise which is well recognised. On this topic Grant says (p. 8)—

> It has been held, that a body will be taken to be a corporation when it is constituted by an Act of Parliament in such a way and for such purposes as show that the meaning of the legislature was that the body should have a perpetual duration, although no express words are used constituting it a corporation. (*Ex parte Newport Marsh Trustee*, 18 Law J. (N. S.) Chanc. 49, S. C. 16, Sim 346). This is called a corporation by implication. And this agrees with the old law, that if the Crown grant land to the men of Islington, *without saying to them and their successors*, rendering rent, this incorporates them for ever for the purpose of the farm ; for without such incorporation the intention of the grant could not be fully carried into effect.

A number of persons is not necessary for creating a corporation. To quote Grant again (p. 48)—

> With respect to the number of persons in whom a corporation may be vested, it is to be observed that a corporation may reside in a single person, as the king, archbishops, bishops, deans, canons, archdeacons, parsons, who are all said to be corporations sole at common law. The chamberlain of London is also a corporation sole for some purposes, and is said to be a corporation by custom (4 Rep. 65 a) ; that is, the earliest known origin of the rights exercised by that officer is usage.

Grant also speaks of quasi corporations having corporate rights and capacities in a limited and imperfect degree only, and for certain purposes only (p. 48). A corporation by implication may sue for an injury to its real property (Grant, p. 53—*Tone Conservators v. Ash*, 10 B. & C. 349).

There is no doubt that in England at common law many aggregate bodies, as counties, hundreds, wapentakes, forests, cities and boroughs, though not incorporated, were treated as though they were bodies corporate, and could take in perpetual succession, and have a common seal (Grant 58). Some of the professorships in the Universities of Oxford and Cambridge have been at times treated as though the several professors were respectively bodies corporate (Grant 196). Lands are

held by many bodies in the nature of a corporation, who nevertheless are not in such possession of the lands as to be the objects of an action in ejectment. Thus the Board of officers of Her Majesty's Ordnance Department are in the nature of a corporation for the management of ordnance property, by virtue of the statutes 1 & 2 Geo. 4, c. 69, 3 Geo. 4, c. 108, 2 Will. 4, c. 25 (Grant p. 279).

Speaking of *quasi* corporations, Grant (p. 661) says—

> Some instances of *quasi* corporations sole remain. These are generally officers of the Crown, as the Lord Chancellor, the Lord High Treasurer, or the Chief Justices, who, for certain purposes, are in the nature of corporations sole respectively.

The English Law concept of *quasi* corporations sole and of offices regarded as corporations is in accord with the concepts of such bodies in Roman Law and in systems of Law which spring from it. Savigny in his treatise on Jural Relations (translation by Rattigan) observes (p. 2)—

> A jural capacity may, for instance, in the first place, be either wholly or partially denied to many individual men ; it may in the second place, be transferred to something external to the individual man, and thus a Juristical Person may by this means be artificially created.

A Juristical Person, Savigny says, is a person who is assumed to be so for purely juristical purposes. In it we find a Bearer of Jural Relations as well as the individual man. Among the Juristical Persons enumerated by him are the State or the Fiscus, Subordinate Officials, who were appointed by the Authorities for the management of different affairs, such as Librarii, Fiscales, and Censuales. Savigny also expresses the view that Juristical Persons come into existence not only by the express sanction of the Sovereign " but also tacitly, by a conscious toleration or by an actual recognition ".

In this country the Attorney-General, the Fiscal, the Collector of Customs, the Postmaster-General, the Director of Public Works, and a whole host of Government functionaries act and are regarded as if they were corporations sole in the matter of contracts on behalf of the Government and in legal proceedings. All contracts are entered into by these functionaries binding them and their successors as if they were corporations sole acting for and on behalf of the Crown. This practice has been in existence to my personal knowledge for well over thirty years. It would appear that the Crown and the subject have both acted on that footing for quite a long time.

It is not contended that the person holding the office of Land Commissioner at the time the determination was made (Mr. A. G. Ranasinha, now Sir Arthur), purported to act in his private capacity. At the time this action was instituted the person holding the office of Land Commissioner was Mr. S. F. Amarasinghe. It is his proxy that has been filed in these proceedings. It is admitted that Mr. Amarasinghe no longer holds the office and his successor too has been transferred. If as contended by

counsel for the Crown the individual holding the office of Land Commissioner must be sued, difficult questions for which he has not provided a satisfactory answer arise. They are—

(*a*) Who is the person to be sued ? Is it the person holding the office—

(i) at the time proceedings are commenced under section 3 of the Land Redemption Ordinance, or

(ii) at the time the determination under that section is made, or

(iii) at the time of the institution of the action ?

(*b*) What is to happen on the transfer of the person holding the office of Land Commissioner to another department of Government after legal proceedings have been instituted against him ? Is the action to continue against the original defendant regardless of whether he holds the office of Land Commissioner or not, or is his successor to be substituted ? If the action is to continue against the original defendant how is he to obey the order of the Court if it is made against him when he is not the holder of the office of Land Commissioner ? His successor not being bound by the decree would have no authority in law to carry it out. If his successor is to be substituted under what provision of the Civil Procedure Code may it be done ?

(*c*) What is to happen on the retirement from the service of the Government of the person against whom the action is brought while it is pending ? Is the action to proceed against him notwithstanding his retirement ? If so how is he going to implement the decision of the Court if it is against him ? His successor not being bound by the decree would be under no legal duty to obey it, nor can he be substituted as there is no provision of the Civil Procedure Code under which it can be done.

(*d*) What is to happen on the death of the officer against whom the action is brought ? Is the action to continue against his successor in office, or his legal representative ? There is no provision in the Civil Procedure Code for substituting his successor in office. Section 398 provides for the substitution of the legal representative of the deceased defendant. If the legal representative carries on the action and it is lost or does not choose to carry it on and decree is entered against him, in either case, the holder of the office of Land Commissioner at the time the decree is entered is in law not bound by it and would have no power to give effect to the decree of the Court.

For the purposes of the Civil Procedure Code the expression " legal representative " means (section 394 (2)) an executor or administrator or the next of kin who have adiated the inheritance in the case of an estate below the value of Rs. 2,500. It will therefore be seen that the course suggested by learned Crown Counsel is impractical and will result in profitless legal proceedings and in a denial of justice. It is not contended that in an action against the Crown, which the law requires should be instituted against the Attorney-General, the name of the person holding that office should be mentioned. Nor is it contended that on any change in the holder of that office or on his death there

should be a substitution of the new holder or that even the proxy of the new holder of the office should be filed. It would appear therefore that for the purposes of legal proceedings the Attorney-General also must be regarded as a corporation sole. In regard to proceedings at law the legal position of other public functionaries such as the Government Agents and other officers who have a multitude of statutory functions to perform is the same.

In my opinion the action has been properly instituted against the Land Commissioner *nomine officii*. That an injunction can be issued against a public functionary such as the Land Commissioner or the Postmaster-General was recognised by this Court so long ago as 1838 in the case of *In re William Clark*[1], and later in the case of *Government Agent, N. P. v. Kanagasunderam*[2].

The next question is whether the determination of the Land Commissioner can be questioned in these proceedings. The provisions of the Civil Procedure Code are wide enough to permit an action of this nature. Learned Counsel for the Crown emphasized the fact that the plaintiff had sought an injunction instead of asking for a declaration. In the instant case the plaintiff was seeking to prevent a wrong and he was entitled to ask the Court to enjoin the defendant "not to do a specified act, or to abstain from specified conduct or behaviour" (section 217 (2) Civil Procedure Code). Hence his prayer that "the defendants jointly or in the alternative" be restrained "from taking steps under Ordinance No. 61 of 1942 to acquire the lands described in the Schedule."

Learned counsel also argued that although the Land Commissioner was authorised by section 3 to acquire lands of the description referred to therein, under the Land Acquisition Act, though not under the repealed Ordinance, the acquiring authority was in fact the Minister and that the action against the Land Commissioner was misconceived. He bases this argument on the fact that sub-section (5) of section 3 of the Land Redemption Ordinance provides that the Land Acquisition Act, with the prescribed modifications, shall apply for the purposes of the acquisition of land which the Land Commissioner under sub-section (4) determines should be acquired. I am unable to uphold that contention. Although the Land Redemption Ordinance makes use of the machinery in the enactment for the compulsory acquisition of land it is the Land Commissioner who is authorised to set that machinery in motion and the determination that any land should be acquired for the purpose of the Land Redemption Ordinance is his and not the Minister's. The words of the section are—

> The Land Commissioner is hereby authorised to acquire on behalf of Government the whole or any part of any agricultural land, if the Land Commissioner is satisfied, etc.

Sub-section (5) of the section prescribes that the provisions of the Land Acquisition Act shall apply "where the Land Commissioner has determined that any land shall be acquired for the purposes of this Ordinance." Once the Land Commissioner has made his determination, the Minister has no option under section 5 of the Land Acquisition Act as modified for the purposes of the Land Redemption Ordinance but to make the written

[1] *Morgan's Digest, p. 249.* [2] *31 N. L. R. 115.*

declaration prescribed therein. It is the Land Commissioner's determination that should be challenged if it is illegal and it is the Land Commissioner who should be restrained from acting illegally.

I have no doubt that under our law the present action is well founded and that it lies both against the Attorney-General and the Land Commissioner *nomine officii*. It is clear from the general provisions of the Civil Procedure Code governing the institution of actions (sections 5, 6, 8, 217), and those special provisions regulating the institution of actions against the Crown and Public Officers (Chapter XXXI), that an action such as this can be maintained.

In England, unlike in this country, the subject had no right to sue the Crown till the enactment of the Crown Proceedings Act in 1947. For that reason in that country parties dissatisfied with the proceedings of statutory functionaries had to resort to the declaratory action in order to test their legality.

In the case of *Dyson v. Attorney-General*[1] the validity of notices issued by the Commissioners of Inland Revenue under the Finance Act 1910 was tested by asking for a declaratory judgment against the Attorney-General. The Court of Appeal held that such an action lay. The plaintiff prayed in aid the decision of *Hodge v. Attorney-General*[2], which was followed by the Court of Appeal. Reference was made in the course of the judgments of the Judges to *Pawlett v. Attorney-General*[3] in which was stated an important principle which we should bear in mind when hearing actions against the Crown in whatever form they are brought. Baron Atkyns said in that case—

> The party ought in this case to be relieved against the King ; because the King is the fountain and head of justice and equity, and it shall not be presumed that he will be defective in either, it would derogate from the King's honour to imagine that what is equity against a common person should not be equity against him.

The case of *Dyson v. Attorney-General* (*supra*) is one of great importance especially as it contains some very valuable observations by Farwell L.J. on actions against Government departments in respect of their illegal acts. They are important enough to be repeated here *in extenso*. He said—

> But the Court is not bound to make declaratory orders and would refuse to do so unless in proper cases, and would punish with costs persons who might bring unnecessary actions : There is no substance in the apprehension, but if inconvenience is a legitimate consideration at all, the convenience in the public interest is all in favour of providing a speedy and easy access to the Courts for any of His Majesty's subjects who have any real cause of complaint against the exercise of statutory powers by Government Departments and Government officials, having regard to their growing tendency to claim the right to act without regard to legal principles and without appeal to any Court. Within the present year in this Court alone there have been no less than three such cases. In *Rex. v. Board of Education*, (1910) 2 K. B. 165, the Board, while abandoning by their counsel all argument that the

[1] *(1911) 1 K. B. 410.* [2] *(1839) 3 Y. & C. Ex. 342.*
[3] *(1667) Hardres' Rep. 465 at p. 469.*

Education Act, 1902, gave them power to pursue the course adopted by them, insisted that this Court could not interfere with them, but that they could act as they pleased. In *In re Weir Hospital* (1910) 2 Ch. 124, the Charity Commissioners were unable to find any excuse or justification for the misapplication of £ 5,000 of the trust funds committed to their care. In *In re Hardy's Crown Brewery* (1910) 2 K. B. 257 the Commissioners of Inland Revenue, who are entrusted by section 2, sub-section 1, of the Licensing Act, 1904, with the judicial duty of fixing the amount of compensation under the Act, fixed the sum *mero motu* without any inquiry or evidence and without giving the parties any opportunity of meeting objections, and claimed the right so to act without interference by any Court. Bray J. and the Court of Appeal held that they had acted unreasonably and ordered them to pay costs. In all these cases the defendants were represented by the law officers of the Crown at the public expense, and in the present case we find the law officers taking a preliminary objection in order to prevent the trial of a case which, treating the allegations as true (as we must on such an application), is of the greatest importance to hundreds of thousands of His Majesty's subjects. I will quote the Lord Chief Baron in *Deare v. Attorney-General* (1 Y. & C. Ex. at p. 208). "It has been the practice, which I hope never will be discontinued, for the officers of the Crown to throw no difficulty in the way of proceedings for the purpose of bringing matters before a Court of Justice when any real point of difficulty that requires judicial decision has occurred." I venture to hope that the former salutary practice may be resumed. If ministerial responsibility were more than the mere shadow of a name, the matter would be less important, but as it is, the Courts are the only defence of the liberty of the subject against departmental aggression.

The declaratory action is being resorted to more and more in England with the increase of statutory functionaries and the Courts have been ever ready to exercise their jurisdiction to prevent injustice. It is unnecessary to cite other English cases as *Dyson's* is a leading case. It is sufficient to say that the words of Farwell L. J. lay down what should be the attitude of the Courts towards the subject when he seeks relief from the illegal acts of Government Departments.

I now come to point (*b*). Does the provision in section 3 (4) that the determination of the Land Commissioner shall be final preclude the plaintiff from questioning it by way of a regular action ?

In the first place it is necessary to consider what it is that the sub-section declares shall be final. It is the determination that any land which the Land Commissioner is authorised to acquire under sub-section (1) should or should not be acquired. Therefore if the Land Commissioner determines that he should acquire any land which he is not authorised to acquire under sub-section (1) the requirements of the sub-section (4) are not satisfied and the determination will not be final. This is precisely what the appellant's counsel submits. He contends that by a wrong interpretation of sub-section (1) the Land Commissioner has given himself a jurisdiction which he does not have. Without authority under the sub-section (1) to acquire the lands in question he has

determined that they should be acquired. Clearly his determination does not fall within the ambit of sub-section (4). Learned counsel for the Crown contended that finality attached to the Land Commissioner's decision whether he was or was not authorised by sub-section (1) to acquire the lands. That is an astounding proposition to which I cannot assent.

Now, when an Ordinance or an Act provides that a decision made by a statutory functionary to whom the task of making a decision under the enactment is entrusted shall be final, the Legislature assumes that the functionary will arrive at his decision in accordance with law and the rules of natural justice and after all the prescribed conditions precedent to the making of his decision have been fulfilled, and that where his jurisdiction depends on a true construction of an enactment he will construe it correctly. The Legislature also assumes that the functionary will keep to the limits of the authority committed to him and will not act in bad faith or from corrupt motives or exercise his powers for purposes other than those specified in the statute or be influenced by grounds alien or irrelevant to the powers taken by the statute or act unreasonably. To say that the word "final" has the effect of giving statutory sanction to a decision however wrong, however contrary to the statute, however unreasonable or influenced by bad faith or corrupt motives, is to give the word a meaning which it is incapable of bearing and which the Legislature could never have contemplated. The Legislature entrusts to responsible officers the task of carrying out important functions which affect the subject in the faith that the officers to whom such functions are entrusted will scrupulously observe all the requirements of the statute which authorises them to act. It is inconceivable that by using such a word as "final" the Legislature in effect said, whatever determination the Land Commissioner may make, be it within the statute or be it not, be it in accordance with it or be it not, it is final, in the sense that the legality of it cannot be agitated in the Courts. No case in which such a meaning has been given to the word "final" was cited to us. The word "final" is not a cure for all the sins of commission and omission of a statutory functionary and does not render legal all his illegal acts and place them beyond challenge in the Courts. The word "final" and the words "final and conclusive" are familiar in enactments which seek to limit the right of appeal; but no decision of either this Court or any other Court has been cited to us in which those expressions have been construed as ousting the jurisdiction of the Courts to declare in appropriate proceedings that the action of a public functionary who has acted contrary to the statute is illegal.

To read the word "final" in the sense which the learned counsel for the Crown seeks to place upon it would amount to giving the public functionary authority to act as he pleases. It is unthinkable that the Legislature would give such a blank authority to a functionary however highly placed. Such powers are rarely given even when the country is at war or is facing a crisis. It must be presumed that the Legislature does not sanction illegal acts on the part of functionaries. If it intends to sanction unauthorised and illegal acts it should say so in plain and unmistakable terms and not use a word of such doubtful import as "final". That the subject should not be harassed by unauthorised action on the part of

statutory functionaries is as much the concern of the Legislature as of the Courts and once a piece of legislation has been put on the statute book the Legislature as well as the public looks to the Courts to exercise their controlling authority against illegal and unjust use of the powers conferred thereby, and the Courts will be failing in their legitimate duty if they denied relief against illegal action on the part of statutory functionaries. It was urged by counsel that the word "final" ousted the jurisdiction of the Courts to consider and decide the legality of the Land Commissioner's determination and that it could be challenged only in Parliament. That would impose on Parliament the obligation of construing the statutes it enacts, an obligation which is outside its proper scope and which it is not qualified to discharge. The jurisdiction conferred by the Courts Ordinance on our Courts cannot be taken away except by express and clear language. I know of no formula by which the undoubted right of the Courts, where their jurisdiction is invoked by appropriate proceedings, to construe an enactment and declare its meaning can be taken away.

The interpretation of statutes is the proper function of the Courts and once legislation has been enacted the Legislature looks to the Courts to declare its true meaning and upon that meaning to determine whether the powers entrusted to the creatures of statute have been exceeded or not. The principles governing the exercise of their functions by statutory functionaries have been delcared by the Courts in England and other Commonwealth countries and are now well established and in my view afford valuable guidance in the consideration of the questions arising on this appeal. I set them out below :—

I. A discretion does not empower a statutory body or functionary to do what he likes merely because he is minded to do so—he must in the exercise of his disrection do, not what he likes, but what he ought. (*Roberts v. Hopwood* [1]).

II. A statutory body or functionary who has to exercise a public duty by exercising his discretion is not to be regarded in the eye of the law as having exercised his discretion—

(*a*) if he takes into account matters which the Courts consider not to be proper for the guidance of his discretion (*R. v. Vestry of St Pancras* [2]).

(*b*) if he takes extraneous matter into account and allows them to influence him (*R. v. Brighton Corporation* [3]).

(*c*) if he misunderstands the law or misconstrues the statute or the section on which he purports to act—*R. v. Mayor and Corporation of Newcastle-on-Tyne* [4] and *R. v. Ormesby Local Board* [5] *R. v. Board of Education*[6], *Board of Education v. Rice* [7].

(*d*) if he acts on an error of fact or is prompted by a mistaken belief in the existence of some circumstance of fact. *Smith v. Macnally* [8].

[1] *(1925) A. C. 578 at 613.*
[2] *(1890) 24 Q. B. D. 371 at 375-376.*
[3] *(1916) 85 L. J. K. B 1552, 1555.*
[4] *(1889) 60 L. T. 963.*
[5] *(1894) 43 W. R. 96.*
[6] *(1910) 2 K. B. 165 at 170.*
[7] *(1911) A. C. 179.*
[8] *(1912) 1 Ch. 816, 825.*

(*e*) if he acts in bad faith or from corrupt motives (*Short v. Poole Corporation* [1]).

(*f*) if he exercises power given by the legislature for one purpose for another or different purpose whether it be fraudulently or dishonestly or not (*Westminster Corporation v. London & North-Western Rly.*[2], *Municipal Council of Sydney v. Campbell* [3], *The King v. Minister of Health Ex p. Davis* [4], *Hanson v. Radcliffe, U. D. C.*[5], *Martin v. Eccles Corporation* [6]).

(*g*) if the act, though performed in good faith and without the taint of corruption, is so clearly founded on alien and irrelevant grounds as to be outside the authority conferred upon him. (*Short v. Poole Corporation* [7]).

(*h*) if he exceeds or abuses his powers or does not keep to the limits of the authority committed to him.

(*i*) if he is unreasonable though acting honestly and in good faith. (*R. v. Robert ex p. Scurr & others*,[8] *Short v. Poole Corporation* [9]).

It was also pointed out in the course of argument that the Land Commissioner in the exercise, performance or discharge of any power, duty or function conferred or imposed upon or assigned to him " by or under " the Ordinance was subject to the general direction and control of the Minister. The fact that the Minister has " general direction and control " does not absolve the Land Commissioner in the performance of his duties. It should be noted that section 3 (4) provides that questions arising under sub-section (1) should be determined by the Land Commissioner " in the exercise of his individual judgment ". In the exercise of a quasi-judicial function the Minister's direction and control have no place. It was so held in the case of *Simms Motor Units, Ltd. v. Minister of Labour and National Service* [10]. Private instructions given to a specially designated officer or tribunal as to how quasi-judicial functions should be performed are bad. The object of establishing an independent tribunal is to remove the power of decision from the executive and this is clearly defeated if the tribunal acts to order. In the case of *Roncarelli v. Duplessis* [11] the Prime Minister and Attorney-General of Quebec who issued an order on the manager of the Quebec Liquor Commission to cancel the licence of Roncarelli a restaurant operator was held liable in damages for issuing an order which he had no power under the Alcoholic Liquor Act, or the Act defining his powers, to issue. In that case reference was made to a number of decisions on the subject of the exercise of discretion by a statutory body having quasi-judicial functions. Among them is the following passage from the judgment of Lord Esher M.R. in the case of *Reg. v. Vestry of St. Pancras* [12]—

If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to

[1] *(1926) 1 Ch. 66, 90-91.*
[2] *(1905) A. C. 426, 428.*
[3] *(1925) A. C. 338, 343.*
[4] *(1929) 1 K. B. 619.*
[5] *(1922) 2 Ch. 490, 500.*
[6] *(1919) 1 Ch. 387.*
[7] *(1926) 1 Ch. 66, 91.*
[8] *(1924) 2 K. B. 695.*
[9] *(1926) 1 Ch. 66, 90.*
[10] *(1946) 2 All E. R. 201.*
[11] *(1952) 1 D. L. R. 680.*
[12] *(1890) 24 Q. B. D. 371 at 375.*

be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.

In the instant case the Land Commissioner, as stated above, misconstrued section 3 (1) (*b*) and gave himself a jurisdiction he did not have. The action taken by him in excess of his jurisdiction to acquire the plaintiff's lands which he is in law not entitled to do is illegal and the plaintiff is entitled to the order he seeks.

I shall now deal with point (*d*). It was argued that a mandamus does not lie against the officers and servants of the Crown and that the issue of an injunction is governed by the same consideration. But the correct form of the English rule on this aspect of the law of mandamus is that mandamus does not lie against the servants of the Crown *as such*. Servants of the Crown when discharging statutory functions which they have no authority to discharge except under the statute cannot be said to be discharging those functions *qua* servants of the Crown. Where they derive their powers from the statute and the statute alone the fact that they are servants of the Crown is no bar to a mandamus in respect of their statutory functions. Again where government officers have been constituted agents for carrying out particular duties in relation to the subject, even where those duties are not statutory, if they are under a legal obligation towards the subject, an order of mandamus will lie for the enforcement of those duties (11 Hal. 99). But we were not referred to any case in which it has been so held. The English law governing injunctions against public officers after 1947 is to be found in section 21 of the Crown Proceedings Act which expressly forbids the grant of injunctions against an officer of the Crown only if the effect of granting the injunction would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown. That section reads—

(1) In any civil proceedings by or against the Crown the Court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that—

(*a*) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(*b*) in any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting

the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

Neither our Civil Procedure Code nor any other enactment imposes a prohibition such as is contained in sub-section (2) above. Our Courts are free to entertain any action against the Crown or its officers and there are no fetters imposed by statute on suing the Crown or its officers. In actions to which the Crown or a public officer is a party our Courts are therefore free to make any order it may make between subject and subject. Similarly in the grant of injunctions the Courts are free to act under section 86 of the Courts Ordinance whether the defendant be the Crown or a servant of the Crown or a subject. There is no fetter on their freedom of action as in England.

It was also submitted on behalf of the Crown that the functions of the Land Commissioner under section 3 of the Ordinance are quasi-judicial and that any action in excess of his powers should be challenged by way of certiorari and not by action. I am unable to accept this submission either. Certiorari is a remedy which does not exclude other remedies. A similar argument was unsuccessfully advanced in the case of *Cooper v. Wilson*[1]. At page 733 Greer L.J. said—

> Nor do I think that the power which he undoubtedly possessed of obtaining a writ of certiorari to quash the order for his dismissal prevents his application to the Court for a declaration as to the invalidity of the order of dismissal.

It was observed in the same case that the power of the Court to grant a declaration has been greatly extended in recent years. Such actions are increasing in this country too. With the growth of legislation which affects the rights of the subject and his freedom of action, suits in which the subject seeks redress against illegal acts on the part of statutory functionaries are bound to increase. The courts should not be slow to grant relief when their jurisdiction is properly invoked, and the existence of other remedies is not a sound reason for refusing to adjudicate on a matter rightly brought before them.

The remedy of a regular action is under our law available regardless of whether the illegal action against which relief is claimed is administrative or quasi-judicial. It is therefore unnecessary to discuss at length the distinction between administrative and quasi-judicial acts. It is sufficient for the purposes of this judgment to quote the following passage which has been judicially approved from page 81 of the Ministers' Powers Report (Cmd. 4060) :—

> But even a large number of administrative decisions may and do involve, in greater or less degree, at some stage in the procedure which eventuates in executive action, certain of the attributes of a judicial decision. Indeed generally speaking a quasi-judicial decision is only an administrative decision, some stage or some element of which possesses judicial characteristics.

An action such as the one brought in this case undoubtedly lies to prevent a functionary vested with statutory powers from acting in

[1] *(1937) 2 All E. R. 726.*

excess of those powers and taking a step he is not authorised by the statute to take. This principle is firmly established in other parts of the Commonwealth such as Australia and New Zealand.

It is sufficient for the purpose of this judgment to refer to the cases of *Attorney-General (N.S.W.) v. Trethowan*,[1] and *Nireaha Tamaki v. Baker*[2]. In the former case an injunction was granted restraining the President of the Legislative Council, the Attorney-General for the State of New South Wales, the Premier and the other Ministers of the Crown for the State of New South Wales, from presenting to the Governor for royal assent a bill to abolish the Legislative Council passed by both Houses of the New South Wales Legislature without submitting the matter to a referendum as required by section 7A of the Constitution Act (1920-29). In the latter case the Commissioner of Crown Lands of New Zealand was sued for a declaration that a block of land about 5,184 acres in extent which was along with some other lands which the Governor had notified in the Gazette under section 136 of the Land Act 1892 open for sale or selection still remained land owned by natives under their custom and usage and for an injunction against selling or advertising the same.

The following among other issues were tried—

(3) Can the interest of the Crown in the subject matter of this suit be attacked by this proceeding ?

(4) Has the Court jurisdiction to inquire whether as a matter of fact the land in dispute herein has been ceded by the native owners to the Crown ?

In deciding the appeal in the plaintiff's favour the Privy Council said—

> Their Lordships think that the learned judges have misapprehended the true object and scope of the action, and that the fallacy of their judgment is to treat the respondent as if he were the Crown, or acting under the authority of the Crown for the purpose of this action. The object of the action is to restrain the respondent from infringing the appellant's rights by selling property on which he alleges an interest in assumed pursuance of a statutory authority the conditions of which, it is alleged, have not been complied with. The respondent's authority to sell on behalf of the Crown is derived solely from the statutes, and is confined within the four corners of the statutes. The Governor, in notifying that the lands were rural land open for sale, was acting, and stated himself to be acting, in pursuance of the 136th section of the Land Act, 1892, and the respondent in his notice of sale purports to sell in terms of s. 137 of the same Act. If the land were not within the powers of those sections, as is alleged by the appellant, the respondent had no power to sell the lands, and his threat to do so was an unauthorized invasion of the appellant's alleged rights.

In England the prerogative writ of mandamus is no longer issued. Instead the High Court is empowered by statute to make an order requiring an act to be done. Section 7 of the Administration of Justice (Miscellaneous) Provisions Act, 1938, provides—

> (1) The prerogative writs of mandamus, prohibition and certiorari shall no longer be issued by the High Court.

[1] *(1930-31) 44 Commonwealth Law Reports 394.* [2] *(1901) A. C. 561.*

(2) In any case where the High Court would, but for the provisions of the last foregoing sub-section, have had jurisdiction to order the issue of a writ of mandamus requiring any act to be done, or a writ of prohibition prohibiting any proceedings or matter, or a writ of certiorari removing any proceedings or matter into the High Court or any division thereof for any purpose, the Court may make an order requiring the act to be done, or prohibiting or removing the proceedings or matter, as the case may be.

(3) The said orders shall be called respectively an order of mandamus, an order of prohibition and an order of certiorari.

(4) No return shall be made to any such order and no pleadings in prohibition shall be allowed, but the order shall be final, subject to any right of appeal therefrom.

(5) In any enactment references to any writ of mandamus, prohibition or certiorari shall be construed as references to the corresponding order and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

In my opinion there is no justification in our country for extending to injunctions the considerations governing the prerogative writ of mandamus. In Ceylon, as in England since 1938, mandamus is a statutory remedy (s. 42, Courts Ordinance), and in our country it was always a mandate in the nature of a writ of mandamus and never a prerogative writ.

For the reasons I have given I would allow the appeal with costs both here and below. I direct that judgment be entered for the plaintiff as prayed for.

PULLE, J.—

This appeal raises difficult points of interpretation of section 3 of the Land Redemption Ordinance, No. 61 of 1942. I am inclined to the opinion that the draftsman had in view the simplest of mortgage transactions by which an owner who has mortgaged a land which is a single physical entity ultimately loses title thereto because it is sold in execution of a mortgage decree or is compelled to transfer it to the mortgagee in satisfaction or part satisfaction of the debt due to him under the mortgage. This case shews that some mortgage transactions can be of a very complex character. The question which has to be determined is whether the language of section 3 can be so made to apply to the facts of the case under appeal as to enable one to say that the 2nd defendant, the Land Commissioner, acted *intra vires* in taking steps to acquire the four allotments of land described in the schedule to the plaint.

The facts are fully stated in the judgment of my Lord, the Chief Justice, and I need not recapitulate them. The broad feature is that the mortgagor, the 3rd defendant, transferred by deed P5 not the entirety of the lands hypothecated by the bonds P1 and P2 but only a portion

in satisfaction of the mortgage decree entered on P2. There were five mortgagees on the bond P2 which had been put in suit by one only of the mortgagees named Sockalingam Chettiar in whose favour the hypothecary decree P4 in the usual form had been entered. The transfer P5 was made out to operate as a conveyance of 2/3rds undivided share of the lands scheduled in P5 to Sockalingam Chettiar and as a conveyance of the balance 1/3rd to one Sekappa Chettiar who was one of the mortgagees on the bond P2. The final result of the transaction was that the 3rd defendant saved for himself a portion of the lands mortgaged by P1 and P2 by satisfying the decree in favour of Sockalingam Chettiar and also by obtaining a discharge of the earlier bond P1.

Two arguments of learned counsel for the appellant to the effect that the conditions prescribed by section 3 (1) (*b*) of the Ordinance have not been satisfied ought, in my opinion, to be accepted. The first is that after the decree on the mortgage bond was entered in favour of Sockalingam Chettiar alone there was no debt due by the mortgagor to Sekappa Chettiar on the bond P2 although Sekappa Chettiar was a party to it, or on the bond P1 for the obvious reason that Sekappa was not a party to P1. Then in satisfaction of the debt due to Sockalingam Chettiar, represented by the money decree entered in his favour in the mortgage suit, what was transferred to him was an undivided share of the several lands described in the schedule to P5. It seems to me to be clear that section 3 of the Ordinance contemplates neither the mortgage of an undivided share of a land nor the transfer to a mortgage creditor of anything less than a single land or several lands as physical entities. The reasons are elaborated in the judgment of my Lord and I do not think I can usefully add anything to it. The legal effect of the conveyances to Sockalingam Chettiar and Sekappa Chettiar is to place the transfer P5 outside the ambit of section 3 (1) (*b*) from which it results that the Land Commissioner exceeded his powers when he took steps to acquire the lands. This renders it unnecessary for me to deal with the other arguments directed to shew that other conditions in paragraph 3 (1) (*b*) have not been satisfied. I would like, however, to add that I am attracted by the second argument that, as all the lands mortgaged by P2 were not transferred by P5, the debt which was satisfied by P5 could not be said, within the meaning of section 3 (1) (*b*), to have been secured by a mortgage of the lands conveyed by P5 when, in fact, the debt was secured by mortgage of those lands *and others*. I readily accede to the argument that provisions such as those contained in the Land Redemption Ordinance, which are aimed at taking away lands lawfully vested in a subject because of the accidental circumstance that the title thereto was derived through a person who having mortgaged it did not have the money to pay off the debt, must be strictly construed. That the lands transferred by P5 were liable on the bond P2 for the whole of the debt does not admit of a doubt. But in applying section 3 (1) (*b*) the proper question that the acquiring authority should ask himself is not whether the lands in P5 were security for the debt on P2 but whether the debt was *secured* by a mortgage of the lands in P5. The latter question cannot, in my opinion, be answered in the affirmative if the debt was secured not only by a mortgage of the lands in P5 but

also by a mortgage of other lands. This rendering of section 3 (1) (*b*) would not violate any canon of construction but rather satisfy the first rule that words must be given their literal meaning.

An examination of section 3 (1) (*a*) reveals that steps can be taken to acquire a single land sold in execution of a mortgage decree, even though not one of the remaining lands has been sold. It is, therefore, argued that if the debt was satisfied, otherwise than by execution by only one of the lands mortgaged being sold by the debtor to the creditor, the same result ought to follow. The question is asked as to why the legislature should make a distinction between a land sold in execution of a mortgage decree and a land which is the subject of a voluntary sale. It was suggested at the argument that one is a forced sale and the other is not. The reason may not be a good one but would it conclude the question in favour of the acquiring authority ? Whether the legislature sought to draw a distinction or not must be gathered by the language used in the statute and if upon a plain reading of the section there is such a distinction the court is not free to refuse to give effect to it. The intention of the legislature can only be ascertained by the language used by it.

The remaining questions argued before us relate to the constitution of the action. The Attorney-General is the 1st defendant and as against him the action was not pressed and it has been dismissed with costs. Whether the Land Commissioner could be sued in his official capacity was debated at length. I find myself on this point in agreement with the conclusion reached by my Lord, the Chief Justice, and also with the conclusion that a statutory functionary like the Land Commissioner can be restrained from acting beyond the scope of the powers conferred by a statute. Assuming that the decision to acquire the lands in question could have been challenged by a mandate in the nature of a writ of certiorari, the plaintiff was not confined to that remedy and he had the right to institute a regular action to obtain a declaratory decree and an injunction. The provision in section 3 (4) was not a bar to the action.

I would therefore direct that the decree dismissing the action against the 2nd defendant with costs be set aside and that a decree be entered for the substituted plaintiff against the 2nd defendant as prayed for in the plaint with costs here and below.

K. D. DE SILVA, J.—

I have had the advantage of reading the judgment prepared by My Lord the Chief Justice which sets out in full the facts relevant to the decision of this appeal.

W. A. Don Elaris Perera, the 3rd defendant-respondent by bond No. 391 of September 30, 1925, (P1) hypothecated a number of lands, one of which is called Keeriyankalliya Estate, to secure a sum of Rs. 50,000 which he borrowed from three Chettiars, namely, Sockalingam, Subramaniam and Arunasalam, repayable with interest at 15 per cent. He gave a secondary

mortgage of the same lands by bond No. 499 of April 1930 (P2) to secure a loan of Rs. 25,000/- carrying interest at the same rate which he obtained from five Chettiars, namely Sockalingam, Subramaniam, Muttiah, Velayuthan and Sekappa. The two first named mortgagees on this bond are two of the mortgagees on the earlier bond P1. According to the terms of P1 and P2 the amount due on each bond was payable to the mortgagees named therein or to any one of them. On a tertiary mortgage of the same lands Elaris Perera borrowed a sum of Rs. 20,000 from Elaris Dabarera and executed bond No. 2,399 of March 8, 1931 (P3).

In the year 1933 Sockalingam alone put the bond P2 in suit in D. C. Colombo Case No. 7,365 and obtained judgment. The decree (P4) in that case was entered on June 22, 1933.

By deed No. 4,010 of May 4, 1935 (P5) the 3rd defendant transferred Keeriyankalliya Estate and some of the other lands mortgaged on P1 and P2 to two of the mortgagees, namely, Sockalingam and Sekappa in the proportion of 2/3 to the former and 1/3 to the latter and their rights passed to the original plaintiff by right of purchase.

The consideration appearing in deed P5 is Rs. 75,000 and this amount was set off in full satisfaction of the claim and costs due on the decree P4 and the principal and interest due on the mortgage bond P1. By that deed the 3rd defendant also undertook to discharge the tertiary bond P3.

Thereafter the 3rd defendant wrote to the Land Commissioner requesting him to take steps under the provisions of the Land Redemption Ordinance No. 61 of 1942 to acquire the lands conveyed on deed P5. The Land Commissioner after notice to the plaintiff and having considered the objections filed by him made his determination on May 12, 1947, under section 3 (4) of the Land Redemption Ordinance that Keeriyankalliya Estate be acquired. Thereupon the plaintiff instituted this action against the Attorney-General and the Land Commissioner who are the 1st and 2nd defendants respectively praying for an injunction restraining them from acquiring the land. The 3rd defendant was made a party to the action on an application made by him.

The acquisition was resisted on the following two grounds :— (1) Keeriyankalliya Estate does not come within the category of lands referred to in section 3 (1) (*b*) of the Land Redemption Ordinance. (2) The plaintiff was a *bona fide* purchaser for value and therefore the provisions of the Land Redemption Ordinance are not applicable to this land. The defendants while asserting that this land was liable to be acquired under section 3 of that Ordinance contended (1) that the determination of the Land Commissioner under section 3 (4) was final and cannot be questioned in these proceedings, (2) that no injunction lay against the Attorney-General, and (3) that the 2nd defendant cannot be sued in his official capacity.

It was conceded by the counsel for the plaintiff during the course of the trial that an action for an injunction cannot be maintained against the

Attorney-General. The learned District Judge held, *inter alia*, that this land came within the provisions of section 3 (1) (*b*) and dismissed the plaintiff's action with costs.

The main argument addressed to us by Mr. H. V. Perera, Q. C., who appeared for the appellant related to the interpretation of section 3 (1) (*b*). One submission made by him was that as all the lands mortgaged had not been conveyed by deed P5 the Land Commissioner was not entitled to acquire this land. Section 3 (1) (*a*) and (*b*) reads as follows :—

> 3. (1) The Land Commissioner is hereby authorised to acquire on behalf of Government the whole or any part of any agricultural land, if the Land Commissioner is satisfied that that land was, at any time before or after the date appointed under section 1, but not earlier than the first day of January 1929 either—
>
> (*a*) sold in execution of a mortgage decree, or
>
> (*b*) transferred by the owner of the land to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was, immediately prior to such transfer, secured by a mortgage of the land.

Where several lands are mortgaged, Mr. Perera argued, that in terms of the rule of interpretation, that words in the singular include the plural, the word "lands" should be substituted for the word "land" in clause (*b*) and that the words "land was" in section 3 (1) should be replaced by the words "lands were". This argument does not commend itself to me. The word "land" in clause (*b*) refers to the "agricultural land" in section 3 (1). Similarly the words "land was" in section 3 (1) have reference to the same "agricultural land". There can be no doubt on that point.

When the Land Commissioner proceeds to act under section 3 (1) (*b*) he has in mind a particular land which he proposes to acquire. He must satisfy himself that that land is an agricultural land. If it is not of that variety he cannot proceed to acquire it under this Ordinance. Once he is satisfied that it is an agricultural land he must ascertain whether it had been transferred by its owner during the relevant period to any other person in satisfaction or part satisfaction of a debt due from the owner to the transferee. He must further ascertain whether the debt was, immediately prior to the transfer, secured by a mortgage of that land. It is only if all these requirements are fulfilled that the Land Commissioner is entitled to make his determination under section 3 (4) to acquire the land.

Does this land called Keeriyankalliya Estate satisfy these requirements ? Admittedly it is an agricultural land. It was also transferred during the relevant period on deed P5 by the owner to Sockalingam and Sekappa. It is stated in the deed P5 itself that the consideration was set off in full satisfaction of the decree P4 and the principal and interest

due on the bond P1. Mr. Perera, however, argued that at the time of the execution of the deed P5 no debt was due from the owner to Sekappa because Sockalingam alone had sued on the bond P2 and obtained judgment. It is true that once Sockalingam put this bond in suit he alone was entitled to receive payment of the debt. Before the institution of that action the 3rd defendant was entitled to pay the debt to any one of the mortgagees at his discretion. This right of selection he forfeited once Sockalingam filed the mortgage bond action. But that does not mean that he ceased to be indebted to the other mortgagees on P2 or that the mortgagees other than Sockalingam ceased to be his creditors. It is not suggested that in order to obtain the transfer P5 Sekappa paid any consideration other than the amount due to him on the bond P2. Even after the decree P4 was entered there was nothing to prevent Sockalingam from associating with Sekappa in accepting the amount due on that decree Though the decree was entered the mortgage P2 continued to be effective until it was discharged. It was so held in the case of *Perera v. Umantenne*.[1] In the instant case both bonds P1 and P2 ceased to be effective only on the execution of the deed P5.

Mr. Perera very frankly conceded that if one, of several lands mortgaged, was sold on a mortgage decree during the relevant period the Land Commissioner was entitled to acquire it provided it was an agricultural land. That being so there can be no valid objection to the acquisition of a land under section 3 (1) (*b*) even if that be the only land transferred in satisfaction of the mortgage debt which was secured by the hypothecation of several lands. It does not make any difference that in one case it is a forced sale while in the other it is a voluntary alienation. It may well be that by the enforced sale of one land the full amount due on the decree was realised just as the voluntary sale of one land was in full satisfaction of the debt due on the mortgage.

When several lands are mortgaged each land secures the whole debt. Therefore it cannot be denied that Keeriyankalliya Estate secured the full amounts due on P1 and P2.

Once the Land Commissioner arrived at a correct decision regarding the matters contemplated by section 3 (1) (*b*) his determination to acquire made under section 3 (4) cannot be challenged. In my judgment his decision that Keeriyankalliya Estate is one which satisfies the requirements of section 3 (1) (*b*) is a correct one.

The other issue raised at the trial, namely, that the Land Commissioner was not entitled to acquire this land because the plaintiff was a bona fide purchaser for value has no merit and was not prossed at the hearing of this appeal.

As the plaintiff has failed to establish that this land does not come within the provisions of section 3 (1) (*b*) it is not necessary to deal with the other issues raised in the case. I would therefore dismiss the appeal with costs.

Appeal allowed.

[1] *(1953) 54 N. L. R. 457.*