1968 *Present :* **Tennekoon, J.**

G. A. D. SENEVIRATNE, Petitioner, *and*
THE ATTORNEY-GENERAL and 2 others, Respondents

S. C. 28-29/1967—Application for Revision in J. M. C. Colombo 6,653/B and Application for a Mandate in the nature of a Writ of Certiorari on the Colombo Joint Magistrate and others

Inquest of death—Nature of proceedings—Finding of Magistrate or inquirer—Whether certiorari or application in revision lies to quash the finding—Criminal Procedure Code, ss. 9, 120, 148 (1) (b), 148 (1) (c), 356, 361, 362, 363, 364 (1)—Courts Ordinance, s. 19.

Neither *Certiorari* nor an Application in Revision lies to quash a finding made by a Magistrate or an inquirer at the conclusion of a purported inquest of death held under the provisions of Chapter 32 of the Criminal Procedure Code.

The functions of a Magistrate or an inquirer holding an inquest of death are of a non-judicial character.

APPLICATIONS for a writ of *certiorari* and in revision in respect of an order made by the Joint Magistrate's Court, Colombo.

George E. Chitty, Q.C., with *R. A. Kannangara, A. M. Coomaraswamy, C. A. Amerasinghe* and *Miss Mano Barr-Kumarakulasinghe*, for the Petitioner.

Colvin R. de Silva, with *Sidat Sri Nandalochana, S. S. Sahabandu, Mrs. Sarath Muttetuwegama* and *S. S. Wijeratne*, for the 2nd Respondent.

V. S. A. Pullenayegum, Crown Counsel, with *R. Abeysuriya*, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

May 23, 1968. TENNEKOON, J.—

These two applications were heard together as they relate to the identical matter, and the parties are substantially the same. The application No. 28/1967 is an application in revision, and application No. 29/1967 is one for a mandate in the nature of a Writ of Certiorari. Substantially the relief claimed in both applications is the same, viz. : The quashing of a finding made on the 15th of September 1966 by the Joint Magistrate, Colombo, at the conclusion of a purported inquest held under Chapter 32 of the Criminal Procedure Code.

The circumstances in which the " verdict " came to be pronounced are as follows :—On the 16th of April 1966 a letter was received by the Magistrate from the Officer-in-Charge, Fort Police Station, which stated

that "one Lokugama Vidanalage Podi Appuhamy *alias* Dodampe Mudalali of No. 228, Main Street, Ratnapura, who was brought to the C. I. D. Office for questioning in connection with the suspected coup d'etat had leapt out of the C. I. D. Office window at the New Secretariat Building at about 2.30 a.m., and that he had died at the General Hospital after admission". Officer-in-Charge, Fort Police Station, requested that a Magisterial inquiry be held into this death. This letter was received at 10.30 a.m.; the Magistrate visited the place where the death had occurred at 1 p.m. Here he inspected the room from which the deceased was alleged to have leapt out. This was on the 4th floor. He also examined the place near the foot of the building where the deceased had lain fallen. The Magistrate then proceeded to the hospital mortuary, and viewed the body of the deceased L. V. Podiappuhamy. He noted that the deceased was bleeding from his mouth, had multiple grazed abrasions on the right groin, and thigh, and on the inner side of the left upper arm. He also noted the presence of scattered abrasions on the back of the left leg and also some abrasions on the inner side of the left leg; also an abrasion on the scrotum. The Magistrate ordered the J. M. O. to hold a post mortem examination. He then proceeded to record evidence of witnesses. A Crown Counsel appeared at this stage claiming to be *amicus curiae* assisted by the police. Another Counsel watched, the interest of the relatives of the deceased. Crown Counsel called certain Police Officers, and also the J. M. O. who had held the post morterm examination. The substance of the evidence of the Police Officers was that the deceased had been brought by the Police, under what powers it is not disclosed, all the way from Ratnapura to Colombo for purposes of 'interrogation' in connection with a suspected conspiracy to over-throw the Government by use of criminal force. He was alleged to have been brought to the C. I. D. Office at about 2.20 p.m. on 15th April, 1966; S. G. Senanayake, a Sub-Inspector of Police of the C. I. D., started questioning him at 11 p.m. on 15th April 1966; Inspector C. Weeratunga and I. M. R. de Silva also came into the room off and on during the interrogation which was held on the 4th floor of the New Secretariat Building. Sub-Inspector Senanayake stated that about 2.15 a.m. on the 16th of April he was alone with the deceased, interrogating him; and that the deceased suddenly darted across to one of the open windows, and got on to the ledge, and leapt out; he had no chance of stopping him, because it happened so suddenly. The deceased had first landed on an asbestos roof of a garage and had crashed through that to the ground. The deceased was then rushed to the General Hospital. The House Officer at the Casualty Ward at the General Hospital stated that the deceased was brought to the Casualty Ward of the General Hospital at 3 a.m., he was alive, but in a state of shock. He asked him what had happened to him, but the deceased did not answer that question, but only asked for some water. The J. M. O. stated that externally he found multiple abrasions; internally he had a fracture of the 7th to 12th ribs on the right side, laceration of the lower lobe of the right lung, laceration of the right lobe of the liver, laceration of the right kidney, and laceration of the adrenal

gland. He was of opinion that death was due to shock and haemorrhage from multiple injuries, and that the injuries could have been caused by a fall from great height, and the grazed external injuries were consistent with the body passing through broken asbestos sheeting.

Crown Counsel after having called the Police evidence, and the two doctors, stated that, that was all the evidence available. The Magistrate called upon any persons present in Court who could give any evidence regarding the death of the deceased to come forward, and give evidence, but no one came forward. He then stated that he would deliver his " verdict " on the 18th of April. On 18.4.63 the Magistrate inquired whether there had been any non-police persons in the C. I. D. Office capable of giving any relevant evidence. The Police stated that there were, and the Magistrate fixed the matter for further inquiry for 20th April 1966. On that day Crown Counsel again appearing as *amicus curiae* called one Bopattevidanalage Dingiri Mahatmaya. He was also apparently a person brought in for questioning, but he added nothing to the evidence already given before the Magistrate. All he said was that he saw the deceased in a certain room in the C. I. D. Office and that when he was taken away for questioning to another room he fell asleep on a bench and did not wake till about 5.30 or 6.00 a.m. on 16.4.1966. Crown Counsel also called the Superintendent of Police Special Branch, C. I. D., the petitioner in these two applications who was in charge of the investigations into the alleged coup. He himself was in another room interrogating one Sergeant Hondamuni. He had sent for the deceased at about 11 p.m. in the course of interrogation of Sergeant Hondamuni and the deceased had been brought into his room in order to be confronted with some things that Sergeant Hondamuni was alleged to have stated. He then says that at about 2.30 a.m. on 16.4.66 he heard a sound like that of an explosion, and some one came into his room, and informed him that Dodampe Mudalaly had jumped out of the window. On this material the Magistrate made the following finding :—

> " On the evidence available in this case I accept the position that the deceased has leapt out of the window on his own. Why the deceased took this step could only be a matter of speculation. According to the medical evidence the death was due to shock and haemorrhage resulting from injuries the deceased has sustained as a result of a fall. On the evidence before me I hold this is to be a case of suicide."

The record was then in accordance with the usual practice forwarded to the Attorney-General. About 3½ months later, that is, on 3rd of August 1966, an affidavit was tendered to the Magistrate from one L. V. Stephen, a brother of the deceased, asking for a fresh inquest. The affidavit stated that the deponent had " read in the newspapers, of statements made at the opening of the non-summary inquiry into the alleged conspiracy against the Government, that lawyers representing certain of the accused have stated that their clients were in a position to give

evidence regarding the manner of my brother's death". A further affidavit was filed on the 12th of August 1966. This affidavit stated that five persons—(1) Sergeant Hondamuni, (2) Sergeant Sirisena, (3) Corporal Silvester Batuwatte, (4) Corporal D. M. Wijeratne, and (5) Sergeant Hendrick Singho, all under detention under Emergency Regulations, at the New Magazine Prison, were in a position to throw fresh light on the manner of L. V. Podiappuhamy's death. On 22.8.66 the Magistrate proceeded to hear the evidence of the new witnesses. An advocate, instructed by a proctor, stated that he was watching the interests of the petitioner, that is of the deponent. A Crown Counsel was also present in Court, and stated that he was available to assist Court if necessary. The advocate who was watching the interests of L. V. Stephen called Sergeant Hondamuni and examined him. Crown Counsel was permitted to suggest further questions. On a further date this advocate called and examined A. D. Sirisena, W. M. Wijeratne, and M. Hendrick Singho. Crown Counsel was permitted to suggest further questions to these witnesses. The Magistrate thereupon proceeded to pronounce a fresh "verdict" on 15th September 1966 in the course of which he said :

"The evidence that has been made available to court since the returning of the verdict of suicide in this case makes it necessary to consider whether the earlier verdict could be allowed to stand.

At the earlier stage of the inquiry S. I. Senanayake testified to having seen the deceased jumping out of a window on the 4th floor of the building. The evidence of H. M. Hondamuni and A. D. Sirisena which was subsequently recorded is in conflict with the earlier evidence. H. M. Hondamuni states that when he was being questioned by S. P. Seneviratne he heard sounds of assault and cries of murder from the adjoining room, and that a little later when he happened to open the door of that room he saw the deceased Dodampe Mudalali lying naked inside the room on the floor with his face upwards. He adds that he heard S. P. Seneviratne saying 'put him on the roof'. According to H. M. Hondamuni sometime after he had heard the "crash" S. P. Seneviratne gave orders first to I. P. Fareed and then to I. P. Rahula Silva to go down and see whether the deceased was dead.

Sirisena's evidence is that he heard sounds of assault and cries of murder from the room into which he had earlier seen the deceased being taken and that later when he himself was taken into that room he saw the deceased lying naked inside the room. Sirisena states that he saw three officers inside the room and one of them raised the deceased into a sitting position and questioned the deceased, struck him on his neck, pushed him violently into a prone position and kicked him.

It may be noted that M. H. Hondamuni and Sirisena were not cross-examined to test the credibility of their evidence. At any inquiry of this nature the law does not expect the Court to satisfy itself that a crime has been committed. The court is required only to

ascertain whether the evidence discloses a "reasonable suspicion" that an offence has been committed as contemplated under section 362 (3) of the Criminal Procedure Code.

In my view the evidence available to court now is sufficient to create such "reasonable suspicion". I therefore act on that "Reasonable suspicion" and alter the verdict of suicide to one of culpable homicide."

On the 17th of September 1966 Crown Counsel moved that in view of the finding of culpable homicide the Magistrate do take steps under Chapters 15 and 16 of the Criminal Procedure Code. The learned Magistrate stated that he has already forwarded the record to the Attorney-General, and declined to take any further steps on the ground apparently that the Attorney-General was free to initiate criminal procedings if he thought fit. Thereafter on the 12th of November, 1966, the present petitioner applied to the Magistrate to lead further evidence touching the death of Dodampe Mudalali, and the Magistrate made order on the 12th of December 1966. This was to the effect that "the application to reopen the inquest proceedings is refused".

At the hearing of these two applications before this Court, Counsel for L. V. Stephen (2nd Respondent in Application No. 28 of 1967 and 3rd Respondent in Application No. 29 of 1967) submitted that neither revision nor certiorari was available to quash the proceedings relating to an inquest of death whether the inquest was held by an ordinary inquirer or by a Magistrate. Crown Counsel appearing for the Attorney-General (who is named as 1st Respondent in Application No. 28 of 1967 and as 2nd Respondent in Application No. 29 of 1967) stated that the position of the Attorney-General was that it was not within the jurisdiction of the Supreme Court to exercise powers of revision over proceedings at an inquest of death; he however contended that certiorari lay.

It is necessary before considering this part of the case to examine the nature of an inquest of death contemplated by law as set out in the Criminal Procedure Code.

Chapter 32 of the Criminal Procedure Code is headed "inquests of deaths"; section 361 states that no inquests of deaths shall be held except under the provisions of this Code. Section 362 provides as follows:—

"362 (1) Every inquirer on receiving information that a person:—

(*a*) has committed suicide; or

(*b*) has been killed by an animal or by machinery or by an accident; or

(*c*) has died suddenly or from a cause which is not known, shall immediately proceed to the place where the body of such deceased person is and there shall make an inquiry and draw up a report of the apparent cause of death, describing such

wounds, fractures, bruises, and other marks of injury, as may be found on the body and such marks, objects and circumstances as in his opinion may relate to the cause of death and stating in what manner such marks appear to have been inflicted.

(2) The report shall be signed by such inquirer and shall be forthwith forwarded to the nearest Magistrate.

(3) If the report discloses a reasonable suspicion that a crime has been committed the Magistrate shall take proceedings under Chapters XV and XVI.

(4) Nothing herein contained shall preclude a Magistrate from forthwith holding an inquiry under the powers vested in him by section 9 of this Code, whenever any of the events mentioned in paragraphs (*a*), (*b*) and (*c*) of subsection (1) of this section have been brought to his notice."

The 4th paragraph of section 9 of the Criminal Procedure Code reads as follows :—

" Every Magistrate's Court shall have.....jurisdiction, under and subject to this Code, to inquire into all cases in which any person shall die in any prison or mental or leprosy hospital or shall come to his death by violence or accident, or when death shall have occurred suddenly, or when the body of any person shall be found dead without its being known how such person came by his death."

Section 363 reads as follows :—

363 (1) When any person dies while in the custody of the police or in a mental or leprosy hospital or prison the officer who had the custody of such person or was in charge of such hospital or prison, as the case may be, shall forthwith give information of such death to a Magistrate of the Magistrate's Court within the local limits of whose jurisdiction the body is found, and such Magistrate or an inquirer authorized by him shall view the body and hold an inquiry into the cause of death.

(2) For the purposes of an inquiry under this section a Magistrate or inquirer shall have all the powers which he would have in holding an inquiry into an offence.

Section 364 (1) then goes on to state that the Magistrate or inquirer holding an inquiry prescribed under this Chapter *shall record the evidence and his findings thereon.*

It is not disputed in this case that the Magistrate was acting under section 363 (1) of the Criminal Procedure Code. It is conceded on all sides that although the deceased was not under arrest at the time of his death, he had been taken in for questioning, removed far away from

home, friends, relations, and advisers, and was under the complete and compulsive control of the police, and consequently was *de facto* if not *de jure* in the custody of the police.

The duty of the Magistrate upon being informed of a death of a person whilst in police custody is to view the body, and to hold an inquiry into the cause of death.

It seems to me that the main purpose of both sections 362 and 363 is that where the death has occurred in the circumstances or in the places mentioned in these two sections that there should be an immediate view of the body prior to burial or cremation, and that there should come into existence a record of any wounds, fractures, bruises, and other marks of injury as may be found on the body and such marks, objects and circumstances as may relate to the cause of death, so that burial or cremation or the lapse of time may not obscure the cause of death. These provisions occurring as they do in a code dealing with the investigation and punishment of crimes, appear to be directed largely to the prompt securing of material as to the cause of the death of a human being in unusual circumstances or places so that this material will be readily available in case such death was the result of an act of another amounting to an offence.

However, it must be noted immediately that the function of an inquirer or a Magistrate acting under Chapter 32 of the Criminal Procedure Code is not to investigate an alleged crime or offence. Indeed the whole inquiry proceeds upon the basis that the cause of death is yet to be ascertained. The learned Magistrate was mistaken when in his second 'verdict' he stated—" The court is required only to ascertain whether the evidence discloses a " reasonable suspicion " that an *offence* has been committed ". It is clear from the sections of law quoted above that the function of an inquirer or Magistrate under Chapter 32 is to hold an enquiry into the cause of death and to state as a finding what in his opinion was the cause of death. The recording of the finding concludes the inquest of death. If the finding of an inquirer forwarded to a Magistrate under section 362 (2) or of a Magistrate acting under section 9 or 363 of the Code gives rise in the Magistrate's mind to a reasonable suspicion that the crime has been committed, the Magistrate may assume the powers of a Magistrate's Court under section 148 (1) (*c*) and initiate criminal proceedings himself, But the right to initiate criminal proceedings that is available to an inquirer under section 148 (1) (*b*) and to a Magistrate under section 148 (1) (*c*) cannot alter the nature of an inquest of death that may precede such initiation of criminal proceedings; it only emphasises the investigative nature of those proceedings.

Does *certiorari* lie to quash such a finding ? I am of opinion it does not. The Magistrate or inquirer holding an inquest is not called upon to determine any question affecting the rights of the subject. He is only called upon to enter upon a voyage of discovery; there are no parties

before him claiming any right or liberty and no proposition advanced by any person the correctness or otherwise of which he is called upon to pronounce upon definitively. A person who is examined by the inquirer or Magistrate at an inquest and who gives evidence tending to show that the cause of death was suicide or homicide or accident cannot be regarded as a party propounding a question for determination by the investigator. It was submitted by Counsel for the petitioner that *certiorari* lies for the following reasons: (i) that it is a Magistrate, i.e., a judicial officer who held the inquest, (ii) that the word *jurisdiction* is used in section 9 of the Criminal Procedure Code in referring generally to the powers of a Magistrate to inquire into cause of death in unusual circumstances and places, (iii) that the Magistrate has in fact found the cause of death to be the offence of culpable homicide which in the context of his ' verdict ' implied that the petitioner was a party or abettor of that offence.

As to (i) I think it is a mistake to lay too much stress on the office held by the person against whom *certiorari* is sought. It is more important to have regard to the nature of the function with which the law has invested him. As to (ii) the use of the word jurisdiction is a neutral fact having regard to the different meanings that that word can have in different contexts. In the 4th para. of section 9 of the Criminal Procedure Code there is to my mind no doubt that the word is used in sense of a power or authority rather than of a judicial function. In this context it must be borne in mind that the authority to hold an inquest of death is one that Magistrates share with inquirers who under our law are not judicial officers at all. They are persons appointed not by Judicial Service Commission but by the Minister of Justice under section 120 of the Criminal Procedure Code for the *investigation* of alleged offences. Even the inquests under section 363 (1) which Magistrates are specially required to hold are capable of being delegated by them to an inquirer : *Vide* the words " ..... and such Magistrate *or an inquirer authorised by him* shall view the body and hold an inquiry into the cause of death " appearing in section 363 (1) of the Criminal Procedure Code.

As to the third ground on which it is contended that *certiorari* lies, the true test to my mind of whether the writ lies is what kind of function the law has imposed upon the authority when acting within its statutory powers and not what it has actually done acting outside of its powers. If the answer to that question is that the function imposed by law is judicial in character the writ will lie to quash determinations or orders made outside or in excess of its statutory authority, or in breach of the rules of natural justice or where there is error of law on the face of the record. Where the function is not judicial in character, whatever other remedies may be available, the prerogative writs of *certiorari* or prohibition will not be available to question acts of such authority which are *ultra vires* of its legal powers. The existence of the right to summon witnesses and to examine them on oath can never by itself be conclusive of the question whether a statutory function is judicial. The more reliable test is to inquire to what end or purpose these powers are given. If the

legislature gives such powers in order to facilitate the making of determinations which are intended by the law to affect the rights of subjects, then the writs are available. To my mind the functions of a Magistrate or inquirer holding an inquest of death are of a non-judicial character. In the ordinary progression of a criminal case from initiation of criminal proceedings, non-summary inquiry, indictment, trial and appeal, the inquest of death finds no place ; if at all it precedes or is concurrent with the investigation of a crime. It seems to me that the duty to inquire into the 'cause of death' is no different from the functions of a commission appointed under the Commissions of Inquiry Act. The Writs of Prohibition and *certiorari* do not issue to such commissions—see *N. Q. Dias v. C. P. G. Abeywardene*[1], and the cases cited therein ; nor in my opinion can they, by a parity of reasoning, issue to proceedings of an Inquirer or Magistrate holding an inquest of death.

A submission was also made that in England the Writ of *Certiorari* issues to a Coroner's Court. While it is correct that the law in relation to *certiorari* to be applied by our courts is that which prevails in England, the constitution and functions of a Coroner's Court and of an Inquirer or Magistrate holding an inquest of death are materially different. There is no power in an Inquirer or Magistrate to pronounce any 'verdict' ; his duty is only to record a finding of the cause of death ; the finding by itself does not automatically initiate any legal proceedings as does the 'inquisition' of a Coroner's Court in England.

The next question for consideration is whether this court can exercise its powers of revision over an inquest of death when a Magistrate holds such inquest, it being conceded and rightly conceded that revision does not lie when an inquirer holds such inquest.

Section 356 of the Criminal Procedure Code reads as follows :—

> "The Supreme Court may call for and examine the record of any case, whether already tried or pending trial in any court, for the purpose of satisfying itself as to the legality or propriety of any sentence or order passed therein or as to the regularity of the proceedings of such court."

In the case of *Attorney-General v. Kanagaratnam*[2] Nagalingam, J. said of this section :

> "I should myself construe the words "pending trial" in this section as the equivalent of "not finally disposed of by an order of acquittal, conviction or discharge", and to embrace every stage of the case from the presentation of a report to Court, and in the case of a non-summary offence through the entire gamut of non-summary proceedings in the Magistrate's Court, and in respect of both summary and non-summary cases to the final order made by a Magistrate or by a higher Court, ending in a verdict of acquittal or conviction or in an order of discharge."

[1] *(1966) 68 N. L. R. 409.*

[2] *(1950) 52 N. L. R. 121.*

It is I think obvious that even on this very wide and liberal interpretation of the words "pending trial", an inquest of death is not caught up by them. It is suggested, however, that the revisionary powers of the Supreme Court are wider than those set out in section 356 of the Criminal Procedure Code. Reliance is placed on section 19 of the Courts Ordinance the relevant portions of which in relation to Criminal Courts read as follows :—

> "The Supreme Court shall have and exercise sole and exclusive cognisance by way of appeal and revision of all . . . . prosecutions matters and things of which such original *court* may have taken cognisance."

The word 'court' is defined as follows :—

> "'Court' shall denote a Judge empowered by law to act judicially alone, or a body of Judges empowered by law to act judicially as a body *when such Judge or body of Judges is acting judicially.*"

For reasons already stated, I do not think that a Magistrate holding an inquest of death, any more than an inquirer performing the same functions, is acting judicially. Some assistance was sought to be derived from the words "matters and things" appearing in section 19 of the Courts Ordinance. These words to my mind are used only to make it clear that the appellate and revisionary powers of the Supreme Court in criminal matters were not confined to 'prosecutions' but would extend to certain other proceedings in which the court is called upon to act judicially. Some of these are set out at pages 125 and 126 of Justice Nagalingam's judgment in *Attorney-General v. Kanagaratnam* and do not need repetition here. These words are, however, insufficient to bring within Supreme Court's appellate or revisionary powers inquest proceedings even when held by a Magistrate.

Before concluding this judgment I feel constrained to pass some comment upon the manner in which the inquest of death was held in this case.

It is fairly obvious that when section 363 (1) enacted in effect that where "any person dies while in the custody of the police or in a mental or leprosy hospital or prison" the inquest shall be held by the "Magistrate or an inquirer authorised by him" the legislature was taking special care that the inquest should be carried out by a person of responsibility and experience because the opportunities for concealing the real cause of death, if the persons in charge of and employed at these institutions were so disposed, are greater than in the ordinary case. It is therefore somewhat regrettable that when the Magistrate first held his inquest in the present case he did little or nothing towards making this inquiry as searching and thorough as possible ; instead he seems to have surrendered his functions to 'Crown Counsel assisted by the Police'. The selection of

persons to be questioned was thus left entirely to the police ; the Magistrate himself seems to have sensed the dangers of this procedure when he at one stage said he would like to examine at least one non-police witness. But even here he left the selection of that person to the police. In the result the findng of suicide made by the Magistrate leaves the impression that he remained a passive instrument in the hands of the police anxiously—though perhaps honestly—wanting such a finding. When in August 1967 the inquiry was re-opened the Magistrate again repeated his performance ; he adopted a procedure which resulted in his reaching a finding devoutly to be wished for by those agitating for a re-opening of the inquiry. At this stage the Magistrate left the selection of persons to be examined in the hands of the advocate watching the interests of L. V. Stephen and briefed to establish the allegation made by certain coup suspects that Dodampe Mudalali was assaulted by the police in the course of an interrogation and thrown out of the 4th floor window to his death. There was no attempt, particularly in the face of his own previous finding of suicide, to probe the evidence of the witnesses who were paraded before him ; the Magistrate did not even think it fit in the face of this new material to recall and re-examine the police witnesses who had made statements at the earlier stages of the inquest. The whole inquiry was at this stage channelled for him by the Advocate who called the witnesses and was intent on establishing a case against the police. Here again his finding was a foregone conclusion.

The appearance of lawyers pedalling a case for some client and directing the course of the inquiry is something which no inquirer should permit. The term *amicus curiae* can sometimes be only a Latin guise for a Greek friend. It is of course permissible for a lawyer to appear, declare his interest and suggest any questions or line of inquiry for the inquirer to adopt in his discretion. In the present case while it was quite proper for Crown Counsel to appear and ask that the evidence pertaining to certain matters be taken *in camera* 'in the interests of a pending investigation' it was unfortunate that the Magistrate substantially left the course of the inquiry in the hands of Crown Counsel, as though he were one appearing at a non-summary inquiry ; his appearance was marked *amicus curiae* assisted by the police. It is also unfortunate that the Magistrate did nothing to pursue obvious lines of inquiry. What for instance did Inspector Senanayake mean by the word 'interrogating' particularly when this was carried out for no stated reason in the small hours of the morning while the rest of the City was asleep ? Was it merely questioning or did it involve the use of certain other methods which our police are not unknown to use in the course of their investigations. The Magistrate also became aware that there were a number of non-police persons in the C. I. D. premises at the time of the incident ; yet he left it to the police to select one from among them to be called and that one only stated that he heard and saw nothing. One is left with the impression that Crown Counsel was in reality there to watch the interests of the police. It is hardly necessary to add that the Attorney-General's Department (and its

members) should avoid, at the early stages of any death in unusual circumstances, allying itself with any persons who are interested in establishing a particular cause as the cause of death ; this can only lead to stultifying that department, much to the public disadvantage, in the performance of any duties that may arise for it under the Criminal Procedure Code in relation to that death. If a police officer or group police of officers wish to have their interests watched at an inquest they should retain private counsel for that purpose.

The two findings, first of suicide and later of ' culpable homicide ' are thus upon an examination of the whole of the proceedings at the inquest utterly unreliable and unconvincing. It is with regret, therefore, that I have reached the conclusion that in these proceedings the law does not permit me to quash either of these findings.

My order in respect of each of the applications is as follows :—

S. C. Application No. 28/67 (Revision) is dismissed.

S. C. Application No. 29/67 (Certiorari) is also dismissed.

There will be no order for costs in either case.

Applications dismissed.