1955 *Present :* **Sansoni J.**

**W. H. BUDDHADASA**, Petitioner, *and* **N. NADARAJA**
Respondent

*S. C. 90—In the matter of an Application for an Injunction under Section 20 of the Courts Ordinance*

*Injunction—Power of Supreme Court to grant injunctions—Conditions precedent—Liability of a servant of the Crown—Courts Ordinance (Cap. 6), s. 20—Income Tax Ordinance (Cap. 188), s. 79 (2) (a).*

In an application for an injunction to restrain the respondent, in supposed performance of his functions as Deputy Fiscal, from wrongfully seizing and selling the movable property of the petitioner in alleged pursuance of the provisions of section 79 (2) (a) of the Income Tax Ordinance—

*Held*, that the power of the Supreme Court to grant injunctions under section 20 of the Courts Ordinance "is a strictly limited one to be exercised only on special grounds and in special circumstances". An injunction will not therefore be granted if the petitioner was in a position to apply to the District Court for an injunction at about the time that he filed his application in the Supreme Court or even if, between the date of his filing his petition in the Supreme Court and the date of hearing of arguments, the petitioner could have instituted action in the District Court.

*Held further*, that a servant of the Crown purporting to act in his official capacity on behalf of the Crown can be restrained from so acting by an injunction issued against him as an individual.

APPLICATION for an injunction under section 20 of the Courts Ordinance.

*Issadeen Mohamed*, with *Carl Jayasinghe*, for the petitioner.

*Walter Jayawardene*, for the Deputy Fiscal, Western Province.

*R. S. Wanasundera*, Crown Counsel, as *amicus curiae*.

May 2, 1955. SANSONI J.—

The petitioner in this application has asked for the issue of an injunction under section 20 of the Courts Ordinance, Cap. 6, to restrain the respondent "from pursuing the unlawful action already committed" (i.e., the wrongful seizure of the petitioner's goods) "and to prevent further unlawful

actions about to be committed, namely, the sale of the petitioner's goods and the continuance of the seizure". He has also asked that the respondent be ordered to release the petitioner's goods already seized. The respondent is described in the caption as "N. Nadarajah of Colombo holding office as Deputy Fiscal, Western Province" while the petitioner is "W. H. Buddhadasa carrying on business under the name, style and firm of W. H. Hendrick and Sons at No. 63 Bankshall Street, Pettah, Colombo".

The application was made by petition and affidavit to which were attached certain documents referred to therein, and was filed on 17th February. It came before Gunasekara, J., who ordered notice to be issued on the respondent returnable 22nd February. Notice was duly served on the respondent who filed his own affidavit and the affidavit of T. Murugaser, Assessor of Income Tax, both dated 19th March. The affidavits refer to certain documents filed along with them. In reply to those affidavits the petitioner's proctor filed two further affidavits dated 21st March from the petitioner and W. H. Hendrick, Managing Director of Messrs. Hendrick and Sons, respectively, to which were attached certain documents referred to therein.

The petitioner's complaint in his first affidavit is that "the respondent proceeded on the 14th February, 1955 to seize and seal up the goods belonging to the petitioner at premises No. 63, Bankshall Street, alleging that he was empowered under a certificate issued by the Deputy Commissioner of Income Tax in June, 1954, under section 79 (2) (*a*) of the Income Tax Ordinance to seize the goods belonging to a firm called Hendrick and Sons Limited". He claims to have been the Director/Secretary of the firm of Hendrick and Sons Limited which had been carrying on business at No. 63 Bankshall Street but had ceased to carry on business in those premises as from August 1954. He claims that he bought the goods of that firm for valuable consideration on 10th August, 1954, and thereafter occupied the same premises paying rent to its owners, one of whom is the petitioner himself. He claims that most of the goods lying in those premises have been purchased and imported by him from various sources. His reason for filing this application is that he will suffer irremediable mischief before he can prevent it by bringing an action in an original Court.

The respondent was until 11th March, 1955, the Deputy Fiscal, Western Province. He relies in his affidavit on a certificate of tax in default dated 25th June, 1954, issued by the Deputy Commissioner Income Tax under section 79 (2) (*a*) of the Income Tax Ordinance, Cap. 188, in respect of tax due from Hendrick and Sons Limited, of No. 63 Bankshall Street. He says he received along with that certificate a letter from the Deputy Commissioner requesting him to take early action to recover the tax from the defaulter. He refers in his affidavit to the reports he received from his officers who were sent to demand payment from the defaulter, to the effect that they demanded payment of the tax from the Manager of the Company on several occasions early in July and August, 1954. As no payment was made, the respondent says that he directed his writ officer

on 15th September, 1954, to seize the movable properties of the Company and that he received a report from his officer that he had effected a seizure on 15th September and placed guards over the property seized. A copy of a letter dated 16th September purporting to have been sent by the petitioner as Secretary of Hendrick and Sons Ltd., 63 Bankshall Street, is referred to in the affidavit. It reads :—

Colombo, 16.9.54.

Fiscal, W. P.,
Colombo.

Dear Sir,

With ref. to the C. I. T. No. D 9/58 on which certain goods were seized by your officer, I hereby undertake to hold the said articles at your disposal. If the cupboards containing these articles are sealed the name of the business will suffer damage. I therefore request you to refrain from sealing the cupboards.

Yours faithfully,
(Sgd.) (Illegibly.)

W. H. Buddhadasa
Secretary,
Hendrick and Sons Ltd.,
63 Bankshall Street,
Colombo 11.

The Commissioner of Income Tax on 17th September directed the respondent to stay sale and withdraw the guards provided Rs. 200 a day was paid by the defaulting Company. No further seizure was apparently attempted till November, 1954, but on that occasion the respondent says he was informed by his officer that the defaulting Company had been liquidated and that the goods lying in those premises belonged to the petitioner. On 11th January, 1955, the Commissioner of Income Tax again directed the respondent to take immediate steps to seize and sell the movable property at No. 63 Bankshall Street for recovery of any balance outstanding on the certificate. The respondent says his officer started to seize and inventorise the goods at No. 63 Bankshall Street on 17th January and this process went on till 21st January.

In his second affidavit dated 21st March, 1955, which was obviously filed to meet certain allegations in the respondent's affidavit, the petitioner refers to the seizure alleged to have been effected between 17th and 21st January in the following paragraphs :—

(4) The respondent avers that he seized the goods between the 17th and 21st January, 1955. It is admitted that the respondent's subordinates came to the premises on the 17th of January, 1955, and proposed to seize the goods but I resisted the same and thereafter the guards left the premises.

(5) On or about the 26th of January, 1955, the respondent's subordinates accompanied by a Police Sergeant came again to my premises at 63 Bankshall Street and attempted to seize and seal my goods. On showing my documents of title to the goods in the premises, the respondent's subordinates and the Police Sergeant left my premises.

(6) If however the respondent's officers' presence in my premises between the 17th day of January, 1955 and the 21st day of January, 1955, and the inventorizing of my goods was deemed a seizure then there was in fact a suspension of seizure for the reason that I continued to carry on business and dealt with the goods which were alleged to be already seized as owner as I was entitled to in the usual course of my business, during the said period and subsequently.

He refers again to the alleged seizure of 14th February, 1955, in the following paragraphs :—

(7) On the 14th February, 1955, the Respondent's officers came again to my premises at 63 Bankshall Street, and proposed to seize and seal my goods. I resisted the same and was taken into custody and thereafter the goods were seized and sealed and placed in charge of guards in my absence.

(8) Therefore I am advised that the seizure under complaint was in law and in fact the one that took place on the 14th February, 1955.

It is significant that the petitioner does not deny the allegations in the respondent's affidavit that a seizure was effected on 15th September, 1954, and that the letter dated 16th September, 1954, was sent to him by the petitioner. The omission to refer to these matters, and to deny those allegations if they are untrue, is certainly strange.

I shall now refer to the proceedings which took place at the enquiry before me. An application had been made by the petitioner's proctor to add the present Deputy Fiscal, Mr. E. A. A. de Silva in place of the respondent who had retired on 11th March, 1955, in order to render the writ, if granted, effective. Mr. Mohamed supported this application but Mr. Jayawardene objected to the addition of Mr. de Silva. At the

same time Mr. Jayawardene raised three preliminary objections to the grant of an injunction and it was agreed that the preliminary objections should be considered first. I accordingly heard arguments on them. They were :—

(1) that the petitions and affidavits filed by the petitioner did not bring this case within section 20 of the Courts Ordinance.

(2) that an injunction would not be granted against a public officer where the grant of such an injunction would in effect be the grant of an injunction against the Crown.

(3) that in any event the Court would not exercise its discretion in favour of the petitioner in the circumstances of this case.

It will be convenient to deal with the first and third preliminary objections together. Section 20 (formerly section 22) of the Courts Ordinance repeats the language of section 49 of the Charter of 1833, the terms of which were considered by the Full Court in *In re Baly* [1]. Mr. Mohamed submitted that this judgment was of no binding force because the Charter and the Courts Ordinance are not *in pari materia*. Now the rule of construction in regard to Acts which are *in pari materia* is that such Acts are to be taken together as forming one system and as interpreting and enforcing each other (Craies on Statute Law, 5th Edition page 126). But one should not misunderstand the meaning of the phrase " Acts *in pari materia* " in this context. It only means that the Acts relate to the same subject or the same branch of the law ; it does not mean that the Acts were enacted by the same legislative body. Although the Charter and the Courts Ordinance were not enacted by the same legislative body they are both legal enactments passed by the legislative authority of the Crown. I consider myself bound by the interpretation given by the Full Court to provisions of the Charter which are identical with those of the Courts Ordinance, the more so as the Court thought that it was called upon " to establish a well considered precedent for the future guidance of this Court ". The rule of interpretation which seems to be applicable in this case is, I think, that enunciated in Australia and adopted by the Privy Council :—" No doubt it is a general rule of construction that when particular words in a statute have received judicial interpretation and the statute is subsequently repealed and re-enacted in identical terms, the words in the new enactment should be considered in the sense previously attributed to them by the judiciary. But I think that rule only applies to cases of considered decision upon the meaning of particular words in a statute " (Craies op. cit. p. 162).

The Full Court considered that it must look strictly to the Charter for its guidance, and decided that the relevant provisions " give to this Court a special power to be exercised on very special occasions only. They appear to point not simply to a limited jurisdiction, protecting the applicant *ad interim*, until he can protect himself by obtaining an injunction in the District Court, which he can obtain on filing the libel as the very

[1] *(1859) 3 Lor. 238.*

first step in the cause, but they also require that the applicant should, as a condition precedent to obtaining a writ from this Court, show that he is prevented by some substantial cause from applying at once to the District Court instead of coming to the Supreme Court at all". The judgment then gives instances of such cases and proceeds :—"The petitioner's affidavit simply states that there is not time for him to apply to the District Court. That affidavit was sworn on the 6th of July, the day on which this application was first made to this Court; and as the question of right, on which the application was founded, had been for some time mooted between the parties, and the transaction at the College on which the Queen's Advocate relies, as ground for believing that irremediable mischief would ensue, unless an injunction of this Court be interposed, took place on the 1st of July, the Supreme Court is at a loss for any proof, either of insufficiency of time, or of any other cause, of which this Court as a Court of Justice could take notice why the application for an injunction might not have been made in the District Court".

On this question of the powers of this Court under section 20 we have also the judgment of Bonser, C.J., in *Mohamado v. Ibrahim* [1]. The learned Chief Justice pointed out, as the Full Court had also done, that this Court has by its constitution no original jurisdiction in civil matters and that the provisions of section 20 confer "a limited power, very different from that given by the Judicature Act of 1873 to the English Supreme Court of granting injunctions in all cases in which it shall appear to the Court just or expedient to do so". He also held that this Court has no inherent power to issue injunctions and its jurisdiction is restricted to the cases referred to in section 20. He then went on to say: "It would appear, therefore, that the power of granting injunctions is a strictly limited one to be exercised only on special grounds, and in special circumstances, (1) where irremediable mischief would ensue from the act sought to be restrained, (2) an action would lie for an injunction in some Court of original jurisdiction and (3) the plaintiff is prevented by some substantial cause from applying to that Court". Nowhere in his judgment did Bonser, C.J., show any disagreement with the judgment of the Full Court; on the contrary, I think his judgment occasionally adopts, with variations, the language of the earlier judgment. While the applicant failed before Bonser, C.J., because he had not satisfied the above-mentioned first condition, and the applicant before the Full Court failed because he had not satisfied the third condition, the preliminary objections raise the question whether the applicant before me has satisfied the second and third conditions.

I have already referred to the salient features of this dispute in so far as they have a bearing on the preliminary objections. It is necessary to consider whether the petitioner was prevented by some substantial cause from applying to the District Court for an injunction. I quite appreciate that he was under an obligation to comply with the imperative provisions of section 461 of the Civil Procedure Code before he could proceed against the respondent in the District Court. I wish to make it clear that if the first act of interference by the respondent with the goods in question

[1] *(1895) 2 N. L. R. 36.*

took place on 14th February, 1955, there would be no substance in the first and third preliminary objections because the month's notice required to be given would have involved the petitioner in delay and resultant damage ; but that is not the view I take of the facts as I gather them from the affidavits, and I am now considering only such facts as appear to me to be incontrovertible. On the petitioner's own admission in his second affidavit, there was an interference or at least a threatened interference with the goods in question on 17th January, 1955. It is strange that though he refers to these matters, he has studiously refrained from making any admission or denial in regard to the respondent's statement that there was a seizure in September 1954, with regard to which the petitioner himself wrote the letter R7 dated 16th September, 1954. Taking these facts alone into consideration I ask myself whether the petitioner has established that he was prevented by some substantial cause from applying to the District Court for an injunction. Even if the first attempt at interference with these goods claimed by him only took place on 17th January, he could on that day have given the respondent a month's notice of action ; he would then have been in a position to apply to the District Court for an injunction at about the time that he filed the present application. It was submitted that the petitioner complains of a seizure which was effected on 14th February. But, as the judgment of the Full Court put it, " the question on which the application was founded had been for some time mooted between the parties " and if the petitioner chose to wait until the only forum in which he could ask relief was this Court he must bear the consequences of the rule that the power of this Court to grant injunctions " is a strictly limited one to be exercised only on special grounds and in special circumstances ".

But there is a further objection to the grant of the injunction applied for. It was stated by Mr. Jayawardene that although the papers were filed in this Court on 16th February and over a six weeks had elapsed before I heard arguments, no action had yet been filed in the District Court. This statement was not contradicted by Mr. Mohamed and I therefore accept it as setting out the true position. If, then, as the Full Court held, an injunction under section 20 is only granted under a limited jurisdiction to protect the applicant *ad interim* until he can protect himself by obtaining an injunction in the District Court, it is clear that the petitioner has failed in his duty to act promptly. If I were to issue the injunction I could only do so on the footing that the petitioner could not, for some substantial cause beyond his control, have obtained one from the District Court ; and this is demonstrably not so. It should not be thought that this Court will issue an injunction permanently or for an indefinite period. If the petitioner's object was to obtain redress for a threatened wrong and not to hamper the work of the Income Tax Department, he should have given the statutory notice at once, and instituted an action in the District Court on the earliest date after the expiry of one month. If no such notice has been given, the petitioner has disentitled himself to any relief whatever in these proceedings. For these reasons the application of the petitioner must be dismissed.

In appreciation of the helpful arguments of Counsel on the second preliminary objection, I shall deal with it as briefly as possible. Counsel

treated as axiomatic the proposition that no injunction lies against the Crown. Mr. Jayawardene sought to deduce from this the corollary that no injunction will be issued against an officer of the Crown if such an injunction will in its practical effect be an injunction against the Crown. His argument was that you cannot do indirectly what you are prohibited from doing directly, and the effect of issuing an injunction against the respondent in his individual capacity would be to interfere with the work of the Income Tax Commissioner in collecting tax for the Crown. The case may, he said, be different if the respondent as Fiscal were seeking to seize goods of the petitioner in execution, say, of a decree entered in favour of a private judgment creditor. Mr. Mohamed on the other hand argued that although the Crown is not liable to be sued in tort and is not liable to an injunction, Crown Servants are personally, though not officially or in a representative capacity, liable for any wrong done by them in the course of their employment even though done by the authority of the Crown. These propositions, I should add, were conceded by Mr. Jayawardene. Mr. Mohamed denied the existence of a supposed rule that the Crown cannot be interfered with in its work, for if that were the case, he submitted, no injunction could issue against any servant of the Crown for they are all engaged in doing the work of the Crown.

As I see it the point in dispute is whether a servant of the Crown purporting to act in his official capacity on behalf of the Crown can be restrained from so acting by an injunction issued against him as an individual. I think the respondent's position is correctly set out in the question I have just posed, for what he did was done in virtue of his office as Deputy Fiscal, and the petitioner has made him a respondent not in his official capacity but as an individual—thereby complying with the rule in *Raleigh v. Goschen* [1]. The plaintiffs in *Raleigh v. Goschen* had, however, asked for an injunction against the Lords of the Admiralty to restrain a threatened trespass on their land, and this question would have been considered in that case if the plaintiffs had not made the mistake of suing the defendants as an official body. I think the answer to the question is to be found in the judgment of the Privy Council in *Nireaha Tamaki v. Baker* [2]. In that case an aboriginal inhabitant of New Zealand sued the Commissioner of Crown Lands for a declaration that he and other aboriginal natives owned certain land, and for an injunction to restrain the Commissioner from advertising the same for sale or disposal as being property of the Crown. The following extracts from the judgment make the position quite clear :—"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 . . . . . 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 unauthorised invasion of the appellant's alleged rights. In the case of *Tobin v. R.*[3] a naval officer, purporting to act in pursuance of a statutory

[1] (*1898*) *1 Ch. 73.* [2] (*1901*) *A. C. 561.*

[3] *16 C. B. N. S. 310.*

authority, wrongly seized a ship of the suppliant. It was held on demurrer to a petition of right that the statement of the suppliant showed a wrong for which an action might lie against the officer, but did not show a complaint in respect of which a petition of right could be maintained against the Queen, on the ground, amongst others, that the officer in seizing the vessel was not acting in obedience to a command of Her Majesty, but in the supposed performance of a duty imposed upon him by Act of Parliament, and in such a case the maxim 'Respondeat superior' did not apply. On the same general principle it was held in *Musgrave v. Pulido* [1], that a governor of a Colony cannot defend himself in an action of trespass for wrongly seizing the plaintiff's goods merely by averring that the acts complained of were done by him as 'Governor' or as 'acts of State'. It is unnecessary to multiply authorities for so plain a proposition and one so necessary to the protection of the subject. Their Lordships hold that an aggrieved person may sue an Officer of the Crown to restrain a threatened act purporting to be done in supposed pursuance of an Act of Parliament, but really outside the statutory authority". If in the passage just quoted we substitute "goods" for "land" and "petitioner" for 'appellant" I think it perfectly fits the case I am dealing with.

I find that this case is cited in Bowstead on Agency (11th Edition) p. 280 for the following rule:—"A public agent threatens to do an act, purporting to be in pursuance of statutory powers, but in fact outside the limits of such powers. He may be restrained by injunction at the instance of a person aggrieved". It is referred to also in Broom's Legal Maxims (9th Edition p. 41) where the learned editor cites it in support of the following statement: "Although a petition of right does not lie for a tort committed by servants of the Crown, yet the servants who commit it, whether spontaneously or by order of a superior power, are answerable therefor in an ordinary action, for the civil irresponsibility of the superior power for tortious acts could not be maintained with any show of justice if its agents were not personally responsible".

Mr. Jayawardene relied on the case of *Ellis v. Earl Grey* [2] where Vice Chancellor Shadwell granted an injunction because he was of the opinion that the injunction sought did not seek to interfere with any public duty which the Lords of the Treasury had to discharge, or with any discretion which they had to exercise in their public capacity. "But", he said "it seeks to restrain them from doing a mere ministerial act, with a view to secure the money for the parties who may be decreed to be entitled to it". That case is cited in 18 Hailsham, paragraph 15, as authority for the statement that "in a proper case an injunction will be granted to restrain a department of the British Government from doing a mere ministerial act if it does not involve an interference with the public duty of the department". But I do not regard it as authority for the proposition that an injunction will not be granted to restrain a public officer from threatening to do a wrongful act which purports to be within his statutory powers but is in fact outside them. It is clear that section 79 (2) (*a*) of the Income

[1] *(1879) 5 A. C. 102.* [2] *58 E. R. 574.*

Tax Ordinance Cap. 188 empowers and requires the officer " to cause the tax to be recovered *from the defaulter* named in the certificate *by seizure and sale of his movable property* ". If the officer seizes or threatens to seize the property of any other person he would obviously be acting only in supposed pursuance of the Ordinance but really outside the statutory authority, and the Privy Council has decided that he may be restrained from doing so.

For these reasons I would overrule the second preliminary objection but in view of my earlier findings on the first and third preliminary objections the application for an injunction fails and I dismiss it with costs.

*Application dismissed.*