28/81

No. 47 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL TRINIDAD AND TOBAGO

B E T W E E N :

ENDELL THOMAS — Appellant (Plaintiff)

- and -

THE ATTORNEY GENERAL — Respondent (Defendant)

RECORD OF PROCEEDINGS

STEPHENSON HARWOOD,
Saddlers' Hall,
Gutter Lane,
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Solicitors for the Appellant

CHARLES RUSSELL & CO.,
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Solicitors for the Respondent

No.47 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL TRINIDAD AND TOBAGO

BETWEEN:

ENDELL THOMAS — Appellant (Plaintiff)

- and -

THE ATTORNEY GENERAL — Respondent (Defendant)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.47 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL TRINIDAD AND TOBAGO

BETWEEN:

ENDELL THOMAS — Appellant (Plaintiff)

- and -

THE ATTORNEY GENERAL — Respondent (Defendant)

RECORD OF PROCEEDINGS

No.1

WRIT OF SUMMONS

In the High Court

No.1
Writ of Summons

18th October 1972

TRINIDAD AND TOBAGO

J.D. SELLIER & CO.
Solicitors, Conveyancers & Notaries Public
(Writ of Summons)

IN THE HIGH COURT OF JUSTICE No.2227 of 1972

BETWEEN:

ENDELL THOMAS — Plaintiff

AND

THE ATTORNEY GENERAL — Defendant

ELIZABETH THE SECOND, by the Grace of God, Queen of Trinidad and Tobago and of Her other Realms and Territories, Head of the Commonwealth.

In the High Court

No.1
Writ of Summons

18th October 1972

(continued)

TO: THE ATTORNEY GENERAL,
RED HOUSE,
PORT OF SPAIN.

WE command you, that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of ENDELL THOMAS and take notice that in default of your so doing, the Plaintiff may proceed therein, and judgment may be given in your absence.

WITNESS: The Honourable Mr. Justice Hyatali, Chief Justice of our said Court at Port-of-Spain, in the said Island of Trinidad, this 18th day of October, 1972.

N.B.- This Writ is to be served within Twelve Calendar months from the date thereof or, if renewed, within Six Calendar months from the date of the last renewal, including the day of such date and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitors at the Registrar's Office at the Court House, in the City of Port-of-Spain.

The Plaintiff's claim is for:

1. Declarations that :

(a) regulations 74, 80, 81, 86, 99 and 101 of the Police Service Commission Regulations, 1966 are ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962 null and void and of no effect;

(b) his purported interdiction from the performance of his duties as a public officer and a member of the Trinidad and Tobago Police Service and deprivation of half his pay as the same and the purported laying of three charges against him and inquiry into the said charges and his purported conviction of the same and removal from the said Service by the Police Service Commission are ultra vires the Trinidad and Tobago (Constitution) Order in Council 1962, null and void and of no effect;

(c) that the said purported laying of charges and inquiry and conviction and removal are ultra vires the Police Service

Commission Regulations 1966, null and void and of no effect;

(d) he is and has at all material times been a public officer and a member of the Police Service holding the office of Assistant Superintendent;

(e) he is and has at all material times been entitled to the full salary, emoluments, rights, leave and other benefits of the said office and service;

(f) alternatively to (d) that he has been wrongfully dismissed from the said office and service.

2. Damages for wrongful dismissal.

3. Costs.

4. Such further or other relief as the case may require.

This Writ of Summons is accompanied by a Statement of Claim pursuant to Order 3 Rule 6.

This Writ was issued by Messrs. J.D. Sellier & Co. of No.13 St.Vincent Street, Port-of-Spain, and whose address for service is the same, Solicitors for the said Plaintiff who resides at 10, Kewley Street, Tunapuna, Trinidad.

J.D. SELLIER
Plaintiff's Solicitors

In the High Court

No.2
Statement of Claim

18th October 1972

No. 2

STATEMENT OF CLAIM

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2227 of 1972

B E T W E E N :

ENDELL THOMAS Plaintiff

AND

THE ATTORNEY GENERAL Defendant

STATEMENT OF CLAIM

1. The Plaintiff was at all material times a public officer and a member of the Trinidad and Tobago Police Service holding the office of Assistant Superintendent.

2. The Defendant is sued by virtue of section 19(2) of the Crown Liability and Proceedings Act, No.17 of 1966.

3. By letter dated the 29th August, 1970, the Director of Personnel Administration ("the Director") informed the Plaintiff that as a consequence of allegations of indiscipline made against him the Police Service Commission ("the Commission") had decided in accordance with regulation 80 of the Police Service Commission Regulations, 1966 ("the Regulations") that he should be interdicted from the performance of his duties on half pay from the date of receipt of the said letter until further notice pending the outcome of the allegations against him.

4. By a letter dated the 10th September, 1970, the Director informed the Plaintiff that the Commission had decided to charge him in accordance with regulation 81(6) of the Regulations with three offences contrary to regulations 74(2)(d) and 74(1)(a) of the Regulations, particulars of which were supplied to the Plaintiff in the said letter.

5. By letters dated the 16th October and the 30th October, 1970, the Director informed the Plaintiff that a tribunal comprising the following persons had been appointed to conduct an inquiry into the charges.

Mr.W.Bruno, Chief Magistrate - Chairman

Mr.C.Barnes, former Assistant Commissioner of Police - Member

Mr.W.M.Walker, Administrative Officer II, Ministry of Works - Members

6. On divers days between the 18th November, 1970, and the 12th of January, 1971, the said Tribunal purported to conduct the said inquiry and by a letter dated August, 1971, the Director informed the Plaintiff that the said Tribunal had found him guilty of all three charges and that the Commission had decided that he should be dismissed from the Police Service under regulation 101 unless he could show good cause why he should not be so dismissed.

7. By a letter dated 12th of August, 1971, the Plaintiff applied for a review of his conviction which was granted and was carried out by a Review Board comprising :

Mr. Eric Kirton, Barrister-at-Law

Mr. E.B.Annisette, Solicitor

Mrs. L.Beckford, Social Worker.

8. By a letter dated the 31st of December, 1971, the Director informed the Plaintiff that the Commission after considering the report of the Review Board had re-affirmed the findings of the said Tribunal that the Plaintiff was guilty of the charges as aforesaid but had decided not to dismiss the Plaintiff but to remove him from the Police Service in the public interest in accordance with regulation 99 of the Regulations such removal to take effect after the grant to the Plaintiff of vacation leave for which he might be eligible.

9. By a letter dated the 13th January, 1972, the Plaintiff was informed by the Commissioner of Police that he had 171 days leave accrued to him and his said removal would be effective from the 14th of August, 1972.

10. The members of the Commission and the members of the said Tribunal and of the said Review Board and/or those persons purporting to exercise powers over the Plaintiff by virtue of the Regulations were at all material times the servants and/or agents of the Crown.

11. The three said offences with which the Plaintiff was charged and of which he was convicted were purportedly created by the Regulations which were expressly made by the

Commission with the consent of the Prime Minister under the provisions of section 102 of the Constitution of Trinidad and Tobago. At all material times the three said offences did not exist in law, the purported creation of them by the Regulations being ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962, void and of no effect as the power to create offences for which public officers and/or members of the Police Service are triable resides in the Governor-General only by virtue of section 13 of the said Order and must be exercised in the manner therein prescribed.

12. In the premises all the acts of the members of the Commission and the said Tribunal and the said Review Board in relation to the Plaintiff including the said purported interdiction and deprivation of half pay, and laying of charges, and inquiry, and conviction and order for removal are and were ultra vires the said Order, null and void and of no effect.

13. Further and/or alternatively the said Tribunal which purportedly derived its authority over the Plaintiff from regulations 81(b) conducted the said inquiry improperly and without regard for the due process of Law in that the procedure for such an inquiry prescribed by regulation 81 of the Regulations had not been complied with and/or the Plaintiff was deprived of the rights and/or safeguards given him by the Regulations and in particular Regulation 81.

PARTICULARS

(a) The Plaintiff received no warning in writing in accordance with regulation 81(1).

(b) No investigating officer was appointed in accordance with section 81(1).

(c) Alternatively to (b) one Dennis Ramdwar, Deputy Commissioner of Police, was purportedly appointed investigating officer but he failed to comply with any of the provisions of regulations 81(3) 81(4) or 81(5).

14. Further and/or alternatively the said Tribunal was not properly constituted in accordance with regulation 86(2) of the Regulations in that none of the members of the said Tribunal were Police Officers.

15. In the premises by virtue of the matters set out in paragraphs 13 and 14 hereto the said purported laying of charges and inquiry and conviction and order for removal are and were ultra vires the Regulations, null and void and of no effect.

16. Further or alternatively by reason of the matters aforesaid the Plaintiff has been wrongfully dismissed by the Crown.

And the Plaintiff claims:

1. Declarations that:

(a) the said regulations 74, 80, 81, 86, 99 and 101 are ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962, null and void and of no effect;

(b) the said purported interdiction and deprivation and laying of charges and inquiry and conviction and removal are and were ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962, null and void and of no effect;

(c) the said purported laying of charges and inquiry and conviction and removal are and were ultra vires the Police Service Commission Regulations, 1966, null and void and of no effect;

(d) he is and has at all material times been a public officer and a member of the Police Service holding the office of Assistant Superintendent;

(e) he is and has at all material times been entitled to the full salary, emoluments, rights, leave and other benefits of the said office and service;

(f) alternatively to (d) that he has been wrongfully dismissed from the said office and service.

2. Damages for wrongful dismissal.

3. Costs.

4. Such further or other relief as the case may require.

M.G.DALY
Of Counsel

In the High Court

No.2 Statement of Claim

18th October 1972

(continued)

Filed with the Writ of Summons this 18th day of October, 1972 by Messrs. J.D. Sellier & Co. of No.13 St.Vincent Street, Port-of-Spain, Solicitors for the Plaintiff

J.D. SELLIER & CO.
Plaintiff's Solicitors

No.3 Defence

13th December 1972

No. 3

DEFENCE

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2227 of 1972

B E T W E E N :

ENDELL THOMAS Plaintiff

AND

THE ATTORNEY GENERAL Defendant

DEFENCE of the above-named Defendant delivered this 13th day of December, 1972 by his Solicitors, the Crown Solicitor of No.7 St.Vincent Street in the City of Port-of-Spain.

SAHADEO TOOLSIE
for Crown Solicitor,
Defendant's Solicitor.

D E F E N C E

1. The Defendant admits paragraphs 1, 2, 4, 5, 7, 8 and 9 of the Statement of Claim.

2. With regard to paragraph 3 of the Statement of Claim the Defendant admits that by letter dated 29th August, 1970 the Director of Personnel Administration informed the Plaintiff that as a consequence of allegations of indiscipline made against him the Police Service Commission had decided in accordance with regulation 80 of

the Police Service Commission Regulations, 1966 that he should be interdicted from the performance of his duties on half pay from the date of receipt of the said letter until further notice pending the outcome of the allegations against him. The letter however, also stated that the plaintiff was thereby interdicted from the performance of his duties on half pay from the date of receipt of the said letter until further notice pending the outcome of the allegations against him.

3. The Defendant admits so much of paragraph 6 of the Statement of Claim as alleges that by letter dated August, 1971, the Director informed the Plaintiff that the Tribunal referred to in paragraph 5 of the Statement of Claim had found him guilty of all three charges and that he should be dismissed from the Police Service under regulation 101 unless he could show good cause why he should not be so dismissed, but denies that the said Tribunal on divers days between the 18th of November, 1970 and 12th January or at any other time purported to conduct the inquiry referred to in paragraph 5 of the Statement of Claim. The Defendant will contend that the said Tribunal validly and properly conducted the said inquiry on divers days between the said dates and at all other material times.

4. The Defendant admits so much of paragraph 10 of the Statement of Claim as alleges that the members of The Commission and the members of the said Tribunal and of the said Review Board and/or those persons referred to in that paragraph were at all material times the servants and/or agents of the Crown but the Defendant denies that the members of the Commission and/or the members of the Tribunal and/or the members of the Review Board and/or the said persons purported to exercise powers over the Plaintiff by virtue of the regulations, and will contend that the members of the Commission and/or Tribunal and/or Review Board and/or the person referred to validly and properly exercised their powers over the Plaintiff by virtue of the said Regulations.

5. The Defendant admits so much of paragraph 11 of the Statement of Claim which alleges that the Regulations were expressly made by the Commission with the consent of the Prime Minister under Section 102 of the Constitution of Trinidad and Tobago, but denies that the three offences with which the Plaintiff was charged and of which

he was convicted were purportedly created by those Regulations. The Defendant will contend that the offences were validly and properly created by the Regulations. Further the Defendant denies (a) that the three offences did not exist in law or that their creation by the Regulations was ultra vires the Trinidad and Tobago (Constitution) Order in Council 1962, or that such creation was void or that it was of no effect; (b) that the power to create offences for which public officers and/or members of the Police Service are triable resides in the Governor-General only, or at all, by virtue of s.13 of the said Order or otherwise or that it could have at the material time been exercised by the Governor-General in any prescribed manner or at all. The Defendant will rely on the Trinidad and Tobago (Constitution) Order in Council, 1962, and the Constitution of Trinidad and Tobago.

6. The Defendant denies each and every allegation contained in paragraph 12 of the Statement of Claim.

7. The defendant denies each and every allegation contained in paragraph 13 of the Statement of Claim save and except the allegations particularised in (a) of that paragraph, and so much of (c) of that paragraph as asserts that Dennis Ramdwar, Deputy Commissioner of Police, the investigating officer failed to comply with the provisions of regulations 81(3), 81(4) or 81(5), which are admitted.

8. The Defendant admits that none of the members of the Tribunal were Police Officers as is alleged in paragraph 14 of the Statement of Claim but denies that the Tribunal was improperly constituted in accordance with regulation 86(2) of the Regulations or at all.

9. The Defendant denies each and every allegation contained in paragraphs 15 and 16 of the Statement of Claim.

10. The Defendant will contend that even if there were breaches of and/or non-compliance with the Regulations as have been alleged in the Statement of Claim that such breaches and/or non-compliance did not invalidate the decisions of the Commission.

11. Further and/or in the alternative the Defendant will say that the Plaintiff's action for declarations and/or other relief is not

maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago.

No.3
Defence
13th December 1972
(continued)

12. Further and/or in the alternative the Defendant will contend that the Plaintiff was a servant of the Crown dismissable at pleasure.

13. By reason of the premises the Plaintiff is not entitled to the declarations sought and/or any other declaration and/or any relief.

14. Save as hereinbefore expressly admitted the Defendant denies each and every allegation and/or implication of fact in the Statement of Claim as if the same were herein set out and traversed seriatim.

I.C. BLACKMAN
Of Counsel

I hereby accept delivery of Defence in the above matter although the time for doing has expired.

Dated this day of December, 1972.

Plaintiff's Solicitor

No. 4

No.4
Amended
Reply
July 1973

AMENDED REPLY

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2227 of 1972

B E T W E E N :

ENDELL THOMAS Plaintiff

AND

THE ATTORNEY GENERAL Defendant

AMENDED REPLY

1. The Plaintiff joins issue with the Defendant in his Defence save in so far as the

In the High Court

No.4
Amended Reply
July 1973
(continued)

same consists of admissions.

2. As to paragraph 11 of the Defence the Plaintiff will contend that sections 99 and 102 of the Constitution of Trinidad and Tobago are not bars to the Plaintiff's action and/or to the reliefs claimed therein.

3. As to paragraph 12 of the Defence the Plaintiff will contend that the Plaintiff was not dismissable at pleasure and/or the power of the Crown to dismiss the Plaintiff at its pleasure is and was at all material times limited and/or restricted by the Trinidad and Tobago (Constitution) Order in Council 1962 and/or the Trinidad and Tobago Constitution and/or the Police Service Act, 1965 and/or the Police Ordinance, Chapter 11 No.1 and/or regulations made under the said Ordinance and/or by it being an implied term of the Plaintiff's employment and/or office that he was dismissable only for cause and/or in consequence of lawful and valid disciplinary proceedings and/or in the manner lawfully and validly specified in the said legislation.

M.G. DALY
Of Counsel

AMENDED this day of 1973, pursuant to the Order of the Honourable Mr.Justice . re delivered as amended this day of July, 1973 by Messrs. J.D.Sellier and Company.

Plaintiff's Solicitors

No. 5

ORDER OF MR. JUSTICE MAHARAJ

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2227 of 1972

B E T W E E N :

ENDELL THOMAS Plaintiff

AND

THE ATTORNEY GENERAL Defendant

IN CHAMBERS

Entered the 2nd day of July, 1973
Dated the 18th day of June, 1973
Before the Honourable Mr. Justice S. Maharaj

On the return of the Summons filed herein on the 9th day of April, 1973 and upon reading the Affidavit of Sahadeo Toolsie sworn to on the 19th day of April, 1973 and filed herein together with the exhibits thereto attached and upon hearing Counsel for the Plaintiff and the Defendant

IT IS HEREBY ORDERED AND DIRECTED that the following preliminary points raised in paragraphs 5, 11 and 12 of the Defendant's defence herein be heard and determined in open Court by a Judge of the High Court on or before the Hearing of the Summons for directions and/or the setting down of the action on the General List of Cases to be tried :-

(1) Whether the power to create offences for which the plaintiff was triable resides in the Governor-General only or whether the three offences with which the plaintiff was charged were validly and properly created by the Police Service Commission Regulations, 1966 made by the Police Service Commission with the consent of the Prime Minister under section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time.

(2) Whether the Plaintiff's action is maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago.

In the High Court

No.5
Order of Mr. Justice Maharaj

2nd July 1973

(continued)

(3) Whether the Plaintiff was a servant of the Crown dismissable at pleasure.

AND IT IS FURTHER ORDERED AND DIRECTED that the costs of this application be costs in the cause fit for Counsel.

WENDY SANDRA-PUNNETT
Assistant Registrar

No.6
Judgment of Mr.Justice J.Braithwaite

17th December 1976

No. 6

JUDGMENT OF MR.JUSTICE J.BRAITHWAITE

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2227/1972

THOMAS

V

THE ATTORNEY GENERAL

Before the Honourable Mr. Justice John A.Braithwaite

Daly for Plaintiff.
Blackman for Defendant.

DETERMINATION OF POINTS ORDERED BY THE HONOURABLE MR. JUSTICE SONNY MAHARAJ BY HIS ORDER DATED THE 2ND DAY OF JULY 1973 AND ENTERED ON THE 2ND DAY OF JULY, 1973

By order dated the 18th day of June, 1973 and entered on the 2nd day of July, 1973, Maharaj J: ordered and directed that the following preliminary points raised in paragraphs 5, 11 and 12 of the defendant's defence be heard and determined in open court by a Judge of the High Court on/or before the setting down of the action on the General List of Cases to be tried:

(1) Whether the power to create offences for which the plaintiff was triable resides in the Governor-General only or whether the three offences with which

the plaintiff was charged were validly and properly created by the Police Service Commission Regulations, 1966 made by the Police Service Commission with the consent of the Prime Minister under section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time:

(2) Whether the plaintiff's action is maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago

(3) Whether the plaintiff was a servant of the Crown dismissible at pleasure.

Paragraphs 5, 11 and 12 of the defence read as follows :-

"5. The defendant admits so much of paragraph 11 of the statement of claim which alleges that the Regulations were expressly made by the Commission with the consent of the Prime Minister under section 102 of the Constitution of Trinidad and Tobago; but denies that the three offences with which the Plaintiff was charged and of which he was convicted were purportedly created by these Regulations. The Defendant will contend that the offences were validly and properly created by the Regulations. Further the defendant denies (a) that the three offences did not exist in law or that there creation by the Regulations was ultra vires the Trinidad and Tobago (Constitution) Order-in-Council 1962, or that such creation was void or that it was of no effect; (b) that the power to create offences for which public officers and/or members of the Police Service are triable resides in the Governor-General only, or at all, by virtue of section 13 of the said Order or <u>otherwise</u> or that it could have at the material time been exercised by the Governor-General in any prescribed manner or at all. The Defendant will rely on the Trinidad and Tobago (Constitution) Order-in-Council 1962 and the Constitution of Trinidad and Tobago."

For ease of reference paragraph 11 of the plaintiff's statement of claim reads thus:

"11. The three said offences with which the Plaintiff was charged and of which he was convicted were purportedly created by the Regulations which were expressly made by the Commission with the consent of the Prime Minister under the provisions of section 102 of the Constitution of Trinidad and Tobago. At all material times the three said offences did not exist in law, the purported creation of them by the Regulations being ultra vires the Trinidad and Tobago (Constitution) Order-in-Council 1962, void and of no effectas the power to create offences for which public officers and/or members of the Police Service are triable resides in the Governor-General only by virtue of section 13 of the said Order and must be exercised in the manner therein prescribed."

Paragraphs 11 and 12 of the defence read as follows :-

"11. The defendant will maintain that the plaintiff's action for declarations and/or other relief is not maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago.

12. Further and/or in the alternative the defendant will contend that the plaintiff was a servant of the Crown dismissible at pleasure."

"The three offences" mentioned above are apparently contained in Regulations 74(2)(a) and 74(1)(a) of the Police Service Commission Regulations, 1966 which came into operation on the 15th of October, 1966 (in this determination referred to as "the Regulations") and purported to have been made by the Police Service Commission (in this determination referred to as "the Commission") with the consent of the Prime Minister under the provisions of section 102 of the Constitution of Trinidad and Tobago (in this determination referred to as "the Constitution").

The offences involved allegations of (a) neglect of duty and (b) the doing, without reasonable excuse of an act which amounted to failure to perform in a proper manner a duty imposed upon him as a police

officer. The precise details of the "offences" are not set out in the pleadings and are not indeed, relevant for the purpose of this determination. Suffice it to say that the plaintiff was prior to the coming into force of the Police Service Act, 1965 (in this determination referred to as "the Act") (that is to say, the 27th day of August, 1966) a member of the Police Force as defined by section 103 of the Constitution and after that date by virtue of section 3(2), (3), (4) and (5) of the Act, became a police officer in the Police Service as constituted by subsection (1) of the said section 3. By letter dated the 29th of August 1970 he was interdicted from the performance of his duties by the Commission in the purported exercise of its powers under regulation 80 of the Regulations and subsequently on the 10th of September, 1970 was notified that disciplinary charges under regulations 74(2)(a) and 74(1)(a) would be preferred against him.

Sometime in August 1971, he was informed that he had been found guilty of these charges and that he would be dismissed from the Police Service under regulation 101 of the Regulations unless he could show good cause why he should not be so dismissed. The plaintiff applied under the Regulations for a review of his conviction, the ultimate result being that a decision was taken to substitute for the penalty of dismissal an order for his removal from the Police Service in the public interest in accordance with regulation 99 of the Regulations. It was in respect of this action by the Commission that the plaintiff in his statement of claim, made, inter alia, the following claim, that is to say, that regulations 74, 80, 81, 86, 99 and 101 of the Regulations are ultra vires the Constitution, null, void and of no effect:

This then is the general background against which Maharaj J. made his order of the 18th of June, 1973.

For the sake of convenience, I shall deal with the last point mentioned in the learned Judge's order first, viz: whether the plaintiff was a servant of the Crown dismissible at pleasure.

In the Attorney-General of Trinidad and Tobago v. Richard Aitcheson Toby, (Civil Appeal No.48 of 1973) the learned Chief Justice Sir Isaac Hyatali made a careful and

comprehensive review of the authorities relating to the Crown's right to dismiss its servants at its pleasure, and I do not think I can do any better than to refer to those portions of his speech in which the proposition is dealt with.

Before I do so however, I think I ought to make it clear that I have no doubt in my own mind that the plaintiff was a servant of the Crown. Section 3(1) of the Act, provides that the several public offices, "being the office of a member of the Police Force, from time to time set out in the Third Schedule shall be deemed to constitute the Trinidad and Tobago Police Service, which is hereby established for the purposes of this Act." The office of Assistant Superintendent held by the plaintiff is one of those offices set out in the Third Schedule of the Act. It therefore follows, it appears, that the plaintiff was the holder of a public office. If he was, then by the definition of the term "public office" at s.105(1) of the Constitution, he was the holder of an office of emolument in the "public service," which expression means the service of the Crown in a civil capacity in respect of the government of Trinidad and Tobago. It seems to me safe, therefore, to conclude that the plaintiff was at the time of his removal from office a servant of the Crown.

I now turn to the dicta of Sir Isaac Hyatali in Toby's case: After referring to a point raised by senior counsel for Toby, at p.5 (about the middle of the page) the learned Chief Justice says this:

> " But the point raised by Mr.Wharton need not trouble us further since it was stated by the Privy Council in Shenton v Smith (1895) A.C.229, 234-5 that -
>
> > "Unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown but because such are the terms of their engagement as is well understood throughout the public service. "

I proceed therefore on the footing that the right to dismiss at pleasure is founded not upon Crown prerogative but upon an implied

term at common law that servants of the Crown are dismissible at pleasure unless it is provided otherwise in special cases. This raises two questions; whether an express term in a contract can validly so provide or whether nothing short of a statute is essential for that purpose. To answer these questions the common law on the subject as a whole must be examined. In my judgment it is conveniently and authoritatively summaried in 7 Halsbury's Laws 3rd Edn. (1954) paras. 547 and 732 in these terms:

> "547. Crown contracts for service and for payments.
>
> /1/ In the absence of special statutory provisions, all contracts of service under the Crown are terminable without notice on the part of the Crown.
>
> /2/ This is so even though there be an express term to the contrary in the contract. /3/ For the Crown cannot deprive itself of the power of dismissing a servant at will and that power cannot be taken away by any contractual arrangement made by an executive officer or department of State. /4/ It has even been held that this rule is part of the wider principle that the Crown cannot by contract fetter its future executive action.
>
> 732. Tenure of office
>
> /5/ Except where it otherwise provided by Statute all public officers and servants of the Crown including colonial judges hold their appointments at the pleasure of the Crown; /6/ and all in general are subject to dismissal at any time without cause assigned; /7/ nor will an action for wrongful dismissal be entertained even though a special contract be proved." "

These principles, it is of interest to note, reflect and reproduce the view which G.S. Robertson in his renowned and respected work entitled Civil Proceedings By and Against the Crown (1908) expressed at 359 in these terms:

> "the Crown's absolute power of dismissal can only be restricted by statute, and anything short of a statute, which

purports to restrict it is void as contrary to public policy."

The first and second propositions in the text quoted above from 7 Halsbury's Laws 3rd Edn. (supra) namely, that in the absence of special statutory provisions all contracts of service under the Crown are terminable without notice on the part of the Crown even though there be an express term to the contrary in the contract was laid down in Dunn v Reg. (1896) All E.R. page 907. In that case Lord Esher recounted the view he had expressed obiter in De Dohse v. Reg. (1886) 66 L.J.Q.B. 422, n. referred to Lord Watson's approval of it in the House of Lords in the same case on appeal (1886) L.J.Q.B. 423) and held, that the Crown's right of dismissal at pleasure even in the fact of an engagement for a fixed term was applicable to servants of the Crown. Lord Herschell stated, inter alia, in Dunn's case (supra) at p.909 that -

> "It is said /the petitioner/ was engaged for three years certain, and that there was no right to determine his services before the expiration of three years. Persons employed in the public service of the Crown are, unless there is some statutory provision for a higher tenure, ordinarily engaged to hold office during the pleasure of the Crown. When therefore, the petitioner was appointed by Sir Claude McDonald, even if he was expressly appointed for three years, yet there was the implied right of the Crown, as in all cases, to end the appointment at pleasure."

Kay, L.J. at p.910, ibid, stated that the rule was not confined to military cases but was equally applicable to civil servants.

In his judgment, the trial judge stated that the principle that servants of the Crown can always be dismissed at pleasure was clearly laid down in Dunn v. Reg. (supra). In Reilly v. R. (supra) Lord Atkin stated obiter in the course of delivering the advice of the Privy Council at p.181, ibid, that

> "If the terms of appointment definitely prescribed a term and expressly provide for a power to determine for cause it appears necessarily to follow that any

implication of a power to dismiss at pleasure is excluded. This appears to follow from the reasoning of the Board in Gould v Staurt (1896) A.C.575. This was not in the case of a public officer but in this connection the distinction between an office and other service is immaterial. The contrary view to that here expressed would defeat the security to numerous servants of the Crown in judicial and quasi-judicial and other offices throughout the Empire where one of the terms of their appointment has been expressed to be dismissal for cause."

The terms of the appointments in that case as well as in Gould v. Stuart(supra) however were statutory. Moreover in the latter case it was held that the Civil Service Act 1884 had effected a statutory modification of the rule that the Crown may dismiss civil servants at pleasure. Lord Atkin's dictum therefore must necessarily be confined to cases where a statute provides for a fixed term in addition to a power to dismiss for cause. This is not of course the situation in the instant case. But be that as it may, it is of importance to note in this connection that the learned authors of Halsbury's Laws 3rd Edn. 340 at note (k) submit that the opinion expressed in Reilly v. R.(supra) is wrong in so far as it conflicts with the text at p.340 para.732, ibid, to the effect -

"nor will an action for wrongful dismissal be entertained even though a special contract be proved."

With respect to Robertson v Minister of Pensions (supra) it would suffice for present purposes to state that the opinion expressed by Denning, J. (as he then was) was founded on certain dicta relating to a statutory contract in Reilly's case (supra). Moreoever his opinion that the implied term to dismiss at pleasure could not exist where there was an express term is not in consonance with what Lord Watson stated in the House of Lords in De Dohse's case (supra). In my view, therefore, neither Reilly v. R. (supra) nor Robertson v Minister of Pensions (supra) can be relied upon to support the contention that the implied term of dismissal at pleasure can be varied otherwise than by statute. I would only say finally, that Lord Diplock in the recent case of Kodeeswaran v Attorney General of Ceylon (1970) A.C.1111

placed the principle beyond the realm of controversy when he said at p. 1118 that -

> "It is now well established in British Constitutional theory, at any rate as it has developed since the eighteenth century that any appointment as a Crown servant, however subordinate, is terminable at will, unless it is expressly otherwise provided by legislation."

In nearly every quotation from the authorities, phrases occur repeatedly to indicate that only in cases where express statutory provisions provide otherwise is the Crown's right to dismiss its servant at will restricted: In Shenton v Smith (supra) there is the phrase "Unless in special cases it is otherwise provided;" At para. 547 of the 3rd Edn. of Halsbury's Laws: "In the absence of special statutory provisions .....": At para. 732: "Except it is otherwise provided by Statute all..... servants of the Crown.....hold their appointments at the pleasure of the Crown:" Lord Herschell at p.909 of Dunn's case (supra) "unless there is some statutory provision for a higher tenure:" and finally Lord Diplock in Kodeeswaran v Attorney General of Ceylon (supra) "unless it is expressly otherwise provided by legislation:" I now quote two parts of the Act, a Statute duly enacted by Parliament in accordance with Parliament's power to make laws under section 36 of the Constitution and the procedure set out in Part 2 of Chapter IV of the Constitution:

"TENURE

(a) Tenure of office.	9. A police officer shall hold office subject to the provisions of this Act and any other enactment and any regulations made thereunder and unless some other period of employment is specified, for an indeterminable period.
Term appointments.	10. A police officer who is appointed to an office in the police service for a specified period shall cease to be a police officer at the expiration of that period.

Resignation.

11. A police officer may resign his office by giving such period of notice as may be prescribed by Regulations.

MODES OF LEAVING SERVICE

(b) Modes of leaving service.

61. The modes by which a police officer may leave the police Service are as follows:

(a) on dismissal or removal in consequence of disciplinary proceedings;

(b) on compulsory retirement;

(c) on voluntary retirement;

(d) on retirement for medical reasons;

(e) on resignation;

(f) on the expiry or other termination of an appointment for a specified period;

(g) on the abolition of office. "

Bearing in mind that one of the purposes of the Act set out in its long title is to provide for matters concerning the relationship between the Government and the Police Service, (to adapt the language of the Privy Council in Gould v Stuart (supra)) "the provisions of the Police Act, being manifestly intended for the protection and benefit of police officers are inconsistent with imposing into their contract the term that the Crown may put an end to it at its pleasure." Take section 9 of the Act, for example. This section specifically and expressly provides that subject to the provisions of the Act.... a police officer, unless some other period of employment is specified shall hold office for an indeterminable period. Surely this must be a provision which is "inconsistent with imposing into a police officer's contract of service the term that the Crown (Government)

may put an end to this contract at its pleasure." Look then at the provisions of section 61, subject to which section 9 has effect. This section sets out seven (7) circumstances in which a police officer may leave the Police Service, none of which include dismissal at pleasure. On the contrary, it would seem that the common law term is expressly excluded from the list. What the provisions section 9 and 10 read together seem to me to do is to achieve a higher and more secure tenure of office than which existed prior to the coming into operation of the Act. "What I conceive the true position to be is that whereas prior to coming into operation of the Statute a police officer apparently was dismissible at the pleasure of the Crown, after the coming into operation of the Act, unless one of the events described in paragraphs (b) to (g) of section 61 of the Act takes place, a police officer may be dismissed or removed from office only in consequence of disciplinary proceedings and not othetwise. This is what Sir Richard Crouch said in delivering the judgment of the Judicial Committee of the Privy Council at p.576 of Gould v. Stuart (supra) :

> "The respondent in this appeal entered into the service of the Government of New South Wales under and in accordance with the provisions of the Civil Service Act, 1884, of that Colony as a clerk at a yearly salary. Before his service had been determined in a manner prescribed by the Act, the Government dismissed him. On March 7, 1895, he brought a suit to recover damages for the dismissal against the appellant, who had been duly appointed to be sued as nominal defendant on behalf of the Government in the matter in that claim. The appellant pleaded that when the plaintiff was engaged as clerk he was not nor had he since been reasonably competent to perform the service for which he was engaged, wherefore the Government rescinded the contract and dismissed him. And for another plea the appellant said that the plaintiff misconducted himself in the service by wilfully disobeying the reasonable orders of the Government and by habitually neglecting his duties and failing to perform them, wherefore they dismissed him. The plaintiff demurred to these pleas; and the defendant

gave notice that on the argument of the demurrer he would object to the declaration on the grounds (1) that it did not disclose any cause of action; (2) that there is nothing in the provisions of the Civil Service Act which prevents the Government from terminating the employment of an officer under it at any time. The Supreme Court of New South Wales gave judgment for the plaintiff on the demurrer, and the present appeal is from that judgment.

It is the law in New South Wales as well as in this country that in a contract for service under the Crown, civil as well as military, there is, except in certain cases where it is otherwise provided by law, imported into the contract a condition that the Crown has the power to dismiss at its pleasure: Dunn v Reg; De Dohse v Reg. The question then to be determined is, has the Civil Service Act, 1884, made an exception to this rule? Part I of the Act provides for the classification of officers according to their salaries, the increase of salaries, and the appointment of a Civil Service Board. Part II provides for the examination, appointment, and promotion of candidates for admission to the service. Part V for superannuation allowance, in which according to s.48 an officer is not entitled to a superannuation allowance until he has served fifteen years. Part VI for the creation of a Civil Service Superannuation Fund, to which every officer is made to contribute by a deduction of 4 per cent from his salary. Sects. 10 and 49, which were referred to in the argument for the appellant, are not applicable to the present case. Sect.10 provides for the services of an officer being dispensed with in consequence of the abolition of his office or part; and s.49 to any officer not entitled to a superannuation allowance whose services may be dispensed with through no fault of his own, or who may be compelled through informity of body or mind to leave the service, giving power to the Governor to grant a gratuity to him. The provisions in Part III are the most material in the present case. Sect.32 provides for the

suspension of any officer who in the opinion of the Minister or of any officer authorized by him to investigate any matters or accounts pending a report shall have committed any act which appears to him to justify suspension; but if the suspension is not made by the Minister, the officer making it is immediately to lay before the Minister a report stating his reasons for the suspension, and the Minister may either confirm it or restore the officer to his office. Then s.33 enacts that if the Minister orders or confirms the suspension he shall report the same to the Governor, who, after calling on the officer to show cause or make explanation, may remove the suspension, or according to the nature of the suspension, or according to the nature of the offence dismiss the officer from the service, or reduce him to a lower class therein or to a lower salary within his class, or deprive him of such future annual increase as he would otherwise have been entitled to receive or any part thereof during any specified time, or punish him by fine not exceeding 50l; provided that the Governor before deciding may direct the Board, or appoint one or more persons to inquire into the matter, with authority to receive evidence and to summon and examine witness on oath. Sect.34 provides for punishment by fine not exceeding £10 of an officer who is negligent or careless in the discharge of his duties; s.35 for the summary dismissal of any officer convicted of felony or any infamous offence, and the forfeiture of his office by becoming bankrupt or applying to take the benefit of an Insolvent Act, or making an assignment for the benefit of his creditors; and s.37 for fine, suspension, or dismissal in case of dishonourable conduct or intemperance. These provisions, which are manifestly intended for the protection and benefit of the officer, are inconsistent with importing into the contract of service the term that the Crown may put an end to it at its pleasure. In that case they would be superfluous, useless, and delusive. This is, in their Lordships' opinion, an exceptional case, in which it has been deemed for the public good that a civil service should be established under certain regulations with some qualification

of the members of it, and that some restriction should be imposed on the power of the Crown to dismiss them. "

I can see no material difference between the point which I have to determine and the point determined by the Privy Council in the case quoted above. Again I state my determination to be that where an Act of Parliament expressly provides for the method of dismissal of a servant of the Crown the Crown's common right to dismiss that servant at its pleasure is thereby abrogated.

I turn now to the first point for determination which is set out above: i.e. whether the power to create offences for which the plaintiff was triable resides with the Governor-General only or whether the three offences with which the plaintiff was charged were validly and properly created by the Police Service Commission Regulations 1966 made by the Police Service Commission with the consent of the Prime Minister under Section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time. Counsel for the plaintiff referred me to section 13 of the Constitution which reads as follows:

"Special powers relating to functions of Commission.	13. The Governor-General may by Order at any time within twelve months after the commencement of this Order make provisions for the definition and trial of offences connected with the functions of any Commission established by the Constitution and the imposition of penalties for such offence."

Before attempting to interpret this provision, it may be useful to state that the Governor-General neither within the period specified in the section nor for that matter at any other time made any Order under the section. So that whatever construction is put upon the section, the fact remains that no offences have been defined neither has the mode of trial of offence connected with the functions of any Commission been provided for. Counsel for plaintiff maintained that section 13 was

the provision which enabled the Governor-General:

(a) to define disciplinary offences relating to persons subject to the jurisdiction of a particular Commission; and

(b) to provide for the mode of trial of these offences.

What Counsel for the defendant argued, on the other hand, was that the word "offence" appearing in the section meant "a criminal offence" and in this connection he referred to Volume III of Stroud's Judicial Dictionary 4th Edition at para.1824 where the word "offence" is defined as a "criminal offence" as distinct from an administrative disciplinary offence. Counsel reinforced his argument by adverting to the word "trial" and "penalties", which, as he stated, clearly indicated that the Constitution had in mind providing for the creation trial and punishment of criminal offences committed by persons seeking to interfere with the Commission in the exercise of these functions under the Constitution.

To support his contention in this respect Counsel quoted the following authorities :

(a) Derbyshire County Council vs. Derby (1896) 2 Q.B. p.57-58;

(b) Statutory Instruments 1959 Pt. I p.528, 529 where the Trinidad and Tobago (Order-in-Council) 1959 is set out;

(c) G.N.No.17 of 1961 (Trinidad and Tobago) paras. 11-13;

(d) The Jamaica Constitution (Order-in-Council) 1959 (S.I.1959 Pt.I p.438 S.57(c).

Quite apart from the persuasive influence of the above authorities, it seems to me that the provisions of section 13 of the 1962 Order is clear and unequivocal. The functions of the Commission are set out in section 99(1) of the Constitution as follows :

"Appointments etc. of police officers.

99(1). Power to appoint persons to hold or act in offices in the

Police Force (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit delegate any of its powers under this section to any of its members or to the Commissioner of Police or any other officer of the Police Force. "

As I see it, the purport and intent of section 13 is to enable the Governor-General by Order to ensure that members of a Commission carry out these functions fairly and without bias, ill-will or corruption. In this context the Governor-General could create criminal offences such as bribery, disclosure of confidential information, efforts to influence a Commission, and similar offences and could prescribe both the mode of trial of these offences and the penalties to be attached thereto (q.v. Regulations 11 to 13 of the 1961 Regulations). The important words of the section seem to me to be "connected with the functions of (any) Commission," that is to say connected with the appointment, promotion, transfer, confirmation, removal and discipline by the Commission of persons subject to its jurisdiction. I can see nothing in this section (i.e. section 13 of the Constitution) enabling the Governor-General to create offences or charges of a disciplinary nature against persons who are subject to the disciplinary control of the Commission.

Even if I am wrong in this conclusion, and the correct position is that the section enables the Governor-General to create disciplinary offences and to provide for their trial and punishment, the stark fact of the matter is that the Governor-General has not made any such Order and the natural inference would seem to me to be that there do not exist any disciplinary charges under section 13 of the Constitution which could have been preferred against the plaintiff.

On the other hand, if I am right, before I can determine the first part of the first point set by Maharaj J, to be determined it will be necessary to look into other aspects of existing law relating to the discipline of Police Officers. I refer first of all to paragraph (a) section 61 of the Police Service Act:

> "Mode of leaving service.
>
> 61. The modes by which a police officer may leave the Police Service are as follows :
>
> (a) on dismissal or removal in consequence of disciplinary proceedings:"

Secondly I refer to section 65(1)(j) and (3) of the Police Service Act.

> "Regulations for the Police Service.
>
> 65.(1) The Governor-General may make Regulations for carrying out or giving effect to this Act, and in particular for the following matters namely
>
> (a) - (i).....
>
> (j) the enlistment, training and discipline of the Police Service;
>
> (2).....
>
> (3) Any Regulations and any other regulations respecting the Police Service in operation at the coming into operation of this Act shall have effect in relation to police officers under this Act until regulations have been made under this Act. "

The simple prima facie proposition that seems to me to evolve from these two clear statutory provisions together with the equally clear provisions of section 99(1) of the Constitution is that a police officer may only be dismissed or removed from office in consequence of disciplinary proceedings conducted by the Commission in respect of disciplinary offences created either by Regulations made

by the Governor-General under section 65(1)(j) of the Act or by Regulations made by the Governor-General under the former Police Ordinance. (q.v. The Police Regulations 1954 (infra). No Regulations have been made by the Governor-General under section 65(1)(j) of the Police Service Act relating to the creation of disciplinary offences. It seems to follow that, subject to what I have to say below, the plaintiff could only have been properly triable on disciplinary charges in existence as a result of Regulations made by the Governor-General under the former Police Ordinance. However one looks at this part of the first question posed by Maharaj J. the answer seems to be that at least prior to the coming into operation of the "1962 Constitution", the only authority having jurisdiction under the law and the Constitution to make Regulations relevant to the discipline of the Police Force was the Governor-General in the exercise of powers specifically and expressly conferred upon him by Parliament. I now quote the provisions of section 102 (1) and (3) of the Constitution. The language of the section appears to me to be unambiguous :

"Powers of procedure of Service Commissions etc.	102.(1) Subject to the provisions of sub-section (3) of this section, a Commission to which this section applies may, with the consent of the Prime Minister, by regulation or otherwise regulate its own procedure; including the procedure..... functions."

It was argued by counsel for the defendant that the provisions of section 102(4) read together with the provisions of section 99 gave the Commission the power to create disciplinary offences. His argument was to the effect that in as much as one of the functions of the Commission was to exercise disciplinary control over police officers under section 99, the power to regulate its own procedure connoted a power to create disciplinary offences of charges. I could not and did not give this argument serious considerations: If counsel's argument was correct, the jurisdiction of judicial tribunals would immediately be enlarged to create offences or charges when once they were given power to regulat their own procedure. The High Court, for example,

which has the control and custody over persons appearing before it and also has the right by law to regulate its own procedure, would according to counsel's argument, have the power to create new criminal offences. Surely this cannot be the law.

In the context of the criminal law as far back as 1820 Chief Justice Marshall of the United States of America said this in the case of U.S. v. Willberger (1820) 2 Wheat (U.S.) at p.95.:

> "..... the power of punishment is vested in the Legislature and not in the judicial department, which is to define a crime and orders its punishment."

It seems to me that in the realm of administrative law where the punishment for a "disciplinary offence" can deprive a public officer of his livelihood indefinitely similar considerations ought to apply. This thinking seems to be reflected in the historical attitude of the several Governments of Trinidad and Tobago towards the Police Force.

At least up to 1950 when the Police Ordinance Ch.11 No.1 was passed, the disciplinary control of the Force was vested in the Commissioner of Police in respect of disciplinary offences created by the Legislature under Part IV of the Ordinance, and by the Governor by Regulations made under Section 23(b) of the Ordinance (q.v. the Police Regulations, 1954. (G.N.No.64 of 1954). All that the Trinidad and Tobago (Constitution) (Amendment) Order-in-Council 1959 did was to establish a Police Service Commission and to transfer from the Commissioner of Police to the Commissioner disciplinary control of members of the Police Force subject to procedural Regulations made by the Governor in consultation with the Commission. It is note-worthy that no attempt was made to create or define disciplinary offences in the 1961 Regulations, and quite rightly so. Section 66G of the 1959 amendment clearly gives no power to any authority to create disciplinary offences - only to settle procedures. The Police Service Commission from the date of its establishment until possibly 1966 was authorised by the Constitution to exercise disciplinary control in respect of offences created by statute or by regulations made

by the Governor-General under statute. All that the Constitution (1962) did in this respect was :

(a) in section 99 to re-establish the commission as the disciplinary controlling body; and

(b) to transfer to the Commission the power formerly vested in the Governor to make regulations for its own procedure.

It did not purport to invest any authority other than Parliament with the power to create disciplinary offences, or to put it another way, it did not purport to remove from Parliament the powers which Parliament had prior to 1966 exercised under its constitutional right to make laws. If that had been the intention the Constitution would have said so expressly.

Parliament by the Act recognised that it would have to make regulations for the training and discipline of the Police Service and spelled the necessity out in section 65 (1)(j) of the Act to enable the Governor-General to make regulations for the discipline of the Police Service and to preserve only regulations which were made under the Act and such other regulations in operation on the date of the coming into force of the Act. If therefore the Commission without the sanction of the Constitution or of Parliament purported to create or define disciplinary offences any such effort must clearly be ultra vires the Constitution and the Act.

What in fact seems to me to be the position is that now that the Act has repealed the Police Ordinance Ch.11 No.1, in the absence of Regulations made under the Act, only those Regulations in existence on the date of the coming in operation of the Act can be said to be legally valid. In any event the suspect portions of the 1966 Police Service Commission Regulations did not come into force until after the Act was proclaimed, so that they could not be numbered among the regulations referred to in section 65 of the Act. This however is by the way.

This short historical survey, apart from well established legal doctrines relating to the power to define, create and provide for punishment of disciplinary offences, seems to show that so far as the Police Service is

concerned, Parliament has at least as far back as 1950 been the sole repository of the powers to create and define disciplinary offences. If I read section 65(1)(j) of the Act correctly, I can only opine that Parliament is correct in assuming that it is proper authority empowered by the Constitution to make laws relating to the discipline of the Police Service. This power Parliament has delegated to the Governor General (now the President) and it is this entity that at all material times had and still has the power to create disciplinary offences - not the Police Service Commission.

In full answer to Maharaj J's first question, I am of the opinion:

(a) that only the Governor-General acting under the provisions of section 65 of the Act or under the provisions of the former Police Ordinance has the power to create disciplinary offences in respect of Police Officers.

(b) that all regulations purported to have been made under Section 102 of the Constitution under which the plaintiff was supposedly charged are void, null and of no effect.

I now look at the second point required by Maharaj J. to be determined: The wording of this point is as follows :

"Whether the plaintiff's action is maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago."

In order to appreciate the true purport and intent of this point, I have found it necessary to consider -

(a) what exactly the plaintiff is claiming in his action; and

(b) what (if any) effect the provisions of sections 99 and 102 have on the plaintiff's legal capacity to maintain his claims.

Now what the plaintiff is claiming is set out in his statement of claim as follows :

(1) Declarations that:

(a) Regulations 74, 80, 81, 86, 99 and 101 of the Police Service Commission Regulations 1966 are ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962, null void and of no effect;

(b) his purported interdiction from the performance of his duties as a public officer and a member of the Trinidad and Tobago Police Service and deprivation of half his pay as the same and the purported laying of three charges against him and inquiry into the said charges and his purported conviction of the same and removal from the said Service by the Police Service Commission are ultra vires the Trinidad and Tobago (Constitution) Order-in-Council 1962, null and void and of no effect;

(c) that the said purported laying of charges and inquiry and conviction and removal are ultra vires the Police Service Commission Regulations 1966, null and void and of no effect;

(d) he is and has at all material times been a public officer and a member of the Police Service holding the office of Assistant Superintendent;

(e) that he has wrongfully be dismissed from the said office and service.

In a word the plaintiff is claiming :

(a) declarations that the disciplinary provisions contained in the Police Service Commission Regulations are ultra vires the Constitution; and

(b) damages and costs for wrongful dismissal.

Before I enter upon an appraisal of the effects of sections 99 and 102 of the Constitution, may I say this, that where it is expressly stated, as it is in section 102 (4) of the Constitution that "the question whether Commission has validly performed any function vested into it by or under the

Constitution shall not be enquired into in any court," then the only circumstances in which a court, by reason of its inherent powers, may enquire into any such question is where:

(a) the Commission has exceeded its jurisdiction; or

(b) the Commission has acted without jurisdiction; or

(c) the Commission has assumed jurisdiction in respect of disciplinary offences which have no lawful validity;

for if it has so done, it would not have performed a function vested in it by or under the Constitution, or to put it another way, it would have performed a function not vested in it by or under the Constitution. To cite a concrete example, if, as is being contended in this case by counsel for the plaintiff, the Commission has no power to create disciplinary offences, and there do not exist in law the offences for which the plaintiff could have properly been triable by the Commission, then all proceedings conducted by the Commission in respect of the plaintiff would be a nullity. If these proceedings are a nullity, then the Commission would not enjoy the protection afforded by subsection (4) of section 102 of the Constitution. In support of his contention counsel for the plaintiff referred to the following cases :

(a) Trinidad Bakeries Limited v N.R.P.W. (12 W.I.R.) p.320

(b) Re Langhorne 1969 (14 W.I.R.) at p.353

(c) Re Sarran 1969 (14 W.I.R.) at p.361

(d) Anisminic Ltd. v. The Foreign Compensation Commission and another [1969] 1 All E.R. at p.208.

I have read these four cases and it is my opinion that, (to adapt to the instant case the words of Lord Reid at letter H and seq. at p.213 of the report of Anisminic v. Foreign Compensation etc. (supra), where a Commission established under the provisions of the Constitution "has done or has failed to do

something in the course of its enquiry" which it has no power to do or which is enjcined to do under the terms of its appointment, then such action or lack of it renders its decision a nullity. As I have said above, if the proceedings in these circumstances are a nullity, then a Court has the inherent right to interfere. On the other hand as Lord Reid put it at p.214 of his speech "if it (the Commission) is entitled to enter on the enquiry and does not do any of the things (above-mentioned) then its decision is equally valid whether it is right or wrong subject only to the power of the court in certain circumstances to correct any error of law."

I set out now parts of the speech of Lord Reid in Anisminic's case (supra).

At page 212 of Anisminic's case (supra) Lord Reid says this:

> " The next argument was that, by reason of the provisions of S.4(4) (of the Foreign Compensation Act 1950) the courts are precluded from considering whether the commission's determination was a nullity, and, therefore, it must be treated as valid whether or not enquiry would disclose that it was a nullity."

Section 4(4) is in these terms:

> " The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law."

The commission maintain that these are plain words only capable of having one meaning. Here is a determination which is apparently valid; there is nothing on the face of the document to cast any doubt on its validity. If it is a nullity, that could only be established by raising some kind of proceedings in court. But that would be calling the determination in question, and that is expressly prohibited by the statute. The appellants maintain that that is not the meaning of the words of this provision. They say that "determination" means a real determination and does not include an apparent or purported determination which in the eyes of the law has no existence because it is a nullity. Or, putting it in another way, if one seeks to show

that a determination is a nullity, one is not questioning the purported determination - one is maintaining that it does not exist as a determination. It is one thing to question a determination which does exist; it is quite another thing to say that there is nothing to be questioned.

Let me illustrate the matter by supposing a simple case. A statute provides that a certain order may be made by a person who holds a specified qualification or appointment, and it contains a provision, similar to s.4(4), that such an order made by such a person shall not be called in question in any court of law. A person aggrieved by an order alleges that it is a forgery or that the person who made the order did not hold that qualification or appointment. Does such a provision require the court to treat that order as a valid order? It is a well established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly - meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court.

Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman of Parliament had intended to introduce a new kind of ouster clause so as to prevent any enquiry even whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word "determination" as including everything which purports to be a determination but which is in fact no determination at all. And there is no degree of nullity. There are a number of reasons why the law will hold a purported decision to be a nullity. I do not see how it could be said that such a provision protects some kinds of nullity but not others; if that were intended it would be easy to do so.

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of a natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

At page 360 of Langhorne's case (supra) Luckoo C.J. summarises thus :

"To sum up the matter: The courts would have no jurisdiction to pronounce upon the validity of what the Commission does, but since from the nature of its power must be inferred the necessity to act judicially in accordance with common law precepts, courts are entitled to examine the way in which the enquiry was conducted, and the jurisdiction exercised to see whether it was in accordance with what the law demanded. This may involve such considerations as whether the enquiry was conducted in conformity with the principles of natural justice. For, if in

> the process of exercising that jurisdiction there was any contravention of accepted principles of the common law as to how such judicial functions should be observed, then corrections may be called for by causing the enquiry to be brought into court for the other party to show cause why it should not be quashed."

As far back as 1968, the validity of the Public Service Commission Regulations has been suspect. (The provisions of the Police Service Commission, are mutatis mutandis, similar to those of the Public Service Commission Regulations).

Mr. Justice Achong in the third paragraph of his judgment at p.5 in the case, The Civil Service Association of Trinidad and Tobago v. The Public Service Commission for Trinidad and Tobago (Civil Action No.1656/1968) said :

> "It seems to me, however, that in purporting to publish the 1966 Regulations, the Commission was not acting in the performance of any of the functions vested in it and so would not enjoy the protection afforded by the sub-section (i.e. 102(4) of the Constitution:")

Speaking for myself I would not have gone as far as the learned Judge went (i.e. to declare the publication of the 1966 Regulations invalid). The learned Judge certainly had strong views about the validity of the Regulations and he not only condemned their validity in toto but he also questioned the validity of their publication. I think that it is a good thing to have Regulations which affect the public at large published (whether it is required by law or not). But it is a dangerous matter to publish Regulations which are clearly ultra vires the law and the Constitution. To this extent I agree with Achong J.

By no stretch of legal imagination can it be held that the combined efforts of s.99 and s.102(4) of the Constitution create or give the power to create disciplinary offences. Section 99 clearly defines "jurisdiction" and s.102(4) clearly limits the regulatory powers of a Commission to its own procecure and nothing further. If Parliament or the Constitution had in mind to endow a Commission

with powers to create disciplinary offences, they would have done so in express terms.

If I am right in finding that Sections 99 and 102 of the Constitution gave the Commission no power to create the offences for which the plaintiff was tried and convicted, it would seem to follow that the proceedings against the plaintiff were a nullity. The plaintiff would therefore have recourse to the Court for his remedy. What the appropriate remedy was has given me some difficulty to determine. While I am convinced that he is entitled to the relief sought at sub-paragraphs (a) to (e) of his statement of claim, I am far from being sure that his claim for a declaration that he has been wrongfully dismissed from the Police Service is maintainable. And for this reason among others: if the proceedings, as I find them, are a nullity, then the true position would, I think be that the plaintiff was not dismissed at all. In other words, the supposed dismissal of the plaintiff does not exist as a dismissal. The question as to whether it was wrong or right does not therefore arise.

There is a school of thought which holds that public officers hold their offices at the will of the Crown (now the Republic) and that notwithstanding the existence of statutory contractual laws passed by Parliament whereby the terms and conditions of employment of public servants have been codified and endorsed by Parliament, the ancient principle of dismissibility at the will of the Crown (now the State) still prevails because of the absence of words in the particular statute expressly binding the Crown as it was and the State as it now is. For its authority for its proposition this school relies on the provisions of Section 7 of the Interpretation Act, 1962 which sets out the following provisions:

> " No enactment passed or made after the commencement of this Act binds or affects in any manner Her Majesty or Her Majesty's rights or prerogatives unless it is expressly stated therein that Her Majesty is bound thereby."

The form of words adopted by the Parliamentary draftsmen to indicate that the Crown is bound by the provisions of an Act is :

> "This Act binds the Crown."

This formula, of course, leaves no doubt in anybody's mind that the State (Crown) is bound by the provisions of the particular Act. In my opinion, the formula is the most fool-proof device of ensuring that provisions of the Act bind the Crown. But then, the question arises, is this formula the only means of expressly stating that the Crown/State is bound by an Act? I think not. For example, where in the long title to an Act it is expressly stated that the Act is one to provide for matters concerning the relationship between the Government and the Police Service, can it be seriously argued that the provisions of such an Act do not expressly bind the Government (that is to say The Crown in its right of the Government of Trinidad and Tobago).

Again I refer to section 61(a) of the Police Service Act.

"Mode of leaving service

61. The mode(s) by which a police officer may leave the Police Service are as follows :

(a) on dismissal or removal in consequence of disciplinary proceedings: "

Where such clear-cut and unambiguous provisions are passed by the Queen in her Parliament (as she then was) to regulate "the relationship between the Queen in her right of the Government of Trinidad and Tobago and the Police Service, can it still be said that these provisions do not bind the Crown? If the provisions of this Act do not expressly bind the Crown, whom then do they expressly bind? The police officers concerned, admittedly but who else? Surely one cannot have a unilateral binding. If they do not bind the Crown, but only the Police Officers concerned, it would seem to follow that the Crown is at liberty to ignore all of the provisions of the Act or, if it so desired, to honour some of the provisions and to disregard others. What seems to be clear is that if the Crown is bound by any one of the provisions of the Act, it is bound by all. As I see it, the words used in other statutes to bind the Crown (i.e. This Act binds the Crown) indicate no magic formula. It is my considered view that where an Act in clear terms expresses Parliament's intention to regulate the relationship between the (Executive)

(Crown) (Government) (State) call it what you may (and the Police Service) it sounds at least ill in the mouth of any of these Authorities to contend that because a certain form of words is absent from the Act, the Government (the Crown) (the State) can hold itself exempt from accepting its obligations under the Act. At the most I think that if the Crown is not bound by the Act, to which it wholeheartedly subscribed, in its Parliament in the words of Sir Richard Crouch at p.578 of Gould v Stuart, (supra) the provisions of the Act are "superfluous, useless and delusive" and may I add my own word "misleading." What is more is that, if the absence of the words in the provisions of the Act "This Act binds the Crown" means that the Crown is not bound by the provisions of the Act, then the Act is, so far as the interests of the Police Service is concerned, a completely worthless and ineffectual (and perhaps ludicrous) piece of legislation, because the executive authority could legally refuse to respect or give effect to its provisions. Now this clearly could not have been Parliament's intention when it passed an Act specifically and expressly to provide for matters concerning the relationship between the Government (i.e. the Crown) and the Police Service. My opinion is that an Act which expressly seems to set up a special contractual relationship between the Government and its servants is one which must ex hypothesi be binding on both the Government and its servants.

I have quoted extensively from the judgment of Sir Isaac Hyatali Chief Justice in Toby's case. There is one additional passage in the learned Chief Justice's speech to which counsel for the defendant referred: (see pp.4 & 5) Civil Appeal No.48 of 1973). The learned Chief Justice made only passing comment on s.7 of the Interpretation Act, 1962. This is what he said after quoting the section:

> "Neither the 1965 Act (the Civil Service Act, 1965) nor the 1966 Act (The Crown Liability and Proceedings Act, 1966) contains any provision which expressly states that Her Majesty is bound thereby. Compare in this connexion, for example, s.69 of the Housing Act, 1962 and s.36 of the Petroleum Act 1969, which expressly state in each case that the Crown is bound thereby."

Both these sections contain the words "This Act binds the Crown", whereas these words do

not appear either in the Civil Service Act, 1965 or the Crown Liability and Proceedings Act 1966. If my reasoning is correct that the Crown can be bound by expressions other than the formula appearing in the two Acts referred by the learned Chief Justice, it would appear that the learned Chief Justice's dictum can hardly be regarded as authority for the proposition that only where an Act contains the words referred to above can that Act be said to bind the Crown.

If I am right in concluding that an expression in the long title to an Act to provide for the relationship between the Government and the Police Service is an expression of intent that the Crown should be bound by the provisions of the Act, then such an expression would be, in my view, sufficient to satisfy the provisions of section 7 of the Interpretation Act, 1962.

In this connection see p.192 of Craies on Statute Law, seventh edn. where at the bottom of the page these words appear:

> "In East and West India Dock Company v. Shaw Savill and Allion Company /1888/ 39 Ch. D. Chitty J. said that the full title might "be referred to for ascertaining generally the scope of the Act." "

I now answer the points set to be determined by Maharaj J. specifically as follows :

> (1) The power to create "charges" "offences" of the nature of those preferred against the plaintiff vested solely in the Governor-General acting in accordance with the provisions of Section 65(1)(j) of the Act and not in the Commission.
>
> (2) The answers to the second and third questions must of necessity be framed in cautious language. Let me put it this way. If, in my opinion, the appropriate Regulations had been made under section 65(1)(j) of the Act by the Governor-General and had the Commission acted in the instant case in accordance with the charging provisions of those Regulations or the regulations in existence at the date of the coming into operation of the Act the Court's jurisdiction would have been completely ousted

by the provisions of section 102(4) of the Constitution. As I see it and as I have set out above, all the proceedings against the plaintiff amounted to was a nullity and if I am right in this view, the Court is entitled to say that the plaintiff had suffered a wrong and must have had a remedy. No other forum is open to him but the High Court. I think that, subject to what I have stated above his action is maintainable.

(3) There is no doubt that the plaintiff was a servant of the Crown and as such was at common law dismissible at the pleasure of the Crown.

The position is made clear at paragraph 732 of Halsbury's Laws 3rd Edn. (1954) in these terms :

"732(5). Except where it is otherwise provided by Statute all public officers and servants of the Crown including colonial judges hold their appointments at the pleasure of the Crown;

(6) and all in general are subject to dismissal at any time without cause assigned;

(7) nor will an action for wrongful dismissal be entertained even though a special contract be proved. "

The important words in the above quotation are "Except where it is otherwise provided by Statute."

The Police Service Act, 1965, a statute expressly provides as follows :

"(a) Tenure of office — 9. A police officer shall hold office subject to the provisions of this Act and any other enactment and any regulations made thereunder and unless some other period of employment is specified, for an indeterminate period.

Terms of appointments — 10. A police officer who is appointed to an office in the police service for a specified period shall cease to be a police

officer at the expiration of that period.

(b) Modes of leaving service.

61. The modes by which a police officer may leave the Police Service are as follows :

(a) on dismissal or removal in consequence of disciplinary proceedings;

(b) on compulsory retirement;

(c) on voluntary retirement;

(d) on retirement for medical reasons;

(e) on resignation;

(f) on the expiry or other termination of an appointment for a specified period;

(g) abolition of office."

These clear express provisions of a Statute, in my judgment, have abrogated the common law principle of dismissibility of a police officer at the pleasure of the Crown.

The specific answer to Maharaj J's final question is that the plaintiff, though a Servant of the Crown was not dismissible at pleasure but was by Statute dismissible or removable only in consequence of disciplinary proceedings for a disciplinary offence known to the law: only where the proceedings are a nullity (as I found in this case they were) can a court enquire into them - otherwise a court has no legal or constitutional right to enquire into such proceedings nor has a servant of the Crown any maintainable case of action before a Court. Section 102(4)(a) of the Constitution puts this beyond any peradventure.

In accordance with the order of Mr. Justice Maharaj, I forward this determination and the proceedings to the Registrar for such further interlocutory process as may be applied for.

Dated this 17th day of December, 1976.

John A. Braithwaite,
Judge.

No. 7

ORDER OF HIGH COURT

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.2227 of 1972

B E T W E E N :

ENDELL THOMAS Plaintiff

AND

THE ATTORNEY GENERAL Defendant

Dated and Entered the 17th day of December, 1976
Before the Honourable Mr. Justice J.Braithwaite

THE POINTS OF LAW raised by the Defence of the Defendant had by the order of the Honourable Mr. Justice S. Maharaj dated the 18th day of June, 1973 directed to be set down to be argued before this Court coming on the 12th, 14th and 15 days of July, 1976 to be argued in the presence of Counsel for the Plaintiff and the Defendant and UPON reading the pleadings filed herein and UPON hearing what was alleged by Counsel for the Plaintiff and for the Defendant THIS COURT DOTH DECLARE as follows:-

(1) that the power to create disciplinary offences for which the plaintiff was triable is vested solely in the Governor-General and is exercisable only by Regulations made by him under section 65(1)(j) of the Police Service Act, 1965, or under the former Police Ordinance, Chapter II, No.1 and that the three disciplinary offences with which the plaintiff was charged were not validly and properly created by the Police Service Commission Regulations, 1966 made by the Police Service Commission with the consent of the Prime Minister under section 102 of the Constitution of Trinidad and Tobago and did not exist in law at any material time.

(2) That the Plaintiff's action is maintainable notwithstanding sections 99 and 102 of the Constitution of Trinidad and Tobago.

(3) That the Plaintiff, though a servant of the Crown was not dismissable at

In the High Court

No.7
Order of High Court

17th December 1976

(continued)

pleasure but was by Statute dismissable or removable only in consequence of Disciplinary proceedings for a disciplinary offence known to the law.

AND IT IS ORDERED that this determination and the proceedings be forwarded to the Registrar for such further interlocutory process as may be applied for.

C. BEST
Temporary Assistant Registrar

In the Court of Appeal

No.8
Notice of Appeal

22nd December 1976

No. 8

NOTICE OF APPEAL

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL
CIVIL APPEAL NO.68 of 1976

B E T W E E N :

THE ATTORNEY GENERAL — Defendant/Appellant

AND

ENDELL THOMAS — Plaintiff/Respondent

TAKE NOTICE that the Defendant/Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgment of Mr. Justice JOHN A. BRAITHWAITE dated the 17th day of December, 1976 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

And the Defendant/Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The whole of the Judgment of Mr. Justice

Braithwaite dated the 17th day of December, 1976.

3. GROUNDS OF APPEAL.

The learned Judge erred in law in concluding that although the Plaintiff/Respondent was a servant of the Crown he was not dismissable at pleasure; and that the Police Service Act, 1965 abrogated the right of the Crown to dismiss the Plaintiff/Respondent at pleasure.

1. The learned Judge erred in law in concluding that the Police Service Commission in creating regulations specifying disciplinary offences had acted contrary to the Trinidad and Tobago (Constitution) Order-in-Council 1962 and the Police Service Act, 1965.

2. The learned Judge erred in law in concluding that the power to create disciplinary offences for which police officers could be punished resided only in the Governor-General or Parliament and not in the Police Service Commission.

3. The learned Judge erred in law in holding that the disciplinary proceedings conducted against the Plaintiff/Respondent were a nullity and were not saved by section 102(4) of the Constitution.

4. The learned Judge having found that Section 13 of the Trinidad and Tobago (Constitution) Order-in-Council, 1962 did not empower the Governor-General to create disciplinary offences for which police officers could be disciplined erroneously held that the Police Service Commission did not have such a power and/or that the disciplinary offences of which the Plaintiff/Respondent was found guilty did not exist in law.

5. The learned Judge erred in law in holding that the Plaintiff/Respondent is entitled to declarations sought at paragraph 15 of the Plaintiff/Respondent's Statement of Claim.

6. That the decision of the Judge dated

the 17th day of December, 1976, be reversed.

7. The persons directly affected by the appeal are :-

	Names		Addresses
1.	Endell Thomas	...	10 Kewley Street, Tunapuna
2.	The Attorney General	...	Red House, Port-of-Spain

Dated this 22nd day of December, 1976.

TO: THE REGISTRAR,
High Court of Justice.

TO: MESSRS. J.D. SELLIER & CO.
13 St.Vincent Street,
Port-of-Spain.

Solicitors for the Plaintiff/Respondent

SAHADEO TOOLSIE
for Chief State Solicitor,
Solicitor for the
Defendant/Appellant

No. 9

NOTICE OF CROSS APPEAL

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL
CIVIL APPEAL No.68 of 1976

B E T W E E N :

THE ATTORNEY GENERAL — Defendant/Appellant

AND

ENDELL THOMAS — Plaintiff/Respondent

TAKE NOTICE that upon the hearing of the above appeal the Plaintiff/Respondent herein intends to contend that the decision of Mr. Justice JOHN A. BRAITHWAITE dated the 17th day of December, 1976 should be varied as follows to include the following orders and/or relief:-

(a) Declarations in terms sought in paragraphs 1(a) to (e) inclusive of the Writ of Summons herein.

(b) An order that the Defendant/Appellant pay to the Plaintiff/Respondent all sums due to the Plaintiff/Respondent from the 14th of August, 1972 by way of salary, emoluments and other benefits to be assessed by a Judge in Chambers in default of agreement.

(c) An order that the Defendant/Appellant pay to the Plaintiff/Respondent the costs of the action.

And take Notice that the grounds on which the Plaintiff/Respondent intends to rely are as follows :-

(1) The learned Judge erred in law and/or wrongly exercised his discretion in refusing to grant the relief or make the orders referred to above or to give judgment for the Plaintiff/Respondent in terms thereof under Order 33 rule 6 of the Rules of the Supreme Court, 1975.

Dated this 29th day of December, 1976

J.D. SELLIER & CO.
Solicitors for the Plaintiff/ Respondent

No.9
Notice of Cross Appeal

29th December 1976

(continued)

TO: THE REGISTRAR, HIGH COURT OF JUSTICE
and

TO: THE CHIEF STATE SOLICITOR
7 St. Vincent Street,
Port-of-Spain.

No.10
Judgment of Mr. Justice Kelsick

19th January 1979

No. 10

JUDGMENT OF MR. JUSTICE KELSICK

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No.68 of 1967

Between

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO — Defendant/ Appellant

And

ENDELL THOMAS — Plaintiff/ Respondent

Coram: Sir Isaac Hyatali, C.J.
C.E.G. Phillips, J.A.
C.A. Kelsick, J.A.

January 19, 1979.

Tajmeol Hosein, S.C. and Ivol Blackmen - for the Appellant

Martin Daly - for the Respondent

J U D G M E N T

Delivered by Kelsick, J.A.

The appellant at all material times was a public officer and an officer in the First Division of the Trinidad and Tobago Police Service holding the office of Assistant Superintendent.

The officers in the First Division ("First Division Officers") comprised officers in rank from the Commissioner to an Assistant Superintendent. In the Second Division were the other police officers from Inspector to Constable (see the First and Second Schedules to the Police Service Act, 1965, ["the Act of 1965"]. First Division Officers had been Gazetted Police Officers ("Gazetted Officers") under the Police Ordinance Ch.11 No.1 which the Act of 1965 repealed. For the purposes of Ch.11 No.1 I shall refer to the police officers other than Gazetted officers as "subordinate officers".

In August, 1971, a disciplinary tribunal appointed under the Police Service Commission Regulations, 1966, hereafter referred to as "the 1966 Regulations", found the appellant guilty of three offences contrary to reg. 74(2)(a) and 74(1)(a) of the 1966 Regulations, in consequence of which the Police Service Commission ("the Police Commission") imposed on the appellant the penalty of dismissal under reg.101(1)(a) of the 1966 Regulations. I will refer to those offences as "the relevant offences".

On the recommendation of the Review Board constituted in pursuance of s.102(2) of the Constitution set out in the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962, (hereafter respectively designated "the 1962 Constitution" and "the 1962 Order") the Police Commission substituted, for the order of the appellant's dismissal, an order under reg.99 of the 1966 Regulations for his removal from the police service in the public interest. This took effect on 14th August, 1972, when the vacation leave for which he was eligible, expired.

On 10th October, 1972, the appellant instituted these proceedings against the Attorney General under s.19(2) of the Crown Liability and Proceedings Act, 1966, [Act 17 of 1966]. In para.1 of the Writ of Summons and in para.16 of the statement of claim the appellant sought declarations that :-

(a) regs. 74, 80, 81, 99 and 101 of the 1966 Regulations are ultra vires the 1962 Constitution, null and void and of no effect.

(b) his purported interdiction from the performance of his duties as a public officer and a member of the Trinidad and Tobago Police Service and deprivation of half his pay as the same and the purported laying of three charges against him and enquiry into the said charges and his purported conviction of the same and removal from the said Service by the Police Commission are ultra vires the 1962 Constitution, null and void and of no effect;

(c) the said purported laying of charges and inquiry and conviction and removal are ultra vires the 1966 Regulations, null and void and of no effect;

(d) he is and has at all material times been a public officer and a member of the Police Service holding the office of Assistant Superintendent;

(e) he is and has at all material times been entitled to the full salary, emoluments, rights, leave and other benefits of the said office and service;

(f) alternatively to (d) that he has been wrongfully dismissed from the said office and service.

He also claimed damages for wrongful dismissal.

The pleadings raised several questions of law.

The following Order, dated June 18, 1973, and entered on July 2, 1973, was made by Maharaj J. :-

> "It is hereby ordered and directed that the following preliminary points raised in paragraphs 5, 11 and 12 of the Defendant's defence herein be heard and determined in open Court by a Judge of the High Court on or before the hearing of the Summons for directions and/or the setting down of the action on

the General List of Cases to be tried :-

(1) Whether the power to create offences for which the plaintiff was triable resides in the Governor General only or whether the three offences with which the plaintiff was charged were validly and properly created by the Police Service Commission Regulations, 1966, made by the Police Service Commission with the consent of the Prime Minister under section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time.

(2) Whether the Plaintiff's action is maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago.

(3) Whether the Plaintiff was a servant of the Crown dismissible at pleasure."

The Order was made under O.XXXV r.2 of the Rules of the Supreme Court, 1946 which read :-

"If it appears to the Court or a Judge that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried,... the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such proceedings as the decision of such question of law may render unnecessary may thereupon be stayed."

That rule of court was replaced as from January 2, 1976, by O.33 rr.3 and 6 of the Rules of the Supreme Court, 1975, which enacted :-

"3. The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may

give directions as to the manner in which the question or issue shall be stated.

... ...

6. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment as may be just."

These points of law, which I shall refer to as "Remits (1), (2) and (3)" respectively, were argued before Braithwaite J., who on 17th December, 1976, made the following declarations :-

(1) That the power to create disciplinary offences for which the plaintiff was triable is vested solely in the Governor General and is exercisable only by Regulations made by him under s.65(1)(j) of the Act of 1965, or under Ch.11 No.1 and that the three disciplinary offences with which the plaintiff was charged were not validly and properly created by the 1966 Regulations made by the Commission with the consent of the Prime Minister under s.102 of the 1962 Constitution and/or did not exist in law at any material time.

(2) That the Plaintiff's action is maintainable notwithstanding ss.99 and 102 of the 1962 Constitution.

(3) That the Plaintiff, though a servant of the Crown, was not dismissable at pleasure but was by Statute dismissable or removable only in consequence of disciplinary proceedings for a disciplinary offence known to the law.

The Attorney General appealed against the decision of Braithwaite J. on the following grounds :-

1. The learned Judge erred in law in concluding that the Police Commission in creating regulations specifying

disciplinary offences had acted contrary to the 1962 Constitution and the Act of 1965.

2. The learned Judge erred in law in concluding that the power to create disciplinary offences for which police officers could be punished resided only in the Governor General or Parliament and not in the Police Commission.

3. The learned Judge erred in law in holding that the disciplinary proceedings conducted against the Plaintiff/Respondent were a nullity and were not saved by s.102(4) of the 1962 Constitution.

4. The learned Judge, having found that s.13 of the 1962 Constitution did not empower the Governor General to create disciplinary offences for which police officers could be disciplined erroneously held that the Commission did not have such a power and/or that the disciplinary offences of which the Plaintiff/Respondent was found guilty did not exist in law.

5. The learned Judge erred in law in holding that the Plaintiff/Respondent is entitled to declarations sought at para.16 of the Plaintiff/Respondent's Statement of Claim.

In his cross appeal the respondent gave notice of his intention to contend that Braithwaite J.'s decision should be varied to include the following orders and/or reliefs:-

(a) Declarations in terms sought in paras. 1(a) to (e) inclusive of the Writ of Summons herein.

(b) An order that the Defendant/Appellant pay to the Plaintiff/Respondent all sums due to the Plaintiff/Respondent from the 14th of August, 1972, by way of salary, emoluments and other benefits to be assessed by a Judge in Chambers in default of agreement.

(c) An order that the Defendant/Appellant pay to the Plaintiff/Respondent the costs of the action.

on the grounds that :-

> The learned Judge erred in law and/or wrongly exercised his discretion in refusing to grant the relief or make the Orders referred to above or to give Judgment for the Plaintiff/ Respondent in terms thereof under Order 33 rule 6 of the Rules of the Supreme Court.

At the hearing of this appeal, after arguments had been concluded on the remits, the Court of its own motion invited submissions from Counsel as to the effects, if any, on the issues in this case of s.18 of the Constitution of the Republic of Trinidad and Tobago Act, 1976 ["the Act of 1976"] which came into force on 1st August 1976, subsequent to the conclusion of the hearing before Braithwaite J.

The Relevant Enactments and their Construction

This appeal centres on the true meaning and effect of the following enactments :-

(a) Ss.99(1) and 102 of the 1962 Constitution, and the 1966 Regulations made thereunder;

(b) the Act of 1965, more particularly ss.9, 10, 61 and 65(1)(f), in relation to (a);

(c) ss.3 and 7 of the Interpretation Act, 1962, in relation to (b);

(d) s.18 of the Act of 1976 in relation to (b) and to the 1966 Regulations.

Neither ss.102(1) and 99(1) of the 1962 Constitution on the one hand, nor s.65(1)(j) of the Act of 1965 on the other, expressly confer authority on the Police Commission or the Governor General respectively to formulate disciplinary norms. Such a power, if it exists, must be implied.

The basic Common Law rules of construction are saved by s.4 of the Interpretation Act No.2 of 1962 that applies to the Act of 1965 and according to which :-

> "Nothing in this Act shall be construed as excluding the application to an

enactment of a rule of construction applicable thereto and not inconsistent with this Act."

The Interpretation Act, 1889 (U.K.) applies to the interpretation of the 1962 Order and Constitution (s.105(7) of the 1962 Constitution.

I do not agree with Braithwaite J. that the meanings of the relevant sections of the 1962 Constitution and of the Act of 1965 are plain and clear. At most they are ambiguous.

In that situation I would refer for enlightenment as to the intention of the law makers to other provisions of the enactment so as to construe the enactment as a whole by exposition within the four corners of the enactment. If the doubts are not thereby resolved, I would have recourse to extraneous aids that may throw light upon the subject. This includes the state of the law when the enactments were passed; the circumstances in which they became law; the reasons for which they were passed; and the changes they were designed to encompass; in short the history of the relevant law. As an aid to interpretation I would compare other enactments with which the enactment comprises a series related to each other so as to form a system of legislation, and to other enactments in pari materia.

A similar approach was taken by Wooding C.J. in Felix v. Burkett and Thomas (1964) 7 W.I.R. 339 at p.346, when he adopted views expressed in Attorney General v. Brown (1920) 1 K.B. at pp.791-2 by Sankey J. and in Hawkins v. Tathercole (1855) 6 De G.M. & G by Turner L.J. On the appeal in Felix's case (supra) the Privy Council traced the course of legislative development of the relevant enactment and derived assistance from an English Act in pari materia (see Felix v. Thomas (1966) 10 W.I.R. 507 at pp.512-4).

Useful assistance on the construction of Commonwealth constitutions may be obtained from the judgments of the Privy Council in Hinds v. The Queen (1976) 1 All E.R. 353 and in Maharaj v. The Attorney General of Trinidad and Tobago (No.2) (1978) 2 All E.R. 670.

Constitutions differ in material aspects from ordinary statutes. There are rules of construction which are peculiar to the former;

while many of the principles applicable to the latter have reference to the former. The external aids to interpretation of written Constitutions were discussed in Hind's case supra on appeal from Jamaica. Lord Diplock expatiated on the subject at pp.359-60 :-

> "A written constitution, like any other written instrument affecting legal rights or obligations, falls to be construed in the light of its subject matter and of the surrounding circumstances with reference to which it was made."

It was, he declared, proper to refer to other home rule and independence constitutions of former colonial territories, more particularly those with a unitary framework. However, a distinction must be made between the ratio decidendi of a case depending on the express words of the particular constitution and one arising from the necessary implication of the subject matter and structure of the constitution. This is especially so in cases interpreting federal constitutions where the question may have arisen from the separation of the judicial from the legislative or executive power or the division of such powers between the federation and the states.

He continued :-

> "Nevertheless all these constitutions have two things in common which have an important bearing on their interpretation. They differ fundamentally in their nature from ordinary legislation passed by the parliament of a sovereign state. They embody what is in substance an agreement reached between representatives of the various shades of political opinion in the state as to the structure of the organs of government through which the plenitude of the sovereign power of the state is to be exercised in future. All of them were negotiated as well as drafted by persons nurtured in the tradition of that branch of the common law of England that is concerned with public law and familiar in particular with the basic concept of separation of legislative, executive and judicial power as it had been developed in the unwritten constitution of the United Kingdom.

"..... As to their subject matter, the peoples for whom new constitutions were being provided were already living under a system of public law in which the local institutions through which governments were carried on, the legislature, the executive and the courts, reflected the same basic concept.

The new constitutions, particularly in the case of unitary states, were evolutionary not revolutionary. They provided for continuity of government through successor institutions, legislative, executive and judicial, of which the members were to be selected in a different way, but each institution was to exercise powers which, although enlarged, remained of a similar character to those that had been exercised by the corresponding institution that it had replaced.

Because of this a great deal can be, and in drafting practice often is, left to necessary implication from the adoption in the new constitution of a governmental structure which makes provision for a legislature, an executive and a judicature. It is taken for granted that the basic principle of separation of powers will apply to the exercise of their respective functions by these three organs of government. Thus the constitution does not normally contain any express prohibition on the exercise of legislative powers by the executive or of judicial powers by either the executive or the legislature. As respects the judicature, particularly if it is intended that the previously existing courts shall continue to function, the constitution itself may even omit any express provision conferring judicial power on the judicature. Nevertheless it is well established as a rule of construction applicable to constitutional instruments under which this governmental structure is adopted that the absence of express words to that effect does not prevent the legislative, the executive and the judicial powers of the new state being exercisable exclusively by the legislature, by the executive and by the judicature respectively. To seek to apply to constitutional instruments the canons of construction

"applicable to ordinary legislation in the fields of substantive criminal or civil law would, in their Lordships' view be misleading - particularly those applicable to taxing statutes as to which it is a well-established principle that express words are needed to impose a charge on the subject.

In the result there can be discerned in all those constitutions which have their origin in an Act of the Imperial Parliament at Westminster or in an Order in Council, a common pattern and style of draftsmanship which may conveniently be described as 'the Westminster model'."

Lord Hailsham in his judgment in Maharaj's case supra at p.681 H. referred to independence constitutions of former Colonial territories as being in pari materia :-

"The 1962 Constitution is one of a family of constitutions similar, but not identical in form, enacted for colonial dependencies of the Crown on their attaining independence, as the result of negotiations and discussions relating to the terms on which independence should be granted. Many of them (including that of Trinidad and Tobago) have been amended since independence (sometimes more than once), but they still retain strong family resemblances."

Historical Background

Counsel for both parties in this appeal analysed and compared the written and unwritten laws which were the ancestors of the material enactments. I shall now briefly review the historical background of those laws.

Prior to the commencement of the Police Ordinance, Ch.11 No.1 on 13th April, 1950, the appointment (including promotion and transfer), disciplining and dismissal or removal of public officers (for convenience hereafter compendiously referred to as "disciplinary powers") were vested in the Governor by articles XIII and XIV of the Trinidad and Tobago Letters Patent 1924 /"the Letters Patent 1924"/ and the Royal Instructions, both of which were issued on

6th June, 1924. The Governor had to consult his nominated Executive Council but was not obliged to accept its advice.

Disciplinary powers were exercised by the Governor in accordance with Colonial Regulations which were in the nature of subsidiary legislation made under the Letters Patent that had the force of law. (See Roberts Wray's Commonwealth and Colonial Law p.239-240). Public officers were disciplined and dismissed for breaches of conduct which were not, except in the respect of subordinate or junior officers in the protective services (police, prison and fire officers), prescribed by or under any Ordinance.

The Colonial Regulations detailed certain acts for which an officer was liable to be disciplined, but this was not a comprehensive or exclusive code of conduct. Officers convicted of a serious criminal offence were dismissed and charges were laid for other kinds of conduct in breach of the duties owed by an employee to his employer. This is apparent from the form of charges set out in Russell's "Notes on Forms on Official Proceedings under the Colonial Regulations". The Regulations and the Forms spelt out the procedure to be followed and included provisions incorporating the rules of natural justice.

A part of the Governor's authority over subordinate officers was exercisable by the Commissioner of Police and other Gazetted officers under Ch.11 No.1 and under the Ordinance which it replaced.

The Trinidad and Tobago Letters Patent 1950, the related Royal Instructions and the Trinidad and Tobago Constitution Order in Council 1950, ["the 1950 Order"] came into operation on 31st August, 1950, Articles 10 and 11 of the Letters Patent 1950 were substantially the same as Articles XIII and XIV of the Letters Patent 1924 and read :-

> "10. The Governor, in our name and on Our behalf, may constitute such judgeships and other offices for the Colony and may make appointments (including promotions and transfers) to any judgeship or other office constituted for the

" Colony, and any person so appointed shall, unless it is otherwise provided by law, hold office during Our pleasure.

11. Subject to the provisions of any law or regulations for the time being in force and to such instructions as may from time to time be given to him by Us through a Secretary of State, the Governor may, upon sufficient cause to him appearing, dismiss or suspend from the exercise of his office any person holding any public office in the Colony or may take such other disciplinary action as may seem to him desirable. "

From 31st August, 1950, to 31st August, 1962, the authority to discipline Gazetted Officers continued to reside in the Governor. In its exercise he was, until 27th September, 1961, subject to the control of the Secretary of State. He had to consult with, but was not obliged to accept the advice tendered by, the Public Service Commission and later the Police Commission. The Executive Council had no say in this regard (Clause 4(2) of the Royal Instructions).

The first Public Service Commission was established pursuant to s.64 of the 1950 Order. The Commission was to advise the Governor on any question referred by him to the Commission regarding any of his disciplinary powers. (See s.65 of the 1950 Order and s.3 of the Public Service Commission Ordinance Ch.42 No.10).

S.66 of the 1950 Order enabled the Governor to make regulations for inter alia:-

(c) the organization of the work of the Commission and the manner in which the Commission shall perform its functions;

... ...

(g) the definition and trial of offences connected with the functions of the Commission and the imposition of penalties for such offences. Provided that no such penalty shall exceed a fine of four hundred and eighty dollars

and imprisonment for a term of one year.

The Public Service Commission Regulations [Revised Laws 1951-1953 Vol.I p.3], which I shall refer to as "the 1951 Regulations" were made on 8th January, 1951, and do not specify any disciplinary offences.

Ss. 66C to 66E of the 1950 Order as enacted by the Trinidad and Tobago Constitution (Amendment) Order in Council, 1956, ["the 1956 Order"] invested the Police Service Commission, which it created, with the powers of the Public Service Commission in respect of Gazetted Officers and Inspectors, and set up Police Promotion Boards for Officers below the rank of Inspector.

The new Commission was consultative to the Governor as regards the appointment of the Commissioner and Deputy Commissioner of Police and the exercise of disciplinary control over all police officers; but the Governor had to accept the advice of the Commission in respect of appointments of other police officers.

Substantially similar provisions were re-enacted in ss.66C to 66E of the 1950 Order by the Trinidad and Tobago (Constitution) (Amendment) Order in Council 1959, ["the 1959 Order"] and subsequently in ss.82 to 85 of the Constitution annexed to the Trinidad and Tobago Constitution Order in Council 1961, [hereafter referred to as "the 1961 Constitution" and "the 1961 Order respectively"].

The Trinidad and Tobago Letters Patent 1959 substituted, for the words "The Governor" in art. 10 of the Letters Patent 1950, the words "Subject to the provisions of any law or regulation for the time being in force, the Governor".

The Police Commission Regulations 1961, ["the 1961 Regulations"] were made by the Governor under s.66C(2) of the 1950 Order, as amended by the 1959 Order, which was to the like effect as the original s.66 of the 1950 Order. The 1951 Regulations were revoked by the Public Service Commission Regulations 1961 which came into operation on the same day as the 1961 Regulations [6th February, 1961].

Provisions similar to those contained in the Colonial Regulations for the conduct of disciplinary proceedings were inserted in the 1961 Regulations. Different procedures were laid down for charges which, if proved, warranted, in the opinion of the Commission, dismissal and for those which did not; and the audi alteram partem rule of natural justice was expressly provided for.

Specified were penalties which might be imposed in respect of disciplinary offences on officers subject to the jurisdiction of the Commission. These were dismissal; reduction in rank; suspension, withholding or deferment of increment; fine (deductible from salary); forfeiture or seniority of rank, and reprimand. An officer absent from the territory without leave was liable to summary dismissal. The 1961 Regulations did not prescribe any other disciplinary offences.

The 1961 Constitution conferred full internal self government on Trinidad and Tobago within the framework of the Federation of the West Indies. The Legislative Council was replaced by a bicameral legislature and the Governor and the other two public officers were removed from the Legislature and the Cabinet. The Letters Patent 1950 were revoked.

S.15 of the 1961 Order continued in force "existing laws" which was defined to mean laws enacted by any legislature established for Trinidad and Tobago before the 27th September, 1961, ["the appointed day"] and in force immediately before that day and any instrument in force as aforesaid made in exercise of a power conferred by any such law. Such laws were to be construed with such adaptations and modifications as were necessary to bring them into conformity with the Order.

As s.66G of the 1950 Order, under which the 1961 Regulations were made, was not an enactment of a local legislature and therefore not an existing law; and since the 1961 Regulations were not continued in force by the 1961 Order (Cf. s.26 of the Jamaican Constitution Order in Council, 1962), they ceased to have effect on 19th December, 1961, when the 1950 Order was revoked by the 1961 Order. No regulations were made under s.86(3) of the 1961 Constitution, which reproduced s.66G of

the 1950 Order.

It would nevertheless appear from regulation 114 of the 1966 Regulations, which purported to revoke the 1961 Regulations, that the latter had been treated as having continued in force.

The 1962 Constitution

We come now to the 1962 Order and Constitution. Ss. 99 and 102, so far as material enacted :-

> "99.(1) Power to appoint persons to hold or act in offices in the Police Force (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission;
>
> Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit delegate any of its powers under this section to any of its members or to the Commissioner of Police or any other officer of the Police Force."

By subsections (2) to (5) the disciplinary powers over all police officers were vested in the Police Commission subject to the following qualifications :-

(a) the veto of the Prime Minister on an appointment of a Commissioner or Deputy Commissioner;

(b) consultation with another Service Commission before appointment of an officer subject to the Commission's jurisdiction;

(c) the concurrence of the Judicial and Legal Service Commission to an imposition of punishment on an officer for an act or omission done in exercise of a judicial function.

"102.(1) Subject to the provisions of subsection (3) of this section, a Commission to which this section applies may, with the consent of the Prime Minister, by regulation or otherwise, regulate its own procedure, (including the procedure for the consultation with persons with whom it is required by this Constitution to consult), and confer powers and impose duties on any public officer or any authority of the Government of Trinidad and Tobago for the purpose of the discharge of its functions.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section, a Commission to which this section applies may by regulation make provision for the review of its findings in disciplinary cases."

Subsection (3) prescribed the quorum for a meeting of the Commission.

(4) The question whether :-

(a) a Commission to which this section applies has validly performed any function vested in it by or under this Constitution;

(b) any member of such a Commission or any other person has validly performed any function delegated to such member or person in pursuance of the provisions of sub-section (1) of section 84, or sub-section (1) of section 93, or sub-section (1) of section 99, as the case may be, of this Constitution; or

(c) any member of such a Commission or any other person has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred

to in the preceding paragraph;

shall not be enquired into in any court.

(5) References in this section to a Commission to which this section applies are references to the Judicial and Legal Service Commission, the Public Service Commission or the Police Service Commission, as the case may be, established under this Constitution."

S.105(5), which governed public officers in general, enlarged the power of removal under s.99(1) :-

"(5) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service :-

Provided that -

(a) nothing in this subsection shall be construed as conferring on any person or authority power to require a Judge of the High Court or a Judge of the Court of Appeal or the Auditor-General to retire from the public service;"

Provisions analogous to s.99 were enacted with respect to the Public Service Commission (s.93) and the Judicial and Legal Service Commission (s.84) with one important difference. Unlike s.99, s.93 was prefaced by the expression "Subject to the provisions of this Constitution."

The Trinidad and Tobago Constitution (Amendment) Act 1968 extended s.102 to the Teaching Service Commission which it established and enacted s.99C in terms similar to s.93.

A Judge of the Supreme Court, the Auditor General and a member of a Service Commission appointed for a fixed period could be removed from office only for inability to perform the functions of his office (whether arising from infirmity of mind or body or any other

cause) or for misbehaviour and such a person (other than a member of a Service Commission) was not to be removed except after a preliminary enquiry conducted by a tribunal presided over by a Judge to determine whether the question of his removal should be referred to the Judicial Committee of the Privy Council for decision; and their salaries and allowances were a charge on the Consolidated Fund and could not be adversely altered. (Ss.76, 80, 89 and 97; 83(3)(c); 92(6)(7); 98(6)(7); 99A(6)(7).

The 1962 Order and Constitution together with the Trinidad and Tobago Independence Act 1962 (U.K.) converted Trinidad and Tobago into an independent sovereign democratic State.

The most significant change in the Constitution was the insertion of Chapter I which recognised and protected fundamental rights and freedoms, included among which by section 1 were :-

"(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

... ...

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;"

S.2 prohibited the abrogation, abridgement or infringement of any of the said rights and freedoms, by or under any law and particularised these rights and freedoms which it forbade any Act of Parliament to contravene. These included the rights

"(a) not to be deprived of a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

... ...

(h) not to be deprived of such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

By s.105(1) "law" includes any instrument having the force of law and any unwritten rule of law. This embraces the 1962 Constitution.

The scheme of the 1962 Constitution recognises the separation of powers. The divisions relate to :-

(a) the Executive - Chapters III and V;

(b) Parliament - Chapter IV;

(c) the Judiciary - Chapter VI (ss.73 to 83);

Finance, and the functions in relation thereto of the Auditor General, are governed by Chapter VII (ss.85 to 90). The Public Service, and the Service Commissions who exercised jurisdiction over it, are regulated in Chapter VIII (ss.92 to 101).

S.38 entrenched certain sections of the Constitution which could only be altered by an Act passed by prescribed majorities in each House of Parliament. It mandated that certain provisions of the Constitution were not to be altered except in accordance with that section. Some of those sections required for their alteration an Act of Parliament passed by a two-thirds majority in each House of Parliament. For the other sections there had to be a majority of three-fourths in the House of Representatives and two-thirds in the Senate.

In the first category fall ss.84, 90, 92-4, 96 and 98-9; and in the second ss.73-7, 79, 80, 83 and 89.

The 1966 Regulations were expressed to have been made under s.102 of the 1962 Constitution on 11th October, 1966. They were amended by GN.Nos.106/1968 and Nos. 780/1969.

Under the proviso to s.99 of the 1962 Constitution the Police Commission delegated to the Commissioner of Police and other senior Gazetted Officers some of its powers under

s.99 and under the 1966 Regulations that were exercisable over subordinate officers (other than Inspectors) see (GN. No.159/1966 dated 11th October, 1966 and GN. No.83/1969).

A pattern of development and change similar to that of the Police Commission was followed by the Public Service Commission; and by the Judicial and Legal Service Commission which was first established by the 1959 Order in the re-enacted section 66 of the 1950 Order. No regulations were however made by the Judicial and Legal Service Commission.

I turn to the statutes governing the disciplinary control over police officers, and begin with Ch.11 No.1

Ch.11 No.1

The Commissioner of Police was appointed by Her Majesty the Queen (through the Secretary of State for the Colonies); and other Gazetted Officers by the Governor on the advice of the Executive Council (in accordance with Royal Instructions) - see ss.6-10. Subordinate officers (including Inspectors) were appointed by the Commissioner, subject to the provisions of the Ordinance and the regulations made or continued in force under Ch.11 No.1 (ss.11-13).

The power to appoint included the power to remove and to suspend. (S.16 of the Interpretation Ordinance Ch.1 No.2).

The Police Force was an armed force for the prevention and detection of crime and the suppression of internal disturbance [s.3(1)].

Part IV [ss.35 to 39] related to discipline. S.35 specified (criminal) offences by police officers which were punishable on summary conviction by fine or imprisonment. Offences by subordinate officers which were triable by the Commissioner were set out in ss.36 and 37(1)(a); and those which were triable by another Gazetted Officer in s.37(1)(b).

By s.37(1)(vi) a subordinate officer could have been charged for any act, conduct, disorder or neglect to the prejudice of good order or discipline or in violation of duty in his office or any other misconduct

as a member of the Force. The punishments prescribed for such offences were dismissal (by the Commissioner only), confinement to barracks, punishment drill, reduction in rank or pay, fine and reprimand. The right to a hearing and to an appeal were conferred in sections 38 and 39.

S.23 empowered the Governor to make regulations inter alia relating to :-

"(a) the duties to be performed by police officers and their guidance in the discharge of such duties;

(b) the training and discipline of the Force;

(c) promotion to the various ranks in the Force;

... ...

(h) generally, for the good order and government of the Force. "

The 1954 Regulations, made under s.23, laid down rules of conduct to be observed by police officers for contravening which they could presumably be disciplined [regs. 1 to 14]; and provided for the recording of evidence and of punishments - information which was to be available in the event of an appeal [regs. 71 to 74]. Disciplinary offences were to be classified as grave or minor according to the punishments that may be awarded [reg. 76] and a conviction for a criminal offence was, in addition, treated as a disciplinary offence [reg. 77].

Which offences were grave and which minor so as to attract the respective penalties set out in ss.36 and 37 of Ch.11 No.1 and in the 1954 Regulations would appear to have been left to be determined by the Gazetted Officer who presided at the trial.

The 1954 Regulations were amended (GN. Nos.66/1962, 106/1963 and 24/1964) but none of these amendments had reference to discipline.

It is convenient here to interpolate that under similar enactments the Chief Fire Officer and the Commissioner of Prisons exercised disciplinary powers over subordinate fire brigade and prison officers respectively. See the Fire Brigades Ordinance Ch.11 No.4 ss.22,

25, to 28, as amended; and the Prison (Amendment) Rules 1961 (GN. No.65 of 1961), which prescribed a Code of Discipline and were made under s.1 of the West Indian Prisons Act 1838 (U.K.).

I will now examine the effect of the Constitutional instruments on the provisions of Ch.11 No.1, including s.23, and on the 1954 Regulations.

Disciplinary powers over Gazetted Officers, other than the Commissioner, as well as the power to make regulations in relation to such matters under s.23, were exercised by the Governor on the advice of the Executive Council in compliance with Royal Instructions.

S.3 of Ch.42 No.10(id) which came into force, after Ch.11 No.1, on 29th November, 1951, ordained :-

> "Wherever in any law for the time being in force there is any provision affecting or relating to the appointment, promotion or transfer, or the dismissal or other disciplinary control, of any public officer,... and any reference is made in such provision to the Executive Council .... such reference shall be construed as a reference to the Public Service Commission established under the authority of section 64 of the Trinidad and Tobago (Constitution) Order in Council, 1950, and the expression 'Governor in Council' or 'Governor in Executive Council' or any other similar expression implying action by the Governor with the advice of the Executive Council of the Colony shall, wherever used in any such provision, mean the Governor acting with the advice of such Public Service Commission, but not necessarily in accordance with such advice:
>
> Provided that nothing herein contained shall be deemed to impose any obligation on the Governor to consult with the said Public Service Commission on any such matter affecting or relating to any public officer or the public service."

That section adapted and modified the provisions of Ch.11 No.1 to bring them into

conformity with the 1950 Order. The Governor was no longer obliged to act in accordance with the advice of the Executive Council in exercising his disciplinary powers, but he could, if he wished, consult the Public Service Commission, but did not have to accept its advice. The preamble to Ch.42 No.10 seemed to assume that the changes in the law had already been impliedly made by the 1950 Order.

S.23 of the 1959 Order enabled the Governor to make orders modifying or adapting existing laws so as to conform with the provisions of that Order. No such orders were made in respect of Ch.11 No.1 or the 1954 Regulations.

Similar provisions were contained in s.15 of the 1961 Order and in s.4 of the 1962 Order, under both of which, in the absence of any such orders, the necessary alterations to the existing laws were implied. The Courts could, and would, make these alterations in cases coming before them. See Kanda v. Government of Malaya [1962] 2 W.L.R. 1153.

It seems to me that Ch.42 No.10 deprived the Executive Council of its right to make regulations under s.23 of Ch.11 No.1 in so far as disciplinary powers were involved, such powers being thereafter exercisable by the Governor in his discretion.

With the transfer of executive powers of Government from the Colonial Office to local Ministers the control of the Public Service was taken away from the Executive and by stages was vested in an independent Service Commission so as to insulate public officers as far as practicable from political interference. This object might be frustrated if the grounds on which a public officer could be disciplined were left to be determined entirely or in part, by enactments made, not by the legislature, but by Ministers under a section of a statute conferring on the Executive general power to make regulations.

Though the relevant 1954 Regulations were made on the advice of the Executive Council, they were not invalidated on that account, for the Governor was entitled to make them in his discretion.

No further relevant regulations were made

by the Governor under s.23.

By the combined effect of s.15(3) of the 1961 Order and the provisos to art.83(1) and 84(1) of the 1961 Constitution the disciplinary powers of the Commissioner of Police over subordinate officers under Ch.11 No.1 were preserved.

S.4 of the 1962 Order impliedly divested the Governor of, and transferred to the executive Police Commission, his disciplinary powers; and also, in my opinion, his authority under s.23 of Ch.11 No.1 to legislate in relation to the same.

S.99 of the 1962 Constitution and s.4 of the 1962 Order impliedly repealed the sections of Ch.11 No.1 which gave disciplinary powers to the Commissioner of Police; but under the proviso to s.99 the Police Commission was allowed to delegate these powers to the Commissioner or to any other police officer. Such delegations were made (see above).

The same result could have been achieved if the 1962 Constitution had deemed the powers vested by Ch.11 No.1 in the Gazetted Officers to have been delegated to them under s.99. See Evelyn v. Chichester 15 W.I.R. 410, 430 D.

The Act of 1965 which was operative as from 24th August, 1966, repealed Ch.11 No.1 It is one of a fasiscule of Acts relating to the public service that were passed by Parliament in December, 1965; that were assented to on 22nd January, 1966, and that came into force on 27th August, 1966. The other Acts, hereafter called "the related Acts" are the Civil Service Act, 1965, the Fire Service Act, 1965, the Prison Service Act, 1965; and the Education Act, 1966, which incorporated similar provisions concerning the Teaching Service.

The related Acts create sub-divisions of the segment of the public service that was subject to the jurisdiction of the Public Service Commission. By Act No.25 of 1968 a separate Teaching Service Commission was established by an amendment of the 1962 Constitution.

The long title to the Act of 1965 is:-

"An Act to make provision for the

classification of the Police Service, to provide a procedure for the settlement of disputes between the Government and the Police, to provide for matters concerning the relationship between the Government and Police Service, to consolidate, amend and revise the law relating to the Police Service and for matters connected with and incidental thereto."

It established the Trinidad and Tobago Police Service, classifies its members into grades, and provides for pay and allowances to be fixed by subordinate legislation. The Police Service consists of a First and Second Division comprising respectively the Gazetted officers and subordinate officers /s.6_7.

The Governor General was authorised to issue arms to police officers /s.4_7.

Sections 9 to 11, under the caption "Tenure", provides as follows :-

"9. A police officer shall hold office subject to the provisions of this Act and any other enactment and any regulations made thereunder and unless some other period of employment is specified, for an indeterminable period.

10. A police officer who is appointed to an office in the police service for a specified period shall cease to be a police officer at the expiration of that period.

11. A police officer may resign his office by giving such period of notice as may be prescribed by Regulations. "

Part IV (ss.28 to 57) sets out the powers, duties functions and obligations of police officers. Conduct of police officers or by members of the public in relation to the police which are criminal offences are specified in ss.38 and 40.

On his appointment a police officer is required by s.60 to take the oath of office and secrecy set out in the Fifth Schedule, by which he undertakes well and truly to serve the Sovereign in his particular office.

The heading of Part V, in which ss.61 to 65

are included is "General Regulations".

S.61 and 65 provided :-

"61. The modes by which a police officer may leave the Police Service are as follows :-

(a) on dismissal or removal in consequence of disciplinary proceedings;

(b) on compulsory retirement;

(c) on voluntary retirement;

(d) on retirement for medical reasons;

(e) on resignation;

(f) on the expiry or other termination of an appointment for a specified period;

(g) on the abolition of office.

65. (1) The Governor General may make regulations for carrying out or giving effect to this Act, and in particular for the following matters namely :-

(a) for prescribing classifications for officers in the police service, including qualifications, duties and remunerations;

(b) for prescribing the procedure for appointments from within the police service;

(c) for prescribing the probationary period on first appointment and for the reduction of such period in appropriate cases;

(d) for prescribing conditions for the termination of first appointments;

(e) for prescribing the procedure for the recovery of any penalties from a police officer;

... ...

" (g) for regulating the duties to be performed by police officers;

... ...

(j) the enlistment, training and discipline of the Police Service;

... ...

(i) for prescribing and providing for the use of powers under this Act or the regulations;

... ...

(m) for regulating generally the terms and conditions of temporary employment;

(n) generally, for the good order and government of the Police Service. "

Sub-section (3) purported to continue the 1954 Regulations in operation until regulations were made under the Act of 1965.

Ss.62 to 64 fix the respective ages at which First and Second Division officers may retire voluntarily and with the approval of the Police Commission. The superannuation benefits of Second Division officers are set out in the Sixth Schedule to the Act; and those of First Division Officers are (as previously) to be determined by and under the Pensions Ordinance Ch.9 No.6.

The Police Service Regulations 1971, were made under s.65 of the 1965 Act, were published on 31st March, 1971, and purported to have been given retrospective effect to 1st January, 1971. Regs. 49 to 61 relate to discipline. Some of these regulations may be categorised as creating disciplinary offences but they are restricted in their scope, and not constitute an exclusive and comprehensive code. In any event these Regulations were promulgated after any time material to this case.

An important feature introduced into the Act of 1965 is the regulation of the conduct of officers with respect to industrial relations. In Parts II and III (sections 12 to 27) provision is made for associations of police officers, when recognised by the Ministry of Finance, to represent officers in negotiations with the Chief Personnel Officer, Before

the Personnel Department, under the Chief Personnel Officer, submits proposals to the Ministry of Finance for classification of officers, grievances, remuneration or terms and conditions of employment, he may consult, and in any event must place such proposals before, the recognised association (s.13).

S.16 is in the following terms :-

> "Where the Department and the appropriate recognised association reach agreement on any of the matters specified in subsection (1) of section 12, the agreement shall be recorded in writing and shall be signed by the Chief Personnel Officer on behalf of the Minister of Finance and shall be binding upon the Government and the police officers to whom the agreement relates."

Should there be a failure to agree on any matter the dispute is referred for compulsory arbitration to a Special Tribunal consisting of three members of the Industrial Court, (ss.18, 19). This Court was established by the Industrial Stabilisation Act, 1965, (No.8 of 1965) (since repealed and replaced by the Industrial Relations Act, 1972).

S.20(1) provides as follows :-

> "An award made by the Special Tribunal under section 19 shall be binding on the parties to the dispute and on all police officers to whom the award relates and shall continue to be binding for a period to be specified in the award, not less than five years from the date upon which the award takes effect. "

Following a spate of strikes and lockouts, Act No.8 of 1965 provided for the compulsory recognition of trade unions by employers, for legal and binding effect to be given to industrial agreements registered with the Industrial Court; and prohibited strikes and lockouts except in specified circumstances. It set up the Industrial Court expeditiously to decide trade disputes outside the public service.

By s.37 of that Act the right to strike was unconditionally denied to members of the Police Service, of the Prison and Fire

Services and the Defence Force.

Where a worker (which excludes a public officer) is disciplined or dismissed by his employer he has a legal right to have any dispute arising in connection therewith decided by the Industrial Court /ss.74, 2(1)(V) and 2(2) of the Act of 1972/.

The law immediately before the commencement of the Act of 1965

Before giving consideration to the effect, if any, that the Act of 1965 had on any of the remits, it is convenient to state the relevant law that obtained between the commencement of the 1962 Constitution and of the Act of 1965.

The Police Commission was successor to the Police Service Commission which was advisory to the Governor. By s.99 of the 1962 Constitution, the disciplinary powers which the Governor exercised on behalf of the Crown were transferred to the Police Commission. (See Hind's case supra).

In Jamaica and Barbados (but not in Guyana) disciplinary powers were entrusted to the Governor General acting on the advice of the relevant Commission which he was bound to accept. In practice the legal result was the same in Trinidad and Tobago.

Braithwaite J. held, and it is not disputed, that police officers were dismissible at the pleasure of the Crown.

The Police Commission exercised disciplinary control over Gazetted Officers in the same manner as the Public Service Commission did over public officers subject to its jurisdiction.

The procedure followed was that set out in the 1961 Regulations, which as stated above, had ceased to have effect.

The Police Commission, or its staff under its direction, formulated the charges for misconduct against the officer and these were notified by letter to the officer.

If the charge was not admitted and the proceedings were with a view to his dismissal, the facts were found by an Investigating Committee appointed by the Governor on the advice of the Commission.

The enquiry was conducted in accordance with the rules of natural justice embodied in the Regulations. The Committee submitted to the Commission its Report, which included its findings and its recommendations for punishment, if any. After considering the Report, which was morally, but not legally, binding on the Commission, the Commission arrived at its decision, including the form of punishment. It would seem to follow that the officer was not entitled as of right to the observance of this procedure since he was dismissible at the pleasure of the Crown who was not obliged to give any reason for his dismissal.

The discretion of the Commission in exercising its disciplinary powers under s.99 over police officers was uncontrolled - unlike the case of the Public Service Commission which was fettered by ss.1 and 2 of the 1962 Constitution under s.93.

Ss.99 and 102 were complementary to each other. The privative provisions in s.102(4) emphasised that the officer was dismissible without cause assigned and that he had no vested right in the procedure laid down by the Regulations.

To adapt the language of Latham C.J. in Fletcher v. Nott (1938) 60 C.L.R. 55 at p.71-2G cited later in this judgment the conclusion that the respondent had no right of action for wrongful dismissal was I think placed beyond dispute by the provisions of s.102(4) of the 1962 Constitution.

I now turn to a consideration of the remits and in particular to the reasons advanced for the radical changes in the law attributed to the Act of 1965 by Counsel for the respondent.

I shall deal first with Remit (3) and then with Remits (1) and (2). This was the order followed by Braithwaite J. in his judgment and by this court at the hearing of the appeal.

Remit (3): Whether the plaintiff/respondent was a servant of the Crown dismissible at pleasure

The argument for the respondent, which was accepted by Braithwaite J., was that this common law right of the Crown had been

abrogated by statute in respect of all police officers. Reliance was placed on ss.9, 61 and 65 of the 1965 Act.

A related question, which was not specifically raised in the pleadings, but which was dealt with in the judgment of Braithwaite J. and was argued before this Court, is whether, on a true construction of Act No.2 of 1962 and more particularly sections 3 and 7, the Act of 1965 was at all relevant times binding on the Crown.

The common law rule is that a servant of the Crown is dismissible at pleasure. This rule may however be altered by statute. It is stated in 8 Halsbury's Laws (4th edn.) at para.1106:-

> "Except where it is otherwise provided by Statute all public officers and servants of the Crown hold their appointments at the pleasure of the Crown and all, in general, are subject to dismissal without cause assigned. The courts will not entertain an action for wrongful dismissal ....."

This rule was acknowledged in Art.XIII, of the Letters Patent 1924 and in Art. 10 of the Letters Patent 1950(id).

In Dunn v. Regem (1896) All E.R. Rep. 907, 909, Lord Herschell said :-

> "Persons employed in the public service of the Crown are, unless there is some statutory provision for a higher tenure, engaged to hold office during the pleasure of the Crown."

I shall now review the cases which were referred to by Counsel under this remit.

In Shenton v. Smith (1895) A.C.229 the Government of Western Australia by notice terminated the services of the appellant Dr. Smith, a temporary employee. In his suit against the Government for damages for breach of contract, he alleged that the procedure set out in the Colonial Regulations for dismissal of public servants formed part of his contract of employment and had not been followed. The Privy Council in advising that the appellant had no course of action, opined :-

"Unless in special cases where it is otherwise provided servants of the Crown hold their offices during the pleasure of the Crown, not by virtue of any special prerogative of the Crown but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law suit, but an appeal of an official or political kind."

With regard to the Regulations, the Privy Council drew attention to the fact that, as the heading thereto indicated, they were merely for the guidance of Colonial Governments and that they did not constitute a contract between the Crown and its servants.

Great emphasis was placed by Braithwaite J. and by Counsel for the respondent on Gould v. Stuart (1896) A.C.575, which was decided shortly after Shenton's case, supra. In that case the Privy Council held that the Civil Service Act 1884 of New South Wales ["the N.S.W. Act"] created a statutory exception to the common law rule which imports into a contract for service under the Crown a condition that the Crown has the power to dismiss at its pleasure.

The N.S.W. Act provided for the appointment, promotion, suspension and dismissal of officers. It prescribed what conduct constituted disciplinary offences (including negligence in the discharge of duties) and the penalties for such offences, including dismissal, reduction in rank or pay and fine; and for an inquiry before disciplinary action was taken.

The respondent, who was a clerk, was summarily dismissed for incompetence and wilful disobedience of reasonable orders, without being heard in accordance with the procedure laid down in the Act. The Privy Council decided that he was unlawfully dismissed. The ratio decidendi is recorded in the following passage of the judgment at p.570:-

"These provisions, which are manifestly intended for the protection and benefit

> of the officer, are inconsistent with importing into the contract of service the term that the Crown may put an end to it at its pleasure. In that case they would be superfluous, useless, and delusive. This is, in their Lordships' opinion, an exceptional case, in which it has been deemed for the public good that a civil service should be established under certain regulations with some qualification of the members of it, that some restriction should be imposed on the power of the Crown to dismiss them."

The question which has arisen in subsequent cases is whether the general rule applies or whether the relevant enactment has had the effect of altering the common law rule and so comes within the exception postulated in Gould v.Stuart (supra). It is not easy to reconcile some of the cases with others. By and large the general rule has been maintained. Clear, unambiguous and mandatory language has been usually required to alter the rule and there has been a disinclination by judges to infer the necessary intention.

In Reilly v. R. (1933) All E.R. Rep.179 181 Lord Atkin declared obiter :-

> "If the terms of appointment definitely prescribe a term and expressly provide for a power to determine'for cause' it appears necessarily to follow that any implication of a power to dismiss at pleasure is excluded. This follows from the reasoning of the Board in Gould v. Stuart. "

In Attorney General of Trinidad and Tobago v. Toby Civ.App. No.48 of 1973, Hyatali C.J., as a result of the decision in Gould v. Stuart supra, declared that Lord Atkin's dictum must necessarily be confined to cases where a statute provides for a fixed term in addition to a power to dismiss for cause. In that same vein is the pronouncement by Goddard L.C.J. in Terrell v. The Secretary of State for the Colonies (1953) 2 Q.B. 482, 499.

Hyatali C.J. endorsed the statement in Robertson's Civil Proceedings by and against the Crown (1908) at p.359 :-

"....the Crown's absolute power of dismissal can only be restricted by statute and anything short of a statute, which purports to restrict it is void and contrary to public policy."

He approved the following statement by Lord Diplock in Kodeeswaran v. Attorney General of Ceylon (1970) A.C. 1111 at p.1118 :-

"It is now well established in British Constitutional theory, at any rate as it has developed since the eighteenth century, that any appointment as a Crown servant, however subordinate, is terminable at will unless it is expressly otherwise provided by legislation."

In Ryder v. Foley (1906) 4 C.L.R. 422, and in Fletcher v. Nott supra. The High Court of Australia held that a police officer holds office during pleasure and could not maintain an action for wrongful dismissal against the Government of the respective States which employed them.

The relevant statute in Ryder v. Foley supra was s.6 of the Police Act 1863 of Queensland which provided that the Commissioner of Police had power to dismiss any constable, upon sufficient proof of misconduct or unfitness, to be submitted for the approval of the Government.

Barton J. at p.439 made these pertinent observations :-

"Unless there is something in this Statute which authorises a difference in the ordinary terms of employment between civil servants and the Crown, the case is to be determined upon principles ordinarily regulating such matters, and it is only upon clear authority on the face of the Statute that the plaintiff can be exempted from the liability to dismissal at the pleasure of the Crown."

In the judgment of O'Connor J. at p. 449 :-

"It would seem very unlikely that the well known incident of dismissal at pleasure, which attaches to all contracts

between public servants and the Government would be so materially altered without some more formal and direct language than that which is used in the section under consideration."

In Venkata Rao v. Secretary of State for India (1937) A.C. 248 a civil servant employed as a reader in the Government Press sued the Crown for unlawful dismissal. He had fallen under suspicion of leaking information relative to examination papers. No enquiry was held, as prescribed by the Civil Service Classification Rules made under s.96B of the Government of India Act.

Lord Roche, who delivered the reasons for advising the dismissal of the appeals, stated at p.256-7 :-

"They regard the terms and the section as containing a statutory and solemn assurance that the tenure of office, though at pleasure, will not be subject to capricious or arbitrary action, but will be regulated by rule. The provisions for appeal in the rules are made pursuant to the principle so laid down. "

In Fletcher v. Nott supra F, a police constable sued his employers, the Government of New South Wales for damages for unlawful dismissal. His services were terminated summarily following a finding by a Judge, who was appointed as a Commission of Inquiry, that he had deliberately "framed" a man for a starting price betting offence and had given false evidence to procure a conviction for a betting offence.

The original dismissal was by the Commissioner of Police and this was later confirmed by the Executive Council.

F. alleged that he had a legal right to a hearing, under the Police Regulations Act 1899 ["the Act of 1899"] and the rules made thereunder and thereafter to an appeal under the Police Regulation (Appeals) Act, 1923 ["the Act of 1923"] before he could be lawfully dismissed.

Under s.12 of the Act of 1899 the Governor was authorised to make rules "for the general government and discipline of members of the Police Force". The following

Rules relating to the discipline and conditions of service of officers were made under that enactment :-

"Sec. (iv) 1. Police are admitted to the service in accordance with the provisions of the Police Regulations Acts and upon the following conditions:-

(m) They will be liable to punishment or dismissal for disobedience, neglect or omission of duty .....or any words or actions subversive of discipline or calculated to impair the efficiency of, or bring discredit upon the police service, or any misconduct punishable by law or contrary to rules and instructions: and will also be liable to such legal penalty as may be incurred."

Sec.(ix) prescribed the procedure for inquiries and the punishments. It provided for a written charge clearly setting out an offence and, if the charge is denied, for the holding of a departmental enquiry to decide whether the charge is, or is not proved.

The Act of 1923 established a Police Appeal Board to hear appeals inter alia from a decision of the Commissioner of Police which involves dismissal.

The Court held that these enactments were directory only, created no legal rights and did not displace the common law rule that F held office at the pleasure of the Crown.

Latham C,J. reviewed the previous cases to which I have made reference and stated at p.68-9 :-

"A rule which altered the terms of the appointment of members of the force by giving them rights against the Crown which were inconsistent with their

legal position as determined by the true construction of the statute would not be a rule merely for the government and discipline of the force. Any rule which, purporting to be made under sec.12, conferred upon a member of the force a right to be employed unless his dismissal could be justified would, in my opinion, be inconsistent with the Act and would therefore be invalid.

Further, it is clear that rules may be made under a statute for the purpose of informing public servants of the manner in which the right to dismiss will be exercised by the Crown without conferring any legal right upon public servants to have those rules observed."

He cited Venkata Rao supra as authority for the proposition :-

"...that there is no necessary inconsistency between an officer of the Crown holding his appointment at pleasure, and the existence of rules, either contained in a statute or made under a statutory power, which purport to regulate the manner in which an officer is to be dismissed. Such rules do not legally limit the power or manner of dismissal."

Regarding the legal effect of the rules he said that they :-

"do not, however, purport to confer rights upon members of the police force. For example, the rule upon which most reliance is placed, namely, sec .(iv)(1)(m), informs the members of the force that they will be liable to dismissal in certain cases. Such a rule does not purport to create any rights. It merely informs and warns members of the force that the power of dismissal may be exercised in the circumstances mentioned."

The above remarks were directed primarily against F's dismissal by the Executive Council (acting for the Crown). Later however the Chief Justice justified the initial dismissal by the Commissioner of Police at pp.71-72 :-

"If, however, the commissioner himself

had power to dismiss and exercised that power, but unfairly or wrongfully, the remedy of the plaintiff is not by way of action, but by way of appeal to the Police Appeal Board.

... ...

The conclusion that the plaintiff has no right of action for wrongful dismissal whether he was dismissed by the commissioner or by the minister is, I think, placed beyond dispute by the provisions of sec.8 of the Police Regulation (Appeals) Act, which is as follows:

> 'Notwithstanding anything contained in any other Act, no appeal from a decision, either of the appeal board, or of the Minister... ... ... with respect to any member of the police force shall lie or be permitted to any court or tribunal whatsoever, and no writ of prohibition or mandamus or certiorari shall lie in respect thereof! ....

Any action in which a constable complains of wrongful dismissal by the commissioner or by the Minister must, in my opinion, be regarded as an appeal to a court from a decision of the Commissioner or the Minister when he has been dismissed under such a decision. Upon any other interpretation of sec.8 the provision would be quite ineffectual. Thus sec.8 provides a further answer to the plaintiff's claim."

Rich J. doubted whether the enactments were more than of an administrative character for guidance of the Force. In his view :-

> "Neither rules nor statute appear to me to be directed to the control or restriction of the power of the Executive Government."

Starke J. at p.76 construed the legislation as an administrative scheme for the management and discipline of the police force.

Evatt J. declared at p.78 :-

"It is noted that sec.iv(1)(v), dealing with conditions of service, is mainly set out in descriptive or narrative form. Further, when closely examined, each condition seems rather to emphasize existing legal liabilities and obligations rather than to describe existing rights or to confer new rights. For instance, clause 1(m) of sec.iv states that the police are liable to punishment or dismissal in respect of a large number of matters mentioned in the rule. It is not possible to read clause 1(m) as an exclusive specification of the causes for which punishment or dismissal may be imposed.

Sec.ix(10)(dealing with discipline) declares that complaints against police officers should be committed to writing so that, if disciplinary action is required or intended, a definite charge will be preferred and such a procedure will be adopted as will enable the officer charged to know what is alleged against him, and to make full answer. But here again the rules refrain from employing language of command and strongly suggest that what is being done is to direct each person concerned how he is to behave and conform himself, not to give any legally enforceable right to the officer charged or to alter the contract or any part of it to which he is a party."

He adverted to the scheme of the Act of 1923 at p.80 :-

"It is plain that this Act is of fundamental importance in the good government of the police force of New South Wales. The scheme is that while officers are deprived of all redress before the ordinary courts of law, they are given by way of compensation, a right of access to an independent tribunal, appointed for seven years, well experienced in the exercise of judicial power, and presumably specifically acquainted with the administrative problems affecting the force."

In his view the Act of 1923 was no barrier

to F's summary dismissal by the Executive and so could co-exist with the Crown's right of dismissal at pleasure that is enjoyed prior to the Act of 1923.

Ridge v. Baldwin (1963) 2 All E.R.65 was a majority decision of the House of Lords. The Chief Constable of a borough questioned his dismissal by the Watch Committee. By section 191(4) of the Municipal Corporations Act 1882 /"the Act of 1882"/ :-

> "The Watch Committee...may at any time suspend and...at any time dismiss any borough constable whom they think negligent in the discharge of his duty or otherwise unfit for the same."

The appellant's appointment was expressed to be subject to the Police Act and regulations.

Section 4(1) of the Police Act 1919 /the Act of 1919/ authorised a Secretary of State to make regulations, inter alia as to the conditions of service of members of the police force and enjoined the police authority to comply with such regulations.

The Police Disciplinary Regulations made under the Act of 1919 set out in a Schedule a Discipline Code detailing various offences, including discreditable conduct and neglect of duty, that may be committed by a member of the Police Force.

Lord Reid at p.71 distinguished three classes of dismissal :-

(a) that of a servant by his master;

(b) that of the holder of an office held during pleasure; and

(c) that of the holder of an office when there must be something against the person to warrant his dismissal.

The Chief Constable came within the third category.

Lord Reid opined at p.72 that the Act of 1882 permitted the Watch Committee to take action only on the grounds of negligence and unfitness. The officer therefore could not be dismissed without being charged

for such an offence in accordance with the rules of natural justice.

Lord Morris said at p.100 that the powers given by s.191(4) of the Act of 1882 must be exercised in accordance with such of the regulations made under the Act of 1919 which were applicable. The officer should have been charged for neglect of duty specified in the Discipline Code. He stated obiter at p.107 that the Watch Committee was exercising a quasi-judicial function and, if there had been no regulations, it would have been obligatory to apply the rules of natural justice.

Lord Hodson at p.114 said :-

"No one I think disputes three features of natural justice that stand out - (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to those charges."

The House of Lords ruled that the dismissal of the Chief Constable was void.

In Kanda's case supra, the power under art.144 of the Constitution of the Federation of Malaya to dismiss was subject to Art.135 (2) which required an officer to be afforded an opportunity of being heard. The failure to supply him with a copy of a report on the basis of which he was dismissed was found to be a breach of Art. 135(2) and a denial of natural justice.

In Parrikissoon v. The Attorney General of Trinidad and Tobago Civ. App. No.59 of 1975 dated March 29, 1977, Rees, J.A. (obiter) expressed the view that the opening words of s.99C of the 1962 Constitution placed a limitation on the power of the Teaching Service Commission so that it could only be exercised in a manner consistent with s.1(a) of the 1962 Constitution.

In Malloch v. Aberdeen Corporation (1971) 2 All E.R. 1278 the appellant was a certified school teacher employed by the respondent School Board which was an education authority. An 1882 Act, under which he was appointed, declared that his appointment should be during the pleasure of the respondent. It also decreed that :-

> "No resolution of the education authority for the dismissal from the service of a (certified teacher) shall be valid unless written notice of the motion for his dismissal shall, not less than three weeks before the meeting at which the resolution is adopted, has been sent to the teacher and to each member of the education authority."

The Act proclaimed that its purpose was to secure that no (certificated) teacher appointed by and holding office shall be dismissed from such office without due notice to the teacher and due deliberation on the part of the School Board. This provision was not complied with and the appellant was not given a hearing before the dismissal took effect.

Three of the five Law Lords who heard the appeal inferred that the object of giving the teacher notice was to afford him an opportunity to prepare his defence, and ruled that he was entitled to be heard in accordance with the rules of natural justice.

Lord Wilberforce stated, at p.1296, that the legislature intended to preserve the status of the teacher as one holding office only to be dismissed after due process.

His purported dismissal was declared to be a nullity.

In Cameron v. The Attorney General of Trinidad and Tobago (H.C. No.3819 dated 18th May, 1971) McMillan J., applying Gould v Stuart, supra, held that ss.6 and 12 of the Civil Service Act, 1965 and reg.50 of the Public Service Commission Regulations 1966 ["the P.S.C.Regs."] which is the counterpart of reg.46(a) of the 1966 Regulations and the procedure for disciplinary action provided for in Chapter VIII (regs.84 to 114)were manifestly for the benefit of civil servants and limited the Crown's common law right to dismiss at pleasure. He said :-

> "Whatever may have been the absolute power of the Crown with regard to the termination of the service of the public officer prior to 31st August, 1962, that power as well as the power

to exercise disciplinary control falls since 31st August, 1962, to be exercised by the Public Service Commission in the manner provided by the Civil Service Act, 1965, and the Public Service (sic) Regulations 1966."

In that case a public officer was transferred in disregard of reg.29 of the P.S.C.Regs. which required three months notice of the intended transfer to be given to him, within which time he could apply to the Public Service Commission to have the transfer decision reviewed.

The officer refused to comply with the order of transfer and was suspended pending the hearing of a disciplinary charge for non-compliance with the order. McMillan J. ruled that the transfer and suspension were nullities. The only case cited in the judgment was Gould v. Stuart supra.

I now direct my attention to the question:

Whether the Act of 1965 is binding on the Crown

S.7 of the Interpretation Act, 1962 ["the Act of 1962"], which came into force on 19th July, 1962, provides :-

> "No enactment passed or made after the commencement of this Act binds or affects in any manner Her Majesty or Her Majesty's rights or prerogatives unless it is expressly stated therein that Her Majesty is bound thereby."

S.60 of, and para.1(4) of the Schedule to, the Act of 1962 continued to apply to enactments passed before 19th July, 1962, the rule previously contained in s.37 of the Interpretation Ordinance Ch.1 No.2, which the Act of 1962 repealed. Para.1(4) reads :-

> "No enactment passed before the commencement of this Act shall in any manner whatsoever affect the rights of the Crown unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby."

The reason for both rules is that the laws are prima facie made by the Crown with the consent of Parliament for subjects and not for the Crown.

Braithwaite J. said that words other than "This Act binds the Crown" could be employed to achieve the same purpose. I agree.

In his opinion the long title to, and s.61(a) of, the Act of 1965 were clear-cut and unambiguous provisions by which the Act binds the Crown.

The long title is part of the Act and contains a general statement of the legislative purpose. Where there is ambiguity the Courts may look at the long title for the purpose of interpreting the Act as a whole and ascertaining its scope as an aid to resolving the difficulty. It may not be looked at to modify the interpretation of plain language. Vacher v. London Society of Compositors (1913)A.C. 107, 128; R. v Bates (1925) 2 All E.R. 842, 844 and Re Sykes deceased (1961) 1 Ch. 229, 242.

Braithwaite J. went on to say that the Act of 1965 could not be binding on the Crown unless it also was binding on police officers, and that if the Crown was bound by any provision of the Act it was bound by all.

He was clearly wrong. An agent or servant of the Crown can take advantage of a statute which is not binding on the Crown. See Crown Liability and Proceedings Act, 1966, s.33(1) which reads :-

> "This Act shall not prejudice the right of the Crown to take advantage of the provisions of an enactment although not named therein."

Section 7 of the Act of 1962 re-enacts the original common law rule to which there was later engrafted the exception, which together now is the common law rule in England, as applied in Cooper v. Hawkins (1906) 2 K.B. 164.

In Town Investments v. Department of Environment (1976) 3 All E.R. 479, Lawton L.J. stated at p.489 :-

> "I will examine the constitutional position shortly. From the 18th century

onwards it has been commonly believed amongst lawyers, first that an Act did not apply to the Crown unless there was an express provision in it to that effect and, secondly, that it can take the benefit of any statute although not specifically named in it: see Blackstone's Commentaries. 19th century text-book writers followed Blackstone: see Stephen's Commentaries. The courts did the same: see R. v. Cruise and Attorney General v. Tomlin."

Speaking for the Privy Council in Province of Bombay v. Municipal Corporation of Bombay (1947) A.C.58 Lord du Parcq recounted at p.61 :-

"The maxim of law in early times was that no statute bound the Crown unless the Crown was expressly named therein .... But the rule so laid down is subject to at least one exception. The Crown may be bound, as has often been said, 'by necessary implication.' If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions."

S.7 of the Act of 1965 abolished the above exception.

At the hearing before this Court counsel for the respondent invoked the aid of s.3(1) of the Act of 1962. S.3 reads :-

"(1) Every provision of this Act extends and applies to every enactment passed or made before or after the commencement of this Act, unless a contrary intention appears in this Act or the enactment."

(2) The provisions of this Act apply to this Act as they apply to an enactment passed after the commencement of this Act."

In Toby's case supra the submission was made that the power to dismiss at pleasure had been eliminated by the Civil Service Act, 1965, and the Crown Liability and Proceedings

Act, 1966. Hyatali C.J. pointed out obiter, that neither Act had complied with s.7 of the Act of 1962. He compared s.69 of the Housing Act, 1962, and s.36 of the Petroleum Act, 1969, which read :-

> "This Act binds the Crown."

See also s.87 of the Industrial Relations Act, 1972. It would seem that the Court's attention was not drawn to s.3(1) of the Act of 1962.

Enactments corresponding to ss.3(1) and 7 of the Act of 1962 are to be found in the Interpretation (Northern Ireland) Act, 1954, (Ch.33), ss.2(1), 7; the Canadian Interpretation Act, ss.3(1) and 16; and the Barbados Interpretation Act Cap.1 ss.3(1) and 10(3). Section 16 of the Canadian Act was re-enacted in 1967-8 to read :-

> "No enactment is binding on Her Majesty or affects Her Majesty's rights or prerogatives in any manner except only as therein mentioned or referred to."

The earlier section 16 was construed by the Privy Council in re Silver Brothers Ltd. (1932) A.C.514. The material facts and the decision are summarised in the headnote:-

> "By s.17 of the (Dominion) Special War Revenue Act, 1915,.....liability to the Crown for the excise taxes thereby imposed was to rank for payment in priority to all other claims of whatsoever kind save administration expenses.
>
> By s.1357 of the R.S.Queb., 1909, all sums due to the Crown in respect of Provincial taxes are to constitute a privileged debt ranking after law costs. By s.16 of the Interpretation Act (R.S.Can., 1906, c.1) no provision in any Act is to affect the Crown unless it is expressly stated therein that the Crown is to be bound thereby.
>
> In a bankruptcy in the Province of Quebec the assets were insufficient to discharge both a sum due for tax under the Dominion statute above-mentioned and a sum due for Provincial taxes.

" Held, that it would have been competent to the Parliament of Canada under the British North America Act, 1867, s.91 head 21 (bankruptcy), or head 3(taxation), to enact the statute of 1915 so as to prejudice the right of the Province, but that having regard to s.16 of the Interpretation Act the statute had to be read as though it provided that the priority enacted should not operate so as to diminish any right of the Crown in any province; the result was that the two debts would run pari passu as claimed by the Province."

Viscount Dunedin made these pertinent observations at p.523 :-

"Now, first of all, the Interpretation Act is a general Act meant to apply to all future as well as to all present legislation, and their Lordships doubt whether it could be excluded except by special reference.

It is perhaps right here to mention the method in which the learned trial judge got rid of the effect of s.16, though it was not adopted by any of the judges who formed the majority in the Supreme Court. He says that s.17 is in a later statute than s.16, and therefore, in view of the maxim 'posteriora prioribus derogant' s.16 must give way. But this entirely misses the point that the maxim only applies when the two statutes cannot live together. There is no difficulty in the statute that enacts s.17 living with the Interpretation Act. The clause of the Interpretation Act is, to speak, written into every statute. Thus the later statute gives perfectly good priority against all and sundry, but says that this priority does not affect the Crown's right in the Province.

Next it was said that inasmuch as the Bank Act and Bankruptcy Act not only deal with preferences, but (inter alia) with Crown preferences, there is an 'irresistible implication' that the Act was meant to deal with all Crown preferences. The simple answer to this is to fix one's eyes on s.16, and it

> becomes apparent that it is a contradiction in terms to hold that an express statement can be found in an 'irresistible implication'."

And at p.524 :-

> "The effect of s.16 is so to speak, to add to the words of s.17, 'but this priority shall not operate against any right in the Crown in a Province, where such right would be diminished by the priority being asserted against it."

Our attention was drawn to Act No. 17 of 1966 in which there is no section expressly stating that the Act binds the Crown. This may have been accidental or it may have been considered unnecessary having regard to the fact that almost every section names the Crown as being liable.

In Craies on Statute Law (7th ed.) at p.222 it is written under the caption "General and Specific Enactments: construction if repugnant" :-

> "Acts of Parliament sometimes contain general enactments relating to the whole subject-matter of the statute, and also specific and particular enactments relating to certain special matters; and if the general and specific enactments prove to be in any way repugnant to one another, the question will arise, which is to control the other? In Pretty v. Solly Romilly M.R. stated as follows what he considered to be the rule of construction under such circumstances. 'The general rules,' said he, 'which are applicable to particular and general enactments in statutes are very clear; the only difficulty is in their application. The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply'."

It follows that the general provision in s.3 must give way to the special one in s.7 so that the former operates on all sections of the Act of 1962 except s.7.

The same provisions in the Act of 1965 are relied on for it to bind the Crown and also to change the tenure of office of a police officer so that he becomes dismissible only for cause. In both instances the reason given is that the purpose of the Act was the public good.

It was at one time considered to be the law that if an Act was passed for the public good it automatically bound the Crown by necessary implication. This was the reason given in Gould v. Stuart supra for holding that the Act in question had altered the common law rule as to the tenure of office of the public servants.

The Privy Council modified that rule in Province of Bombay supra, per Lord du Parcq at p.63 :-

> "Their Lordships prefer to say that the apparent purpose of the statute is one element, and may be an important element, to be considered when an intention to bind the Crown is alleged. If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficient purpose must be wholly frustrated unless the Crown were bound then it may be inferred that the Crown has agreed to be bound. Their Lordships will add that when the court is asked to draw this inference, it must always be remembered that, if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words."

By virtue of s.3(1) and (2), s.7 applies to Act No. 2 of 1962, and extends and applies to every enactment passed after 19th July, 1962, including the Act of 1965. This view is acknowledged in s.9 which mandated :-

> "This Act binds the Crown to the full extent authorised or permitted by the constitutional laws of Trinidad and Tobago."

Moreover, on a reading of s.7 with para. 1(a) of the Schedule. of the Act of 1962 it is manifest that the legislature intended to alter the statutory rule in s.37 of the repealed Ch.1 No.2 by applying to future enactments the original common law rule and by continuing the statutory rule in repect of past enactments only.

In this regard I endorse the view of the author of a Commentary on the Interpretation (Northern Ireland)Act in the June 1965 issue of the Northern Ireland Law Quarterly Vol.16 No.2 at p.218 :-

> "Whatever its other effect may be, section 7 has undoubtedly resulted in it being much easier to determine the extent to which the the Crown is bound by an Act of the Parliament of Northern Ireland. In relation to such an Act the lawyer is no longer plagued by the doctrine of necessary implication which can cause so much trouble across the channel or even in the Republic."

In my judgment an Act or any provision thereof passed after 19th July, 1962, is binding on the Crown only if it expressly so provides or if the Crown is expressly named there.

If I am wrong, and the principle of necessary implication still applies, I would hold that, on a reading of the Act of 1965, as a whole, and in particular the sections relied on for the respondent, Parliament has not clearly manifested its intention to bind the Crown.

Even if the inference can properly be drawn that the Act was passed for the benefit of police officers and therefore the public good, it is not conclusive. That is a fact, though an important one, to be taken into account in deciding whether the Act is binding on the Crown by implication.

It is possible for certain provisions only of the Act to be binding, such as ss.16 and 20 (cited above) where the Government is expressly or impliedly mentioned.

The Act of 1965 may readily be distinguished from the material enactment in Gould v. Stuart supra.

The Act of 1965 is not a comprehensive code for police officers. The most important, if not the sole aspects, of discipline, namely disciplinary powers are embodied in the Constitution that is the supreme law of the land, in which there is no express provision restricting their exercise.

In Gould v. Stuart supra all the relevant matters, including the offences justifying dismissal, are set out in the statute which confers the powers to discipline and to dismiss. The offences are not left, as in the Act of 1965, to be provided for in future, by regulations which are made under a general enabling power in the Act, and which are subject to change without reference to Parliament.

Such rule, if and when made, could not create rights or alter the terms of appointment of a police officer. They merely inform or warn officers that the powers of dismissal may be exercisable in the circumstances mentioned. See Venkata Rao supra, and Fletcher v. Nott supra per Latham C.J.

S.9 states that it is subject to other enactments, which must include the 1962 Institution.

S.61 indicates the modes in which a

police officer may leave the service, not those by which the Crown may terminate an officer's service. Nor does it state that they are the only modes and that they are no others. Compare ss.76(3) and s.98(6) and (7) of the 1962 Constitution; also reg.46(a) of the 1966 Regulations which declare that the service of a police officer holding a permanent office may be terminated only for one of seven reasons stated therein, including 'dismissal or removal in consequence of disciplinary proceedings'. It has not been suggested that reg.46(a) made under s.102 of the 1962 Constitution did, or could, have the effect contended for the Act of 1965. Apart from the liability to be removed without cause assigned by the Police Commission, which it would be otiose to repeat in an Act, the modes enumerated in s.61 are a restatement and consolidation of the pre-existing law; but excluding retirement in the public interest, which is listed in reg.46(a). S.61 adds no new condition of service to the tenure of office, and creates no new rights.

Ss.62 to 64 reproduce substantially the statutory provisions in Ch.11 No.1 and in the Pensions Ordinance Ch.9 No.6.

The long title takes the matter no further by recording the self-evident fact that it provides for matters concerning the relationship between the Government and the Police Service. As a statement of legislative purpose it falls short of the more explicit terms used in the Malloch case supra.

The Act of 1965 does not employ the "formal and direct language" or "the language of command" envisaged respectively by Barton J. in Ryder v. Foley supra and by Evatt J. in Fletcher v. Nott supra.

It is a fundamental rule of the common law that a public servant is dismissible at the pleasure of the Crown. The manner in which such a law may be altered is described in Craies op. cit. at pp.339 to 340 :-

> "There is no presumption that a statute is intended to override the common law. In fact the presumption, if any, is the other way, for the

'general rule' in exposition is this, that in all doubtful matters, and where the expression is in general terms, the words are to receive such a construction as may be agreeable to the rules of common law in cases of that nature, for statutes are not presumed to make any alteration in the common law further or otherwise than the Act does expressly declare. It is a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion. And if, as Coleridge J. said in R. v. Scott, there is 'seeming conflict between the common law and the provisions of a statute,' it is not right to begin 'by assuming at once that there is a real conflict and sacrificing the common law'; we ought rather to proceed in the first place 'by carefully examining whether the two may not be reconciled, and full effect given to both.' 'It is a sound rule,' said Byles J. in R. v. Morris, 'to construe a statute in conformity with the common law rather than against it, except where and so far as the statute is plainly intended to alter the course of the common law."

Even if I am again mistaken and the provisions of the Act do bind the Crown and a police officer's services may be terminated only in the modes set out in s.61, the clear intention cannot be inferred that, in the disciplinary proceedings referred to in s.61(1)(j),an officer can be disciplined only on charges prescribed by regulations made under s.65. He could for example be disciplined, and if appropriate dismissed, for misconduct not designated as a disciplinary offence in theRegulations, such as a disclosure to unauthorised persons of information that may adversely affect the security of the State.

In my judgment the Act of 1965 did not abrogate the right of the Crown to dismiss an Assistant Superintendent (or any other police officer) at pleasure. These are my reasons :-

The powers to discipline and to dismiss

or remove a police officer from the Service is conferred by implication in s.99 of the 1962 Constitution. (See Hind's case supra).

Those powers are not controlled or restricted either in s.99 or in any other section of the 1962 Constitution.

Where it is intended to curb the disciplinary powers in respect of any person or authority there are specific provisions in plain and mandatory words; as in regard to Judges of the Supreme Court, the Auditor General and members of the Service Commissions. There is no such provision in the Act of 1965.

A statute creating an exception to the common law rule, which is impliedly entrenched under s.99, must be competent to alter that section and be passed in the manner and form prescribed by s.38, of the 1962 Constitution. The Act of 1965 was not so passed.

The Act of 1965 does not contain an express provision that it is binding on the Crown. No section relied on, either singly or in connection with another such section, mentions the Crown or is capable of the sole interpretation that it is intended to bind the Crown, by necessary implication or that the relevant section or sections are not to be unilaterally binding on the police officer.

My answer to the question in Remit 3 is that the respondent was at the relevant times dismissable at the pleasure of the Crown.

Remit (1): Whether the three offences with which the plaintiff/respondent was charged were validly and properly created by the 1966 Regulations under section 102 of the Constitution and existed in law at any material time

The respondent's stand on this issue is a denial that the Police Commission ever had the right to create disciplinary offences and that such a right could only be exercised by or under a statute. This had been done by s.23 of Ch.11 No.1 and the 1954 Regulations, which were continued in existence by the Act of 1965. Section 65(1)(j) of the Act of 1965,

which replaced s.23, was, he contended, now the only authority under which offences could be prescribed by regulations made thereunder.

This remit was raised in para.11 of the Statement of Claim in which it was alleged that :-

> "The three said offences with which the Plaintiff was charged and of which he was convicted were purportedly created by the Regulations which were expressly made by the Commission with the consent of the Prime Minister under the provisions of section 102 of the Constitution of Trinidad and Tobago. At all material times the three said offences did not exist in law, the purported creation of them by the Regulations being ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962, void and of no effect, as the power to create offences for which public officers and/or members of the Police Service are triable resides in the Governor-General only by virtue of section 13 of the said Order and must be exercised in the manner therein prescribed."

Issue was joined on these contentions in paragraph 5 of the Defence.

The offences referred to in para.11 are specified in paragraph 4 of the Statement of Claim and are contraventions of Reg.74(2)(d) and 74(1)(a) of the 1966 Regulations.

Under reg.74 a police officer commits an offence against discipline and is liable to such punishment as is prescribed by reg. 101 or by any other regulation, if :-

(1) without reasonable excuse he does an act which :-

(a) amounts to failure to perform in a proper manner any duty imposed upon him as a police officer.

(2) he is guilty of :-

(d) neglect of duty that is to say .....

(here follow subparagraphs (i) to (ix) listing the types of neglect of duty).

This Court was not informed of the category of neglect of duty enumerated in reg.74(2)(d) under which the charge was laid nor the particulars of either charge.

In paragraph 4 of the Statement of Claim it is alleged that particulars of the offences were supplied to the plaintiff by a letter dated 10th September, 1970. It must however be assumed for the purposes of these proceedings that if the respondent was lawfully charged for the misconduct alleged, then he was properly "convicted", and that the facts proved warranted the punishment imposed.

The date(s) of the alleged contraventions of the regulations is not disclosed in the Record of Appeal but it is apparent from theStatement of Claim that it was prior to 29th August, 1970, the date of the letter interdicting the respondent from the performance of his duties.

Braithwaite J. considered that the precise details of the offences were not relevant for the purpose of the determination.

The respondent's appointment was initially terminated under regulation 101 of the 1966 Regulations.

On the advice of the Review Board, constituted under s.102(2) of the 1962 Constitution, that penalty was varied to one of retirement in the public interest in accordance with reg.99.

Reg.101 specified the penalties that the Police Commission may impose in disciplinary proceedings brought against police officers in respect of an offence. In addition to dismissal, the less severe penalties are reduction in office or of remuneration; deferment or stoppage of increment; fine deductible from pay, and reprimand.

Reg.99 provides that :-

"Where on consideration of the report

"of the disciplinary tribunal, the Commission is of the opinion that the police officer does not deserve to be dismissed by reason of the charges alleged but that the proceedings disclose other grounds for removing him from the Police Service in the public interest, the Commission may make an order for the removal of such police officer without recourse to the procedure prescribed by regulation 49."

Reproduced below is regulation 49(3):-

"If the Commission, after considering representations, if any, made by the police officer, is of the opinion that, having regard to all the circumstances of the case, the police officer should be retired in the public interest, the Commission shall require the police officer to retire on such date as the Commission shall determine, and the police officer shall be retired accordingly."

See also s.105(5) of the 1962 Constitution cited earlier in this judgment.

Where an officer's service is terminated in the public interest he qualifies for a pension, gratuity or other allowance under s.12(3) of the Pensions Ordinance Ch.9 No.6, as amended by Act No.1 of 1954, and applied to police officers in the First Division by s.63 of the Act of 1965.

It is convenient here to dispose of the allegations with regard to s.13 of the 1962 Order made in paragraph 11 of the Statement of Claim.

S.13 provided that :-

"The Governor General may by Order at any time within twelve months after the commencement of this Order make provisions for the definition and trial of offences connected with the functions of any Commission established by the Constitution and the imposition of penalties for such offences."

The date of commencement of the 1962 Order was 1st August, 1962.

It was decided by Braithwaite J. that

s.13 enabled the Governor General to create criminal offences that hindered the performance of the functions of the Commission and did not authorise him to create offences or charges of a disciplinary nature against persons subject to the jurisdiction of the Commission.

This assumption is reflected in reg.8 of the 1951 Regulations and in regs.11 to 14 of the 1961 Regulations. These were made respectively under s.66(g), and its re-enactment as s.66G (2)(f), of the 1950 Order which were worded similarly to s.13 of the 1962 Order.

In any event no regulations were issued under s.13 which has now lapsed by effluxion of time.

That determination, with which I am in agreement, has not been contested by the respondent.

On this remit Braithwaite J. summarised his findings as follows :-

"In full answer to Maharaj J.'s question, I am of the opinion :-

(a) that only the Governor General acting under the provisions of section 65 of the Act or under the provisions of the former Police Ordinance has the power to create disciplinary offences in respect of Police Officers;

(b) that all regulations purported to have been made under section 102 of the Constitution under which the plaintiff was supposedly charged are void, null and of no effect."

In elaboration of (b) he held that s.102(1), read with s.99, of the 1962 Constitution only enabled the Police Commission to regulate its procedure and did not permit it to create disciplinary offences or charges.

I do not concur in finding (b) which is too extensive in its scope. I hold that s.102 of the 1962 Constitution does not enable the Police Commission to enact

regulation 74.

The historical narrative reveals that in practice the Governor prescribed, by regulations made under statute, disciplinary offences (and the punishments therefor) in respect of subordinate officers only.

Charges against Gazetted Officers were formulated by or on behalf of the Governor in pursuance of his authorisation under the Letters Patent and Colonial Regulations, from the wording of which it is clear that the causes for dismissal or for other disciplinary action were eventually within his uncontrolled discretion. See for example Re Gerriah Sarran (1969) 14 W.I.R. 361, 362 and Re Langhorne (1962) 14 W.I.R. 353, 355.

The plenitude of the Governor's power in this regard was transferred or delegated to the executive Police Commission by ss.99 and 102 of the 1962 Constitution. To adopt the language of Lord Diplock in Hind's case supra, those sections provided continuity of Government through inter alia the Police Commission as a successor executive institution which was to exercise power of a similar character to those exercised by the institution it replaced. Because of this a great deal can be left to implication.

That answers the contention of counsel for the respondent that the right to prescribe offences must be expressly given.

This approach is consonant with the rule of construction that the grant of powers in an enabling act to a public body confers by necessary implication incidental powers to carry out the purpose in view. In dealing with that rule, which is set out in Craies op.cit. at p.258, the author begins by describing it in the context of :-

> "Statutes which had been passed to enable something to be done which was previously forbidden or not distinctly authorised by law without prescribing the way in which it is to be done."

In my opinion it is essential to the proper exercise of its disciplinary powers that the Police Commission should have the power to specify the grounds on which such function may be exercised. To borrow a phrase from the judgment of the Privy Council in Doyle v. Falconer (1856) 16 E.R.

at p.300, "it was an incident sine quo res ipsa esse non potest".

It was the contention of counsel for the respondent that the creation of disciplinary offences is a legislative, and not an administrative, function and can only be effected by or under a statute. In this connection he referred to DeSmith's Judicial Review of Administrative Action (3rd ed.) Chapter 2 on the Classification of Functions and drew particular attention to this definition at p.60:-

> "a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases;"

And also to the decision of Achong J. in Civil Service Association v. Public Service Commission, H.C.1656 of 1968 dated June 26, 1970, in which he said (obiter) that in purporting to publish the Public Service Commission Regulations 1966 (which are in pari materia to the 1966 Regulations) the Public Service Commission was not acting in the performance of any of the functions vested in it.

Braithwaite J. expressed the view that the Police Commission was a tribunal performing judicial functions, that disciplinary offences and the penalties therefor were analogous to criminal offences and the punishments for crime, and that such offences and penalties could only therefore be prescribed by Act of Parliament.

I have derived much assistance from The Queen v. White ex. p. Byrnes (1964) 109 C.L.R. 665, a case not referred to by either counsel. It was a decision of a full court of five judges of the High Court of Australia presided over by Dixon C.J. Sir Douglas Menzies, who had been a member of that court, cited that case in delivering the judgment of the Judicial Committee on appeal from the Supreme Court of Ceylon in Kariapper v. Wijesinah (1967) 3 All E.R. 485, at pp.491-2.

The facts in White's case supra were as follows :-

B, a public officer was charged by the Chief Officer of his Department pursuant to

s.55 of the Public Service Act and reg.58 of the Public Service Regulations for the offence of wilfully disobeying a lawful order to attend a medical examination made by the Chief Officer under s.26 of the said Act. The Chief Officer found that the charge was sustained and fined B $3.00. The Appeal Board before which B was represented by counsel, upheld that decision. B maintained that the Chief Officer in imposing the fine and the Appeal Board in upholding his decision were purporting to exercise functions which were judicial within the meaning of the Commonwealth of Australia Constitution Act. Rejecting this contention, the High Court of Australia at p.670 declared :-

> "We think that the so-called fine is nothing but a mulct to be deducted from salary or pay and we think that the provisions of s.55, in spite of the heading of Div.6 'Offences', should be interpreted as wholly concerned with breaches of discipline and disciplinary measures concerned only with the Service. Division 6 is, of course, limited to the Service and we are not here dealing with a law having general operation over all the members of the community. We are dealing with the regulation of what is, no doubt, a very large body of people with respect to their work for and their relations with the Commonwealth Crown. The expressions used in sub-s (1) of s.55 relate of course to conduct which is treated as open to considerable objection on what may be Service grounds but it should be kept steadily in mind that the so-called punishment must be determined by officers acting under the provisions of the subsequent sub-sections of s.55. Again, when para.(d) of sub-s. (3) is examined, it is seen that no inconsiderable portion of the disciplinary measure which it authorized relates simply to status, conditions, or other relations in the Service.....
>
> As has already appeared, we think that Div. 6 of Pt.III of the Act relating to offences is part of the law regulating the relationship between the Commonwealth and its servants; it is a law with very special application. Section 55, in creating so-called

'offences' and providing for their 'punishment', does no more than define what is misconduct on the part of a public servant warranting disciplinary action on behalf of the Commonwealth and the disciplinary penalties that may be imposed or recommended for such misconduct; it does not create offences punishable as crimes. The formalities prescribed in s.55, sub-ss.(3), (5) and (7), and 57, 58 and 60 (which counsel for the applicant described as 'judicial trappings') are directed to safeguarding public servants from possible official injustice in the determinations whether there has been departure from the 'code' established by s.55(1) and, if so, what punishment should be imposed. The establishment of these safeguards does not indicate that an officer whose conduct is being tried for a criminal offence; indeed in the Act a clear distinction is drawn between criminal offences committed by public servants (s.62) and breaches of the disciplinary code established by s.55(1). The foregoing considerations point clearly enough to the conclusion that neither a Chief Officer nor an Appeal Board, in performing the duties imposed by Div.6, sits as a court of law exercising judicial powers; each sits as an administrative tribunal maintaining the discipline of the Commonwealth Service in the manner prescribed by law."

The conclusion reached by the Court was that the provisions under which the applicant had been dealt with were not an attempt to confer a part of the judicial power of the Commonwealth upon either the Chief Officer or the Appeal Board.

Also apposite is the recent judgment of the Court of Appeal of England in R. v. Board of Visitors of Hull Prison Exp.Germain and others (Times Newspaper October 4, 1978). The Board of Visitors constituted under the Prison Act 1952 punished the appellant for offences against discipline that were set out in rules made by the Secretary of State under a section of the Act enabling him to make rules for the discipline and control

of persons detained in prisons. The sections mandated that the rules make provision for ensuring that a person charged with any offence under the rules shall be given a proper opportunity of presenting his case. The rules stated that the prisoner should be informed of the charge and should be heard and allowed to present his defence.

The appellants applied, unsuccessfully, to the Divisional Court for an order of certiorari to quash the Board's adjudication on the ground that the appellants were not allowed to cross examine the witnesses or to call witnesses of their own. (See (1978) 2 W.L.R. 599).

For the purpose of deciding whether the appeal was properly before them the Court of Appeal ruled that the judgment appealed from was not in "a criminal cause or matter" :-

> "Because in the rules the offences were specifically described as 'offences against discipline' they could be treated as other than 'offences against the public law'."

Megaw L.J. also observed :-

> "The issue of law which the court, having the jurisdiction, thus had to decide, arose out of a special 'private law', code of discipline which related to a particular and limited class of persons and in respect of which special considerations applied. Thus the warning signals were hoisted against any ready and uncritical assumption that principles which applied generally in other spheres could, or ought necessarily to, be applied in the present sphere without regard to possible modifications."

To adopt and adapt the language of the High Court of Australia in White's case supra, reg.74, in creating so-called "offences" and providing for their punishment does no more than define what is misconduct on the part of a police officer warranting disciplinary action on behalf of the State and the disciplinary penalties that may be imposed or recommended for such misconduct; it does not create offences punishable as crimes.

In my judgment the Police Commission was not exercising a legislative, but an executive or administrative function incidental to its function of exercising disciplinary control over police officers, when it formulated the 1966 Regulations which are a discipline code and not legislation in the strict sense. They are akin to the former Colonial Regulations, which the 1961 Regulations replaced, or to General Orders which obtained in other colonies or to a disciplinary code adopted by professional associations such as the Medical or Bar Association.

An employer or master whose employee or servant is dismissable without cause, may nevertheless terminate the servant's service for cause. The varieties of misconduct justifying dismissal at common law are numerous and it is impracticable comprehensibly to include all examples of such misconduct in a code. The employer may indicate in cases as they arise particular acts or omissions which amount to misconduct. This may include disobedience of lawful reasonable orders and neglect of duty. See Batt's Master and Servant (5th ed.) Chapter V and Halsbury's Laws (3rd ed.) pp.485-9.

The 1966 Regulations are more in the nature of private or domestic rules in contrast to public law. The former regulates a class of persons, the latter usually has general application to the public at large.

Reg.74 prescribes a rule non-compliance with which is to be regarded as a breach of discipline or a disciplinary offence. This differs from an enactment creating a criminal offence, which, unlike a disciplinary offence, may be punished by imprisonment or deprivation of personal liberty either peremptorily, or in default of payment of a fine. A fine as a penalty for a disciplinary offence is usually deductible from the officer's salary, if not voluntarily paid.

Even where the Police Commission is authorised to make regulations relating to procedure, these are not laws or legislation in the accepted sense of the term, since it is optional for the matters dealt with (except appeals) to be embodied in the form

of Regulations. They could be made "otherwise". as by insertion in a Circular Memorandum or in General or Departmental Orders.

Any reference to reg.74 that there may have been in the charges is severable from the charge and may be regarded as surplusage.

It is worthy of note that disciplinary offences in respect of subordinate officers, and these only, were created by the Police Service Regulations 1961 made under s.87 of the Jamaican (Constitution) Order in Council 1959 which is the counterpart to s.102 of the 1962 Constitution.

Counsel for the respondent was forced into admitting that if the Police Commission had no authority to define disciplinary offences under the 1962 Constitution its power to discipline was thwarted and could not lawfully be exercised until not only the 1965 Act, but regulations, made under s.65 thereof, became law.

It is not necessary to decide whether s.65 of the Act of 1965 enabled the Governor General, exclusively or concurrently with the Police Commission, to create the relevant offences by regulations.

The conferment of express power in this regard on the Parliaments of Guyana and Barbados by art.108(6) and s.96(3) of their respective Constitutions suggests that such legislation could not otherwise have been passed under the section investing those legislatures with the authority to pass ordinary laws for peace, order and good government.

Article 108(6) of the Constitution of Guyana which came into force on 26th May, 1966, ordained that :-

> "Parliament may make provision with respect to offences against Police Force discipline and the punishment that may be imposed for any such offence, and any power to exercise disciplinary control (including any power to remove a person from office) or to determine an appeal from a decision to exercise such a power that

is exercisable by any person or authority under the provisions of this article shall be exercised in accordance with any such provision."

Article 18(3) ordained :-

"In relation to any person who is a member of a disciplined force /which includes a police force/ raised under a law in force in Guyana, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than articles 4, 6 and 7. (Those articles are irrelevant for our purposes)."

To the like effect as art.108(6) is s.96(3) of the Constitution of Barbados.

On the premise that the Police Commission had authority under s.99 of the 1962 Constitution to prescribe the relevant offences, the Act of 1965 could only be relevant to this remit if all of the following conditions were satisfied:-

(a) the Act was binding on the Crown (a question dealt with under remit (3));

(b) s.65(1)(j) was sufficiently explicit to permit of the disciplinary offence being created by regulations;

(c) s.65(1)(j) of the Act could not co-exist, and was therefore inconsistent, with s.99 of the 1962 Constitution;

(d) the Act was passed with the Parliamentary majorities prescribed by s.38 of the 1962 Constitution for altering s.99.

As condition (d) was not fulfilled, the others are immaterial and the Act of 1965 does not affect the determination of this remit.

This problem was anticipated and provided against in the above cited provisions of the Constitutions of Guyana and Barbados which expressly authorised Parliament to enact

such legislation.

Now for my findings on Remit (1).

The 1966 Regulations, and in particular reg.74, existed in law at the relevant time for the following reasons:

The nature of any misconduct for which a Gazetted Officer or a First Division Officer could be disciplined and dismissed or removed from the service was always specified by the Crown or by its delegate. Grounds for dismissal were prescribed by statute only in respect of officers in a disciplinary force such as the Police Force; but to adopt the language of Evatt J. in Fletcher v. Nott supra these were not an exclusive specification of the cases for which punishment or dismissal may be imposed.

In formulating charges for misconduct the Crown, through the instrumentality of the Governor or of a Service Commission, does not exercise a legislative, but an administrative or executive, function.

While s.102 of the 1962 Constitution was not a statutory authorisation for the Crown to create disciplinary offences, the 1966 Regulations were a convenient vehicle in which to place the regulations. The mention of the regulation in the charge may be disregarded and does not vitiate the proceedings.

S.65(1)(j) of the Act was inconsistent with s.99 of the 1962 Constitution and no express power to legislate in respect of disciplinary offences was conferred on Parliament by that Constitution.

Even if s.65(1)(j) of the Act of 1965 was validly enacted it did not deprive the Police Commission of the right to prescribe disciplinary offences by virtue of its implied power under s.99.

At the highest s.65 conferred a concurrent right on the Governor General to prescribe such offences; but it is not necessary to decide this point, as no such offences had been so prescribed at the relevant time.

If the power to prescribe offences against discipline resided in the Police Commission as inherent or implied in or as

ancillary, to the powers transferred to it from the Crown, then the Act of 1965, to the extent that it could not co-exist and was inconsistent with, s.99, was void, since it was not passed in the manner and form prescribed by s.38 of the 1962 Constitution (See Kariapper v. Wijenshia supra) which was approved in Faultin's case supra.

My determination on Remit (1) is that the three offences, specified in reg.74 of the 1966 Regulations, with which the plaintiff/respondent was charged, were validly and properly created by the Police Commission under s.99 of the 1962 Constitution and existed in law at the material time.

Remit (2): Whether the Plaintiff's action is maintainable notwithstanding Sections 99 and 102 of the 1962 Cohstitution

The question here is whether the courts are in this case precluded by s.102(4) of the 1962 Constitution from considering the legality of the termination of the appellant's service and more especially the validity of the offences purportedly created by reg.74 of the 1966 Regulations.

It is essentially an exercise in construing s.102(4). That enactment declares that a question whether a Service Commission has validly performed any function vested in it by the 1962 Constitution shall not be enquired into in any court.

S.99 on its face vests an apparently absolute discretion in the Police Commission to discipline and dismiss police officers. As mentioned previously, it does not state that it is subject to any of the controls set out in other sections of the Constitution or in any other law.

A number of cases were cited in which it was held that preclusive provisions did not oust the jurisdiction of the Courts to enquire into the validity of proceedings when there was a lack or excess of jurisdiction on the part of the administrative tribunal.

In many of these cases the courts ruled that the dismissal of a public officer or other adverse ruling of the tribunal was a nullity because a rule of natural justice had not been observed.

No allegation has been made or proved in this case of non-compliance with such rules, which were in fact observed. The respondent was told what was alleged against him and his defence or explanation was heard.

The effectiveness of an ouster provision depends on its wording and the circumstances in which it is sought to be invoked.

This Court was invited to hold that, if the respondent was dismissible only for cause and the convictions for the relevant offences were nullities, s.102(4) did not prevent the court from inquiring into the validity of the disciplinary proceedings.

This contention appears to be tenable where the section bestowing the power to dismiss is subject to Chapter I of the 1962 Constitution (as in s.93).

See Kanda's case supra and Harrikisson's case supra.

The facts in Smith v. East Elloe R.D.C. (1956) 1 All E.R.855 (H.L.) were that the Acquisition Land (Authorisation Procedure) Act, 1946, Sch.1 Part 4 para.16 ordained that a compulsory purchase order "shall not, either before or after it has been confirmed, made or given be questioned in any legal proceedings whatsoever".

The appellant was the owner of land and a dwellinghouse in respect of which a compulsory purchase order was made by the respondent under the above Act. He issued a writ against the respondent and others in which he claimed a declaration that the order was made and confirmed in bad faith, and damages.

Relying on para.16(above) the respondents applied for, and obtained, an order setting aside the writ and all subsequent proceedings, for lack of jurisdiction.

The appeal of the respondents against that order was dismissed by three of the Law Lords who heard the appeal.

Viscount Simonds said at p.858 :-

"My Lords, I think that any one bred in the tradition of the law is likely to regard with little sympathy

> legislative provisions for ousting the jurisdiction of the court, whether in order that the subject may be deprived altogether of remedy or in order that his grievance may be remitted to some other tribunal. But it is our plain duty to give the words of an Act their proper meaning and, for my part, I find it quite impossible to qualify the words of the paragraph in the manner suggested. It may be that the legislature had not in mind the possibility of an order being made by a local authority in bad faith, or even the possibility of an order made in good faith being mistakenly, capriciously or wantonly challenged. This is a matter of speculation. What is abundantly clear is that words are used which are wide enough to cover any kind of challenge which any aggrieved person may think fit to make. I cannot think of any wider words. Any additions would be mere tautology."

By way of amplification he continued at p.859 :-

> "Plain words must be given their plain meaning. There is nothing ambiguous about para.16; there is no alternative construction that can be given to it; there is, in fact, no justification for the introduction of limiting words such as 'if made in good faith', and there is the less reason for doing so when those words would have the effect of depriving the express words 'in any legal proceedings whatsoever' of their full meaning and content."

In their dissenting judgments Lord Reid and Lord Somerwell expressed the view that the jurisdiction of the court was not excluded where, as in that case; mala fides was alleged against the authority making the order and they would have allowed the appeal.

In Anisminic Ltd. v. Foreign Compensation Commission (1969) 1 All E.R.208, the Foreign Compensation Act, 1950, s.4(4) provided that:-

> "The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law."

Under that Act the respondent commission was set up to deal with claims for compensation for property confiscated by the Egyptian Government and to make payments therefor. The appellant before the House of Lords was such a claimant.

There were certain conditions to be established to qualify a person as a claimant, of which the Commission had to be satisfied. One of these was British nationality.

The appellant, who was the original owner of the confiscated property, was a British national but his successor in title was not.

The appellant's contention was that he was the proper claimant. The contrary was argued by the respondent who maintained that it was his successor in title.

The House of Lords held that a claimant who was an original owner did not have to prove anything about successors in title; that the Commission made an enquiry which the Order providing for payments did not empower them to make and which they had no right to take into account. The Commission misconstrued the provision giving it power to act and consequently it failed to deal with the question entrusted to it. It lacked jurisdiction to make the determination which was not a real, but a purported determination, and therefore a nullity. Accordingly s.4(4) did not oust the court's jurisdiction.

The enactment construed in R. v. Secretary of State for the Environment ex p. Ostler (1976) 3 All E.R. 91 was similar to the one in Smith's case supra that was followed by the House of Lords, in allowing an appeal from a Divisional Court which had ruled that the jurisdiction of the court was not ousted by the enactment.

Despite the doubts expressed in Anisminic's case supra concerning Smith's case supra the Court of Appeal held that it was good law and binding on them.

Lord Denning M.R. at p.95 distinguished the Anisminic case supra on three grounds:-

"First, in the Anisminic case the

Foreign Compensation Act, 1959, outsted the jurisdiction of the court altogether. It precluded the court from entertaining any complaint at any time about the determination. Whereas in Smith v. East Elloe Rural District Council the statutory provision has given the court jurisdiction to enquire into complaints so long as the applicant comes within six weeks. The provision is more in the nature of a limitation period than of a complete ouster. That distinction is drawn by Professor Wade in his book on Administrative Law, and by the late Professor deSmith in the latest edition of Halsbury's Laws of England.

Second, in the Anisminic case the House was considering a determination by a truly judicial body, the Foreign Compensation Tribunal, whereas in Smith v. East Elloe Rural District Council the House was considering an order which was very much in the nature of an administrative decision. That is a distinction which Lord Reid himself drew in Ridge v. Baldwin.

There is a great difference between the two. In making a judicial decision, the tribunal considers the rights of the parties without regard to the public interest. But in an administrative decision (such as a compulsory purchase order) the public interest plays an important part. The question is, to what extent are private interests to be subordinated to the public interest.

Third, in the Anisminic case the House had to consider the actual determination of the tribunal, whereas in Smith v. East Elloe Rural District Council the House had to consider the validity of the process by which the decision was reached."

Lord Goff discerned the ratio in the Anisminic case to be that the House was dealing simply with a question of absence of jurisdiction and not a case where an order is made within jurisdiction. He opined at p. 98:-

"I think there is a real distinction between the case with which the House

was dealing in Anisminic v. Foreign Compensation Commission and Smith v. East Elloe Rural District Council on that ground that, in the one case the determination was a purported determination only, because the tribunal, however eminent, having misconceived the effect of the statute, acted outside its jurisdiction, and indeed without any jurisdiction at all, whereas here one is dealing with an actual decision made within jurisdiction though sought to be challenged."

In Civil Service Association v. Public Service Commission supra, the plaintiff by Writ of Summons prayed for a declaration that the Public Service Commission Regulations 1966 were void and of no effect.

Achong J. held that the action was misconceived because the Commission is not a body corporate and could not be sued eo nomine. He nevertheless expressed the following opinion :-

"S.102(4) on which the contention is obviously based deals with questions touching the validity of the performance of the functions vested in the Commission by the Commission and any member thereof or any person to whom such function has been delegated. It seems to me, however, that in purporting to publish the 1966 Regulations the Commission was not acting in the performance of any of the functions vested in it and so would not enjoy the protection afforded by the subsection."

Durga Das Basu in his "Commentary on the Constitution of India" (1965) Vol.1 at p.338 wrote :-

"Our Constitution itself confers 'final' power on the President (Art. 103(1)), or other administrative authority (art.31(3)), to decide specified questions. Where the Constitution itself excluded such questions, the courts lose their jurisdiction to entertain those questions altogether, because they have no power to override the Constitution and the questions, accordingly, become non-justiciable.

> A different situation arises where a statute confers 'final' power upon some administrative authority or tribunal, because the constitutional jurisdiction of our superior Courts cannot be taken away by statutory provisions. Even the jurisdiction of the inferior courts has been saved by the judicial construction that some statutory provisions are intended to exclude the jurisdiction of the courts of law only where the decision of the administrative authority is ultra vires, so that the courts retain their jurisdiction to determine whether the decision or order of the statutory authority is ultra vires or without jurisdiction."

In Harrikissoon v. the Attorney General of Trinidad and Tobago supra, the appellant (a teacher) had questioned the legality of his transfer to another school by the Teaching Service Commission under s.99C of the 1962 Constitution. He asserted that it was a punishment.

The Public Service Regulations 1966 required an officer to be given three months notice of intended transfer during which time he was permitted to request the Commission to review its decision. His appeal was dismissed.

Two of Hyatali C.J.'s reasons, in which Phillips J.A. concurred, are relevant to this appeal :-

The first was -

> "The order of transfer being clearly within the scope of powers vested in the Commission, enjoyed a presumption of validity, which could not be successfully assailed or removed, unless it was shown beyond a reasonable doubt that the transfer did not involve the exercise of a function vested in the Commission but the exercise of a different and forbidden function."

and the second -

> "The preclusive provision of s.102(4)(b) of the Constitution is expressed in perfectly clear and simple terms. There

can be no doubt about its meaning or intent. It does not therefore collide with 'the fundamental rule' as it was called by McNair J. in Francis v. Yiewsley & West Drayton R.D.C. (1958) 1 Q.B. 478, or 'the well known rule' as Sachs J. described it in Commissioners of Customs & Excise v. Cure & Doeley Ltd. (1962) 1 Q.B. 340, 357, 'that a statute should not be construed as taking away the jurisdiction of the courts in the absence of clear and unambiguous language to that effect'. For present purposes, the provision is, in my view, the same in scope, clarity and intent as that considered by the House of Lords in Smith v. Elloe Rural District Council (1956) 1 All E.R. 855."

He also cited from the passage in Basu op. cit.

In re Fisher (1966) 9 W.I.R. 465 a police officer was reduced in rank on the recommendation of a Court of Inquiry which investigated a complaint against the officer in accordance with the Police Service Regulations 1962 which were made under the 1959 Constitution, and continued in force by the 1962 Constitution, of Jamaica. Hercules J. (as he then was) applying Smith v. East Elloe supra held that s.136 of the Jamaican Constitution, which corresponds to s.102(4) of the 1962 Constitution, was clear and unambiguous and that no exercise of the functions provided for by that section could be inquired into in any court.

He also quoted from the extract of Basu op.cit.

Art.93 and 119(6) of the Guyana Constitution are the counterparts of ss.93 and 102(4) of the 1962 Constitution.

The Court of Appeal of Guyana has construed art.93 vis a vis art.119(6) in the following cases :- Re Gerriah Sarran supra; Re Langhorne supra both cited under remit (1); Evelyn v. Chichester (1970) 15 W.I.R. 410; in which public officers questioned the legality of their punishment by the Public Service Commission under art. 96, which corresponds to s.93 of the 1962 Constitution.

In Re Langhorne supra the punishment was a fine; and in the other two cases it was dismissal.

The Court of Appeal held that the Commission had performed a judicial or quasi-judicial act or function; and that, notwithstanding art. 119(6), the Court had power to enquire into the validity or constitutionality of the proceedings by virtue of the conjoint effect of art. 119(1) and 125(8) of the Guyana Constitution which read :-

> "119(1) Save as otherwise provided in this Constitution, in the exercise of its functions under this Constitution a Commission shall not be subject to the direction or control of any other person or authority."
>
> 125(8) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any functions shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law."

In Re Gerriah Sarran supra the Commission had, under art.96 of the Guyana Constitution, delegated to a permanent Secretary the power to hold an enquiry into the conduct of a public officer. The Permanent Secretary purported to sub-delegate that power to an assistant secretary. Crane J.A. at p.364 commented on art. 125(8) :-

> "I believe the purport of art.125(8) is quite clear. As I understand the matter, that article operates as a proviso to art.119(6). It is in the nature of a proviso, I feel, because it preserves, by excepting out of art. 119(6), the ancient supervisory jurisdiction of the High Court in fit cases 'to enquire and be informed', which, <u>but for art.125(8), would not exist in view of that aspect of finality which appears in art.119(6)."</u>

(This passage was approved by Chancellor

Luckhoo in Re Langhorne supra at p.360).

Crane J.A. pontificated :-

> "This seemingly exclusionary jurisdictional clause in art.119(6) is clearly designed to achieve non-interference by the judiciary in matters of appointments to, and discipline in the Public Service - matters which the framers of the Constitution think and rightly so, properly to be within the Administration's normal sphere of competence. The idea is that administration must not be unnecessarily impeded by resort to the courts to which, in this case, there is no right of appeal. Administrative law and procedure, together with administrative discretion, are thus given free scope for development; they are left unfettered to function within their own province, save for the right of the subject to the writ of certiorari, the constitutional safeguard provided in art. 125(8)."

Invoking the maxim "delegatus non potest delegare" the Court held that a writ of certiorari should issue to the Permanent Secretary, who had acted in excess of his jurisdiction.

The facts in Re Langhorne supra are summarised in the headnote :-

> "The applicant was the holder of a public office in that he was a dispenser employed by the Ministry of Health. He was interdicted from duty by the Public Service Commission pending the determination of certain departmental charges which were preferred against hin with a view to his dismissal. A portion of his salary was withheld during the period of interdiction. An enquiry was held and the charges found proved, whereupon he was informed that he would be reinstated, but that that portion of his salary which had been withheld would not be paid to him, and that his incremental date would be postponed for six months.
>
> The applicant complained that it was incompetent for the Public Service Commission to withhold more than the sum

prescribed by reg.190 of the Regulations for Public Hospitals, Cap.139 (sub.leg.) /G.7 by way of a fine, and further that he was deprived of his rights when certain documents were not placed at his disposal before the day of the commencement of the enquiry, as is required by the Colonial Regulations."

At p.367 Luckhoo C. drew a distinction between a usurpation of jurisdiction by the Commission, into which the Courts could enquire, and a wrong exercise of jurisdiction vested in the Commission by the Constitution that might affect the validity of the function, which was not justiciable. In construing art.119(6) he said at p.357 :-

> "The jurisdiction of the courts, therefore, is only shut out under that article if the particular function purported to be performed is truly vested in the Commission 'by or under the Constitution'. It is the nature of a condition precedent that the function must so vest before the courts cease to have the right to enquire under this article. If, then, a question is raised as to whether in a particular case a function is or is not vested, this goes to the root of the Commission's jurisdiction and so is properly justiciable by the courts without the aid of any other enabling provision."

and later at p.357 :-

> "But once the jurisdiction to act has been properly assumed, the validity of the discharge of that function cannot be questioned under art.119(6), although the Commission may have come to its conclusions without sufficient evidence or by applying principles not countenanced by law. In cases of that kind, the courts are expressly prohibited from interfering. The Constitution obviously did not wish to ascribe an appellate jurisdiction to the courts where facts may have been wrongly construed or wrong interpretations given to matters involving legal questions."

In Chichester supra the Court of Appeal reviewed the English and Guyana cases. A public officer, who was a deckhand on a ship under the control of a Government Department, was charged with misconducting himself during a voyage. He did not admit his guilt. He was thereafter dismissed by the General Manager of the Department whose power to do so under the relevant Ordinance was 'subject to such departmental orders as may from time to time be made by the Government.

The power of appointment and discipline originally conferred on the General Manager by the Ordinance was deemed by the Constitution of Guyana to have been delegated to him by the Public Service Commission under that Constitution.

Where liability was contested, the departmental Orders, made under two Acts, contemplated the holding of an inquiry. No such inquiry was held. The Court of Appeal decided that, unlike the Commission, the General Manager was not clothed with the authority to dismiss the respondent at pleasure and was restricted in the exercise of his powers by the Orders which had the force of law. Non-compliance with the Orders vitiated the dismissal.

After assuming that the decision of the General Manager would be afforded the same protection as art. 119(6) provides for a Commission, Luckhoo C. continued at p.421-2 :-

> "For, there can be no question that if this particular article is not elsewhere qualified under the Constitution, a Commission (which includes the Public Service Commission) when performing a constitutional function would enjoy a decided freedom from judicial inquiry And the only jurisdiction which a court will have is one of the preliminary question of whether the particular function was or was not vested in the Commission 'by or under' the Constitution. At least a court would be precluded from attempting to sit as ' a court of appeal' to inquire whether functions have been validly performed or not, that is, on a construction of this article in isolation."

He discovered that qualification in art.119(1) and 125(8).

Persaud J.A. at p.428 followed R.v. Fisher supra.

Section 102(4) is consistent, and in harmony, with the right of the Crown to dismiss at pleasure. If this ouster clause is not to apply, the respondent has at least successfully to cross the hurdles that he was no longer dismissible at pleasure but only for cause, and that such cause could not be specified by the Police Commission but solely by the Governor General.

The justifications proferred by counsel for enabling the respondent in the present appeal to pierce the veil of the privative provision in s.102(4) were that he was found guilty of a disciplinary offence by the Police Commission in the exercise of a quasi-judicial function; that there was no authority vested in the Commission to enact the offences set out in reg.74 of the 1966 Regulations, and that these offences did not otherwise exist in law. Consequently the Commission was acting without or in excess of jurisdiction in removing the respondent from the service.

In my judgment the removal of the respondent cannot be questioned by the Court for the following reasons :-

The Commission clearly was exercising the functions of disciplinary control and of removal which were truly vested in it under ss.99 and 105(2) of the Constitution. It has not been demonstrated beyond reasonable doubt that it was exercising a function not vested in it.

The Commission was performing an act incidental to the exercise of its functions under s.99 when it notified the appellant of his misconduct which might result in disciplinary proceedings and when he was subsequently charged for such misconduct.

The appellant was dismissible without cause assigned.

The disciplinary powers of the Police Commission were not subject to or restricted by ss.1 or 2 or any other section of the 1962 Constitution, or in any enactment validly

amending s.99.

Pursuant to s.99 the respondent was properly charged by the appellant for the disciplinary offences specified in reg.74 of the 1966 Regulations.

Even if, (which it is unnecessary to decide) the Police Commission, or the Committee of Inquiry in finding the facts, was performing a quasi-judicial or judicial act or function, and on that account the respondent was entitled as of right to the observance of the rules of natural justice incorporated in the 1966 Regulations or at Common Law, there was substantial adherence to those rules.

The alleged illegality - the creation of disciplinary offences without statutory authority - is an error of law within jurisdiction in the process of exercising the function or jurisdiction which was properly assumed and entered upon by the Police Commission. At the highest it could only have been a wrong exercise, and not a usurpation of jurisdiction. There was no lack of jurisdiction.

The jurisdiction of the court to enquire into whether the Commission had validly exercised that function is ousted by the plain and simple words of s.102(4).

My answer to this remit is that the plaintiff's action is not maintainable because :-

(a) the clear words of s.102(4) of the 1962 Constitution ousted the jurisdiction of the courts to enquire into the validity of the removal of the respondent which was a function vested in the Police Commission by s.59 and 105(5) of the 1962 Constitution.

(b) Alternatively, if the respondent was only dismissible for cause, the Police Commission acted within the jurisdiction conferred on it by s.99 of the 1962 Constitution in removing the respondent for a disciplinary offence which existed in law and in accordance with the rules of natural justice incorporated in the 1966 Regulations.

The Act of 1976

Having disposed of the remits it only remains to determine whether s.18 of the Act of 1976 is relevant to this appeal.

That section reads :-

> "All enactments passed or made by any Parliament or person or authority under or by virtue of the former Constitution and not before the appointed day declared by a competent court to be void by reason of any inconsistency with any provision of the former Constitution including in particular sections 1 and 2 thereof and that are not repealed, lapsed, spent or that had not otherwise had their effect, shall be deemed to have been validly passed or made and to have had full force and effect as part of the law of Trinidad and Tobago immediately before the appointed day, even if any such enactments were inconsistent with any provision of the former Constitution including in particular sections 1 and 2 thereof."

As I indicated in Faultin's case supra the crucial point to be decided is as follows :-

> To the extent that any provisions of the Act of 1965 or of the 1966 Regulations were void for inconsistency with the 1962 Constitution, were those provisions validated with effect from the date of the passing of the enactments or only from the point in time immediately before the commencement of the Act of 1976 on 1st August, 1976? The answer depends on the true meaning and effect of the phrase :-

> "shall be deemed to have been validly passed and to have had full force and effect as part of the law of Trinidad and Tobago immediately before the appointed day (1st August, 1976)."

In resolving the ambiguity in the meaning of this section assistance was derived from the rule of interpretation succinctly expounded by Lindley L.J. in Lauri v. Renad (1892) 3 Ch.402 at p.421 :-

> "It is a fundamental rule of English law that no statute shall be construed

so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

I endorse my conclusion in Faultin supra that :-

"the words 'immediately before the appointed day' qualify the passing as well as the coming into operation of the Act in question, and the validation of a law by s.18 of the Act of 1976 is effective only as from the point in time immediately before 1st August, 1976."

The material part of section 18 may be reconstructed to read :-

"All enactments...shall be deemed :-

(a) to have been validly passed or made, and

(b) to have had full force and effect as part of the law of Trinidad and Tobago;

immediately before the appointed day."

The result is that, if any of the relevant enactments was void ab initio, the validation would have been effective after the material date when the infringements of the 1966 Regulations were alleged to have taken place and the order for the respondent's removal from the police service was made or enforced. Section 18 therefore has no bearing on, or relevance to, the issues in this cause.

The Decision

My determination in essence is that, by and under ss.99 and 102 of the 1962 Constitution and the 1966 Regulations, the plaintiff/respondent was properly charged with, and convicted of, the relevant offences and lawfully removed from the Public Service.

O.3 r.6 (cited above) came into

operation after the order of Maharaj J. and before the determination by Braithwaite J. As it is a rule of procedure, and not of substantive law, it is applicable to the hearing before this Court.

Under s.38(1) of theSupreme Court of Judicature Act, 1962, the Court of Appeal has all the power, authority and jurisdiction of the High Court for the purposes of and incidental to, the determination of any judgment or order made thereon.

By s.39(1) and (2) of the same Act this Court has the power to make any such order as the High Court could have made and to make such further or other order as the case may require. An order may be made on such terms as may be just, to ensure the determination on the merits of the real question in controversy between the parties.

In the pleadings the respondent has not questioned his removal from the public service on its merits. If he was properly charged with the relevant offences, there is no cavil that they were not proved or that his interdiction from the performance of his duties or his removal from the service was unlawful.

I would allow the appeal against the order of Braithwaite J., disallow the cross appeal, and dismiss the cause. I would also order the plaintiff/respondent to pay to the appellant his costs of the proceedings here and in the court below.

C.A. Kelsick,
Justice of Appeal.

No. 11

JUDGMENT OF SIR ISAAC HYATALI

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No.68 of 1976

Between

THE ATTORNEY GENERAL OF TRINIDAD & TOBAGO	Defendant/ Appellant

And

ENDELL THOMAS	Plaintiff/ Respondent

Coram: Sir Isaac Hyatali, C.J.
C.E.G.Phillips, J.A.
C.A.Kelsick, J.A.

January 19, 1979

T.Hosein, Q.C. and I.Blackman - for the appellant

M.G.Daly - for the respondent.

J U D G M E N T

Delivered by Sir Isaac Hyatali, C.J.:

The question whether the respondent Endell Thomas, a former police officer of the First Division in the Police Service, was dismissible at the pleasure of the Crown, is a crucial one in this appeal. If he was, then nothing further falls to be considered; but if he was not, the other two questions become highly relevant. All three questions however, raise extremely important constitutional issues and I should like at the outset to acknowledge that the Court was greatly assisted by the comprehensive and skilful submissions of Mr. Hosein for the appellant, on the one hand, and the lucid and able arguments of Mr. Daly for the respondent, on the other.

Having had the invaluable advantage of

reading beforehand the judgment delivered by Kelsick, J.A. and Phillips, J.A. respectively, I feel obliged to express my admiration of the expansive and searching analysis they have each made of the relevant legislation, authorities and principles bearing upon the issues in this appeal. It is regrettable that we have not been able to reach an unanimous decision on them, especially as, they affect the status and fortunes of a highly disciplined body of officers, of whom much is expected, and on whom so much more depends, by reason of the vast powers and responsibilities reposed in them to preserve the peace, to enforce the criminal law, to repress internal disturbances, and to safeguard internal security.

By s.37 of the Interpretation Ordinance Ch.1 No.2 (the Ordinance) it was provided that -

> "No law shall in any manner whatsoever affect the rights of the Crown unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby."

In addition to what might be conveniently described as "dictionary provisions" in s.2 of the Ordinance, there were a number of general rules prescribed therein in the remaining thirty-five sections thereof for the construction of enactments. Almost all of them however, were restrained or guarded by the repetition in each section of the expression, "unless the contrary intention appears", and like phrases.

The Ordinance was repealed by the Interpretation Act 1962 (the 1962 Act) which, like its predecessor, contained general rules for the construction of enactments, in addition to "dictionary provisions". By sections 3 and 7 thereof it was provided as follows :

> "3(1) Every provision of the Act extends and applies to every enactment passed or made before or after the commencement of this Act, unless a contrary intention appears in this Act or the enactment.
>
> (2) The provisions of this Act apply to this Act as they apply to an enactment passed after the commencement of this Act.

"... ... ...

(7) No enactment passed or made after the commencement of this Act binds or affects Her Majesty or Her Majesty's rights or prerogatives unless it is expressly stated therein that Her Majesty is bound thereby."

I pause here to observe, that the expression "unless a contrary intention appears" recurred throughout and burdened the Ordinance. The tedious repetition of that expression however, is avoided in the 1962 Act, by the employment of the formula contained in s.3(1), and the provisions of s.3(2) which made that formula applicable to the 1962 Act and enactments passed thereafter. Consequently, the necessity for qualifying each section of the 1962 Act with the expression "unless a contrary intention appears" was eliminated. The substance of the scheme devised by the draftsman therefore was firstly, to apply the formula contained in s.3(1) to the whole of the 1962 Act; and secondly, to make every section of the 1962 Act applicable to all statutes passed thereafter unless a contrary intention appeared. In my judgment, at least two irrefutable results flow from that scheme. Firstly, the rule of construction contained in s.7 must be held to apply to the 1962 Act unless a contrary intention appears therein; and secondly, the said rule of construction must also be held to apply to the 1965 Act unless a contrary intention appears therein. It is to be noted under the first result that a contrary intention is actually expressed in s.9 of the 1962 Act to the effect that it binds the Crown, whereas in the 1965 Act, except for two sections to which I refer hereafter, no such intention is actually expressed. But in my view, it necessarily follows from the second result referred to, that if a contrary intention appears from the rest of its provisions, effect must be given to it.

I have thus come to the conclusion that the 1962 Act has reproduced, albeit in different language, the rule of construction which had been prescribed in s.37 of the Ordinance to the effect, that no enactment binds the Crown, unless it is therein expressly provided, or unless it appears by necessary implication that the Crown is bound thereby. This, in my judgment, is the same as saying that no enactment binds the Crown unless it is expressly stated that it is bound or unless a contrary intention appears therein.

It was Mr. Hosein's submission however, that the doctrine of necessary implication had been abolished by s.7 of the 1962 Act, and to establish the validity of that proposition he referred the Court to para.1(4) of the Schedule thereto which provides as follows :

> "(4) No enactment passed before the commencement of this Act shall in any manner whatsoever affect the rights of the Crown unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby."

That provision reproduces with minor adaptations, the provisions of s.37 of the Ordinance, and was made applicable to statutes passed before the 1962 Act, by s.60 thereof. In my judgment however, this provision was unnecessary and was inserted ex abundante cautela in the Schedule, since by s.3 of the 1962 Act every provision thereof was made applicable to statutes made or passed both before and after its enactment. Consequently, the doctrine of necessary implication which was preserved by the conjoint effect of ss.3 and 7 of the 1962 Act, as I have sought to demonstrate, applied to statutes made or passed before its enactment. It was therefore otiose to enact the rule in para.1(4) of the Schedule.

In any event, it seems to me, that the reproduction of the rule prescribed in s.37 of the Ordinance and the enactment of a provision prescribing that it applies to statutes to which the Ordinance had been applicable before its repeal, provide no warrant for concluding that s.7 abolished the doctrine of necessary implication. So to conclude would be tantamount to prescribing that s.7 was exempted from the imperative directions of s.3(2). It is obviously beyond the competence of this Court to so prescribe. If the legislature wished to so provide it would have been very easy for it to say so in plain words. Moreover, the construction contended for by counsel for the appellant, introduces and sustains a conflict between the two sections, whereas the construction which Mr. Daly proposed and which I favour, not only avoids the conflict but makes for their harmonious and congruent operation on all enactments. In accordance with well settled principles

therefore, the former must be rejected and the latter preferred.

It was also contended that s.3 of the 1962 Act, being a general provision, could not override s.7 thereof which was a special provision, and with which it was in conflict. If as I have held however, the conjoint effect of ss.3 and 7 is to preserve and continue the rule of construction formulated in s.37 of the Ordinance, then the question whether one section conflicts with the other and which should prevail does not arise for consideration.

Kelsick, J.A. has drawn attention in his judgment to enactments corresponding to ss.3 and 7 of the 1962 Act. In particular, he referred to the Interpretation (Northern Ireland) Act 1954, and a commentary thereon in the Northern Ireland Law Quarterly Vol.16 No.2 at p.218. I had the advantage of reading a photocopy of the author's comments, but I am unable to accept his opinion that the Act had set to rest the doctrine of necessary implication in Northern Ireland statutes. From my reading of his commentary, it appears to me that his opinion was formed without giving any or sufficient consideration to the effect of s.2(1) and 2(3) on s.7 of that Act, all of which are in almost identical terms as ss.3(1), (2) and 7 of the 1962 Act.

I pass on then to consider the question, whether it could be said that the 1965 Act binds the Crown. I accept that no formula is necessary to be inserted in a statute to achieve such a result, but except for two sections in the 1965 Act dealing with industrial agreements and disputes, I have been hard put to find any express statement therein that it binds the Crown. It was contended that the long title was tantamount to such a statement. That title however, shows that the Act was passed to achieve four objectives as follows :

(1) "to make provision for the classification of the Police Service."

(2) "to provide a procedure for the settlement of disputes between the Government and the Police Service."

(3) "to provide for matters concerning the relationship between the Government and the Police Service."

(4) "to consolidate, amend and revise the law relating to the Police Service and for matters connected with and incidental thereto."

In my judgment, the objectives set out in that title, fall woefully short of anything which can reasonably be interpreted or accepted as such an express statement. I therefore reject the contention that anything in the nature of, or amounting to, an express statement that the Crown is bound thereby is contained in the long title.

In ss.16 and 20 of the 1965 Act however, provision is made to regulate and control the relationship between Government and the Public Service with respect to their industrial relations. By s.16 it is provided that -

"16. Where the Department and the appropriate recognised association reach agreement on any of the matters specified in subsection (1) of section 12, the agreement shall be recorded in writing and shall be signed by the Chief Personnel Officer on behalf of the Minister of Finance and shall be binding upon the Government and the police officers to whom the agreement relates."

If there is failure to reach agreement, provision is made for the industrial dispute arising therefrom to be referred for final resolution by a Special Tribunal, whose award thereon is binding not only on the Government, but on all police officers to whom it relates, for the period specified in the award, being not less than five years. This is prescribed by s.20(1) in the following terms :

"20(1) An award made by the Special Tribunal under section 19 shall be binding on the parties to the dispute and on all police officers to whom the award relates and shall continue to be binding for a period to be specified in the award, not less than five years from the date upon which the award takes effect."

These two sections furnish a striking example of what can clearly be described as

express statements binding the Crown. But the fact that the Crown is named in these two sections does not necessarily, or for that reason, extend to it the operation of the rest of the 1965 Act. Indeed, that fact furnishes good ground for inferring, as Mr. Hosein contended, that the other parts of the 1965 Act were excluded from the express statements made in those two sections. That principle of interpretation was propounded in Perry v. Eames (1891-4) All E.R. Rept.110, 1103 where Chitty, J. held that the Crown not being named in s.3 of the Prescription Act (1832) (which dealt with easements of light), was not bound by that section even though it was bound by ss.1 and 2 thereof, wherein it was named. That principle was referred to and approved by the Court of Appeal in Wheaton v. Maple and Co. (1893) 3 Ch.48. For a further example of its acceptance and application see Anglo-Saxon Petroleum Co. Ltd. v. Lords Commissioners of the Admiralty (1947) K.B.794, where it was held that although s.1 of the Merchant Shipping (Salvage) Act 1940 conferred on the Crown the right to claim for salvage services, it did not have the effect of imposing on the Crown, a corresponding liability for performing those services negligently.

The question which therefore arises is whether from the wording of the provisions other than ss.16 and 20(1) of the 1965 Act, it can be irresistibly inferred that the Crown is bound thereby. In my judgment, it is a necessary implication from the statement in the long title that it is an Act to make provision for matters concerning the relationship between the Government and the Police Service and the actual provision in the body therein concerning those matters, that the legislature intended that the 1965 Act should bind the Crown. I accordingly hold that it does. This conclusion however, does not determine the question whether the appellant, who was indisputably a servant of the Crown dismissible at pleasure prior and up to the enactment of the 1965 Act, remained subject to that implied term after it was passed.

To answer that question, one must be able to point to a provision in the 1965 Act which can be said with certainty to have varied or altered that implied term of employment. This is so because, it must be kept steadily in view, as I sought to demonstrate in Attorney General v. Toby No.48 of 1973 (C.A.) dated 4 March 1976, that the

implied term under reference can only be varied by statute. If the 1965 Act therefore, has in fact provided for a higher or different tenure, the Crown cannot be heard to say that it is not bound thereby; but if it has not I will be obliged to hold that the implied term has remained intact and exposed the appellant to the peril of dismissibility at the pleasure of the Crown.

The provisions of the 1965 Act which are germane to this question are these:

> "9. A police officer shall hold office subject to the provisions of this Act and any other enactment and any regulations made thereunder and, unless some other period of employment is specified, for an undeterminable period.
>
> 10. A police officer who is appointed to an office in the police service for a specified period shall cease to be a police officer at the expiration of that period.
>
> 61. The modes by which a police officer may leave the Police Service are as follows :
>
> (a) on dismissal or removal in consequence of disciplinary proceedings;
>
> (b) on compulsory retirement;
>
> (c) on voluntary retirement;
>
> (d) on retirement for medical reasons;
>
> (e) on resignation;
>
> (f) on the expiry or other termination of an appointment for a specified period;
>
> (g) on the abolition of office."

In reference to these provisions the learned judge had this to say :

> "Bearing in mind that one of the purposes of the Act set out in its long title is to provide for matters concerning the relationship between the Government and the Police Service, (to adapt the language of the Privy Council in Gould v. Stuart

(supra) 'the provisions of the Police Act, being manifestly intended for the protection and benefit of police officers are inconsistent with importing into their contract the term that the Crown may put an end to it at its pleasure.' Take section 9 of the Act, for example. This section specifically and expressly provides that subject to the provisions of the Act . . . a police officer, unless some other period of employment is specified shall hold office for an indeterminable period. Surely this must be a provision which is 'inconsistent with importing into a police officer's contract of service the term that the Crown (Government) may put an end to this contract at its pleasure.' Look then at the provisions of section 61, subject to which section 9 has effect. This section sets out seven (7) circumstances in which a police officer may leave the Police Service, none of which include dismissal at pleasure. On the contrary, it would seem that the common law term is expressly excluded from the list. What the provisions section 9 and 10 read together seem to me to do is to achieve a higher and more secure tenure of office than which existed prior to the coming into operation of the Act. 'What I conceive the true position to be is that whereas prior to the coming into operation of the Statute a police officer apparently was dismissable at the pleasure of the Crown, after the coming into operation of the Act, unless one of the events described in paragraphs (b) to (g) of section 61 of the Act takes place, a police officer may be dismissed or removed from office only in consequence of disciplinary proceedings and not otherwise. This is what Sir Richard Crouch said in delivering the judgment of the Judicial Committee of the Privy Council at page 576 of Gould v Stuart (supra) :"

After quoting extensively from that judgment, he concluded thus :

"I can see no material difference between the point which I have to determine and the point determined by the Privy Council in the case quoted above. Again I state my determination

"to be that when an Act of Parliament expressly provides for the method of dismissal of a servant of the Crown, the Crown's common law right to dismiss that servant at its pleasure is thereby abrogated."

It was principally on the above-quoted sections of the 1965 Act and the decision in Gould v Stuart (1896) A.C.575, that Mr. Daly for the respondent relied, to make good his point that the 1965 Act had varied the implied term of dismissibility at will, which previously applied to the respondent's employment.

It is not in dispute that the respondent's period of employment was for an indeterminable period. But all that the word 'indeterminable' means in this context is that the period is not ascertained or fixed. Yet the learned judge held that that period was inconsistent with importing the implied term into the respondent's contract of employment. I cannot see how it is. On the contrary, the converse of that proposition seems to me to be the more logical conclusion.

The learned judge then pointed out that s.61, subject to which s.9 had effect, had specified seven circumstances in which a police officer may leave the service and that the implied term of dismissibility at pleasure was omitted from those specified. From that specification and omission, he extracted this principle: that where an Act of Parliament expressly provides for the method of dismissal of a servant of the Crown, the Crown's common law right to dismiss at pleasure is abrogated.

I do not consider that the omission of dismissibility at pleasure from s.61 has any significance. Nor does it provide by itself, any justification for the conclusion that the implied term was abrogated thereby. In my judgment, that implied term can only be effected if it can be said that the provision in para.(a) of s.61 relating to dismissal in consequence of disciplinary proceedings, is inconsistent therewith.

In reference to ss.9 and 10, the learned judge expressed the view that they had provided for "a higher and more secure tenure of office than that which existed prior to the enactment of the [1965] Act." But unless

para.(a) of s.61 had effected this result, that conclusion cannot in my opinion be justified. Section 9, as I have already noted, deals with an unfixed period of employment while s.10 refers to the determination of an employment after the expiration of any period that may be fixed. In this connexion, it should be noted that the 1965 Act itself has not specified any fixed period for the employment of a police officer. In sum therefore, the learned judge held that (1) barring the events specified in para.(b) to (g) of s.61 of the 1965 Act, a police officer may be dismissed or removed from his office only in consequence of disciplinary proceedings and not otherwise; and (2) the express provision of the method of dismissal in s.61(a) abrogated the implied term of dismissibility at pleasure.

The crucial question raised by the learned judge's conclusions therefore is whether the provision contained in s.61(a) has altered or abrogated the implied term, or put another way, is inconsistent with the right of dismissibility at pleasure.

If the principles enunciated in Gould v Stuart (supra) are applicable to the instant case then the decision of the learned judge on the point under reference cannot, in my view, be faulted. It is necessary therefore, to understand what was in issue in that case and what was decided by the Privy Council. That was a case in which the New South Wales Civil Service Act 1884, (the 1884 Act) made specific provisions in the body of the Act itself for several matters, including the conditions which had to be observed, to discipline or effect the dismissal of an officer. For example, provision was made, inter alia, in s.32 for the suspension of an officer by the Minister, or a confirmation or removal of such suspension if made by an officer; in s.33, for reporting a confirmed suspension to the Governor who was then required to call upon the officer to show cause against his suspension, reduction in rank, punishment by fine or dismissal; in s.34, for punishment by fine of an officer who is negligent or careless in discharging his duties; in s.35, for the summary dismissal of officers convicted for felony or any infamous offence; and in s.37, for dismissal in case of dishonourable conduct or intemperance.

No such provisions however are to be found in the 1965 Act. This at once distinguishes the instant case from Gould v Stuart (supra). In Fletcher v Nott (1938) C.L.R.55 Latham, C.J. in commenting on the 1884 Act said that it contained -

> "a series of statutory provisions which brought the matter of the dismissal of any officer through the Minister to the Governor and they included provisions which specified in detail what the Governor /i.e.to say the Crown/ could do. There are no such provisions in the rules made under the Act."

The Act mentioned in that passage, was a reference to the Police Regulations Act 1899, under which rules were made specifying the conditions of admission to the Police Service and the procedure for inquiring into disciplinary charges. The distinction drawn between the 1884 Act and the 1899 Act of New South Wales by Latham, C.J. can also be drawn between the 1884 Act and the 1965 Act. I accordingly adopt it for present purposes. I also agree with the distinction made between the two enactments and the conclusion reached by Kelsick, J.A., save that I do not accept that the absence of an express statement in the 1965 Act binding the Crown is a relevant factor in support of his conclusion. In my judgment therefore, Gould v Stuart (supra) does not assist the respondent's case, and was wrongly held by the learned judge to support his decision that the provisions of the 1965 Act, like the provisions of the 1884 Act had made an exception to the rule of dismissibility at pleasure, that is to say, had abrogated the implied term of the respondent's employment with the Crown.

In Dunn v Reg (1896) 1 Q.B. 116 Kay, L.J. in reference to the implied term likened the position of a civil servant to that of a military officer and said :

> "It seems to me that the continued employment of a civil servant might in many cases be as detrimental to the interests of the State as the continued employment of a military officer. It is impossible not to see that in remote places on the frontiers of our territory the question of peace or war might depend

"on the action of a civil servant on the spot; and it seems to me that there is as much ground for the possession by the Crown of an unrestricted right of dismissal in the case of civil service as there is in the case of military service. When the authorities are referred to, they appear to be distinctly to the effect that there is such a right of dismissal. Besides the case in the House of Lords in which the expressions used by the learned Lords seem to be generally applicable to the service of the Crown, there is the case of Shenton v. Smith (1895) A.C. 229 which was not a case of military service."

As reported in (1896) All E.R. Rep. 907, 909, Lord Herschell on the other hand, said that the appointments of such officers-

"are made for the public good /but/ it is essential for the public good to be able to determine the appointments at pleasure, except in cases where, for the public good, it has been determined that some other tenure is better."

These observations apply with equal, if not greater force, to members of the Police Service who, as I have noted earlier in this judgment, are invested with vast powers and responsibilities to preserve the peace and safeguard internal security. To remove this implied term from their contracts of employment is a serious matter, since the removal could gravely imperil the discipline of the Service and result in dire consequences for order and internal security in the country. Accordingly, it is not a step which ought to be taken without mature deliberation and due consideration for the public good. Hence the requirement, no doubt, that only a statute can abrogate the term.

The enactment relied on therefore, must plainly express the abrogation or must be couched in language from which the abrogation can clearly be spelled out, or from which it can be irresistibly inferred. (See in this connexion Attorney General v Hancock (1940) 1 All E.R. 32, 34 per Wrottesley, J.).

All that s.61 says in this regard is

that a mode by which a police officer may leave the Service is "on dismissal or removal in consequence of disciplinary proceedings." In my judgment, that provision is not inconsistent with dismissibility at pleasure. Moreover, it is not couched in language from which it can be inferred that for the public good a higher or different tenure has been substituted. The provision is intended to ensure against and in fact inhibits arbitrary or capricious action, but such a safeguard is no warrant for concluding that a different or higher tenure was substituted. This is the clear effect of the decisions in Dunn v Reg. (supra); Shenton v Smith (1895) A.C.229; Ryder v Foley (1906) 4 C.L.R. 422; Fletcher v Nott (1938) 60 C.L.R.155 and Venkata Rao v Secretary of State for India (1937) A.C. 248, all of which have been adequately reviewed by Kelsick, J.A. in his judgment and on which I find it unnecessary to comment further.

In this connection, Mr. Daly referred us to Mallock v Aberdeen Corporation (1971) 2 All E.R. 1278. In that case the Act of 1882 stipulated, inter alia, that a resolution of the education authority for the dismissal of a certificated teacher shall not be valid, unless written notice of the motion to dismiss him had been sent to the teacher not less than three weeks before the meeting at which the resolution is adopted. That Act was preceded by an explanation of its purpose which was, "to secure that no certificated teacher appointed by and holding office under a School Board in Scotland shall be dismissed from such office without due notice to the teacher and due deliberation on the part of the Board." It was held, inter alia, by a majority in the House of Lords, that the implication to be drawn from the stipulation aforesaid, was that a teacher was accorded the right to be heard in appropriate circumstances. The dismissal in that case was made without affording the teacher that right. And even though he held his office during the pleasure of the Authority, the House of Lords ruled that the dismissal was a nullity. The decision in that case turned on the failure to observe the principles of natural justice provided for in the Act. As Lord Wilberforce said at p.1296 id :

"the legislature intended to preserve the status of a teacher as one holding a public office only to be dismissed after due process, in 1882 described as due deliberation by a body of elected members."

Also relevant on this point is Maharaj v Attorney General (1977) 1 All E.R. 411.

Ridge v Baldwin (1963) 2 All E.R. 66 to which we were referred, was also a case dealing with the observance of the principles of natural justice. It is sufficient to say that the observance of these principles has nothing to do with the crucial question to be answered in the instant case, namely, whether the respondent held his office at the pleasure of the Crown or for a different tenure.

For these reasons I hold that there is no provision in the 1965 Act, which alters or varies expressly or by implication, the implied term of employment of the respondent that he holds his office during pleasure. In my judgment the expression "dismissal in consequence of disciplinary proceedings" is not inconsistent with dismissibility at pleasure and, in any event, it is not an expression from which the irresistible inference can be drawn that for the public good a higher or different tenure was provided for thereby.

In sum therefore, my conclusions are these: (a) the 1962 Act has preserved the doctrine of necessary implication as formulated in s.37 of the Ordinance; (b) From the wording of the long title of the 1965 Act and its provisions "concerning the relationship between the Government and the Police Service" it is a necessary implication that the Crown is bound thereby; and (c) the stipulation in s.61(a) of the 1965 Act that "dismissal or removal in consequence of disciplinary proceedings" is one of the modes by which a police officer may leave the service, has not altered the implied term of dismissibility at pleasure inherent in the respondent's contract of employment with the Crown, since it cannot be irresistibly inferred therefrom that for the public good a higher or different tenure of employment was substituted.

On the pleadings and before the learned judge the respondent claimed that the three offences of which he was charged and convicted

did not exist in law at any material time. The contention was that the purported creation of them by the Police Service Commission Regulations 1966 (the 1966 Regulations) was ultra vires the Order on the ground that the power to create offences for which members of the Police Service were triable, resided in the Governor General alone, by virtue of s.13 of the Order. The learned judge rejected the contention that s.13 of the Order invested the Governor General with any such power and as I agree entirely with his reasons for doing so, I endorse and quote the relevant portion of his judgment thereon:

> "As I see it", he said, "the purport and intent of section 13 is to enable the Governor General by Order to ensure that members of a Commission carry out these functions fairly and without bias, ill-will or corruption. In this context the Governor General could create criminal offences such as bribery, disclosure of confidential information, efforts to influence a Commission, and similar offences and could prescribe both the mode of trial of these offences and the penalties to be attached thereto. (q.v. Regulations 11 to 13 of the 1961 Regulations). The important words of the section seem to me to be 'connected with the functions of (any) Commission.' that is to say connected with the appointment, promotion, transfer, confirmation, removal and discipline by the Commission of persons subject to its jurisdiction. I can see nothing in this section (i.e. section 13 of the Constitution) enabling the Governor General to create offences or charges of a disciplinary nature against persons who are subject to the disciplinary control of the Commission."

The three leading principles applicable to the construction of statutes were re-stated by Lord Salmon in the recent case of Johnson v Moreton (1978) 3 All E.R. 37, 40 in these terms :

> "(1) If the language of a statute be plain, admitting of only one meaning,

"the legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results: Vacher & Sons Ltd. v London Society of Compositors (1913) A.C.107, 121 per Lord Atkinson.

(2) The courts have no power to fill a gap in a statute, even if satisfied that it had been overlooked by the legislature and that if the legislature had been aware of the gap, the legislature would have filled it in: Gladstone v Bower (1960) 3 All E.R.353; Brandling v Barrington (1827) 6 B &C 467, 475 per Lord Tenterden, C.J.

(3) If the words of a statute are capable, without being distorted, of more than one meaning, the courts should prefer the meaning which leads to a sensible and just result complying with the statutory objective and reject the meaning which leads to absurdity or injustice and is repugnant to the statutory objective: River Wear Commissioners v Adamson (1877) 2 App. Cas. 743, 763 per Lord Blackburn; Attorney General v H.R.H.Prince Ernest Augustus of Hanover (1951) 1 All E.R. 948, 953 per Viscount Simonds; Stock v Frank Jones (Tipton) Ltd. (1978) 1 All E.R. 945, 953 per Lord Simon of Glaisdale."

While these principles can be of considerable assistance in interpreting a written Constitution, it is important to remember that we are concerned here with the interpretation of a constitutional instrument of a particular kind, namely, one manifesting a pattern and style of draftsmanship, which Lord Diplock feliciously described, as "the Westminster model" in Hinds v The Queen (1976) 1 All E.R. 353, 360. In construing such an instrument therefore it is necessary to keep in view, not only Lord Salmon's re-statement of the three leading principles applicable to the interpretation of statutes, but essential to superimpose on that view, the principles applicable to the interpretation of constitutions on the Westminster model. These were authoritatively enunciated by Lord Diplock in Hind's case (supra), and I would venture to summarize them as follows :

(1) A written constitution affecting legal rights or obligations, falls to be construed in the light of its subject matter and of the surrounding circumstances with reference to which it was made.

(2) In seeking to apply to the interpretation of constitutions on the Westminster model, judicial opinions about other constitutions which differ in their express provisions from the former, care must be taken to distinguish between judicial reasoning based on the express words used in a particular constitution and reasoning which depended on what, though not expressed, is nonetheless a necessary implication from the subject matter of the constitution, its structure and the circumstances in which it was made.

(3) All the written constitutions granted to former colonial or protected territories by an Act of the Imperial Parliament or Order in Council have two things in common which have an important bearing on their interpretation, viz: (a) they differ fundamentally in their nature from ordinary legislation passed by Parliament of a sovereign state, in that, they embody what is in substance an agreement reached between representatives of the various shades of political opinion as to the structure of the organs of government through which the plenitude of the sovereign power of the state is to be exercised thereafter; and (b) they were negotiated as well as drafted by persons nurtured in that branch of the common law of England that is concerned with public law and familiar in particular with the basic concept of the separation of legislative, executive and judicial power as it had been developed in the unwritten constitution of the United Kingdom.

(4) Being evolutionary and not revolutionary, the new constitutions provided for continuity of government through

successor institutions which remained similar in character to those which they replaced. Because of this a great deal was left to necessary implication and consequently the absence of express words to that effect does not prevent the legislative, the executive and judicial powers of the new state being exercisable exclusively by the legislature, by the executive and by the judicature respectively; (emphasis added) and

(5) Having regard to the characteristics of such constitutional instruments and the principles applicable thereto, it would be misleading to apply the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law and particularly those applicable to taxing statutes which require express words to impose a charge on the subject.

Kelsick, J.A. has demonstrated in his comprehensive review of the history of the legislation preceding the enactment of the 1962 Constitution on 31 August 1962, that prior and up to that date, the power of exercising disciplinary control over Gazetted Officers, of whom the respondent was one, resided in the Governor. As I accept his conclusion as sound it would be sheer supererogation on my part to make my own analysis of those provisions. I only note here that the exercise of such control over these officers was effected both by specifying to them the conduct which constituted breaches of discipline and enforcing disciplinary sanctions against defaulters for such breaches.

The question therefore is whether that power in its plenitude was transferred to the Police Service Commission under s.99 of the Constitution. It was not contested and rightly so that the power to enforce disciplinary sanctions against defaulters was vested in the Commission by s.99, but it was contended that power to specify the conduct which constituted breaches of offences was not. Express words, it was said, or a provision from which it could be clearly inferred, was essential to achieve that result. That submission in my view, and the learned judge's acceptance of it, failed to take into account sufficiently, or at all, the principles enunciated by Lord Diplock in the

Hind's case (supra). Adapting in particular the fourth of those principles as I have stated it, I hold that the transfer of the power to specify conduct which constituted breaches of discipline was left to necessary implication, and consequently, the absence of express words to that effect is no justification for saying that that power was not transferred to the Commission. In my judgment, s.99 effectively and completely transferred that power to the Commission and that it thereupon became entitled to exercise the powers of the Governor whom it clearly replaced.

What then is the nature and scope of this power? The learned judge in his judgment expressed his views on this question in these terms :

> "The Police Service Commission from the date of its establishment until possibly 1966 was authorised by the Constitution to exercise disciplinary control in respect of offences created by statute or by regulations made by the Governor General under statute. All that the Constitution (1962) did in this respect was :
>
> (a) in section 99 to re-establish the Commission as the disciplinary controlling body; and
>
> (b) to transfer to the Commission the power formerly vested in the Governor to make regulations for its own procedure.
>
> It did not purport to invest any authority other than Parliament with the power to create disciplinary offences or to put it another way, it did not purport to remove from Parliament the powers which Parliament had prior to 1966 exercised under its constitutional right to make laws. If that had been the intention, the Constitution would have said so expressly.
>
> Parliament by the /1965/ Act recognised that it would have to make regulations for the training and discipline of the Police Service and spelled the necessity out in s.65(1)(j) of the/1965/ Act to

"enable the Governor General to make regulations for the discipline of the Police Service and to preserve only regulations which were made under the /1965/ Act and such other regulations in operation on the date of the coming into force of the /1965/ Act. If therefore the Commission without the sanction of the Constitution purported to create or define disciplinary offences any such effort must clearly be ultra vires the Constitution."

In the event, he answered the question by saying that he was of opinion -

"(a) that only the Governor General acting under the provisions of s.65 of the /1965/ Act or under the provisions of the former Police Ordinance has the power to create disciplinary offences in respect of Police Officers;

(b) that all regulations purported to have been made under s.102 of the Constitution under which /the respondent/ was supposedly charged, are void, null and of no effect."

If by the expression "disciplinary offences" the learned judge meant criminal offences or offences against the public law, then I agree entirely with him that the purported creation by the Commission of such offences was ultra vires the Constitution. It would have been a clear usurpation of power by the Commission to do so since the Governor, the Commission's predecessor, had no such power under the Ordinance, nor had the Police Service Commission established under s.66B of the Trinidad and Tobago (Constitution) Orders in Council 1950 to 1959. The only instance in which the Governor was given power to create criminal offences and to provide for their punishment, was under s.66G(1)(f) of the said Orders in Council, but this power was limited to the creation and punishment of offences connected with the functions of the Commission. The said Orders in Council were repealed by the Trinidad and Tobago (Constitution) Order in Council 1961 but that power remained vested in the Governor by virtue of s.86(3)(f) thereof.

This was a new legislative power

expressly delegated to the Governor by the Queen in Council and because of this, it could not be said that this new power to legislate for criminal offences passed to the Commission under what I have identified earlier as the fourth principle of construction propounded by Lord Diplock in Hind's case (supra). Hence the provision in s.13 of the Trinidad and Tobago (Constitution) Order in Council 1962, which retained that power in the Governor and provided for its exercise by him under the Constitution, which repealed the Orders in Council aforesaid.

The Commission however did not usurp any power in making the 1966 Regulations, since it did not create thereunder any criminal offence or any offence against the public law. What it did was to define what was misconduct on the part of police officers and police officers alone, to stipulate the disciplinary sanctions or penalties that breaches thereof would attract, and to prescribe the procedure for discharging its functions and dealing with disciplinary charges. It is manifest, that none of these so called disciplinary offences bear any of the characteristics, elements or sanctions applicable to a criminal offence, or an offence against public law, and moreover, the power which the Commission exercised to create them and to provide penalties for their breaches, was no greater than and well within the power exercised by its predecessor, which it replaced.

It was attractively argued by Mr. Daly however, that the prescription of disciplinary offences by the Commission under the 1966 Regulations constituted the exercise of a legislative power which s.99 did not confer upon it.

In support of that submission he referred to Professor De Smith's Judicial Review of Administrative Actions (2nd Edn.) 57 where, in reference to the distinction between legislative and administrative acts, the learned author after observing that it is usually expressed as being a distinction between the general and the particular, said:

> "A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy."

But after specifying five criteria by which the distinction may be detected and the legal consequences which flow from the distinction, the learned author at p.58 made this significant comment :

> "Since the general shades off into the particular, to discriminate between the legislative and the administrative by reference to these criteria may be pecularly difficult task and it is not surprising that the opinions of judges as to the proper characterisation of a statutory function are often at variance."

To illustrate the difficulty reference was made therein to the conflicting views of the Court of Appeal in Blackpool Corporation Council v. Baker (1948) 1 K.B. 349 and in Lewisham Borough Council v. Roberts (1949) 1 K.B. 608. In the former case, Scott, L.J. employed forceful language to condemn bureaucratic behaviour, and to express the opinion that a Minister's instructions contained in circulars restricting certain powers delegated to local authorities, where legislative in character and effect; that in the latter case, where power was delegated, to a local authority to acquisition a part of one particular house, the Court of Appeal held the delegation to be an administrative as opposed to a legislative act, and critised the opinion expressed by Scott, L.J. As Dr. H.W.R. Wade rightly remarked in his learned monograph on Administrative Law (2nd Edn) 308 -

> "/This/ shows how even judges differ in their opinions of what is legislation, and how there are only differences of degree to mark it off from the general run of administrative activity"

But be that as it may, the case of The Queen v. Whyte ex parte Byrnes (1964) 109 C.L.R. 665, in particular, and the dictum of Megaw, L.J. in Reg. v. Board of Visitors of Hull Prison Ex Parte St. Germain and Others (The Times, London, 4 Oct, 1978 p. 13), quoted by Kelsick, J.A. and to whom I am indebted for drawing them to my notice, clearly establish the converse of Mr. Daly's submission, and supports the contention of Mr. Hosein with which I agree, that the disciplinary offences contained in the 1966 Regulations are not criminal offences or offences against the public law but are in substance and effect a domestic code of conduct for police officers made in the exercise of an executive as opposed to a legislative power, for the purpose of enabling the Commission to discharge its functions of removing, and exercising disciplinary control over, such officers.

A point which has disturbed me is, that the code of conduct aforesaid, was made with the consent of the Prime Minister under s.102(1) of the Constitution. Authority is conferred under that subsection for the Commission to make regulations with his consent for the purpose of regulating its procedure but there is no authority thereunder for the prescription of a code, or for such a prescription either with or without his consent. It seems to me therefore that the code prescribed in the 1966 Regulations with the consent of the Prime Minister was improperly made and published under the authority of s.102(1).

As against this however, it has to be borne in mind that the power to charge the respondent, who was an Asst. Superintendent at the material time with breaches involving neglect of duty and doing without reasonable excuse, an act amounting to failure to perform in a proper manner a duty imposed on him as a police officer, (see the finding

of the learned judge), and to discipline him therefor if proved, was a fundtion vested in the Governor immediately before the enactment of the Constitution. (See s.66C of the 1959 Order in Council and s.82 of the 1961 Order in Council). For the purpose of exercising that function, the Governor was under no prior obligation to prescribe disciplinary offences or to publish a code of discipline. He could have exercised his disciplinary powers without any such prescription or publication. As this was the power and function which the Commission inherited from the Governor under s.99 of the Constitution the respondent has no good ground for complaint. Moreover he was not prejudiced by the notification to him that the breaches aforesaid were contrary to Regulation 74(1)(a) and 2(d) of the 1966 Regulations.

As these breaches were specified with certainty and communicated to him, the notification that they were contrary to Regulations 74(1)(a) and 2(d) aforesaid was immaterial, or mere surplusage, as Kelsick, J.A. has put it. Subject therefore to the consequences of my conclusion that the respondent was a servant of the Crown dismissible at pleasure, my opinion on the preliminary point under this head is that the Commission at all material times had exclusive power under s.99 of the Constitution to define the matters which constituted disciplinary breaches or offences in the Police Service; that the three offences with which the respondent was charged were validly defined or created thereunder by the Commission, and that the statement in the charges to the effect that they were contrary to Regulations 74(1)(a) and 2(d) of the 1966 Regulations, was mere surplusage and accordingly immaterial.

I move on now to consider the third point, viz: whether the respondent's action is maintainable in view of ss.99 and 102 of the Constitution. I must of necessity approach this question on the footing that I have answered the first and second questions against the respondent. It follows from these answers that the Commission was clearly exercising a function vested in it when it charged the respondent with the three disciplinary breaches or offences under reference and removed him from the Police Service thereafter. The respondent is

accordingly precluded by s.102(4) of the Constitution from instituting the proceedings herein. I had occasion to discuss the principles applicable to the construction and application of that subsection in Harrikissoon v Attorney General (C.A. of Trinidad and Tobago) No.59 of 1975 dated 29 March 1977, and for present purposes, it is not necessary for me to repeat in this judgment what I said then. I would merely state that as at present advised I do not wish to add anything to the views I expressed in that case. I have considered what Phillips, J.A. has said on this point and I should like to say that if his answers to the first and second questions are correct then it seems to me that his conclusion on the third question is also correct.

The last question arose out of an intervening event, namely, the enactment of s.18 of the Republic of Trinidad and Tobago Act 1976, the terms of which have been reproduced in the judgments of Phillips and Kelsick, JJ.A. However this Court as constituted today, had occasion in Faultin v Attorney General (C.A. of Trinidad and Tobago) No.1 of 1975 dated 13 December 1976, to consider the meaning and effect of that section on laws passed prior to its enactment and inconsistent with the Constitution. It held that the validation of a law by s.18 of the Act of 1976 aforesaid, is effective only as from the point in time immediately before 1 August 1976, that is to say, the date on which the said Act became operative. It follows that this question which was raised by the Court, is not material to the issues raised in this appeal with respect to the validity or otherwise of the 1966 Regulations and certain provisions of the 1965 Act.

For these reasons I would allow the appeal with costs and dismiss with costs the respondent's cross appeal whereby he sought a variation of the judgment of Braithwaite, J. in his favour to include under O.33 r.6 of the Rules of the Supreme Court 1975 an order which would have the effect of determining the action in his favour. A necessary consequence of allowing this appeal on the grounds given herein is that the respondent's action against the appellant must be dismissed with costs and I would so order. There would be an order accordingly.

Isaac E. Hyatali
Chief Justice

Postscript

As a postscript to this judgment I should like to add the following observations. Irrespective of the course which the appellant may be advised to pursue hereafter, it seems to me that the divided opinions expressed on the extremely important questions raised and discussed in this appeal, make it essential in the public interest and for the public good for urgent steps to be taken by Parliament to enact such amendments to the Constitution and such other laws as may be relevant, as would spell out with clarity and more particularly, place beyond debate the precise powers and duties of the Police Service Commission and indeed of the other Commissions established under the Constitution of the Republic of Trinidad and Tobago 1976. As this can quite properly be done without prejudice to accrued and subsisting rights, it would be prudent and eminently desirable in my judgment, for the steps recommended to be implemented with the utmost despatch.

Isaac E. Hyatali

No.12

JUDGMENT OF MR. JUSTICE PHILLIPS

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal
No.68 of 1976

Between

THE ATTORNEY GENERAL OF TRINIDAD & TOBAGO — Defendant/Appellant

And

ENDELL THOMAS — Plaintiff/Respondent

Coram: Sir Issac Hyatali, C.J.
C.E.G. Phillips, J.A.
C.A. Kelsick, J.A.

January 19th 1979

T.Hosein, Q.C. and Ivol Blackman - for the appellant

M.G. Daly - for the respondent

J U D G M E N T

Delivered by Phillips, J.A.:

INTRODUCTION

The questions raised by this appeal are of the highest importance, involving as they do the true nature of the legal relationship that exists between the State (formerly "the Crown") and a particular category of its servants, viz: the members of the Police Service, whose conditions of service are purportedly regulated by the provisions of the Police Service Act, 1965, which came into operation on August 27, 1966. I have used the word "purportedly" because the first issue which falls for determination on this appeal is whether the Act, which was passed by Parliament in December, 1965 in pursuance of its power, contained in s.36 of the former Constitution

of Trinidad and Tobago ("the Constitution") to "make laws for the peace, order and good government of Trinidad and Tobago" and assented to by the Governor-General on behalf of Her Majesty, has the legislative effect which its compliance with the provisions of s.44 thereof would prima facie confer upon it.

The questions under reference have received lengthy examination by counsel for the parties and are such as require the most careful and searching analysis by this Court. They were first subjected to judicial scrutiny as a result of High Court Action No.2227 of 1972 commenced by writ of summons issued by the plaintiff/respondent on October 18, 1972. By his statement of claim which was delivered with the writ the plaintiff alleged that he was at all material times a public officer and a member of the Police Service of Trinidad and Tobago, holding the office of Assistant Superintendent. He further alleged that by letters dated August 29, 1970 and September 10, 1970 respectively the Director of Personnel Administration informed him of the decision of the Police Service Commission ("the Commission") to interdict him from the performance of his duties on half pay and to charge him with three disciplinary offences contrary to regulation 74 of the Police Service Commission Regulations, 1966 ("the 1966 Regulations") /Government Notice No.131 of 1966, dated October 15, 1966_7.

Thereafter a tribunal was appointed under regulation 86 to conduct an inquiry into the said charges, particulars of which had been supplied to the plaintiff by the Director's letter of September 10, 1970. On divers days between November 18, 1970 and January 12, 1971 the said tribunal purported to conduct the said inquiry, and by a letter dated August, 1971 the Director informed the plaintiff that the tribunal had found him guilty of all the charges and that the Commission had decided that he should be dismissed from the Police Service under regulation 101 unless he could show good cause why he should not be dismissed.

An application made by the plaintiff under regulation 106 for a review of his conviction was later granted and by a letter dated December 31, 1971 the plaintiff was informed that

"the Commission after considering the report of the Review Board had re-affirmed the findings of the said tribunal that the plaintiff was guilty of the charges as aforesaid but had decided not to dismiss the plaintiff but to remove him from the Police Service in the public interest in accordance with regulation 99 of the Regulations, such removal to take effect after the grant to the plaintiff of vacation leave for which he might be eligible."

In accordance with this decision the Commissioner of Police informed the plaintiff by a letter dated January 13, 1972 that he had 171 days leave accrued to him and that his removal from the Police Service would be effective from August 14, 1972.

The three disciplinary offences with which the plaintiff had been charged and which ultimately resulted in his removal from office were alleged contraventions of regulation 74(1)(a) and (2)(d) of the 1966 Regulations, which purport to be

"Made by the Police Service Commission, with the consent of the Prime Minister, under the provisions of section 102 of the Constitution of Trinidad and Tobago."

Regulation 74 purports to create a large number of disciplinary offences the commission of which exposes a police officer to penalties of various degrees of severity. It is the last of a series of twenty regulations comprising Chapter VII the theme of which is 'Conduct'. The regulation is divided into two paragraphs the first of which is of a general nature and the second of which contains a comprehensive list of nineteen offences, many of which are susceptible of commission in any of several ways particularised in the regulation. At the end of both paragraphs appears the stipulation that a police officer guilty of any disciplinary offence "is liable to such punishment as is prescribed by regulation 101 or by any other regulation." Regulation 101 prescribes a list of eight different penalties that may be imposed by the Commission in consequence of disciplinary proceedings brought against a police officer in respect of an offence. These range in descending order of severity from dismissal to a mere reprimand.

Regulation 75 is the first of thirty-eight regulations constituting Chapter VIII which deals with "Disciplinary Procedure". It reads as follows :

> 75. "A police officer who fails to comply with any regulation, order or directive for the time being in force in the Police Service or with any of these regulations, or commits an offence prescribed in these regulations, shall be liable to disciplinary proceedings in accordance with the procedure prescribed in these regulations."

Regulation 80 purports to vest the Commission with the power of interdiction from duty, with all its attendant consequences, of a police officer for whose dismissal disciplinary proceedings "have been or are about to be instituted".

Regulation 81 relates to the investigation of allegations that may give rise to the laying of disciplinary charges by the Commission and provides (by para.8) as follows :

> (8) "Where the Commission, under section 99 of the Constitution, has delegated to a police officer its duty of deciding under paragraph (6) whether a police officer shall be charged and of charging such police officer with an offence; the reference in paragraphs (4), (5), (6) and (7) to the Commission shall be construed as a reference to that police officer."

The foundation of the plaintiff's case as pleaded in his statement of claim was to the effect that the disciplinary offences of which he had been convicted had no legal validity as the purported creation of them by the 1966 Regulations, was ultra vires the Constitution, void and of no effect. It was alleged that the sole legitimate repository of the power to create such offences was the Governor-General - a situation which existed, it was said, by virtue of section 13 of the Trinidad and Tobago (Constitution) Order in Council, 1962 ("the 1962 Order in Council").

A further and/or alternative plea put forward by the plaintiff is couched in the following terms :

> "the said Tribunal which purportedly derived its authority over the Plaintiff from regulation /86 (1)/ conducted the said inquiry improperly and without regard for the due process of law in that the procedure for such an inquiry prescribed by regulation 81 of the Regulations had not been complied with and/or the Plaintiff was deprived of the rights and/or safeguards given him by the Regulations and in particular regulation 81."

Particulars were given of alleged infringements of regulation 81. After making some additional allegations, which it is not necessary to set out, the plaintiff claimed the following relief :

(1) declarations that :

(a) the said regulations 74, 80, 81, 86, 99 and 101 are ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962, null and void and of no effect;

(b) the said purported interdiction and deprivation /of half pay/ and laying of charges and inquiry and conviction and removal are and were ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962, null and void and of no effect;

(c) the said purported laying of charges and inquiry and conviction and removal are and were ultra vires the Police Service Commission Regulations, 1966, null and void and of no effect;

(d) he is and has at all material times been a public officer and a member of the Police Service holding the office of Assistant Superintendent;

(e) he is and has at all material times been entitled to the full salary, emoluments, rights,

leave and other benefits of the said office and service;

(f) alternatively to (d) that he has been wrongfully dismissed from the said office and service.

(2) Damages for wrongful dismissal.

(3) Costs.

The facts pleaded in the statement of claim were substantially admitted in the defence, the main thrust of which was to refute the allegation that the three disciplinary offences under reference had no legal validity as well as any other allegation as to the impropriety of the proceedings taken against the plaintiff. In particular the substance of the defence is contained in the following pleas put forward in paras. 5, 11 and 12.

Para. 5 affirmed that the three disciplinary offences of which the plaintiff had been convicted were validly created by the Regulations and denied that power to create the said offences resided in the Governor-General only, or at all, by virtue of s.13 of the said Order in Council or otherwise.

By para.11 it was pleaded that

"the plaintiff's action was not maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago."

Para.12 is in the following terms:

"Further and/or in the alternative the Defendant will contend that the Plaintiff was a servant of the Crown dismissible at pleasure."

In reply to the last mentioned allegation the plaintiff pleaded as follows :

"As to paragraph 12 of the Defence the Plaintiff will contend that the Plaintiff was not dismissible at pleasure and/or the power of the Crown to dismiss the Plaintiff at its pleasure is and was at all material

times limited and/or restricted by the Trinidad and Tobago (Constitution) Order in Council, 1962 and/or the Trinidad and Tobago Constitution and/or the Police Service Act, 1965 and/or the Police Ordinance, Chapter 11 No.1 and/or regulations made under the said Ordinance and/or by it being an implied term of the Plaintiff's employment and/or office that he was dismissible only for cause and/or in consequence of lawful and valid disciplinary proceedings and/or in the manner lawfully and validly specified in the said legislation."

The substantial issues between the parties being all questions of law, the defendant took advantage of the procedure prescribed by Order 35, r.2 of the Rules of the Supreme Court, 1946 (the counterpart of O.34, r.2 of the English R.S.C. 1883) and by application on summons obtained from Maharaj, J. an order dated June 18, 1973 to the following effect:

"That the following preliminary points raised in paragraphs 5, 11 and 12 of the Defendant's defence herein be heard and determined in open Court by a Judge of the High Court on or before the hearing of the Summons for directions and/or the setting down of the action on the General List of Cases to be tried:

(1) Whether the power to create offences for which the Plaintiff was triable resides in the Governor-General only or whether the three offences with which the plaintiff was charged were validly and properly created by the Police Service Commission Regulations, 1966 made by the Police Service Commission with the consent of the Prime Minister under section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time.

(2) Whether the Plaintiff's action is maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago.

(3) Whether the Plaintiff was a servant

of the Crown dismissible at pleasure."

Legal argument on these questions was heard in open Court byBraithwaite, J. who delivered a written determination on December 17, 1976. It is against that determination that the defendant has appealed. Like Braithwaite, J., I consider it appropriate to deal first with the third question which I shall hereafter refer to as "the first question", redesignating the first and second questions as the "second" and "third" respectively.

THE FIRST QUESTION

"Whether the Plaintiff was a servant of the Crown dismissible at pleasure"

The correct answer to this question turns basically upon the determination of the issue as to whether the Police Service Act, 1965 has the legislative effect which is normally associated with an Act of Parliament, the supreme law-making authority in the land. This issue arises because, in the submission of counsel for the appellant, the Act does not contain an express statement to the effect that it binds the Crown (now "the State"). Counsel's submission is founded upon s.7 of the Interpretation Act, 1962 ("the Interpretation Act") which provides that -

> "No enactment passed or made after the commencement of this Act /July 19, 1962/ binds or affects in any manner Her Majesty's rights or prerogatives unless it is expressly stated therein that Her Majesty is bound thereby."

It may here be stated, in parenthesis, that it is not in dispute that the appellant was at all material times the holder of a public office, i.e., an office of emolument in the public service, and therefore the holder of an office in the service of the Crown in a civil capacity in respect of the government of Trinidad and Tobago./See s.105 (1) of the Constitution/.

It is necessary at the outset to state the relevant common law rule which is expressed by the learned authors of 36 Halsbury's Laws of England, (3rd edn.), para. 652, as follows :

"The Crown, which means in this connexion not merely the Sovereign personally, but also all bodies and persons acting as servants or agents of the Crown, is not bound by the provisions of any statute unless the contrary is expressly stated or there is a necessary implication that it was intended to be bound. In particular the Crown is not normally bound by a statute imposing a duty or tax.

In the past, attempts were made to classify the cases in which an intention to bind the Crown was to be inferred. It was said, for example, that the necessary implication would arise in the case of any statute made for the public good, the advancement of religion and justice, and to prevent injury and wrong. Generalisations of this nature have received occasional approval in more modern times, but their validity, particularly in so far as they relate to statutes for the public good, has been more often, and more powerfully, doubted, and it is clear that the question whether the Crown is bound by a statute in which express provision is not made is treated today as one to be answered by reference purely to the provisions of the statute in question or the code of which it forms a part."

Numerous statutes dealing with a large variety of subjects have in the past given rise to the question of interpretation as to whether they were intended by necessary implication to be binding on the Crown. In one such case, Province of Bombay v. Municipal Corporation of the City of Bombay & anor. (1947) A.C.58, which was determined by the Judicial Committee of the Privy Council on appeal from the High Court of Bombay it was held that :

(1) "the general principle applicable in England in deciding whether the Crown is bound by a statute - that it must be expressly named or be bound 'by necessary implication' - applies also to Indian legislation;

(2) The Crown is not bound, either expressly or by necessary implication,

by s.222, sub.s.1, and s.265 of the City of Bombay Municipal Act, 1888, which in effect give the Municipality power to carry water mains for the purposes of water supply through, across or under any street and 'into, through or under any land whatsoever within the city.' "

Delivering the judgment of the Board, Lord Du Parcq said (at p.63) :

"In the recent case of Attorney-General v. Hancock, /(1940) 1 K.B. 427, 435/ Wrottesley J. cited a series of decisions in which the Crown was held not to be bound although the statute in question was clearly for the public benefit. A plain and striking example is the case which their Lordships have already cited, Gorton Local Board v. Prison Commissioners, /(1940 2 K.B. 165 (n), 168/, where it was held that a by-law, made under the Public Health Act, 1875, and clearly designed to safeguard the health of the public, did not bind the Crown, and gave the local board no control over one of His Majesty's prisons. In the present case the High Court disposed of the submission by a finding that, on the material before them, it was not shown to be for the public good that the Crown should be bound by the Municipal Act. This is, perhaps, not a wholly satisfactory way of dealing with the respondent's contention, which was, not that the court must consider whether it is for the public good that the Crown should be bound by a particular Act, but that wherever an Act is 'for the public good' it must be taken to bind the Crown. Their Lordships prefer to say that the apparent purpose of the statute is one element, and may be an important element, to be considered when an intention to bind the Crown is alleged. If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficient purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound. Their Lordships will add that when the court is asked to draw this inference, it must always be remembered

that, if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words."

In the same case Lord Du Parcq had earlier said (ibid. at p.61) :

"The Crown may be bound, as has often been said, 'by necessary implication'. If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the legislature that the Crown should be bound, then the result is the same as if the Crown had been expressly named. It must then be inferred that the Crown, by assenting to the law, agreed to be bound by its provisions."

The essence of counsel for the appellant's submission was that s.7 of the Interpretation Act had the effect of repealing the common law principle in relation to Acts passed after its commencement, with the result that the Police Service Act, 1965, which is specifically declared by its long title to be

"AN ACT to make provision /(inter alia)7 for matters concerning the relationship between the Government and the Police Service"

is rendered ineffectual for the purpose of achieving what appear to be its express objects in so far as members of the Police Service are concerned and has no legislative effect, except in so far as the Crown is entitled to take advantage of its provisions.

The importance of the issue as to whether the Crown is bound by the Act lies in the fact that if it is not so bound the respondent's position falls to be determined by the Common Law whereby, being a servant of the Crown, he would be dismissible at the pleasure of the Crown.

In support of his submission with respect to the effect of s.7 of the Interpretation Act counsel referred to the express preservation of the common law rule in its application to enactments passed before the commencement of the Act by s.60 thereof which, by providing for the operation of the Schedule to the Act in relation to such

enactments, renders applicable thereto para.1(4) of the Schedule which stipulates that :

> "No enactment passed before the commencement of this Act shall in any manner whatever affect the rights of the Crown unless it is therein expressly provided or unless it appears by necessary implication that the Crown is bound thereby."

This seemingly plausible submission is, however, gravely affected by the operation of s.3(1) of the Act which reads as follows :

> 3.(1) "Every provision of this Act extends and applies to every enactment passed or made before or after the commencement of this Act, unless contrary intention appears in this Act or the enactment."

At the hearing of this appeal a prolonged argument took place with respect to the harmonious construction of the provisons of ss.3(1) and 7 of the Act and para.1(4) of the Schedule set out above. On behalf of the appellant it was contended that this was a proper case for the application of the well-known maxim "generalia specialibus non derogant"and its converse "specialia generalibus derogant", the effect of which, it was said, was to leave s.7, "a special enactment", unaffected by s.3(1) which was described as "a comprehensive enactment". While agreeing that it is comprehensive I would add that it is fundamental to a proper understanding and application of the provisions of the Interpretation Act.

I am unable to accept counsel's contention which, in my judgment, fails to give effect to the clearly expressed object of s.3(1), viz: to oust the application of any provision of the Act to any enactment in any case where a contrary intention appears either in the Act or in the enactment. It is essential to bear in mind that the Act is an Interpretation Act, the function of which is to assist in the interpretation of enactments. It appears to me that to seek to invoke for its construction the rule as to the implied repeal of general provisions in enactments by special provisions relating to

the same subject is contrary not only to the principles upon which that rule is founded (see Craies on Statute Law,7th edn., pp.377-382) but also to the clear intendment of s.3(1) and s.4 of the Act. This section is to the following effect:

> 4. "Nothing in this Act shall be construed as excluding the application to an enactment of a rule of construction applicable thereto and not inconsistent with this Act."

It appears to me that the conjoint effect of these two provisions is to leave intact the paramount common law rule of interpretation firmly founded on the requirements of reason and common sense, viz, that instruments must be construed so as to give effect to their intention. As was said by Lord Watson, delivering his opinion in the House of Lords in Solomon v. Solomon & Co.Ltd. (1897) A.C.22 at p.38 :

> "'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

The Police Service Act, 1965 ("the Police Service Act") came into existence on August 27, 1966, i.e. after the commencement of the Constitution. It repealed and replaced the Police Ordinance, Ch.11 No.1, of the Laws of Trinidad and Tobago. It is described by its long title as

> "AN ACT to make provision for the classification of the Police Service, to provide a procedure for the settlement of disputes between the Government and the Police Service, to provide for matters concerning the relationship between the Government and the Police Service, to consolidate, amend and revise the law relating

to the Police Service and for matters connected therewith and incidental thereto."

It is an enactment passed by the legislative arm of the Government (then "the Crown") for the express purpose (inter alia) of regulating the relations between the "Government" and the "Police Service", i.e. between the Crown and its servants. A perusal of the Act as a whole, including its long title, leads to the irresistible conclusion that the Legislature intended that the Act should have a legally binding effect on those relations. The word "provide" and cognate expressions are normally used by Parliament for the purpose of achieving legally binding results by way of legislation. In my opinion, any suggestion that there is not at least a necessary implication that this was the object of the Act is plainly untenable. No such suggestion was in fact made.

The submission on behalf of the appellant was that the Crown was not bound by the Act because it did not contain an express statement to that effect as required by s.7 of the Interpretation Act. I have no hesitation in rejecting this argument. In my judgment, a statement sufficient for the purposes of s.7 is to be found in the long title of the Act, which "is undoubtedly part of the Act" and which "it is legitimate to use for the purpose of interpreting the Act as a whole and ascertaining its scope."

(See Vacher et al. v. London Society of Compositors, (1913) A.C.107, per Lord Moulton at p.128).

In Ealing London Borough Council v. Race Relations Board /(1972) A.C.342 at p. 361/ Lord Simon of Glaisdale, one of five members of the House of Lords determining an appeal relating to a question of interpretation of certain provisions of the Race Relations Act, 1968, listed what he described as "five principal avenues of approach to the ascertainment of the legislative intention," one of them being that the courts must pay

"particular regard to the long title of the statute to be interpreted (and, where available, the preamble), in which the general legislative

objectives will be stated."

In the light of this principle it appears to me to become manifest that the general legislative objective of the Police Service Act is that the Crown should be bound by its provisions. In any event, there is a clear indication by necessary implication from the language of the Act as a whole of an intention that the Crown should be bound by its terms. This is sufficient for the purposes of s.3(1) and thus renders nugatory the operation of s.7.

Such a construction, it was urged, nullifies the object of s.7 to alter the common law rule in relation to future enactments so as to provide that the Crown should be bound thereby only in cases where an express statement to that effect is contained in the enactment. The answer to this objection is, of course, that it is equally clear that section 3(1) contemplate exactly this result in appropriate cases. The gravamen of the matter is that there is no real incompatibility between s.3(1) and s.7 of the Act. It is obvious that the majority of statutes are of such a nature as not to have a binding effect upon the Crown (now "the State") in the absence of a statement of the kind contemplated by s.7. In cases like the present the fact that the absence of such a statement does not affect the binding nature of the statute in relation to the Crown results from the over-riding effect of s.3(1) in ousting the operation of s.7 for the purpose of carrying out the intention of the Legislature.

This is but one illustration of the cardinal rule that instruments are to be construed as a whole and not in separate bits and pieces. As is stated in Craies (op.cit.) at p.99:

> "'It is not the duty of a court of law', said Selwyn, L.J. in Smith's case [(1869) L.R. 4 Ch. App. 611 at 614] 'to be astute to find out ways in which the object of an Act of the legislature may be defeated'.
>
> This rule of construction, viz. exposition ex visceribus octus, has frequently been recognised and acted upon by courts of law from Coke's

time down to the present day. In Brett v. Brett, (1826) 3 Addams, 210 at 216/ Sir John Nicholl M.R. said as follows :

> 'The key to the opening of every law is the reason and spirit of the law; it is the animus imponentis, the intention of the law-maker expressed in the law itself, taken as a whole. Hence, to arrive at the meaning of any particular phrase in a statute, the particular phrase is not to be viewed detached from its context in the statute; it is to be viewed in connection with its whole context, meaning by this as well the title and preamble as the purview or enacting part of the statute."

In Bywater v. Brandling /(1828) 7 B. & C., 643 at 660/ Lord Tenterden said:

> "'In construing Acts of Parliament we are to look not only at the language of the preamble or of any particular clause, but at the language of the whole Act. And if we find in the preamble or in any particular clause an expression not so large and extensive in its import as those used in other parts of the Act, and upon a view of the whole Act we can collect from the more large and extensive expressions used in other parts the real intention of the legislature, it is our duty to give effect to the larger expressions, notwithstanding the phrases of less extensive import in the preamble or in any particular clause.' "

In Colquhoun v. Brooks, (1889) 14 App. Cas. at 506, Lord Herschell said :

> "It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throws light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act."

I consider that the principles contained in the extracts which I have quoted provide ample justification for the conclusion that the intention of s.3(1) of the Interpretation Act makes it operate in the present case so as to oust the application of s.7. In this connection specific reference should be made to certain sections of the Police Service Act which are obviously intended to confer security of tenure of office on members of the Police Service. They are as follows :

"9. A police officer shall hold office subject to the provisions of this Act and any other enactment and any regulations made thereunder and unless some other period of employment is specified, for an indeterminate period.

10. A police officer who is appointed to an office in the police service for a specified period shall cease to be a police officer at the expiration of that period.

11. A police officer may resign his office by giving such period of notice as may be prescribed by Regulations.

61. The modes by which a police officer may leave the Police Service are as follows :

(a) on dismissal or removal in consequence of disciplinary proceedings;

(b) on compulsory retirement;

(c) on voluntary retirement;

(d) on retirement for medical reasons;

(e) on resignation;

(f) on the expiry or other termination of an appointment for a specified period;

(g) on the abolition of office."

In my opinion, these provisions amply support the learned judge's conclusion which he expressed in the following words :

"Bearing in mind that one of the purposes

of the Act set out in its long title is to provide for matters concerning the relationship between the Government /the Crown/ and the Police Service, to adapt the language of the Privy Council in Gould v Stuart /(1896) A.C.575 at p.576/ 'the provisions of the Police Service Act, being manifestly intended for the protection and benefit of police officers are inconsistent with importing into their contract the term that the Crown may put an end to it at its pleasure.' . . . . . .
. . . . . .
What I conceive the true position to be is that whereas prior to the coming into operation of the Statute a police officer was apparently dismissible at the pleasure of the Crown, after the coming into operation of the Act, unless one of the events described in paragraphs (b) to (g) of section 61 of the Act takes place, a police officer may be dismissed or removed from office only in consequence of disciplinary proceedings and not otherwise."

The general principles governing the question as to the Crown's entitlement to terminate at will the contracts of its servants are conveniently stated in 8 Halsbury's Laws of England, (4th edn.) para. 970, as follows :

"In the absence of special statutory provisions, all contracts of service under the Crown are terminable without notice on the part of the Crown. This is so even if there is an express term to the contrary in the contract, for the Crown cannot deprive itself of the power of dismissing a servant at will, and that power cannot be taken away by any contractual arrangement made by an executive officer or department of state. It has even been held that this rule is only part of the wider principle that the Crown cannot by contract fetter its future executive action."

This statement may be regarded as the product of the distillation of many judicial decisions, several of which emanate from the Judicial Committee of the Privy Council. Thus, in Shenton v. Smith, (1895) A.C.229, Lord Hobhouse, speaking for the Committee,

stated the rule (at pp.234-5) as follows:

> "Unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown but because such are the terms of their engagement, as is well understood throughout the public service."

In Kodeeswaran v. The Attorney General of Ceylon, (1970) A.C.1111 (at p.1118F) Lord Diplock spoke for the Board when he stated that :

> "It is now well established in British Constitutional theory, at any rate as it has developed since the eighteenth century that any appointment as a Crown servant, however subordinate, is terminable at will, unless it is expressly otherwise provided by legislation."

/See also Attorney-General v. De Keyser's Royal Hotel, (1920) A.C. 508/

Counsel for the appellant placed reliance on Fletcher v. Nott, (1938) 60 C.L.R. 55, in which the High Court of Australia affirmed the judgment of the Supreme Court of New South Wales ordering that judgment be entered for the defendant who had been sued by the plaintiff, Fletcher, for damages for wrongful dismissal from the service of His Majesty as a member of the police force of New South Wales. It is sufficient to state my opinion that Fletcher's case is clearly distinguishable from the appellant's case as well as from Shenton v. Smith (supra), as was pointed out by Latham, C.J. (ibid. at p.69).

It seems to me that the long title of the Police Service Act and the sections to which reference has been made lead irresistibly to the inference that it was the intention of the Legislature to abolish the common law rule under consideration. In this connection it is of interest to observe that the terms of s.61 are substantially similar to those of regulation 46, para.(a), of the 1966 Regulations which provides (inter alia) as follows :

> "46. The services of a police officer may be terminated only for the

"reasons stated hereafter :

(a) Where the police officer holds a permanent appointment -

(i) on dismissal or removal in consequence of disciplinary proceedings;

(ii) on compulsory retirement;

(iii) on voluntary retirement;

(iv) on retirement for medical reasons;

(v) on being retired in the public interest;

(vi) on resignation without benefits payable under any enactment providing for the grant of pensions, gratuities or compensation;

(vii) on the abolition of office."

The insertion in this regulation of the word "only" is, in my opinion, merely in consonance with the Legislature's intention, necessarily to be implied from s.61 of the Act, not to preserve the common law rule whereby the Crown had been entitled to dismiss police officers at its pleasure.

The simple fact is that s.3(1) of the Interpretation Act unequivocally preserves the Common Law principle of the paramountcy of the intention of an enactment for the purposes of its construction and thus curtails what might at first sight appear to be the effect of section 7. Nor is there any incongruity about this. In relation to a special enactment like the Police Service Act, which is intended to regulate contractual relations between the Crown and a category of its servants, the scheme of the Interpretation Act clearly accords with reason and common sense. In the case of an ordinary enactment which prima facie has no reference to the Crown the test to be applied for determination of the question as to whether it is binding on the Crown remains the same whether it is passed or made before or after the date of commencement of the Interpretation Act. The universal test, as stated in Salomon v. Salomon & Co.Ltd. (supra), is the intention of the enactment to be gathered either from necessary implication or, (in cases of enactments where it is not possible to arrive at the intention by this

route) an express statement thereof. It is only to this latter category that s.7, being unaffected by s.3(1), can aspire to have any application.

It appears to me that when viewed in this light not only is a harmonious construction given to the Interpretation Act, but it is thereby rendered capable of serving the purpose for which it was intended, viz: as an aid to the proper interpretation of enactments. I am fortified in this view by the dictum of Byles, J. in R. v. Morris, (1867) L.R. 1 C.C.R. 90 at p.95, /cited with the approval by Slesser, L.J. in Lord Eldon v. Hedley Bros., (1935) 2 K.B.1 at 24/ to the effect that

> "It must be remembered that it is a sound rule to construe a statute in conformity with the common law rather than against it, except where or in so far as the statute is plainly intended to alter the course of the common law."

The presumption against the alteration of the common law by statute is founded upon an abundance of authority. The relevant principles are conveniently summarized in Craies (op.cit. at p.339) in the following words :

> "If it is clear that it was the intention of the legislature in passing a new statute to abrogate the previous common law on the subject, the common law must give way and the statute must prevail; but there is no presumption that a statute is intended to override the common law. In fact the presumption, if any, is the other way, for 'the general rule in exposition is this, that in all doubtful matters, and where the expression is in general terms, the words are to receive such a construction as may be agreeable to the rules of common law in cases of that nature, for statutes are not presumed to make any alteration in the common law further or otherwise than the Act does expressly declare.' /Per cur., Arthur v. Bokenham (1708) 11 Mod. 150; Secretary of State for India v. Bank of India Ltd. (1938) L.R. 65 I.A. 286, 298 per Lord Wright/. ' It is a well-established principle of construction that a statute

is not to be taken as establishing a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion.' /Per Devlin, J. in National Assistance Board v. Wilkinson, (1952) 2 Q.B. 648 (D.C.)/. 'And if', as Coleridge, J. said in R. v. Scott, /(1856) 25 L.J. M.C. 128, 133/ 'there is a seeming conflict between the common law and the provisions of a statute', it is not right to begin 'by assuming at once that there is a real conflict and sacrificing the common law'; we ought rather to proceed in the first place' by carefully examining whether the two may not be reconciled, and full effect given to both'. "

The real value of s.7 of the Interpretation Act appears to be that it serves as a perpetual reminder to legal draftsmen to insert in enactments intended to be binding on the State an express statement of such intention for which, it is important to observe, no specific form of words is prescribed. In this connection it is interesting to note that the State /formerly "the Crown"/ Liability and Proceedings Act, 1966, does not contain an express statement in the form "This Act binds the Crown", which is sometimes regarded as possessing some sort of magical quality. With respect to that Act counsel for the appellant conceded that there was an express statement of intention to bind the Crown resulting from various expressions used in the Act. It would, of course, have been fatal to his case to concede the application of the principle of necessary implication.

For the reasons I have endeavoured to state I am of opinion that the Interpretation Act does not affect the Police Service Act in the manner contended for by counsel for the appellant. I am satisfied that on the true construction of this enactment the Crown was not entitled to terminate the respondent's appointment except in a manner provided for by the enactment. I am therefore of the view that the learned judge's determination of this question was correct.

THE SECOND QUESTION

Having arrived at this conclusion I now turn to a consideration of the second question that was determined by the learned judge. It is in the following terms :

> "Whether the power to create offences for which the plaintiff was triable resides in the Governor-General only or whether the three offences with which the plaintiff was charged were validly and properly created by the Police Service Commission Regulations, 1966 made by the Police Service Commission with the consent of the Prime Minister under section 102 of the Constitution of Trinidad and Tobago and existed in law at any material time."

A useful starting point for the resolution of this question is an enquiry into the history of any legal provisions relating to the discipline of the Police Service that were in existence prior to the coming into operation of the 1966 Regulations. It is reasonable to expect that the Police Service Act should contain such provisions. By s.65 of the Act it is provided (inter alia) as follows :

> "65.(1) The Governor-General may make Regulations for carrying out or giving effect to this Act, and in particular for the following matters, namely -
>
> . . . . . .
>
> (j) The enlistment, training and discipline of the Police Service . .. . . .
> ... .
>
> (n) Generally, for the good order and government of the Police Service.
>
> .. . . . .
>
> (3) Any regulations and any other regulations respecting the Police Service in operation at the coming into operation of this Act shall have effect in relation to police officers under

this Act until regulations have been made under this Act."

/Emphasis added/

The importance of this section cannot be over-estimated. This is because, in my opinion, it shows that it was the express intention of Parliament to vest in the Governor-General the power to make regulations relating to the several matters enumerated therein, including regulations governing the discipline of the Service - the matter with which we are here specifically concerned. Moreover, the insertion of the stipulation that any relevant regulations should continue in operation until the making of regulations under s.65 indicates that it was not then contemplated by Parliament that any other authority would be vested with the said power. It may not be otiose to add that it is manifest that the general power given by s.65(1)(j) to make regulations for the "discipline of the Police Service" includes the power to create disciplinary offences susceptible of commission by members of the Service. Prior to the commencement of the Act there had been in existence the Police Regulations, 1954, ("the 1954 Regulations") made by the Governor in Council under the provisions of s.23 of the Police Ordinance, Ch.11 No.1, which had been repealed and replaced by the Act.

It is imperative at this point to direct attention to the operation of the Existing Laws Amendment Order, 1962, made by the Governor-General under s.4 of the 1962 Order in Council, in relation to the Police Ordinance as well as the 1954 Regulations. By s.1 of that Order it is provided that the expression "existing laws" shall have the same meaning as that assigned to it by the 1962 Order in Council and that "existing law" shall be construed accordingly. Section 4(5) of the Order in Council defines "the existing laws" as meaning

> "all Acts, Ordinances, laws, regulations, orders and other instruments having the effect of law made or having effect as if they had been made in pursuance of the existing Order /i.e. the 1961 Order in Council/ and having effect as part of the law of the Colony of Trinidad and Tobago immediately

before the commencement of this Order."

By s.4(1) of the 1962 Order in Council it is provided as follows :

"4.(1) Subject to the provisions of this section, the operation of the existing laws after the commencement of this Order shall not be affected by the revocation of the existing Order but the existing laws shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order."

Section 3 of the Existing Laws Amendment Order, 1962 is to the following effect :

"3.(1) Subject to this Order and the Constitution, a reference in any existing law to the Governor (meaning thereby a Governor of the former Colony of Trinidad and Tobago) including a reference to the Governor in Council or the Governor in Executive Council, shall be read and construed as a reference to the Governor-General.

(2) For the avoidance of doubt it is hereby declared that -

(a) where immediately before the commencement of this Order a function was, under an existing law, expressed to be exercisable by the Governor acting in his discretion, or absolute discretion, then unless that function is, under the Constitution, expressed to be exercisable by the Governor-General acting in accordance with his own deliberate judgment or in accordance with theadvice of any person or authority other than the Cabinet, that function is exercisable by the Governor-General acting in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet:

" (b) where immediately before the commencement of this Order a function was, under an existing law, expressed to be exercisable by the Governor or any person or authority and that function is, under the Constitution, expressed to be exercisable by some other person or authority, then that function is exercisable by that other person or authority in accordance with the Constitution."

The cumulative effect of the foregoing provisions, in my judgment, was not only to preserve the Police Ordinance and the 1954 Regulations made thereunder but also to confer upon the Governor-General, as the chief executive authority of the State, the power of making any new regulations in relation to matters concerning the discipline of the Police Force (later "Service"). In the exercise of this power the Governor-General would, of course, have to "act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet."

(See also s.63 of the Constitution).

These were the circumstances in which the Police Service Act came into existence. While it repealed and replaced the Police Ordinance it expressly preserved the 1954 Regulations, which, however, did not provide a comprehensive code of disciplinary offences applicable to all police officers. No regulations having been made by the Governor-General in exercise of the powers vested in him by s.65 of the Police Service Act, the 1966 Regulations were issued on October 15, 1966, purporting to be made by the Police Service Commission in exercise of powers derived from s.102 of the Constitution.

The Police Service Commission owes its existence to s.98 of the Constitution and is one of two Service Commissions (the other being the Public Service Commission) created by the original Chapter VIII of the Constitution, entitled "The Public Service". Both in the pleadings and at the trial the appellant relied upon ss.99 and 102 of the Constitution as providing the legal foundation for the 1966 Regulations which purport

(inter alia) to establish a code of conduct to be obeyed by police officers and, more particularly, for regulation 74 thereof which purports to prescribe a comprehensive list of disciplinary offences as well as the penalties to which offenders are exposed.

The respondent, on the other hand, contended, to use the words of para. 11 of the statement of claim, that "the power to create offences for which public officers and/or members of the Police Service are triable resides in the Governor-General only by virtue of section 13 of the /1962 Order in Council/ and must be exercised in the manner therein prescribed." The said section 13 provides:

> "13. The Governor-General may by Order at any time within twelve months after the commencement of this Order make provision for the definition and trial of offences connected with the functions of any Commission established by the Constitution and the imposition of penalties for such offences."

In rejecting the respondent's contention the learned judge stated, (inter alia):

> "....the purport and intent of section 13 is to enable the Governor-General by Order to ensure that members of a Commission carry out these functions fairly and without bias, ill-will or corruption. In this context the Governor-General could create criminal offences such as bribery, disclosure of confidential information, efforts to influence a Commission and similar offences and could prescribe both the mode of trial of these offences and the penalties to be attached thereto (q.v. Regulations 11 to 13 of the 1961 Regulations). The important words of the section seem to me to be 'connected with the functions of any Commission', that is to say, connected with the appointment, promotion, transfer, confirmation, removal and discipline by the Commission of persons subject to its jurisdiction. I can see nothing in this Section (i.e. section 13 of the Constitution) enabling the Governor-General to create offences or charges of a disciplinary nature

"against persons who are subject to the disciplinary control of the Commission."

I am in complete agreement with the learned judge's reasoning, in support of which I would refer to counsel for the appellant's submission that the word "offence" prima facie means a criminal offence. /See Stroud's Judicial Dictionary, (4th edn.) vol.3, p.1824/. It appears to me that the determination of this issue is put beyond the shadow of a doubt by reference to the predecessor of s.13 which appears as s.66G(2) of the Trinidad and Tobago (Constitution) (Amendment) Order in Council, 1959 /S.I.1959 No.1044/ and which (so far as it is material for present purposes) is to the following effect:

"66G(2) Subject to the provisions of this Order, the Governor after consultation with a Commission to which this section applies may make regulations for giving effect to the appropriate provisions of this Part of this Order relating to that Commission, and in particular and without prejudice to the generality of the foregoing power, may by such regulations provide for any of the following matters, that is to say :

(a) . . . . . .
. . . . . .

(f) the definition and trial of offences connected with the functions of the Commission and the imposition of penalties for such offences;

Provided that no such penalty shall exceed a fine of five hundred dollars and imprisonment for a term of one year . . . "

It is perhaps, useful to add that in pursuance of this provision criminal offences were actually created by regulations 11 and 13 of the Police Service Commission Regulations, 1961, ("the 1961 Regulations") which relate respectively to the unauthorised disclosure by any person of (inter alia) any information "which has come to his notice in the course of

the performance of his functions under /the/ Regulations in relation to any matter referred to the Commission or to a member", and to the wilful giving to the Commission or to any member thereof of "any information which he knows to be false or does not believe to be true". It must be pointed out, however, that, in any event, the Governor-General never sought to exercise the power vested in him by s.13 of the 1962 Order in Council.

Having eliminated this section as a possible source of a power to create a code of disciplinary offences applicable to the Police Service, I must now resume a brief historical record of the relevant legislation. I begin by referring to the Constabulary Ordinance, Cap.88 of the Revised Edition of the Laws of the Colony of Trinidad and Tobago, 1925, which was a codification of several Ordinances commencing with No.16 of 1905. Section 24 provided (inter alia) as follows :

> "24. The Governor in Executive Council may make regulations relating to all or any of the following matters, that is to say :
>
> . . . . . .
>
> (2) The training and discipline of the Force.
>
> . . . . . .
>
> (7) Generally, for the good order and government of the Force. "

Apart from this, the Ordinance contained a series of sections (36-39) which, conjointly falling under the heading 'Discipline', prescribed a multiforious number of offences, ranging from the crime of causing mutiny or sedition punishable by a term of three years imprisonment with hard labour after conviction on indictment to less serious offences like insubordination, wilful disobedience of lawful orders, ill-treating any animal used in the public service, etc., punishable, on conviction before the Inspector General, to any one or more of the following punishments, namely :

"Imprisonment, with or without hard

"labour, for any term not exceeding six months;

Dismissal;

Reduction to a lower rank or lower rate of pay;

Fine not exceeding two pounds (to be levied by stoppages from the offender's pay). "

The Constabulary Ordinance was repealed and replaced by the Police Ordinance /Ch.11 No.1 of the Revised Ordinances 1940/ which came into operation on April 7, 1938 as Ordinance No.5 of 1938. This Ordinance was in its turn repealed and replaced as from April 13, 1950 by the Police Ordinance, Ch.11 No.1 of the Revised Ordinances, 1950, the immediate predecessor of the Police Service Act.

By s.24 of the Police Ordinance, Ch. 11 No.1 of the 1940 Revision of the Laws, the Governor in Council was empowered to make regulations relating to several matters including :

(b) the training and discipline of the Force.

. . . . . .

(h) generally, for the good order and government of the Force.

In addition to this the Ordinance contained a series of sections (36-39 inclusive) falling under the general caption of "Discipline" and creating a large number of criminal as well as disciplinary offences ranging from offences punishable by three years imprisonment with hard labour after conviction on indictment to disciplinary offences punishable by a Magistrate or the Commissioner of Police (the new name for the former Inspector-General of Constabulary) by a term of imprisonment not exceeding six months, dismissal, confinement to barrack cells or barracks, reduction of rank or pay or a fine not exceeding ten dollars.

The same general pattern is to be observed in the Police Ordinance, Ch.11 No.1 of the 1950 Revision of the Laws ("the Police Ordinance") in relation to its treatment of disciplinary matters. More specifically, s.23 empowered the Governor in Council to make regulations for (inter alia):

(b) the training and discipline of the Force;

. . . . . .

(h) generally, for the good order and government of the Force.

Moreover, as in the previous Ordinances, Part IV of this Ordinance, entitled "DISCIPLINE" creates (in ss.35-41 inclusive) a large and varied number of criminal as well as disciplinary offences and also the various punishments to which offenders were exposed.

It is not without interest to observe that this Ordinance (s.36) removes the liability of Inspectors and officers of lower rank to be tried and convicted by the Commissioner for any offences punishable by a term of imprisonment. Moreover the provision is retained whereby "no sentence of dismissal shall be carried out without the confirmation thereof in writing by the Governor." Reference may also usefully be made to a new provision for delegation by the Commissioner of his function of enquiring into disciplinary offences established by the last proviso to section 36(1) which reads as follows:

> "Provided further that the Commissioner may, in his discretion, depute any police officer above the rank of Inspector to enquire into any charge under this section, and the offender shall, on conviction before such police officer, be liable to punishment in the same manner as if he had been convicted before a police officer other than the Commissioner of an offence under the next succeeding section."

The 1954 Regulations were made in pursuance of the powers conferred upon the Governor in Council by s.23 of the Police Ordinance. These Regulations deal with a large variety of subjects including the division of the country (then a colony) into Police Divisions and Districts, the formation of various Branches of the Police Force and its classification by ranks; and create a large number of disciplinary offences as well as the penalties to which police officers found guilty thereof are rendered liable. These Regulations repealed the Constabulary Regulations, 1932 which were made by the

Governor in Executive Council on November 24, 1932 in pursuance of powers contained in the Constabulary Ordinance, Cap.88 of the 1925 edition of the Laws of the Colony of Trinidad and Tobago. The 1954 Regulations have not been expressly repealed and, except in so far as they may have been impliedly repealed by any other valid enactment, would continue in operation not only for that reason but also because they and any other existing regulations respecting the Police Service have been expressly preserved by the stipulation of s.65(1) of the Police Service Act that they should continue in existence "until regulations have been made under /the/ Act." No regulations have been made under the Act. In any event, their existence was continued after the commencement of the 1962 Constitution by the operation of s.4 of the 1962 Order in Council which makes provision for the preservation of the existing laws.

The Police Service Commission was originally established by s.38 of the Trinidad and Tobago (Constitution) (Amendment) Order in Council, 1956 /S.I. 1956 No.835/ which amended the Trinidad and Tobago (Constitution) Order-in-Council, 1950 /S.I. 1950 No.510/ by inserting therein three new sections, viz.66A, 66B and 66C. The only section that is relevant for present purposes is 66C which I quote hereunder:

> "66C.(1) The Governor, acting in his discretion, may refer to the Police Service Commission for their advice-
>
> (a) any question relating to the appointment or promotion of Senior Police Officers; or
>
> (b) any question relating to the dismissal or other disciplinary control of Senior Police Officers other than Inspectors; or
>
> (c) any question involving the exercise by the Governor of his power to dismiss any Inspector or Junior Police Officer, or any matter relating to an Inspector or Junior Police Officer in respect of which, under any law in force in the Colony -
>
> (i) an appeal has been made by an Inspector or Junior Police Officer to the Governor

" from a decision of the Commissioner; or

(ii) a decision of the Commissioner has been referred to the Governor for his sanction or confirmation;

(d) any other question, not being a question relating solely to Inspectors or Junior Police Officers, which, in his opinion, affects in general the good order and government of the Police Force.

(2) It shall be the duty of the Police Service Commission to advise the Governor on any question which he shall refer to them in accordance with the provisions of this section but the Governor shall not be required to act in accordance with the advice given to him by the said Commission."

The next stage in the evolution of the functions of the Police Service Commission was reached when the Trinidad and Tobago (Constitution) (Amendment) Order in Council, 1959 [S.I. 1959 No.1047] came into operation. The major change that was effected by this Order was that whereas the Governor previously had a discretion as to whether he should seek the advice of the Commission in the stipulated cases, it was rendered mandatory by this Order for him to seek such advice, although in cases of the exercise of disciplinary powers he was not bound to act upon the advice of the Commission. This is the effect of the new section 66C(1) the terms of which are as follows :

"66C.(1) Subject to the provisions of this Order, power to appoint (including power to appoint on transfer) police officers to whom this section applies and to dismiss and to exercise disciplinary control over persons holding or acting in the offices of such police officers shall vest in the Governor acting on the recommendation of the Police Service Commission:

Provided that in the exercise of the power of dismissal and

" disciplinary control over police officers to whom this section applies the Governor shall act after consultation with the Police Service Commission."

The Police Service Commission Regulations, 1961 ("the 1961 Regulations") [Government Notice No.17 of 1961] were expressed to have been "made by the Governor under section 66G of the Trinidad and Tobago (Constitution) Orders in Council, 1950 to 1959, after consultation with the Police Service Commission" and came into operation on February 6, 1961. The powers vested in the Commission in relation to discipline were exercisable only in respect of "relative officers", i.e. "police officers to whom section 66C of the Order in Council applies" viz: officers above the rank of Inspector. The object of the 1961 Regulations, broadly speaking, was to prescribe the procedure for the conduct of disciplinary proceedings as well as the penalties to which offenders were liable. It is worthy of observation that no attempt was made to provide for the establishment or definition of disciplinary offences, although regulations 11 and 13 expressly created criminal offences connected with the functions of the Commission, in pursuance of powers conferred on the Governor by s.66G of the Triniad and Tobago Orders in Council 1950 to 1959.

The next step in this evolutionary process occurred in 1961 when the country obtained responsible government in the form of a Cabinet system as a result of the coming into operation of the Trinidad and Tobago (Constitution) Order in Council, 1961 ("the 1961 Order in Council") [S.I. 1961 No. 1192]. This is the first occasion on which the Constitution of the country was embodied in an "Annex" appended to the Order in Council.

It is desirable to set out the following provisions of this Constitution:

Article 82, Power to make appointments to the offices of Commissioner of Police and Deputy Commissioner of Police and to dismiss and to exercise disciplinary control over any person holding or acting in these offices shall vest in the Governor, acting after consultation with the Police Service

Commission.

Article 83(1). Save as provided in the last foregoing article, power to make appointments to offices in the Police Force shall vest in the Governor, acting in accordance with the advice of the Police Service Commission:

Provided that power to make appointments to offices in the Police Force below the rank of Inspector shall, to such extent as may be provided by any law of the Legislature, vest in the Commissioner of Police.

. . . . . .

Article 84(1). Save as provided in article 82 of this Constitution, power to dismiss and exercise disciplinary control over persons holding or acting in offices in the Police Force shall vest in the Governor, acting after consultation with the Police Service Commission;

Provided that power to dismiss and exercise disciplinary control over persons holding or acting in offices in the Police Force below the rank of Assistant Superintendent on probation shall, to such extent as may be prescribed by any law of the Legislature, vest in the Commissioner of Police."

The final stage in the historical survey with which we are concerned was the attainment by the country of political independence which was established when the Trinidad and Tobago (Constitution) Order in Council, 1962 ("the 1962 Order in Council") [S.I. 1962 No.1875] came into operation, the representative of Her Majesty in Trinidad and Tobago being then for the first time designated Governor-General. It is perhaps otiose to add that Letters Patent, Royal Instructions to the Governor and all such accoutrements of the colonial era had already disappeared from the scene and are therefore irrelevant to the resolution of the present questions.

(See Article 1 of the 1961 Order in Council).

Consideration has already been given to the purpose and effect of s.13 of the 1962 Order in Council, which is the successor of s.66G, para.(f), of the Orders in Council, 1950 to 1959.

In this context I accept as substantially correct the following extract from the learned judge's determination:

> "At least up to 1950 when the Police Ordinance, Ch.11 No.1 [of the Revised Laws of Trinidad and Tobago, 1950] was passed, the disciplinary control of the [Police] Force was vested in the Commissioner of Police in respect of disciplinary offences created by the Legislature under Part IV of the Ordinance, and by the Governor by Regulations made under section 23(b) of the Ordinance (q.v. the Police Regulations, 1954, G.N. No.64 of 1954). All that the Trinidad and Tobago (Constitution) (Amendment) Order-in-Council, 1959, did was to establish a Police Service Commission and to transfer from the Commissioner of Police to the Commission disciplinary control of members of the Police Force subject to procedural Regulations made by the Governor in consultation with the Commission. It is noteworthy that no attempt was made to create or define disciplinary offences in the 1961 Regulations, and quite rightly so. Section 66G of the 1959 amendment [i.e. to the Constitution Order in Council] clearly gives no power to any authority to create disciplinary offences - [but gives power] only to settle procedure. The Police Service Commission from the date of its establishment until possibly 1966 was authorised by the Constitution to exercise disciplinary control in respect of offences created by statute or by regulations made by the Governor-General under statute."
>
> [Emphasis added]

It is now necessary to embark on a discussion of the effect of ss.99 and 102 of the Constitution, which are the twin pillars on which the case for the appellant was sought to be constructed. The first matter to which attention must be directed is that although the 1966 Regulations are expressed to have been

"made by the Police Service Commission, with the consent of the Prime Minister, under the provisions of section 102 of the Constitution of Trinidad and Tobago"

it is clear that this section, the object of which is to vest the Commission with authority to regulate its own procedure, does not, either expressly or by necessary implication, even purport to confer on the Commission the power to create disciplinary offences. The material terms of the section are as follows :

"102(1) Subject to the provisions of subsection (3) of this section, a Commission to which this section applies may, with the consent of the Prime Minister, by regulation or otherwise regulate its own procedure, including the procedure for the consultation with persons with whom it is required by this Constitution to consult, and confer powers and impose duties on any public officer or on any authority of the Government of Trinidad and Tobago for the purpose of the discharge of its functions.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section, a Commission to which this section applies may by regulation make provision for the review of its findings in disciplinary cases.

(3) At any meeting of a Commission to which this section applies a quorum shall be constituted if three members are present, and, if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein."

It is manifest that the key to the

determination of the present issue is to be found in the true construction of s.99(1) of the Constitution which prescribed the functions of the Police Service Commission in the following terms :

> "99(1) Power to appoint person to hold or act in offices in the Police Force /now 'Service'/ (including appointments on promotion and transfer and the confirmation of appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:
>
> Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit delegate any of its powers under this section to any of its members or to the Commissioner of Police or any other officer of the Police Force."

It is obvious that this provision does not expressly confer upon the Commission power to create disciplinary offences for which the section empowers it to put police officers on trial. And it is noteworthy that counsel for the appellant's submission that the Commission is vested by the section with such a power was not based upon the alternative principle which normally comes into operation in regard to the construction of legal instruments, viz: the principle of necessary implication from the language of the instrument.

In support of his contention counsel invoked the application of the rule which is described in Craies, (op.cit., p.258) as follows :

> "One of the first principles of law with regard to the effect of an enabling Act is that if the legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view, 'on the principle', as Parke B. said in Clarence Ry. v. Great N. of England Ry.

" [(1845) 13 M. & W. 706, 721]
'that ubi aliquid conceditur, conceditur etiam id sine quo res ipsa non esse potest'."

This is a principle which, it must be emphasized, may be resorted to only when it is not possible to ascertain the intention of the Legislature from the language it actually uses. In such circumstances an intention is ascribed to the Legislature although it expresses none. An extensive discussion of this type of situation is to be found in Maxwell on Interpretation of Statutes, (11th edn. Chapter 12, sections 1 and 2, at pp.345-362) under the respective headings "Implied Enactments - Necessary Incidents and Consequences" and "Implied Powers and Obligations."

The Chapter is introduced by the learned authors (op. cit. p.345) as follows:

> "Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the legislature, where it has expressed none, on questions necessarily arising out of its enactments.
>
> Although, as already stated, the legislature is presumed to intend no alteration in the law beyond the immediate and specific purposes of the Act, these are considered as including all the incidents or consequences strictly resulting from the enactment. Thus, when the legislature imposes upon the promoters of a railway or other undertaking an obligation to construct and maintain works, it necessarily follows that they must bear the cost of construction and maintenance, unless there be an express or plainly implied provision to the contrary."
>
> (See West Indian Improvement Co. v. Attorney General of Jamaica (1894) A.C. 243).

In relation to implied powers and obligations, the learned authors (at p.351) make the following statement, which expresses in different words the principle quoted from Craies (op.cit.supra):

> "In the same way, when powers, privileges, or property are granted by statute, everything indispensable to their exercise or enjoyment is impliedly granted also as it would be in a grant between private persons."

The following (among other) illustrations of the principle are thereafter given in the text (at pp.351-354):

> "...Thus by a private grant or reservation of trees the power of entering on the land where they stand and of cutting them down and carrying them away is impliedly given or reserved, and by the grant of mines the power to dig them is impliedly conferred. . . . . .
> . . . . . .
>
> It has been held that a colonial legislative body has impliedly granted to it by the Act or charter which constitutes it the power of removing and keeping excluded from the chamber where it carries on its deliberations all persons who interrupt its proceedings, for such a power is absolutely indispensable for the proper exercise of its functions. But a power of punishing such offenders for their contempt of its authority is not necessary for this purpose, and so is not granted by implication."

As illustrated by numerous cases the rule under consideration may be invoked only when its application is absolutely indispensable for the carrying out of the object sought to be achieved by the Legislature. It is a common law rule and is not to be confused with the rule of interpretation whereby the object of a legal instrument may be determined as a matter of necessary implication from the language of the instrument itself. In Kielly v. Carson, (1843) 4 Moo. P.C.63 Parke, B., delivering the opinion of the Judicial Committee of the Privy Council, said (at p.88) :

> "The whole question then is reduced to this - whether by law, the power of committing for a contempt, not in the presence of the Assembly, is incident to every local Legislature.

" The Statute Law on this subject being silent, the Common Law is to govern it; and what is the Common Law depends upon principle and precedent.

Their Lordships see no reason to think, that in the principle of the Common Law, any other powers are given them, than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. These powers are granted by the very act of its establishment, an act which on both sides, it is admitted, it was competent for the Crown to perform. This is the principle which governs all legal incidents. 'Quando Lex aliquid concedit, concedere viditur et illud, sine quo res ipsa esse non potest.' In conformity to this principle we feel no doubt that such an Assembly has the right of protection itself from all impediments to the due course of its proceedings. To the full extent of every measure which it may be really necessary to adopt, to secure the free exercise of their Legislative functions, they are justified in acting by the principle of the common law. But the power of punishing any one for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a local Legislature, whether representative or not. All these functions may be well performed without this extraordinary power, and with the aid of the ordinary tribunals to investigate and punish contemptuous insults and interruptions."

I would respectfully adapt these words of Parke, B. to the facts of the present case by stating that it is clearly not "essentially necessary for the exercise of its functions" by the Police Service Commission that it should be endowed with the "extraordinary power", not conferred upon it by s.99 of the Constitution or any other law, to promulgate a code of disciplinary

offences for the purpose of regulating the conduct of police officers. As pointed out at an earlier stage of this judgment, not only is this power expressly vested in the Governor-General by s.65 of the Police Service Act, but it is expressly provided by the Legislature that the 1954 Regulations should continue in operation until the making of new regulations under the said section. Moreover, this is merely in consonance with the discernible historical pattern whereby the making of subordinate legislation of this nature was confined to the chief executive authority of the country, formerly "the Governor" - later "the Governor-General", acting "in accordance with the advice of the Cabinet or a Minister, acting under the general authority of the Cabinet". /See s.63(1) of the Constitution/.

It appears to me that such a state of affairs is dictated not only by the law but also by reason and commonsense. It was suggested by counsel for the appellant that with the arrival of the age of political independence it was no doubt regarded as desirable to confer on an independent body like the Police Service Commission not only the power "to remove and exercise disciplinary control" over police officers, but also the power to create a code of disciplinary offences for the purpose of the exercise of the said power. The only comment I would make on this aspect of the matter is that the state of affairs envisaged by counsel appears to be analogous to a situation whereby, in the realm of the criminal law, the legislative power of creating and defining criminal offences were to be considered to be handed over to the judicial officers who administer that branch of the law merely by reason of the conferment on them of their judicial functions.

For the reasons indicated I am of opinion that the maxim upon which counsel for the appellant relied in support of the proposition that s.99 of the Constitution provides a valid basis for the creation of disciplinary offences by the 1966 Regulations can have no application to the facts of the present case.

I am fortified in this view by an important consideration. It is the fact that s.99, which is alleged by the appellant

to be the source of the Commission's power to create disciplinary offences, vests it with authority, subject to certain conditions, to "delegate any of its powers under /the/ section to any of its members or to the Commissioner of Police or any other officer of the Police Force." It appears to me to be inconceivable that the alleged power could have been considered suitable for sub-delegation. In this connection it must be borne in mind that

> "there is a strong presumption against construing a grant of delegated legislative power as empowering the delegate to sub-delegate the whole or any substantial part of the law-making power entrusted to it."
>
> See De Smith, Judicial Review of Administrative Action (3rd edn.) pp.264 et seq.

In circumstances in which it is customary to provide for sub-delegation of what is prima facie the purely administrative power of the exercise of disciplinary control over police officers, it seems to be extraordinary that s.99 should be intended, without express words, to confer in addition a legislative power which is not normally the subject of sub-delegation. (See De Smith, op.cit. pp.60 et seq.) I am, accordingly, of the view that the existence of the power of delegation contained in s.99 is inconsistent with the construction of the section contended for by counsel for the appellant.

An alternative submission made on behalf of the appellant was to the effect that, on the assumption that the disciplinary offences of which the respondent was found guilty were not validly created by the 1966 Regulations, it was open to the appellant to rely upon certain common law principles of the law of contract in order to provide a legal foundation for their existence. This ex facie startling proposition was based, it was said, on the fact that conduct of the kind that gave rise to the charges against the respondent could confer on his employer the contractual right to dismiss him.

The offences with which the respondent

was charged were alleged contraventions of regulation 74(1)(a) and (2)(d), particulars of which were supplied by letter dated September 10, 1970, As stated by the learned judge :

> "The offences involved allegations of (a) neglect of duty and (b) the doing, without reasonable excuse, of an act which amounted to failure to perform in a proper manner a duty imposed upon him as a police officer. The precise details of the 'offences' are not set out in the pleadings and are not indeed relevant for the purpose of this determination."

Counsel, however, contended that the charges were substantially based on allegations of (a) incompetence or inefficiency and (b) neglect of duty; and that both of these allegations were such as might at common law provide an employer with legal justification for dismissal of his employee. In this connection reference was made to Batt, The Law of Master and Servant, (5th edn.) pp.91-92, where the learned author deals with the subject of "Incompetence" as a ground for dismissal of a servant.

The first comment to be made is that in order to determine whether any particular act or conduct of the respondent could fall within the common law principle sought to be invoked by counsel, it would be necessary for the Court to have full particulars of the said act or conduct. This is because it is imperative that courts of law should at all times have regard to the basic rule stated by Scrutton, L.J. in Blay v. Pollard and Morris, (1930) 1 K.B. 628 at p.634, to the effect that

> "cases must be decided on the issues on the record; and if it is desired to raise other issues they must be placed on the record by amendment."

It is significant that although an amendment was not sought by counsel for the appellant, the main point put forward in objection to the respondent's application that this Court should finally dispose of the action was that the matter should be remitted to the High Court so as to leave open to the appellant a possible opportunity of seeking

an amendment of his pleadings. It is sufficient to state that the issue raised by counsel was not a subject matter of the pleadings or of the determination at first instance of the present question and I am satisfied that it would be highly improper for this Court to give consideration to it. In any event, it appears to be impossible to equate an employer's right to dismiss an employee, which might arise on a breach or breaches of contract, with a right purporting to originate from the commission of disciplinary offences expressly prescribed by subsidiary legislation.

What, moreoever, seems to me to be an insurmountable impediment to the entertainment of the present submission is that by adopting the course suggested by counsel this Court would be giving its sanction to an infringement of the principles of natural justice of the kind that was the subject-matter of adjudication by the Judicial Committee of the Privy Council in Annamunthodo v. Oilfield Workers Trade Union, (1961) A.C. 945.

The headnote to the report reads as follows :

"The appellant, a member of a trade union, was charged before the General Council of the union with offences against certain of the union rules. There was no power under these particular rules to expel him, since expulsion thereunder could be ordered only in the case of second or third offences and those were the first offences alleged against the appellant, for which under those rules a small fine only could be imposed. The appellant having been convicted of the offences charged, the General Council purported to expel him under another rule, rule 11(7), under which he had not been charged, which provided for expulsion where a member had been guilty of 'conduct prejudicial to the interests of the union'. The appellant had attended before the General Council when the evidence was taken, but, owing to a previous engagement, did not attend the adjourned hearing a week later, when the charges were found proved. His expulsion was upheld on his appeal under rule 11(7)

"to the Annual Conference of Delegates, whose decision under the rule was to be 'final and binding'. In an action by the appellant against the union claiming that his purported expulsion was ultra vires and void:

Held, that rule 11(7) was not a rule which merely empowered the General Council to impose more severe penalties for the various other offences specified in the rules provided that the conduct of which a member was convicted under them was prejudicial to the interests of the union. Rule 11(7) created a separate and distinct offence and should not have been invoked for the purpose of expelling the appellant unless he had been given notice of the charge under it and had had a fair opportunity of meeting it. If a domestic tribunal formulated specific charges which led only to a fine, it could not without notice resort to other charges which led to far more serious penalties. When the General Council at the adjourned hearing desired to proceed under rule 11(7) the hearing should again have been adjourned so as to give the appellant notice of the fresh charge, and by failing to do so the council had not observed the requirements of natural justice.

Further, the appellant had not, by appealing to the Annual Conference of Delegates, lost his right to complain of rule 11(7) being invoked. By having appealed he did not forfeit his right of redress in the courts and could still complain that the original order was invalid for want of observance of the rules of natural justice.

The decision of the General Council convicted the appellant of an offence against the rules with which he had never been charged and must be set aside and the purported expulsion declared invalid.

. . . . . .

Judgment of the Federal Supreme Court of the West Indies (1960) 2 W.I.R. 73 reversed."

In my opinion, the principles enunciated in Annamunthodo's case (supra) apply a fortiori to the case under review seeing that the tribunal which found the appellant guilty of disciplinary offences alleged to be in contravention of the 1966 Regulations never had to consider the question of the Commission's entitlement at Common Law to dismiss the respondent for any alleged breach of his contractual obligations.

In the result, therefore, I am of opinion that the learned judge arrived at the correct determination of this question which he stated in the following words :

> "The power to create 'charges' /or/ 'offences' of the nature of those preferred against the plaintiff vested solely in the Governor General acting in accordance with the provisions of section 65(1)(j) of the /Police Service/ Act and not in the Commission."

THE THIRD QUESTION

The third question which the learned judge had to determine was as follows :

> "Whether the plaintiff's action is maintainable in view of sections 99 and 102 of the Constitution of Trinidad and Tobago."

In so far as this question embraces the issue as to whether either of these sections may be held to be a legally valid source of the creation of disciplinary offences by the 1966 Regulations (and more particularly of regulation 74 under which the respondent was charged), the question has already been answered in this judgment in favour of the respondent.

The issue that now falls for consideration is one that is raised by the following provisions of s.102(4):

> "102(4) The question whether -
>
> (a) a Commission to which this section applies has validly performed any functions vested in it by or under this Constitution;

"(b) any member of such a Commission or any other person has validly performed any function delegated to such member or person in pursuance of the provisions of sub-section (1) of Section 84, or subsection (1) of section 93, or subsection (1) of section 99, as the case may be, of this Constitution; or

(c) any member of such a Commission or any other person has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in the preceding paragraph;

shall not be enquired into in any Court."

We are concerned here with the functions vested in the Police Service Commission by s.99 which, in my judgment, did not vest the Commission with the power to create the disciplinary offences the alleged commission of which led to the respondent's removal from the Police Service.

The issue to be determined, therefore, is whether this Court is precluded by s.102(4) from adjudication of the question as to whether the purported exercise by the Commission of the power of charging the respondent with legally non-existent disciplinary offences could in any sense be described as performance of a function vested in it by or under the Constitution.

It seems to me that the answer to this question is to be found in the majority decision of the House of Lords in Anisminic Ltd. v. The Foreign Compensation Commission and anor. (1969) 1 All E.R. 208, where it was held that on the true construction of s.4(4) of the Foreign Compensation Act, 1950, a provision substantially similar to that under consideration,

"'determination' meant a real /and/ not a purported determination; accordingly, the subsection did not operate to exclude enquiry by a court of law."

I would respectfully refer to the following extract from the speech of Lord Reid (ibid. at pp. 212-214) :

"The next argument is that by reason of s.4(4) of the Act of 1950, the courts are precluded from considering whether the commission's determination was a nullity, and, therefore, it must be treated as valid whether or not enquiry would disclose that it was a nullity. Section 4(4) is in these terms:

> 'The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law'.

The Commission maintain that these are plain words only capable of having one meaning. Here is a determination which is apparently valid; there is nothing on the face of the document to cast any doubt on its validity. If it is a nullity, that could only be established by raising some kind of proceedings in court. But that would be calling the determination in question, and that is expressly prohibited by the statute. The appellants maintain that that is not the meaning of the words of this provision. They say that 'determination' means a real determination and does not include an apparent or purported determination which in the eyes of the law has no existence because it is a nullity. Or, putting it in another way, if one seeks to show that a determination is a nullity, one is not questioning the purported determination - one is maintaining that it does not exist as a determination. It is one thing to question a determination which does exist; it is quite another to say that there is nothing to be questioned.

. . . . . .

. . . . . .

It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word 'jurisdiction' has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow

"and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. . . . . ."

I consider this statement to be eminently applicable to the facts of the present case in relation to which counsel for the appellant made submissions similar to those that were rejected in the Anisminic case, (supra). In my opinion, when the Commission charged the respondent with legally non-existent disciplinary offences it was not performing any function vested in it by s.99 of the Constitution. It follows from this that the tribunal appointed by the Commission to conduct an enquiry into the said charges had no "jurisdiction to enter on the enquiry in question" within the "narrow and original sense" of that term as indicated in Lord Reid's opinion.

I would also respectfully refer to the following statement from the concurring speech of Lord Pearce (ibid. at p.233):

"My Lords, the courts have a general jurisdiction over the administration of justice in this country. From time to time Parliament sets up special tribunals to deal with special matters and gives them jurisdiction to decide these matters without any appeal to the courts. When this happens the courts cannot hear appeals from such a tribunal or substitute their own views on any matters which have been specifically committed by Parliament to the tribunal. Such tribunals must, however, confine themselves within the powers specially committed to them on a true construction of the relevant Acts of Parliament. It would lead to an absurd situation if a tribunal, having been given a circumscribed area of enquiry, carved out from the general jurisdiction of the courts, were entitled on its own motion to extend that area by misconstruing the limits

> "of its mandate to enquire and decide as set out in the Act of Parliament . . . . . It is, therefore, for the courts to decide the true construction of the statute which defines the area of a tribunal's jurisdiction. This is the only logical way of dealing with the situation and it is the way in which the courts have acted in a supervisory capacity."

It was however, contended by counsel for the appellant that the principles enunciated in the Anisminic case, (supra) must be restricted to the functions of judicial tribunals and cannot operate so as to exclude the application of s.102(4) to the exercise by the Commission of its functions, which, it was said, were purely administrative. The submission was that, in the final analysis, the respondent's complaint was against the administrative act of his removal from office and that no regard must be paid to the previous acts of the Commission that led to such removal.

In my judgment, this submission is plainly without merit. It is clear that the events which culminated in the respondent's removal from office were initiated by the Commission when it charged him with alleged contravention of regulation 74 of the 1966 Regulations and caused an investigation of the charges to be held by a tribunal which found him guilty of the alleged offences. It is manifest that the tribunal's proceedings were judicial in nature and that, if the tribunal, to use the already quoted words of Lord Reid in the Anisminic case (supra)

> "had no jurisdiction to enter on the enquiry in question",

itfollows that the respondent's removal from office as a result of its findings was a nullity and that it is not open to the appellant to invoke the provisions of s.102(4) of the Constitution for the purpose of avoiding this result.

/See de Smith, op. cit. pp.68-77_7

The only other point to which I consider it necessary to refer is the suggestion made

by counsel for the appellant that the present question falls within the principle of the decision in Smith v. East Elloe Rural District Council, (1956) 1 All E.R. 855, which was affirmed by the House of Lords /(1956) A.C. 736/ and followed in R. v. Secretary of State for the Environment, ex parte Ostler, (1976) 3 All E.R. 90. In the latter case Smith v. East Elloe Rural District Council (supra) was clearly distinguished from the Anisminic case (supra) by all the members of the Court, the reasons of Lord Denning, M.R., with which Shaw, L.J. agreed, being stated (ibid at p.95) as follows :

> "In these circumstances I think that Smith v. East Elloe Rural District Council /supra/ must still be regarded as good and binding on this court. It is readily to be distinguished from the Anisminic case /supra/. The points of difference are these.
>
> First, in the Anisminic case /supra/ the Foreign Compensation Act, 1950 ousted the jurisdiction of the court altogether. It precluded the court from entertaining any complaint at any time about the determination. Whereas in Smith v. East Elloe Rural District Council /supra/ the statutory provision has given the court jurisdiction to enquire into the complaints so long as the applicant comes within six weeks. The provision is more in the nature of a limitation period than of a complete ouster. That distinction is drawn by Professor Wade in his book on Administrative Law /3rd edn. (1971) 152, 153/ and by the late Professor de Smith in the latest edition of Halsbury's Laws of England /1 Halsbury's Laws (4th edn.) para.22, n.14/.
>
> Second, in the Anisminic case /supra/ the House of Lords was considering a determination by a truly judicial body, the Foreign Compensation Tribunal, whereas in Smith v. East Elloe District Council /supra/ the House was considering an order which was very much in the nature of an administrative decision. That is a distinction which Lord Reid himself drew in Ridge v. Baldwin, /(1963) 2 All E.R. 66 at 75, 76; (1964) A.C. 40 at 72/. There is a great

"difference between the two. In making a judicial decision, the tribunal considers the rights of the parties without regard to the public interest. But in an administrative decision (such as a compulsory purchase order) the public interest plays an important part. The question is, to what extent private interests are to be subordinated to the public interest.

Third, in the Anisminic case [supra] the House had to consider the actual determination of the tribunal, whereas in Smith v. East Elloe Rural District Council, [supra] the House had to consider the validity of the process by which the decision was reached."

Goff, L.J. while not in agreement with all the reasons expressed by Lord Denning, M.R., concurred in the result and (at pp.97-98) gave two reasons for his opinion that the two cases were distinguishable:

"First, the suggestion made by Lord Pearce that the Anisminic case [supra] dealt with a judicial decision, and an administrative or executive decision might be different. I think it is.

. . . . . .

The second ground of distinction is that the ratio in the Anisminic case [supra] was that the House was dealing simply with a question of jurisdiction, and not a case where the order is made within the jurisdiction, but is attacked on the ground of fraud or mala fides . . . . . "

The learned Lord Justice then made the following statement (at p.98e) :

"Nevertheless, despite these difficulties, I think there is a real distinction between the case with which the House was dealing in Anisminic v. Foreign Compensation Commission [supra] and Smith v. East Elloe Rural District Council, [supra] on the ground that, in the one case the determination was a purported determination only, because

"the tribunal, however eminent, having misconceived the effect of the statute, acted outside its jurisdiction, and indeed without any jurisdiction at all, whereas here one is dealing with an actual decision made within the jurisdiction though sought to be challenged."

I am satisfied that the circumstances of the present case are such as to lead to the inescapable conclusion that in purporting to remove the respondent from his office in consequence of his being found guilty of legally non-existent disciplinary offences the Police Service Commission acted "without any jurisdiction at all." The result is that the purported removal from office was a nullity and, consequently, my answer to the third question is that the plaintiff's action is not barred by either s.99 or s.102 of the Constitution.

THE FOURTH QUESTION

The fourth and final question for determination is one that was not and, indeed, could not be raised in the Court below as it relates to the application, if any, to this case of the provisions of s.18 of the Constitution of the Republic of Trinidad and Tobago Act, 1976, which came into operation on August 1, 1976, i.e. after the hearing by the High Court of the matters submitted to it for determination. This question was argued by counsel at the invitation of the Court.

Section 18 of the Act provides as follows :

"All enactments passed or made by any Parliament or person or authority under or by virtue of the former Constitution and not before the appointed day declared by a competent court to be invalid by reason of any inconsistency with any provisions of the former Constitution including in particular sections 1 and 2 thereof and that are not repealed, lapsed, spent or that had not otherwise had their effect, shall be deemed to have been validly passed or made and to have had full force and effect as part of the law of Trinidad and Tobago immediately before the appointed day,

"even if such enactments were inconsistent with any provision of the former Constitution including in particular sections 1 and 2 thereof."

The 'appointed day' was August 1, 1976.

The submission made by counsel for the appellant in relation to this question may be summarised as follows:

1. The effect of s.18 is to validate retrospectively the 1966 Regulations, as well as s.65(1)(j) and (m) of the Police Service Act, if, and to the extent to which, the latter may have been repealed by the former.

2. This validation would operate as from the respective dates of commencement of the Regulations and the relevant provisions of s.65(1) of the Act and would result in an implied repeal of those provisions by the Regulations.

On behalf of the respondent, on the other hand, it was contended that the object of the section was not to confer validity per se on void enactments but to validate only such enactments as may have been considered "void by reason of any inconsistency with any provision of the former Constitution." No question, therefore, could arise of the Regulations, allegedly founded upon s.99, one of the provisions of that Constitution, being held to the inconsistent with another of those provisions. In any event, the Regulations do not fall within the definition of "an enactment", which, according to s.2, para. (b) of the Interpretation Act, means

"An Act or Ordinance or statutory instrument or any provision of an Act or Ordinance or statutory instrument",

the last mentioned term being itself defined as

"an instrument made under an Act or an Ordinance."

I am of opinion that the submissions of

counsel for the respondent are well-founded and in accepting them I would stress that the vice allegedly affecting regulation 74 of the 1966 Regulations is not its inconsistency with any provision of the 1962 Constitution, but its intrinsic invalidity emanating from the fact that neither s.99 nor s.102 of the Constitution provides it with a legal foundation. It is, in my judgment, void ab initio.

Moreoever, it seems to me that the language of s.18 is such as to make it clear that it has no intention of interfering with vested rights, which would be the effect of acceptance of the argument advanced on behalf of the appellant as to the retrospective validation of the 1966 Regulations. In Lauri v. Renad, (1892) 3 Ch. 402, Lindley, L.J. said (at p.421):

> "It is a fundamental rule of English Law that no statute shall be construed so as to have a retrospective operation, unless its language is such as plainly to require such a construction. And the same rule involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

In Young v. Adams, (1898) A.C.469, in which the Judicial Committee of the Privy Council had to determine whether a New South Wales Civil Service Act was retrospective in its operation, Lord Watson, delivering the advice of the Board, said (at p.476) :

> "It does not seem to be very probable that the legislature should intend to extinguish, by means of retrospective enactment, rights and interests which might have already been valid in a very limited class of persons, consisting, so far as appears, of one individual, viz., the respondent. In such cases their Lordships are of opinion that the rule laid down by Erle, C.J. in Midland Ry. v. Pye /(1861) 10 C.B. (N.S.) 179, 191/ ought to apply. They think that in the present case the learned Chief Justice (of N.S.Wales) was right in saying that a retrospective operation ought not to be given to the statute unless the

"intention of the legislature that it should be so construed is expressed in plain and unambiguous language, because it manifestly shocks our sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment. The ratio is equally apparent when a new enactment is said to convert an act wrongfully done into a legal act, and to deprive the person injured of the remedy which the law then gave him."

The principle thus expressed by the Judicial Committee is, in my judgment, manifestly applicable to the present case. There is nothing in the language of s.18 which requires that legal validity be conferred upon regulation 74 of the 1966 Regulations so as to deprive the respondent of any remedy which would otherwise be open to him. It seems to me that the object of s.18 is, in effect, to extend the definition of "existing law" contained in s.2 so as to include as from the appointed day all enactments that might be held to be void by reason only of inconsistency with any provision of the former Constitution. For this purpose such enactments are "deemed to have been validly passed or made and to have had full force and effect as part of the law of Trinidad and Tobago."

For the reasons indicated I am of opinion that any rights vested in the respondent by the law as it stood at the date of his removal from office on August 14, 1972 have not been affected by s.18 of the Constitution of the Republic of Trinidad and Tobago Act, 1976.

CONCLUSION

Having determined the three questions posed to him in favour of the respondent, Braithwaite, J. on December 17, 1976, made an order that his said determination and the proceedings in the matter should be forwarded to the Registrar "for such further interlocutory process as may be applied for." The appeal against the judge's decision was instituted by notice, dated December 22, 1976, setting out five grounds of appeal alleging errors in law on the part of the learned judge. The sole relief claimed by the appellant was that the decision be reversed - in effect a claim that the

respondent's action should be dismissed and judgment entered for the appellant.

On the other hand, by a notice dated December 29, 1976, the respondent intimated his intention to contend at the hearing of the appeal that the learned judge's decision should be varied on the ground that the judge had erred in law and/or had wrongly exercised his discretion in not finally disposing of the action by giving judgment for the respondent in terms of the relief specifically claimed. This course of action, it was alleged, should have been followed in pursuance of Order 33, r.6 of the R.S.C. 1975, which is an exact replica of the R.S.C., Order 33, r.7 (U.K.) and is to the following effect :

> "If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just."

In these circumstances it is interesting to observe that when counsel for the appellant put forward his alternative argument to the effect that the disciplinary offences with which the respondent was charged had a common law foundation in the law of contract, he submitted that this Court should consider the question of remitting the case to the learned judge for the purpose of affording the appellant an opportunity of having the pleadings amended in order to raise this new issue.

It seems to me that despite the latitude allowed by the Rules of Court in connection with the granting of applications for amendments of pleadings "for the purpose of determining the real question in controversy between the parties", any amendment of the kind suggested would not fall within the purpose contemplated by the Rules and would be rendered inadmissible by the likelihood of its having the effect of prejudicing rights that would accrue to the respondent from a Statute of Limitations. (See s.5 of the Limitation of Personal Actions Ordinance Ch.5 No.6). To permit any amendment whereby the foundation of the disciplinary charges

in question is to be shifted from allegations of breaches of r.74 of the 1966 Regulations to allegations of breaches of therespondent's contractual duties as an employee would, in my view, be reminiscent of the wolf's behaviour in Aesop's fable of "The Wolf and the Lamb". I am satisfied that nothing can be found in this case to provide the slightest justification for the adoption of the course suggested by counsel for the appellant.

The determination in favour of the respondent of the three questions considered by the learned judge was, in my judgment, sufficient for the purpose of disposing of the action and made it unnecessary for any further proceedings to be taken in the High Court. Being of opinion that the learned judge arrived at the correct decision in relation to each question and that the respondent's rights have not been affected by s.18 of the Constitution of the Republic of Trinidad and Tobago Act, 1976, I consider the present case to be a proper one for the exercise of the powers vested in the High Court and the Court of Appeal respectively by Order 33, r.6 of the R.S.C. 1975 and s.39(1) of the Supreme Court of Judicature Act, 1962. The latter provision stipulates (inter alia) that :

> "On the hearing of an appeal from any order of the High Court in any civil cause or matter, the Court of Appeal shall have the power to -
>
> (a) confirm, vary, amend, or set aside the order or make such order as the court from whose order the appeal is brought might have made, or to make any order which ought to have made, and to make such further or other order as the nature of the case may require."

Reference should also be made to s.20 of the said Act which provides as follows :

> "20. The High Court and the Court of Appeal respectively in the exercise of the jurisdiction

" by the Constitution shall in every cause or matter pending before theCourt grant, either absolutely or on such terms and conditions as to the Court seems just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim properly brought forward by him in the cause or matter, so that as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided."

I would, accordingly, dismiss this appeal with costs and determine the action by granting to the respondent the following relief :

1. Declarations that

(a) regulation 74 of the Police Service Commission Regulations, 1966 is ultra vires the Trinidad and Tobago (Constitution) Order in Council, 1962, null and void and of no effect;

(b) the purported interdiction of the respondent from duty by the Police Service Commission with deprivation of half pay, the laying of charges, the holding of an inquiry, the purported conviction of the respondent and his removal from office were ultra vires the Police Service Commission Regulations, 1966 as well as the Trinidad and Tobago (Constitution) Order in Council, 1962, null and void and of no effect;

(c) the respondent has at all material times been entitled to the full salary, emoluments, rights, leave and other benefits of the said office and service;

(d) the respondent has been wrongfully dismissed from the said office and service.

2. Damages for wrongful dismissal to be assessed by a judge in chambers.

C.E.G. Phillips
Justice of Appeal

No. 13

ORDER OF COURT OF APPEAL

TRINIDAD AND TOBABO

CA:68/76 IN THE COURT OF APPEAL

BETWEEN

THE ATTORNEY GENERAL Defendant/Appellant

AND

ENDELL THOMAS Plaintiff/Respondent

Dated and Entered the 19th day of January, 1979.

Before the Honourable The Chief Justice
Mr. Justice C. Phillips
Mr. Justice C.A.Kelsick

UPON Reading the Notice of Appeal filed herein on behalf of the above-mentioned Defendant/Appellant dated the 22nd day of December, 1976 and the Judgment hereinafter mentioned.

AND UPON Reading the Judge's Notes herein

AND UPON Hearing Counsel for the

No.13
Order of Court of Appeal

19th January 1979

(continued)

Defendant/Appellant and Counsel for the Plaintiff/Respondent.

AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED

that this appeal be and the same is hereby allowed and that the Judgment of the Honourable Mr. J.Braithwaite dated the 17th day of December, 1976 entered in favour of the Plaintiff/Respondent be wholly set aside and that the costs of this appeal be taxed and paid by the Plaintiff/Respondent to the Defendant/Appellant.

IT IS FURTHER ORDERED

that the cross appeal dated the 29th day of December, 1976 be and the same is hereby dismissed with costs to be taxed and paid by the Plaintiff/Respondent to the Defendant/Appellant

Assistant Registrar

No. 14

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No.68 of 1976

Between

ENDELL THOMAS — Appellant/Plaintiff

And

THE ATTORNEY GENERAL — Respondent/Defendant

Dated the 14th day of February 1979
Entered the day of 1979
Before the Honourable: Sir Isaac Hyatali, Kt. Chief Justice
Mr. Justice Clement Phillips
Mr. Justice C.Kelsick

UPON Motion this day made unto this Court by Counsel for the Appellant/Plaintiff for conditional leave to appeal to the Judicial Committee of the Privy Council against the judgment of this Court made herein on the 19th day of January, 1979.

AND UPON hearing Counsel for the Appellant/Plaintiff and the Respondent/Defendant

AND UPON reading the Notice of Motion dated the 26th day of January, and the Affidavit of the Appellant/Plaintiff sworn to the 26th day of January, 1979, both filed herein

THIS COURT DOTH BY CONSENT ORDER that subject to the performance by the Appellant/Respondent of the conditions hereinafter mentioned and also to the final order of this Court upon the compliance with such conditions leave to appeal to the Judicial Committee of the Privy Council against the

said Judgment is hereby granted to the Appellant/Plaintiff

AND THIS COURT DOTH FURTHER BY CONSENT ORDER

(1) That the Appellant/Plaintiff do within 90 days provide security in the sum of £500 sterling to the satisfaction of the Registrar or deposit into Court the said sum for the due prosecution of the said appeal and for the payment of all such costs as may become payable by the applicant In the event of his not obtaining an Order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be).

(2) That the Appellant/Plaintiff do within ninety days from the date hereof take out all appointments that may be necessary for the settling and preparation of the transcript record in such appeal to enable the Registrar to certify that the said transcript record has been settled and that the provisions of this order on the part of the Appellant/ Plaintiff complied with and that the said transcript record which the Appellant/Plaintiff purposes will be printed in Trinidad & Tobago be transmitted to the Registrar of the Privy Council within sixty days from the date of such certificate.

(3) That the Appellant/Plaintiff do within one hundred and twenty days from the date hereof apply to this Court for the final order for leave to appeal

(4) That execution be stayed pending determination of the said appeal of that part of the said Judgment whereby the Appellant/Plaintiff was ordered to pay the Respondent/Defendant's costs of the action and appeal to this Court.

(5) That the costs of and occasioned by this motion be costs in the cause to abide the result of the appeal.

(6) That each party may be at liberty to apply.

Registrar

No. 15

ORDER GRANTING FINAL LEAVE TO APPEAL

Civil Appeal No.68/76

AN APPEAL FROM THE COURT OF APPEAL

Between

ENDELL THOMAS — Appellant/Plaintiff

And

THE ATTORNEY GENERAL — Defendant/Respondent

Entered the 6th day of November, 1979
Dated the 6th day of November, 1979
Before the Honourables:- Mr. Justice M.Corbin, J.A.
Mr. Justice G.Scott, J.A.
Mr. Justice N. Hassanali, J.A.

On the return of Motion issued on the 30th day of October, 1979 on behalf of the above named Appellant/Plaintiff and upon reading the said Motion the Affidavit of William David Clarke sworn to on the 30th day of October, 1979, and the Certificate of the Registrar of the High Court of Justice all filed herein.

Upon hearing Counsel for the Appellant/Plaintiff and Counsel for the Respondent/Defendant

In the Court of Appeal

No.15
Order Granting Final Leave to Appeal
6th November 1979
(continued)

IT IS ORDERED THAT

leave be and the same is hereby granted to the Appellant/Plaintiff to appeal to the Judicial Committee of the Privy Council against the Judgment of the Court of Appeal dated 19th January, 1979

Dated the 6th day of November, 1979.

Sgd.

Asst. Registrar
30/11/79

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No. 47 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL TRINIDAD AND TOBAGO

B E T W E E N :

ENDELL THOMAS — Appellant (Plaintiff)

- and -

THE ATTORNEY GENERAL — Respondent (Defendant)

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