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its ordinary meaning, the meaning giving in the definitions must be applied to the word wherever it appears in the Act, unless the contrary is clearly indicated. In my opinion there can be no doubt that in section 31 the word 'debt' was used in its restricted sense as defined in the Act. If the legislature had intended to give a displaced person, against whom a money decree had been passed, the protection afforded by clause (r), it would have been perfectly simple to use some such words in the opening words of the section as 'any decree for the payment of money'. I am, therefore, of the opinion that the matter was correctly decided by the learned Single Judge and would dismiss the appeal with costs.

A. N. Bhandari, C.J.—I agree.

K.S.K.

CIVIL WRIT

Before Chopra and Grover, JJ.

M/s ALLEN BERRY AND Co., PRIVATE LTD., AND ANOTHER,—*Petitioners.*

versus

VIVIAN BOSE AND OTHERS,—*Respondents*

Civil Writ No. 673 of 1959.

1959

Oct., 8th

Commission of Inquiry Act (LX of 1952)—Section 5—Status and functions of the Commission appointed under—Whether a civil court or quasi-judicial Tribunal—Proceedings before the Commission—Whether judicial or quasi-judicial in nature—Section 8—Procedure to be followed by the Commission—Whether can be regulated by the Commission—Procedure perscribed for inspection of documents—Whether can be interfered with by the High Court—Inspectors appointed by the Commission to collect

material and record statements of persons—Whether improper as offending maxim **delegata protestas non-potest de**gare—*Solicitor and Secretary attached to the Commission—Whether disqualified on the ground of bias—Section 6—Immunity granted under—Whether complete—Constitution of India (1950)—Article 20(3)—Protection of—Whether can be invoked by witnesses appearing before the Commission.*

Held, that the Commission appointed under the Commission of Inquiry Act, 1952, is a fact finding body meant only 'to instruct the mind of the Government without producing any documents of a judicial nature.' It is neither a civil court nor are its procedings judicial except for the purpose of Sections 193 and 228 of the Indian Penal Code, nor do the provisions of the Code of Civil Procedure or of the Evidence Act apply to its proceedings. The Commission is neither a *quasi*-judicial Tribunal nor does it exercise powers of such a Tribunal nor are its proceedings *quasi*-judicial. There is no contest between the Government and the petitioners nor will there be any determination of disputes between any parties nor will the opinion or views expressed by the Commission in any way prejudicially affect the rights of the petitioners because its findings or opinions or recommendations will have no force of their own and the Government may or may not accept them and, similarly, may or may not introduce any legislative measures or take any administrative action. It is thus open to the Commission, under Section 8 of the Act, to regulate its own procedure and if the Commission indicates that it will follow the procedure which is fair to every one and which will conform to the rules of natural justice, the parties before the Commission should have no cause of grievance.

Held, that it is for the Commission to lay down the procedure in the matter of the inspection of documents and the procedure indicated by it, namely, that at later stages any documents that are sought to be used against the petitioners or are considered material will be shown to those interested to prepare their defences, appears to be quite just and it is not for the High Court to decide at what particular stage or stages and what particular documents should be shown to the petitioners. The claim of the petitioners for a general and roving discovery is not sustainable even if the Code of Civil Procedure were to apply.

Held, that the Commission has only appointed Inspectors to collect certain material and record only those statements which are volunteered by the witnesses. That has been done essentially to assist and help the Commission in the collection of material which it is physically impossible for the Chairman and the Members of the Commission to do collectively or individually. Such an appointment of Inspectors is not contrary to the well-known maxim '*delegata potestas non-potest delegare* for although an individual clothed with judicial functions cannot delegate the discharge of those functions unless he is expressly empowered to do so, and a deputy cannot transfer his entire powers to another, yet a deputy, having general powers, may, in general, constitute his servant or bailiff for the purpose of doing some particular act provided of course that such act be within the scope of his own legitimate authority.

Held, that the proceedings before the Commission not being of a judicial or *quasi*-judicial nature, it cannot be said that the Solicitor and the Secretary are incapable of giving impartial assistance and should not be allowed to be attached to the Commission even if there is any bias or interest so far as they are concerned.

Held, that Article 20(3) of the Constitution of India can be invoked in the proceedings before the Commission by witnesses who appear before it if and when the occasion arises. The guarantee under the aforesaid Article would be available to the witnesses against whom the First Information Report has already been lodged in which they have been accused of some offence. It would also extend to any compulsory process for production of evidentiary documents which are reasonably likely to support prosecution against them. It would equally extend to any testimonial compulsion in the case of those who appear as witnesses and who cannot be compelled to testify against themselves with regard to any matters of which they have been accused in the First Information Report.

Held, that the immunity under Article 20(3) of the Constitution is complete whereas under section 6 of the Act it is a limited and narrow one. All that will happen under section 6 of the Act is that a person's statement shall not subject him to or be used against him in any civil

or criminal proceeding but it will be open to the prosecution agency to make use of such information that may have appeared in his statements which may lead to the discovery of other evidence which may incriminate him. Moreover section 6 of the Act does not cover the case of production of an incriminating document and gives no immunity with regard to the same. It will be operative only after a statement has been made or a document has been produced. On the other hand, the inhibition in Article 20(3) extends to the very first stage and the person accused of an offence cannot be compelled to state a fact or produce a document which may tend to incriminate him. The moment such compulsion is exercised, he can claim the immunity. Section 6 will merely render his statement immune but will not afford protection against such compulsion to give self-incriminating answers or to produce self-incriminating documents. It is thus not possible to accede to the proportion that the immunity under section 6 of the Act is co-extensive with the one under Article 20 (3) of the Constitution and is complete substitute for the prohibition enjoined by Article 20(3).

Petition under Article 226/227 of the Constitution of India praying that :—

(*a*) Certiorari *or any other suitable writ, order or direction quashing the order dated 7th April, 1959 and the order dated 8th April, 1959.*

(*b*) *Prihibition restraining Respondents 1 to 3 from examining any person in disregard to the provisions of Article 20(3) of the Constitution and particularly restraining Respondents 1 to 3 from examining persons accused of criminal offences in the said First Information Report in disregard of Article 20(3) or from asking any question which may tend to incriminate or from cross-examining them.*

(c) *Prohibition and/or any other suitable writ or order directing Respondents 4 and 5 not to work as officers of the Commission and directing Respondents 1 to 3 not to permit Respondents 4 and 5 to associate themselves in any manner with the proceedings of inquiry before them.*

(*d*) *A writ order or direction directing Respondent 1 to 3 to disclose forthwith all the materials,*

documents and Reports available to them to the Petitioners and allow them to inspect the same.

(e) *Prohibition or any other suitable writ, order or direction restraining Respondents 1 to 3 from permitting the cross-examination of the witnesses or recording their evidence in contravention of the provisions of the Indian Evidence Ait.*

G. S. PATHAK, VED VYAS, S. K. KAPUR; P. C. KHANNA; for Petitioners.

C. K. DAPTHRY, SOLICITOR-GENERAL, JINDRA LAL AND S.B.R.L. IYENGER FOR U.O.I AND DALJIT SINGH, for Respondents.

ORDER

Grover, J.

GROVER, J.—This petition under Articles 226 and 227 of the Constitution is directed against two orders made on 7th April, 1959 and 8th April, 1959 by the Commission of Inquiry appointed under the Commission of Inquiry Act, 1952 (to be referred to as the Act), the petitioners being Messrs Allen Berry & Co. Private Limited and Shri Ram Krishan Dalmia.

By means of a Notification dated 11th December, 1956, the Central Government in exercise of the powers conferred under the Act appointed a Commission of Inquiry (hereinafter called the Commission) to enquire into the affairs of the petitioners and various other persons and companies mentioned in the said Notification for the purposes specified therein. On the 9th January, -1957, another Notification was issued providing that all the provisions of sub-sections (2), (3), (4) and (5) of section 5 would apply to the Commission. On 12th February, 1957, three miscellaneous petitions were filed under Article 226 of the Constitution in the High Court at Bombay challenging the validity of

the Act and the Notification dated 11th December, 1956, on various grounds. The Commission then consisted of late Justice S. R. Tendolkar as Chairman and respondents Nos. 2 and 3 as Members. The Writ Petitions were disposed of by the Bombay High Court on 29th April, 1957. The petitions failed except to the extent that it was ordered that the said Notification was legal and valid except as to the last part of clause (10) into which the Commission had to inquire, namely, "and the action which in the opinion of the Commission should be taken as and by way of securing redress or punishment or to act as preventive in future cases" and the Commission was directed not to proceed with the inquiry pursuant to that part of clause (10). On appeal having been brought to the Supreme Court from the judgment of the Bombay High Court, their Lordships confirmed the decision of the High Court except that he contenion raised on behalf of the Union of India was allowed to the extent that only the words "by way of redress or punishment" occurring in the latter portion of clause (10) of the Notification were directed to be delated. In other words the latter portion of clause (10) after the judgment of the Supreme Court was to run as under :—

> "and the action which in the opinion of the Commission should be taken * * * * * to act as a preventive in future cases."

The judgment of the Supreme Court is reported in *Shri Ram Krishan Dalmia and others* v. *Shri Justice S. R. Tendolkar and others* (1), and will have to be referred to for various matters.

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(1) A.I.R. 1958 S.C. 538

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Late Justice S. R. Tendolkar having resigned from the Chairmanship of the Commission, respondent No. 1 was appointed as its Chairman on 28th August, 1958. The Commission as at present constituted consists of the Chairman, who is respondent No. 1, and the two Members, namely respondents Nos. 2 and 3. Respondent No. 4 is the Solicitor to the Commission and Respondent No. 5 is the Secretary. While the evidence was being recorded at Calcutta towards the end of March, 1959, the petitioner raised certain objections orally which were incorporated in a formal application dated 4th April, 1959, (Annexure E). The points which have now been agitated before us were raised in some form or the other in that application and a subsequent application of 7th April, 1959fi submitted on behalf of Shri R. Dalmia. The objections that were raised and which related substantially to the procedure which was being followed by the Commission were dismissed by the Commission by its order made on 8th April, 1959. By the order passed on 7th April, 1959, the Commission declined to entertain the application presented on that day.

On behalf of the petitioners the following contentions have been raised :—

1. There has been non-disclosure of relevant material and documents by the Commission and there has been consequent denial of the rule of natural justice with regard to the same ;
2. The Commission has been guilty of illegally delegating its powers and functions to certain Investigating Officers ;
3. Respondents Nos. 4 and 5 who are the Solicitor and the Secretary to the Commission are disqualified to act as Officers

of the Commission because of bias and they are not capable of giving impartial and independent assistance to the Commission ;

4. The Commission is a Civil Court and its procedure should be governed by the Code of Civil Procedure in so far as that procedure can be made applicable. It would also be governed by the provisions of the Indian Evidence Act ;

5. Even if the Commission is not a Civil Court the proceedings before it are "judicial proceedings in or before any Court" within the meaning of section 1 of the Evidence Act with the result that all the provisions of the aforesaid Act will apply to the proceedings before the Commission. Thus the witnesses cannot be cross-examined except according to the procedure laid down in that Act.

6. In any event the Commission is performing the functions of a quasi-judicial tribunal and all the proceedings before it are of a quasi-judicial nature and the procedure to be followed by it must conform to all the Rules which govern quasi-judicial proceedings ;

7. Article 20(3) of the Constitution will be applicable to the proceedings before the Commission.

It may be mentioned that the decision of the Commission as embodied in the order dated 8th April, 1959 has gone substantially against the petitioners on most of the points mentioned above.

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The learned Solicitor-General who appears on behalf of the Union submits that in order to decide all the contentions that have been raised with the exception of the last point it is essential to determine first the functions and nature of the Commission and its proceedings. According to him there can be four classes of proceedings :—

(i) Judicial *stricto sensu* as before a Court of Law

(ii) Quasi-judicial, where judicial spirit must prevail .

(iii) Administrative, but affecting rights of a citizen where procedure of fair play should apply .

(iv) Miscellaneous, where a body is set up for collecting information for legislative purpose.

As regards the first three clauses there is one common feature, namely, any order made or decision given as a result of such proceedings may affect the rights of others. The proceedigs falling into the fourth category would be of a body or tribunal which is under no obligation of any kind of following a judicial procedure or applying the rules of fair play. The only obligation of such a body is to make a report, not for any direct action but for the purpose of legislation, etc. It is urged that the Commission falls within such a category and that it is a fact-finding body set up for the purposes of legislative or administrative action which may or may not be taken in the future. It does not perform any judicial functions; it comes to no judgment or decision which is enforceable *preprio vigore* or which can become enforceable subject to confirmation by a specified authority. It is not bound by

any procedure except such as may be prescribed or it may itself devise, and it may in its discretion follow a quasi-judicial or administrative procedure. There are neither any parties arrayed before it nor is there a *lis* nor any determination of a *lis* nor can it affect the rights of any party.

For the purposes of determining the status of the Commission, its functions and the nature of its proceedings, it may be convenient to deal at this stage with the contention that has been raised that according to the provisions contained in the Act itself the Commission should be deemed to be a Civil Court. It is pointed out on behalf of the petitioners that section 4 of the Act gives the powers of a Civil Court to the Commission in respect of the following matters—

(a) Summoning and enforcing the attendance of any person and examining him on oath ;

(b) Requiring the discovery and production of any document ;

(c) Receiving evidence on affidavits ;

(d) Requisitioning any public record or copy thereof from any Court or office ;

(e) Issuing commissions for the examination of witnesses or documents ; and

(f) any other matter which may be prescribed.

Those powers are conferred on all Commissions appointed under the Act. Unless section 5, however, where the appropriate Government is of

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opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) should be made applicable to a Commission, the appropriate Government may, by notification in the Official Gazette, direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission. In the instant case all the aforesaid sub-sections were made applicable to the Commission as stated before. Sub-section (4) of section 5 is in the following terms:—

> "The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180, or section 288 of the Indian Penal Code (Act XLV of 1860) is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (Act V of 1898), forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, 1898."

Much emphasis is laid by the learned counsel for the petitioners on the deeming provisions contained in the aforesaid sub-section and it is strenuously urged that all the incidents and consequences must flow and should be given effect to because of the

use of the deeming provisions. Reference is made to *The State of Bombay* v. *Pandurang Vinayal Chaphalkar and others* (1), where the Bombay Building (Control on Erection) Ordinance, 1948, applied to certain areas mentioned in the Schedule to the Ordinance, and in exercise of the powers vested in it the Government extended its provisions to certain other areas including Ratnagiri in respect of buildings intended to be used for cinemas and other places of entertainment. The Ordinance was repealed by an Act the provisions of which were similar to those of the Ordinance. Section 15(1) of the Act repealed that Ordinance and declared that "the provisions of sections 7 and 25 of the Bombay General Clauses Act, 1904 shall apply to the repeal as if that Ordinance were an enactment". While holding that on a true construction of section 15(1) of the Bombay Building (Control on Erection) Act, 1948, and section 25 of the Bombay General Clauses Act, 1904, the notification issued on 15th January, 1948, under the Ordinance continued in force under the Act of 1948, their Lordships held that by virtue of the Ordinance the provisions of the Act stood extended to other areas in the State including Ratnagiri to the extent indicated in the notification. At page 778 the following observations were made which are noteworthy :—

> "The Ordinance by use of those words was given the status of an enactment and, therefore, the word "Ordinance" occurring in the notification has to be read accordingly and as extending the Act to those areas, and unless that is done, full effect cannot be given to the concluding words used in section 15(1) of

(1) 1953 S.C.R. 773

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the Act. The concluding words of section 15(1) of the Act achieve the purpose that was achieved in the Cotton Cloth and Yarn (Control) Order by the "proviso". By reason of the deeming provisions of section 15, the language used in the notification extending the ordinance to those areas as a necessary consequence has the effect of extending the operation of the Act to those areas. When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion (*vide* Lord Justice James in *Ex parte Walton : In re Levy* (1).

Their Lordships referred to the observations of Lord Asquith in *East End Dwellings Co., Ltd.*, v. *Finsbury Borough Council* (2), which were to the following effect :—

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitabily have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs; it does not say that having done, so, you must

(1) 17 D. 746 at P. 756
(2) (1952) A.C. 109

cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The learned Solicitor-General points out that the purpose for which the deeming provision was inserted in sub-section (4) of section 5 is contained in what follows the words creating the legal fiction. According to him the use of the word "and" is quite appropriate because the legislature intended that the Commission is to be deemed to be Civil Court only for the purposes mentioned in sub-section (4) in the lines which followed the word "and". An identical question came up for consideration before a Division Bench of the Nagpur High Court consisting of Sinha, C.J. (now Chief Justice of the Supreme Court) and Butt, J., in *M. V. Rajwade, I.A.S., District Magistrate* v. *Dr. S. M. Hussan and others* (1). A commission of Inquiry had been appointed by the Government of Madhya Pradesh under the Act for making an inquiry and submitting a report with regard to the firing which the police had to open on a mob while the treasury and records were being removed from the tehsil building in Chhuikhadan. Certain articles were published in various newspapers, etc., and contempt proceedings were started against the authors and publishers. The Nagpur Bench had to examine the questions whether Commission of Inquiry was a court within the meaning of the Contempt of Courts Act and whether the proceedings before the Commission of Inquiry were judicial proceedings. The relevant provisions of the Act and in particular sub-sections (4) and (5) were referred to and the effect of the deeming provision as contained in section 5(4) was fully examined. It was laid down that the purpose for which the fiction

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had been created had to be gathered from what followed the words which created the fiction. The following observations at page 75 are pertinent :—

> "Applying this test to the instant case, it would appear that the purpose for which the action is created in sub-section (4) of section 5 of the Commissions of Inquiry Act, 1952, is to be inferred from the words that follow the expression "the Commission shall be deemed to be a civil Court". It would not be correct to contend that the above expression is full and complete in itself and what follows it only denotes the limitation on the full-fledged status and powers of a civil Court that the Commission would otherwise have possessed. If that was the intention of the Legislature, the sentence would have been completed after the words "civil Court" and what follows it would have been the subject of a separate sub-section or sentence. It is, therefore, clear that under the Commissioners of Inquiry Act, 1952, the Commission is fictionally a civil Court only for the purpose of the contempts punishable under Sections 175, 178, 179, 180 and 228 of the Indian Penal Code, 1860 subject to the condition that it has not the right itself to punish the contemners, a right which other Courts possess under Section 480 of the Code of Criminal Procedure, 1898. Similarly it follows that the fiction relating to the proceedings before the Commission is confined to offences that are punishable under Sections 193 and 228 of the Indian Penal Code, 1860, referred to in sub-section

(5) of the Act, and does not extend beyond this limit."

The Nagpur Bench proceeded to consider the various definitions of the words "court" and "courts of justice" and expressed the view that the Commission in question was obviously appointed by the State Government "for the information of its own mind", in order that it should not act, in exercise of its executive power, "otherwise than in accordance with the dictates of justice and equity" in ordering a departmental enquiry against its officers. It was, therefore, a fact-finding body meant only to instruct the mind of the Government without producing any document of a judicial nature. It was further observed that the least that was required of a Court was the capacity to deliver a "definitive judgment" and unless that power vested in a tribunal in any particular case, the mere fact that the procedure adopted by it was of a legal character and it had the power to administer an oath would not impart to it the status of a Court. It has been contended before us on behalf of the petitioners that the Nagpur Bench did not fully appreciate the observations of their Lordships of the Privy Council in *Radhakissen Chamsid and others* v. *Durga Parsad Chamdra and another* (1), on which reliance was placed by it but we are not satisfied that that is correct and, with respect, we consider that the reasons given in the Nagpur case for coming to the conclusion that the deeming provision contained in sub-section (4) of section 5 of the Act made it a Civil Court only for the purposes contained in what followed that provision are weighty and correct. *In Brajnandan Sinha*, v. *Jyoti Narain* (2), their Lordships while observing that the view expressed by the Nagpur Bench in the above case

(1) A.I.R. 1940 P.C. 167
(2) (1955) 2 S.C.R. 955

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with regard to the construction of the provisions of the Public Servants (Inquiries) Act, 1850, was more in the nature of digression considered that the nature and functions of the Commission had been correctly described by the learned Nagpur Judges and thus gave their imprimatur to the fact-finding nature of the Commission. The learned Solicitor-General further relied on the following passage from the judgment of their Lordships in the aforesaid case which appears at page 963 :—

> "It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

It is thus not possible to accede to the contention that the Commission is a Civil Court by virtue of the deeming provision contained in sub-section (4) of section 5 of the Act.

The next question is whether sub-section (5) of Section 5 which has also been made applicable to the Commission read independently or together with sub-section (4) of Section 5 and Section 4 of the Act makes the proceedings before the Commission judicial and gives the Commission the status of a Court. Sub-section (5) is as follows :—

> "Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860)."

A great deal of emphasis has been laid by the learned counsel for the petitioners on the words "within the meaning of" and it has been contended that this has reference to the judicial interpretation given by the various Courts to the words "judicial proceeding" occurring in sections 193 and 228 of the Indian Penal Code. Reference has been made to *Bishamber Singh* v. *The State of Orissa and another* (1), where the expression "within the meaning of" came up for consideration. The context in which the connotation of these words was examined was quite different there. Section 3(1) of the Orissa Estates Abolition Act empowered the State Government to issue a notification declaring that the estates specified therein had passed to the State but the notification had to be in respect of the property which was defined as an estate in section 2(g). In order to be an intermediary, according to the definition given in Section 2(h), the person must be among other, things a Zamindar, etc., etc., within the meaning of *Wajib-ul-arz* or any Sanad, deed or other instrument. It was held by the majority with regard to the Nagra Zamindar that a Zamindarwas an intermediary as defined in Section 2(h) of the Act. At page 852, it was observed by Das, J., (as he then was) as follows :—

> "It is, therefore, quite clear that the proprietors of Nagra are Zamindars within the meaning of the Ekrarnama, call it a "deed" or "other instrument" as one likes."

This authority is not apposite for the purpose of deciding what is meant by the words "within the meaning of" as employed in sub-section (5) of Section 5 of the Act. The argument raised on behalf of

(1) 1954 S.C.R. 842

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the respondents that the aforesaid words are meant for the limited purpose of making the proceedings judicial whenever any proceedings have to be taken under sections 193 and 228 of the Indian Penal Code is sought to be repelled by the learned counsel for the petitioners by a comparison with section 37 of the Inome-tax Act where sub-section 4 provides :

> "Any proceeding before any authority referred to in this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860)."

It is contended that the two expressions "within the meaning of" and "for the purposes of" are used distinctively and it must be inferred that the draftsmen who are familiar with these expressions have employed them in different senses. The words "judicial proceeding" have not been defined in the Indian Penal Code and we have not been shown any authorities taking a uniform view of what is meant by those words as employed in Section 193. A general reference was made to the commentary on the Law of Crimes by Rattan Lal but that is hardly of much assistance. It is not possible to understand that while drafting sub-section (5) of Section 5 the draftsman would have left the meaning of judicial proceeding to be understood with reference to such wide matters as are covered by judicial decisions given under Sections 193 and 228 of the Indian Penal Code. The words 'judicial proceeding' are employed in the two aforesaid subsections of Section 5 and it seems obvious from the scheme of the Act, the nature of the functions of the Commission and other relevant matters that a proceeding before the Commission was to be deemed to be a judicial proceeding for the purpose

of Sections 193 and 228 of the Indian Penal Code. In Section 37 of the Income-tax Act the two expressions appear to have been used distinctively because Section 196 of the Indian Penal Code does not employ the words judicial proceedings and, therefore, it was not possible to use the expression "within the meaning of" with reference to that Section.

The learned counsel for the petitioners have placed a great deal of reliance on *Suraj Mall Mohta and Co.* v. *A. V. Visvanatha Sastri and another* (1), where while examining the validity of certain provisions of the Taxation on Income (Investigation Commission) Act (XXX of 1947), a comparison was made by Mehar Chand Mahajan, C.J., between the procedure prescribed by the impugned Act and the procedure prescribed by the Income-tax Act with regard to escaped income. While making that comparison the substantial difference between the two procedures was stated at pages 464 and 465 in the following words :—

> "When an assessment on escaped or evaded income is made under the provisions of section 34 of the Indian Income-tax Act, all the provisions for arriving at the assessment provided under section 23(3) come into operation and the assessment has to be made on all relevant materials and on evidence and the assessee ordinarily has the fullest right to inspect the record and all documents and materials that are to be used against him. Under the provisions of section 37 of the Indian Income-tax Act the proceedings before the Income-tax Officer are

(1) (1955) 1 S.C.R. 448

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judicial proceedings and all the incidents of such judicial proceedings have to be observed before the result is arrived at. In other words, the assessee would have a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal."

It is contended that it has been clearly decided by their Lordships that the proceedings before the Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings are attracted and this is by virtue of the provisions contained in Section 37 of the Income-tax Act. It is true that divorced from the context and taken in a general way the observations made appear to support the view put forward on behalf of the petitioners with regard to Section 37 of the Income-tax Act in which similar provisions existed as are to be found in Section 4 and Section 5(4) and 5(5) of the Act. The learned Solicitor-General has pointed out that the proceedings before the Income-tax Officer have always been considered to be judicial or quasi-judicial and that it was not merely because of the provisions of Section 37 of the Income-tax Act that their Lordships of the Supreme Court held that such proceedings were judicial proceedings in the fullest sense. It is submitted that the point which the Supreme Court was examining in *Suraj Mall Mohta's case* was quite different and the observations which were made must be understood in this background that the proceedings before the Income-tax Officer are of a different nature and they affect the rights of the assessee thus making it incumbent on the Income-tax Officer to proceed fundamentally in a judicial manner and come to a decision upon properly ascertained facts. There seems to be a good deal

of force in the submissions of the learned Solicitor-General and it is not possible to hold that merely because of identical powers having been conferred under Section 37 of the Income-tax Act and Sections 4 and 5(4) and 5(5) of the present Act the functions of the Commission are of a judicial nature and that its proceedings are assimilated to the character of judicial proceedings. While considering this matter it is essential to keep in the fore-front the nature of the functions and powers of the Commission and the purpose for which it has been appointed. If it is a fact-finding body it is difficult to envisage that the legislature intended giving it the character of a judicial body or tribunal exercising judicial functions. If the matter were *res integra* there may be some room for argument but in *Shri Ram Krishna Dalmia and others* v. *Shri Justice S. R. Tendolkar and others* (1), which related to this very Commission their Lordships have made certain observations which lend support to the position taken by the Solicitor-General. The passage appearing at page 546 may be referred to with advantage :—

> "As has been stated by the High Court itself in the latter part of its judgment, the only power that the Commission has is to inquire and to make a report and embody therein its recommendations. The Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken.

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Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called and consequently the question of usurpation by Parliament or the Government of the powers of the Judicial organs of the Union of India cannot arise on the facts of this case * * * * * *".

Further at page 547 it is observed that the Commission of Inquiry has no judicial powers and its report will purely be recommendatory and not effective *proprio vigore*. On behalf of the petitioners it is suggested that the argument which was being considered by their Lordships, was of a different nature, namely, that the Parliament or the Government had usurped the functions of the judiciary which argument was founded on the theory of separation of powers and that the Supreme Court was not examining the question whether the Commission would be a Court or whether the proceedings before it would be judicial proceedings in view of Sections 4 and 5(5) of the Act. It is true that the argument as addressed to us was not examined by their Lordships but when the real nature of the Commission, its functions and powers were being considered it would have been present to the mind of their Lordships that these provisions, if the arguments raised on behalf of the petitioners were to be accepted, would confer judicial powers on the Commission and make its proceedings judicial in the fullest sense of that word.

The next question is whether the proceedings before the Commission are governed by the Indian Evidence Act, Section 1. It has been contended on behalf of the petitioners that according to Section 3 of that Act Court includes all judges and Magistrates and all persons except arbitrators legally authorized to take evidence. As the Commission is legally authorized to take evidence under Section 4 of the Act, the argument raised is that the Commission is a Court and the proceedings before it would be governed by the Evidence Act. As the proceedings before the Commission have been held not to be judicial, the other condition necessary to attract the applicability of the Evidence Act contained in Section 1 of that Act is not satisfied.

It is now to be seen whether the Commission can be regarded to be a quasi-judicial Tribunal exercising quasi-judicial powers and as such bound by all the rules that would govern the proceedings of such a Tribunal. A great deal of emphasis has been laid by the learned counsel for the petitioners on what the Commission itself thought about following a procedure consistent with the rules of natural justice and fair play. Our attention has been invited to a number of English decisions, e.g., *The King* v. *Minister of Health* (1), *Errington and others* v. *Minister of Health* (2), *Cooper* v. *Wilson and others* (3), *The King* v. *Electricity Commissioners* (4), *B. Johnson and Co. (Builders), Ltd.* v. *Minister of Health* (5), and *R.* v. *Manchester Legal Aid Committee* (6), to show that it is not necessary that only those bodies or tribunals whose decisions or orders are enforceable *proprio vigore* fall

(1) 1934 2 K.B. 98
(2) 1934 All. E.L.R. (Reprint) 154
(3) 1937 2 K.B. 309
(4) 1924 I K.B. 171
(5) 1947 2 All. E.L.R. 395
(6) 1952 All. E.L.R. 480

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within the category of quasi-judicial Tribunals. In Halsbury's Laws of England, Third Edition, Volume 11, at page 56, the following statement has been referred to :—

> "Moreover an administrative body, whose decision is actuated in whole or in part by questions of policy, may be under a duty to act judicially in the course of arriving at that decision. Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, if at some stage of the proceedings leading up to the decision there was something in the nature of a *lis* before it, then in the course of such consideration and at that stage the body would be under a duty to act judicially. If on the other hand, an administrative body in arriving at its decision has before it at no stage any form of *lis* and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any time to act judicially."

This passage was approved in *Nagendra Nath Bora and another* v. *Commissioner of Hills Division* (1). The basic authority is the case of *The King* v. *Electricity Commissioners* (*supra*) (2). There the Electricity Commissioners, a body established under the Electricity (Supply) Act, 1919, were empowered to constitute provisionally separate electricity districts and in certain events to formulate schemes for effecting improvements in the existing organization for the supply of electricity and were directed to hold local inquiries upon the

(1) A.I.R. 1958 S.C. 393 at P. 406
(2) 1924 I K.B. 171

schemes. The Commissioners constituted an electrictly district and formulated a scheme providing for the incorporation of a joint electricity authority. They then held a local enquiry with a view to making an order embodying the scheme. A question arose whether proceedings were of a quasi-judicial nature subject to writs of certiorari or prohibition. Bankes, L.J., laid down that at every stage the Electricity Commissioners were required to hold local inquiries for the purpose of giving interested parties the opportunity of being heard. The Act imposed upon them very wide and responsible duties and powers in reference to the approval or formulation of schemes. On principle and on authority powers so far-reaching, affecting as they did individuals as well as property, were powers to be exercised judicially and not ministerially, as proceedings towards legislation. It is significant that the real reason why the proceedings before the Electricity Commissioners were held to be quasi-judicial was that they could affect the rights of individuals as well as their property. Atkin, L.J., at page 208, pointed out that the final decision of the Commissioners was not to be operative until it had been approved by the two Houses of Parliament, but that was not inconsistent with the view that in arriving at that decision the Commissioners themselves were to act judicially and within the limits prescribed by the Act of Parliament. The learned counsel for the petitioners have relied a great deal on the fact that the decision of the Electricity Commissioners was not to be effective or operative until it had been approved by the Houses of Parliament and even then it was held that the Commissioners had a duty to act judicially. Atkin, L.J., however, proceeded to observe as follows at page 208 :—

> "It is to be noted that it is the order of the Commissioners that eventually takes

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effect; neither the Minister of Transport who confirms, nor the Houses of Parliament who approve, can under the statute make an order which in respect of the matters in question has any operation. I know of no authority which compels me to hold that a proceeding cannot be a judicial proceeding subject to prohibition or certiorari because it is subject to confirmation or approval, even where the approval has to be that of the Houses of Parliament."

In the present case, the decision or finding which will be given by the Commission will not eventually take effect. The Commission is only to make recommendations and express opinion on the matters that have been referred to it. This English case is accordingly quite distinguishable. Most of the English as well as Indian cases were discussed by Das, J., (as he then was) in *Province of Bombay* v. *Khushaldas S. Advani* (1), and the proper tests were formulated for deciding whether a Tribunal is quasi-judicial and is exercising quasi-judicial functions. After referring to another passage from the judgment of Atkin, L.J., in *Rex* v. *Electricity Commissioners,* (2), the learned Judge proceeded to observe as follows at page 257/258 :—

"The real test which distinguishes a quasi-judicial act from an administrative act is the third item in Atkin, L.J's. Definition, namely, the duty to act judicially... .....Therefore, in considering whether a particular statutory authority is a quasi-judicial body or a mere administrative

(1) A.I.R. 1950 S.C. 222 pp. 257 to 260
(2) (1924) 1K.B. 171

body it has to be ascertained whether the statutory authority has the duty to act judicially."

He then proceeded to consider the circumstances when a statutory body could be said to be under a duty to act judicially. The principles to be deduced from the discussion of all the cases mentioned in the judgment were stated at pages 259 to 260. "The principles as I apprehend them are; (i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

"In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the catagory of quasi-judicial act if the authority is nevertheless required by the statute to act judicially." The learned Solicitor-General, relying on the above principles, invited us to consider whether the proceedings conducted by the Commission and the nature

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of its functions and powers satisfied the tests laid down for holding whether the Tribunal is exercising quasi-judicial functions and its acts are quasi-judicial. According to the learned counsel for the petitioners there is a *lis* in the sense that the Government is one party and the petitioners and other companies mentioned in the notification are the other parties, that there is a proposition and opposition and that the rights of the petitioners will be prejudicially affected by any findings that may be given by the Commission. The learned Solicitor-General, on the other hand, points out that it is not possible to hold from the notification that the Government is a party or that there is any contest between the respective rights of the Government and of the petitioners. The Commission is not to decide any disputes nor is it to determine the respective rights of the contesting parties. Even if there are no parties and the second test laid down in the Supreme Court judgment is to be considered, the final determination by the Commission must be such that it should have a duty to act judicially. That duty can be cast upon it if the rights of any party are to be prejudicially affected. Giving the matter our full consideration it cannot be held that there is any contest in the present case between the Government and the petitioners or that there will be any determination of disputes between any parties or that the opinion or views expressed by the Commission would in any way prejudicially affect the rights of the petitioners. According to the petitioners, their rights would be affected in this manner :

The Commission might and is likely to give some decision one way or the other with regard to various matters relating to the affairs of the petitioners and the companies, and the Commission might find that there has been misappropriation,

fraud or embezzlement on the part of the petitioners or other officials of the Companies. The Government then might take legislative or administrative or executive action either by ordering criminal prosecution or by taking proceedings under the Indian Companies Act. There would have been some force in these contentions if their Lordships of the Supreme Court had not held in *Shri Ram Krishna Dalmia and others* v. *Shri Justice S. R. Tendolkar and others* (1), that the offending portion in clause 10 of the notification should be deleted. It is extraordinary that the argument addressed on behalf of the petitioners before the Supreme Court at the previous stage was somewhat contrary to what has been submitted now, as is clear from what is stated in paragraph 9 at page 546 of that report. There the learned counsel appearing for the petitioners went so far as to say that while the Commission might find facts on which the Government might take action legislative or executive (although the latter kind of action to be contemplated was not conceded), the Commission could not be asked to suggest any measures legislative or executive to be taken by the appropriate Government. While repelling this contention, their Lordships observed :—

> "It is, in our judgment, equally ancillary that the person or body conducting the enquiry should express its own view on the facts found by it for the consideration of the appropriate Government in order to enable it to take such measure as it may think fit to do. The whole purpose of setting up of a Commission of Inquiry consisting of experts will be frustrated and the elaborate process of inquiry will be deprived of its utility if the

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opinion and the advice of the expert body as to the measures the situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own."

It is quite clear from the above observation that the report of the Commission cannot be to the prejudice of any body because its findings or opinions or recommendations will have no force of their own and the Government may or may not accept them and, similarly, may or may not introduce any legislative measures or take administrative action.

Our attention was also invited on behalf of the petitioners to several other cases on the point, namely, *The Bharat Bank, Ltd., Delhi* v. *The Employees of the Bharat Bank, Ltd., Delhi and the Bharat Bank Employees' Union, Delhi* (1), In re: *Banwarilal Roy and others* (2), *Nagendra Nath Bora and others* v. *Commissioner of Hills Division and others* (3), *Express Newspaper (P), Ltd., and another* v. *The Union of India and others* (4), *Gullapalli Nageswara Rao and others* v. *Andhra Pradesh State Road Transport Corporation and another* (5), in which practically the same principles have been reiterated and followed as have been laid down in *Province of Bombay* v. *Khushaldas S. Advani* (6). There is one decision of their Lordships which requires particular consideration because a good deal of stress was laid on the supposed similarity between the facts in that case and the present case. In *Manak Lal, Advocate* v. *Dr. Prem*

(1) A.I.R. 1950 S.C. 188
(2) 48 Cal. W.N. 766
(3) A.I.R. 1958 S.C. 398
(4) A.I.R. 1958 S.C. 578
(5) A.I.R. 1959 S.C. 308
(6) A.I.R. 1950 S.C. 222

Chand Singhvi and others (1), there was a complaint of professional misconduct against an Advocate. The complaint was sent for enquiry to a Tribunal nominated by the Chief Justice of the High Court of Rajasthan under Section 10(2) of the Bar Councils Act. The Tribunal held an enquiry and found against the Advocate. The High Court agreed with the findings and directed that the Advocate should be removed from practice. The matter was brought on special leave to the Supreme Court. One of the main arguments addressed was that the Chairman of the Tribunal had appeared in certain criminal proceedings against the Advocate's clients at whose instance the complaint was instituted. The question was whether he was biased and, therefore, the proceedings conducted before the Inquiry Tribunal were vitiated as being contrary to the rules of natural justice. It was urged that the principle of bias should not be applied to the proceedings before the Tribunal appointed under the Bar Councils Act as it was not empowered to pass final orders on the enquiry and that the report made by the Tribunal was to be submitted to the High Court for its final decision. Without discussing this matter (it seems to have been taken for granted that the proceedings were of such a character), their Lordships held that once there was any room for a reasonable apprehension that the Tribunal might have been indirectly influenced by any bias, the enquiry proceedings were vitiated. It is contended on behalf of the petitioners that although the decision or the report of the Inquiry Tribunal was not to have any final effect, nevertheless their Lordships considered that the proceedings before the Inquiry Tribunal were of judicial or quasi-judicial nature. It must be remembered that under Section 10(1) of the Indian Bar Councils Act, the High Court may reprimand,

(1) A.I.R. 1957 S.C. 425

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suspend or remove from practice any Advocate whom it finds guilty of professional or other misconduct. Sub-section (2) of that Section provides that on receipt of a complaint made to it by any Court or by the Bar Council or by any other person that any such Advocate had been guilty of misconduct, the High Court shall, if it does not summarily reject the complaint, refer the case for enquiry either to the Bar Council or after consultation with the Bar Council to the Court of a District Judge..... Section 11 provides for the constitution of the Tribunal of the Bar Council and Section 12 provides for procedure to be followed by the Tribunal and District Courts in the conduct of enquiries. It is quite clear that the statute itself contemplates that the enquiry has to be of judicial or quasi-judicial nature and it is really the High Court which directs the enquiry to be made, and the very constitution of the Tribunal and its procedure with regard to which rules have been framed by the various High Courts show that the Tribunal exercises judicial or quasi-judicial functions. Moreover, the rights of an Advocate are likely to be seriously affected by any adverse finding given by the Tribunal of the Bar Council and, therefore, also the proceedings before the Tribunal would assume the character of quasi-judicial.

As a result of the above discussion on principle and on authority it must be held that the Commission is a fact-finding body meant only 'to instruct the mind of the Government without producing any documents of a judicial nature'. It is neither a Civil Court nor are its proceedings judicial nor do the provisions of the Code of Civil Procedure or of the Evidence Act apply to its proceedings. The Commission is neither a quasi-judicial Tribunal nor does it exercise powers of such a

Tribunal nor are its proceedings quasi-judicial. The Commission is right in coming to this conclusion and in holding that under Section 8 of the Act it can regulate its own procedure. The Commission has pointed out in its orders which are impugned that it will follow the procedure which is fair to every one and which will conform to the rules of natural justice. The petitioners should be more than satisfied that the Commission proposes to follow such a procedure. This will dispose of points 4. 5 and 6.

Once the conclusions mentioned above are reached, the other points that have been raised on behalf of the petitioners can easily be disposed of. On point No. 1, it was contended on behalf of the petitioners that all the documents which are in the possession of the Commission should be shown to the petitioners and they should be allowed their right of inspection not only for the purpose of contradicting any material that may appear against them but also for the purpose of putting forward such material as may be in their favour. Apart from certain English cases, namely, *R.* v. *Westiminister Assessment Committee,* (1) and *R. Architects' Registration Tribunal, ex-parte Jaggar* (2), reliance was placed on *Suraj Mall Mohta and Co.* v. *A. V. Visvanatha Sastri and Another* (3), where it was observed while considering the relevant provisions of the Income-tax Act including Section 37 that there is the fullest right of inspection conferred by those provisions. As the language employed in Section 37 of the Income-tax Act and Section 4 read with Section 5(v) of the Act is similar, it is urged that the petitioners are entitled to complete inspection of the records in the possession of the Commission. As we have

(1) (1940) 4 All. E.L.R. 132
(2) (1945) 2 All. E.L.R. 130
(3) (1955) 1 S.C.R. 448

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held that the proceedings conducted by the Commission are not judicial or quasi-judicial, the aforesaid authority can be of no avail to the petitioners. It is for the Commission to decide what to do in this matter and it has been indicated in its orders to what extent and how the inspection of the records will be allowed. The Commission has made it quite clear that at later stages any documents that are sought to be used against the petitioners or are considered material will be shown to those interested to prepare their defences. That will include matters in their favour just as much as are against them. The procedure indicated by the Commission in the matter of inspection of documents appears to be quite just and it is not for us to decide at what particular stage or stages and what particular documents should be shown to the petitioners. The claim of the petitioners for a general and roving discovery is not sustainable even if the Code of Civil Procedure were to apply.

It will now be convenient to dispose of the second point. The argument raised is that the Investigating Officers have been appointed by the Commission to collect material and record statements of persons who volunteer to appear as witnesses and these Investigating Officers will then submit reports. This, it is submitted, is contrary to the well known maxim *delegata potestas non-potest delegare*. That maxim can possibly have no applicability to the facts of the present case. Admittedly the Commission has only appointed Inspectors to collect certain material and record only those statements which are volunteered by the witnesses. That has been done essentially to assist and help the Commission in the collection of material which it is physically impossible for the Chairman and the Members of the Commission to

do collectively or individually. It is true, as stated in Broom's Legal Maxims at page 571, Tenth Edition, that an individual clothed with judicial functions cannot delegate the discharge of these functions unless he is expressly empowered to do so but although a deputy cannot transfer his entire powers to another, yet a deputy having general powers may in general constitute his servant or bailiff for the purpose of doing some particular act provided of course that such act be within the scope of his own legitimate authority. The other maxim on which reliance has been placed in this connection is the one stated at page 443 of Broom's Legal Maxims, *expressio unius est exclusio alterius,* which means that the express mention of one thing implies the exclusion of another. It is contended that Section 5(3) of the Act indicates the limit of delegation which can be made by the Commission of its powers and functions and, therefore, it should be implied that the delegation of other functions is completely excluded. As we are of the view that there is no delegation of any functions in the present case, the applicability of the aforesaid rule cannot be invoked. Moreover this point has not been shown to have been raised before the Commission.

As regards the third point, namely, that the officers of the Commission, respondents Nos. 4 and 5, who are the Solicitor and the Secretary respectively, are incapable of giving impartial assistance and should not be allowed to be attached to the Commission, there would have been some force in the objection raised, particularly, in view of the decisions in *The King* v. *Sussex Justices* (1), *The King* v. *Essex Justices* (*Sizer and Others*) (2), *R.* v. *Salford Assessment Committee* (3), and *Manak*

(1) (1924) 1 K.B. 256
(2) (1927) 2 K.B. 475
(3) (1937) 2 All. E.L.R. 98

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Lal, Advocate v. *Dr. Prem Chand Singhvi and others* (1), if the proceedings had been of a judicial or quasi-judicial nature, but, as that is not so, it is not possible for us to hold that even if there is any bias or interest so far as these respondents are concerned they are disqualified from being associated with the Commission.

All the other points having been disposed of now, the last and the most important question is whether Article 20(3) of the Constitution can or cannot be invoked by the witnesses who are examined by the Commission. The Commission also considered that the argument raised with regard to the aforesaid article merited greater consideration but three things were pointed out by it in the order dated 8th April, 1959. "First, the protection is one that is conferred on the witness and no witness has yet claimed it. Secondly, Mr. Ved Vyas does not appear for any witness and cannot invoke the article on behalf of some one for whom he does not appear. And thirdly, Mr. Ved Vyas has not told us which witness has been imperilled nor has he indicated which of the many questions that have been put offend this article." If the Commission had confined itself to these observations, there might have been very little to say for the petitioners but it has proceeded to hold after consideration of certain case law that Article 20(3) cannot be invoked by any witnesses who appear before it. It has been contended that as the Commission has misapprehended and misconceived the scope and ambit of the aforesaid article, appropriate orders and directions should be made in this behalf. Article 20(3) is in the following terms :—

> "No person accused of any offence shall be compelled to be a witness against himself."

(1) A.I.R. 1957 S.C. 425

In England, the principle is firmly established that it is for the prosecution to prove the guilt and the accused need not make any statement against his will. This procedure differs from the one prevailing in France and other continental countries. The principle of immunity from self-incriminating evidence is thus founded on the presumption of innocence. In the Criminal Evidence Act, 1898, it is provided that the accused is competent to be a witness on his own behalf but he cannot be compelled to give evidence against himself. If he gives evidence on his own behalf, the prosecution may comment upon such evidence but his failure to give such evidence cannot be commented upon. In the United States of America, the fifth Amendment to the Constitution adopted the above principle by laying down "no person..... shall be compelled in any criminal case to be a witness against himself," In the Japanese Constitution, Article XXXVIII provides, "no person shall be compelled to testify against himself."

It is contended on behalf of the petitioners that the immunity embodied in Article 20(3) was incorporated in the Constitution as a fundamental right and is essentially wider in its scope and content than the immunity from self-incriminating evidence recognised in England or America. It is not dependent on the nature of the proceedings and it extends to immunity from compelling a witness to testify against himself or produce the documents which may incriminate him. It is submitted in para. 14(a) of the petition that the Directors and Officers of the Dalmia-Jain Airways, Ltd., and other Dalmia concerns have been named as accused persons in a First Information Report which was lodged in November, 1953, and a copy of which has been filed as annexure 'F' to the petition. It is further stated in para. 14(e) that the

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aforesaid plea under Article 20(3) was raised with the consent of the witnesses, Shri V. H. Dalmia and N. C. Roy, who are senior officers of petitioner No. 1 and were being examined in respect of serious allegations which, if substantiated, would result in their criminal prosecution. Moreover, they were covered by the wide words in which the accused are described in the First Information Report. The initial question whether protection under Article 20(3) can be claimed in the proceedings before the Commission was considered by the Commission itself and it preferred to rely on a decision of the Andhra High Court, *Suryanarayana* v. *Vijaya Commercial Bank* (1). It has been held in that case that the immunity granted by Article 20(3) does not extend to civil proceedings. The fact that the answer given by a person might tend to subject him to a criminal prosecution at a future date will not attract the protection envisaged by the aforesaid Article. The intendment of the Article was to afford some protection to a person involved in a crime having regard to the predicament in which he would be placed and the legislative intent was only to give some protection to such a person accused of a crime. To interpret it as applying to all proceedings, civil or criminal, which might at a subsequent period expose the person concerned to prosecution on the basis of answers given by him, is to enlarge the scope of the Article and to defeat justice. To stretch this prohibition to civil case would be to put a premium on dishonesty. The learned Judges dissented from a judgment of the Calcutta High Court in *Calcutta Motor and Cycle Co.* v. *Collector of Customs* (2). In a subsequent decision of a Division Bench of the Calcutta High Court, *Collector of Customs and others* v. *Calcutta Motor and Cycle Co. and other* (3), consisting of

(1) A.I.R. 1958 Andh. 766
(2) A.I.R. 1956 Cal. 263
(3) A.I.R. 1958 Cal. 682

P. Chakravartti, C.J., and K. C. Das Gupta, J., (now on the Supreme Court Bench), it has been laid down that the protection afforded by Article 20(3) is available to a person accused of an offence not merely with respect to the evidence to be given in the Court room in the course of a trial but also at previous stages, if a formal accusation had been made of the commission of an offence which might in the normal course result in prosecution. In that case notices had been issued under Section 171-A of the Sea Customs Act to some persons to appear before certain Customs Officials and to produce certain documents. It appeared from the accusation made in the search warrants at the instance of the Customs authorities and those made in one of the notices by the Customs authorities themselves that the accusation of the criminal offences could not be excluded. It was held that the protection given by Article 20(3) could be claimed by the persons concerned. It was further held that there was no reasons for considering that the protection would be available only to a person who had been formally accused or charged. Even if a man had been named as a person who had committed an offence, particularly by officials who were competent to launch prosecution against him, he was accused of an offence within the meaning of Article 20(3) and a situation had arisen in which he claimed protection against being compelled by a co-ercive process to furnish evidence against himself. In coming to the conclusion at which they did, the learned Chief Justice who delivered the judgment referred to and relied to a large extent on the decision in *M. P. Sharma and another* v. *Satish Chander, District Magistrate, Delhi, and others* (1), That case arose out of the First Information Report, dated 19th November, 1953, which had been lodged by the Registrar of the Joint Stock

(1) A.I.R. 1954 S.C. 300=1954 S.C.R. 1077

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Companies against Dalmia concerns which has been referred to before and a copy of which has been filed as annexure 'F' to the petition. On the basis of the report, an application was made to the District Magistrate Delhi under Section 96 of the Criminal Procedure Code for the issue of warrants for the search of documents in certain places. The District Magistrate ordering investigation of the offences issued warrants for search at 34 places. Voluminous records were seized. The petitioners moved the Supreme Court under Article 32 of the Constitution praying that the search warrants be quashed as being absolutely illegal and for the return of documents seized. Out of the two contentions raised, one related to infringement of fundamental rights under Article 20(3). At page 1086, Jagannadhadas, J., observed as follows :—

> "In view of the above background, there is no inherent reason to construe the ambit of this fundamental right as comprising a very wide range. Nor would it be legitimate to confine it to the barely literal meaning of the words used, since it is a recognised doctrine that when appropriate a constitutional provision has to be liberally construed, so as to advance the intendment thereof and to prevent its circumvention. Analysing the terms in which this right has been declared in our Constitution, it may be said to consist of the following components. (1) It is a right pertaining to a person "accused of an offence" ; (2) It is a protection against "compulsion to be a witness" ; and (3) It is a protection against such compulsion resulting in his giving evidence 'against himself'."

Dealing with the only substantial argument that compelled production of incriminating documents from the possession of an accused person was compelling an accused to be a witness against himself, the learned Judge proceeded to state at page 1087 as follows :—

> "Broadly stated the guarantee in article 20(3) is against 'testimonial compulsion'. It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decision."

At page 1088 it was laid down that the protection afforded to an accused in so far as it related to the phrase 'to be a witness' was not merely in respect of testimonial compulsion in the Court room but might well extend to compelled testimony previously obtained from him. It was available, therefore, to a person against whom a formal accusation relating to the commission of an offence had been levelled which in the normal course might result in prosecution. With reference to the facts of that case, the learned Judge reached the following conclusion :—

> "Considered in this light, the guarantee under article 20(3) would be available in the present cases to these petitioners against whom a First Information Report has been recorded as accused therein. It would extend to any compulsory process for production of evidentiary

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documents which are reasonably likely to support a prosecution against them."

It was held, however, that the searches which had been ordered did not attract the immunity granted by Article 20(3) as that was not tantamount to compelled production within the meaning of Article 20(3). The observations made above leave little room for doubt that the guarantee under the aforesaid Article would be available to the witnesses against whom the First Information Report was lodged in November, 1953, and in which they have been recorded as accused. In the words of Jagannadhadas, J., it would extend to any compulsory process for production of evidentiary documents which are reasonably likely to support prosecution against them. It would equally extend to any testimonial compulsion in the case of those who appear as witnesses and who cannot be compelled to testify against themselves with regard to any matters of which they have been accused in the First Information Report in question. With respect we are inclined to agree with the view expressed in *Collector of Customs and others* v. *Calcutta Motor and Cycle Co., and others* (1), Although the learned Solicitor-General maintained that the view expressed in the Andhra case was correct, he made no attempt to demolish or criticise the reasoning or conclusions of the Calcutta Bench, probably because of the clear enunciation of law on this point by Jagannadhadas, J., in *M. P. Sharma and others* v. *Satish Chandra, District Magistrate, Delhi, and others* (2). His main argument was based on the provisions contained in Section 6 of the Act which runs as follows :—

"No statement made by a person in the course of giving evidence before the

(1) A.I.R. 1958 Cal. 682
(2) 1954 S.C.R. 1077=A.I.R. 1954 S.C. 300

Commission shall subject him to, or be used against him, in any civil or criminal proceedings except a prosecution for giving false evidence by such statement :

Provided that the statement—

(a) is made in reply to a question which he is required by the Commission to answer, or

(b) is relevant to the subject matter of the inquiry."

It is submitted that Section 6 gives the immunity which is complete to the statements made by any person while giving evidence before the Commission. The learned Solicitor-General submits that the State has an inherent right to ask any question in order to exercise legislative powers from any person who is in a position to answer that question. Reference has been made to *Huddart, Parker and Co. Proprietary, Ltd.* v. *Moorehead, Appeleton* v. *Moorehead* (1), where O' Conner, J., observed at page 377 :—

"The power of inquiry for the purpose of administration and, under Parliamentary Government, for the purpose also of informing the legislature, is an essential part of the equipment of all executive authority."

According to the learned Solicitor-General although the provisions of Section 136 of the Evidence Act do not go far enough, the immunity contained in Section 6 of the Act fully satisfies the

(1) 8 C.L.R. 330

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requirements of Article 20(3) of the Constitution and the Act itself granted the same protection against self-incrimination as Article 20(3). Reliance has been placed principally on certain American decisions, namely, *Theodore F. Brown* v. *John W. Walker, United States Marshal* (1), and Interstate *Commerce Commission* v. *Daniel G. Baird, etc.* (2). In the first case the question was of an alleged incompatability between 5th Amendment to the Constitution and the Act of Congress of February 11, 1893, which enacted that "no person shall be excused from attending and testifying or from producing books, papers, etc., before the Interstate Commerce Commission. The provision relating to immunity was as follows :—

> "But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said commission.. ...."

While upholding the validity of the statute one of the reasons given was that if it could be construed in harmony with the fundamental law, it should be so construed and effort should be to reconcile the same with the Constitution. The observations at page 823 are noteworthy :—

> "Any evidence that he may give under such a statutory direction will not be 'against himself', for the reason that, by the very act of giving the evidence, he becomes exempted from any prosecution or punishment for the offence respecting which his evidence is given."

(1) 40 Law: Ed. 819
(2) 48 Law: Ed. 860

In the second case it was held that compulsory production of documentary evidence in a proceeding before the Initerstate Commerce Commission on a complaint alleging violations by railroad companies of the Act of February 4, 1887, to regulate commerce, did not infringe the immunity guaranteed by the 5th Amendment. The statutes expressly extended immunity from prosecution or forfeiture of estate because of testimony given in pursuance of the requirements of the law. These powers had been conferred on the Inter-state Commission to enquire into the business of all common carriers and keep itself informed as to the manner and method in which the same was conducted with the right to obtain from the common carrier full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created. While certain contracts were produced for inspection, the witnesses refused to permit them to be given in evidence. It was observed that the inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function was largely one of investigation, and it should not be hampered by those narrow rules which prevailed in trials at common law, where a strict correspondence was required between allegation and proof. In view of the fact that the statute protected the witness from such use of testimony given as would result in the punishment, etc., it was held that the contracts in question should have been produced as evidence by the witnesses.

There are certain infirmities in the argument raised by the learned Solicitor-General which may now be considered. In the first place Section 6 of the Act does not cover the case of production

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of an incriminating document and gives no immunity with regard to the same and the learned Solicitor-General was unable to show that this is not so. Secondly, the language employed in the statutory provision containing the immunity in *Theodore F. Brown* v. *John W. Walker, United States Marshal* (1), was in much wider terms and extended to any transaction, matter or thing concerning which the witnesses might testify, or produce evidence, documentary or otherwise. As stated at page 820 the Act there (embodying wider language) had been passed in view of the opinion expressed in an earlier case in *Counselman* v. *Hitchcock* (2), There the language of the provision granting the immunity was as follows :—

> "That no answer or other pleading of any party, and no discovery or evidence obtained by means of any judicial proceeding from any party or witness in this or any foreign country, shall be given in evidence, or in any manner used against such party or witness, or his property or estate, in any court of the United States, or in any proceeding by or before any officer of the United States, in respect to any crime, or for the enforcement of any penalty or forfeiture by reason of any act or omission of such party or witness."

This provision was considered as not taking away the privilege given by the Constitution that a person would not be compelled in any criminal case to be a witness against himself. Other observations made there show that if a statutory provision containing such an immunity could not and would

(1) 40 Law. Ed. 819
(2) 35 Law: Ed. 1110

not prevent the use of the witness's testimony to search out other testimony to be used in evidence against him or his property then the immunity conferred by the Constitution would be rendered futile as many links frequently composed that chain of testimony which was necessary to convict any individual of a crime. In the present case it is pointed out on behalf of the petitioners that although a witness is protected against the use of his own testimony given before the Commission in any other proceeding yet such testimony could be instrumental in searching out other testimony which could be used against him and which might incriminate him. All that will happen under Section 6 of the Act is that his statement shall not subject him to or be used against him in any civil or criminal proceeding but it will be open to the prosecuting agency to make use of such information that may have appeared in his statement which may lead to the discovery of other evidence which may incriminate him. Thus although the immunity under the Constitution is complete but under Section 6 of the Act it is a limited and narrow one. As *observed in Theodore F. Brown's case* (1), Section 860 of the revised statute which was in point in the earlier case *Counselman* v. *Hitchcock* (2), did not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard and was not a full substitute for that prohibition. It appears that in *Theodre F. Brown's case* (1), the validity of the statutory provisions which were supposed to come into conflict with the Fifth Amendment was upheld on account of the wide language employed in the provisions containing the immunity in the statute. In a later decision of the Supreme Court, in *Jules W. Arndstein* v. *Thomas D. McCarthy, etc.* (3), it was

(1) 40 Law: Ed. 819
(2) 35 Law. Ed. 1110
(3) 65 Law. Ed. 138

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held that constitutional protection against self-crimination was not removed by the provision in Section 7 of the Bankruptcy Act of July 1, 1889, that no testimony given by the bankrupt shall be offered in evidence against him in any criminal proceeding, since this provision could not and would not prevent the use of his testimony to search out other testimony to be used in evidence against him or his property. The third weakness in the argument of the Solicitor-General is that it is not clear whether the principles laid down in the American cases would be of much assistance here. The inhibition in Article 20(3) is a part of the fundamental rights whereas in some American decisions the privilege granted by the 5th Amendment is not treated as a part of the fundamental rights of national citizenship so as to be included among the privileges and immunities of citizens of the United States, which the States were forbidden by the 14th Amendment to abridge,—*vide Hyerman Smyder* v. *Commonwealth of Massachusetts* (1). In the fourth place, Section 6 of the Act will be operative only after a statement has been made or a document has been produced. But the inhibition in Article 20(3) extends to the very first stage and the person accused of an offence cannot be compelled to state a fact or produce a document which may tend to incriminate him. The moment such compulsion is exercised, he can claim the immunity. Section 6 will merely render his statement immune but will not afford protection against such compulsion to give self-incriminating answers or to produce self-incriminating documents. For these reasons it is not possible to accede to the proposition canvassed by the learned Solicitor-General that the immunity under Section 6 of the Act is co-extensive with the one under

(1) 291 U.S. 97

Article 20(3) of the Constitution and was a complete substitute for the prohibtion enjoined by Article 20(3).

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In view of all the discussion above, it must be held that Article 20(3) can be invoked in the proceedings before the Commission by witnesses who appear before it if and when the occasion arises. As that occasion has not been shown to have arisen so far as the present petitioners are concerned, no order or direction is necessary at this stage in this behalf.

As a result of the decision given on the various points raised, this petition is dismissed. Considering the nature of the contentions canvassed the parties are left to bear their own costs.

CHOPRA, J.—I agree.

Chopra J.

B.R.T.

APPELLATE CIVIL.

Before Shamsher Bahadur, J.

CHIRANJI LAL,—*Appellant.*

versus

HANS RAJ,—*Respondent.*

Regular Second Appeal No: 322-P of 1955.

1959

Oct., 8th

Indian Contract Act (IX of 1872 -Section 65—Price paid for goods not delivered—Whether can be recovered—Legal maxim—Loss lies where it falls—Whether applicable.

Plaintiff purchased seven pipes in two lots. The entire purchase price was paid but delivery of only three pipes was made, the other being in the stage of transit