130/74

G.P.A. A. 446.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(Appèl DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

C. T. BE RS NAUDE

Appellant.

versus/teen

DIE STAAT

Respondent.

Appellant's Attorney A.C. v P.T.A. *Respondent's Attorney* CLAUDE R & H
Prokureur van Appellant *Prokureur van Respondent*

Appellant's Advocate S.S. Rossouw *Respondent's Advocate* E. Jonker
Advokaat van Appellant *Advokaat van Respondent*

Set down for hearing on 3-11-74
Op die rol geplaas vir verhoor op

(T.P.A.) Concurrent Sentences

9.45 a.m. — 11.45 a.m.
11.15 a.m. — 12.45 p.m.
1.15 p.m. — 4.15 p.m.

C.A.V.

Word die voormelde appèl gehandhaaf en die bevel

S.O.S.

IN THE SUPREME COURT OF SOUTH AFRICA.
(APPELLATE DIVISION)

In the appeal of:

THE STATE ..... Appellant

versus

C.F. BEYERS NAUDE ..... Respondent.

Coram: Rumpff, C.J., Botha, Trollip, Rabie et Corbett, JJ.A.

Date of Hearing: 4 November 1974.

Date of Judgment: 2 December 1974

J U D G M E N T

CORBETT, J.A.:

The pertinent facts in this matter and the question of law taken on appeal by the State appear from the judgment of the Chief Justice. I wish to state briefly my reasons for being unable to agree with the majority conclusion that the appeal be allowed.

The essential enquiry is whether in refusing to give evidence before four members of the Commission on

24 September 1973 the respondent contravened section 6(1) of the Commissions Act, No. 8 of 1947.

The relevant portion of section 6(1) reads as follows:

> "Any person summoned to attend and give evidence ..... before a commission who, without sufficient cause (the onus of proof whereof shall rest upon him)..... having attended, refuses to be sworn or to make an affirmation as a witness after he has been required by the chairman of the commission to do so..... shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment."

In my view, the situation envisaged by the above-quoted portion of the section is an attendance before a sitting of a commission by the person summoned to give evidence; his being formally required, at such sitting, by the chairman of the commission to be sworn or make affirmation as a witness; and his refusal so to be sworn or to make affirmation.

In the present case it is common cause that the

respondent was duly summoned to attend before the Commission appointed to enquire into, amongst other organisations, the Christian Institute; that at the proper time and place he attended before a body consisting of the chairman of the Commission and three other members; and that, after being required by the chairman to do so, he refused either to be sworn or to make an affirmation. It is contended upon his behalf that the body before whom he attended was not the Commission and that, therefore, no offence was committed. The correctness of this contention depends upon the construction to be placed upon the Act - and in particular upon section 6(1) - and upon the proclamations issued by the State President in regard to the appointment of the Commission.

Before this is considered, there are certain preliminary observations which should be made:-

(1) Section 6(1) contains a penal provision and as Sir Etienne de Villiers remarked in R. v. Ackerman, 1931 O.P.D. 65, at p. 69 - "a section creating a criminal offence should not lightly have its penal scope extended beyond the plain meaning of its

language"..../

language". (See also S. v. Chigwida, 1970 (2) S.A. 523 (SR); Steyn, Uitleg van Wette, 3rd ed., p. 111)

(2) It is true that a commission of enquiry, with reference to which the provisions of the Act have been declared by the State President to be applicable, is normally empowered merely to investigate a matter of public concern, to report thereon and, in doing so, make whatever recommendations it thinks fit. This is, indeed, the position in the case of this Commission. The Commission itself thus has no power, in the light of its findings, to take or initiate any action, whether it be against any person or body or merely of a general character: this is a matter for the Executive, to whom it reports. In one respect, however, the Commission has the power to affect the rights of the individual: it can summon any person, whether willing or unwilling, to appear before it and require such person, under pain of penal sanction, to give evidence before it on oath. The exercise of this inquisitorial

power...../

power makes an important inroad upon the right of the individual to "the tranquil enjoyment of his peace of mind" (M. de Villiers, The Roman and Roman-Dutch Law of Injuries, p. 24) and such privacy as the law allows him (cf. O'Keefe v. Argus Printing and Publishing Co. Ltd. and Another, 1954 (3) S.A. 244 (C)). Normally, it is only before a judicial tribunal, exercising either civil or criminal jurisdiction, that a person can be summoned to appear and compelled to give evidence. The proceedings of such a court are regulated by means of various safeguards designed to protect the individual. A non-judicial tribunal, exercising inquisitorial powers, is not only something additional to this but also it is free to dispense with some of the safeguards which characterize proceedings in a court of law. Persons appearing as witnesses before such a tribunal may run the risk of having aspects of their private lives exposed, of damaging (perhaps sometimes unfounded) allegations being made against them and of their being

made...../

made the objects of adverse findings and recommendations to the Executive (cf. In re Pergamon Press Ltd (1971) 1 Ch. 388, at 399). It is important, therefore, that an exercise of such powers by a non-judicial tribunal be strictly in accordance with the statutory or other authority whereby the powers are granted.

It is clear that the Commission, although appointed by the State President in the exercise of his prerogative, derives its power to summon witnesses and to require them to give evidence before the Commission from the Act. The term "commission" is not defined in the Act; nor does the Act make provision for any quorum for its proceedings. Generally speaking, a tribunal or body of this nature has no corporate existence apart from its members. Prima facie, therefore, the term "commission" means all the members of the commission acting together (cf. Schierhout v. Union Government, 1919 A.D. 30, at 44; Transvaal Coal Owners Association and Others v. Board of Control, 1921 T.P.D. 447, 452-3; Rose-Innes, Judicial Review of Administrative Tribunals in South Africa, pp. 121-2).

At...../

At the same time it must be conceded that a commission is, in general, the master of its own procedures. Within the bare framework provided by the Act and such modifications and regulations as may have been made by the State President in terms of section 1(1) of the Act, it is free to determine how it shall function. There is no doubt that a commission, particularly where it consists of a substantial number of persons, may operate without every member participating personally in every activity. Were it otherwise, a commission would be hamstrung from the start. And, in any event, it is difficult to see how normally any individual person could have locus standi to complain about the manner in which a commission conducted its proceedings. Where, however, the Act (as modified by the State President) and the regulations prescribe procedures, then the commission's freedom of action is inhibited; and where the activity affects the rights of an individual, the latter can demand a strict adherence to the prescribed procedures.

Bearing.....

Bearing this in mind, it seems to me that there is much to be said for the view that when the Act makes it an offence for a person, summoned to give evidence before a commission, to refuse to take the oath, then, in the absence of any valid modification or regulation to the contrary, the "commission" in this context means all the members of the commission sitting together. There are two points which I would emphasize in this connection. Firstly, if it does not mean all the members of the commission, sitting together, what does it mean? In the case of a commission such as the present one, consisting, as it does, of a chairman and nine members (ten in all), must a majority be present; or has the commission carte blanche in the matter? Can a witness who refused to give evidence be convicted under section 6 where upon attendance, he found himself before, say, only two members of the commission, or only the chairman? Various answers to these queries were advanced in the course of argument. I found none of them satisfying.

Secondly...../

Secondly, it can, in my view, make a substantial difference to an unwilling witness whether or not the full commission is present when he is required to give evidence. Naturally, this would not always be the case; but it could often be the case. And, indeed the present case provides an instance of that. Where the personal conduct of a witness is the very subject-matter of a commission's terms of reference, it may be of considerable moment to him that all the members of the commission should have an opportunity to hear t his evidence, put questions to him and form their own individual judgments in regard to his evidence. Moreover, in my view, it is no answer to say that he can refuse to give evidence before a sitting where all are not present and then plead "sufficient cause" if and when charged under section 6(1). If a sitting comprising less than the full membership of the commission is a validly constituted sitting of the commission for the purposes of section 6, then it is difficult to see how a refusal to give evidence before

such...../

such a body could be justified on the grounds of "sufficient cause".

It is argued that such a conclusion would cause great inconvenience, especially in the case of commissions consisting of a substantial number of persons. Arguments ab inconvenienti should not be pressed too far, particularly where, as in this case, the inconvenience can readily be obviated. Thus, a requirement of full attendance at a sitting of a commission, where a witness is required to give evidence, could be ameliorated by simply providing for a quorum in regulations made under section 1(1).

Whatever, in general, the position may be under the Act as such, the present case depends rather on its own facts in that the State President, by making regulations 16, 17 and 18, has substantially modified the position. These regulations read as follows:

> "16. The Commission may appoint one or more committees consisting of such members of the Commission as it may think fit, to hear evidence and addresses in respect of any particular matter on behalf of the Commission: Provided that the..../

the Chairman or the Vice-chairman of the Commission shall be a member of such a committee.

17. For the purposes of the application of regulation 16, such a committee shall be deemed to be the Commission.

18. When the Chairman is absent from a sitting of the Commission and the Vice-chairman of the Commission is present thereat, he shall act as Chairman, with all the duties and powers of the Chairman."

It appears that in pursuance of the power thus granted to it under regulation 16 the full Commission resolved that two committees, each consisting of 6 members (the chairman and vice-chairman being appointed to both committees), be appointed; one of them with reference to the Christian Institute and one with reference to another organisation under investigation. It was before four members of the former committee that the respondent was required to give evidence.

I have little doubt that it was competent for the State President, in the exercise of his powers under section 1(1) of the Act, to make these regulations. It seems to me that the regulations could fall either under the

power...../

power to confer additional powers on the Commission (subpara. (i)), or to provide for procedures to be followed (subpara. (ii)), or to provide generally for matters considered to be necessary or expedient (subpara. (iv)). It follows that I cannot agree with the suggestion that the regulations are in any respect ultra vires. I accept, too, that in terms of the regulations it was competent for the Commission to appoint a committee to hear witnesses giving evidence in regard to the Christian Institute and that for this purpose the committee would be deemed to be the Commission. It would follow that, had respondent been called upon to give evidence before the full committee appointed to hear evidence relating to the Christian Institute, his refusal would, in the absence of sufficient cause, have constituted a contravention of section 6(1). But it is clear that this did not happen. Only four members of the committee were present when he was required to take the oath. What I have said in regard to the meaning of "commission" in the context of section 6(1) applies equally where by competent statutory regulation a body other than the Commission has

conferred upon it certain of the powers of the Commission and is deemed, qua those powers, to be the Commission. To put it succinctly, my view is that, for the purposes of section 6(1), read together with regulations 16 and 17, a committee appointed by the Commission in terms of regulation 16 means the full committee acting together.

It was argued that because two members of the Commission were appointed to both committees it was to be inferred that each committee was not intended always to operate with its full complement. It is by no means clear to me that this is a necessary inference; but, in any event, it is not the Commission's intention but the intention underlying the regulation that is of relevance. If the regulation, properly interpreted, means the full committee, then the intention of the Commission cannot change that. It was further argued that regulation 16 confers upon the Commission an untrammelled discretion in the appointment of such committees. That may be, but when a committee

has...../

has been appointed by the Commission to act, it is that committee, and nothing less, that must act - unless and until the Commission, by an appropriate resolution, changes its composition. Moreover, it is only the Commission that can make any such change: the committee itself is not empowered to do so.

Nor do I think that the position can be assumed to have been regularised by the application of the omnia praesumuntur rite esse acta principle. The facts in regard to the appointment of the committees were first canvassed during the hearing of the appeal by the Transvaal Provincial Division. This is fully explained in the judgment of that Court as follows:

> "Met verwysing na die pasgemelde regulasies, is dit nodig om sekere verdere feite te vermeld. Tydens die verhoor van die appellant voor die landdros, is geen ondersoek ingestel na die vraag of die vier lede van die kommissie voor wie die appellant op die 24ste September 1973 verskyn het, 'n komitee was wat aangestel was ingevolge artikel 16 van die regulasies nie; volgens die getuienis in die oorkonde was dit 'n moontlikheid wat nie uitgesluit was nie. Toe hierdie punt ter sprake gekom..../

> gekom het aan die begin van die beredenering van die appèl voor ons, en dit geblyk het dat daar 'n gevaar bestaan dat die saak op hierdie aspek na die landdros terugverwys sou moes word, het mnr. Rees, wat namens die Staat verskyn het, 'n beëdigde verklaring van die sekretaris van die kommissie aangebied, waarin die tersaaklike feite uiteengesit word, en mnr. Kriegler, namens die appellant, het homself bereid verklaar om daardie feite formeel te erken. Die feite is dus by wyse van ooreenkoms voor ons geplaas, en die appèl is beredeneer op die grondslag asof daardie feite in die oorkonde vervat was; en dit is op daardie grondslag wat die appèl behandel moet word.

According to the affidavit referred to a resolution was taken on 6 June 1973 by the full Commission appointing the aforementioned committees. There is no suggestion that any other relevant resolutions were taken by the Commission. This is the evidence which the State elected to place before the Court a quo after the question as to whether the four members before whom respondent appeared constituted a committee appointed in terms of regulation 16 had been pertinently raised. In the circumstances I do not think that there is any room for the application of the above-mentioned presumption.

I...../

I am very conscious of the fact that the point now in issue was not raised by the respondent when he appeared on 24 September. He stated a number of grounds of objection to giving evidence; but not this one. I do not think, however, that this can affect the position. It is a matter of principle. The respondent refused to give evidence and, as I see it, the sole issue, at this stage, is whether his refusal took place before a properly constituted sitting of a committee ~~properly~~ empowered under regulation 16 to hear his evidence. If the body in question was not such a committee, then no offence was, in my view, committed.

For these reasons I would dismiss the appeal.

M.M. Leoland

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(APPÈLAFDELING)

In die saak tussen:

DIE STAAT Appellant

en

C.F. BEYERS NAUDÉ Respondent

CORAM: RUMPFF, H.R., BOTHA, TROLLIP, RABIE et CORBETT, A.RR.

VERHOOR: 4.11.1974. GELEWER: 2.12.1974.

U I T S P R A A K

RUMPFF, H.R. :

In Julie 1972 het die Staatspresident, luidens Goewermentskennisgewing No. 3613, wat in die Staatskoerant van 14 Julie 1972 verskyn, n Kommissie van ondersoek aangestel bestaande uit n voorsitter en agt ander lede. Uit die opdrag van die Kommissie blyk dit dat ondersoek gedoen moet word na die doelstellings en bedrywighede van sekere organisasies, waaronder die Christelike Instituut van Suidelike Afrika,

na/.....

van die verrigtinge en van name van getuies en die bevoegdheid om n perseel te betree en dokumente in beslag te neem.

Artikel 3 (3) van Wet No. 8 van 1947 wat nie van toepassing gemaak is nie, lees soos volg:

> „Indien die voorsitter van n kommissie dit vereis moet n getuie, voordat hy getuienis aflê, n eed aflê, of n bevestiging maak, en die eed word opgelê en die bevestiging afgeneem deur die voorsitter van die kommissie of sodanige beampte van die kommissie as wat die voorsitter mag aanwys."

Die regulasie wat handel oor die oplê van die eed is regulasie 6 en dit lui aldus:

> „Die Voorsitter of n beampte deur die Voorsitter in algemeen of spesiaal daartoe gemagtig, lê n getuie wat voor die Kommissie verskyn, die eed op of neem van hom n bevestiging af."

Artikel 4 van die Wet bepaal dat onderhewig aan sekere voorbehoude, sittings van die kommissie openbaar moet wees. Regulasie 8 bepaal egter dat die naam van n getuie en inligting wat sy identiteit mag openbaar, op sy versoek nie gepubliseer mag word nie en regulasie 10 bepaal o.a. dat die verrigtinge van die Kommissie nie gepubliseer mag word nie.

By/....

By proklamasie No. 138 van 1973, wat in die Staatskoerant van 6 Junie 1973 verskyn, het die Staatspresident die volgende nuwe regulasies toegevoeg tot die reeds bestaande regulasies:

> „16. Die Kommissie kan een of meer komitees aanstel, bestaande uit die lede van die Kommissie wat hy goeddink, om ten behoewe van die Kommissie getuienis en betoë aan te hoor ten opsigte van enige besondere saak: Met dien verstande dat die Voorsitter of die Ondervoorsitter van die Kommissie n lid van so n komitee moet wees.
>
> 17. Vir die doeleindes van die toepassing van regulasie 16 word so n komitee geag die Kommissie te wees.
>
> 18. Wanneer die Voorsitter afwesig is van n sitting van die Kommissie en die Ondervoorsitter van die Kommissie daarby teenwoordig is, tree hy as Voorsitter op, met al die pligte en bevoegdhede van die Voorsitter."

Dit is onnodig om te verwys na Goewermentskennisgewings waarvolgens lede van die Kommissie in die loop van die tyd vervang is of waarvolgens die totale getal van nege lede blykbaar vermeerder is tot tien lede. Op 6 Junie 1973 het die Kommissie besluit om twee komitees uit sy lede aan te stel wat elk uit ses lede bestaan het. Die eerste

komitee het gestaan onder voorsitterskap van mnr. A.L. Schlebusch en die tweede onder die voorsitterskap van die ondervoorsitter van die Kommissie. Die eerste komitee is opgedra om ondersoek te doen na die Christelike Instituut van Suidelike Afrika, waarvan appellant die direkteur is. Later is n dagvaarding aan respondent beteken om op 24 September 1973 as getuie voor die Kommissie te verskyn. Op daardie datum was die Kommissie verteenwoordig deur vier lede van die eerste komitee insluitende die voorsitter, mnr. A.L. Schlebusch. Nadat die voorsitter dit van hom vereis het, het respondent geweier om die eed af te lê of vrae te beantwoord en hy het n dokument oorhandig waarin die redes vir sy weiering (wat nie op die samestelling van die Kommissie of komitee betrekking gehad het nie) uiteengesit word. Nadat die bepalings van artikel 6 van die Kommissiewet onder sy aandag gebring is, het hy volhard in sy weiering. Artikel 6 lees soos volg:

> „6 (1) Iemand wat gedagvaar is om voor n kommissie te verskyn en getuienis af te lê of n boek, dokument of onderwerp oor te lê en wat sonder voldoende rede (waarvan die bewyslas op hom rus) in gebreke bly om op die tyd en plek in die dagvaarding aangegee, te verskyn, of om aanwesig te bly totdat die ondersoek voltooi is of totdat die voorsitter van die kommissie hom

verlof gegee het om weg te bly, of wat na verskyning weier-om as getuie die eed af te lê of n bevestiging te maak nadat die voorsitter van die kommissie dit van hom vereis het of wat, na eedaflegging of bevestiging, weier om elke wettiglik aan hom gestelde vraag ten volle en op bevredigende wyse te beantwoord, of wat in gebreke bly om n boek, dokument of onderwerp oor te lê wat in sy besit of bewaring of onder sy beheer is en tot oorlegging waarvan hy gedagvaar is, is aan n misdryf skuldig en by skuldigbevinding strafbaar met n boete van hoogstens vyftig pond of met gevangenisstraf van hoogstens ses maande of met beide daardie boete en gevangenisstraf.

(2) Iemand wat, nadat hy die eed afgelê of n bevestiging gemaak het, omtrent enige onderwerp valse getuienis voor n kommissie aflê met wete dat daardie getuienis vals is, of terwyl hy nie weet of glo dat dit juis is nie, is aan n misdryf skuldig en by skuldigbevinding strafbaar met n boete van hoogstens honderd pond of met gevangenisstraf van hoogstens twaalf maande of met beide daardie boete en gevangenisstraf."

Respondent is daarna voor n streeklanddros aangekla weens die oortreding van hierdie artikel. Hy het onskuldig gepleit. Nadat die betrokke Staatskoerante by die verhoor ingehandig is en die sekretaris van die Kommissie formele getuienis afgelê het, het respondent getuienis afgelê

en/.....

en, luidens die uitspraak van die landdros, breedvoerig verwys na die dokument wat hy aan die voorsitter van die eerste komitee oorhandig het. Skynbaar het die respondent n teologiese opleiding gehad en was hy op een tyd predikant totdat hy van sy amp onthef is. Later het hy in die politiek verseil geraak in die sin dat hy openlik teen die regeringsbeleid van apartheid propageer omdat dit volgens sy mening onchristelik is. Uit die uitspraak van die landdros blyk dit dat respondent se beswaar om die eed af te lê en getuienis af te lê o.a. daarin geleë was dat (a) die lede van die kommissie uit lede van die Parlement bestaan, (b) die Kommissie se verrigtinge nie openbaar is nie, (c) die regulasies nie voorsiening maak vir behoorlike regsverteenwoordiging nie en (d) daar nie n geregtelike kommissie van ondersoek aangestel is nie. Die respondent se verweer is verwerp en hy is skuldig bevind.

~~Die straf wat op hom gelê is, lees~~ soos volg:

> „Beboet R50-- of een maand gevangenisstraf plus n verdere drie maande gevangenisstraf wat vir drie jaar opgeskort word op voorwaarde dat Besk. nie veroordeel word weens oortreding

van/.....

van Art. 6 (1) van Wet No. 8 van 1947, soos gewysig, gepleeg gedurende die tydperk van opskorting nie."

Sy appèl het voor twee regters van die Transvaalse Provinsiale Afdeling gedien. Daardie hof het sy appèl gehandhaaf en die skuldigbevinding en vonnis ter-syde gestel. Uit die uitspraak van die hof a quo blyk dit dat namens respondent drie gronde aangevoer is waarop die appèl moes slaag, nl.:

„(1) Die liggaam voor wie die appellant op die 24ste September 1973 verskyn het en geweier het om die eed af te lê en te getuig, was nie n liggaam wat behoorlik saamgestel was as ‚n kommissie' binne die bestek van artikel 6 van die Wet nie, en gevolglik het die appellant se gemelde weiering geen oortreding van daardie artikel daargestel nie.

(2) Die regulasies deur die Staatspresident uitgevaardig in Proklamasie 164 van 1972 en Proklamasie 138 van 1973 is ultra vires met betrekking tot die Staatspresident se bevoegdhede soos verleen in artikel 1 van die Wet, in die volgende opsigte -

(a) regulasies 5, 7, 10 en 12, omdat hulle strydig is met die bepalings van artikel 4 van die Wet;

(b) regulasies 16 en 17, omdat hulle voorgee om die kommissie te magtig om n gedeelte van sy opgelegde taak aan n komitee of komitees te delegeer.

(3)/.....

(3) Daar is op n oorwig van waarskynlikhede bewys gelewer dat die appellant „voldoende rede' gehad het om te weier om die eed af te lê en te getuig, binne die bestek van artikel 6 van die Wet."

Ten opsigte van hierdie gronde het die hof a quo hom soos volg uitgedruk:

„Vanweë die gevolgtrekking waartoe ons gekom het met betrekking tot die eerste van die bogenoemde drie appèlgronde, sal dit onnodig wees om in hierdie uitspraak die tweede en derde appèlgronde te behandel. Gevolglik word daar hieronder alleenlik verwys na sodanige feite, oorwegings en argumente as wat ter sake is met betrekking tot die eerste appèlgrond, en word aangeleenthede wat net betrekking het op die ander twee appèlgronde verder buite beskouing gelaat."

Teen die uitspraak van die hof a quo kom die Staat tans in hoër beroep in hierdie hof kragtens artikel 105 van Wet 32 van 1944. Voor ons is gelê n band bevattende afskrifte van die noodsaaklike stukke maar slegs n klein gedeelte van die getuienis van appellant wat voor die landdros afgelê is. Die res van sy getuienis is klaarblyklik met toestemming van die respondent uitgelaat. Weens hierdie feit was ek aanvanklik onder die indruk dat respondent by ooreenkoms

afstand/.....

afstand gedoen het van die ander twee gronde waarop hy hom in die hof a quo beroep het. Eers die betoog-hoofde van appellant het die ware posisie openbaar deurdat op die laaste bladsy daarvan gevra is dat die appèl moes slaag en die saak na die hof a quo terugverwys word. Die bedoeling was dus om alleen die enkele regspunt te beredeneer wat deur die hof a quo beslis is. Dit is dan ook gedoen en die gevolg is dat indien die appellant sou slaag, die saak terugverwys moet word na die hof a quo om sy beslissing te gee oor die ander gronde wat wel daar beredeneer is, maar wat nie voor hierdie hof beredeneer is nie, en dus nie hier beslis kan word nie. Ek kan nie begryp waarom die verteenwoordigers van die Staat op hierdie prosedure besluit het nie. Sou die hof a quo daarmee volstaan om n beslissing te gee oor een van die twee oorbly-wende gronde, sou daar weer n appèl kon wees na hierdie hof en indien die appèl nie in sy geheel voor hierdie hof beredeneer sou word nie, sou daar selfs vir n derde keer geappelleer kan word. Dit is n

sprekende voorbeeld waarom hierdie hof in beginsel ten sterkste gekant is teen die verhoor van 'n appèl stuksgewyse. In enkele gevalle van 'n besondere aard word 'n uitsondering gemaak maar dit is nie op die huidige geval van toepassing nie. Gedane sake het geen keer nie, maar dit moet duidelik verstaan word dat in die toekoms, in gevalle soos die onderhawige, hierdie hof nie bereid sal wees om toe te laat wat in hierdie saak gebeur het nie.

Wat die uitspraak van die hof a quo betref, is dit nodig om enkele passasies daarvan aan te haal om aan te toon hoe die hof tot sy bevinding gekom het. Ter aanvang het die hof a quo hom op die volgende standpunt gestel:

> „Dit was gemene saak in die beredenering voor ons dat die Staatspresident se bevoegdheid om 'n kommissie van ondersoek in te stel, 'n oorspronklike bevoegdheid is wat nie aan die bepalings van die Wet ontleen is nie (vgl. Bell v. Van Rensburg N.O. 1971 (3) S.A. 693 (C), op 705G - 706D). Waar die Staatspresident egter so 'n kommissie aangestel het en die bepalings van die Wet daarop van toepassing gemaak het, dan is dit duidelik dat die omvang van 'n persoon se strafregtelike aanspreeklikheid ten opsigte van 'n weiering om voor daardie

kommissie te getuig, as uitgangspunt bepaal moet word aan die hand van die bepalings van die Wet self. Ons is van mening dat die uitdrukking ‚n kommissie' in die inleidende gedeelte van artikel 1 (1) van die Wet, beteken: ‚n kommissie bestaande uit al sy lede'. Dit is na ons oordeel die natuurlike en voor die hand liggende inhoud van die uitdrukking. Dit is trouens nouliks denkbaar dat die Wetgewer na ‚n kommissie' wat deur die Staatspresident aangestel is en wat uit meerdere lede bestaan, sou verwys in enige ander sin as betekenende die aldus aangestelde kommissie in sy geheel, met al sy lede. As dit die betekenis van ‚n kommissie' in artikel 1 (1) van die Wet is, soos ons meen klaarblyklik die geval is, dan dra dieselfde uitdrukking in die res van die Wet, soos in artikel 3 (1), en in die besonder in artikel 6 (1), prima facie dieselfde betekenis."

In die hof a quo is namens die respondent aangevoer dat wanneer die wetgewer bedoel dat n statutêre liggaam kan funksioneer met minder as sy voltallige ledetal, daar uitdruklik n kworum voorgeskryf word. In hierdie verband is daar na/etlike wette en beslissings verwys. Namens die Staat is aangevoer dat die sake waarna verwys is, betrekking het op liggame wat judisiële of quasi-judisiële bevoegdhede uitoefen. Die uitspraak van die hof a quo aangaande hierdie betoog, lees soos volg:

Na/.....

„Na ons mening is dit egter nie nodig om die genoemde sake te ontleed met die oog op die aard van die bevoegdhede van die liggame wat daar ter sprake was nie, omdat ons van oordeel is dat die onderskeid tussen judisiële en quasi-judisiële bevoegdhede, aan die een kant, en andersoortige bevoegdhede, aan die ander kant, nie per se die antwoord bied op die vraag onder bespreking nie. In Schierhout se saak, supra, het Hoofregter INNES die posisie soos volg gestel:

'We were referred to a number of authorities in support of a principle which is clear and undisputed. When several persons are appointed to exercise judicial powers, then in the absence of provision to the contrary, they must all act together; there can only be one adjudication, and that must be the adjudication of the entire body .... And the rule would apply whenever a number of individuals were empowered by Statute to deal with any matter as one body; the action taken would have to be the joint action of them all ....., for otherwise they would not be acting in accordance with the provisions of the Statute. It is those provisions which in each instance must be regarded....'
(onderstreping is ons eie).
Dit uiteindelike vraag is dus: wat was die bedoeling van die Wetgewer, soos dit blyk uit die bepalings van die wet?"

Wat die werkswyse van die Kommissie betref, het die hof a quo bevind dat „wanneer dit gaan oor die kwessie van eedoplegging van getuies en getuienislewering as sodanig, meer in die besonder met die oog op die bepalings van artikel 6 (1) van die Wet, dan word dit nog steeds vereis dat die

Kommissie/.....

Kommissie qua kommissie moet optree, d.w.s. terwyl al sy lede aanwesig is". Die hof a quo se benadering is soos volg:

> „Dit kan argumentsonthalwe in die guns van die Staat aanvaar word dat die geldigheid van n kommissie se verslag en aanbeveling nie aangetas word deur die feit dat al die lede van die kommissie nie by elke stap in die voorafgaande werksaamhede aanwesig was nie, selfs waar getuienis aangehoor is. Dit kan verder ook argumentsonthalwe aanvaar word dat die Wetgewer, vanweë die bepalings van artikels 1(1)(b)(i), (ii) en (iv), n verdeling van werksaamhede onder verskillende lede van die kommissie as n moontlike werkswyse van n kommissie beoog het, selfs wat betref die aanhoor van getuienis."

Maar onmiddellik daarop is gesê:

> „Maar al hierdie veronderstellings maak dit nog nie moontlik om artikel 6(1) van die Wet uit te lê op die wyse wat deur die Staat voorgestel word nie. Die algemene werkswyse van n kommissie is een ding, maar die bepaalde strafsanksie wat in artikel 6(1) geskep word, is n ander. Soos ons reeds gesê het, meen ons dat ‚n kommissie' in artikel 1(1) van die Wet klaarblyklik verwys na n kommissie wat bestaan uit al sy lede, en prima facie beteken ‚n kommissie' dan in artikel 6(1) dieselfde."

Aangaande die feit dat die respondent voor vier van die ses lede van die komitee verskyn het, het die hof a quo die volgende gesê:

„In/.....

„In die eerste plek blyk dit uit die feite vroeër aangehaal dat die appellant nie voor n deur die kommissie aangestelde komitee verskyn het nie, maar slegs voor 4 van die 6 lede van so n komitee. Die bepaling van artikel 17 van die regulasies, dat ‚so n komitee' geag word die kommissie te wees, verwys klaarblyklik na n komitee wat deur die kommissie kragtens artikel 16 aangestel is, as geheel, en nie na sommige lede van die komitee nie. Dit blyk nie uit die getuienis dat die betrokke komitee ooit sy bevoegdhede aan van sy lede oorgedra het nie, maar selfs al sou die komitee voorgegee het om dit te doen, dan sou so n oordrag ~~n oordrag~~ na ons mening kragteloos gewees het vanweë die toepaslikheid van die reël delegatus delegare non potest.

In die tweede plek, en in ieder geval, is ons van oordeel dat artikels 16 en 17 van die regulasies, met spesifieke verwysing na die toepassing van artikel 6 (1) van die Wet, ultra vires is ten opsigte van die bevoegdhede van die Staatspresident kragtens artikel 1 (1) van die Wet. Ons spreek geen mening uit met betrekking tot die geldigheid van hierdie regulasies op enige gebied anders as die toepassing van artikel 6 (1) nie. Maar wat artikel 6 (1) betref, het ons hierbo reeds bevind dat die Wetgewer bedoel het om die betrokke gedrag wat in die artikel uiteengesit word, strafbaar te maak slegs indien die betrokke weiering om te getuig plaasvind voor n voltallige kommissie. Dit synde die geval, het die Staatspresident geen bevoegdheid gehad om by wyse van regulasie die trefwydte van die artikel te verbreed tot n omvatting van die geval waar n gedagvaarde persoon voor iets minder as die voltallige kommissie verskyn nie."

Na/.....

Na my mening het die hof a quo gefouteer, eerstens, om die betekenis van die woord „kommissie" in artikel 6 van die Wet in isolasie te benader, asof die Kommissie se ontstaan in die Wet gevind moet word, en, tweedens, om as uitgangspunt die antwoord te aanvaar, wat wesenlik die geskil is, nl., dat die uitdrukking „kommissie" in die inleidende gedeelte van artikel 1 (1) van die Wet beteken: „n kommissie bestaande uit al sy lede". Dit skyn my of in hierdie opsig daar n petitio principii was.

Dit is gemene saak dat die Kommissie aangestel is kragtens die prerogatief van die Staatspresident, wat deur artikel 7 (4) van die Grondwet van die Republiek van Suid-Afrika aan hom toegeken is, en wat die koninklike prerogatief onder die Engelse reg in sy persoon gekontinueer het. Hierdie soort kommissie het unieke eienskappe en die aard van die kommissie kan o.a. afgelei word van gegewens wat versamel is en wat verskyn in die uitspraak in die Bellsaak, supra. Dit is n kommissie wat feite inwin en n aanbeveling aan die Staatspresident voorlê sonder dat die Regering enigsins daardeur gebind is. Skriftelike en mondelike getuienis kan verkry word maar ook kan vertoë aangehoor word. Wesenlik is die

kommissie/.....

kommissie nie meer as n adviserende liggaam tot die uitvoerende gesag nie, vgl. Minister of the Interior v. Bechler and Others, 1948 (3) S.A. 409 (A) te bl. 454. Dit is m.i. duidelik dat die Staatspresident kan gelas hoe die kommissie sy werk moet verrig en dat by afwesigheid van enige spesifieke instruksies van die Staatspresident so n kommissie sy eie werkswyse kan bepaal. Indien so n kommissie uit twee lede sou bestaan, sou hulle kon ooreenkom dat die een lid n bepaalde deel van die aangewese onderwerp sal ondersoek terwyl die ander lid die ander deel sal ondersoek. Dieselfde prosedure sou deur so n kommissie gevolg kon word afgesien van die getal lede van die kommissie, m.a.w. die kommissie kan self besluit watter lede bepaalde ondersoeke moet waarneem. Informasie so ingewin sal onderling beskikbaar gestel en bespreek word, waarna verslag aan die Staatspresident gedoen sal word.

Die bepalings van artikel 1 van die Kommissiewet No. 8 van 1947 lees soos volg:

„(1)/.....

„(1) Wanneer die Staatspresident, voor of na die inwerkingtreding van hierdie Wet, 'n kommissie aangestel het (wat hieronder 'n ‚kommissie' genoem word) om 'n saak van openbare belang te ondersoek, dan kan hy by proklamasie in die Staatskoerant-

(a) die bepalings van hierdie Wet of enige ander wet met betrekking tot daardie kommissie van toepassing verklaar, behoudens die wysigings en uitsonderings wat hy in die proklamasie bepaal; en

(b) regulasies met betrekking tot daardie kommissie uitvaardig-

(i) wat bykomende bevoegdhede aan die kommissie verleen;

(ii) wat voorsiening maak vir die wyse waarop die ondersoek ingestel moet word of die prosedure wat daarby gevolg moet word of vir geheimhouding;

(iii) wat hy nodig of dienstig ag om te verhinder dat die kommissie of 'n lid van die kommissie beledig, neergehaal of verkleineer word of dat die verrigtinge of bevindings van die kommissie benadeel, beïnvloed of vooruitgeloop word;

(iv) wat oor die algemeen voorsiening maak vir alle aangeleenthede wat hy nodig of dienstig ag om vir die doeleindes van die ondersoek voor te skryf.

(2) 'n Kragtens paragraaf (b) van subartikel (1) uitgevaardigde regulasie kan vir 'n oortreding daarvan of versuim om dit na te kom voorsiening maak vir strawwe by wyse van-

(a) in die geval van 'n regulasie bedoel in subparagraaf (i), (ii) of (iv) van genoemde paragraaf, 'n boete van hoogstens tweehonderd rand of gevangenisstraf vir 'n tyd van hoogstens ses maande;

(b) in die geval van 'n regulasie bedoel in subparagraaf (iii) van genoemde paragraaf, 'n boete van

hoogstens/.....

hoogstens duisend rand of gevangenisstraf vir n tydperk van hoogstens een jaar.

(3) Ondanks andersluidende bepalings van die een of ander wet is n landdroshof bevoeg om enige straf op te lê wat by so n regulasie voorgeskryf is."

Artikel 2 handel oor waar n kommissie kan sit. Artikel 3 handel oor die bevoegdhede aangaande getuies. Sub-artikel (1) van artikel 3 bepaal dat onderhewig aan sekere voorbehoude sittings van die kommissie openbaar moet wees. Artikel 4 is hierbo genoem en artikel 5 maak die opsetlike steuring van n kommissie se verrigtinge strafbaar. Artikel 6, die laaste materiële artikel van die Wet, is reeds hierbo aangehaal.

n Bestudering van die inhoud van die Wet toon myns insiens aan dat die wetgewer nie beoog het om, deur die toepassing daarvan, die aard van die kommissie te verander nie. Indien die Wet deur die Staatspresident van toepassing gemaak word, kry persone na wie, of verenigings of instansies waarna, n ondersoek ingestel moet word, geen regte teenoor die uitvoerende gesag wat hulle vantevore nie gehad het nie. Wat wel gebeur, is dat n sekere beskerming aan die kommissie gegee word en dat die

manier/.....

manier waarop getuienis ingewin kan word, deur sanksies meer effektief gemaak word. Getuies kan nou gedagvaar word (wat sonder die toepassing van hierdie Wet nie kan gebeur nie) en weiering om getuienis af te lê word strafbaar gemaak. Die toepassing van die Kommissiewet maak ook nie van die kommissie n sogenaamde „statutêre liggaam" nie. Sy oorsprong is nie die Kommissiewet nie. Aan die ander kant volg uit die toepassing van die Wet op n bepaalde kommissie, dat daardie kommissie, vir sover hy hom op die bepalings van die Wet wil beroep, moèt voldoen aan die regulasies wat deur die Staatspresident uitgevaardig mag word.

Die inherente reg van n kommissie om sy eie werkswyse vas te stel, word, myns insiens, deur die wetgewer erken deur die bepalings van artikel 1 (1), wat aan die Staatspresident bevoegdheid gee om (indien hy wil) regulasies

uit/.....

uit te vaardig wat voorsiening maak „vir die wyse waarop die ondersoek ingestel moet word of die prosedure wat daarby gevolg moet word". Indien sodanige regulasies nie uitgevaardig word nie, sal die kommissie sy eie wyse van ondersoek moet bepaal. Hierdie einste bepaling in artikel 1 (1) van die Wet is m.i. lynreg in stryd met die stelling van die hof a quo dat die wetgewer bedoel het dat, vir doeleindes van artikel 6 van die Wet, n kommissie beteken n kommissie bestaande uit al sy lede. Immers, indien die Staatspresident by regulasie sou bepaal, bv., dat by die uitvoering van die taak van n kommissie n bepaalde kworum aanwesig moet wees, dan sou die bepaalde kworum geregtig wees om die getuienis aan te hoor en sou die woord „kommissie" in artikel 6 beteken n kommissie bestaande uit die bepaalde

kworum/.....

kworum. Luidens artikel 1 (1) kan die Staatspresident die Kommissiewet of enige ander wet van toepassing verklaar „behoudens die wysigings (‚modifications', in die Engelse teks) en uitsonderings wat hy in die proklamasie bepaal". Die Kommissiewet of ander wette bly natuurlik as sodanig bestaan maar deur die regulasies kan die uitwerking van die Kommissiewet of ander wette vir doeleindes van n besondere kommissie gewysig word. Luidens regulasie 16 kan die Kommissie een of meer komitees aanstel, bestaande uit lede wat die Kommissie goeddünk, om getuienis en betoë aan te hoor ten opsigte van enige besondere saak. Selfs indien daar twyfel sou bestaan of n komitee wat deur die Kommissie aangestel word, as die Kommissie beskou kan word vir doeleindes van artikel 6 van die Wet, indien dit van toepassing gemaak is, is hierdie twyfel deur regulasie 17 uit die weg geruim. Regulasie 17 bepaal dat, vir doeleindes van regulasie 16, n komitee geag word die Kommissie te wees. Klaarblyklik beteken dit dat wanneer so n komitee optree om getuienis en betoë aan te hoor, hy optree met dieselfde bevoegdhede en

magte/.....

magte as wat die volle Kommissie besit. Die komitee kan dus n getuie laat dagvaar en kragtens regulasie 6 (supra) lê die voorsitter van die komitee of n daartoe aangestelde beampte, n getuie die eed op. Daar is, na my mening, geen regverdiging te vind nie vir die standpunt van die hof a quo dat, selfs al word aanvaar dat die lede van die Kommissie nie by al die werksaamhede teenwoordig hoef te wees nie, hulle tog almal teenwoordig moet wees wanneer n getuie die eed aflê. Dit sou dan o.a. beteken dat onmiddellik nadat die eed afgelê is, al die lede nie meer by die aanhoor van getuienis teenwoordig hoef te wees nie, tensy hy op een of ander stadium weier om vrae te beantwoord, n afleiding wat myns insiens aantoon tot watter markante anomalie so n vertolking kan lei. n Soortgelyke anomalie skuil in die betoog wat in hierdie hof namens respondent gelewer is, nl., dat indien n getuie vrywillig getuienis aflê, die Kommissie nie voltallig hoef te wees by die eedaflegging nie en dat, indien hy weier om die eed af te lê, sy weiering moet plaasvind voor die voltallige Kommissie.

Die Bevinding van die hof a quo dat regulasies 16 en 17 ultra vires is, vir sover dit artikel 6 (1) van die Kommissiewet betref, is ook gebaseer op die a priori stelling

dat/.....

dat die wetgewer bedoel het dat vir alle doeleindes die woord „kommissie" in artikel 6 beteken 'n kommissie bestaande uit al die aangestelde lede. Na my mening het die hof a quo in hierdie verband die bevoegdhede van die Staatspresident onder artikel 1 van die Wet oor die hoof gesien. Artikel 1 van die Wet maak voorsiening daarvoor dat die Wet toegepas kan word „behoudens die wysigings" wat in die proklamasie van die Staatspresident verskyn. Wanneer regulasie 17 dus bepaal dat 'n deur die Kommissie benoemde komitee vir doeleindes van regulasie 16 geag word 'n kommissie te wees, dan beteken dit dat die woord „kommissie" in artikel 6 omskryf word en ook 'n komitee insluit wat deur die Kommissie benoem is. In hierdie opsig kan dit gesê word dat artikel 6 „gewysig" is in die sin waarin die woorde „behoudens die wysigings" in artikel 1 (a) gebruik word. Regulasies 16 en 17 is dus nie ultra vires nie, vir sover dit artikel 6 van die Wet betref, en die woord „kommissie" in artikel 6 beteken ook, in die huidige geval, 'n komitee deur die Kommissie aangestel.

Soos/.....

Soos blyk uit die uitspraak van die hof a quo, het die hof hom beroep op n deel van die uitspraak in Schierhout v. Union Government, 1919 A.D. 30, op bl. 44. Nadat op bl. 44 gestel word dat wanneer verskeie persone benoem word om geregtelike pligte uit te oefen, hulle tesame moet optree, word daar gesê: „there can only be one adjudication, and that must be the adjudication of the entire body (Billings v. Prinn, 2 W.Bl., p. 1017). And the same rule would apply whenever a number of individuals were empowered by Statute to deal with any matter as one body; the action taken would have to be the joint action of all of them (see Cook v. Ward, 2 C.P.D. 255; Darcy v. Tamar Railway Co., L.R. 3 Exch., p. 158, etc.) for otherwise they would not be acting in accordance with the provisions of the Statute. It is those provisions which in each instance must be regarded; and the question here turns upon the construction of sec. 2 (6) of Act 29 of 1912".

In Cook v. Ward het dit gegaan oor n statutêre raad n sgn. „drainage board". In die bylae tot die Wet was reëls wat o.a.

voorsiening/.....

voorsiening gemaak het vir 'n kworum, 'n meerderheidsbeslissing, en ook vir die bevoegdheid om magte te delegeer aan 'n komitee. Ten opsigte van 'n komitee was daar ook 'n reël wat 'n meerderheidsbeslissing bepaal het. So 'n komitee van drie lede is aangestel met sekere magte om 'n taak uit te voer. Die drie lede het onderling ooreengekom dat elke lid 'n deel van die taak sou doen. Die Court of Appeal het beslis dat die komitee sy opgelegde taak as een liggaam moes uitvoer. Lord Coleridge het o.a. op bl. 261 van die verslag gesê:

> „The 8th rule provides that 'a committee may meet and adjourn as they think prôper. Questions at any meeting shall be determined by a majority of votes of the members present; and, in case of an equal division of votes, the chairman shall have a second or casting vote.' Now, what was done here was not done in striĉt conformity with those provisions. Under clause 6 of the schedule it may be that the board might have delegated this power to a single member of their body. They have, however, delegated it to three."

En verder:

> „Now, neither the rules, the provisional order, nor the resolution appointing the committee confer upon them the power of acting otherwise than in concert. Being a plural body, they must conform to the regulations which govern all such bodies, and must act according to the

provisions/...

provisions of the 8th clause, which manifestly contemplates the bringing together of the whole of the members of the committee in order that they may exercise a joint judgment in each case."

In die Darcysaak het dit gegaan oor 'n raad van direkteure van 'n maatskappy. Luidens artikel 90 van die Companies Clauses Act, 1845, wat in 'n maatskappy se „special act" ingelyf is, het die direkteure die bestuursmag oor die maatskappy gehad en in artikel 90 is bepaal dat die direkteure „shall hold meetings at such times as they shall appoint for that purpose", dat „in order to constitute a meeting there shall be present at least the prescribed quorum" en dat „all questions shall be determined by the majority of votes of the directors present". Daar was ook 'n bepaling in die „special act" dat die kworum van die direksievergadering ten minste drie direkteure moes wees, behalwe wanneer die getal tot drie verminder word, wanneer dit twee moes wees.

Tydens 'n private onderhoud met twee direkteure, het die sekretaris van hulle goedkeuring verkry (by wyse van 'n brief) om 'n regshandeling namens die maatskappy aan te gaan

(affixing/.....

(affixing the company's seal to a bond). 'n Derde direkteur het hom op straat sy mondelinge goedkeuring gegee met die belofte dat hy die brief later sou onderteken. In die saak wat voor vier regters gedien het, is beslis dat daar 'n vergadering moes gewees het van die direkteure as direksie. Soos Bramwell, B. dit uitgedruk het: „This is clearly the intention of the act; and it is an obvious consideration that, if it were otherwise, a quorum of directors might meet at one place with power to act for the company and another quorum might, at the same time, meet at another place, with equal power and come to an opposite determination."

In die Schierhoutsaak het twee van die drie lede, waaruit die Staatsdienskommissie bestaan het, 'n sekere aanbeveling gedoen. Namens appellant is aangevoer dat die aanbeveling deur die volle kommissie moes gedoen gewees het. Na oorweging van die bepalings van artikel 2 van Wet 29 van 1912, het hierdie hof tot die konklusie gekom dat 'n aanbeveling van 'n meerderheid van twee lede 'n aanbeveling van die betrokke

kommissie/.....

kommissie was. Wat die Schierhoutsaak en die aangehaalde Engelse sake dus aantoon, is dat daar gekyk moet word na die bedoeling van die skepper van 'n regsgeldige benoeming van 'n aantal persone om 'n besondere taak te verrig. Soos reeds bevind, blyk dit weens die aard van die Kommissie, uit die wil van die wetgewer, soos uitgedruk in artikel 1 van die Wet, en uit die regulasies deur die Staatspresident uitgevaardig, dat dit die bedoeling was dat die Kommissie kan funksioneer sonder om voltallig te wees.

Die laaste vraag wat beantwoord moet word, is of die komitee, waar dit in hierdie saak oor gaan, by die uitvoering van sy taak, voltallig moet wees vir doeleindes van artikel 6 van die Wet. Soos uit die aanhaling van die uitspraak van die hof a quo blyk, is die volgende bevind: „Die bepaling van artikel 17 van die regulasies, dat ‚so 'n komitee' geag word die kommissie te wees, verwys klaarblyklik na 'n komitee wat deur die kommissie kragtens artikel 16 aangestel is, as geheel, en nie na sommige lede van die komitee nie." Die hof a quo het geen redes uiteengesit nie

waarom/.....

waarom tot die konklusie gekom is, behalwe in 'n passasie in die uitspraak wat later aangehaal en behandel sal word. Ook hier moet, na my mening, na die bedoeling gekyk word wat blyk uit die skeppingsproses van so 'n komitee. By die beoordeling van hierdie bedoeling moet in gedagte gehou word dat die Kommissie inherent die mag het om te besluit hoe hy sal funksioneer by die uitoefening van sy taak. Hy kan besluit dat een lid 'n bepaalde saak ondersoek. Die toepassing van die Wet, in die onderhawige geval, verander die posisie alleen vir sover die regulasies bepaal dat, indien 'n komitee benoem word, die voorsitter of ondervoorsitter lid van die komitee moet wees. Afgesien hiervan bly die inherente bevoegdheid van die Kommissie bestaan. Die komitee word aangestel vir 'n beperkte doel nl. om ten behoewe van die Kommissie getuienis en betoë aan te hoor. Omdat so 'n komitee geag word die Kommissie te wees vir hierdie doel, moet die verrigtinge van die komitee uit hoofde van regulasie 2 genotuleer word. Wesenlik is die komitee dus 'n instrument wat getuienis en betoë ontvang wat, omdat dit genotuleer is, later deur die volle Kommissie oorweeg kan word.

Uit/...

Uit die bewoording van regulasies 16 en 17 blyk dit dat die Staatspresident die bedoeling gehad het dat die Kommissie n komitee kan benoem en dat die Kommissie self kan bepaal hoe die komitee moet funksioneer. Die enigste vereiste van die Staatspresident is dat die voorsitter of die ondervoorsitter van die Kommissie n lid van n komitee moet wees. Uit die manier waarop die twee komitees deur die Kommissie saamgestel is, kan die bedoeling van die Kommissie afgelei word. Die Kommissie het uit tien lede bestaan en twee komitees van ses lede elk is aangestel. Terwyl die eerste komitee die Christelike Instituut van Suidelike Afrika moes ondersoek, was die doelwit van die tweede komitee die Suid-Afrikaanse Instituut vir Rasseverhoudings. Op elk van die komitees is sowel die voorsitter as ondervoorsitter benoem. Die ander agt lede is so verdeel dat nie een op altwee komitees dien nie. Die gevolg is dat al die lede van die Kommissie op n komitee dien. Dat weens siekte of ander rede n lid nie beskikbaar sou wees nie, moes voorsien gewees het en dit kon beswaarlik die bedoeling

van/.....

van die Kommissie gewees het (as die funksie van die komitee in aanmerking geneem word) dat by afwesigheid van n lid van die komitee, die hele komitee uit aksie gestel word. Dit skyn myns insiens duidelik te wees dat met die metode waarop die twee komitees saamgestel is, die gelyktydige funksionering van die twee komitees beoog is. Die aanstelling van sowel die voorsitter en ondervoorsitter op beide komitees weerspieël ook die bedoeling dat elke komitee sonder die een of die ander ampsdraer kan funksioneer omdat daar sonder die een of die ander, in elk geval n voorsitter sou wees soos deur regulasie 16 vereis. Dit is ook n aanduiding dat die Kommissie bedoel het dat die komitee nie voltallig hoef te wees wanneer hy as komitee funksioneer nie. Die enigste redes wat die hof a quo aangegee het waarom die vier lede van die komitee nie as die Kommissie geag kon word volgens regulasie 17 nie, lees soos volg:

> „Dit blyk nie uit die getuienis dat die betrokke komitee ooit sy bevoegdhede aan 4 van sy lede oorgedra het nie, maar selfs al sou die komitee voorgegee het om dit te doen, dan sou so n oordrag na ons mening kragteloos gewees het vanweë die toepaslikheid van die reël delegatus delegare non potest."

Weens/.....

Weens die oorwegings hierbo genoem, meen ek dat dié reël nie van toepassing is nie, dat die 4 lede as die komitee en derhalwe as die Kommissie vir doeleindes van artikel 6 (1) van die Wet kon optree, en opgetree het, en dat die uitspraak van die hof a quo nie gehandhaaf kan word nie.

Sedert die uitspraak van die hof a quo gelewer is, het twee ander regters van dieselfde afdeling, in die saak Clemenshaw v. The State, n appèl aangehoor van n ander getuie wat ook geweier het om voor dieselfde Kommissie die eed af te lê, in omstandighede soortgelyk aan die van die onderhawige saak, en wat deur n landdros skuldig bevind is aan n oortreding van artikel 6 van die Kommissiewet. Die hof het bevind (op 20 Mei 1974) dat die uitspraak in die onderhawige saak verkeerd was en het die appèl afgewys. Vir doeleindes van hierdie uitspraak is dit onnodig om na die uitspraak in die Clemenshawsaak te verwys.

Die/.....

Die appèl slaag, die bevel van die hof a quo word tersyde gestel, en die saak word terugverwys na die hof a quo.

HOOFREGTER.

BOTHA, AR.
TROLLIP, AR.
RABIE, AR.
} Stem saam.

die Kommissiewet verskyn, feitlik geheel en al te beperk tot die Wet self. Sodoende het die Hof verkeerdelik be= vind dat 'n „kommissie" vir die doel van die vertolking van artikel 6 van die Wet, 'n kommissie bestaande uit al sy lede beteken. Met hierdie bevinding as uitgangspunt (Uitspraak: p. 84 reëls 12-28) is alle teenargumente af= gemaak (Uitspraak: p. 86 reëls 11-16, p. 88 reëls 1-8, p. 89 reëls 12-28, p. 90 reël 16 - p. 91 reël 5, p. 93 reëls 4-11), en het dan ook geblyk die grondslag van die beslissing te wees (Uitspraak: p. 94 reëls 7-16).

5.

Deur die ondersoek tot die bepalings van die Kommissiewet te beperk, het die agbare Hof uit die oog verloor dat die kommissie die skepping van die Staatspresident is en dat sy behoorlike samestelling bepaal moet word aan die Staatspresident se bevoegdhede en sy bedoeling soos weer= spieël in sy handelinge.

6. In/...

In hierdie verband verwys appellant na 'n uitspraak van Snyman en Viljoen, RR, in die saak van Staat teen Cleminshaw (TPA, C.A. 115/74) (*** 'n afskrif waarvan hierby aangeheg is) en wat op soortgelyke feite en regsvrae beslis is. Die Edele Regters het, met eerbied, die korrekte beredenering toegepas. Dit is soos volg (met enkele byvoegings deur appellant se advokate):

(a) Die bevoegdheid om 'n kommissie van ondersoek aan te stel setel in die Staatspresident uit hoofde van die bepalings van artikel 7(4) van die Grondwet van die Republiek van Suid-Afrika, 1961, Wet No. 32 van 1961, wat die koninklike prerogatief in sy amp bevestig en voortsit:

Bell v. Van Rensburg N.O., 1971(3) SA 693 (KPA);

S. v. Cleminshaw, p. 10 reël 21 - p. 11 reël 7.

(b) Die/...

sing verklaar:

Artikel 1(1) van die Kommissiewet.

(d) Die Kommissiewet doen geen afbreuk aan die Staatspresident se prerogatief nie; inteen= deel word sy bevoegdhede daardeur uitgebrei:

S. v. Cleminshaw (supra) p. 11 reëls 8-30 en p. 18 reëls 10-22.

(e) Die in artikel 6 bedoelde kommissie, is die kommissie wat deur die Staatspresident aange= stel is (Cleminshaw-saak, p. 21 reëls 24-25). Ten einde dus te bepaal hoe die liggaam saam= gestel moet wees ten einde die kommissie soos deur die Staatspresident in die vooruitsig ge= stel, te wees, moet die Staatspresident se be= doeling nagegaan word.

(f) Kragtens/...

(f) Kragtens artikel 16 van die regulasies soos gepubliseer in Proklamasie No. 138 van 1973 (Staatskoerant No. 3922 van 6 Junie 1973) is die onderhawige kommissie bevoeg om komitees aan te stel, en volgens artikel 17 van gemelde regulasies word sodanige komitee(s) deur die Staatspresident geag die kommissie te wees. Waar 'n komitee aangestel is, is hy beklee met al die bevoegdhede van die kommissie, vir die tersaaklike doeleindes, insluitende dié vervat in artikel 6 van die Kommissiewet:

S. v. Cleminshaw, (supra), p. 19 reëls 4-10.

7.

Die agbare Hof a quo se uitspraak word nou verder ontleed met verwysing na die aspekte waar hy in ons eerbiedige sub= missie fouteer het.

8. Die/...

must be present at the meeting, and that of that major part, there must be a majority in favour of the act or resolution.'"

Vide:-

Staple of England v. Bank of England, 1888(21) QBD 160, p. 165;

Halsbury: LAWS OF ENGLAND, derde uitgawe, Vol. 9, art. 95;

Crew: PROCEDURE AT MEETINGS, tiende uitgawe (1938), p. [illegible];

Saunders: WORDS AND PHRASES: tweede uitgawe (1969), pp. 245/6;

York Tramways Co. Ltd. v. Willows, 1882(8) QBD 685 op p. 698;

Miller/...

Miller v. Black and Black Co. Ltd., 1925 TPD 832 op p. 844.

24.

Sover ons kan bepaal is die enigste liggame waarop die meer= derheidsbeginsel nie van toepassing is nie, instansies met gedelegeerde bevoegdhede en geregtelike of quasi-geregtelike tribunale.

25.

Ten aansien van gedelegeerdes is die enigste gesag wat aange= haal word die saak van In re Liverpool Household Stores As= sociation (Ltd.) Vol. 59 (1890) L.J. CH 616, op p. 624 (cf. York Tramways Co. Ltd. v. Willows, supra). Dit word egter aan die hand gedoen dat die onderhawige komitee verskil van die liggaam wat in voormelde saak ter sprake was. Die

komitee/...

komitee is nie die kommissie se delegatus nie (cf. Uitspraak: p. 93 reëls 26-31); hy ontleen nie sy bevoegdhede aan die kommissie nie, maar aan die Staatspresident; die kommissie het geen van sy bevoegdhede aan hom oorgedra nie, maar ooreenkomstig die bepalings van artikel 16 van die regulasies die lede van die komitee aangestel.

26.

Die ander tipe liggaam waar voltallige bywoning noodsaaklik is vir die behoorlike samestelling daarvan is, soos voormeld, geregtelike of quasi-geregtelike instansies (Rose-Innes: JUDICIAL REVIEW OF ADMINISTRATIVE TRIBUNALS (1963), pp. 122/3). Die kommissie en a fortiori die komitee is nie sodanige liggame nie (Bell. v. Van Rensburg N.O., supra, veral p. 730-731). Die kommissie van ondersoek se doelstelling is om feite te versamel en verslag te doen. Hy mag aanbevelings doen, maar die Staatspresident, of enige ander persoon is geensins daaraan gebonde nie. In die

juridiese/...

juridiese sin tas hy dus die regte van geen persoon aan nie. Die komitee se doelstellinge is nog meer beperk; hy kan slegs getuienis en betoë aanhoor, en die kommissie kan so= danige getuienis en betoë ignoreer (Cleminshaw-saak: uit= spraak: p. 14 reël 8 - p. 16 reël 16). 'n Persoon oor wie se regte 'n tribunaal moet besluit is daarop geregtig dat al die lede van die tribunaal gedurende al die verrigtinge teenwoordig is, ten einde te verseker dat reg teenoor hom ge= skied. Dieselfde oorwegings geld nie vir 'n getuie wat voor 'n kommissie verskyn nie. Bygevolg kan die sake waarna die agbare Hof a quo op p. 86 reël 28 - p. 87 reël 2 van die uitspraak verwys, van die huidige geval onderskei word -

R. v. Van Reenen, 1 S..8;

Cook v. Magistrate, Cape Town, (supra),

The Coalowners' Association v. Board of Control, 1921, TPD 447, op p. 452-3;

Schierhout v. Union Government, 1919 AD 30 op p. 44;

R. v. Price, 1955(1) SA 219 (AA) op p. 224;

R. v. Pillay,/...

Lubbe Recordings/Pta/MWC C.A. 115/74

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

Date: 7th May, 1974
Delivered: 20/5/74

THE MAGISTRATE

PRETORIA.

Case No. 731/73

DOROTHY LILIAN PEARL CLEMINSHAW Appellant

versus

THE STATE Respondent

J U D G M E N T

SNYMAN ET VILJOEN J.J.: This is an appeal against the appellant's conviction on a charge of having contravened Section 6 of the Commissions Act, 1947, (Act No. 8 of 1947) read with Sections 1, 2 and 3 of the said Act.

The relevant portion of Section 6 is:

"(1) Any person summoned to attend and give evidence..... before a Commission who, without sufficient cause (the onus of proof whereof shall rest on him)..... refuses to be sworn or to make affirmation as a witness after he has been required by the Chairman of the Commission to do so ..... shall be guilty of an offence and liable on conviction to a fine not exceeding R50 or to imprisonment for a period of not more than six months, or to both such fine and imprisonment."

(10

It is common cause that the State President acting by virtue of his Prerogative, appointed a Commission of Enquiry as announced by him in Government Notice No. 1238 published in Government Gazette No. 3813 of 14th July 1972.

(20

The membership of the Commission was subsequently duly

changed / ....

charged by him, and at the time relevant to the offence with which the appellant was charged, consisted of :-

Mr. A.L. Schlebusch (Chairman)

Mr. E.M. Malan

Mr. J.J. Engelbrecht

Mr. L. Le Grange (Vice Chairman)

Mr. L.G. Murray

Mr. D.J.L. Nel

Mr. S.J.M. Steyn

Dr. G. de V. Morrison (10

Mr. W.M. Sutton

and

Mr. H.J.D. van der Walt.

The Commission's terms of reference in terms of the said Government Notice are the following :-

(1) To inquire into and, taking into account the evidence, memoranda and exhibits which were submitted to the Parliamentary Select Committee on Certain Organisations, report on -

(a) the objects, organisation and financing of (20 the National Union of South African Students, the South African Institute of Race Relations, the University Christian Movement, the Christian Institute of Southern Africa, and any related organisations, bodies, committees or groups of persons;

(b) the activities of the aforementioned organisations, bodies, committees or groups of persons and the direct or indirect results or possible results of those activities; (30

(c) the activities of persons in or in connection

with / ....

with the aforementioned organisations, bodies, committees or groups of persons and the direct or indirect results or possible results of those activities; and

(d) Any related matter which come on to the notice of the Commission, and which in its view calls for enquiry.

(2) To make recommendations if, in view of the Commission's findings, it appears to be necessary to do so. In order that the Commission may be better able to carry out this Commission, it has been granted full power and authority to interrogate at its discretion all persons who in its opinion are able to furnish information on the subjects mentioned in its terms of reference, or on matters relating thereto; to obtain, inspect and make extracts from all books, documents, papers and registers which in its opinion may contain information on the said subjects; and to conduct investigations into the subject matter of this enquiry in any other authorised manner.

The Commission has been requested to report to the State President as soon as possible.

Mr. Schlebusch was duly appointed as Chairman of the Commission, and in terms of Government Notice 980 of the 6th June 1973, Mr. le Grange was appointed Vice-Chairman.

The preamble to Section 1 of the Commission's Act (Act 8 of 1947) reads as follows:-

"To make provision for conferring certain powers on Commissions appointed by the Governor-General" (now of course the State President) "for the purpose of investigating matters of public concern, and to

provide for matters incidental thereto."

Sub-section (1) then provides as follows :

"Whenever the Governor-General has .... appointed a Commission (hereinafter referred to as a "commission") for the purpose of investigating a matter of public concern, he may by proclamation in the Gazette -

(a) declare the provisions of this Act or any other law to be applicable with reference to such commission, subject to such modifications and exceptions as he may specify in such proclamation; and

(b) make regulations with reference to such commission -

(i) conferring additional powers on the commission;

(ii) providing for the manner of holding or the procedure to be followed at the investigation or for the preservation of secrecy;

(iii) which it may deem necessary or expedient to prevent the commission from being insulted, disparaged or belittled, or to prevent the proceedings or findings of the commission from being prejudiced, influenced or anticipated;

(iv) providing generally for all matters which he considers it necessary or expedient to prescribe for the purposes of the investigation.

Acting under the powers conferred on him by Section 1 of the Act the State President caused to be published by Proclamation 164 of 1972, a notice rendering the provisions of

Act, with the exception of the provisions of sub-section (3) of Section 3, and Section 4 thereof, applicable to the commission. He also made regulations which he set out in a schedule to the Proclamation.

Subsequently, additional regulations (Nos. 16, 17, and 18) were published by Proclamation No. 138 of the 6th June, 1973. We quote those regulations which are germane to the issues before us :

REGULATION 5 :

No person whose presence at the inquiry is in the view of the Chairman, not necessary for the furtherance of the formation of the Commission, or is not authorised by these regulations, may be present at the inquiry.

REGULATION 6 :

The Chairman or an officer authorised generally or specially thereto by the Chairman, shall administer to any witness appearing before the Commission, an oath or affirmation.

REGULATION 16 :

The Commission may appoint one or more committees consisting of such members of the Commission as it may think fit, to hear evidence and addresses in respect of any particular matter on behalf of the Commission : Provided that the Chairman or the Vice-Chairman of the Commission shall be a member of such a committee.

REGULATION 17 :

For the purposes of the application of regulation 16, such a committee shall be deemed to be the Commission.

REGULATION 18 :

When the Chairman is absent from a sitting of the Commission, and the Vice-Chairman of the Commission is

present thereat, he shall act as Chairman, with all the duties and powers of the Chairman.

Acting in terms of Regulation 16, the Commission on the 8th June, 1973 passed a resolution appointing two committees:

Committee 1 consisted of :

Mr. A.L. Schlebusch
Mr. J.J. Engelbrecht
Mr. L. le Grange
Mr. D.J.L. Nel
Mr. S.J.M. Steyn
Mr. W.M. Sutton

Its task was to hear evidence and addresses in respect of the Christian Institute of Southern Africa.

Committee 2 consisted of :

Mr. L. le Grange
Mr. A.L. Schlebusch
Dr. G. de V. Morrison
Mr. H.J.D. v.d. Walt
Mr. E.G. Malan
Mr. L.G. Murray

Its task was to hear evidence and addresses in respect of the South African Institute of Race Relations.

It will be noted that Mr. Schlebusch and Mr. le Grange were appointed to both committees.

It is common cause that a summons duly issued and signed by the secretary of the Commission was served on the appellant to appear before Committee No. 1 on the 26th September 1973. She appeared but when called upon by the Chairman (Mr. Schlebusch) to testify under oath or affirmation, she refused to do so, and handed in a statement (Exhibit "E" on page 110 of the record) setting forth the reasons for her refusal.

Although the Commission had appointed a committee consisting of six of its members, only the Chairman and three of the committee members (four in all) were present when the appellant was called upon by the Chairman to take the oath or

to / ....

to affirm.

The appellant was thereupon charged as stated in the Regional Court of Pretoria. She was found guilty and sentenced to a fine of R20 or 10 days' imprisonment; and in addition to two months' imprisonment suspended for 3 years on condition that she is not again convicted of the offence of refusing to be sworn or make affirmation, or to give evidence before a Commission of Inquiry, when duly called upon to do so, which offence is committed during the period of suspension.

The appellant gave evidence before the Magistrate, admitting her refusal to be sworn or affirmed or to give evidence, and seeking to show sufficient cause for her refusal to give evidence in respect of the Christian Institute, that is the organisation in respect of which Committee 1 had been assigned to hear evidence or addresses.

Before setting out her reasons for refusing to testify the appellant stated that she would have been perfectly happy and fully prepared to answer in open Court any questions at all which the Court or the Prosecutor might put to her including those which might have been put to her at the Commission. She then proceeded to say that she had not lightly made her decision not to testify before the Commission. She had given the matter deep thought, being concerned that in refusing she might in some way be infringing the law.

She claims that it seemed to her that she was in danger that she might be asked in secret about "these people and about the organisation" (she interpolated : about herself also), and that she might be in danger of bearing false witness against them. She explained (we quote) - "I didn't know what they would ask me or how well I might be able to remember anything, or how I might misinterpret what any of them had said or done,

and / ....

and that then I might be associated with any punitive action which might be taken against them, or against the organisation, or against myself."

She handed in a photo copy of a statement setting out in shortened form her motivation for her decision not to testify.

The appellant then deals in her evidence with utterances in Parliament and in publ' by the Prime Minister, the Parliamentary Leader of the Opposition, and by certain members of the Commission. Because of these, she says, she felt that "these men (i.e. the members of the Commission) were party politicians first and foremost, and because their members and some members of the Commission had threatened the very organisations they were now going to investigate, they could not possibly come to an impartial and objective report about these organisations." She added that because of what the Prime Minister had said in advance, in fact, wittingly or otherwise, pressure was being exerted on the Commission.

The appellant, in her evidence, also deals with a body referred to as "NUSAS" certain of whose members were served with "banning orders" shortly after an interim report was issued about them by the Commission.

It was because of all this, as we understand her evidence, that she came to the conclusion that people could be punished by Administrative measures as a result of the Commission's report; and as the evidence was given in secret, they had no recourse to the ordinary courts, so that they could be punished for something they couldn't testify about in Court, or try to prove wrong; or prove their innocence. She thought this could happen to the staff of the Christian Institute and herself as well. Furthermore, she felt herself to be on trial without knowing the charges. She had also heard that she was considered to be a

Communist. / ....

Communist.

In conclusion of her evidence-in-chief, she reiterated that her objection was to giving evidence in secret, as she may be wrong and the persons affected would not be able to correct her. She averred that she had nothing to hide or be ashamed of, but wished to dissociate herself from a procedure which by-passes the normal courts, and undermines the rule of law. She thought that the Commission would try to create an aura around the organisation being investigated which would make it more easy for the public to accept any banning or restriction of their activities.

In cross-examination she said her grounds were based on her understanding of the political situation in the country, and that the appointment of the Commission was a political gambit on the part of the Prime Minister.

The appellant's grounds of appeal as amended, and read with the Heads of Argument on her behalf, are:

1. (a) It is an essential element of the offence created by Section 6(1) of the Commissions Act (Act No. 8 of 1947) that the body before which a person is summoned to attend and give evidence and before which such person refused to be sworn as a witness, must be a commission appointed by the State President.

(b) The Commission appointed by the State President consisted of a chairman and eight members (see Govt. Notice 1238 of 14th July 1972).

(c) The body before which the Appellant attended and before which she refused to be sworn as a witness was <u>not</u> the commission appointed by the State President, but consisted merely of four persons,

namely / ....

namely, Mr. A.S. Schlebusch (Chairman) and Messrs. S.J.M. Steyn, D.S. Nel and W.M. Sutton.

2. The Magistrate erred in fact and/or in law in finding that the appellant did not show sufficient cause, within the meaning of that term in Section 6 of the said Commissions Act, (No. 8 of 1947) for her refusal to be sworn or to make affirmation as a witness before the Commission.

Before us, Mr. Kriegler, for the appellant, argued only the first of the above grounds, indicating that while he was not abandoning the second ground, he would not address argument or make any submission in respect of it.

Mr. Kriegler relied heavily on a judgment of a full Bench of this Division in the case of C.F.B. Naude vs. The State (C.A. 2082/73) delivered on the 12th March 1974. It is common cause that the facts in that case are identical to those relevant in the instant case in regard to the first ground of appeal. Unless therefore this Court comes to the conclusion that the judgment by that Court is clearly wrong, it is bound by that decision and must follow it.

The State President's power to appoint the Commission is inherent in his Prerogative and it is clear that he acted in terms of that Prerogative in appointing the Commission. (Naude's case page 14, and Bell vs. Van Rensburg N.O. 1971 (3) S.A. 693(E) at 705G-706D).) The State President's Prerogative is a continuation of the Royal Prerogative of the British Crown under English Common Law, and was preserved for him by Section 7(4) of the Constitution of the Republic of South Africa Act (Act 32 of 1961).

Baker A.J. of the Cape Provincial Division in Bell vs. Van Rensburg N.O. (supra) has made an exhaustive analysis of the subject / ....

subject of the State President's Prerogative. We propose, with respect, to adopt his reasoning and conclusions for the purposes of this case. What emerges from it is that in spite of the voluminous learning and literature on the subject, the powers of the Queen-in-Council are dimmed by antiquity and the extent of the Queen's powers under her Prerogative in present-day circumstances are, or have become, uncertain.

Our Legislature has sought to clarify the position by enacting the Commissions Act. That Act (see Section 1) assumes the existence of the Governor General's (now the State President's) power under his Prerogative to appoint Commissions to investigate matters of public concern, and proceeds to grant him wide powers in regard to it. But while it confers these powers upon him, it in no way detracts from his rights under his Prerogative. It does not bind him to the powers it grants him, but specifically says that he <u>may</u> (not must) declare the provisions of the Act or any other law applicable with reference to a Commission. He is also permitted to make such modifications or exceptions to it as he thinks fit. Furthermore, he may make regulations conferring additional powers on a Commission, and he may provide for the manner of holding, or the procedure to be followed at the investigation, or for the preservation of secrecy; and provide generally for all matters which he considers it necessary or expedient to prescribe for the purposes of the investigation.

It cannot be doubted that the purpose of the Commissions Act is to amplify, clarify and even to extend the State President's power when exercising his Prerogative; and not in any way to limit or restrict it. It is in this light that the Commissions Act must be seen.

task of the Commission was left to it as one body. Some eleven months later the State President proclaimed three further regulations (16, 17 and 18). Regulation 16 authorised the Commission to appoint committees to perform certain specified tasks on its behalf. Regulation 17 conferred on such committees in respect of their function, the same status as had the Commission itself. Regulation 18 allows the Vice-Chairman of the Commission to act as Chairman should the Chairman be absent from a sitting of the Commission.

We see the addition of these three regulations as intended by the State President to expedite and facilitate the working of the Commission.

By means of regulation 16 the hearing of evidence and addresses could be divided among the members of the Commission so as to expedite or facilitate that aspect of the Commission's work.

Regulation 17, by deeming such a committee when hearing evidence or addresses, to be the Commission, bestows upon it all the essential functions, duties, rights, authority, protection and sanctions which the Commission has in terms of its appointment; more particularly, under the Regulations and those portions of the Act made applicable to it when hearing evidence or addresses.

Regulation 18 provides for the Vice-Chairman to act as Chairman when the Chairman is absent from a sitting of the Commission. Save that, like the other regulations and the appropriate portions of the Act, it affects the procedure of a Committee when hearing evidence or addresses on behalf of the Commission, it seems to us to have no special reference to a committee appointed under regulation 16.

As the issues before us involve the question of whether the

Chairman / ....

Chairman of a committee had the right to administer an oath or affirmation to witnesses appearing before it, it is necessary to consider the powers of the Commission; for it seems to us that whatever power the Commission had, a committee would also have.

Sub-section (1) of Section 3 of the Act, confers on a Commission inter alia the powers enjoyed by a Provincial Division of the Supreme Court of South Africa to "summon witnesses, to cause the oath or affirmation to be administered to them," (and) "to examine them....". Sub-section (2) enables the secretary of the Commission to sign and issue summonses to be served on witnesses to secure their attendance before the commission. Sub-section (3) which the State President has expressly excluded, reads as follows:

> "If required to do so by the Chairman of a Commission, a witness shall before giving evidence, take an oath or make an affirmation, which oath or affirmation shall be administered by the Chairman of the Commission or such official of the Commission as the Chairman may designate."

In place of sub-section (3) the State President has issued regulation 6, which reads :

> "The Chairman or an officer authorised generally or specially thereto by the Chairman, shall administer to any witness appearing before the Commission an oath or affirmation."

The essential difference between sub-section 3(3) of the Act and regulation 6, is that while in the sub-section a witness shall if required take an oath or make affirmation, in terms of regulation 6, the Chairman or officer shall administer an oath or affirmation to any witness appearing before it. Whilst