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19, 1963

IN THE PRIVY COUNCIL

No. 13 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

SIR ABUBAKAR TAFAWA BALEWA Appellant

- and -

SENATOR CHIEF T. ADEBAYO DOHERTY Respondent
SIR VAHE ROBERT BAIRAMIAN,)
JAMES MALCOLM HARRISON, and) Pro-forma
GERALD PERCY COOKE) Respondents

AND B E T W E E N:

SIR ABUBAKAR TAFAWA BALEWA Appellant

- and -

WESTERN NIGERIAN DEVELOPMENT CORPORATION Respondent
SIR VAHE ROBERT BAIRAMIAN,)
JAMES MALCOLM HARRISON, and) Pro-forma
GERALD PERCY COOKE) Respondents

(CONSOLIDATED)

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
19 JUN 1964
25 RUSSELL SQUARE
LONDON, W.C.1.

74101

CHARLES RUSSELL & CO.,
37, Norfolk Street,
LONDON, W.C.2.
Appellant's Solicitors.

HATCHETT JONES & CO.,
90, Fenchurch Street,
LONDON, E.C.3.
Respondents' Solicitors.

IN THE PRIVY COUNCILNo. 13 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

SIR ABUBAKAR TAFAWA BALEWA	<u>Appellant</u>
- and -	
SENATOR CHIEF T. ADEBAYO DOHERTY	<u>Respondent</u>
SIR VAHE ROBERT BAIRAMIAN,)	
JAMES MALCOLM HARRISON, and)	<u>Pro-forma</u>
GERALD PERCY COOKE)	<u>Respondents</u>

AND B E T W E E N:

SIR ABUBAKAR TAFAWA BALEWA	<u>Appellant</u>
- and -	
WESTERN NIGERIAN DEVELOPMENT CORPORATION	<u>Respondent</u>
SIR VAHE ROBERT BAIRAMIAN,)	
JAMES MALCOLM HARRISON, and)	<u>Pro-forma</u>
GERALD PERCY COOKE)	<u>Respondents</u>

(CONSOLIDATED)

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IN THE PRIVY COUNCIL

No. 13 of 1962

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

SIR ABUBUKAR TAFAWA BALEWA Appellant

- and -

SENATOR CHIEF T. ADEBAYO DOHERTY Respondent

SIR VAHE ROBERT BAIRAMIAN,)
JAMES MALCOLM HARRISON, and) Pro-forma
10 GERALD PERCY COOKE) Respondents

AND B E T W E E N:

SIR ABUBAKAR TAFAWA BALEWA Appellant

- and -

WESTERN NIGERIAN DEVELOPMENT CORPORATION Respondent

SIR VAHE ROBERT BAIRAMIAN,)
JAMES MALCOLM HARRISON, and) Pro-forma
GERALD PERCY COOKE) Respondents

(CONSOLIDATED)

RECORD OF PROCEEDINGS

No. 1

APPLICATION FOR WRIT OF SUMMONS

IN THE HIGH COURT OF LAGOS

Suit No. LD/355/1961

In the
High Court of
Lagos

No. 1

B E T W E E N :

SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff

- and -

1. SIR ABUBAKAR TAFAWA BALEWA)
Prime Minister of the)
Federation) Defendants
2. SIR VAHE ROBERT BAIRAMIAN)
3. JAMES MALCOLM HARRISON)
4. GERALD PERCY COOKE)

Application
for Writ of
Summons.

24th July, 1961.

APPLICATION FOR WRIT OF SUMMONS

The Plaintiff's claim against the defendants is for (a) a declaration that the Tribunal of Inquiry appointed by the first defendant as per Government Notice No. 1446 is illegal, unconstitutional and invalid (b) an injunction restraining the 2nd, 3rd and 4th defendants from holding the said enquiry and (c) such further or other orders

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30

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In the
High Court of
Lagos

as the Court deems fit to grant.

Dated this 24th day of July, 1961.

No. 1

(Sgd.) Akin-Olugbade Adepegba & Co.
Plaintiff's Solicitors
13/15, Balogun St. Lagos.

Application
for Writ of
Summons.

Plaintiff's Address: 25, Odunlami Street, Lagos.

24th July, 1961
- continued.

1st Defendant: Prime Minister's Office, Lagos.

2nd Defendant: Federal Supreme Court, Lagos.

3rd & 4th Defendants: c/o Senate House, Lagos.

Filed. at 8.15 a.m. 24/7/61

10

No. 2

No. 2

Plaintiff's
Motion on
Notice

PLAINTIFF'S MOTION ON NOTICE

IN THE HIGH COURT OF LAGOS

Suit No. LD/355/1961

24th July, 1961.

B E T W E E N :

SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff

- and -

- 1. SIR ABUBAKAR TAFAWA BALEWA)
- Prime Minister of the)
- Federation)
- 2. SIR VAHE ROBERT BAIKRAMIAN)
- 3. JAMES MALCOLM HARRISON and)
- 4. GERALD PERCY COOKE)

Defendants

20

MOTION ON NOTICE:

TAKE NOTICE that this Honourable Court will be moved on Monday the 31st day of July 1961 or so soon thereafter as Counsel can be heard on behalf of the above named Plaintiff for an order (a) that the question described in the Schedule to this Motion be referred to the Federal Supreme Court in accordance with the provisions of the Section 108(2) of the Second Schedule to the Nigeria (Constitution) Order in Council:

30

(b) that the 2nd, 3rd and 4th defendants be restrained from holding the tribunal of enquiry which is the subject matter of the action filed in the above matter;

(c) such further or other orders as this Honourable Court may deem fit to make.

In the
High Court of
Lagos

No. 2

Plaintiff's
Motion on
Notice

24th July, 1961.
- continued.

SCHEDULE

10

(1) Whether section 3(4) of the Commissions and Tribunals of Enquiry Act, 1961 is not ultra vires, unconstitutional and invalid in so far as it purports to exclude the jurisdiction of the Court in these proceedings.

(2) Whether the whole of the provisions of the Tribunals of Enquiry Act, 1961, is not ultra vires, unconstitutional and invalid.

Dated this 24th day of July, 1961.

(Sgd.) Akin-Olugbade Adepegba
& Co.

20

Plaintiff's Solicitors
15/15, Balogun Street, Lagos.

Plaintiff's Address: 25 Odunlami St., Lagos.

1st Defendant: Prime Minister's Office, Lagos.

2nd Defendant: Federal Supreme Court, Lagos.

3rd & 4th Defendants: c/o Senate House, Lagos.

Filed at 8.15 a.m. on 24/7/61.

In the
High Court of
Lagos

No. 3

PLAINTIFF'S MOTION EX PARTE

No. 3

IN THE HIGH COURT OF LAGOS

Suit No.ID/355/61.

Plaintiff's
Motion Ex
Parte.

24th July, 1961.

B E T W E E N :

SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff

- and -

- | | | |
|----------------------------------|--------------|----|
| 1. SIR ABUBAKAR TAFAWA BALEWA | } Defendants | 10 |
| Prime Minister of the Federation | | |
| 2. SIR VAHE ROBERT BAIRAMIAN | | |
| 3. JAMES MALCOLM HARRISON and | | |
| 4. GERALD PERCY COOKE | | |

MOTION EX PARTE

For an order that the prayer sought for in the Motion on Notice dated the 24th day of July 1961 be granted temporarily pending the hearing and determination of the said Motion on Notice and for such further or other Orders as this Honourable Court may deem fit to make. The Plaintiff will rely on the affidavit filed in support of the Motion on Notice in this matter.

20

Dated this 24th day of July, 1961.

(Sgd.) Akin-Olugbade Adepegba & Co.
Plaintiff's Solicitors
13/15, Balogun Street,
Lagos.

Fld. at 8.15 a.m. on 24/7/61

No. 4

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION ON
NOTICE AND MOTION EX PARTE

In the
High Court of
Lagos

No. 4

IN THE HIGH COURT OF LAGOS

Suit No.LD/355/61

Affidavit in
Support of
Plaintiff's
Motion on
Notice and
Motion Ex
Parte.

24th July, 1961.

B E T W E E N:

SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff

-- and --

- 1. SIR ABUDAKAR TAMAWA DANAWA }
Prime Minister of the }
Federation } Defendants
- 2. SIR VAHE ROBERT BALRAMIAN }
3. JAMES MALCOLM HARRISON and }
4. GERALD PERCY COOKE }

10

A F F I D A V I T

I, SENATOR CHIEF T. ADEBAYO DOHERTY, Nigerian
Citizen, Company Director of Odunlami Street, Lagos
do make oath and say as follows:-

(1) I am the Plaintiff in the above matter.

20

- (2) I have filed an action against the defend-
ants in the following terms:
(a) a declaration that the Tribunal of
Inquiry appointed by the first defendant as
per Government Notice No.1446 is illegal,
unconstitutional and invalid
(b) an injunction restraining the 2nd, 3rd
and 4th defendants from holding the said
enquiry and
(c) such further or other orders as the
Court deems fit to grant.

30

(3) The contents of Government Notice No.1446
which form the subject matter of the action
are as follows:

"APPOINTMENT OF A TRIBUNAL OF INQUIRY

In exercise of the powers conferred by
section 3 of the Commissions and Tribunals

In the
High Court of
Lagos

No. 4

Affidavit in
Support of
Plaintiff's
Motion on
Notice and
Motion Ex
Parte.

24th July, 1961
- continued.

of Inquiry Act, 1961, I hereby with the concurrence of the Council of Ministers and with the consent of the Acting Governor-General, Chief Dennis Chukude Osadebay, appoint Sir VAHE ROBERT BAIRAMIAN, Federal Justice, to be a Commissioner for the purpose of the said Act, and I further appoint Mr. James Malcolm Harrison and Mr. Gerald Percy Cooke as Commissioners, and I hereby further direct that the said Sir Vahe Robert Bairamian should be the Chairman of the said Tribunal, and I hereby authorise the said Tribunal to inquire into:

10

1. The general business operation and financial policy of the National Bank of Nigeria Limited and of its subsidiary companies during the period 1st October, 1959 to 31st December, 1960.

2. The nature, amounts and terms of advances or credit facilities or guarantees, as well as validity and sufficiency of any securities therefore, made, granted or given by the said bank at any time to:

20

(a) all subsidiary companies of the said bank;

(b) directors of the said bank or members of their families;

(c) any corporation, firm or other association of persons in which it may appear that any director of the said bank has or has had any interest at any material time;

30

(d) any private individual, corporation, firm or other association of persons, whether or not any director or official is or was interested therein.

3. The relationship and dealings at any time between the said bank and its directors or any of them on the one hand and on the other hand:

(a) The National Investment and Properties Co. Ltd.

40

(b) The Western Region Marketing Board;

(c) The Western Nigeria Development Corporation and its statutory predecessors;

(d) The Mutual Aids Society Limited;

(e) Any political party, group or association, or any persons, corporation, firm or other association of persons acting on behalf of any such political party, group or association.

In the
High Court of
Lagos

No. 4

Affidavit in
Support of
Plaintiff's
Motion on
Notice and
Motion Ex
Parte.

24th July, 1961
- continued.

10

4. Whether, and if so, to what extent party political considerations or associations have at any time influenced the said bank in its dealings with customers or prospective customers whether as borrowers or as depositors.

5. Whether, and if so, in what respect the business and affairs of the said bank have not been conducted at any material time in accordance with the provisions of the Banking Ordinance 1958 or of any other relevant Ordinance.

20

6. Whether in respect of any of the aforesaid matters or of any matters affecting the business and affairs of the said bank which, not having been hereinbefore specifically mentioned, may come to the notice of the Commissioners, any director or other officer of the said bank has failed to adhere to the standards of conduct or propriety demanded of him in his office, and if so in what respect.

30

For the purpose of these Terms of Reference the expression "subsidiary company" shall have the meaning given to it by the note at the foot of the First Schedule of the Banking Ordinance, 1958, and the provisions of the Banking or other relevant Ordinance shall be deemed to include the provisions of any regulations, direction, order or requirement lawfully made or given pursuant to any such Ordinance.

40

The Tribunal shall hold the first sitting in Lagos on Saturday, July 22, at 11 a.m. in the Chambers of the Senate, and the Tribunal shall thereafter hold the said inquiry at such place or places and upon such dates as the Tribunal may determine.

With the consent of the Acting Governor-General I hereby further appoint Mr. Olatunde

In the
High Court of
Lagos

No. 4

Affidavit in
Support of
Plaintiff's
Motion on
Notice and
Motion Ex
Parte.
24th July, 1961
- continued.

Tanimowo Fawole as Secretary to the said
Tribunal.

DATED at Lagos this 21st day of July,
1961.

ABUBAKAR TAFAWA BALEWA
Prime Minister of the Federation"

- (4) That at all material times up to 30th June 1961 I was a director of the National Bank of Nigeria Limited.
- (5) That in respect of proceedings instituted by me to restrain a Commission of Inquiry on substantially the same matters as the ones covered by the terms of reference quoted above the Lagos High Court found that I had interest in instituting the action. 10
- (6) That I shall before the hearing of the interlocutory application for injunction, file a further affidavit exhibiting all necessary documents to show that I have interest in the subject matter of this action. 20
- (7) That members of the said Tribunal of Enquiry have declared their intention to start holding the enquiry as from Tuesday 25th July, 1961.

(Sgd.) T.A. Doherty
DEPONENT.

SWORN to at the High Court
Registry, Lagos, this 24th
day of July, 1961.

30

Before me

(Sgd.) S.M. Chidom
COMMISSIONER FOR OATHS.

No. 5

In the
High Court of
Lagos

JUDGE'S NOTES ON PLAINTIFF'S MOTION EX PARTE

IN THE HIGH COURT OF LAGOS

No. 5

TUESDAY THE 25TH DAY OF JULY, 1961

BEFORE THE HONOURABLE,
MR. JUSTICE ONYEAMA,
JUDGE

Judge's Notes
on Plaintiff's
Motion Ex
Parte.

25th July, 1961.

Suit No.ID/355/1961

CHIEF T.A. DOHERTY

Plaintiff

10

vs.

SIR ABUBAKAR TAFAWA BALEWA & 3 Ors.

Defendants

WILLIAMS Q.C., and ADEPEGBA moving ex parte:

No writ has yet been issued but an application for a summons has been lodged with the Registrar; there is also an application for an interlocutory injunction but this has not been served; no interlocutory order can be made until a writ has been issued so there is no use serving the interlocutory injunction; the matter is a very urgent one and that is why this ex-parte motion is being made; the purpose of the motion is to suspend the inquiry proposed until the interlocutory application has been heard; the facts are in the affidavit; the enquiry is now in progress although I understand unofficially that only matters of procedure are being settled today; Halsbury 3rd Edition Vol. 21 page 412 paragraphs 863, 865, 866.

20

30

Commission appointed under Tribunal of Inquiries Act 1961; no general law can be enacted on tribunals of inquiry by the Federal Parliament; before 1957 Commission of Inquiry was concurrent; Nigerian Constitution, Amendment No.2 Order in Council; P.B.165 of 1957 Laws of Nigeria; see B 183 item K. deletes item 6 in 1954; no change has been made since 1957 and the power to appoint tribunals is an incidental power under the present Constitution;

40

Attorney-General for the Commonwealth of Australia v. Colonial Sugar Refining Co. Ltd. 1914 A.C. 237 -

In the
High Court of
Lagos

No. 5

Judge's Notes
on Plaintiff's
Motion Ex
Parte.

25th July, 1961
- continued.

"incidental powers;" only a Regional parliament can now make general laws on commissions of inquiry; Federal Parliament can only make specific laws directed to specific matters; s.65 of constitution of 1960 section 3 of the Act;

The section seeking to exclude the jurisdiction of the Court is unconstitutional; in view of the penal clauses of the Act the liberty of the Plaintiff may be involved; right to go to Court is given by the Constitution and cannot be taken away; fundamental right to liberty; section 3: of the constitution; 10

COURT:- There is in my view, sufficient material before me to warrant a stay pending the issue of the writ of summons and the service of the interlocutory application for injunction. It is ordered that the Commission of Inquiry stay all further proceedings for a period of seven days from today.

It is further ordered as follows:

- (1) That a copy of this order be served on the Chairman and on the secretary of the Commission. 20
- (2) That all writs, notices and other documents intended for service on the first respondent be left at the Chambers of the Honourable the Attorney-General of the Federation.
- (3) That the respondents or any of them be at liberty to move to vary or discharge this Order.
- (4) That costs of this Motion be costs in the cause.

(Sgd.) CHARLES ONYEAMA
JUDGE. 30

July 25, 1961.

ORDER ON PLAINTIFF'S MOTION EX PARTE

IN THE HIGH COURT OF LAGOS

In the
High Court of
Lagos

No. 6

Suit No. ID/355/1961

Order on
Plaintiff's
Motion Ex
Parte.

25th July, 1961

B E T W E E N:

SENATOR CHIEF T.A. DOHERTY Plaintiff

- and -

- 1. SIR ABUBAKAR TAFAWA BALEWA
Prime Minister of the
Federation
- 2. SIR VAHE R. BAIRAMIAN
- 3. JAMES MALCOLM HARRISON
- 4. GERALD PERCY COOKE Defendants

10

20

UPON READING the affidavit of Senator Chief T. Adebayo Doherty, Company Director of Odunlami Street, Lagos, sworn to and filed on the 24th day of July, 1961, and AFTER HEARING Frederick Rotimi Alade Williams Esquire, Q.C. (Solomon Christopher Adeniran Adepegba with him) of Counsel for the Applicant in support:

IT IS ORDERED that the 2nd, 3rd & 4th Defendants be restrained from holding the tribunal of enquiry which is the subject matter of the action filed in the above matter for a period of seven days from today:

IT IS FURTHER ORDERED as follows:

30

- (1) That a copy of this Order be served on the Chairman and on the Secretary of the Commission.
- (2) That all writs, notices and other documents intended for service on the first respondent be left at the Chambers of the Honourable the Attorney-General of the Federation.
- (3) That the respondents or any of them be at liberty to move to vary or discharge this Order.
- (4) That costs of this motion be costs in the cause.

40

DATED at Lagos this 25th day of July, 1961.

(Sgd.) CHARLES ONYEAMA
JUDGE.

In the
High Court of
Lagos

No. 7

MOTION ON NOTICE

IN THE HIGH COURT OF LAGOS

Suit No. LD/355/1961

No. 7

Motion on
Notice

26th July, 1961.

B E T W E E N:

SENATOR CHIEF T.A. DOHERTY

Plaintiff (Respondent)

- and -

1. SIR ABUBAKAR TAFAWA BALEWA
(Prime Minister of the
Federation)
2. SIR VAHE R. BAIRAMIAN
3. JAMES MALCOLM HARRISON
4. GERALD PERCY COOKE Defendants (Applicants)

10

MOTION ON NOTICE:

TAKE NOTICE that this Honourable Court will be moved on Wednesday the 26th day of July 1961 at the hour of 9 in the forenoon or so soon thereafter as Counsel can be heard on behalf of the Defendants for :-

(a) an Order dissolving the Order of this Honourable Court dated the 25th day of July, 1961, restraining the above-named second, third and fourth defendants from holding the tribunal of enquiry which is the subject matter of the action filed in the above matter;

20

or alternatively (b) an Order granting an expeditious hearing to the substantive motion filed in this matter by the Plaintiff for Thursday 27th July, 1961,

and (c) such further or other Orders as this Honourable Court may deem fit to make.

30

DATED at Lagos this 26th day of July 1961.

(Sgd.) S.D. ADEBIYI
Solicitor for the Defendants.

Plaintiff's address: 25, Odunlami Street, Lagos
Defendants' Address: c/o Their Solicitor,
Ministry of Justice, Lagos.

Filed on 26/7/61 at 9.30 a.m.

No. 8

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION ON NOTICE AND EXHIBIT

In the High Court of Lagos

No. 8

IN THE HIGH COURT OF LAGOS

Suit No.LD/355/1961

Affidavit in Support of Defendants' Motion on Notice and Exhibit.

26th July, 1961.

B E T W E E N:

SENATOR CHIEF T.A. DOHERTY
Plaintiff (Respondent)

- and -

- 10 1. SIR ABUBAKAR TAFAWA BALEWA)
Prime Minister of the Federation)
- 2. SIR VAHE ROBERT BAIRAMIAN) Defendants
- 3. JAMES MALCOLM HARRISON) (Applicants)
- 4. GERALD PERCY COOKE)

A F F I D A V I T

I, SAMUEL DUROJAIYE ADEBIYI of 20 Milverton Road Ikoyi, Lagos. Legal Practitioner, Nigerian, make oath and say as follows:-

20 1. That I am one of the Solicitors to the above-named defendants (Applicants).

2. That the second, third and fourth defendants are the Commissioners appointed by the 1st defendant to form a Tribunal of Enquiry by a Commission published as Government Notice No.1446 in the Official Gazette of the Federation dated 21st July, 1961, to enquiry into the various matters therein stated.

30 3. That the said Tribunal opened its sitting in Lagos on Tuesday, 25th July, 1961.

4. That at the said opening session the Plaintiff appeared before the said Tribunal by Chief O.B. Akin-Olugbade, of Counsel, and thereby submitted to the jurisdiction of the said Tribunal.

5. That at the end of the said opening session the defendant and the Secretary to the Tribunal were served an Order of this Honourable Court dated

In the
High Court of
Lagos

No. 8

Affidavit in
Support of
Defendants'
Motion on
Notice and
Exhibit.

26th July, 1961
- continued.

the 25th July, 1961, a copy of which is annexed to this affidavit and marked "Exhibit "A" restraining the second, third and fourth defendants from holding the said Tribunal of Enquiry for a period of seven days from the date of the said Order.

6. That the said Order was obtained by the Plaintiff without due notice to any of the defendants.

7. That it does not appear on the face of the order that the Plaintiff was required to give any undertaking for damages or if so required that he duly complied with that requirement. 10

8. That in my honest belief, the application by the Plaintiff was frivolous, vexatious and constitutes an abuse of the process of this Honourable Court.

9. That in my honest belief, the Order was irregularly granted because since this is a matter which raises points of importance which demand serious consideration in the ordinary course of law it ought not to have been dealt with in a summary fashion before the precise nature of the claim of the Plaintiff in the action has been formulated. 20

10. That the said Order ought not to have been made on an ex-parte application as it is such as would operate injuriously against the defendants who, although within the jurisdiction, had been given no opportunity to be heard in opposition to the application.

11. That the Government of the Federation has incurred and is incurring heavy costs in the procuring of the services of the third and fourth defendants as Commissioners and in briefing counsel to help the Tribunal in the collection and presentation of the evidence on the matters into which the Tribunal is required to enquire. 30

12. That it is, therefore, desirable for any question relating to the legality of the Tribunal to be decided early.

13. That, in pursuance of this, I verily believe that an expeditious hearing of the substantive motion should be ordered by this Honourable Court. 40

14. That it will be just to make an Order discharging the Order in the terms of the attachment

hereto marked Exhibit "A" or in the alternative an Order for the expeditious hearing of the substantive motion in this matter.

In the High Court of Lagos

No. 8

(Sgd.) S.D. ADEBIYI
DEPONENT.

SWORN to at the High Court Registry, Lagos this 26th day of July, 1961.

Affidavit in Support of Defendants' Motion and Notice and Exhibit.

26th July, 1961
- continued.

10 Before Me:
(Sgd.) S.M. Chidom
COMMISSIONER FOR OATHS.

EXHIBIT "A" to Affidavit in Support of Defendants' Motion on Notice

Exhibit "A" to Affidavit in Support of Defendants' Motion on Notice.

IN THE HIGH COURT OF LAGOS

Suit No. LD/355/1961

26th July, 1961.

BETWEEN:

SENATOR CHIEF T.A. DOHERTY Plaintiff

- and -

20 1. SIR ABUBAKAR TAFAWA BALEWA }
Prime Minister of the }
Federation } Defendants
2. SIR VAHE R. BAIRAMIAN }
3. JAMES MALCOLM HARRISON }
4. GERALD PERCY COOKE }

30 UPON READING the affidavit of Senator Chief Adebayo Doherty, company Director of Odunlami Street, Lagos, sworn to and filed on the 24th day of July, 1961, and AFTER HEARING Frederick Rotimi Alade Williams Esquire, Q.C. (Solomon Christopher Adeniran Adepegba with him) of Counsel for the Applicant in support:

IT IS ORDERED that the 2nd, 3rd & 4th Defendants be restrained from holding the tribunal of enquiry which is the subject matter of the action

In the
High Court of
Lagos

filed in the above matter for a period of seven
days from today:

IT IS FURTHER ORDERED as follows:

No. 8
Exhibit "A" to
Affidavit in
Support of
Defendants'
Motion on
Notice

- (1) That a copy of this Order be served on the Chairman and on the Secretary of the Commission.
- (2) That all writs, notices and other documents intended for service on the first respondent be left at the Chambers of the Honourable the Attorney-General of the Federation.
- (3) That the respondents or any of them be at liberty to move to vary or discharge this Order.
- (4) That costs of this motion be costs in the cause.

10

26th July, 1961
- continued.

DATED at Lagos this 25th day of July, 1961.

(Sgd.) CHARLES ONYEAMA
JUDGE.

This is the document referred to in the affidavit of Samuel Durojaiye Adebisi and therein referred to as Exhibit "A" Sworn to this 26th day of July, 1961. 20

Before Me
(Sgd.) S.M. Chidom
COMMISSIONER FOR OATHS.

No. 9

No. 9

Writ of
Summons

WRIT OF SUMMONS

26th July, 1961.

IN THE HIGH COURT OF LAGOS

CIVIL SUMMONS

Suit No. LD/355/ of
1961.

BETWEEN SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff, 30
and SIR ABUBAKAR TAFAWA BALEWA (Prime
Minister) & Ors. Defendants.

To SIR ABUBAKAR TAFAWA BALEWA & ORS. of Prime
Minister's Office, Lagos.

You are hereby commanded in Her Majesty's

name to attend this court at High Court, Lagos on Monday the 31st day of July, 1961, at 9 o'clock in the forenoon to answer a suit by Senator Chief T. Adebayo Doherty of 25, Odunlami Street, Lagos against you.

In the High Court of Lagos

No. 9

Writ of Summons.

26th July, 1961 - continued.

10

The Plaintiff's claim against the defendants is for (a) a declaration that the Tribunal of Inquiry appointed by the first defendant as per Government Notice No. 1446 is illegal, unconstitutional and invalid (b) an Injunction restraining the 2nd, 3rd and 4th Defendants from holding the said enquiry and (c) such further or other orders as the Court deems fit to grant.

Issued at Lagos the 26th day of July, 1961.

(Sgd.) CHARLES ONYEAMA
JUDGE

Summons £ s. d.
Service 8. 1. -
Mileage 8. 4
 6. 3

20

£8.15.7d Pd. on CR. No. D83620 of 24/7/61.

TAKE NOTICE:- That if you fail to attend at the hearing of the suit or at any continuation or adjournment thereof, the Court may allow the Plaintiff to proceed to judgment and execution.

No. 10

No. 10

APPLICATION FOR WRIT OF SUMMONS

IN THE HIGH COURT OF LAGOS

Application for Writ of Summons.

26th July, 1961.

Suit No. ID/362/61.

B E T W E E N:

30

WESTERN NIGERIA DEVELOPMENT CORPORATION
Plaintiff

- and -

- 1. SIR ABUBAKAR ALFAWA BALEWA,)
Prime Minister of the)
Federation) Defendants
- 2. SIR VAHE ROBERT BAIKRAMLAN)
- 3. JAMES MALCOLM HARRISON)
- 4. GERALD MERCY COCKE)

APPLICATION FOR WRIT OF SUMMONS

The Plaintiff claims against the defendants -

In the
High Court of
Lagos

No. 10

Application
for Writ of
Summons.

26th July, 1961

- continued.

(1) a declaration that the Tribunal of Inquiry appointed by the first defendant as per Government Notice No.1446 of 1961 is illegal, unconstitutional and invalid; alternatively a declaration that the said Tribunal of Inquiry is illegal, unconstitutional and invalid in so far as it purports to authorise an inquiry into the relationship and dealings at any time between the National Bank of Nigeria Ltd., and its directors or any of them on the one hand and the Plaintiff and its statutory predecessors on the other hand;

10

(2) an injunction restraining the defendants, their servants and agents from holding the said inquiry; and

(3) such further or other orders as this Honourable Court may deem fit to make.

Dated this 26th day of July, 1961.

(Sgd.) M.A. ODESANYA
Plaintiff's Solicitors

Address:
c/o M.A. Odesanya
51/55 Broad Street, Lagos.

20

Filed at 8.25 a.m. on 27/7/61.

Plaintiff's Address: Parliament Road, Agodi, Ibadan.

1st Defendant's Address: Prime Minister's Office,
Lagos.

2nd Defendant's Address: Federal Supreme Court,
Lagos.

3rd Defendant's Address: c/o Senate House, Lagos.

No. 11

WRIT OF SUMMONS

IN THE HIGH COURT OF LAGOS

CIVIL SUMMONS

Suit No. LD/362/of 1961

In the
High Court of
Lagos

No. 11

Writ of
Summons.

27th July, 1961.

BETWEEN WESTERN NIGERIA DEVELOPMENT CORPORATION
Plaintiff, and SIR ABUBAKAR TAFAWA BALEWA (Prime
Minister of the Federation) & Ors. Defendants.

10 To SIR ABUBAKAR TAFAWA BALEWA of Prime Minister's
Office, Lagos.

You are hereby commanded in Her Majesty's name
to attend this court at High Court, Lagos on Monday
the 31st day of July, 1961, at 9 o'clock in the
forenoon to answer a suit by Western Nigeria
Development Corporation of Parliament Road, Agodi
Ibadan against you.

20 The Plaintiff's claim against the defendants -
(1) a declaration that the Tribunal of Inquiry
appointed by the first defendant as per Government
Notice No.1446 of 1961 is illegal, unconstitutional
and invalid; alternatively a declaration that the
said Tribunal of Inquiry is illegal, unconstitution-
al and invalid in so far as it purports to author-
ise an inquiry into the relationship and dealings
at any time between the National Bank of Nigeria
Ltd., and its directors or any of them on the one
hand and the Plaintiff and its statutory predeces-
sors on the other hand;

30 (2) an injunction restraining the defendants, their
servants and agents from holding the said inquiry;
and

(3) such further or other Orders as this Honourable
Court may deem fit to make.

Issued at Lagos the 27 day of July, 1961.

(Sgd.) CHARLES ONYEAMA
Judge.

Summons £8. 1s. -d
Service 8. 4d
Mileage 6. 3d

40 £8.15. 7d Pd. on CR.No.D.83708 of 27/7/61.

TAKE NOTICE:-- That if you fail to attend at the
hearing of the suit or at any continuation or
adjournment thereof, the Court may allow the Plain-
tiff to proceed to judgment and execution.

In the
High Court of
Lagos

No. 12

JUDGE'S NOTES ON DEFENDANTS' MOTION ON NOTICE

No. 12

IN THE HIGH COURT OF LAGOS

Judge's Notes
on Defendants'
Motion on
Notice.
27th July, 1961.

THURSDAY THE 27TH DAY OF JULY, 1961

BEFORE THE HONOURABLE,
MR. JUSTICE ONYEAMA,
JUDGE

Suit No. LD/355/61.

CHIEF T.A. DONERTY

Plaintiff

Vs.

10

SIR ABUBAKAR TAFAWA BALEWA & 3 Ors.

Defendants

ELIAS Q.C. and ADEBIYI for Applicants:

AKIN-OLUGBADE for Respondent

AKIN-OLUGBADE: I am seeing the motion for the first time today; Rotimi Williams who argued the motion ex-parte is ill and a doctor's certificate has been filed; an affidavit has only this morning been filed by the respondent; the motion in this matter was served on Adepegba at 11.55 a.m. yesterday, Order 34 Rule 17; Supreme Court Rules;

20

ATTORNEY-GENERAL:- Regarding Order 34 Rule 17 we are in your Lordship's hands; I thought that when my friend Mr. Adebisi got to Court yesterday and your Lordship said you would hear the motion, you would be exercising your discretion in our favour.

COURT:- I do not think it is a matter of discretion; if I have not given special leave to the contrary, and it has not been suggested that I have, there is nothing for it but to allow two clear days.

30

Adjourned to 29th July, 1961.

(Sgd.) CHARLES ONYEAMA
JUDGE

July 27, 1961.

No. 13

FURTHER AFFIDAVIT IN SUPPORT OF PLAINTIFF'S
MOTION ON NOTICE AND EXHIBITS.

In the
High Court of
Lagos

No. 13

IN THE HIGH COURT OF LAGOS

Suit No.ID/355/1961

Further
Affidavit in
support of
Plaintiff's
Motion on
Notice and
Exhibits.
27th July, 1961.

B E T W E E N:

SENATOR T. ADEBAYO DOHERTY Plaintiff

- and -

- 1. SIR ABUBAKAR TAPAWA BALEWA)
Prime Minister of the)
Federation) Defendants
- 2. SIR VAHE ROBERT BAIRAMIAN)
- 3. JAMES MALCOLM HARRISON)
- 4. GERAID PERCY COOKE)

10

FURTHER AFFIDAVIT

I, CHIEF THEOPHILUS ADEBAYO DOHERTY, Senator,
Nigerian, Company Director of No.25, Odunlami
Street, Lagos, make oath and say as follows:-

20

- 1. I am the Plaintiff in the above-mentioned action.
- 2. Following the said action I swore to an affi-
davit on the 24th July, 1961 in support of my
motion praying for an interlocutory Order by this
Honourable Court.
- 3. The motion has been fixed for hearing on Monday
the 31st July, 1961.
- 4. Pursuant to my statement in the said affidavit
that further affidavit will be filed later I depose
as follows :-

30

(a) That I had obtained an order against the
first and second defendants in a previous motion
of similar nature in respect of the old Law in
Suit No.ID/10/1961.

The document attached herewith and marked
Exhibit "A" is a true copy of the ruling of the
High Court, Lagos thereon.

(b) That the facts set out by the learned trial
Judge in support of his decision that I have
sufficient interest to sustain my claim in that
action are true.

In the
High Court of
Lagos

No. 13

(c) That I was informed by my Solicitor Chief O.B. Akin-Olugbade and I verily believe that the document attached herewith and marked Exhibit "B" is a fair and accurate report of part of the opening speech of Neil Lawson Esq., Q.C. Counsel to the Tribunal of Enquiry.

Further
Affidavit in
support of
Plaintiff's
Motion on
Notice and
Exhibits.

27th July, 1961
- continued

(Sgd.) T.A. Doherty
DEPONENT.

SWORN to at the High Court
Registry, Lagos, this 27th
day of July, 1961.

Before Me

(Sgd.) S.M. Ghidom
COMMISSIONER FOR OATHS.

10

Exhibit "A"
to Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961.

EXHIBIT "A" to Further Affidavit in Support of
Plaintiff's Motion on Notice

IN THE HIGH COURT OF LAGOS

HOLDEN AT LAGOS, NIGERIA

ON TUESDAY THE 18th DAY OF JULY, 1961,

BEFORE THE HONOURABLE
MR. JUSTICE BELLAMY,
ACTING CHIEF JUSTICE.

20

Suit No.ID/310/1961

SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff

V.

1. THE HON. SIR ABUBAKAR TAFAWA BALEWA
(Prime Minister of the Federation)
2. THE HON. SIR VAHE BAIRAMIAN Defendants

J U D G M E N T

By a writ of summons issued on the 19th June, 1961, Chief T. Adebayo Doherty, the Plaintiff, claims against the Honourable Sir Abubakar Tafawa Balewa and Sir Vahe Bairamian, the 1st defendant and 2nd Defendant respectively, the following relief:-

30

"(i) A declaration that the Commission of Enquiry appointed by the 1st defendant as per Government Notice No.954, dated 15th May, 1961, is invalid, illegal and ultra vires.

(ii) An injunction restraining the second defendant from holding the improper enquiry in pursuance of his appointment as Commissioner under the aforesaid Government Notice".

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

10 The Plaintiff now brings this motion, applying for
the following Orders, namely, (1) that the 2nd
defendant be restrained from holding the enquiry
aforesaid pending the determination of the action;
20 (2) that the questions whether the Commissions of
Inquiry Ordinance takes effect as a Regional Law
or as an act of the Federal Parliament under the
Nigeria (Constitution) Order in Council, 1960, be
referred for determination to the Federal Supreme
Court under section 103(2) of said Order in Council;
and, (3) such further or other Orders as this Court
may deem fit to make.

I find it convenient to state in chronological
order how the questions between the Plaintiff and
the defendants arose. The facts which I am about
to set forth appear in the affidavit which have been
filed, some of them by leave of the Court after the
motion had been opened, and, in the main, are not
in dispute.

30 The Plaintiff was at all material times a
Director, and held the office of Managing Director,
of the National Bank of Nigeria Limited (herein-
after called "the Bank"). The 1st defendant was
at all material times, and he still is, the Prime
Minister of the Federation. The 2nd defendant was
at all material times and he still is, a Federal
Justice of the Supreme Court, and on 15th May, 1961,
under a commission issued by the 1st defendant in
purported exercise of powers conferred on him by
section 2 of the Commissions of Inquiry Ordinance,
40 he was appointed to be the Commissioner to inquire
into, amongst other subjects relating to the Bank's
business, "the general business operation and
financial policy of the National Bank of Nigeria
Ltd., and of its subsidiary companies during the
period 1st October, 1959 to 31st December, 1960".

By letter dated the 23rd May, 1960, the Federal
Minister of Finance, Chief Festus Okotie-Eboh, in
exercise of powers conferred in him by section 12

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

of the Banking Ordinance, appointed Messrs. Deloitte, Plender, Griffiths and Company, Chartered Accountants, of 5, London Wall Building, Finsbury Circus, London, to make a special examination under conditions of secrecy of the books and affairs of the Bank, the scope of their authority being "to carry out an audit of the books of Head Office and of such branches as you consider necessary and to report to me in writing as soon as possible, referring in particular to the following points, (a) any advances or other transactions which may contravene the provision of the Banking Ordinance; (b) all advances of £1,000 or more to be listed, showing the form and estimated value of the security held in respect of each advance; advances of any amount which you consider to be bad or doubtful to be listed; (c) rates of interest charged on loans and overdrafts; (d) the liquidity position of the Bank in relation to the ratio prescribed by the Central Bank of Nigeria under the provisions of section 8 of the Ordinance; (e) the worth of the Bank's investments in stocks, shares, real property and otherwise; (f) all foreign exchange transactions of £10,000 or more over the last 12 months to be listed and those which may have contravened the provisions of the Exchange Control Ordinance, and, (g) any transactions which come to your notice which may contravene any laws of Nigeria other than those specified above; and to make recommendations".

Messrs. Deloitte, Plender, Griffiths and Company carried out their special examination, and about October, 1960, they submitted their report to the Minister, "having dealt in their report with the particular subjects contained in their terms of reference, Messrs. Deloitte, Plender, Griffiths and Company made the following recommendations "regarding ownership and management" of the Bank".

"37. We make the following recommendations regarding ownership and management of the Bank :-

(i) In our opinion the whole of the ordinary capital and reserves attributable to the ordinary shareholders has been lost; together with part of the preference capital. This is shown by the revised balance sheet which forms statement 5.

(ii) The actions of the present management of the Bank in

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(a) submitting incorrect statement to the Central Bank, (paras. 5, 6 & 7)

(b) falsifying the Bank's books (para.9) and

(c) adopting a policy of making large advances which do not appear to be readily repayable (para.12(v)), and which policy is contrary to good banking practice.

10 in our opinion show that the management is unfitted to be in control of the Bank

20 (iii) The low interest charge of 1½% p.a. made on large loan (\$241,271 at 30th April, 1960) to a company (J.H. Doherty Ltd.) with which the managing director is concerned, (statement 3) together with the arrangement under which the Bank's properties at 21/25 Broad Street are being developed by a Company (National Investment Properties Co. Ltd.) in which two of the Bank's directors have a one-half interest, (see para.20) leads us to the opinion that the present management are more concerned with using the Bank's assets for their own private purposes, than for the benefit of the shareholders as a whole, and the security of the depositors.

30 (iv) We therefore recommend that the Minister informs the Bank that he will take steps to revoke the Bank's license unless changes in the ownership and management, agreeable to the Minister, are made.

(v) The existing 4% Preference Shares, held by the Western Region Marketing Board should be converted into Ordinary Shares, so as to give the Board control of the Bank.

(vi) The Western Region Marketing Board should appoint additional directors of the Bank.

40 (vii) Dr. A. Maja, the present chairman, should resign his directorship. T.A.Doherty should resign his directorship and his position as managing director.

(viii) A new chairman, approved by the Central Bank, should be appointed.

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
-- continued.

(ix) The position of managing director should be left unfilled.

(x) The day-to-day running of the Bank should be put in the hands of the general manager, Mr. Duroshola.

(xi) The Minister, in accordance with his powers under Section 14(b) of the Banking Ordinance, 1958 should appoint a person who has had proper training and experience to advise the Bank in the proper conduct of its business." 10

On the 14th October, 1960, the Minister wrote to the Plaintiff:

"Sir,

By my letter dated the 27th of May, 1960 I advised you that, in accordance with the power conferred upon me by section 12 of the Banking Ordinance and after consultation with the Central Bank, I had appointed the firm of Messrs. Deloitte, Plender, Griffiths and Company, assisted by such other qualified persons as I might from time to time appoint, to make a special examination, under conditions of secrecy, of the books and affairs of the National Bank of Nigeria Limited. The examiners have now submitted a full report to me and, in accordance with the requirements of section 13(3) of the Banking Ordinance, I now enclose a copy of such report. 20

2. The report sets out in specific terms many irregularities and improprieties. It is my intention to report the circumstances to the Governor-General in Council. In accordance with the provisions of section 14(c) of the Banking Ordinance, I now require you to furnish me, within 21 days, with a detailed explanation in writing of each and every irregularity and impropriety to which reference is made in the report, together with details of action taken or proposed in those cases where this is called for. 30 40

3. I should be grateful if you would acknowledge the receipt of this letter and its enclosure."

Having received that letter and the report

referred to therein, the Plaintiff wrote back to the Minister on the 28th October:

"Sir,

Your letter of the 14th instant No.F.11203/Vol.III/448, was received and in reply thereto we have to state as follows:-

10 First of all we have to thank the Minister, the Staff of the Ministry and the Examiners for having quite fully observed the conditions of secrecy which the ordinance enjoined so as not to embarrass the Bank,

20 The report of the Examiners Messrs. Deloitte Plender Griffiths and Company is so much a volume that it is impossible to deal with these in detail within 21 days and in such a case, we would have to send for our Accountants and Auditors in United Kingdom. All that is possible to do is to give a general answer to the different points raised in the report.

30 On the 8th of March, this year, a Mr. Lee came into the Bank with a letter of authorisation to examine the Books of the Bank without any previous notice or intimation. His attitude was courteous but very unfriendly. It was with difficulty we could persuade him that we would need arrange for his accommodation etc. His attitude was that of C.I.D. men armed with a search warrant. He came the following day and started on the Books. Within a few hours it was evident he was after finding out how much of the funds of the Bank had been advanced to the Action Group Party and the following day he was off to Ibadan to pursue this search. It was on his return that he and I had a talk about this account. I am prepared to confront Mr. Lee on this.

40 In passing I would like to state that when Mr. Fenton the Governor of the Central Bank had first arrived in Nigeria and I paid him a courtesy visit at Ikoyi I advised him not to allow politics to interfere with his assignment in this country and that if he is in any doubt or dilemma his best adviser is the Governor-General. I am sure Mr. Fenton still remembers this piece of advice.

On the 30th of May, the eve of my sailing

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

"to the United Kingdom I was asked to call at the Ministry of Finance and there handed a letter that certain Accountants and Auditors will examine the books of the Bank both in the Head Office and the Branches the following morning. It is a great pity that I was therefore out of the country when the Examiners started their work as a lot of inaccuracies, wrong valuations and wrong deductions in the report would not have occurred.

10

The National Bank of Nigeria has been in existence for the past 27 years during which period of time the only way to invest our funds was on real property, share of Companies, Overdraft to Customers and loans to the public.

The Banking Ordinance came into operation on the 1st October, 1959. The Examiners seem to be altogether oblivious or ignorant of this fact and seem to treat us as a wilful breaker of the laws and regulations under Banking Ordinance.

20

Our greatest difficulty has been the question of the 25% liquidity in relation to our background as stated above. On at least two occasions I mentioned to Mr. Fenton that it is extremely difficult for us to keep within this ratio as at any time we should fail to get adequate deposits. We would have expected Mr. Fenton to call us to a conference to enquire into these difficulties perhaps lend us one of his top men to help us seek a way out and may be even recommend the Federal Government to give us assistance as I believe Mr. Fenton's duty should include such a line.

30

The Directors of the Bank have done nothing that can be calculated as a wilful act prejudicial to the interest of the Bank or the Public but have developed the Bank to the best of our ability according to the knowledge and experience that we possessed and if we have made any mistake we express our regret for same. We have ourselves felt the necessity for calling in our monies outstanding and the ordinance gives us one year and 2 years within which to do this by selling our properties and shares in companies but the first year has not as yet expired.

40

Certain points and allegations in the Report need our explanation:

" LOANS AND ADVANCES: The Examiners' adverse criticism of these are no doubt due to their lack of knowledge of local conditions and of our land values. A property purchased five years ago has appreciated 100%, the one purchased 10 years ago has appreciated 200% and one purchased 15 years has appreciated 300% and this applies to our property investment as well as collateral securities we hold.

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

10 INTEREST LOW AS NOT TO BE ECONOMIC: The reduction of the rate of interest to all customers came under special review. We had been paying very heavy Income Tax calculated on interest on Overdrafts which interest do not come in by way of actual physical cash but by book entries, the Board of Directors therefore decided to stop calculating interest on some accounts by asking the customer to close the accounts and open a number two account which must not run into overdraft. It was during this review that the interest of J.H. Doherty Limited was reduced to 1½%. It was not just the act of the Managing Director.

20

RETURNS TO CENTRAL: We consider our London Branch as just as any other branch of the Bank in relation to the Head Office."

SERIOUS ALLEGATION AGAINST THE MANAGING DIRECTOR AND THE CHAIRMAN:

30 On page 13 of their Report at Section 20 of the Examiners wrote as follows :-

40 'Included in the properties of £271,996 is £41,958 for 21/25 Broad Street. This property has been charged to the Western Region Marketing Board to secure a guarantee given by the Bank for £500,000 advances by the Board to National Investment Properties Co. Ltd. This latter Company is having a large building erected on the site. One half of the shares in this Company are owned by two Directors of the Bank Dr. A. Maja and P.A. Doherty. It appears therefore that profits from the development of these properties will flow into the hands of these two directors.'

In all the report this is the only occasion on which we have been accused of fraudulent

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
-- continued.

"intentions in our actions of which if any top executive is guilty there would be justification for his removal. I say most emphatically that I do not own one single share in the National Investment Properties Co. Ltd. nor am I a Director nor do I even know who the shareholders are. Dr. Maja assured me that he owns only £200 worth of shares in the Company. That a reputable and responsible firm like Deloitte, Plender, Griffiths & Co. should make such a reckless and unwarranted allegation against our integrity is beyond my understanding. It is evident they have been listening to rumours.

10

We shall expect this portion to be expunged from their report with apology. We would not like to think that such rumours have affected their judgment and recommendations.

In accordance with the Minister's letter under reply we have approached the Western Region Government and they have expressed their willingness to come to our assistance in the spirit of the examiners' recommendation. We enclose herewith copies of letters already exchanged.

20

We will be grateful if Mr. Fenton will still come to our aid with one of his top men in consultation with the Western Region Government."

In answer to that, on the 14th November, the Minister wrote:

30

"Sir

I acknowledge with thanks the receipt of your confidential letter, reference TAD/EOB, of the 28th of October, 1960, which purported to reply in general terms to some of the points raised in the Report on the affairs of the National Bank of Nigeria, Limited, prepared by Messrs. Deloitte Plender Griffiths and Company.

2. I must say, quite frankly, that your letter appears to gloss over many of the specific points of criticism raised by the Examiners under cover of giving a general answer. I accept your contention that it would be difficult, if not impossible, to deal with the Report of the Examiners in detail within the 21 days I originally laid down, and therefore now require you to furnish

40

"me, within 30 days, with a detailed explanation in writing of each and every irregularity, and impropriety to which reference is made in the Report together with details of the action taken, or proposed, in those cases where this is called for."

In the
High Court of
Lagos

No. 13

Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

10 The Plaintiff answered that letter on the 13th December, and with that letter he forwarded to the Minister the Bank's "reply" to each matter specifically raised in the report of Messrs. Deloitte, Plender, Griffiths and Company. With regard to the recommendations made in the report relating to "Ownership and management of the Bank", the Bank stated:

"Paragraph 37:

(i) Examiners' comments noted.

(ii) Examiners' comments noted.

(iii) (NOTE: Chief Doherty to comment on the interest of 1 $\frac{1}{2}$ %).

20 In regard to the development of Bank's properties at 21/25 Broad Street by the National Investment and Properties Company Limited, our comments under paragraph (23) shows clearly that Bank directors name derive no benefit from the venture at the expense of the Bank whatsoever.

(iv) See comments under (v) below.

(v) Steps have already been taken to put the recommendations into effect.

30 (vi) The Western Region Marketing Board are taking steps accordingly.

(vii) Steps are being taken to comply.

(viii) Steps are being taken by the Western Government accordingly. And it will be up to it to decide whether the appointment of a new Chairman by it requires the approval of the Central Bank.

(ix) and (x) The Western Government will decide.

(xi) This would be most welcomed."

40 That letter, enclosing the Bank's reply, was

In the
High Court of
Lagos

written on the 13th December, and apparently no further correspondence took place between the Plaintiff and the Minister on this subject.

No. 13
Exhibit "A" to
Further
Affidavit in
Support of
Plaintiff's
Motion on
Notice
27th July, 1961
- continued.

Following upon the recommendations made by Messrs. Deloitte, Plender, Griffiths and Company in their report to the Minister, the Government of the Western Region took over the Bank through the Western Region Marketing Board, which then took steps to regularize the affairs of the Bank in accordance with the recommendations made in the said report. What was done, according to the Plaintiff in agreement with the 1st defendant, was as follows:

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"(a) The conversion of the Preference Shares of the Western Region Marketing Board into Ordinary shares;

(b) An increase in capital of £2,000,000 subscribed and taken up by the Western Region Marketing Board;

(c) The resignation of Dr. Haja as Chairman and Chief Doherty as Managing Director and, of three other directors of the Bank, all in March 1961. The position of Managing Director was left unfilled.

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(d) The appointment of three nominee directors of the Marketing Board, one of whom is now Chairman of the Bank, approved by the Central Bank.

(e) The levying of interest on loans formerly interest-free.

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(f) The day-to-day managing of the Bank was put into the hands of the General Manager, Mr. Duroshola.

(g) Steps were taken and are being taken to re-assess bad or doubtful debts and to obtain repayment as far as possible of these debts."

On the 15th May, 1961, the 1st defendant wrote to the Premier of the Western Region:

"My dear Premier, I am writing to give you advance information that, as I am not satisfied that those in charge of the National Bank are genuinely putting its affairs in order, I have

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decided after very careful consideration that there is no satisfactory alternative to the appointment of a Commission to enquire into the affairs of the Bank. A public announcement will be made shortly. I attach a copy of the terms of reference which will be given to the Commission."

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10 The public announcement referred to in that letter was the publication on the following day, 16th May, 1961, in the Federation of Nigeria Official Gazette of Government Notice No. 954 whereby the public was notified that on the 15th May, 1961, the 1st de-
20 fendant had issued a Commission appointing the second defendant to be the Commissioner to hold a commission of inquiry into the particular matters set forth in the commission including "the general business operation and financial policy of the National Bank of Nigeria Ltd., and of its subsidiary companies during the period 1st October 1959 to 31st December, 1960".

On the 19th June, 1961, at the instance of the 2nd defendant, a Public Notice was published in the following local newspapers, namely, the Daily Express, the Daily Times, and the West African Pilot, which stated inter alia that the first sitting of the Commission would be on the 7th July, 1961, that the inquiry would begin on the 10th July, 1961, and that the sittings would take place in the Chamber of the Senate.

30 On that same day, 19th June, very shortly after the publication of this public notice, the Plaintiff issued his writ in this action, and he now moves the Court for orders in the terms of his notice of motion.

40 The question which at once presents itself is this, under the particular circumstances of this case, has the Plaintiff any right to come to this Court for the relief that he is claiming? The 1st defendant says, No. In the affidavit sworn to by John Murray on the 5th July, 1961, on behalf of the 1st defendant, the case for the 1st defendant on this question is put in this way, that "the Commission of Inquiry appointed as aforesaid is one into the affairs of the National Bank of Nigeria Ltd. and in no wise affects or infringes any right or rights of the plaintiff nor does the plaintiff in his affidavit adduce any fact or facts establishing any rights in respect of which he would be entitled

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to seek the protection of this Honourable Court in this matter by way of injunction or otherwise". To put it broadly, the argument advanced on behalf of the 1st defendant is that the Plaintiff is in no better position than a stranger, and, in the language of Lord Dunedin in Attorney-General for the Dominion of Canada v. Ritchie Contracting and Supply Company (1919) A.C.999 (P.C.) at page 1005, that he has failed to aver and prove that what is to go on in the Commission of Inquiry is calculated to infringe his rights. In the course of the argument for the 1st defendant it was suggested that the Plaintiff was not suing either on behalf of the Bank, into the affairs of which the Commission of Inquiry had been appointed to inquire, and that, on the authority of Draper v. British Optical Association (1938) 1 ALL E.R. 115. the Plaintiff's action was premature.

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The 2nd defendant, who was unrepresented and appeared in person, did not address any argument to me on this question. He intimated that he could not consent to the interlocutory injunction being granted because any such consent would be contrary to his Commission and to his orders.

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On the other hand, it was submitted on behalf of the Plaintiff that he has shown a very strong interest to sustain his claim. It is urged on his behalf that, if the inquiry proceeds, then it must necessarily inquire into the way that he has conducted the affairs of the Bank, and in those circumstances his liberty is being invaded. It was urged furthermore on his behalf that it is not necessary for the plaintiff to show that his rights have been invaded, but it is sufficient if he can show that his rights are threatened. It was submitted that in the present case, if the Plaintiff's contention that the appointment of the Commission of Inquiry aforesaid was ultra vires is well-founded, it was quite impossible to say that the plaintiff's rights would not be infringed or threatened.

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There is, I think, no dispute as to the law. In order to enable the plaintiff to apply for a declaratory order or an injunction he must show that he has an interest in the subject matter. This principle was laid down in Guaranty Trust Co. of New York v. Hannay & Co., (1905) 2 K.B. 536 where it was held that the Court has power to make a declaration, whether there is a cadre of action

or not, at the instance of a party interested in the subject matter.

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10 Such being the principle, it remains to ascertain whether, on the facts before me, the plaintiff has shown that he has an interest in the subject matter. To answer this question it is first necessary to recall that the Commission of Inquiry appointed on the 15th May, 1961, is charged with the duty of inquiring into "the general business operation and financial policy" of the Bank during the period from 1st October, 1959 to 31st December, 1960. The particular subject of inquiry named in the commission includes:

"2. The nature amounts and terms of advances or credit facilities or guarantees, as well as validity and sufficiency of any securities therefor, made granted or given by the said bank to:

- 20 (a) All subsidiary companies of the said Bank;
(b) Directors of the said bank or members of their families;
(c) Any corporation, firm or other association of persons in which it may appear that any director of the said Bank has or has had any interest at any material time;
(d) Any private individual, corporation, firm or other association of persons, whether or not any director or official is or was interested therein.

30 3. The relationship and dealings between the said bank and its directors or any of them on the one hand and on the other hand:

- 40 (a) The National Investment Properties Ltd.,
(b) The Western Region Marketing Board;
(c) The Western Region Development Corporation;
(d) The Mutual Aids Society Ltd.,
(e) Any political party group of association, or any person, corporation, firm or other association of persons acting on behalf of any such political party, group or association.

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4. Whether, and if so, in what respect the business and affairs of the said bank have not been conducted at any material time in accordance with the provisions of the Banking Ordinance, 1958 or of any other relevant Ordinance.

5. Whether in respect of any other of the aforesaid matters or of any matter affecting the business and affairs of the said Bank which, not having been hereinbefore specifically mentioned, may come to the notice of the Commissioner, any director or other officer of the said bank has failed to adhere to the standards of conduct or propriety demanded of him in his office, and if so in what respect."

10

There is no dispute that during the period from 1st October, 1959 to 31st December, 1960, the Plaintiff was a Director of the Bank, and that in fact he held the office of Managing Director of the Bank during this period. There is also no dispute that the management of the Bank, which must include the Plaintiff, was severely criticised by Messrs. Deloitte, Plender, Griffiths and Company in their Report to the Minister of Finance. It was stated in this report that, "the actions of the present management of the Bank in (a) submitting incorrect statement to the Central Bank, (b) falsifying the Bank's books, and (c) adopting a policy of making large advances which do not appear to be readily repayable, and which policy is contrary to good banking practice, in our opinion show that the management is unfitted to be in control of the Bank. It was also stated in this report that, in the opinion of Messrs. Deloitte, Plender, Griffiths and Company, "the present management was more concerned with using the Bank's assets for their own private purposes than for the benefit of the shareholders as a whole and the security of the depositors", and it was recommended in the report that the plaintiff should resign his directorship and his position as Managing Director. It is difficult for me to conceive of any more damaging statements of the plaintiff in his capacity as Managing Director of the Bank. The terms of reference given to the Commission of Inquiry include the particular subjects referred to the special examiners, Messrs. Deloitte, Plender, Griffiths and Company, for examination and recommendation, and in asking his inquiry I am convinced that the 2nd defendant, the Commissioner, will be bound to investigate all the matters

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investigated by Messrs. Deloitte, Plender, Griffiths and Company, and in so doing is, I think, bound to call upon the Plaintiff for an account of his management of the Bank during the period in question. I find it quite impossible to say, in these circumstances, that the Plaintiff's rights may not be affected. I have given careful consideration to the arguments addressed to me on behalf of the 1st defendant, and I am not persuaded that it has been shown that the Plaintiff has not interest or no sufficient interest in the subject matter to sustain his claim. I would, therefore, answer this first question in the affirmative, and I find that the Plaintiff has shown that he has a sufficient interest to sustain his claim.

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This brings me to the next question which is, has the Plaintiff made out a case for the granting of an interlocutory injunction to restrain the 2nd defendant from holding the inquiry pending the determination of the action?

I think I had better consider first what are the principles which have been laid down with regard to the granting of an interlocutory injunction, and then I will consider whether it has been established by the Plaintiff that this case has been brought within those circumstances which have been held to justify the granting of an interlocutory injunction.

The law is well settled. It is very clearly stated by Cotton, L.J. in the Court of Appeal in Preston v. Luck, (1884) Ch. D. 497, where that distinguished Judge said:

"Of course, in order to entitle the plaintiffs to an interlocutory injunction, though the court is not called upon to decide finally on the right of the parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the Plaintiffs are entitled to relief."

It is, therefore, for the Plaintiff in the present case to establish (1) that there is a substantial question to be investigated at the hearing, and (2) that there is some probability of his succeeding at the trial.

Imprimis, I direct myself that the onus is on

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the plaintiff to establish the two ingredients I
have mentioned.

The Plaintiff's case for a declaration and
injunction is based upon three grounds. First, it
is said that the consent of the Governor-General to
the appointment of the 2nd defendant to be the
Commissioner to hold the inquiry was not obtained.
Secondly, it is said that the 1st defendant has no
power to appoint a commission of inquiry because the
Legislature of the Federation is incompetent to
legislate on Commissions of Inquiry by reason of
changes introduced in the Nigeria (Constitution)
Order in Council, 1960, And, thirdly, it is said
that the appointment of the 2nd defendant was bad
because it was not made in the proper exercise of
the 1st defendant's discretion.

10

It must be borne in mind that these are
questions to be determined at the hearing of the
cause. It is not necessary - indeed it would not be
right - for me to come to any definite conclusion
upon them. It is only necessary for me to consider,
upon the evidence before me, whether or not the
Plaintiff has shown that any one of these three
questions is substantial and may be decided in his
favour at the hearing.

20

With regard to the first question, it is
common ground between the parties that, by virtue
of the provisions of the Transfer of Functions
(Federation) Order, 1959, made under the Ministers'
Statutory Powers and Duties (Miscellaneous Provis-
ions) Ordinance, 1958, and by virtue of section
154(2)(b) of the Nigeria (Constitution) Order in
Council, 1960, which provides that reference to
officers in the public service of the Federation
includes references to the offices of judges of the
Federal Supreme Court, the consent of the Governor-
General was necessary to the appointment of the 2nd
defendant to hold the Commission of Inquiry.

30

Now, what is the evidence that the consent of
the Governor-General was not given as required by
law? The plaintiff has adduced no evidence in sup-
port of the averment in his affidavit sworn to on
the 30th June, 1961 that "the consent of the
Governor-General has not been obtained to the said
appointment". It is true that he has exhibited to
his affidavit aforesaid a copy of the appointment of

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- 10 the Commission of Inquiry as published in the Federation of Nigeria Official Gazette of the 16th May, 1961, as Exhibit "C". An examination of this document, the contents of which have not been challenged by the defendants, shows that it does not contain any statement that such consent has been given, Clause 4 of the Transfer of Functions (Federation) Order, 1959 provides inter alia that "a statement in the terms of any appointment that such consent has been given shall be prima facie evidence of such consent". This does not, of course, mean that the absence of such a statement in the terms of the appointment is prima facie evidence that such consent was not given. Has any evidence been adduced by the defendants to supply the deficiency in the Plaintiff's case? There is the evidence of Albert Ikeme Osakwe who, on the 6th July, 1961, swore that on the 9th May, 1961, the consent of the Governor-General was obtained.
- 20 He does not state with precision the source of his information. If he was present when the Governor-General gave his consent to the appointment of the 2nd defendant why does he not say so? If the Governor-General signified his consent in writing, the writing or a statutory equivalent should have been exhibited to his affidavit. In my opinion, the affidavit of Mr. Osakwe is hopelessly insufficient. The 1st defendant swore to an affidavit on the 6th July, 1961, and in this affidavit he states:
- 30 "2. That I remember clearly that during a discussion I had with the Governor-General of the Federation, the Rt. Hon. Nnamdi Azikiwe early in May, 1961 before I made the appointment of a Commission of Inquiry published as Government Notice No. 954 in the Official Gazette of the Federation of 16th May, 1961, His Excellency gave his consent to my appointing the second defendant, Sir Vahe Bairamian, a Federal Justice, as the Commissioner to
- 40 enquire into the various matters specified in the said Government Notice."

This evidence is unchallenged and uncontradicted, and I accept it. It is implicit that the Governor-General's consent to the appointment was given by him in the course of a conversation with the 1st defendant and that such consent was an oral consent. This immediately raises the question, is a verbal consent sufficient? Section 86(1) of the Nigeria (Constitution) Order in Council, 1960, provides

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interalia that in the exercise of his functions under this Constitution or any other Law the Governor-General shall act in accordance with the advice of the Council of Ministers or a Minister of the Government of the Federation acting under the general authority of the Council of Ministers. It seems to me that the appointment of a Commission of Inquiry to inquire into the affairs of the Bank was a matter upon which the 1st defendant must first have obtained the authority of the Council of Ministers, and the consent of the Governor-General should have been signified under the hand of the Deputy Governor-General or the Secretary to the Governor-General and Council of Ministers or the Deputy Secretary to the Council of Ministers as provided for in section 56(1) of the Interpretation Ordinance.

10

The basis of the appointment of the 2nd defendant to act as the Commissioner to hold the commission of Inquiry in question here was the giving of the Governor-General's consent prior to such appointment. Without such consent, the appointment of the 2nd defendant to hold the Commission of Inquiry must at the hearing of the action be held to be invalid. Without in any way deciding this point, it seems to me, on the evidence before me, to be at least doubtful if such consent was validly given.

20

That being my view, it is unnecessary for me to consider the remaining two questions, and I deliberately refrain from so doing. In the first place, the Plaintiff has shown to my satisfaction that, on the question of consent of the Governor-General alone, there is a serious question to be considered at the hearing of the action and that there is a probability of his succeeding on this point. And, secondly, I have been requested by the plaintiff to refer the second question which involves the interpretation of the Nigeria (Constitution) Order in Council, 1960, to the Federal Supreme Court for decision.

30

In my judgment, the Plaintiff has made out a case for the granting of an interlocutory injunction in the terms of the notice of motion. It is said that by granting an injunction in this case the court will be breaking new ground. That may be so, but it cannot be said that that is a good reason or any reason for refusing to grant an

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injunction in proper case. Needless to say I am reluctant to interfere summarily in such a case, but I am satisfied that there is a very grave question, possibly grave questions, to be decided at the hearing, and that until then the subject matter of the action should be preserved until the rights of the parties can be finally determined.

10 Before I refer any question to the Federal Supreme Court under section 108(2) of the Nigeria (Constitution) Order in Council I must be of opinion that the question involves a substantial question of law.

20 The question I am requested by the Plaintiff to refer to the Federal Supreme Court as set out in the Schedule to the notice of motion is not expressed in terms which would enable the Federal Supreme Court to deal with all the constitutional issues raised in argument before me, and during the hearing of the motion, at the suggestion of the Court, the question was re-framed by leading counsel for the Plaintiff. The question now reads:

"Whether the Commissions of Inquiry Ordinance is an existing law within the meaning of the Nigeria (Constitution) Order in Council, 1960, and if so, whether it has effect as a Federal Law or whether it has ceased to have effect either as a Federal law or at all before the coming into force of the said Order in Council".

30 Very able and sustained arguments have been addressed to me over a period of four days on this constitutional question which is by no means free from doubt. I do not propose to recapitulate these arguments. The Plaintiff's contention is that a Federal law which purports to provide for the holding of Commissions of Inquiry is invalid. I find it impossible to say that the question I am requested to refer to the Federal Supreme Court is not of considerable importance. I think it is.

40 Having regard to the increasing tendency nowadays of appointing Commissions of Inquiry to investigate matters of public importance, I should have thought that a decision of the Federal Supreme Court, which will settle all doubts upon the subject, would have been welcomed by the Federal Government.

The result of this motion is this. There will be an injunction restraining the 2nd defendant from

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27th July, 1961
- continued.

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holding the Commission of Inquiry under the commis-
sion dated 15th May, 1961, published as Government
Notice No.954 in the Federation of Nigeria Official
Gazette of the 16th May, 1961, until the final
determination of the action or further order. The
question as amended during the hearing of this
motion is referred to the Federal Supreme Court
under Section 108(2) of the Order in Council 1960.
I order the costs of this motion to be reserved
till the hearing or further order.

10

(Sgd.) Alexander Bellamy
ACTING CHIEF JUSTICE.

18th July, 1961

Mr. Dingle Foot, Q.C.
With him Messrs. Taveene and Akin-Olugbade -
for Plaintiff.

Mr. A. Wheeler, Senior Crown Counsel --
for 1st Defendant.

Sir Vahe Bairamian - in person.

£5.10.10d pd. on CR.No.D.83583 95 folios @ 1/2d
p.f.

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HIGH COURT CASHIER'S OFFICE
LAGOS
21/7/61

1/4d Pd. on CR.No.D.83707 of 27/7/61.

This is the document referred to and marked
Exhibit "A" in the further Affidavit of
Senior Chief T. Adebayo Doherty Sworn to this
27th day of July, 1961.

Before Me

(Sgd.) S.M. CHIDOM

COMMISSIONER FOR OATHS.

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EXHIBIT "B" to Further Affidavit in Support of
Plaintiff's Motion on Notice

In the
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P.A. Graham-Jones A.I. 9.0.-9.15 a.m. 25.7.1961.

No. 13

NATIONAL BANK OF NIGERIA LIMITED:
TRIBUNAL OF INQUIRY.

Exhibit "B"
to Further
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The Tribunal met at 9.0 a.m. on the 25th July
(Sir Vahe Bairamian in the Chair)

27th July, 1961

Sir Vahe Bairamian: I will ask the Secretary of
the Tribunal to read the appointment.

10 Secretary of the Tribunal (Mr. Olatunde Tanimowo
Fawole):

APPOINTMENT OF A TRIBUNAL OF INQUIRY

In exercise of the powers conferred by section
3 of the Commissions of and Tribunals of Inquiry
Act, 1961, I hereby with the concurrence of the
Council of Ministers and with the consent of the
Acting Governor-General, Chief Dennis Chukude
Osadebey, appoint Sir Vahe Robert Bairamian, Feder-
al Justice, to be a Commissioner for the purpose
20 of the said Act, and I further appoint Mr. James
Malcolm Harrison and Mr. Gerald Percy Cooke as
Commissioners and I hereby further direct that the
said Sir Vahe Robert Bairamian should be the Chair-
man of the said Tribunal, and I hereby authorise
the said Tribunal to inquire into:-

30 1. The general business operation and finan-
cial policy of the National Bank of Nigeria
Limited and of its subsidiary companies during
the period 1st October, 1959 to 31st December,
1960.

2. The nature amounts and terms of advances
or credit facilities or guarantees, as well
as validity and sufficiency of any securities
therefor, made granted or given by the said
bank at any time to:

- (a) All subsidiary companies of the said Bank;
(b) directors of the said bank or members of
their families;
(c) any corporation, firm or other association
40 of persons in which it may appear that any

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- continued

director of the said bank has or has had any interest at any material time;

(d) any private individual, corporation, firm or other association or persons, whether or not any director or official is or was interested therein

3. The relationship and dealings at any time between the said bank and its directors or any of them on the one hand and on the other hand:

(a) The National Investment and Properties Co. Ltd., 10

(b) The Western Region Marketing Board;

(c) The Western Nigeria Development Corporation and its Statutory predecessors;

(d) The Mutual Aids Society Ltd.,

(e) Any political party group or association, or any persons, corporation, firm or other association of persons actin on behalf of any such political party, group or association. 20

4. Whether and, if so, to what extent party political considerations or associations have at any time influenced the said bank in its dealings with customers or prospective customers whether as borrowers or as depositors.

5. Whether and, if so, in what respect the business and affairs of the said bank have not been conducted at any material time in accordance with the provisions of the Banking Ordinance 1958 or of any other relevant Ordinance. 30

6. Whether in respect of any of the aforesaid matters or of any matters affecting the business and affairs of the said bank which, not having been hereinbefore specifically mentioned, may come to the notice of the Commissioners, any director or other officer of the said bank has failed to adhere to the standards of conduct or propriety demanded of him in his office, and if so in what respect.

For the purpose of these Terms of Reference the expression "subsidiary Company" shall have the meaning given to it by the note at the foot of the First Schedule of the Banking Ordinance, 1958, and the provisions of the 40

Banking or other relevant Ordinance shall be deemed to include the provisions of any regulations, direction, order or requirement lawfully made or given pursuant to any such Ordinance.

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- continued.

10

The Tribunal shall hold the first sitting in Lagos on Saturday, July 22, at 11 a.m. in the Chambers of the Senate, and the Tribunal shall thereafter hold the said inquiry at such place or places and upon such dates as the Tribunal may determine.

With the consent of the Acting Governor-General I hereby further appoint MR. OLATUNDE TANIMOWO FAWOLE as Secretary to the said Tribunal.

Dated at Lagos this 21st day of July, 1961.

ABUBAKAR TAFAWA BALEWA
Prime Minister of the Federation.

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Sir Vahe Bairamian: Will you also read the note which the Prime Minister signed in regard to the date of opening?

Mr. Olatunde Tanimowo Fawole:

Cabinet Office,
Lagos.

To Whomsoever It May Concern:

30

It was brought to my notice this afternoon that, because of the unexpected 'plane delay of Mr. Gerald Percy Cooke, the Banker member of the Commission, the Tribunal of Enquiry appointed by me as the Prime Minister of the Federation under Gazette Notice No. 1446 and dated 21st day of July, 1961, was unable to hold its first sitting in Lagos today, Saturday, July 22, at 11 a.m. in the Chamber of the Senate as stipulated in the said Gazette Notice.

I hereby authorise the said Tribunal to commence sitting on Monday, July 24, at 11 a.m. or such other day and time as the Commissioners shall at their discretion deem fit.

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ABUBAKAR T. BALEWA
Prime Minister
22nd July, 1961.

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Chairman: I fixed this morning at 9 o'clock for beginning the sessions of the Tribunal and the sessions of the Tribunal begins. Now, I have appointed Mr. Lawson and Mr. Holden to assist this Tribunal in the preparation and presentation of evidence under section (7) paragraph (2) of the Act and I shall now ask him to address the Tribunal and suggest procedure and then, when that is done, I shall then ask whether any persons, learned Counsel for example, wish to appear before the Tribunal under the relevant section. Will you please speak, Mr. Lawson.

10

Mr. Lawson: May it please your Lord and members of the Tribunal, Mr. Holden and myself are here to assist the Tribunal by placing the facts before you and by calling before you and questioning the witnesses whose evidence can assist in ascertaining the truth relating to the matters within your terms of reference.

We are here to act under your direction for the Tribunal. We do not appear for anyone who is concerned in the Inquiry and we do not appear for any Government department and, in discharging our duties, it is our intention to the best of our endeavour, to act with impartiality.

20

If I may remind the Tribunal and those who are present, we are not here concerned with the trial. There is no Plaintiff, there is no Defendant, there is no Prosecution and there is no Accused.

As the Tribunal's duty is to ascertain the facts, you will require, and it is important that you should receive, the help of those persons who know the facts. Now, since it is our particular task to call and question the witnesses, it will assist considerably if those who can give evidence can make available written statements. It may be that some persons have already prepared written statements and if such statements could be handed to the Secretary without delay, that would facilitate the work of this Inquiry.

30

There may also be persons who can give oral or documentary evidence relating to the facts with which you are concerned and these persons are invited to communicate with the Secretary, who will arrange for the taking of statements and the copying of documents.

40

Summonses to testify or to produce documents will be served shortly on a number of people and those who receive such summonses are also invited to get in touch with the Secretary so that arrangements can be made, if they so desire, for the taking of statements and the copying of documents.

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10 If I may be permitted to say this, Sir, there can be no doubt of the importance to the Court of the matters which the Tribunal is charged to investigate and it is equally clear that it is essential that the Inquiry should be a thorough one. Thoroughness, of course, must depend upon the extent to which members of the public are prepared to come forward and give evidence, oral or documentary.

20 Now, Sir, with regard to the question of procedure. The procedure which has been commonly adopted in Tribunals and Commissions of Inquiry in England has been the procedure that since Counsel appointed to assist the Tribunal is the Tribunal's Counsel, and since the evidence which is brought forward is really the evidence for the Tribunal, that all witnesses should be called into the box to testify by Counsel representing the Tribunal.

Eneanya B.1. 9.15-9.30 a.m.

Mr. Lawson, Q.C. Contd.

30 But when Counsel representing the Tribunal has questioned those witnesses, the practice has been that other Counsels insofar as they are interested, and Counsel representing the person himself giving evidence should such Counsel be appearing before the Tribunal, are then permitted to cross-examine the witness and there can be some re-examination and, of course, questions by the Tribunal. So far as the question of evidence is concerned, it would assist you if at a later stage Counsels who are representing, or seek to represent, other interests here should comment upon that suggestion. So far as documents are concerned, there will be a number of documents, many of them emanating from public sources, a record which Mr. Holden and I will lay before the Tribunal when we are dealing with the matter. There will also be other documents. So far as documents of public record are concerned, arrangements have been made that copies of these documents can be obtained or will be available for other persons interested so that there should be no difficulty about them. The only difficulty

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which may arise is in relation to documents which are in the possession of persons to whom subpoena would be issued for their production. The making available of copies of those documents must, of course, depend upon the extend of which people who are served subpoenas are willing to co-operate and allow such documents to be copied before they are in fact put in evidence. But we may be able to see how we proceed as the inquiry goes on with those matters.

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Now, Sir, if I may remind you of the provisions of Section 16 of the Act, Section 16 of the Commissions and Tribunals of Inquiry Act, 1961, provides, of course, that "Any person whose conduct is the subject of the enquiry or who in any way implicated or concerned in the matter under inquiry is entitled to be represented by counsel at the whole of the inquiry, whereas other people, that is to say not falling within those categories are entitled to apply for representation but in the words of the Act, any other person who may consider it desirable that he should be so represented, may by leave of the Commissioners be represented in the manner aforesaid". No doubt you will be considering what are applications for representation under that section.

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Now, if I may revert finally to the position of Mr. Holden and myself, as I have said, we consider it to be our duty as counsel for the Tribunal to act with complete impartiality. We shall not, however, shrink from putting forward relevant matters in whatever directions they may trend. We shall not hesitate where it seems necessary to do so, to probe and probe deeply into relevant matters. If I finally may say, Mr. Holden and myself will be accessible to counsels and others appearing for interested parties at any convenient time to them and to ourselves, and we offer our co-operation to the end that the work of the Tribunal may be accomplished expeditiously and exactly.

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Chairman: May I ask if any Gentleman wishes to appear before the Tribunal as Counsel under section 16 of the Act?

B.J.M. McKenna: I wish to appear with Mr. D.O. Coker for the National Bank of Nigeria Limited whose conduct is the subject of the Inquiry under your commission. I do not desire to make any comment on what Mr. Lawson has said. As the National

Bank of Nigeria Limited is the subject of the inquiry I take it that that Bank is entitled to be represented at this inquiry.

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Chairman: Accepted; thank you. Any other gentleman?

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S.C. Ighodaro: I am appearing, Sir, with Chief Akinrele and Mr. S.C. Agbaje-Williams for the Western Nigeria Development Corporation and the Marketing Board.

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10 Chairman: It may appear as B and C in paragraph 3 of the appointment. Accepted; thank you.

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O.B. Akin Olugbade: My Lord the Chairman, I am appearing with Mr. Dingle Foot and Mr. Tavern for the former Directors of the National Bank of Nigeria whose conduct incidentally you may be inquiring into in this Inquiry.

Odesanya: I am, Sir, appearing with Chief F.R.A. Williams for the Action Group and the National Investment and Properties Company Limited.

20 Chairman: You mentioned the National Investment and Properties Company Limited and you also mentioned the Action Group. How do they come into this story?

Odesanya: It is not specifically mentioned, my Lord, but you will see under paragraph e, "Any political party". I think it is generally understood that the only political party whose conduct may be questioned or whose relationship with the Bank may be inquired into is the Action Group.

30 Chairman: I am sorry I do not know anything about it. But at this stage it should appear that a political party or proper association comes under paragraph 'e', then we can think about it again. At the moment we better leave it in the air.

Odesanya: The arrangement is quite satisfactory, my Lord.

40 Akin Olugbade: I wish to make a correction. I said earlier that I am appearing for the former directors. I should have specified one exception and that is Mr. J.K. Ladipo. I am appearing for Dr. Akin Ola Maja former Chairman, Chief T.A. Doherty who was managing director, Chief S.T. Kunponu-Uso and Alhaji S.O. Bademosi.

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Chairman: Thank you, now Mr. Adebisi wanted to say something.

Adebisi: With the Tribunal's permission. I would wish to appear for the Ministry of Finance as the Government Department which is directly concerned in the matter with which the Tribunal is charged for inquiry.

Chief Okorodudu: My Lord, Members of the Commission, I wish respectfully to announce that I am appearing for the Central Bank of Nigeria. The Central Bank is not an institution whose conduct is subject of any inquiry before, but it is an institution within the meaning of Section 16 concerned in the matter under inquiry.

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Chairman: Is any member of the Central Bank appearing as a witness?

Okorodudu: Some are.

Chairman: Very well, then in that case you may appear in regard to those witnesses.

Now, Gentlemen, I am addressing Mr. Olugbade, Mr. Igbodaro, Mr. Adebisi and Chief Okorodudu. Mr. McKenna said that he had no comments to make on the proposals or procedure which had been made by Mr. Lawson. If any of you has any comment to make we will adopt those proposals.

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Igbodaro: I have no comments to make, my Lord.

Olugbade: I have no comments at this stage.

Chairman: Those proposals or procedures are adopted for the time being.

O. Harrison Obafemi: I am appearing for the Mutual Society.

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Chairman: That is certainly named: thank you. Mr. Lawson, do you wish to open and give us outline?

Lawson: Yes, if you would please. It is unnecessary to me because the terms of the reference have been read to refer specifically to any one of those terms. But perhaps I should say so that there should be no misunderstanding as to the terms of

the reference that the matter rises from a number of grave allegations which have been made and which may appropriately be summarised in this way.

OKOH C1 9.30-9.45 25.7.61.

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10 Mr. Lawson (Contd.): Firstly, that the National Bank of Nigeria during the period referred to in the first terms of reference has seriously infringed the provisions of the Banking Ordinance in ways that are far more than merely technical. Secondly, that the former Directors of the Bank, Dr. Maja, Senator Doherty, Mr. Bademosi, Chief Hunponu-Wusu and Mr. Ladipo who were the Board of the Bank's Directors until some early date this year and who at all material times by their disregard of the provisions of the law and by the unsound banking policies which they followed have gravely endangered the security of funds entrusted to the bank by members of the public and by the great public corporation of the Western Region.

20 Thirdly, that during the period of the former Directors' control, substantial funds deposited with the Bank, both private money and public money, have been used for the personal benefit of the former Directors and for private commercial enterprises with which these Directors or members of their families have been associated. Fourthly, that the economic powers of the Bank have been directed and the funds under its control have been employed to a considerable extent for party political ends and purposes.

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That is the background, those are the allegations to the terms of reference and it is those matters into which the Tribunal is, broadly speaking, concerned to enquire.

Because this is an inquiry into the affairs of a bank, it is right, perhaps, shortly to suggest what is the role which a commercial bank does play in the economy of the country. Perhaps the functions of a commercial bank can be put in this way:

40 firstly, that it is there to channel money available in the hands of the general public so that it may be used for the economic development of the country; secondly, it is there to encourage private savings in conditions of security and confidence; thirdly, it is designed to encourage the use of credit in economic development. That, I would submit, is the role which a commercial bank should play in the economy of a country and particularly in the economy of a country such as this.

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Commercial banking was first undertaken in Nigeria some fifty or more years ago by the expatriate banks, and some thirty years ago came the rise of indigenous banks, the oldest survivor of the indigenous banks being the National Bank of Nigeria, the bank whose affairs are under inquiry and which was founded in 1933. There have been many unsuccessful attempts to establish indigenous banks here, but just as happened in the early days of banking in England, many of the early indigenous banks were unable to meet their liabilities and had to close their doors. These failures were probably due to a number of reasons: for example, the competition of the more wealthy expatriate banks, the slow development of native economy on modern lines and perhaps lack of experienced personnel.

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Now, one must not underestimate the importance of indigenous banking in Nigeria and one must not ignore the fact that the importance of indigenous banking has increased and can be expected enormously to increase in the changing political and economic situation. There is no doubt, from the point of view of this country, that the development of indigenous commercial banking presents very great advantages indeed. It is for that reason that it is vital that indigenous banking should be conducted with propriety and in such a way that a twofold object can be achieved: firstly, the protection of the Bank's depositors and secondly, preserving the legitimate role of banks in the national economy and its development. The Tribunal will find that it is really the attainment of this twofold aim, the protection of depositors and safeguarding the Bank's position in economic development, which have led to the enactment of special banking legislation in this country.

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Now, if I may just say a little about the legal position of the commercial banks in Nigeria and shortly consider it under three heads. Firstly, one looks at the common law position, the common law position which is applicable to commercial undertakings here, and there one finds that the relationship between banker and depositor is merely the relationship of debtor and creditor with the added obligation on the bank's part to honour the creditor's cheques if the customer's account is in credit or to the extent of any agreed loan or overdraft. The feature which emerges from that statement of the common law position is this, that at

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common law neither the bank nor its directors have got any duty to hold monies deposited with them in trust or to use those monies prudently. From the common law point of view the bank can do what it likes with its depositors' money. It is for that reason that special legislation has been introduced to put controls on the manner in which depositors' money is used by banks.

10 The second head under which one approaches the banks' legal position is by reference to the Companies Ordinance which is now Chapter 37 of the 1958 Edition of the Laws, and that applies to all banks because in order to carry on a banking business in this country it is necessary to be an incorporated company. The Companies Ordinance imposes duties owed towards shareholders by the Company and by its directors, but the concept of protection of depositors finds no place in the Companies Ordinance. Under the Companies Ordinance 20 the only right of access to the accounts of banking companies is the right which any member of the public has to go to the Companies Registry and to inspect the returns, in particular the annual returns which companies have to file under the Ordinance, the annual return having annexed to it a copy or summary in the form of a balance sheet. Banks of course do publish by newspaper advertisements from time to time some information as to their financial position, but that usually is not 30 greatly informative, particularly on detailed matters. So here again one sees that there is nothing in the Companies Ordinance which is effective to enable the public generally or depositors in particular to get detailed information as to the financial position of the banks. And it is this deficiency, if I may put it that way, or lacuna in the Companies Ordinance coupled with the situation which arises under the common law, that is to say the lack of recognition of any rights in depositors 40 other than the right to be paid back their money when they ask for it provided due notice has been given, it is those lacunae which really lead to a consideration of the special legislation.

50 Special legislation commenced in this country by the Banking Ordinance of 1952, Ordinance No.50 of 1952, which provided - if I may deal with this in quite a general way because it has been superseded by the later Banking Ordinance - for some exercise of powers of control by the grant or withholding of licences to banks and provided also some

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limitations upon the extent to which banks should use their money, for example, a restriction on grants of advances or loans to directors in excess of the sum of £300 unsecured, and also contained a broad provision the effect of which was that all banks ought to keep a reasonable liquidity position, that is to say that all banks should have at any particular time a sufficiency of really liquid assets in the form of hard cash or immediately realisable securities as against the contingency of substantial withdrawals of depositors. The Ordinance of 1952 was, as you, my Lord, known repealed by the Ordinance of 1958, and it would, I think, be convenient if I invited the Tribunal shortly to look at some of the provisions of the Banking Ordinance of 1958 which is Chapter 19 of 1958. There is in fact a separate print by the Government Printer or alternatively it is to be found in Volume I of the 1958 Edition of the Laws at page 145. This is an Ordinance, if I may comment on it generally, which goes into considerable detail in relation to the control of the banks and the obligations imposed upon them. If one can trust it with the much shorter and much less detailed and much less definite provisions of the 1952 Ordinance, one can see quite clearly that the legislature intended in 1958 that the law should be tightened up, that more rigid restrictions should be placed upon banks in relation to their dealings with depositors' money and that an increased degree of State or central control should be imposed upon companies undertaking banking business.

I do not know whether the Tribunal has copies of the Ordinance. It is at page 145. Section I deals with commencement, and as will be seen "the Ordinance shall come into operation upon such date as may be notified by the Governor-General after the signification of the pleasure of Her Majesty". It is convenient here to state that the Ordinance in fact came into operation on the 1st October, 1959, and the authority for that is Government Notice No.1998 which is printed in the Federal Government Gazette No.61 dated the 1st October, 1959.

ANTONIO 9.45 - 10.00 D.1 25/7/61

(Mr. Lawson (Continuing))

There is an original print, and I think a copy is available.

Section II is a definition section which I think I need not trouble the Tribunal with.

Section III deals with the licencing of banks. It starts by providing in section III sub-section (i) no banking business should be transacted in Nigeria except by a company which is in possession of a valid licence which is granted by the Minister after consultation with the Central Bank, authorising it to carry on banking business.

10 A Minister is defined, as will be seen in the last paragraph of Section II, as the Minister charged with the responsibility for matters relating to banking in the Federation or a person acting under his direction or on his behalf. Perhaps the only sub-section of Section III to which it is necessary to refer is sub-section VB - a Minister may by order revoke any licence (i) if the holder ceases to carry on banking business or goes into liquidation or is wound up or otherwise dissolved, or (ii) in the circumstances, and in the manner provided for in Section 14 - that is a Section to which I will come shortly.

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Section IV provides for a minimum paid up capital which is required of a licenced bank and it will be observed there that - and here I might be excused perhaps for stressing this - that the distinction in that section is drawn between what I might call an indigenous banks, that is a bank of which the Head Office is situated in Nigeria and (b) what I might be permitted to call an expatriate bank, that is in the case of a bank of which the Head Office is situated outside Nigeria. I may mention that point at this stage because there may be some argument, indeed much is already adumbrated of the fact that certain latter section of the ordinance did not apply to indigenous bank but only apply to expatriate banks; the point the Tribunal will observe is that where the Legislature desired to draw a distinction between an indigenous and an expatriate bank, it did so as in the case of Section IV of this Ordinance.

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40 Section V the point the Tribunal should look at is its application in relation to the provisions of the latter section. Section V provides that every licenced banks of which the Head Office is situated in Nigeria - and here again, it will be observed the distinction between indigenous and expatriate banks as I have called them - must maintain reserve fund and shall, out of its net profit before a dividend is declared, transfer to that sum

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a sum equal to not less than 25% of such profits whenever the amount of reserve is less than the paid up capital of the bank. Then there is a different provision relating to banking and any bank which has reserve funds or aggregates amounting to £200,000 is excluded. The point, as will be seen, is that the question of reserve fund comes in when one is dealing with certain of the latter sections.

Section VI is a section which imposes an obligation upon banks for the protection of, and affecting all its depositors. It says, no licenced bank shall pay any dividend on its shares until all its capitalised expenditure including preliminary expenses, organisation expenses, shares selling Commission, brokerage, and then the important words, amounts of losses incurred, not represented by tangible assets has been completely written off. If I may just pose this problem which is of concrete application in this case, although perhaps not a very important matter: let it be assumed that a bank has incurred a loss through a bad debt where, for example, as has here happened, the debtor is a company which has gone into liquidation and has only paid in liquidation a fractional dividend - now, is the bank entitled to declare a dividend without taking into account the loss which they have absolutely and finally incurred in respect of those particular bad debt unless they have, first of all, written off that loss in their accounts? The Tribunal may well find here that the National Bank was in fact paying dividends when it had not complied with the provisions of Section VI because losses had been incurred which were not represented by tangible assets and those losses had not been written off before dividends were paid.

Section VII is a section which in the context of this inquiry is of very considerable importance and it imposes detailed restrictions upon certain activities by licensed banks. The provisions of Section VII with which the Tribunal may well be particularly concerned - Section VII (1)(a)(c), Section VII (i, f and g) and Section VII sub-section 4 - so if I may just take a little time at this stage in any endeavour to save time perhaps at a later stage in inviting the Tribunal to follow with me the provisions of the relevant sub-sections of Section VII - a licensed bank should not, in Nigeria, grant to any person any advance or credit

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facilities or give any financial guarantee or incur any other loss on behalf of such person so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of such persons is at any time more than 25% of the sum of the paid up capital and published reserves of the bank provided that (i) provisions of this paragraph shall not apply to transactions between banks or between branches of a bank or to what one might call normal commercial trading transactions in relation to exports and bills of exchange and other documents and titles relevant to exports, and (ii) the provisions of this paragraph shall not apply to advances or credit facilities granted to or established on behalf of the Marketing Board established by Legislature in Nigeria or to the purchase of Bill of Exchange payable in Nigeria and accepted by any such Boards as advance against such Bills; and (iii) the provisions of this paragraph shall not apply in respect of any bank while all the banking liabilities it may from time to time incur are the subject of an irrevocable guarantee given by any other bank inside or outside Nigeria, if the form and substance of that guarantee have been proved by the Minister with the expressed recommendation of the Governor of the Central Bank. What the Tribunal may well find here after hearing the evidence in this case is that there have been breaches by the National Bank of the provisions of Section VII(1)(a) in that when a company excluded by any of the provisos to that sub-section, that is the provisos (i), (ii) and (iii), the banks has made advances or granted credit facilities or give financial guarantees to a number of persons in excess of 25% of the sum of paid up capital and published reserves of the banks. If I may quote an instance - I will deal with it in detail later - the 25% figure, that is to say, sum of the paid up capital and published reserves of the bank 25% of that total was in the course of 1960 a sum of approximately £330,000, that is to say, that the total paid up capital and the total reserves of the bank amounted to approximately £1,300,000, but - and 25% of that figure would be approximately (I am giving rough figures) £330,000 - one finds that notwithstanding that that was the 25% limit the National Bank in 1960 gave a guarantee in respect of liability to a company to whom my Hon. and learned friends opposite appears, the National Investment and Property Company Limited, to the extent of half a million pounds.

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Another illustration of the same matter - and I would deal with the same illustration a little later - is that during 1959 and after the Ordinance had come into operation, the Bank granted an overdraft to the Action Group Trust Fund in the sum of some £670,000 of which £400,000 approximately was, at the end of 1960 still owing. This was an advance which presented some other curious features in that it was also made free of interest and it may be a question of course as to how it happened that banks which take money from depositors and pay interest to their depositors are in a position to enable them to lend so substantial a sum free of interest to particular customers as appears to have happened in this case and that there are some three or four other cases of breaches of Section VII(i)(a). If I may now pass to Section VII, subsection (i) - so far as I am aware, if I might be permitted to say this - there is nothing in any document which has come to the notice of Mr. Holden and myself to suggest that there has been any breach of the provisions of Section VII (i)(b).

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Section VII(i)(c) is again a law with which the Tribunal will be seriously concerned. It provides, reading from (a) at the commencement of Section VII (i) that a licensed bank should not in Nigeria grant or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of £500,000 to (i) any one of its Directors whether such advances or facilities are obtained by its Directors jointly or severally; (2) any firm, partnership or private company in which any one or more of its Directors is interested as Director, partner, manager, or agent or to any individual firm, partnership or private companies of whom or of which any one or more of its Directors is a guarantor. For the purposes of this paragraph, a private Company means private company as defined in section 128 of the Companies Ordinance.

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Now, the Tribunal would like perhaps to be referred to Section 128 of the Companies Ordinance which is to be found in the same volume of the Revised Laws 1958 Edition at page 422.

KELLY E.1 10.0 - 10.15 a.m. 25/7/61.

Mr. Lawson (Continuing):

And this is, if I may say it, rather a common form

of legal concept of the private company, is a company which restricts the right to transfer its shares, limits the number of its members with the exception of employees and ex-employees to 50, and prohibits invitations to the public to subscribe to shares or debentures of the Company.

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10 Now the effect of section 7, subsection (1)(c) of the Banking Ordinance, going back to page 149 of the same volume, is to prohibit the grant or per-
mitting to remain outstanding of advances unsecured in excess of 2500 and that prohibition does not, of course, apply to advances in relation to public companies in which directors are concerned, so it is limited in its application to advances to directors personally or to advances to firms or private companies in which directors have interests. The Tribunal may well find, and the information which has become available suggests, that something like half a million pounds was in fact advanced and
20 outstanding during the year 1960 in the way of advances to directors or the former directors of the bank, that is to say the directors whose names I previously stated in the course of this opening, and something like two million pounds of the bank's money had been advanced by way of credit facilities or overdrafts or loans to firms and private companies in which Directors or members of their families were interested, and the Tribunal may well
30 find that in many of the cases falling under this head there was either no security or no security adequate to cover the whole amount of the overdraft or loan, and the Tribunal may well find that there were serious infringements in number and even more perhaps importantly in total finance involved of the provisions of section 7, (i)(c).

40 Now I may pass on to section 7(1)(d). There is some little information suggesting that in one case there was an advance to an official or employee, the security of which may have been questionable, but as this employee occupied a position of particular responsibility and as the purpose for which the advance was made appears to have been a purpose which is regarded as being legitimate purpose as between a bank and an employee in a senior position and was at a rate of interest which was appropriate to such a transaction, I am not proposing to trouble the Tribunal with that matter.

There will be nothing to trouble the Tribunal in relation to section 7 (1)(e).

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In relation to section 7(1)(f), however, there is something to say. As will be seen, section 7, sub-section (1) (f) at page 149 of the volume prohibits a licensed bank from acquiring or holding any part of the share-capital of any financial, commercial, agricultural, industrial or other undertaking except such shareholding as a bank may acquire in the course of the satisfaction of debts due to it which shareholding shall, however, be disposed of at the earliest suitable moment: Provided that this paragraph shall not apply -

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(i) in respect of any shareholding approved by the Central Bank in any corporation set up for the purpose of promoting the development of a money market or securities market in Nigeria, or of improving the financial machinery for the financing of economic development;

(ii) to all shareholdings in other undertakings aggregate value of which does not at any time exceed twenty-five per cent of the sum of the paid-up capital and published reserves of that bank;

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Now the importance of that section is this, and the reason why I mention it, is this, that as will be seen when certain correspondence exchanged between the National Bank and the Central Bank is put before the Tribunal, that the National Bank - I think quite erroneously - took the view that they were in breach of section 7 (1)(f) because they had got some shareholdings in companies of a financial, commercial, industrial or other forbidden character. But it seems clear from all the information which had become available that never at any time did the aggregate of the shareholdings in these other companies, the shareholdings owned by the Bank in these other companies, exceed twenty-five per cent of the total of the paid-up capital and published reserves; so I mention the point in a sense to knock it down, and I mention it to knock it down because as the Tribunal will see, the bank did make a return of transactions which were incompatible with section 7(i) (f), but they made that return erroneously because they or whoever was responsible for making the return omitted to notice that the total value of their shareholdings did not exceed twenty-five per cent of their paid-up capital and published reserves.

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Then again in rather a similar way I should mention 7(i)(g), 7(i)(g) prohibits a bank from purchasing, acquiring or leasing real estate except as may be necessary for the purpose of conducting

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its business or housing its staff, with certain provisos; the first proviso is important in respect of any real estate held or leased by the Bank at the coming into operation of this Ordinance for purposes other than those referred to herein, that is to say for purposes other than the purposes of conducting its business for housing its staff; the bank is allowed a period of three years in which to comply with this paragraph. Now the next proviso, which I should just refer to, is that the bank is entitled to secure debts upon real property and if it wants to enforce its security acquire the property, but is under an obligation to resell it.

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Now what the Tribunal will find here upon the evidence may well be this, that the Bank did in fact own at the time when the Ordinance came into operation, that is to say in October 1959, that the bank at that time owned something like £300,000 worth of freehold or leasehold property mainly in Lagos, all of which had been acquired by the bank some years before, well at one time or another during a period of some ten years preceding the coming into operation of the Ordinance, and it will be found that the bank owned this property and made a return to the Central Bank of Nigeria indicating that it did in fact own this property, but there again there was and could not be anyhow until October 1962 because of the three year's moratorium given in the first proviso to section 7, (i)(g), there could be no question of infringement of section 7 by the bank. Then subsection (2) of section 7 merely gives a definition of unsecured advances or unsecured credit facilities, which definition is applied to paragraph (c) of the first sub-section of section 7, and shows that it means either unsecured advances or facilities or the extent to which any advance or credit facilities is not supported by the value of the security. And then subsection (3) of section 7; "Any licensed bank which prior to the coming into operation of this Ordinance, entered into any transactions incompatible with the provisions of paragraphs (a) to (f) of subsection (i) shall submit a statement of those transactions to the Minister through the Central Bank and shall within one year from the said date liquidate the transactions". So section 7, subsection (3) imposes two obligations upon a bank, the first obligation it imposes upon the bank is that they have to make a return to the Minister through the Central Bank of what one might call

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incompatible transactions, that is to say transactions which are incompatible with the provisions of paragraphs (a) to (f), but not, it will be observed (g), and secondly that the bank is given one year from the coming into operation of the Ordinance, that is to say given until the 1st October, 1960 to liquidate or discharge the incompatible transactions. The Tribunal may well find that the bank in this case did not in fact liquidate those incompatible transactions which it had subsisting at the time when the Ordinance came into force by the 1st October 1960, and may well find that in fact during the period between the ordinance coming into force on the 1st October 1959 and the 1st October 1960, the bank in fact, under the control of its former Board of Directors, entered into further transactions which were in fact in breach of the provisions of the various paragraphs of section 7, sub-section (i), to which I have referred, that is to say, (a) and (c).

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I can now pass to section 3, which again is a section which it will be important for the Tribunal to consider. Section 8 is the section which for the first time in Nigeria enables a liquidity ratio to be laid down to which banks shall conform, and it deals with the matter in this way - Section 8, subsection (1), page 151 - "Every licensed bank shall maintain a holding of specified liquid assets not less than such amount as may from time to time be prescribed by the Central Bank by virtue of section 40 of the Central Bank of Nigeria Ordinance".

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Now if I may pause there for one moment, the power to lay down the liquidity ratio, that is to say the holding of specified liquid assets, is given as is seen from section 3 by section 40 of the Central Bank of Nigeria Ordinance, and in fact it was on the 5th of November 1959 that the Central Bank of Nigeria made an order under the provisions of section 40 of their own ordinance, the Central Bank of Nigeria Ordinance and section 3 of the banking ordinance, the reference to that is Government Notice No.2358 dated 5th November 1959 and it is printed in the Federation of Nigeria Official Gazette No.69 dated the 5th November 1959 at page 1472 Government Notice No.2358.

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ONAMUTI E.1 10.15 - 10.30 25/7/61

Mr. Lawson (Contd.): May I read the notice :-
"Government Notice No.2358 of the 5th November, 1959.

"Prescription of Liquidity Minimum for Licensed Banks.

10 In accordance with section 40 of the Central Bank of Nigeria Ordinance, 1958 (No.24 of 1958), the Central Bank of Nigeria hereby prescribed that with effect from 5th November, 1959, the amount of specified liquid assets as defined in section 8 of the Banking Ordinance, 1958 (No.19 of 1958) which each bank operating in Nigeria under the said Banking Ordinance shall hold in Nigerian pounds or in sterling shall be not less than 25 per cent of the gross demand liabilities of each such bank due in Nigeria pounds together with 25 per cent of the gross time liabilities of each such bank arising out of its time and saving deposits due in Nigerian pounds.

20 Under the provisions of subsection (3) of section 40 of the Central Bank of Nigeria Ordinance 1958, a period of six months from 5th November, 1959 is prescribed for compliance".

30 The net effect of that I might perhaps summarise in this way by saying the Central Bank laid down the specified liquidity ratio of 25% by notice dated the 5th of November, 1959 but that specified ratio did not in fact come into force, so as to be operative and impose any obligation upon the licensed Bank until the 5th of May, 1960, that is to say, six months after the notification of the order made by the Central Bank in the exercise of their powers under Section 40 of their own Ordinance and Section 8 of the Banking Ordinance.

Then the Tribunal will desire to look at Sub-section (2)

40 "For the purpose of computing the amount of specified liquid assets to be held by each licensed bank, the offices and branches situated in Nigeria of such a bank operating in Nigeria and elsewhere shall be regarded as if those offices and branches constituted a separate bank carrying on business in Nigeria".

What that I would submit does mean is this, that where you have got a bank such as the National Bank of Nigeria and, indeed, any other banks carrying on banking business in this country which has not only

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Branches in Nigeria but branches outside Nigeria. When you do your sum of computing the specified liquid assets to be held by each licensed bank you treat the Nigerian part of the bank as if it were a separate unit. That is to say, supposing the Nigerian branches of the bank owed the London branch money, you cannot treat the debt which the Nigerian branches owed to the London branch as if it were an asset of the branches in Nigeria. It is an asset of the bank overall on the overall position but it cannot be an asset of the bank as far as its Nigerian business is concerned because it is obviously a liability of the Nigerian business. The section goes on

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".....All the demand liabilities, and all the time liabilities, of that bank owned through any of those offices and branches in Nigeria shall be regarded as if they constituted liabilities of the separate bank"

That is to say a liability of the Nigerian part of the bank to the London branch is to be regarded as a liability of the Bank.

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".....and all the assets held by or to the credit of any of those offices or branches on behalf of that bank and not on behalf of a customer, including any balance in the books of any office or branch of that bank situated in the United Kingdom, shall be regarded as if they were assets of that separate bank".

What that means I would submit is this. Although the Section is a little complicated, that you have got one of these branches which as the National Bank of Nigeria has a branch in London. The London branch owes the Nigerian branches money. That is an asset that the amount of the debt which London owes Nigeria is an asset of the Nigerian bank and, therefore, they are entitled to include that in their specified liquid assets.

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Now, I would indicate very shortly the problem with which the Tribunal is concerned on the application of this Section. If I may read :-

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"For the purpose of subsection (2), "demand liabilities" means the total of deposits in any bank which must be repaid on demand, and "time liabilities" means the total of deposits repayable otherwise than on demand".

Then Section (4) :-

"The specified liquid assets referred to in this section shall consist of all or any of the following:-

- (a) notes and coins which are legal tender in Nigeria;
- (b) balances at the Central Bank;
- (c) balances at any other Bank in Nigeria and money at call in Nigeria;"

10 and (d) which is important -

- (d) balances at any bank, including the offices and branches of a licensed bank in the United Kingdom and money at call in the United Kingdom."

20 That is to say, as I indicated to the Tribunal before, if the London Branch of the National Bank owed the Nigerian branches or head office in Nigeria money on account, then that debt of London to Nigeria can be included as a specified liquid asset because subsection 4(d) of Section 8 of the Ordinance specifically says that that can be done.

Then, there are certain other matters which are to be included in specified liquid assets - Treasury Bills. Treasury Bills, of course, were not in use by the time the ordinance came into operation in 1959 but issued by the Nigerian Government, but later the Federal Government did again start issuing Treasury Bills.

Then subsection (5):-

30 "A licensed bank shall be guilty of an offence if -

- (a) it fails to furnish within a reasonable time any information required by the Central Bank to satisfy itself that that bank is observing the requirements of subsection (1);
- (b) it allows its holding of specified liquid assets to be less in amount than is from time to time prescribed by the Central Bank;"

and this is important -

40 "(c) during the period of any such deficiency of specified liquid assets, if grants advances

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"or overdrafts without the prior approval of the Central Bank".

Now, the Tribunal may well find having heard the evidence and seeing the documents in this case that during the period from 5th May, 1960 which was the date when the 25% liquidity ratio came into operation. During the 5th of May, 1960 to the end of the year 1960, the National Bank at no time had a holding of specified liquid assets which represented the 25 per cent laid down in the order and incorporated by that reason in the Statute. That is to say, that they were short in relation to their specified liquid assets over the whole of the period. It may be convenient if at this stage I indicate that, in fact, was their percentage of holding and its range in May of 1960. At the end of May, 1960, it was 11 per cent as against the 25 per cent laid down. It rose to its highest point 20.4 per cent in July of 1960, it shrunk to its lowest point of 5.3 per cent in September and by the end of the year it had gradually risen to 8.9 per cent which was the ratio which was produced on the calculation of specified liquid assets as against demand and time liabilities. Those were the ratios which were in fact calculated by contrast between those two amounts but, the mere fact that the Bank had the short fall in its liquidity ratio during the period 5th May, 1960 to 31st December, 1960, in itself is perhaps little more than technical. The serious matter is this, that, notwithstanding that their liquidity ratio fell far below the ratio which was required and, notwithstanding the provisions of subsection 5(c) of Section 8, during the period May to December, 1960, the Bank under the control of its former Board of Directors were granting very considerable advances or overdrafts without the prior approval of the Central Bank and which the Tribunal looks as I hope they will do later this morning at certain documents, it would be observed the very substantial degree to which these advances or overdrafts were granted and the very substantial extent by which the total amount of advances or overdrafts created by the National Bank during the period of May to December, 1960.

Now, I think I can pass quite briefly over Section (9) sub-section (1). That is a provision which requires the National Bank to publish annually within time limited a copy of its balance sheet

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and profit and loss account and the full and correct names of the Directors of the Bank. That was an obligation with which the Bank complied and there is nothing for the Tribunal to inquire although, of course, the Tribunal will be interested to see the balance sheet of the National Bank themselves.

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10 Section 10(1) is a Section which may be dealt with perhaps somewhat briefly. This is the Section which requires a licensed Bank to make a monthly return. Section 10(1)(a) in the form set out in the First Schedule showing the assets and liabilities of its offices and branches in Nigeria together with the total outstanding unsecured advances or credit facilities. These returns may be conveniently referred to as the monthly returns and, of course, the National Bank was, in fact, rendering monthly returns to the Central Bank during the period which began when the Ordinance came into operation on the 1st of October, 1959
20 until the end of 1960, and of course, thereafter. Again, when the Tribunal comes to consider the monthly returns the Tribunal may well find that in a number of important respects, these monthly returns were inaccurate, in one important respect, they were very seriously inaccurate because the evidences which I will call before the Tribunal will indicate this; that during the period from October, 1959 until sometime early in February, 1960, the National Bank under the control of its
30 former Directors falsely returned as cash on its hand the sum of £670,000 or £675,000 which cash it had not.

PERMIDU 10.30 - 10.45 a.m. G.I. 25/7/61.

40 Mr. Lawson (contd.): That sum was represented by a cheque drawn by the Action Group Trust Fund upon its account in Ibadan, handed to the Lagos office of the National Bank of Nigeria on the 31st of October of 1959, but merely kept for some four or five months until certain discoveries were made when the cheque was presented. But what, it appears, was done by the National Bank during that period - and this will be seen by reference to an entry which has been altered in their books of account - is that they treated this cheque, which was a worthless piece of paper in fact, as if it were in fact cash to the extent of £670,000 or £675,000, and when they gave their monthly return for the months of October, November, December 1959 and January 1960 there was included in the cash

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entry on the asset side of the monthly return a sum of £670,000 or £675,000 which did not in fact exist as cash at all. The Tribunal may think that if that matter is established, it is a matter of some gravity.

I should just mention that under section 10(1)(b) there is also requirement upon a bank to furnish a biannual return to the Central Bank the form of which is in the Second Schedule to the Ordinance which will be found on page 162 of the Volume. If the Tribunal will just glance at that to see the nature of the return - it is really an attempt to break down the bank's commitments. That is to say, it is an analysis of customers' liabilities to the bank for loans and advances, and it breaks them down really into the nature of the purposes for which the advance is made. For example, there are separate heads for advances for agricultural purposes, for mining purposes, for manufacture, for construction, for general commerce, including the rather vague and nebulous heading "miscellaneous". Then there is a breakdown of the number of customers.

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These six monthly returns were in fact returned by the National Bank of Nigeria to the Central Bank in accordance with the provisions of section 10(1)(b). There is no complaint as to the contents or form of those returns. There are no suggestion of a gross character that I had indicated in relation to the monthly return, in relation to those returns, and it may well be that the Tribunal will not find any assistance through them. But if my learned Friend, Mr. MacKenna, who represents the bank, or if the Tribunal should desire that these returns be put in, they certainly can be made available. I have seen them myself. If I may say this, I form the view that the Tribunal would not get very much assistance from them because one merely has the statement of the bank or the bank's officer making the return that is being used for this purpose, and in this particular case one finds there are large sums said to be outstanding in the form of advances and are put under the heading of miscellaneous. Really, it is of very little informative value. As I said, if my learned Friend, Mr. MacKenna, would like to consider the matter, they can be made available if desired.

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So far one has been considering under the Bank's Ordinance the provisions which impose

obligations on the bank in relation to their liquid ratio under section 8, or in relation to returns under section 10, or restrictions and prohibitions upon certain activities as one finds under section 6 - restrictions on dividends - and under section 7 - the prohibition of certain types of use of depositors' money.

10 One now really moves into a different part, so to speak, of the Ordinance. That is to say, the following sections are not concerned with that kind of matter. But they are concerned with the exercise of control over bank's business. Section 11 which was newly introduced into the banking law, as many of the other sections were, provides that -

20 "An examiner shall be appointed, who if the Minister so approves shall be an officer of the Central Bank appointed by the Central Bank, and otherwise shall be an officer of the Ministry appointed by the Minister, to examine periodically, under conditions of secrecy, the books and affairs of each and every licensed bank. If the examiner is an officer from the Ministry he shall be given access to any accounts, returns or information with regard to licensed banks that are in the possession of the Central Bank.

30 (2) In examining any bank in accordance with subsection (1) it shall be the duty of the examiner at all times to avoid unreasonable hindrance to the daily business of that bank and to confine the investigation to matters strictly relevant to the examination."

(Light went out.) I trust that this is not a fore-taste of things to come!

"(3) The examiner shall report to the Governor of the Central Bank, who shall inform the Minister of any circumstances likely to call for action by the Minister in accordance with section 14".

40 This section sets up (it is perhaps going a little too wide to call one individual an organisation), but it sets up an office - the Bank's office of banking examiner - and it is the task of the banking examiner to undertake periodical examination of the books and affairs of every licensed bank.

I shall be calling before the Tribunal Mr. Lee,

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an official of the Ministry of Finance, who was appointed by the Minister as bank examiner. Mr. Lee on two occasions in particular - one early in 1960 and one early this year - made an examination of the books and affairs of the National Bank of Nigeria. And it is right to say at once that when Mr. Lee conducted his examination on those occasions, he received the maximum co-operation from the then General Manager (and now a Director of the Bank) and his staff, and that he was given all the assistance by those individuals that they were permitted by their then Board to give, Mr. Lee will tell the Tribunal, taking the matter quite broadly, that the books and records and accounting of the bank were of reasonably high efficiency. The information which I should lay before the Tribunal will suggest that if things did in fact go wrong in this bank, if its monies were diverted from proper purposes in the way in which its books suggested, this was not due to any inefficiency in the accounting or book-keeping arrangements of the bank. This was not due to any inefficiency or lack of ex partes on the part of the General Manager or the Chief Accountant of the bank that is to say, the General Manager as he then was and is now a member of the Board. And the Tribunal may well feel that such things as in fact went wrong and being attributable to lack of experience, bad bookkeeping, bad accountancy, matters of that kind, can only be attributed to the exercise of control by the members of the former Board.

Section 12 makes provision for a further examination of a Bank's books and records in certain cases. And it is important that I should refer to Section 12 because it was an appointment under Section 12 which has ultimately led to the Tribunal sitting here today to proceed with their Inquiry. Section 12 says -

"The Minister may at any time require the examiner appointed in accordance with section 11, or one or more other qualified person whom he shall appoint, to make a special examination under conditions of secrecy of the books and affairs of any licensed bank -

(a) where, after consultation with the Central Bank, the Minister has reason to believe that that licensed bank may be carrying on its business in a manner detrimental to the interests of the depositors and other creditors or

may have insufficient assets to cover its liabilities to the public or may be contravening the provisions of this Ordinance."

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10 "(b) where application is made by shareholders holding not less than one-third of the total number of shares in that bank for the time being issued or by depositors holding not less than one-half of the gross amount of the total deposit liabilities in Nigeria of that Bank: Provided however that the applicants submit to the Minister such evidence as he may consider necessary to justify an examination, and provided also that they furnish adequate security for the payment of the costs of the examination."

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Or the third alternative, which of course does not arise here, is

20 "(c) If the bank suspends payment or informs the Minister or the Central Bank of its intention to do so."

30 Now, what the Tribunal is being informed happened is that the Minister, in exercise of his power under section 12, appointed Messrs. Deloitte, Plender, Griffiths, & Co. a well-known firm of London Accountants to conduct a special examination under conditions of secrecy of the affairs of the bank. That examination took between the end of the month of May and the end of the month of August last year when a report was made to which I will soon make reference.

40 Section 13 provides that when an examination has been ordered under section 11 - that is the bank examiners' examination - or section 12 - that is the special examination - a bank should produce to the examiner at such times as he may specify, all books, accounts and documents in its possession or custody, oral information concerning its business that the examiner may require. And there are penalties if that is not being done. There is provision for the examiner to submit a full report to the Minister who should forward the report to the head office of the bank concerned.

Here again, it is right to say that when Messrs. Deloitte, Plender, Griffiths and Co. made

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their special examination during the summer of last year, they experienced no difficulty on the part of the officers and employees of the bank in obtaining access to such books, accounts and documents as lay down within the control of those office employees, or in obtaining such oral information as were within the power of those offices and employees to give.

ONYEKA H.1 10.45-11 a.m.

Mr. Lawson (Contd.)

And again, the Tribunal will hear from Mr. George, the partner concerned in the firm of Deloitte Plender Griffiths, Company that, in his view, there was little to criticise; all things being taken into account in the bank's bookkeeping, its record keeping and the day to day work which is done by the large numbers of employees of the bank who pursue their vocations in the bank's branches and offices.

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Then Section 14 deals with the powers of the Minister after an examination has taken place, and I need not perhaps spend a lot of time upon that. It indicates the Minister can require the bank to take such steps as he considers necessary to rectify any matter which is the subject of criticism, may appoint a person who has had proper training and experience to advise the bank, may report the circumstances to the Governor-General who may make an order revoking the bank's license, although the bank should have notice of an intention to do that and an opportunity to submit a written statement in reply.

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Section 15 deals with the obligation of a licensed bank to appoint annually an approved auditor. I think I need not spend time on that.

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Section 16 restricts the use of the word bank, that is to say, no one except with the Minister's consent other than a licensed bank should use or continue to use the word "Bank" or any of its derivatives in the description or title under which such a person is carrying on business in Nigeria. I imagine that that would not prevent a person whose surname and, I believe there are some such in Lagos, including the word "Bank" from still using his surname even though he used it in connection with his business, but that might be an interesting problem someone might consider some other time.

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Section 17 - perhaps I should refer to it without prejudice to anything contained in Section 76 of the Company's Ordinance; no persons who have been directors or directly or indirectly concerned in the management of bank which has had its licence revoked under Section 14 or has been struck off the Registry of Companies under the provisions of old Ordinance; who has been convicted by an offence of dishonesty has been pardoned should act or continue to act as a director or be concerned in the management of the Bank.

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Section 18 deals with the provisions of penalties upon directors or managers of the bank who fail to take steps to comply with the provisions of the Ordinance and section 19 restricts prosecutions to those which have the consent of the Attorney-General or instituted by him. I need not trouble the Tribunal about the Ordinance but it should also be clear to all others who are concerned that the Tribunal is not of course concerned with the implementation of any of the provisions of Section 17, 18 and 19. At page 160 is the first schedule which the Tribunal will remember is the Schedule which is specified to be the form of the monthly return required to be rendered by the bank to the Central Bank under section 10(1)(a) of the Ordinance. There will be no need for the Tribunal to look at that in detail at the moment, although it will be necessary at a later stage for the Tribunal, perhaps to examine one of these particular returns.

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The last Ordinance to which it is necessary to make specific reference is the Central Bank of Nigeria Ordinance of 1958 which again is to be found printed in Vol.1 of 1958 edition of the Laws at page 261. This is a fairly lengthy Ordinance and I am not proposing unless the Tribunal should desire me to do otherwise to read more or refer to more than a few of the sections of this Ordinance. The first Sections of the Ordinance to which I should refer is, perhaps Section 4 which is to be found at page 264 which states in general terms the principle objects of the Central Bank and it will be seen that those objects include the promotions of nonetary stability and the sound financial structure in Nigeria as well as to act as banker and financial adviser to the Federal Government.

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The reason why I referred to that Section is,

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of course one of the functions which the Central Bank discharges in the promotion of monetary stability and sound financial structure in Nigeria is to exercise a degree of control over the licensed banks, particularly by giving or withholding consent to advances made by a licensed bank in certain cases; by prescribing and if necessary, varying from time to time the liquidity ratio under Section 8 of the Ordinance and in all the other ways in which a Central Bank can exercise control like, for example increasing or decreasing bank rate at any particular time and thus, exercising an overall and general control over the economy and in particular over the part played by banking institutions in the functioning of the economy.

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Section 6 of this Ordinance shows that the capital of the Central Bank is wholly owned by the Federal Government, so it is in its full sense a State Bank. Section 29 indicates that the bank has certain general powers (page 273) including the power under section 29(1)(c) to act as a banker to the commercial banks and any other credit institutions in Nigeria, and in fact the National Bank of Nigeria did bank with the Central Bank; Central Bank maintaining the account for them in exercise of those powers. Sections 38, 39 and 40, pages 278 and 279 of the Volume; the bank may act as banker to other banks in Nigeria and abroad. 39, the bank shall wherever necessary seek the co-operation and co-operate with other banks in Nigeria to promote and maintain adequate and reasonable banking services for the public; to ensure high standard of conduct and management throughout the banking system and to further such policies not inconsistent with this Ordinance as should be in the national interest. That is an indication of the relationship between the Central Bank and the other Bank, the licensed banks in Nigeria, and it envisages a relationship of co-operation to the aims indicated in Section 39 itself. Then Section 40, sub-section 1 is the section which, so to speak, is ancillary to Section 8 sub-section (1) of the banking Ordinance. The bank may prescribe, from time to time, by publication in the gazette the amount of specified liquid assets which each bank operating in Nigeria under the banking Ordinance is required to hold the minimum in Nigerian pounds or sterling. The minimum amount so prescribed should be expressed as a percentage of the gross demand liabilities which such bank is due in Nigerian pounds together

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with the percentage of the gross term liabilities which such bank arising out of its time and saving deposits due in Nigerian pounds, no banks should be required to maintain a higher percentage with any other bank. Then if the bank at any time increases either of the percentages referred to in sub-section 2 then from 10 to 21 days of grace are allowed for compliance. Then I think there is nothing more in the Central Bank Ordinance to which I should draw the Tribunal's notice and that completes the brief survey I was seeking to make of the legal background to the matter; summarising it in this way. So far as the common law is concerned the common law really knows no special rights or relationship between banks and depositors; so far as its depositors are concerned, banks at common law are entitled to do exactly what they like with the money once it is deposited with them.

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The Company Ordinance really does not tackle the problem of protection of the depositors interests at all. It is concerned only with the interests of shareholders of the company and the obligations of the Company and its directors towards them; therefore one has necessarily the provisions of the banking ordinance of 1958, the object of which is really two-fold. Firstly the protection of the depositors interest by imposing prohibition of certain types of activities by banks; that is to say, by prohibiting a bank from lending more than a certain amount of money to any one person because of the risk involved in so doing. The prohibition against banks of making unsecured advances to directors of the bank or companies or firms in which they are interested, again for the same reasons, is being not consistent with the interests of the banks depositors; the bank carrying on a public business and seeking to induce people to entrust their savings to the bank, then to use those savings entrusted to them, whether they be public money, like monies of the great state corporations or whether they be private monies to use them for the directors own personal benefit or for political ends which the directors may have in their own minds.

I now come to position of the National Bank of Nigeria itself and at this stage it might assist the Tribunal and my Learned Friend if I indicated the steps which have been taken in relation to the preparation of documents.

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A number of folders have been prepared which have been given reference numbers and the object has been to try and isolate particular subject matters into particular folders. A number of copies of these folders have been prepared and it is of course a matter for the Tribunal but the proposal is this that, where the folders consist, as in many cases they do consist of documents of public record like, for example entries in the files of the Registrar of Companies or Registrar of business names, arrangements have been made with the Registrar whereby their photostatic copies are available, which are being prepared under the supervision of the Registrar and any interested person or indeed any member of the public can go to the Registrar's Office where, if he is an interested persons in these proceedings, a set of correspondence will be set which is made available to the Tribunal folders will be supplied on the usual terms. They are, I understand sets of these documents which could perhaps be made available, so to speak, on loan to any of my learned friends who is interested to have them until such time as they can get copies from the Company's Registrar. There are however, other documents which are not documents of public record and of these in separate copies have been prepared and there will be available for those of my learned friends who are interested in the particular matters to have copies of those folders. It is a matter for the Tribunal as to how far copies of documents in which for example, my learned friend, Mr. McKenna, may be interested or my learned friend representing the former Directors of the Bank may be interested, is the question as to how far such documents should be handed over to other parties who do not represent the same interest and although no doubt, have a healthy feeling of curiosity as everybody does have about what documents he should go and see, possibly have no real interest in seeing such documents.

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AKINBOHUN 11.00-11.15 a.m. I.1 25/7/61

Mr. Lawson (continuing)

Now the first of the folders to which I am going to make reference is a folder the number prepared to which is No.T.24, and it is, in fact, the report made by Messrs. Deloitte, Plender, Griffiths, & Co. dated the 15th of August, 1960.

It just appears to me my Lord, I understand that your Lordship was thinking of taking a very

short pause which might act as a breath, and I have reached rather a new and different part before which it would be convenient to make such a pause. It might be a good time for it.

Chairman: Yes, thank you very much.

Mr. F.A. Fani-Kayode: I like to announce that I appear for the official Opposition in the Western Region, Messrs. Elushade, Okunu and Duduyemi with me.

10 Chairman: Who else did you say would appear with you?

Mr. Fani-Kayode: Duduyemi, Okunu and Elushade.

Chairman: Would you please tell us how you came into it under the Act.

20 Mr. Fani-Kayode: Yes. If the terms of reference are looked into, Mr. Chairman, you will find one referring to Section 2 - the nature, amounts, terms of advances, credits and facilities or guarantees, as well as validity and sufficiency of any securities therefor, may be granted or given by the said Bank at any time. You will find, Sir, and we are going to give evidence that the greatest depositors of the Bank is the West Regional Government or its Agencies. That is one. And secondly . . .

Chairman: The Western Region Government was a depositor?

Mr. Fani-Kayode: Or its Agencies.

Chairman: Or its Agencies are depositors.

30 Mr. Fani-Kayode: Government funds were deposited in the Bank. You will also find that sums amounting to about £2.7 million, roughly £2 million, of Government funds were utilised in purchasing Preference Shares in the Bank, and it is our interest to show you that these monies have been expended in accordance with the Section I referred you to. You will also find that in Section 3 of the terms of reference that we are strongly interested because in 3(a) you will find, Sir, the National Bank Investment and Properties Limited mentioned, and
40 we shall show, Sir, that this Company was created and financed absolutely and almost completely with

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funds made available by the Western Region Marketing Board, which is an Agency of Government. The Western Region Marketing Board - that is 3(b) on your list - which is also an Agency of the West Regional Government. It is a Board with a statutory corporation created by the Western Region Government. In fact, all the Institutions in 3(b) and 3(c) are Agencies or Corporations created by the Western Region Government. And in 3(c) you will find the issue of any political party group or association, or any persons, corporation, form or other association or persons acting on behalf of any such political party, group or association.

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You will find that the Western Region Government is controlled by the Acting Group Party and the Official Opposition in the Region is composed of the National Council of Nigeria and the Cameroons, and it is our intention to show that the funds available for the Bank are diverted for political purposes to the funds of the Action Group.

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And also the fourth term of reference - whether, and if so, to what extent party political considerations or associations have at any time influenced the said Bank in its dealings with customers or perspective customers whether as borrowers or as depositors, and it is also my intention to put before the Tribunal that the Bank has been nothing more than an arm of a political party to finance various political individuals in their personal capacity, or in their business, or for political ends, and in this respect I think it is only fair that as the Official Opposition - which is the party in opposition to the Action Group in the Western Region - that is one. And secondly, as the officially recognized opposition, we are interested in seeing how Government funds have been diverted and we have evidence to show that Government funds have not been properly utilised in the Bank. It is our duty to call evidence before you to prove these points.

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Chairman: Yes, the difficulty which I feel is this. We have Section 16 of the Act to go by, and it is a person whose conduct is subject to the Inquiry, for example, the National Bank, or who is in any way, for example, some directors, concerned, for example, anybody who is called as a witness before the Tribunal, he is to have counsel to watch his interests lest he may be affected in some way.

10 Then we have this further provisions that any other person who may be considered desirable that he should be represented say by leave of the Commission be represented. Now, I understand that what you wish to do is to produce evidence. But under section 7, paragraph 2 of the Act we have appointed two gentlemen, Mr. Lawson and Mr. Holden to prepare and present the evidence. If I may add this, the Tribunal of Inquiry is not hearing a charge of any kind. There is no prosecution. There is no lease before it. We are just a fact finding body who have been asked to inquire into various matters and make a report. But now I am just wondering whether we can with any convenience add to the number of persons who are to prepare and present evidence. That is my difficulty.

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20 Mr. Fani-Kayode: With respect, Mr. Chairman, if you look at Section 16 you will see that we are very much concerned because counsel may appear for anybody who is concerned with the matters contained in your terms of reference.

Chairman: I do not understand the word "concerned" in the same way as you did.

30 Mr. Fani-Kayode: I think that there are two words "implicated" or "concerned". Well, Sir, I would say that these words are disjunctive, that is "implicated" or "concerned", and if I can show you, unless you want to bring the documents which I have to show quite clearly, that we are concerned whenever the funds of the West Regional Government in which we anticipate, have been used as deposit in this Bank or as investment in the Bank to a large amount, and I can think of them only as the depositors of this Bank because the other depositors are so small when it comes to the amount deposited that one can just ignore them.

Chairman: Will you please listen to the opening of Mr. Lawson.

40 Mr. Fani-Kayode: I listened to it. I think most of it is concerned with Section 5 of the terms of reference because Mr. Lawson concerned himself mostly with the infringement of the various ordinances.

Chairman: Have you got any evidence in your hands which Mr. Lawson has not got? The duty of the

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Tribunal is to call witnesses, and there was a time when the Tribunal listened to statements and reduced them to something and decided on whether "X", "Y", or "Z" should come forward as witness. In course of time it was realised that this was inconvenient and consequently the practice arose in England for the pleasure of Solicitors to look into statements, to brief counsels to present the evidence before the Tribunal, and it must be understood that there is no question of anybody prosecuting before the Tribunal. 10

ADBSANFA J.1 11.15-11.30 25/7/61.

(Sir Vahe Bairamian Continuing)

Mr. Lawson and Mr. Holden are presenting the evidence and they must and they do know, they have told me so, to present it impartially, not as persons who were feeling interested in the outcome of the report and I do not think, Mr. Fani-Kayode, that you were quite clear where you say that you are the Leader of the Opposition.

Mr. Fani-Kayode: I am not here as such. 20

Chairman: Yes, I just want to remind you for a moment as carefully as I can that you are not quite in the same category as Mr. Lawson and Mr. Holden and if you look at a little book which we have here by Professor Keeton on Trials by Tribunal, you will find that a certain procedure was laid down by Mr. Justice Lynskey when he set a tribunal in 1948; and as I understand from it, well, I am afraid, it is in the Chambers, but you will be welcome to look at it. The rule laid down, as far as I remember is as follows: 30

"That persons who wish to give evidence before the Tribunal would make statements to the Solicitor for the Treasury or to the Police in English. Then this will be looked at by the Counsel to the Tribunal, one impartial person, and will produce what may be favourable or unfavourable without regard to consequences, and that the persons who may appear as Counsel are persons whose names are mentioned in the terms of reference namely their conduct is going to be inquired into or witnesses who are being called by the Tribunal may feel that they would like to have Counsel". 40

All I can suggest is this, that whatever evidence

you may have, instead of taking the trouble to present it yourself and of being suspected if you are presenting it in the spirit of a prosecutor, will come very much better through the Counsel for the Tribunal who are in the eyes of everybody our representatives as impartial as we ourselves in the discharge of their duties, from the report of the Lynskey Tribunal on Procedures.

10 "The Treasury Solicitor, on our behalf, to assist us in the presentation of the evidence and the ascertainment of the fact, instructed the Attorney-General, the Rt. Hon. Sir Hartley Shawcross, K.C., M.P., Mr. Gilbert Paull, K.C., the Hon. H.L. Parker, and Mr. Mark Littman (of Counsel) any witness called on to be called before us who appeared to us to have such an interest in the matters into which we were inquiring as to justify such representation we allowed to be represented by Counsel and Solicitor. Nineteen witnesses were so
20 represented."

If you will allow me what I propose doing is this, I propose that we will adjourn for 15 minutes and during that time, I will be much obliged to you if you look at this and consider whether you really wish to appear or would rather give the material that you propose yourself to present at the Tribunal either to Mr. Lawson or to Mr. Holden. We have got counsels to the Tribunal to prepare and produce evidence and there we stop. I do not propose to
30 appoint any more counsel so that I cannot bring you in under Section 7 paragraph 2.

On the other hand I shall be, of course, willing to hear any other gentleman who are appearing as Counsel but on the whole, I think it will be better to give you this book by Professor Keeton and when we come back in a quarter of an hour, we will listen to you again. I do wish to assure everybody that our anxiety is that everybody should understand that we are, well, you may if you like,
40 call it a court of justice. We are discharging our duties in exactly the same way that we want to enforce the laws of the country to the best of our ability and also last not least, I will like to quote what I always bear in mind, a sentence out of Lord Bacon's Essay on judicature. It is the office of a Judge. The office of a Judge is jus dicere, it is not jus dare. The office of a Judge is to declare the law, it is not to make law and I stick to that.

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Tribunal rose for 15 minutes.

P.A. Graham-Jones K.l. 11.30-11.45 a.m.
25.7.61.

Sitting resumed: 11.42 a.m.

Chairman: Well now, I do not think that there is anything more left except that I hope that that book on the Tribunals is still here. Does anybody know what became of that book?

Mr. R.A. Pani-Kayode: I shall need more than fifteen minutes, Mr. Chairman, to consider this point and I think I will make my stand known later as to whether I am going to withdraw my application because I have not been able to go through this section properly. I have read only the section you read out but there is more in this.

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Minister of Justice, Western Region (Mr. S.O. Igbodaro): Can I say a word or two on this occasion? If you consider the question, the Tribunal is certainly not looking into an affair between the Western Nigerian Government

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Chairman: May I say this. It may be unnecessary and I would defer it until later, if Mr. Pani-Kayode renews his application. I will hear you, of course.

ENEANYA L.l 11.45-12.00

O.Harrison Obafemi: I wish to correct the mistake I made earlier this morning. I announced that I would appear for the Mutual Aids Society Limited while I should have said, for the National Bank of Nigeria. I wish to withdraw.

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Chairman: You do not wish to appear for the Mutual Aid Society?

Obafemi: I do not wish to.

Lawson: May I now tell the Tribunal something about the National Bank of Nigeria Limited itself. The Bank was founded on the 11th of February, 1933 and it had an authorised share capital of £10,000 in ordinary shares. The authorised share capital was increased on the 29th of August 1945 by the addition of £240,000 ordinary shares of £1 each. The National Bank was licensed under the Banking Ordinance of 1950 and on the 14th of September of

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1955 the authorised share capital of the bank was further increased by the addition of £1,000,000 worth of 4% cumulative non-participating preference shares of £1 each. These details the Tribunal will find set out at page 62 of T.24, that is to say, Deloitte Report, page 62 which shows this as appendix 5 paragraph 1, authorised capital of a million 4% preference shares of £1 each. A million pounds. It is a folder containing the Deloitte Report. There the capital position of the Company is stated in relation to the preference shares, that is to say, a million pounds of 4% cumulative non-participating preference shares. It should be noted that under Article 88 of the Company's Article of Association, the holders of the cumulative non-participating preference shares were not entitled to any vote unless the preference shares dividend was more than six months in arrears. At all material time, in fact, the preference shares dividend was being paid to those who held the preference shares. Therefore, they in fact have no voting rights in the company because there was never a default in relation to the payment of dividends since Article 88 of the Article of Association came into operation and exclude them from voting right. That was the position of the company until December 1960 in relation to the authorised share capital.

In December 1960, by a resolution of the Company dated the 9th of December 1960 and by confirming resolution of the 11th of January 1961, two changes were made. The first change was that a million pounds worth of preference shares which have been authorised in September 1955 were converted into ordinary shares and the capital of the company was further increased by an additional £2,000,000 worth of ordinary shares. So, as from the 11th of January, 1961, the authorised capital of the company was £3,250,000 worth of shares all of which by then had become ordinary shares. That is the position in relation to the authorised share capital and the Tribunal will find details in relation to the position as at August 1960 at page 62 of the Deloitte Report and will find the later documents in relation to what happened in December 1960 in a file folder T.3 which contains photostatic copies of entries in the company's register relating to the National Bank of Nigeria Limited. There is no need, I feel, at this stage to trouble the Tribunal with references to those specific

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documents if the Tribunal is prepared to take it from me that that is what the documents show, and I will deal with them at a later stage.

Now, so far as the issued share capital position is concerned there again one sees this matter dealt with as at August 1960 in page 62 of the Deloitte Report and page 64 of the Deloitte Report. The position was this. That £1,000,000 worth of 4% preference shares had been issued in cash to the Western Region Marketing Board and that issue took place in September 1953 following upon the increase of the company's share capital by that amount. So far as the ordinary shares were concerned the position as at the 30th of June 1959 was that there had been 159,615 £1 ordinary shares issued. The bulk of this had been issued in cash at various dates during the years intervening between 1933 and 1959 but the amount did increase in relation to bonus shares, the National Bank having varied for some years a practice of declaring a bonus issue of 1 for 20 in respect of ordinary shares. At the end of the bank's financial year which ended on the 30th of June 1960 there was a further issue of shares being 7,969 ordinary shares issued by way of the bonus, issue, that is to say, 1 for 20 of 159,615 shares together with a small cash issue of 1,217 ordinary shares, so that the issued share capital of the company as at the 30th of June 1960 and thereafter in relation to ordinary shares was £168,801. There again the figures are to be found. The Tribunal would desire the reference at pages 62 and 64 of T.24 of the Deloitte Report.

The next point to be considered in relation to the National Bank is the share holdings of the Directors and as at the end of 1960 the position was as follows. Dr. Maja who was the Chairman of the Bank and one of its founders and by Article 102 of the Article of Association the Chairman and life Director held 6,000 £1 ordinary shares. Chief Doherty who again was one of the founders of the company and by Article 102 of Article of Association was a life Director and was also the Managing Director of the Company held 8,400 shares. Chief Bademosi a Director of the Company held 3,163 shares. Chief Hunponu Wusu a Director of the Bank held 1,632 shares. Mr. Ladipo who I gather is not represented held no shares. There is awkward thing in the position of the company's Article 105 provided that the qualification for being a Director

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was a holding of 100 shares but apparently Mr. Ladipo forgot to get his qualification shares. So, together the Directors held 19,195 ordinary shares. The makeup of those figures is to be found at page 64 of T.24 of the Deloitte Report. And in order to show where the control of the company lay it is important to observe that in addition to the shares owned by the Directors in their own right there were substantial blocks of shares, namely, 36,936
10 £1 ordinary shares which were registered in the name of the Nigerian General Insurance Company Limited. That company was in fact at material times since 1952 a subsidiary of the bank. Then there was another subsidiary of the bank, that is to say, a company called Oshodi and Apena Limited who are in fact licensed money lenders and that company which was a public company held 28,845 shares in the bank. The tribunal may think and, indeed, it appears that the shares owned by
20 Nigerian General Insurance Company Limited, that is 36,936 of ordinary shares, and the shares held by Messrs. Oshodi and Apena Limited 28,845 of ordinary shares, were in fact under the control, namely, of Dr. Maja and Senator Doherty because the position in relation to the Nigerian General Insurance Company Limited was that Dr. Maja and Senator Doherty together with Mr. Bademosi were from 1952 the Directors of the Nigerian General Insurance Company Limited. It may be convenient
30 just to tell the Tribunal without looking at the company files at this stage that in relation to the Nigerian General Insurance Company the folder number of which is T.10, this was a company incorporated on the 21st of April 1951, that by April 1952 the National Bank of Nigerian Limited had acquired 25,000 shares in the Nigerian General Insurance Company of Nigeria and that when the National Bank had paid for the £25,000 worth of shares in National General Insurance Company of
40 Nigeria The National General Insurance Company of Nigeria acquire the shares in the National Bank of Nigeria.

OKOH 12.00-12.15 M.1 27/7/61.

Mr. Lawson (contd.) That is to say, appears in the documents that the National Bank bought shares in the Nigerian General Insurance Company the directors of which were Dr. Maja, Senator Doherty and Chief Bademosi, and when the Bank had paid the Nigerian General Insurance Company Limited for
50 those shares the Nigerian General Insurance Company

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Limited bought shares amounting to some £25,000 with Messrs. Oshodi and Apena Limited. This was a company incorporated some years before 1940, but in 1952 Dr. Maja had been a Director of the company for some years. In 1952 the capital of the company, the Oshodi and Apena Company Limited, was increased. Senator Doherty acquired some shares in that company and became a Director with Dr. Maja. The National Bank then acquired in 1952 15,000 shares in Oshodi and Apena Ltd. for cash and when the bank had acquired those shares in Oshodi and Apena for cash, Oshodi and Apena whose directors were then Dr. Maja and Senator Doherty acquired the shares to which I have referred in the National Bank of Nigeria. It thus followed that more than fifty per cent of the ordinary shares in the Bank were owned or controlled by the Directors of the Bank and in particular by Dr. Maja, Senator Doherty, Chief Bademosi and Chief Hunponu-Wusu. There were some other substantial shareholders in the Bank whose names, which I am not proposing to mention, are set out towards the bottom of page 64 of the Deloitte, Plender and Griffiths Report. The Tribunal will there see that there are three names set out which I am not proposing to read. The last of the gentlemen named is in fact, according to the returns in the Companies Register, deceased, Section (iii) shows that there were 306 other shareholders of whom the largest held some 3,000 shares aggregating 46,385 shares altogether. Now, when the Tribunal comes and when in the course of my opening I come to deal with the specific term of reference which relates to the relationship between the National Bank and the West Regional Marketing Board, it will be necessary to consider the terms which relate to the West Regional Marketing Board's holding of the original £1 million worth of preference shares. For convenience I may perhaps remind the Tribunal that one will find a reference to an agreement relating to that matter between the Bank and the Board at page 63 of T.24, the Deloitte Report. At the moment, I need say no more about that matter.

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Now, during the period 1st October, 1959 to the 31st of December, 1960, the Bank had and controlled a number of subsidiary companies. The Companies Ordinance in this country does not define what is meant by a subsidiary company but for purpose of this Inquiry the Tribunal will bear in mind that the last paragraph but two of the Notice of Appointment indicates that the expression "Subsidiaries" should have the meaning given to it by the

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note at the foot of the first schedule of the Banking Ordinance. And if one refers to the note at the foot of the first schedule of the Banking Ordinance which is in Volume I, the Schedule being reproduced at page 160 and page 161, one would see, and perhaps this is not so strange to those of us who have moved with greater felicity in English law, that the definition of a subsidiary is this: "..... should be deemed to be a subsidiary if a bank is either a member or if it controls the composition of its Board or holds more than half in nominal value of its equity share capital" and so on. In other words, right on page 161 one would see at the foot of the return "N.B." and then follows this definition of "subsidiary". Here again, if I may give the Tribunal the reference, it is page 75 of the Deloitte Report, T.24, and with one exception which I will come to in a moment, the subsidiaries of the Bank were these. There was Oshodi and Apena, the Directors of which were at material times Dr. Maja and Senator Doherty. That was a subsidiary of the bank and the bank in fact held some £16,182 worth of shares as at the 30th of April, 1960, and the position did not alter during the rest of 1960. The capital of Oshodi and Apena Ltd. which the Tribunal might care to note at page 75 against the name of Oshodi and Apena was in fact an issued share capital of £18,744. So it will be seen that in Oshodi and Apena the bank held something like 80% of the shares in that company.

The next subsidiary which should be mentioned is the Amalgamated Press of Nigeria, Ltd. The Bank at the commencement of the period immediately under consideration, that is to say the period from the 1st of October, 1959 and until after the 30th of April, 1960, held £53,700 worth of ordinary shares in the Amalgamated Press of Nigeria Ltd. The issued share capital of that company was in fact £66,413. Amongst the Directors of that company, the Amalgamated Press of Nigeria Ltd., were Dr. Maja and Senator Doherty and they themselves held shares in the Amalgamated Press of Nigeria, in the case of Dr. Maja amounting to £200 worth of ordinary shares, in the case of Senator Doherty amounting to £1,124 worth of ordinary shares. That is the Amalgamated Press of Nigeria in the position which applied up to some date in June, 1960, and in June of 1960 the Bank sold or is said to have sold its shares in the Amalgamated Press of Nigeria, that is to say £53,700 worth of those shares to a company called

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Allied Newspapers Ltd. I shall have to tell the Tribunal the position about Allied Newspapers Ltd. Suffice it to say at the moment that the control of that company. Allied Newspapers Ltd. is in fact vested in a company known as the National Investment and Properties Ltd. with which the Tribunal will be considerably concerned. However, on the fact of the matter and subject to whatever arrangements may have existed between the Allied Newspaper Ltd., the Bank, National Investment and Properties Ltd., it appears that the Bank disposed of its shareholding in the Amalgamated Press Ltd. in June of 1960 and that company then ceased to be a subsidiary of the bank.

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The third subsidiary with which the Tribunal will be concerned, again following through the list but I am afraid not quite in that order, page 75 of the Deloitte Report, is the Nigerian Pictures Corporation Ltd. The position of the Nigerian Pictures Corporation Ltd. was this that the issued share capital of that company was £63,600 of ordinary shares. The authorised share capital was somewhat higher, and of this £63,600 worth of shares the Bank held 50,000 of the nominal value of one pound each which were shares paid for in cash. The Directors of Nigeria Pictures Corporation Ltd. were Senator Doherty, Chief Hunponu Wusu and Mr. Ladipo. The Nigerian Pictures Corporation Ltd. had itself a subsidiary the name of which was West African Pictures Ltd., in which the Nigerian Pictures Corporation Ltd., held 99% - I am putting that broadly - of the issued share capital. The issued share capital of West African Pictures was in fact £10,000. Of that £10,000 some £9,997 were owned by Nigerian Pictures Corporation Ltd., the other three shares being owned by, I think he is a son of Senator Doherty, Mr. Adebayo Doherty, and two other persons. The position with regard to Nigerian Pictures Corporation Ltd. was this, that although it is said that at some time during 1960, the summer of 1960 or possibly the autumn, the National Bank sold its shares in the Nigerian Pictures Corporation Ltd., the documents filed at the Companies Registry do not so far indicate that any such change in the shareholding in Nigerian Pictures Corporation Ltd. had in fact taken place. But of course it may be the case as unfortunately happens elsewhere, that whereas the Companies Ordinance requires companies to make returns within specified period, that companies do not always adhere to the

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time factor. But a subpoena has been issued relating to this particular matter amongst other matters and it is to be hoped that those who will be served with subpoena relating to this particular matter amongst other matters and it is to be hoped that those who will be served with subpoena relating to documents affecting this sale of the shares in Nigerian Pictures Corporation Ltd. by the Bank will see their way, if necessary after taking advice, to make statements or documents available to the Secretary to the Tribunal. At the present moment I am not in a position to assist the Tribunal further than to say that it has been stated by the officers of the Bank that the Bank has in fact sold their shares in Nigerian Pictures Corporation. I cannot now tell the Tribunal to whom that sale was made or when or upon what terms.

ANTONIO 12.15 - 12.30 N.1. 25/7/61.

Mr. Lawson (continuing)

It has been said by the officers of the bank that they have in fact sold their shares in the Nigerian Pictures Corporation but I cannot tell the Tribunal to whom that sale was made or upon what terms.

The next subsidiary of the Bank is the Hotel Bristol Limited. So far as the Hotel Bristol Limited is concerned, that was the company of which Dr. Maja and Mr. Gbadamosi were Directors, - the company has a folder reference No. of which is T.11. The Hotel Bristol, perhaps I might just mention, was a company which was incorporated on the 29th June 1951 with a nominal capital of £24,000; the nominal capital was later increased to £25,000 of which £24,000 were issued, and it appears that Dr. Maja and Chief Gbadamosi acquired control of that company in June of 1956 from the original shareholders. In June of 1956, the two gentlemen concerned became Directors of that company and thereafter remained, and still remain Directors; and the shareholding in the company out of the £24,000 Issued Share Capital were £23,913 worth of shares acquired by the National Bank of Nigeria in June of 1956 and the balance between £23,913 and £24,000 worth of shares, that is to say, the difference of some £87, were held between Dr. Maja, Mr. Gbadamosi, who were the Directors of the company, and Senator Doherty who held 24 shares. The Hotel Bristol, the Tribunal may be concerned to investigate because from the information which has so far become

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available, it appears that the land on which the Hotel Bristol building was formerly sited is, I understand from information I have received, has been demolished. The site was owned by the Hotel Bristol Limited but somehow or other the ownership of the site has now become vested in the National Investment and Properties Limited, without apparently so far as can be ascertained any transfer having been executed by the Hotel Bristol Limited in favour of the National Investment and Properties Company Limited.

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The National Investment and Properties Limited - I would have to deal with in some detail because it is a body which is specifically referred to in the terms of reference. It never was in fact a subsidiary of the National Bank although it does appear that quite apart from the Hotel Bristol land, which has somehow or other got into the hands of the National Investment and Properties Limited, very substantial other landed properties of the National Bank have also got into the hands of the National Investment and Properties Limited. The Hotel Bristol was, as I have told the Tribunal, a subsidiary of the bank throughout the period and remains a subsidiary of the bank to this day to the extent that the bank hold 23,913 shares out of the Issued Share Capital of £24,000.

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The next subsidiary is the Nigerian Spinning Company Limited. This company of which the Directors are Dr. Maja and Senator Doherty became a subsidiary of the Bank sometime in April of 1960 when the Bank acquired £29,750 shares out of the Issued Share Capital of £50,220 in £1 Ordinary Shares. Senator Doherty and Mr. Maja were Directors of that Company, at any rate from November 1957 until, as far as I am aware, the present time, at least until the end of 1960. I have told the Tribunal what was the extent of the Issued Share Capital of that company and the extent of the bank shareholding was £29,750 shares which were paid for in cash according to returns lodged with the companies Registrar. I shall have to revert to that company as a specific matter shortly.

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Now, there is also to be mentioned, although it does not appear at page 75 of T.24 of the Deloitte, Plender and Griffiths Report, the company whose name has, in fact, might I say, been accidentally referred to before the Tribunal this

morning, and that is the Mutual Aids Society Limited. This Society seems to present a somewhat odd problem. The matter is dealt with at page 3 of T.24 of the Report of Messrs. Deloitte, Plender and Griffiths, and the position is as follows: that at material times the Mutual Aids Society Limited has an issued share capital of £67. This was held as to £30 shares by Senator Doherty, Dr. Maja and Chief Hunponu Wusu, each of whom held 10 shares, making 30, the remaining 37 shares were held by other persons not Directors of the National Bank of Nigeria. In fact, the business of the Mutual Aids Society Limited was conducted alongside and jointly with the business of the National Bank of Nigeria, the National Bank of Nigeria taking that part of business including the granting of loans and advances secured and unsecured to various people, which is regarded as being appropriate to banking, and the Mutual Aids Society Limited having its books and doing its business in relation to two kinds of transactions, first of all, straight money lending transaction, that is to say, lending money against "notes of honour" at 47½% interest; the Mutual Aids Society Limited has also been registered as a licensed money lender under the Money Lending Ordinance and also the Mutual Aids Society Limited did what might be actually described as Building Societies business, that is to say, lending money at 12½% interest on security, so that the Mutual Aids Society was not anyhow in law a subsidiary of the Bank until sometime in the latter part of 1960 when the Bank in fact acquired all the shares in the Mutual Aids Society Limited; but for all practical purposes the Mutual Aids Society Limited was conducted as really a department of the Bank. The Mutual Aids Society Limited had I think, no separate and independent staff of its own, it has of course its own Board of Directors; it shared premises and had its name displayed in the same premises as the National Bank of Nigeria. The Tribunal, when they come to consider what is said by Deloitte, Plender and Griffiths Report, may well come to the conclusion that whilst it might be undesirable for a bank to engage in this type of business, particularly in the type of lending business at 47½% on "notes of honour", any infringement of the Ordinance in relation to advances for Mutual Aid was a merely technical matter, but in fact as the Tribunal will see when we come to see the Bank's document, that the Mutual Aids Society Limited was in fact getting its money to lend all

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its customers by borrowing it from the National Bank of Nigeria and making available to the National Bank of Nigeria such securities in the forms of Promissory Notes or Notes of Honour in respect of money lending transactions and such other securities on properties which it got from its customers in respect of the 12½% loans on property. That is the position in relation to the Bank's subsidiaries. We have got a list of them expecting of course the Mutual Aids Society which seems to fall into quite a different category to the others; we have also the Hotel Bristol and the General Insurance Company; they are two subsidiaries which are characterised by these rather striking features in comparison to the others, that is to say, they had money on deposit with the Bank and they have not had any loans or advances from the Bank. So they were what one might call good and useful good and useful subsidiaries, who were not taking money but were in fact helping and depositing with the Banks. But the position in relation to the other subsidiaries is a very striking one indeed. Perhaps it is not necessary to take a detailed note of the figures because I shall have to refer to that document which works out like this: During the year 1960 the position was as shown at page 75 of the Deloitte, Plender and Griffiths Report. The amount advanced as at 31st April 1960 to Amalgamated Press of Nigeria Limited was £489,976, that is to say, nearly half a million pounds was on advance to this subsidiary in relation to Nigerian Pictures Limited and its subsidiary the West African Pictures. The amount which had been advanced on the 30th April 1960 was almost half a million pounds, that is a total of £162,075. Also the amount advanced to Nigerian Spinning Company Limited as at 30th April 1960 was £131,617.

KELLY. 12.30-12.45 p.m. 0.1 25/7/61.

Mr. Lawson (continuing):

that is to say, the total of £362,000 odd and £75,000 odd, the amount advanced to Nigerian Spinning Co. Ltd. as at the 30th April 1960 was £131,617. The amount advanced to Oshodi and Apena on money-lending business, which was a subsidiary to the Bank, was £208,874. So the position was this: that in respect of those four subsidiary companies, if we can include West African Pictures, which was a subsidiary of Nigerian Pictures as belonging to Nigerian Pictures, there was on the 30th April 1960

no less than one and a quarter million pounds advanced by the Bank. The position had changed by the end of 1960 in a way which the Tribunal will see from the documents which I will lay before them, but by the end of 1960 of course, Amalgamated Press of Nigeria was no longer a subsidiary of the Bank; but the amount which was advanced to that company or to company which stood in its shoes had increased from £489,976 on the 30th April 1960 to £616,000 - I am giving the round figure - by December 1960. In the case of Nigerian Pictures Corporation and its subsidiary, West African Pictures, the total amount advances by the end of 1960, that is to say the 31st December, 1960, had gone up from something like £437,000 or £438,000 to £516,000 odd, the total amount of the advanced to Nigerian Spinning Ltd. at the end of 1960 had gone up by £2,000, it was then £133,000 odd, the total amount advanced to Oshodi and Apena had in fact gone down by some £50,000 to £157,000 odd. So that was broadly the position that instead of the figure of advances to this group of companies going down, as one would have expected having regard to the impact on the position of section 8 of the ordinance and particularly section 8, sub-section (5) preventing the grant of further advances when the liquidity ratio was below the prescribed percentage without the consent of the Central Bank, instead of finding that the figure of these advances goes down by the end of the years one finds in fact that it very substantially goes up from about one and a quarter million pounds to something like or something over one and a half million pounds.

Now the next point which it would be as well here to mention is this: in the folder which has been prepared from the company registry documents relating to the National Bank of Nigeria, the reference number of which is T.3, one finds amongst other documents copies of the Bank's own balance sheet and summary profit and loss account for the three years ending the 30th June 1958, 30th June 1959 and 30th June 1960, and if I may, without referring the Tribunal in detail to those documents at the moment, just indicate the nature of the point, which is this: one finds for the year ending 30th June 1958 that the Bank's current deposit and other accounts amount to a total of 10.6 million pounds, that is to say that is the amount for which they are liable in respect of depositors, including savings bank depositors, because they have a savings bank

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department which runs savings accounts, a total of 10.6 million pounds. Now during the same year by way of what one might describe as truly liquid assets, the Bank had no less than about 7 million pounds. That is to say, they had 4 million pounds cash in hand at the Bank, they had nearly 2 million pounds money at call or at short notice, they had something like £800,000 worth of British Government or Nigerian Government securities, that is to say getting on for some 7 million pounds of truly liquid assets as against deposits of 10.6 million pounds, and their loans and advances amounted to something just over 4 million pounds. The same sort of ratio between what one might call truly liquid assets on the one side and liabilities to depositor on the other side, is also to be observed in the annual accounts for the year ending 30th June 1958, where the bank is showing something like 9 million pounds cash in hand and at bank, money at call and short notice, treasury bills, British Government and Nigerian Government securities. The loans and advances have gone up to something like 5.5 million pounds, but the truly liquid assets of the bank are very high in relation to assets which may or have the prospect of being difficult to realise, like loans and advances to, for example, subsidiary companies or to people who are using the amount of loan or advance by way of working capital in a business. So one sets those figures; year ending 30th June, 1958, 10.6 million pounds liabilities to depositors, with a true liquid asset, position of getting on for 7 million pounds; year ending 30th June 1959, 14 million pounds liabilities to depositors, with a true liquid asset, portfolio if I can use that expression, of about 9½ million pounds. But when one comes to the year ending 30th June 1960 one begins to see a different picture clearly emerging, and the different picture is this - that the level of deposits had dropped from 14 million pounds to 10 million pounds - 10.1 million pounds - the Bank's level of 9.5 million to 4 million pounds, whereas the loan and advance position that is to say money advanced by the Bank, not invested in securities or treasury bills or not on call, had gone up to 7 million pounds of the preceding figure for the year ending 30th June 1959 of 5.4 million pounds.

Now the approach that the Tribunal may get from those figures to the problem that it has to consider is really this: that expecting the figures given by the Bank in its own balance sheet, one is getting

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10 according to the balance sheet as at the 30th June 1960 into a position which has the potentiality of being difficult one, since the Bank has now got something like 7 million pounds, that is to say an amount equivalent to 70% of its total liabilities, out in the way of loans and advances, many of them as I have indicated to subsidiaries of the Bank, many of them as I shall indicate shortly to directors of the bank themselves, many of them obviously out on long term liabilities, thus putting the bank in the position that if a substantial depositor wished to withdraw his money from the bank, the bank might very well be in a difficult position in meeting his demand, and that bring me to the next point, which has to be considered in relation to the bank itself, which is this:

Mr. Akin-Olugbade: Excuse me, Sir -

Chairman: Please do not interrupt.

20 Mr. Akin-Olugbade: I do not wish to interrupt Mr. Lawson, but I think I should with all due deference bring to the notice of the Commission what I brought to the notice of Mr. Lawson at the recess this morning. I am appearing for the former directors, as I indicated earlier this morning, to watch their interests here, and I think at this stage I should inform the Commission that at 11.15 a.m. an order was given by the High Court, Lagos, granting interim stay of the proceeding of this Inquiry. Serious 30 allegations are being made which may involve my clients in the future, and even though they have complete and adequate answers to some of these allegations, they may not have the opportunity to give the answers for some time to come, and I think at this stage I shall ask most respectfully for a suspension of this sitting for at least fifteen to twenty minutes. I think the order takes effect from the time it was made.

40 Chairman: I should like to say this to you. My understanding of this inquiry is this - that we have a duty to hold the sitting and carry on. If, on the other hand the Court issues an order that the sitting should be suspended, then we will consider the order, but of course we cannot take note of it until we receive it. It is not that I do not believe what you say, I believe what you say, but I do want you to understand that we have to carry on under the terms of our appointment, if we do not

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we are not obeying the law. As soon as we are served with an order, then we shall obey the law again. (Laughter). So it is quite simple, I appreciate your position, you very naturally wish to do your duty by your clients. What we might do is this: we had better carry on with this, we shall be rising after awhile and after we have risen presumably at some point or another we shall be served with the Order mentioned, and then we shall know what to do. At the moment I do not think you need worry yourself very much because after all if you like to walk out and make allegations against me you can make them.

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Mr. Akin-Olugbade: Far be it from me - but serious allegations have been made.

Chairman: I do not think it matters very much, because the allegations are merely an opening of what Mr. Lawson hopes to show later on by evidence, until the evidence comes forth there is no harm done really. I do not think you need worry yourself overmuch.

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Onamuti P.1 12.45-1.00 25/7/61.

Mr. Akin-Olugbade: The other reason, Sir, I am sorry is that we are challenging the Law under which this Commission was appointed and if eventually it is found that the Law was invalid, all these allegations might bring some other consequences which may affect substantially the interest of my clients. That is one of the reasons why I thought I should butt in at this moment. Thank you, Sir.

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The Chairman: It is always best to meet trouble when it comes. We wait for it to come. I will bear in mind what you have said.

Mr. Lawson: The point I was coming to was this; to give an indication of the nature of the deposits held in the National Bank of Nigeria and, one can do this in a fairly simple way by referring to the position as at the 30th April, 1960, as set out at page 66 of the Deloitte, Plender and Griffiths Report. The position was really this; that as at that date the total deposits of the Bank according to their records and returns amounted to some £8,113,571 of which no less than £2 million were monies deposited by the Bank with the Western Region Marketing Board, the details of those monies can be

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found firstly at page 66. There is a paragraph numbered 6 "Deposits repayable on demand" and the Tribunal would see that the section of the item in that list is a figure of £850,000, a seven-day deposit at 3 per cent which was a deposit of the Western Region Marketing Board at Lagos.

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Another item lower down in the list at London was a deposit of £559,682 by the Western Region Marketing Board and if the Tribunal would turn over the page to page 67 and look at the paragraph which is numbered 8 "Deposits, (c) other deposits". It would be seen that amongst the other deposits were three sums aggregating £601,202. That is to say, £173,076, £111,756, £316,370 which are deposits not repayable on the Western Region Marketing Board. Therefore, the total monies deposited with the Bank by the Western Region Marketing Board as at the 30th April of 1960 was £2,010,884.

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Another very substantial deposit with the Bank was the Western Nigeria Development Corporation which on the 30th of April of 1960, had on deposit with the Bank £1,390,000 short term deposit account, No.1 page 66 of the Deloitte's Report. That was a deposit repayable on demand and the other deposit which the Western Region Development Corporation had with the Bank was a seven-day deposit of £545,000 which appears at page 67 of the Deloitte's Report but misnamed, it is called Western Region Development Corporation. That is a misnomer for the Western Nigeria Development Corporation and it comes about, in fact, in this way that, when the Western Nigerian Development Corporation was incorporation by the Law of the Western Region which set up that body in 1959, the Western Nigeria Development Corporation became the successors to an early Statutory body the name of which was the Western Region Development Board and what has happened is that with this change in succession of the Western Region Production Development Board to the Western Nigerian Development Corporation, a misnomer has crept into the term of Messrs. Deloitte's Report. The references to the Western Nigeria Development Corporation Law for the convenience of the Tribunal are: one finds that the Western Nigeria Development Corporation is set up under Western Region Law No.5 of 1959 the reference to which is chapter 123 in the 1959 edition volume 5 of the Laws of the Western Region. So, taking these two bodies together that is, the

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Western Region Marketing Board with its £2,010,884 and the Western Nigeria Development Corporation with its £1,935,000 one sees that almost £4,000,000 out of the total deposits of £8,113,000 is in fact State money, that is to say, money belonging to the public and in the hands of the Western Region Marketing Board and in the hands of the Western Nigeria Development Corporation who are State bodies set up under Laws of the Western Region, the Members of whom are appointed by the Government of the Western Region and who are designed to fulfil the important functions which are set out in the Region's Marketing Board Law and the Western Nigeria Development Corporation Law none of which seem to have a great deal to do with a lot of the Laws and advances which, in fact, have been made by the National Bank in this case during the control of the former Directors. The total of public monies deposited does not, in fact, and the deposits of the Western Region Marketing Board and the Western Nigeria Development Corporation because at the same time that is to say on the 30th of April, 1960, there were also the additional public monies set out at page 66 and page 67 of the Deloitte's Report. That is to say, the Nigerian Cocoa Marketing Board - £96,507. Then at London the Tribunal would see £99,998 in Nigersoil Construction Company Limited and at Ibadan Nigersoil Construction Company Limited - £116,431, and the Tribunal would also see at Ibadan the first item, page 66, paragraph 6:- Nigersoil Development Company Limited - £38,985. Now the Cocoa Marketing Board is also a Statutory body and its money or public money so far Nigersoil Construction Company Limited and Niger Water Resources Development Company Limited, the position of those two companies is that 60% of the equity capital and the two companies is owned by the Western Nigeria Development Corporation so the monies of those companies are under the control of that public body.

Finally, there is the Western Region Finance Corporation a comparatively small deposit of £53,779, the last item at the bottom of page 66 which again is a Statutory Corporation holding public monies set up under a Western Region Law to fulfil the functions which are allocated to it under that law. The reference to the Law, as a matter of convenience is Western Region Law No.9 of 1955 and it is Chapter 37 of the 1959 Revised Edition of the Laws of the Western Region and, it is to be found in Volume 2 of that Edition. So, the

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net effect of this public deposit is this; that if one aggregates as at the 30th April, 1960, the deposits of the Western Region Marketing Board with the deposits of the Western Nigeria Development Corporation and the two companies in which holds 60% of the equity together with the Nigeria Cocoa Marketing Board and the Western Region Finance Corporation one finds something like £4½ million. £4.4 million in fact is public money deposited with the National Bank of Nigeria and is more than 50% of the total deposits £8.1 million at that time. Now, I have endeavoured to this point to give a broad view of the position of the National Bank of Nigeria as it was in 1960 in relation to the shareholding, its control, its subsidiaries, and its advance position with its subsidiaries, the nature of its deposits and broadly, the nature of the its assets.

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I think the next matter to which I should pass before I come to deal with the details of the terms of reference is just to give the Tribunal references to certain dates, certain matters which occurred during 1959 and down, to the end of 1960 and thereafter so far as is relevant. As would be seen it was on the first of October 1959 that the Banking Ordinance of 1958 came into operation after advance notice had been given to the Banks by the Governor of the Central Bank, Mr. Fenton on the 5th of November, the liquidity ratio was described but the notice allowed as the Central Bank within the provisions of Section 40 could allow a period of six months for compliance with the 25 per cent liquidity ratio. The next date to note and here, it may be convenient to give the Tribunal the reference to folder T.No.26 which is the folder in which there appears correspondence between the Central Bank of Nigeria and the National Bank of Nigeria Limited. Now, I understand there are some of these folders available should my learned friend Mr. McKenna or Counsel for the former Directors of the Bank desire to have them.

ELENDU 1.00-1.15 p.m. Q.1 25/7/61.

Mr. Lawson (contd.): It is folder 26. If there is, of course, any letter in the folder or any other letter that my learned Friend would like me to read, I will do so. But the documents in the folder are in fact documents common to both parties. I did say to the Tribunal that advance notice had been given by the Governor of the Central Bank to

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banks, when the liquidity ratio was prescribed, and that was a reference in fact to a letter dated 2nd of November, 1959, addressed by Mr. Fenton to Senator Doherty. It is the second letter in the bundle T.26.

Then the next important letter in T.26 is the letter of the 9th of January, 1960, from the National Bank of Nigeria Ltd. to the Central Bank. This letter of the 9th of January, 1960, which is the fifth letter in this folder T.26, arose in this way that the Central Bank, as the Tribunal will remember they were entitled to do under section 7 subsection (3) of the Banking Ordinance, requested the National Bank to submit a Statement of Incompatible transactions. The National Bank, in response to that request and a reminder dated 8th January, sent a statement of incompatible transactions. This is the matter to which I referred a little earlier. Their letter of the 9th of January, which I would invite the Tribunal to look at (I am not going to invite the Tribunal to go through in detail all these) but this is a letter of some importance, because the Chief Accountant, who is in fact Mr. Obasa-Porter, writes: "With reference to your letter of the 8th of January" - this is a letter asking for a statement under section 7(3) - "please find the statement required under the provisions of section 7(3) of the Banking Ordinance" -

7(1)(a) is advances in excess of 25% of the total of paid up capital and published reserve. The Bank makes a Nil return. This was erroneous.

(b) They make a Nil return. There is nothing I feel the Tribunal need be concerned about that.

(c) That is the subsection of section 7(1) which prohibits unsecured advances in excess of £500 to Directors or firms or private companies in which the Directors have interest. Nil return was incorrectl

(d) They make a Nil return.

(e) They make a Nil return.

(f) Is, investments in other companies. The Tribunal will bear in mind that the proviso of section 7(1)(f) stated the thing did not apply unless the total of your investments in companies exceed 25%. But notwithstanding that the total of the Bank's investments did not exceed 25%, they did

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make a return, and you will see at the following page of the return they made under (f): They returned their shares in Oshodi & Apena Ltd., they returned their Nigerian General Insurance Company Ltd., the Amalgamated Press; the Nigerian Pictures and the West African Pictures; the position there being that it was the Nigerian Pictures Corporation, the subsidiary of the bank, which in fact own the bulk of the shares in West African Pictures, but they took them together; shares in Glanvill Enthoven & Co. (Nigeria) Ltd. £5,000; shares in Hotel Bristol £70,690. They may give explanatory notes when they say, "Oshodi & Apena Ltd., - this is a subsidiary of the bank", and they give the details which I had given the Tribunal a little earlier; Nigerian Central Insurance Co. Ltd., also details; Amalgamated Press of Nigeria, it says they own about 70%; the Nigerian Pictures, the details which I have given the Tribunal; "Glanvill Enthoven Co. Ltd., is a subsidiary of one of the biggest Insurance Brokers" and there is 50/50 holding in the capital of that company which, of course, is an investment but is not a subsidiary with the bank; then the Hotel Bristol: this is a company 95% of whose shares are held by the bank.

If I may just pause on the Hotel Bristol. The Tribunal may remember that the nominal value of the shares held by the bank in the Hotel Bristol is in fact £23,913. In other words, the total issued capital of the Bristol Company is £24,000. The Bank indicated that the number of the shares was in fact 23,913, but the value of its shares was £70,690. That is a matter of some significance because I have previously indicated that so far as any documentary material at present available is concerned, the Hotel Bristol land seems to have somehow or other, without a transfer, got into the hands of National Investment and Property Company Ltd. If that is true, and if it be true that the Hotel Bristol was demolished and merely exists as a vacant site, it is difficult to see, if it has no assets other than a vacant site which it does not own and the name "Hotel Bristol Ltd.", which I suppose it can use, as to what the £70,690 represents by way of assets in company. That is their return under section 7(1)(f).

The only point I make about it is this, that it is confirmatory evidence from the bank as to the fact and value of their shareholding in these companies. The other point I make, which may be felt

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to be a point in the bank's favour, is this that it was clearly directing its mind towards a compliance with section 7(1)(f). It may well be that it was only misunderstanding which led the bank to fail to appreciate that they need not send in returns under section 7(1)(f) at all because the total value of those investments did not exceed 25% of their paid up capital and published reserves. But that, of course, hardly explains why a Nil return was made in relation to 7(1)(a) and 7(1)(c).

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Then the other documents which is attached to that letter is a return of property owned by way of investment by the bank. The Tribunal will observe a fairly long list of properties. Again humanity is of course frail and errs, and one thing which strikes one at once about it when one looks at the list and remembers the numbers is that one property is put in twice with exactly the same amount, and aggregates twice in the total. The Tribunal will see "18 Market Street, Lagos" which is the last but one entry on the left-hand column, and it gives the date of the lease - 12th of October, 1954, leasehold property. The amount one may understand to mean the value or the amount which was paid for it - I do not understand which - is £3,614.8.6d. That is in fact an exact duplication of an item which appears higher up in the list and is in fact about even more than half way down the page. Exactly the same item on its beneath - "Ijebu bypass landed property Ibadan, 18 Market Street Lagos", and exactly the same details. So it looks as though by some error they put in one property twice. But I would just invite the Tribunal to pause for a moment on this list of properties for this reason, that one sees amongst this list of properties the sixth one down 5-7 Apongbon Street, Lagos. That property is now owned by the National Investment and Properties Co. Ltd., having passed out of the ownership of the bank. The properties owned by the bank at numbers 21, 23 and 25 Broad Street, - they are not in that order actually in the list, No.23 Broad Street is 9th item down and that is shown as being a lease acquired on the 22nd June, 1948; the amount of which is £18,254 odd, and the bank's note is "demolished for erection". Two below that is 25 Broad Street Lagos; the lease is a different date, of course; the amount is £11,285.16/-, and that is said to be demolished for erection. And then two below that is 21 Broad Street, Lagos the lease is of a different date again but has a sum of £14,884 attached to

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it and is to be demolished for erection. The property interests formerly owned by the bank and returned by them as amongst their investment properties in the schedule attached to this letter of the 9th of January, 1960, have now found their way into the ownership of the National Investment and Properties Co. Ltd., and these are transactions which the Tribunal may have to investigate when it comes to deal with the relations and dealings between that Company and the bank. That is the letter of the 9th of January of 1960.

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The next event to observe is that during February of 1960, Mr. Lee, the Banking Examiner, made an examination of the bank's books and records under section 11 of the Banking Ordinance, and in the result the Minister of Finance decided to take action under section 12 of the Banking Ordinance and to appoint special examiners to make an examination of the books and affairs of the National Bank.

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At this stage, I would like to do this. I understand that Mr. John Murray, Permanent Secretary of the Ministry of Finance, is in court on subpoena. I will call for Mr. Murray to produce the original file containing these documents. The reference in the Tribunal's folders is T.23. As is customary with a witness who is on subpoena, I will call for him to produce the original file which contains the original letters from the National Bank of Nigeria to the Ministry of Finance or the Minister of Finance and carbon copies of the letters sent to the Ministry of Finance or the Minister by the National Bank of Nigeria. That is the original of folder T.23.

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Miss Onyeka 1.15 - 1.30 R.1 25/7/61
(Folders were handed to the Chairman by Mr. Lawson)

Chairman: I take it that Mr. MacKenna has no objections to these things?

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MacKenna: I have not examined the document and cannot express any opinion. I have just been handed a copy of the folder.

Chairman: I am sorry, but do you wish to reserve any right to object?

MacKenna: I would rather reserve any right I may have until I have read them.

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Chairman: There is really no serious objection -
I take it to be so.

Mr. Lawson: Again, I do not think it is necessary
to read in detail this correspondence and perhaps
I might be permitted to deal with it in this way,
with the Minister of Finance having decided to take
action under section 12 of the Banking Ordinance on
the 23rd of May, 1960, appointed Messrs. Deloitte,
Plender and Griffiths Company Limited to make a
special examination relating to certain terms of
reference and for the convenience of the Tribunal,
that letter of appointment is reproduced in the
Deloitte, Plender and Griffiths' report at page 30
of T.24. On the 27th of May, the appointment was
notified to the National Bank by a letter, copy of
which is in the folder, Ministry of Finance NBN
Correspondence T.23. Messrs. Deloitte, Plender and
Griffiths prepared a report which is T.24 dated
15th of August, and that report was the work of Mr.
George, a partner in that firm whom I will call on
subpoena, and of Mr. Thomson, a Manager in the firm
who will be available if required to assist for the
purposes of their report. Messrs. Deloitte, Plender
and Griffiths visited the Head Office of the Bank in
Lagos and a number of its branches in Lagos and else-
where in Nigeria and in London and made this report
to the Minister; and on the 14th October 1960, the
Minister sent a copy of the report to the National
Bank of Nigeria under cover of a letter which will
be found in T.23. The letter is dated the 14th
October 1960. Then there was an exchange of corres-
pondence between the National Bank and the Minister
and Ministry of Finance, the whole of which will be
found in the folder T.23 and then one goes back to
the other folder, the correspondence between the
Central Bank of Nigeria and the National Bank
because upon the 22nd November 1960 the National
Bank made a further return to the Central Bank of
Nigeria of incompatible transactions as at the 30th
of September 1960 which the bank had in contrary to
the provision of the Section 71. This will be
found in folder T.26. One has to bear in mind that
by this time, the 22nd of November 1960, and it is
in fact the last letter with two appendices in the
folder T.26, the bank had of course seen the Delo-
itte Plender and Griffiths' report and were aware
of what had been reported by them in relation to
transactions incompatible with the provisions of
the banking Ordinance, I will just, therefore in-
vite the Tribunal to look at this letter because

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it is a letter of some importance. This is a letter signed by Mr. Durushola, then General Manager, not on the Board of the Directors of the Bank at that time, but since in circumstance to which I will briefly refer in a moment, since a Director of the Bank. Mr. Durushola in his capacity as General Manager writes to the Governor of the Central Bank of Nigeria.

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- continued.

10 "With reference to the letter of 8th November herewith please find statement referred to under the provision of Section I of the Banking Ordinance for there is a mistake of Section 73 of the Banking Ordinance 7(i) as per the attached list".

20 Now, Section 7(i)(a) means transactions of the Bank in breach of the Ordinance because it has lent more than an amount of 25% of its paid up capital and published reserves to anyone person. The Tribunal will bear in mind that on the 9th of January 1960 they made no return under this Head but now they have rendered a return. This is a statement of their position as at the 30th September 1960. "They say we have lent more than the proper and committed amount to the following people; £558,824 to the Allied Newspaper transferred from the Amalgamated Press of Nigeria. "The Tribunal will bear in mind that it is stated that in July 1960 the shares held by the National Bank and the Amalgamated Press had been sold to the Allied Newspaper, so that they got £558 outstanding by that company. They got £347,642 owing to them by the Action Group Trust Fund. They have got £497,208 owing to them by Nigerian Pictures Corporation and West African Pictures. They got a guarantee to the West African Regional Marketing Board for half a million pounds. They have got £710,678 owing to them by Mutual Aid Society Limited, the bank's subsidiary. So the banks are here are confessing that as at 30th September, 1960, they in fact, in five cases, were in breach of the provisions of the Section 7(i)(a) of the Ordinance and this is what they say themselves. As I pointed out to the Tribunal that the breach in respect of Mutual Aid Society Limited could well be said to be a technical breach in the situation that the Mutual Aid Society was really run as a department of the Bank. In fact, as the Tribunal will find, this, in itself, was an understatement because it was not the fact that there was one guarantee to the West Region Marketing Board for half a million pounds, the fact

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In the
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Lagos

No. 13

Exhibit "B"
to Further
Affidavit of
Plaintiff's
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Notice

27th July, 1961
- continued.

was that as at the 30th September 1960, and indeed as at 31st December 1960, and indeed as at the 30th June 1960, there were two guarantees by the Bank to the West Region Marketing Board each of one half million pounds, so that the figure of £500,000 in relation to the guarantee to the West African Region Marketing Board was in that return correct - the figure returned should have been one million pounds. Then the other return which they make under B.D.E. and G. - nothing arises on those, but they make a return for the first time of advances to the Directors of the companies or firms in which the Directors are interested which are unsecured. And the Tribunal will see what they returned. An unsecured advance of not a large amount of £1,390 to Chief Gbadamosi, a Director; and unsecured advance of £133,913 to Chief Gbadamosi in his capacity as a partner in the Ikorodu Trading Company, and an unsecured advance of a small amount to Dr. Maja and Senator Doherty in their capacity as partners in the M.L.(?) Trading Company, and an unsecured advance of Nigerian Electric and General Stores Limited to Dr. Akinola Maja of £620; an unsecured advance of £10,741.3.7d to Dr. Maja and Senator Doherty in respect of a company Nigerian Medicine Stores Limited in which those gentlemen were directors and had shares and unsecured advance of £1,254.19.0d. to the Nigerian Spinning Company Limited. So the bank is saying we are in breach of the requirements of section 7(1)(c) of the Ordinance in these respects. The Tribunal will have to consider when we look at the actual state of these accounts whether in a number of cases these unsecured amounts are not very substantially falsified by omission and/or understatement.

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To take the last example on the last page of the document of the Nigerian Spinning Company, the total amount outstanding by the Nigerian Spinning Company Limited, the Directors of which were Senator Doherty and Dr. Maja, was at 30th September 1960 something in the neighbourhood of £131,000. Now that was purported to be secured by allocating charge on the assets of the Nigerian Spinning Company Limited but when one comes to look as one would have to look at the final balance sheet of that Company, it will be the wildest of the optimistic persons who would say that the security on the face of the accounts of the company looks as though it was worth more than about 5d. However this is a matter into which the Tribunal may have

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to inquire. Now at the end of 1960 the Bank proceeded to take certain steps to implement some of the recommendations which were made in the Report of Messrs. Deliotte, Plender and Griffiths, which are to be found at pages 27, 28 and 29 of that report.

Akinbohun 1.30-1.40 p.m. S.1 25/7/61.
Mr. Lawson (continuing)

10 In particular what happened was this and it happened in stages. Firstly, as I have already indicated to the Tribunal the million pounds cumulative preference shares - 4% cumulative preference shares - was converted into ordinary shares by two resolutions which locked together resolution of the 9th December, 1960 and the 11th of January, 1961. Secondly the Bank's capital was increased by another £2 million pounds ordinary shares. Thirdly that increased capital of £2 million pounds ordinary shares was, in fact, taken up for cash by the Western Region Marketing Board, and the way in which the transaction took place was this. That at that time the Western Region Marketing Board - this again the documents will be produced by clerks on subpoena which are being served - had something in excess of £2 million on deposit with the Bank. By creating this additional share capital of £2 million and by the Western Region Marketing Board taking up these £2 million of an additional capital for cash the Bank, in fact, were able to, so to speak, 20 escape the liability to pay £2 million to the Western Region Marketing Board because they receive £2 million in payment for the additional £2 million shares to the effect of the transaction was that the Bank's resources dropped very very seriously because £2 million had disappeared in payment for the additional shares which were issued to the Western Region Marketing Board, so that its public money has got in £2 million shares in the National Bank instead of £2 million of public money in the 30 coffers of the National Bank. Well, if the shares are worth a pound each I suppose there is nothing to worry about.

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Then there is the next matter which happened. On the 1st of April, 1961, Chief Gbadamosi, Chief Hunponu-Wusu, and Mr. Ladipo resigned from the Board of Directors of the Bank and later, on a date which is not without interest, the 30th of June, 1961, Senator Doherty and Dr. Maja also resigned from the Board of the National Bank of

In the
High Court of
Lagos

No. 13

Exhibit "B"
to Further
Affidavit of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

In the
High Court of
Lagos

No. 13

Exhibit "B"
to Further
Affidavit of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

Nigeria. These gentlemen have been replaced and were replaced earlier on by a new Board, the Chairman of which is Mr. Durosaro, formerly of the Western Region Marketing Board. There is another Director who was formerly a Member of the Western Region Marketing Board, and Mr. Durosola who was the General Manager in the old regime, if I can call it that, and he has become a Director of the Bank and is still acting as its General Manager. The last matter that I have to mention under this, so to speak, list of dates and events is this, 10
That in February of 1961 Mr. Lee, the Bank Examiner, made a further examination of the books and records of the Bank for the purpose of establishing their position as at the 31st of December, 1960, so to speak, following up the Deloitte, Plender and Griffiths Report, and Mr. Lee, the Bank Examiner, made a report to the Minister which is dated the 14th of December, 1960. The folder number and reference of which is T.25. I know that my 20
Learned Friend, Mr. MacKenna, has a copy and is planning also to have a copy of that document. There are two other matters which I would invite you, Sir, to allow me to deal with before I close this part of my opening. The first matter is that I would like Mr. Gore to produce the originals of the correspondence between the Central Bank of Nigeria and the National Bank of Nigeria Limited, the copy of which you have in Folder No.T.26. So I call on Mr. John Gore who is Chief Accountant of the Central Bank of Nigeria on his subpoena duties to produce the originals and copies of letters in that T.26. 30

Mr. Gore produced documents mentioned.

So perhaps Mr. Murray and Mr. Gore who only attend on subpoena duties might be released now from further attendance.

Chairman: The name of the gentleman is what?

Mr. Lawson: Mr. John Personal Gore, Chief Accountant, Central Bank of Nigeria. 40

Yes, I am not sure, as I think Mr. Murray is still in Court. I think it would be right that I should like Mr. Murray who is still in Court also, that is, Mr. John Murray, the Permanent Secretary, Federal Ministry of Finance, also to produce the originals of the Deloitte, Plender & Griffiths

Report, T.24. and of Mr. Lee's Report, T.15, dated the 14th of February, 1961. I think, Sir, that it is preferable that the originals are actually to be put in, as and when I refer to them. Documents produced.

In the
High Court of
Lagos

No. 13

10 My Lord, I have now finished with part of my opening, and I would now in the ordinary way come to deal one by one with this specific terms of reference and briefly to indicate the nature of the evidence which is available on each of those terms of reference. You may therefore think it would perhaps be more convenient not to start on the new line at this stage but perhaps to bear in mind that I have perhaps left that until the next sitting of the Tribunal.

Exhibit "B"
to Further
Affidavit of
Plaintiff's
Motion on
Notice

27th July, 1961
- continued.

Chairman: Well, what we would do would be to adjourn until tomorrow - nine o'clock.

Sitting Suspended: 1.40 p.m.

20 This the document referred to and marked Exhibit "B" in the Further Affidavit of Senator Chief T. Adebayo Doherty sworn to this 27th day of July, 1961.

Before Me

(Sgd.) S.M. Chidom

COMMISSIONER FOR OATHS.

In the
High Court of
Lagos

No. 14

FURTHER AFFIDAVIT IN SUPPORT OF DEFENDANTS'
MOTION ON NOTICE

No. 14

IN THE HIGH COURT OF LAGOS

Suit No. LD/355/1961.

Further
Affidavit in
Support of
Defendants'
Motion on
Notice

BETWEEN

Senator Chief T.A. Doherty
Plaintiff (Respondent)

- and -

27th July, 1961.

- | | |
|------------------------------------|------------------------------|
| 1. SIR ABUBAKAR TAFAWA BALEWA) | } Defendants
(Applicants) |
| (Prime Minister of the Federation) | |
| 2. SIR VAHE ROBERT RAIRAMIAN) | |
| 3. JAMES MALCOLM HARRISON) | |
| 4. GERALD PERCY COOKE) | |

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FURTHER AFFIDAVIT

I, SAMUEL DUROJAIYE ADEBIYI of 20 Milverton Road, Ikoyi, Lagos, Legal Practitioner, Nigerian, make oath and say as follows:-

1. That I am one of the Solicitors to the 1st Defendant. 20

2. That I am informed and verily believe that the writ of summons in the above suit was signed some time after mid-day on Wednesday 26th July, 1961.

3. That the restraining Order made by this Honourable Court on Tuesday 25th July, 1961, was therefore made before the writ of summons in the suit came into being.

4. That it does not appear that at the hearing of his ex-parte motion on Tuesday, 25th July, 1961, the Plaintiff undertook to get the writ issued at once or that the Plaintiff thereafter did anything to get the writ issued as a matter of urgency. 30

(Sgd.) S.D. ADEBIYI
Deponent.

Sworn to at the High Court
Registry, Lagos this 27th day
of July, 1961

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Before Me
(Sgd.) S.M. Chidom
Commissioner for Oaths.

JUDGE'S FURTHER NOTES ON DEFENDANTS' MOTION
ON NOTICE

In the
High Court of
Lagos

No. 15

IN THE HIGH COURT OF LAGOS

SATURDAY THE 29TH DAY OF JULY, 1961

BEFORE THE HONOURABLE
MR. JUSTICE CHARLES ONYEAMA,
JUDGE

Judge's
Further Notes
on Defendants'
Motion on
Notice.

29th July, 1961.

Suit No.ID/355/61.

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BETWEEN:

SENATOR CHIEF T.A. DOHERTY Plaintiff

- and -

SIR ABUBAKAR T. BALEWA & ORS. Defendants

ELIAS Q.C.: Attorney-General and Adebisi moving:

WILLIAMS Q.C. with Adepegba and Taverne contra:

Elias: Suppression or misrepresentation of material facts led to making of the Order on Tuesday; Halsbury 3rd Edition Vol.21 page 437 paragraph 927;

20

Williams: I am prepared to agree that if facts have been suppressed the injunction may be rescinded:

Elias: No reference was made to the new Act; counsel appeared for the applicants and submitted to jurisdiction but this was not disclosed to the Court; see 49 E.R. 1011; 1013; Halsbury Op. Cit p.438 paragraph 927;

30

Irreparable or serious mischief not shown: Lloyds Bank v. Medway (1905) 2 K.B. 359; Supreme Court Rules Order 34 Rule 10. Conditions before grant of ex-parte Order not fulfilled; summons not signed by a judge until after the Order had been made; no reference to any specific injury suffered by the Plaintiff in the Order which I made; Halsbury Op. Cit page 419 paragraph 880; Lingwood v. Stowmar 1865 L.R.I. Eq. 77; 28 Eng & Emp. Dig; no reference in the order that any security has been given by the plaintiff for damages; Smith v. Day 1882 21 Ch. D. 421 at page 424. Graham v.

In the
High Court of
Lagos

No. 15

Judge's
Further Notes
on Defendants'
Motion on
Notice.

29th July, 1961
- continued.

Campbell (1878) 7 Ch. D. 490 at page 494; Maclaren v. Stainton 51 E.R. 786; at p. 790; Order may be dissolved even though it is about to expire: Wimbleard v. Cragdon (1886) 2 Ch. D. 421;

Williams Q.C. Order for interim injunction made; Halsbury 21st Edition p.437 paragraph 927 sets out the only grounds for setting aside the Order; Regarding non disclosure of the fact that we had submitted to the jurisdiction of the Tribunal by appearance was the appearance a material fact; Mexborough 49 E.R. 1011; no acquiescence; we acted with maximum speed; criticising the form of the order, e.g. that it did not contain reference to the injury done to the plaintiff, is no ground for discharging the injunction; regarding non-signature see paragraph 863, Halsbury Op-Cit. undertaking to secure damages may be made on an application to vary under Order 34 Rule 11; no ground for dissolving the Order; reads affidavit of Mr. Adebisi dated 26th July.

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Elias Q.C. The affidavit of Doherty should have set out the injury done to him; we could not very well.

C. A. V. To 4th August 1961 for a ruling.

(Sgd.) CHARLES ONYEAMA
JUDGE.

No. 16

Proceedings on
Case to be
stated.

31st July, 1961.

No. 16

PROCEEDINGS ON CASE TO BE STATED

IN THE HIGH COURT OF LAGOS

MONDAY THE 31ST DAY OF JULY, 1961

BEFORE THE HONOURABLE
MR. JUSTICE CHARLES ONYEAMA
JUDGE

30

Suit No. LD/355/61.

DINGLE FOOT Q.C. (Taverne and Akin-Olugbade with him) for the Plaintiff:

DR. ELIAS Q.C. (Adebisi with him) for the defendants).

IMPEY: For 2nd, 3rd and 4th defendants: and Miss Shoyinka.

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10 Impey: I wish to make a statement: My clients constitute the Tribunal appointed by the first defendant; I am instructed to say the Tribunal is an impartial body and has no personal interest. As the matter of this claim is sub judice it will not proceed with the inquiry until the questions if any referred to the Federal Supreme Court are decided and the tribunal hopes that this assurance will be enough. There is therefore, in my submission, no need for interlocutory injunction; the tribunal welcomes the request for questions to be referred and I enquire if my submission is accepted the tribunal and I may be released from further attendance in these proceedings.

In the
High Court of
Lagos

No. 16

Proceedings on
Case to be
stated.

31st July, 1961
- continued.

20 Dingle Foot: As far as I am concerned I accept the assurance; I shall be requiring the Court to submit certain matters to the Federal Supreme Court; I would prefer an undertaking that the Tribunal will not resume sitting until the case is disposed of.

Dr. Elias: In limine: jurisdiction of the Court to entertain the suit:

Court:- Let us deal with the matter of the tribunal's statement first.

Dr. Elias: Nothing to add.

Impey: I am authorised to give the undertaking sought by Mr. Foot.

30 Foot: In that case I shall not be requiring the Court to make an interlocutory order of injunction. I accept the assurance.

Court:- The second, third and fourth defendants need not appear any longer, nor need Mr. Impey. Both Mr. Impey and Mr. Williams, Q.C. who appears in another case involving the same defendants (LD/362/61) agree that for the same reasons as set out above the 2nd, 3rd and 4th defendants do not need to appear in that case.

40 Dr. Elias: My Learned friend Mr. R. Williams and I are agreed that the present suit and the other suit LD/362/61 be consolidated.

Court:- Ordered accordingly:

F.R.A. Williams Q.C. (Agbaje-Williams and Adepegba with him) for Plaintiffs.

In the
High Court of
Lagos

No. 16

Proceedings on
Case to be
stated.

31st July, 1961
- continued.

Dr. Elias, Q.C. and Adebisi for defendants:

Dr. Elias Q.C. in limine: The Commissions and Tribunals of Enquiry Act 1961 is a validly enacted law of the Federal Parliament; section 3(4) of the Act completely ousts the court's jurisdiction; section 24 of the Chiefs Law, 1959; Vol.1 Laws of Western Nigeria; Oba and Chiefs of Lagos Ordinance 1959 section 7; Oluwa v. Oluwa;

The Court may enquire into its jurisdiction;
Wilkenson v. Banking Corp. (1948) 1 ALL E.R. 565.

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Court:- The question surely is whether the enabling Act is valid; for if it is not section 3(4) of the Act cannot possibly stand:

Dr. Elias:- Issue of grave constitutional importance; refer to Federal Supreme Court.

Dingle Foot:- The validity of the Act should be referred; section 108 of the Constitution; the wording of the claim is wide enough to call in question the validity of the Act; substantial question of law; section 3(4) of the Act is invalid; the constitution in section 31 provides for access to the courts; fundamental human rights involved;

20

Williams: I agree the matter should be referred;

Court:- Counsel are invited to submit to the Court the questions they wish referred to the Federal Supreme Court.

Further hearing of this case is adjourned sine die pending decision of the Federal Supreme Court on the questions to be hereafter submitted by the Court.

30

Leave is granted for statements of claim to be filed with copies for delivery to the Attorney-General and for defences to be filed with copies for delivery to the plaintiffs.

Each side is given seven days for this.

(Sgd.) CHARLES ONYEAMA
JUDGE.

July 31: 1961.

No. 17

RULING ON CASE TO BE STATED

IN THE HIGH COURT OF LAGOS

MONDAY THE 31ST DAY OF JULY, 1961

BEFORE THE HONOURABLE
MR. JUSTICE ONYEAMA
JUDGE

In the
High Court of
Lagos

No. 17

Ruling on
Case to be
Stated.
31st July, 1961.

Suit No. LD/355 /61

SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff

- and -

- 1. SIR ABUBAKAR TAFAWA BALEWA)
Prime Minister of the Federation)
- 2. SIR VAHE ROBERT BAIKRAMIAN) Defendants
- 3. JAMES MALCOLM HARRISON)
- 4. GERALD PERCY COOKE)

10

Suit No. LD/326/61.

WESTERN NIGERIAN DEVELOPMENT CORPN. Plaintiff

- and -

- 1. SIR ABUBAKAR TAFAWA BALEWA)
Prime Minister of the Federation)
- 2. SIR VAHE ROBERT BAIKRAMIAN) Defendants
- 3. JAMES MALCOLM HARRISON)
- 4. GERALD PERCY COOKE)
(CONSOLIDATED)

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IN THE MATTER of a REFERENCE under SECTION 108
of the CONSTITUTION of the FEDERATION of NIGERIA

The Plaintiffs in these two consolidated suits
claim as follows:-

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In Suit LD/355/1961 - Senator Chief T.A. Doherty
versus Sir Abubakar Tafawa Balewa and three others:

"(a) a declaration that the Tribunal of Inquiry
appointed by the first defendant as per Govern-
ment Notice No.1446 is illegal, unconstitution-
al and invalid.

(b) an injunction restraining the 2nd, 3rd and
4th defendants from holding the said enquiry
and

In the
High Court of
Lagos

No. 17

Ruling on
Case to be
Stated.

31st July, 1961.

- continued.

"(c) such further or other orders as the Court deems fit to grant."

In Suit ID/362/61 - Western Nigerian Development Corporation Versus Sir Abubakar Tafawa Balewa and three others:-

"(1) a declaration that the Tribunal of Inquiry appointed by the first defendant as per Government Notice No.1446 of 1961 is illegal, unconstitutional and invalid; alternatively a declaration that the said Tribunal of Inquiry is illegal, unconstitutional and invalid in so far as it purports to authorise an inquiry into the relationship and dealings at any time between the National Bank of Nigeria Ltd. and its directors or any of them on the one hand and the Plaintiff and its statutory predecessors on the other hand;

10

(2) An injunction restraining the defendants, their servants and agents from holding the said inquiry; and

20

(3) such further or other orders as this Honourable Court may deem fit to make".

At the hearing, the second, third and fourth defendants through Mr. Impey, of Counsel, explained their position as the Commissioners appointed by the Government Notice under attack and assured the Court that they would not resume sitting as such Commissioners to enquire into the matters set out in their terms of reference until this case had been disposed of. The Court with the consent of the other parties thereupon dispensed with their further attendance.

30

Dr. Elias, Attorney-General of the Federal who appeared for the first defendant took the point, in limine that by reason of sub-section 4 of section 3 of the Commissions and Tribunals of Enquiry Act 1961, the Court was without jurisdiction to entertain the claims. He pointed out that the claims referred to the appointment of the Commission as being invalid, but did not suggest that the Act enabling the appointment was invalid or unconstitutional.

40

I heard arguments on this preliminary issue of jurisdiction and came to the conclusion that the writ of summons was in sufficiently wide terms to

10 include consideration of the constitutionality of the Act under which the Commissioners were appointed. I was of the opinion that the question of the court's jurisdiction had to be decided with reference to the wider issue of the validity of the Act, and not with reference to the narrower issue of a clause in the Act purporting to limit or exclude the Court's jurisdiction; for, in my judgment, if the Act was found to be invalid, no clause in it could survive.

The question whether an Act was valid or not would involve interpretation of the Constitution, a matter within the jurisdiction of a High Court both because the Constitution impliedly recognises such jurisdiction (s.108 of the Constitution) and because the High Court is a superior court of record with unlimited jurisdiction "save as otherwise provided by parliament". (S.115(3) of the Constitution).

20 After considering the matters raised in argument I came to the conclusion that this court had full jurisdiction to entertain the claims.

The Attorney-General next requested a reference to the Federal Supreme Court of the questions which arose in the course of arguments touching the validity of the Commissions and Tribunals of Enquiry Act 1961 as he considered they were questions "of grave constitutional importance".

30 Counsel for the plaintiffs concurred in this request for varying reasons, but all were agreed that the questions involved substantial questions of law.

40 I am of the opinion that the questions which have arisen touching on the interpretation of the Constitution in these suits involve substantial questions of law and at the request of the parties and by reason of the duty imposed on the court by section 108(2) of the Constitution, the questions in the attached schedule are hereby referred to the Federal Supreme Court.

(Sgd.) CHARLES ONYEAMA
JUDGE OF THE HIGH COURT, LAGOS.

In the
High Court of
Lagos

No. 17

Ruling on
Case to be
Stated.

31st July, 1961.
- continued.

In the
High Court of
Lagos

SCHEDULE

No. 17

Ruling on
Case to be
Stated.

31st July, 1961
- continued.

1. Whether or not the Commissions and Tribunals of Enquiry Act 1961 is within the competence of the legislative powers of the Federal Parliament in so far as the said Act purports to have effect in relation to matters and things within Federal Competence anywhere within the Federation.

2. Whether or not Section 3(4) of the said Act is constitutional and valid or contravenes sections 21, 31 and 108 of the Constitution of the Federation of Nigeria.

10

3. Whether or not Sections 8(c) 8(d) 15(a) and 18(1)(b) of the Commissions and Tribunals of Enquiry Act 1961 (or any of them) are constitutional and valid, or contravene sections 20 or 21 of the Constitution of the Federation of Nigeria.

No. 18

Statement on
Case Stated.

No. 18

STATEMENT ON CASE STATED

IN THE HIGH COURT OF LAGOS

Suit No.ID/355/1961.

20

BETWEEN:

SENATOR CHIEF T. ADEBAYO DOHERTY

Plaintiff

- and -

- 1. SIR ABUBAKAR TAFAWA BALEWA
Prime Minister of the Federation
- 2. SIR VAHE ROBERT BAIRAMIAN
- 3. JAMES MALCOLM HARRISON
- 4. GERALD PERCY COOKE

Defendants

- AND -

Suit No.ID/362/1961

30

WESTERN NIGERIAN DEVELOPMENT CORPORATION

Plaintiff

- and -

- 1. SIR ABUBAKAR TAFAWA BALEWA
Prime Minister of the Federation
- 2. SIR VAHE ROBERT BAIRAMIAN
- 3. JAMES MALCOLM HARRISON
- 4. GERALD PERCY COOKE

Defendants

S T A T E M E N T

The Plaintiffs' claim against the Defendants is as stated on pages 2 and 21B of the Record of Case stated.

In the
High Court of
Lagos

No. 18

2. On the 31st day of July, 1961, Ruling was made that these cases are to be stated to the Federal Supreme Court for decision under Section 108 of the Constitution of the Federation of Nigeria.

Statement on
Case Stated.
- continued.

(Sgd.) D.A. BANJOKO

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REGISTRAR:
HIGH COURT, LAGOS.

No. 19

No. 19

DECISION ON DEFENDANTS MOTION ON NOTICE

Decision on
Defendants
Motion on
Notice.

IN THE HIGH COURT OF LAGOS

HOLDEN AT LAGOS, NIGERIA

4th August,
1961.

ON FRIDAY THE FOURTH DAY OF AUGUST, 1961

BEFORE THE HONOURABLE,
MR. JUSTICE ONYIAMA

Suit No. LD/355/61.

20 SENATOR CHIEF T. ADEDAYO DOHERTY Plaintiff

- and -

1. SIR ABUBAKAR TAFAWA BALEWA)
Prime Minister of the Federation)
2. SIR VAHE ROBERT BAIRAMIAN) Defendants
3. JAMES MALCOIM HARRISON)
4. GERALD PERCY COOKE)

D E C I S I O N

30

The application with which I am now concerned is made on behalf of the defendants and is for an order discharging an interim order which I had made on an ex parte application by the Plaintiff's Solicitors which asked for an injunction pending the hearing of a motion on notice which had been filed but had not been served.

In the
High Court of
Lagos

No. 19

Decision on
Defendants
Motion on
Notice.

4th August,
1961

- continued.

The facts which led to the applications were that a Commission of Enquiry consisting of the 2nd, 3rd and 4th defendants was appointed by the first defendant on the 21st of July, 1961, with terms of reference which empowered examination of certain activities of a bank of which the plaintiff was, at a period covered by the proposed enquiry, a director. The terms of reference also included, among other things:-

1. The general business, operation and financial policy of the National Bank of Nigeria Limited and of its subsidiary companies during the period 1st October, 1959, to 31st December 1960. 10

2. The nature, amounts and terms of advances or credit facilities or guarantees, as well as validity and sufficiency of any securities therefore, made, granted or given by the said Bank at any time to:

(b) directors of the said Bank or members of their families. 20

3. The relationship and dealings at any time between the said bank and its directors or any of them"

The Plaintiff applied for a summons in the High Court on the 24th and at the same time filed a motion for an injunction.

The claims in the application for a summons were for:

"(a) a declaration that the Tribunal of Inquiry appointed by the first defendant as per Government Notice No.1446 is illegal, unconstitutional and invalid 30

(b) an injunction restraining the 2nd, 3rd and 4th defendants from holding the said enquiry and

(c) such further or other orders as the Court deems fit to grant".

The motion paper filed in the Motion on Notice was in the following terms: 40

"TAKE NOTICE that this Honourable Court will be moved on Monday the 31st day of July 1961

or so soon thereafter as Counsel can be heard on behalf of the above named plaintiff for an order (a) that the question described in the schedule to this Motion be referred to the Federal Supreme Court in accordance with the provisions of the Section 108(2) the Second Schedule to the Nigeria (Constitution) Order in Council;

10

(b) that the 2nd, 3rd and 4th defendants be restrained from holding the Tribunal of Enquiry which is the subject matter of the action filed in the above matter;

(c) such further or other orders as this Honourable Court may deem fit to make.

In the
High Court of
Lagos

No. 19

Decision on
Defendants
Motion on
Notice.

4th August,
1961

- continued.

SCHEDULE

20

1. Whether section 3(4) of the Commissions and Tribunals of Enquiry Act, 1961 is not ultra vires, unconstitutional and invalid in so far as it purports to exclude the jurisdiction of the Court in these proceedings.

2. Whether the whole of the provisions of the Tribunals of Enquiry Act, 1961, is not ultra vires, unconstitutional and invalid.

In the ex parte application a temporary relief was sought and it was stated in the affidavit in support -

30

"(7) That members of the said Tribunal of Enquiry have declared their intention to start holding the enquiry as from Tuesday 25th July 1961."

From this it was apparent that there were only four days between the appointment of the Tribunal and their entering upon the enquiry. Of these four days one was a Saturday and another a Sunday. This left the Plaintiff very little time to take any effective steps to stop the enquiry, which according to him, was unconstitutional and which affected him.

40

I considered, therefore, that in view of the nature of the claim the matter was one of extreme urgency and called for the exercise of the very extraordinary jurisdiction of granting an ex parte temporary injunction before the writ of summons

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which had been applied for or the motion on notice was served.

Leave was given to the persons affected by the Order to move to vary or discharge it. Pursuant to this, the present application was made.

The Attorney-General of the Federation who moved for the Order to be discharged based his application on three grounds namely:

that material facts were suppressed and not brought to the notice of the Court; that irreparable or serious mischief was not shown to be threatened to the applicant; that the conditions precedent to the granting of an ex parte order were not fulfilled.

10

One of the material facts which were said to have been suppressed was that the applicant had not referred to the Commissions and Tribunals of Enquiry Act 1961. I understand the argument on this head to mean that it was not brought to the notice of the Court that this Act had been enacted. As under section 73(1)(a) of the Evidence Ordinance, this Court must take judicial notice of the enactment of Acts of the Nigerian Parliament, there can be no question of the enactment being suppressed. The other fact which was said to have been suppressed was that Counsel was appearing for the applicant before the Tribunal whose jurisdiction and validity he was impugning in the motion. It was said that by such appearance the applicant submitted to the jurisdiction of the Tribunal and could not be heard subsequently to challenge it. I do not agree with the unqualified statement that by appearing before a Tribunal a party lost his right subsequently to challenge its jurisdiction or validity.

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Wilkinson v. Barking Corporation (1943) 1 All E.R. 564. is authority to the contrary effect. At page 567 of the report of that Asquith L.J. said:

"No act of the parties can create in the courts a jurisdiction which Parliament has said shall vest, not in the courts, but exclusively in some other body, and a party cannot submit to, so as to make effective, a jurisdiction which does not exist."

40

The principle of this statement appears to me to be against the learned Attorney-General's

contention. The claim in this case had been lodged in the court before the Tribunal commenced sitting so that the question of the jurisdiction of the Tribunal, based on the validity of its appointment, had already been raised before the alleged submission to such jurisdiction.

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10 The misrepresentation or suppression of facts which will avail is such as presents to the Court a case which was likely to procure the injunction, but which was in fact different from the case which really existed. I am of the view that neither of the two matters said to have been suppressed falls within this category, and neither would have altered the case made on the applicant's affidavit: see Halsbury's Laws of England 3rd Edition, volume 21 page 438.

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20 The second ground of attack, namely, that the applicant had not shown irreparable mischief will now be considered. The rule is that an injunction will not, in general, be granted without notice, but the court, if satisfied that the delay caused by proceeding in the ordinary way might entail irreparable or serious mischief may make a temporary order ex parte upon such terms as it thinks just. See Halsbury's Laws of England 3rd Edition Vol.21 page 413 paragraph 865. The facts which appeared on the affidavit were that a Tribunal whose validity and legality were being challenged was about to sit and enquire into matters concerning the applicant and his business activities.

30 Under the Act under which the Tribunal was set up, the tribunal had power:

"to summon any person in Nigeria to attend any meeting of the Commissioners to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession, subject to all just exceptions."

40 and also

"to admit any evidence whether written or oral which might be inadmissible in civil or criminal proceedings".

It was obvious that if the Tribunal continued to sit, then under the Act the most intimate papers

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of the applicant could be called for and submitted to the examination of the Commissioner.

I am of the opinion that if it turned out that the contention of the plaintiff-applicant was well founded and the tribunal was found to be unconstitutional, an irreparable mischief would have been done to the applicant by his having to submit himself and his papers to such unconstitutional examination. At the time of the application, the validity of the tribunal was in question and I could not readily conceive of a more serious mischief than inquisitorial harassment of a citizen by an unconstitutional Tribunal.

10

I was satisfied, therefore, that assuming, without deciding, that the contention of the applicant regarding the validity of the Tribunal was well taken, there was a real threat of irreparable and serious mischief likely to be done to him if an interim Order of injunction was not issued, and that this was a case of emergency calling for an ex parte order: see Anon (1876) W.M. 12. The Tribunal was scheduled to commence sitting on the very day that the order was made.

20

The third ground was that conditions precedent to the making of the ex parte order had not been fulfilled, namely, that no summons had been signed by a judge, and that no undertaking for damages was given by the applicant.

The case of Thorneloe v. Skoines (1873) L.R. 16 Eq. 126 is authority for making the order in a very urgent case notwithstanding that a writ had not been issued. There is also the fact that a summons had been applied for and the fees thereon paid. These facts of application and payment of fees amount to commencement of action: see Alawode v. Semoh 4 F.S.C.27.

30

I agree with Mr. Williams that the fact that an undertaking for damages was not taken from the applicant would be no ground for discharging the order: if the order was still subsisting I would have varied it to include an order for the Plaintiff to give an undertaking for damages.

40

In the event I find no ground for discharging the Order, which in any case, has run its course.

(Sgd.) CHARLES OYEBAWA
JUDGE

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IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

ON FRIDAY, 27TH OCTOBER, 1961

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Judgment.

BEFORE THEIR LORDSHIPS

SIR ADETOKUNBO ADEMOLA	Chief Justice of the Federation
SIR LOUIS MBANEFO	Chief Justice of the Eastern Region
SIR LIONEL BRETT	Federal Justice
EDGAR IGNATIUS GODFREY UNSWORTH	Federal Justice
JOHN IDOWU CONRAD TAYLOR	Federal Justice

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F.C.P.
Mbanefo,
C.J.(E.R.)
Unsworth,
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10

F.S.C.326/1961

BETWEEN:

SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff

- and -

1. SIR ABUBAKAR TAFAWA BALEWA (Prime Minister of the Federation)	} <u>Defendants</u>
2. SIR VAHE ROBERT BAIKRAMIAN	
3. JAMES MALCOLM HARRISON	
4. GERALD PERCY COOKE	

20

- And -

WESTERN NIGERIA DEVELOPMENT CORPORATION Plaintiffs

- and -

1. SIR ABUBAKAR TAFAWA BALEWA (Prime Minister of the Federation)	} <u>Defendants</u>
2. SIR VAHE ROBERT BAIKRAMIAN	
3. JAMES MALCOLM HARRISON	
4. GERALD PERCY COOKE	

30

J U D G M E N T

(a) ADEMOLA, F.C.J.:
MBANEFO, C.J., (E.R.)
UNSWORTH, F.J.:

This is a reference from the High Court of

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Lagos under Section 108(2) and (3) of the Constitu-
tion of the Federation of Nigeria, which provides:-

"108(2) Where any question as to the inter-
pretation of this Constitution or the
constitution of a Region arises in any
proceedings in the High Court of a territory
and the court is of opinion that the question
involves a substantial question of law, the
court may, and shall if any party to the
proceedings so requests refer the question to
the Federal Supreme Court. 10

(3) Where any question is referred to the
Federal Supreme Court in pursuance of this
section, the Federal Supreme Court shall give
its decision upon the question and the court
in which the question arose shall dispose of
the case in accordance with that decision."

The questions referred for the decision of the
Court are as follows:-

1. Whether or not the Commissions and Tribun- 20
als of Enquiry Act 1961 is within the compet-
ence of the legislative powers of the Federal
Parliament in so far as the said Act purports
to have effect in relation to matters and
things within Federal competence anywhere
within the Federation.

2. Whether or not Section 3(4) of the said
Act is constitutional and valid or contravenes
sections 21, 31 and 108 of the Constitution of
the Federation of Nigeria. 30

3. Whether or not Sections 8(c), 8(d), 15(a)
and 18(1)(b) of the Commissions and Tribunals
of Enquiry Act 1961 (or any of them) are
constitutional and valid, or contravene
sections 20 or 21 of the Constitution of the
Federation of Nigeria.

The matter that arises for consideration on question
1, is whether the Commissions and Tribunals of
Enquiry Act 1961 (No.26 of 1961) exceeds the legis- 40
lative power of Parliament in so far as that power
relates to the whole Federation.

The Nigerian Constitution is a truly Federal
Constitution in which the residual powers are

vested in the Regional Governments. It follows from this that the Federal Parliament can legislate for the Federation only on those matters in respect of which it is specifically empowered to legislate under the Constitution. The power to legislate in respect of Commissions of Enquiry was at one time on the Concurrent Legislative List, but this was altered in 1957, when Commissions of Enquiry were deleted from that List and reference made in the incidental and supplementary powers for the establishment and regulation of Tribunals of Enquiry. The power to legislate in respect of Tribunals of Enquiry in the 1960 Independence Constitution is to be found in Item 44 of the Exclusive List (Part I of the Schedule) and Item 28 of the Concurrent Legislative List (Part II of the Schedule). Item 44 of the Exclusive List, which formed the subject of argument before us, reads as follows:-

20 "Any matter that is incidental or supplementary:-

- (a) to any matter referred to elsewhere in this list; or
- (b) to the discharge by the Government of the Federation or any officer, court or authority of the Federation of any function conferred by this Constitution."

30 Paragraph 1 of Part III of the Schedule reads as follows:-

"Part III. Interpretation.

In this Schedule references to incidental and supplementary matters include, without prejudice to their generality:-

- (a) offences;
- (b) the jurisdiction, powers, practice and procedure of courts of law;
- (c) the compulsory acquisition and tenure of land; and
- (d) the establishment and regulation of tribunals of enquiry.

The practical effect of Part III, in so far as it affects Tribunals of Enquiry, is to insert in Item 44, immediately after the words "incidental or supplementary" the additional words "including the establishment and regulation of Tribunals of

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Enquiry". In pursuance of this power, the Federal legislature enacted the Commissions and Tribunals of Enquiry Act, 1961, which provides for the establishment of Tribunals of Enquiry with power to compel witnesses to give evidence and produce documents under penalty of fine or imprisonment. Section 3(1) of the Act reads as follows:-

"The Prime Minister may, whenever he shall deem it desirable, issue a Commission appointing one or more Commissioners, or any quorum of them that may therein be mentioned, to hold a Commission of Inquiry into any matter or thing within or affecting the general welfare of the Federal Territory, or into any matter or thing within Federal competence anywhere within the Federation, in respect of which in his opinion, an inquiry would be for the public welfare, or into the conduct of any chief or the management of any department of the public service. The Prime Minister may also appoint a secretary to the Commission who shall perform such duties as the Commissioners shall prescribe."

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20

There is no dispute in this case as to the power relating to the Federal territory of Lagos. The issue is whether the incidental and supplementary powers in Item 44 are wide enough to enable Parliament to enact legislation for the whole Federation in terms of the Act.

Mr. Dingle Foot and Chief Retimi Williams argued that this incidental or supplementary power only authorised the Federal Parliament to appoint Tribunals to enquire into specific matters on the Exclusive Legislative List. In support of this submission they relied upon the Privy Council decision in the case of the Attorney-General for the Commonwealth of Australia v. The Colonial Sugar Refining Company Limited (1914) Appeal Cases, 237). In reply the Attorney-General said that the wording of the Australian Constitution differs from the Nigerian Constitution and submitted that the Nigerian provisions are wide enough to enable Parliament to enact incidental or supplementary legislation in general terms such as those contained in the Commissions and Tribunals of Enquiry Act, 1961. He also sought to distinguish the Sugar Refining case, and mentioned the Canadian cases of

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10 North-West Grain Dealers Association v. Hyndman,
(1921 61 D.L.R., 548) and Kelly v. Mathers, (23
D.L.R., 225), which are referred to in a footnote
at page 491 in Wynes on the Legislative, Executive
and Judicial powers in Australia. It has not been
possible for us to read these Canadian cases, as
the Canadian reports are not available in Nigeria.
Counsel on both sides referred to the changes made
in 1957 to the pre-Independence Constitution, and
argued that these changes or contemporaneous legis-
lation relating to them supported their respective
submissions.

20 The historical argument has not been of any
great assistance in construing the 1960 Constitu-
tion. The position under that Constitution is that
the establishment and regulation of Tribunals of
Enquiry is contained in the incidental and supple-
mentary provisions, and the issue before us is
whether these Constitutional provisions are wide
enough to enable Parliament to enact for the
Federation legislation in terms of the Commissions
and Tribunals of Enquiry Act, 1961.

An examination of the Sugar Refining and other
related cases seems appropriate here. The extent
to which the principles laid down in those cases
should apply to Nigeria can then conveniently be
considered.

30 In the Sugar Refining case the Privy Council
considered the provisions of the Australian Royal
Commissions Acts, 1902-1912, which empowered the
Governor-General by Letters Patent to issue Com-
missions "to make inquiry into and report upon any
matter specified in the letters patent, and which
relates to or is connected with the peace, order
and good government of the Commonwealth or any
public purpose or any power of the Commonwealth".
The Act purported to enable a Royal Commission to
summons persons to give evidence and produce docu-
ments and prescribed penalties for failure to obey
40 any summons issued by a Commission. It was held
that the Act was ultra vires in so far as it pur-
ported to enable a Royal Commission to compel
answers generally to questions or to order the
production of documents or otherwise to compel
compliance by members of the public with its
requisition. The Judicial Committee considered
whether the legislation could be upheld under the
ordinary rules relating to incidental powers or

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under the incidental provisions of the Placitum xxxix of the Australian Constitution, which declared to be within the legislative capacity of the Central Parliament, "matters incidental to the execution of any power vested by this Constitution in the Parliament, or in either House thereof, or in the Government of the Commonwealth or in the Federal Judicature or in any department or officer of the Commonwealth". The Judicial Committee held that the legislation could not be supported under these incidental powers and said:-

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"The authority over the individual sought to be established by the Royal Commissions Acts, the new offences which they create, and the drastic powers which they confer, cannot, in their Lordships' opinion, be said to be incidental to any power at present existing by statute or at common law. A royal Commission has not, by the laws of England, any title to compel answers from witnesses, and such a title is therefore not incidental to the execution of its powers under the common law. And until the Commonwealth Parliament has entrusted a Royal Commission with the statutory duty to inquire into a specific subject legislation as to which has been by the Federal Constitution of Australia assigned to the Commonwealth Parliament, that Parliament cannot confer such powers as the Acts in question contain on the footing that they are incidental to inquiries which it may some day direct."

20

30

The decision in the Sugar Refining case was considered in ex parte Walsh (37 C.L.R., 36 at 70), where the Court held that matters incidental to the execution of a power must be ancillary to some specific power and cannot be linked to the general power of Parliament to legislate on all Federal matters or to the general executive power under section 61 of the Australian Constitution. Knox, C.J., after referring to the Sugar Refining case, said:-

40

"The question whether the section is a valid exercise of all the legislative powers of the Commonwealth may conveniently be considered with the question whether it is a valid exercise of the power conferred by sec.51(xxxix) of the Constitution read in conjunction with

sec.61. In my opinion, both these questions are covered by the opinion of the Judicial Committee in Attorney-General for the Commonwealth v. Colonial Sugar Refining Co. It is clear, from the words of sec.8 AA that the power which it purports to confer on the Minister extends to cases in which he may apprehend injurious results in relation to matters in respect of which the Parliament has not yet made and perhaps never will make any law whatever, and as to which the Executive has not and never may have any duties to perform, and that it is not restricted to matters in respect of which laws have been made. That is to say, the power to deport is given where the injury apprehended relates to a merely possible exercise of the legislative powers of the Parliament, or to a possible, but not actual, duty of the Executive to execute and maintain the laws, and is not confined to cases in which Parliament has exercised its power to make laws. The argument is, as I understand it, that this law is valid as being either a law in respect of every power of legislation which Parliament has, or a law ancillary or incidental to the execution of all those powers or to the execution of the powers vested in the Executive by sec. 61 of the Constitution. In my opinion, the decision to which I have referred establishes authoritatively that a possible exercise by Parliament of its legislative powers in respect of any or all of the matters in respect of which Parliament has power to make laws is not sufficient subject matter to support a law as a valid exercise of the power of legislation conferred by sec.51 (xxxix), or of that power read in conjunction with sec.61 of the Constitution or with any other legislative power of the Parliament."

The matter was further considered in the case of Le Mesurier v. Connor (42 C.L.R., 481 at 497), where Knox, C.J., Rich, J., and Dixon, J., (as he then was) drew attention to the distinction between matters incidental to the subject matter of legislation in accordance with the well-established rules of interpretation, and matters incidental to the execution of a power within the meaning of section 51 (xxxix) of the Australian Constitution. They said this :-

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"It has often been pointed out that the paragraph confers power to make laws with respect, not to matters incidental to the subjects which are confided, by sec. 51 or elsewhere, to the Parliament, but to matters which are incidental to the execution of the legislative power. The distinction between a matter incidental to the execution of a power, something which attends or arises in its exercise, and a matter incidental to a subject to which the power is addressed, is material. The principle that everything which is incidental to the main purpose of a power is contained within the grant itself, is so firmly established and so well understood in English law that it would have been superfluous to incorporate it in an express provision of the Constitution. Section 51 (xxxix) differs in this respect from the power conferred upon Congress by the Constitution of the United States to make all laws which shall be necessary and proper for carrying into execution the specific legislative powers, although, until the decision of the Privy Council in Attorney General for the Commonwealth of Australia v. Colonial Sugar Refining Co. this difference had not received enough attention."

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The effect of these decisions appears to be that in Australian ancillary legislation must come either within the well-established rules relating to matters incidental to the subject matter of legislation or be incidental to the execution of a specific existing power. We have found the decisions of the Australian Courts helpful in considering the Sugar Refining case in its relation to the ancillary provisions in the Constitution of the Federation. The Constitution of the Federation includes in Item 44 of the Exclusive List the two types of ancillary legislation mentioned in the Australian cases. Paragraph (a) clearly relates to matters ancillary to the subject matter of legislation, which in Australia is an implied power, and paragraph (b) of that Item relates to matters ancillary to the discharge of the functions referred to in that paragraph. It is true that Item 44 is a separate legislative power and refers to supplementary as well as incidental matters, but it is nevertheless ancillary only and must be construed accordingly.

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10 This leads to consideration of whether the Commissions and Tribunals of Enquiry Act, 1961, is a valid exercise of the power conferred by Item 44. The legislation is very similar to that which was under consideration in the Sugar Refining case. It covers the whole field of Federal Legislative competence, and possibly more, and enables a Commission of Inquiry, to compel the attendance of witnesses, the disclosure of information and the production of documents on any matter within that field designated by the Prime Minister. We are of the view that the legislation is too wide to come within paragraph (a) of Item 44. This paragraph would permit of legislation providing for Tribunals of Inquiry and matters incidental thereto, but it is not wide enough to provide generally for the attendance of witnesses, the disclosure of information and the production of documents as this is not incidental to legislation establishing or regulating tribunals or commissions of inquiry, as was held in the Sugar Refining case. The legislation does not come within paragraph (b) of that Item, as it is not ancillary to the discharge of any of the functions referred to in that paragraph. In this respect consideration has been given to the Attorney-General's submission that the legislation might be tied to other laws which provide for inquiries. It is possible that these laws might support a general Act dealing purely with procedure, if the general Act were incorporated in the other laws, but they cannot support the general powers given to the Prime Minister under section 3(1) of the Act to appoint Tribunals on any matter within Federal competence, with the compulsory powers referred to previously.

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30

We would accordingly hold that the Tribunals and Commissions of Inquiry Act, 1961, in so far as it applies to the whole Federation, exceeds the power of Parliament under the Constitution.

40 There is one other matter to which reference should be made, namely, the submission of the Attorney-General that a vast number of individual laws will have to be enacted if the general provisions are invalid. We do not think there is substance in this point, as it will be open to Parliament to follow the procedure adopted in Australia since the decision in the Sugar Refining case. The practice there is for the Commonwealth

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to enact specific legislation empowering the issue of Commissions of Inquiry relating to specific matters and to incorporate in them the provisions of a general Act relating to procedure. This practice is not dissimilar to that in England under the Tribunals of Inquiry (Evidence) Act, 1921, which provides that the procedure there prescribed shall apply where it has been resolved by both Houses of Parliament that it is expedient that a Tribunal of Inquiry be appointed for inquiring into a specific matter prescribed in the resolution.

10

In view of the above decision, it is unnecessary to consider a further submission to the effect that the Act is invalid on the ground that particular provisions exceed the power of Parliament and that these invalid provisions cannot be "severed" from the valid provisions or "read down" so as to comply with Constitutional requirements.

In reaching a decision on question 1, it is not necessary to consider section 22 of the Constitution of the Federation, which was mentioned but not argued before us. It may well be that on some future occasion we shall have to consider whether an Act in such general terms as the present one may not be in conflict with the section.

20

The second and third questions, which are relevant in so far as the Act applies to the Federal Territory of Lagos, must now be considered.

The second question relates to Section 3(4) of the Act, which reads as follows:-

30

"The fact that a commission is issued under this section shall be sufficient proof of the proper exercise by the Prime Minister of his authority to do so; and neither the Commission itself nor any action of the Prime Minister in relation thereto shall be enquired into in any court of law."

The Attorney-General conceded before us that he could not support his argument in the court below that the jurisdiction of the courts is completely ousted. He argued before us that the provision means no more than that the Courts cannot inquire into the desirability of appointing a Commission, which is a matter for the discretion of

40

the Prime Minister, but said that, if the Court held that the words exceeded this, then the provision should be "read down" so as to comply with the Constitutional requirements. We do not think that the wording of the sub-section is capable of the construction that it applies only to the discretion of the Prime Minister, and we consider that the sub-section is clearly contrary to the provisions of sections 21, 31 and 108 of the Constitution. This defect could only be remedied by the deletion of the sub-section (which in any event is unnecessary in so far as it may relate only to the well-established rules relating to the exercise of discretionary power) or by completely redrafting the sub-section so as to make it a declaratory provision only. In these circumstances, we would hold that Section 3(4) of the Commissions and Tribunals of Inquiry Act, 1961, is unconstitutional and invalid.

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20 The next question relates to Sections 8(c), (d), 15(a) and 18(1)(b) of the Act. The Sections can conveniently be considered together, as the issues involved are:-

- (a) Is the provision enabling Commissioners to compel the attendance of a witness by warrant of arrest a valid provision?
- (b) Are the provisions which enable the Commissioners to impose a sentence of imprisonment valid?

30 (c) Are the provisions which provide that the Commissioners may impose a fine enforceable in the same way as a fine imposed by a magistrate, that is by imprisonment, valid?

40 The power in (a) does result in a deprivation of liberty within the meaning of Section 20(1) of the Constitution, but it is valid as coming within the permissible circumstances prescribed under that sub-section. It is clear that a witness has imposed upon him the duty of giving evidence before the Commission, and, if he fails to fulfil that obligation, he can be deprived of his personal liberty for the purpose (but only for the purpose) of securing fulfilment of that obligation. The relevant provisions of Section 20(1) are as follows:-

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"No person shall be deprived of his personal liberty, save in the following cases and in accordance with a procedure permitted by law,

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law."

The power of the Commissioners to impose imprisonment is clearly contrary to the provisions of Section 20, and this was not disputed by the Attorney-General. This must also apply to the power to impose a fine which is enforceable by imprisonment. In these circumstances we would hold that Sections 8, 15 and 18 are invalid to the extent that they purport to empower a Commission to inflict a punishment of a fine or imprisonment, and that the Sections should be "read down" accordingly.

10

For the reasons given in this judgment we would answer the three questions referred to us as follows:-

20

1. The Commissions and Tribunals of Inquiry Act, 1961, is not within the competence of the legislative power of the Federal Parliament in so far as the said Act purports to have effect in relation to matters and things within Federal competence anywhere within the Federation.
2. Section 3(4) of the said Act is void.
3. Section 8(c) is valid. Sections 8(d), 15(a) and 18(1)(b) are void to the extent that they empower the Commissioners to impose a sentence of fine or imprisonment.

30

We would assess the cost of each plaintiff at One hundred and fifty guineas and direct that these costs be costs in the cause.

(Sgd.) A.A. ADEMOLA
CHIEF JUSTICE OF THE FEDERATION

(Sgd.) L.M. MBANEFO
CHIEF JUSTICE OF THE EASTERN REGION

(Sgd.) E. UNSWORTH
FEDERAL JUSTICE

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Mr. Dingle Foot, Q.C. (Messrs. O.B. Akin-Olugbede and Dick Taverner with him) for Chief Doherty.

Chief F.R.A. Williams, Q.C. (Messrs. M.A. Odesanya, S. Agbeje Williams, S.C.A. Adepagbe and G.C. Nzegwu with him) for Western Nigeria Development Corporation.

Mr. T.O. Elias, Q.C., Attorney-General (Mr. S.D. Adebiyi with him) for Sir Abubakar Tafawa Balewa.

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1961.
- continued.

In the second place, I think it of great importance that due weight should be given to any differences in wording between the Nigerian Constitution and the Australian Constitution. I need not labour the point that no two written constitutions are identical in intention or effect, but it may fairly be said that while in a number of matters the framers of the Nigerian Constitution thought fit to follow the general outline of the Australian Constitution, and even to adopt its actual wording, in other matters there was a departure from the Australian Constitution of such a kind as to suggest that it was designed not merely to meet the different needs of Nigeria but to avoid specific difficulties to which the Australian Constitution had given rise. Example of this may be found in the provisions for the implementation of treaties and for freedom of inter-territorial trade and commerce in ss.69 and 71 of the Nigerian Constitution. The framers of the Nigerian Constitution, in fact, attempted to improve on earlier federal constitutions, and where they altered the wording they did so with a purpose.

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This being so, any interpretation of the powers of Parliament in Nigeria must take into consideration the fact that it is expressly empowered to make laws for the peace, order and good government of Nigeria (other than the Federal territory) with respect to any matter, including the establishment and regulation of tribunals of enquiry, that is incidental or supplementary to any matter referred to in Item 1 to 43 of the Exclusive Legislative List, and it is arguable that this express power is wider than the corresponding power possessed by the Australian Parliament by the operation of the rules of common law on the interpretation of the Australian Constitution.

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I therefore approach the first of the questions referred to us in this case bearing in mind the observations in the Sugar Refining case as to the interpretation of a truly federal constitution, and bearing in mind also that the Nigerian Constitution, like the Australian Constitution, is "an instrument which was fashioned with great deliberation", and that decisions on the meaning of another constitution are guides to be used with caution.

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I have already suggested that the Nigerian Constitution itself gives reason to suppose that its framers were aware of, and tried to avoid, difficulties which had arisen under other federal constitutions, and in particular the Australian Constitution. If it was their intention to confer wider powers in relation to tribunals of inquiry on the Nigerian Parliament then the Australian Parliament possesses, I think it is a fair comment that they have not chosen to adopt anything like such express words for that purpose as in the instances which I have already cited, relating to the implementation of treaties and the freedom of inter-territorial trade and commerce. The inclusion of Item 44(a) as a separate matter in the Exclusive Legislative List, the reference to supplementary as well as incidental matters, and the express mention of the establishment and regulation of tribunals of enquiry in Part III of the Schedule must all be given their due significance, but the express mention of a matter in Part III of the Schedule does not take it out of the category of incidental and supplementary matters, and the power of Parliament in relation to tribunals of enquiry remains a power in relation to a matter incidental or supplementary to other matters. The submission that when an ancillary power of this kind is conferred it is not to be exercised in such a way as to interfere with personal rights independently of the exercise of the power to which it is incidental or supplementary, seems to me to be well founded. To give an example, the right to enter on private land for specific purposes might reasonably be held to be incidental or supplementary to a variety of matters in the Legislative Lists, but this would not enable Parliament to confer a general right of entry, nor would the right to require the necessary information on which to base an assessment to tax validate a law requiring such information except for the purpose of assessing liability to an actual tax. For these reasons I agree that the compulsory powers contained in the Commissions and Tribunals of Inquiry Act, 1961, are ultra vires to the extent set out in the judgment which has been read.

I would respectfully adopt what has been said with reference to s.22 of the Constitution of the Federation.

In the Federal
Supreme Court
of Nigeria

No. 20

Judgment.
(b) Brett, F.J.

27th October,
1961

- continued.

In the Federal
Supreme Court
of Nigeria

No. 20

Judgment.
(b) Brett, F.J.
27th October,
1961
- continued.

(c) Taylor,
F.J.
27th October,
1961.

As regards the second and third questions referred to this Court, I have nothing to add to what has been said in the judgment read by the Chief Justice and I am content merely to express my concurrence.

(Sgd.) L. BRETT

FEDERAL JUSTICE.

(c) TAYLOR, F.J.:

I have had the benefit of reading the Judgment of the Court, delivered by my Lord the Chief Justice and with which judgment I wholly agree. There are, however, two matters which were not specifically dealt with and to which I shall now briefly turn my attention.

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In the first place, Mr. Dingle Foot Q.C., who appeared for Chief Doherty, the plaintiff, endeavoured to draw a distinction in meaning between the words "Commission" and "Tribunals", the former appearing in the Commissions of Inquiry Ordinance, Cap.36, and the latter in Part III of the Schedule to the 1960 Constitution. Part III has been referred to in full in the judgment read by My Lord the Chief Justice, and I will not here quote it again. Mr. Foot contended that by this change of terminology, the authors of the Constitution envisaged a difference between the two words or bodies. He sought by references to the Law Lexicon and the Oxford Dictionary to show that the two words in fact have different meaning. Finally our attention was drawn to s.2(2) of the Commissions and Tribunals of Enquiry Act 1961 which reads as follows:-

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"A commission of inquiry is a tribunal of enquiry and accordingly references in this Act to commissions of enquiry shall include references to any tribunal of enquiry or court of enquiry however established."

This, Counsel pointed out, shows that Parliament envisaged a difference between a commission

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and tribunal of enquiry. The latter, Mr. Foot would liken more to a Court. I do not think this sub-section bears out Counsel's contention, for a perusal of it shows that if Mr. Foot's argument is correct then three bodies were contemplated - a commission of inquiry, a tribunal of enquiry, and a court of enquiry. Indeed, the word "tribunal" was said in Racecourse Betting Control Board v. Secretary of State for Air, 1944, 1 A.E.R.60 to be capable of three meanings; a court or an arbitration tribunal or a special tribunal, depending on the context in which they appear. As Lord Greene, M.R. said at page 62 of the report:-

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"It is competent to the legislature to set up any kind of tribunal that it pleases. The questions to be determined in any particular case are; what is the true nature of the tribunal which the legislature has established and what are the powers, if any, which have been conferred upon the courts with regard to its decisions: These questions must be decided by a consideration of the statute and the true interpretation of its provisions."

I can see nothing in the 1960 Constitution, and in the particular sections 45, 102, 103, 120 and 150 to which our attention was drawn, to bring me round to the view that by the use of the words "Tribunals of Enquiry" in Part III it was intended that a different meaning should be placed on it than was formerly placed on the words "Commissions of Enquiry".

The other matter was that raised by the Attorney-General, that the Commissions of Inquiry Ordinance, before its repeal on the 20th July, 1961, was an "existing law" within the meaning of s.3 of the Nigeria (Constitution) Order-in-Council, 1960, and that as such the Federal Parliament is empowered to enact the Commissions and Tribunals of Enquiry Act, 1961. He then went on to show that there were "existing laws" on which this "general law" could be hung. The answer to this, of course, is that even if it were an existing law, that by itself will not save the 1961 Act on which it is hung if in fact the latter Act is inconsistent

In the Federal
Supreme Court
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with the provisions of the Constitution. In this respect the case of J.S. Olawoyin v. Commissioner of Police F.S.C.73/1961 is pertinent, and from it I quote the following passage from the judgment of the Court:-

"The argument against the validity of s.59C of the Northern Region High Court Law, as expressed by Chief Rotimi Williams, is as follows:-".....

after setting out Counsel's contention on Chapter IV of the Constitution of Northern Nigeria it goes on to say that:-

"section 3 of the Nigeria (Constitution) Order in Council, 1960, only saves an existing law if it is in conformity with the constitution"

This contention of learned Counsel was accepted by the Court. This argument of the learned Attorney-General does not therefore take the matter any further.

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(Sgd.) JOHN TAYLOR

FEDERAL JUSTICE.

In the Federal
Supreme Court
of Nigeria

Williams Q.C. (Mr. S. Agbaje Williams with him)
of counsel for the 2nd Respondent, Western Nigeria
Development Corporation;

No. 21

Order Granting
Conditional
Leave to Appeal.
5th December,
1961
- continued.

IT IS ORDERED that leave to appeal to the
Privy Council be granted on the following Condi-
tions:

1. That the Record of Appeal be prepared
free of charge.
2. That the Honourable the Attorney-General
do assure the Respondents in writing
that Government guarantee such costs
which may be due to them in the event
of the Appellant not obtaining an order
granting him final leave to appeal, or
of the appeal being dismissed for non-
prosecution or of Her Majesty in Council
ordering the Appellant to pay the Res-
pondents costs of the appeal (as the case
may be).

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(Sgd.) J.A. ADEFARASIN

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CHIEF REGISTRAR.

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL

In the Federal
Supreme Court
of Nigeria

IN THE FEDERAL SUPREME COURT OF NIGERIA

HOLDEN AT LAGOS

Suit Nos. LD/355/61
LD/326/61
FSC. 326/1961

Order Granting
Final Leave to
Appeal to Her
Majesty in
Council.

5th February,
1962.

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APPLICATION for an ORDER for FINAL LEAVE
to APPEAL to PRIVY COUNCIL

BETWEEN:

SENATOR CHIEF T. ADEBAYO DOHERTY Plaintiff/
Respondent

- and -

SIR ABUBAKAR TAFAWA BALEWA (Prime
Minister of the Federation) and 3 others Defendants

- And -

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WESTERN NIGERIA DEVELOPMENT CORPORATION Plaintiffs/
Respondents

- and -

SIR ABUBAKAR TAFAWA BALEWA (Prime
Minister of the Federation) and 3 others Defendants

In re SIR ABUBAKAR TAFAWA BALEWA
(Prime Minister of the Federation) Appellant

(L.S.)

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(Sgd.) A.Ade.Ademola
CHIEF JUSTICE OF
THE FEDERATION.

Monday the 5th day of
February, 1962.

UPON READING the application herein, the
affidavit sworn to on the 28th December, 1961 and
the further affidavit sworn to on 18th day of Jan-
uary, 1962, both filed on behalf of the Appellant

In the Federal
Supreme Court
of Nigeria

No. 22

Order Granting
Final Leave to
Appeal to Her
Majesty in
Council.

5th February,
1962

- continued.

and after hearing Mr. S.D. Adebisi, Senior Crown
Counsel, of counsel for the appellant and Chief
F.R.A. Williams (Mr. Adepegba with him) of counsel
for the Respondents:

IT IS ORDERED that final leave to appeal
to Privy Council be granted.

(Sgd.) S.A. SAMUEL

AG. CHIEF REGISTRAR.

ON APPEAL
FROM THE FEDERAL SUPREME COURT OF NIGERIA

B E T W E E N:

SIR ABUBAKAR TAFAWA BALEWA Appellant

- and -

SENATOR CHIEF T. ADEBAYO DOHERTY Respondent
SIR VAHE ROBERT BAIRAMIAN, }
JAMES MALCOLM HARRISON, and } Pro-forma
GERALD PERCY COOKE } Respondents

AND B E T W E E N:

SIR ABUBAKAR TAFAWA BALEWA Appellant

- and -

WESTERN NIGERIAN DEVELOPMENT CORPORATION Respondent
SIR VAHE ROBERT BAIRAMIAN, }
JAMES MALCOLM HARRISON, and } Pro-forma
GERALD PERCY COOKE } Respondents

(CONSOLIDATED)

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