

Privy Council Appeal No. 13 of 1962

Sir Abubakar Tafawa Balewa - - - - - *Appellant*

v.

Senator Chief T. Adebayo Doherty and others - - - *Respondents*

FROM

THE FEDERAL SUPREME COURT OF NIGERIA

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 3RD JULY 1963**

Present at the Hearing:

VISCOUNT RADCLIFFE.

LORD JENKINS.

LORD GUEST.

LORD DEVLIN.

SIR KENNETH GRESSON.

[Delivered by LORD DEVLIN]

This is an appeal from a decision of the Federal Supreme Court given in the exercise of its powers under section 108 of the Federal Constitution. This section allows questions of law as to the interpretation of the Constitution which arise in an inferior court to be referred to the Supreme Court so that it may give its decision upon them. The appeal is brought before the Board by leave of the Supreme Court given under section 114 (2) of the Constitution.

The questions arose in the course of proceedings before the High Court in Lagos and concern the constitutionality of the Commissions and Tribunals of Inquiry Act 1961, which is a Federal statute. In pursuance of his powers under that statute the appellant, the Prime Minister of the Federation, on the 21st July, 1961, appointed a tribunal to inquire into the affairs of the National Bank of Nigeria. The first respondent (the only one who appeared before the Board) is a director of the Bank and on the 25th July, 1961, the day on which the tribunal held its first meeting, he applied to the High Court of Lagos for an injunction to restrain the tribunal from proceeding further. The High Court ordered that the following three questions should be referred to the Supreme Court.

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.

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.

Before considering the answers which the Supreme Court gave to these questions, it is convenient to refer to previous legislation on tribunals of inquiry and to some of the provisions of the Constitution,—the earlier Constitution of 1954 as well as the present one of 1960,—in relation to that subject. In 1940, when Nigeria was still a unitary state, there was enacted an ordinance empowering the Governor-General to set up commissions of inquiry. This ordinance was of the same sort as the Tribunals of Inquiry (Evidence) Act 1921 in force in Great Britain. The Act of 1961 is a repetition with minor alterations of the Ordinance of 1940.

The Constitution of 1954 established the Federation out of the three regions of Nigeria, Northern, Western and Eastern, the South Cameroons (which for the purposes of this appeal their Lordships can ignore) and the Federal Territory of Lagos. The Federal Legislature was given complete power in the Federal Territory of Lagos, but in the regions the legislative power was divided between the Federal Legislature and the Legislatures of the Regions. The Constitution specified two legislative lists, one called the Exclusive and the other the Concurrent. The Federal Legislature alone could legislate with respect to any matter on the Exclusive list. Both the Federal and the appropriate Regional Legislature could legislate on any matter on the Concurrent list. The Regional Legislature alone could legislate on matters not specified on either list. All this is to be found in section 51 of the Constitution. So that, as was said in the principal judgment delivered in the Supreme Court in the present case by the Chief Justice of the Federation, the Chief Justice of Eastern Nigeria and Unsworth, F.J., "the Nigerian Constitution is a truly federal constitution in which the residual powers are vested in the regional government".

In the 1954 Constitution "Commissions of Inquiry" was a subject specified in the Concurrent list. The result of this would appear to be that either the Federal or a Regional Legislature could set up a commission to inquire into any subject, even one that was within the exclusive competence of the other legislature. This was evidently not what was intended, and it is natural to suppose that neither legislature would want to inquire into matters on which it could not legislate. Consequently, an alteration was made in 1957 by Order in Council, S.R. & O. 1530. The change was effected by deleting "Commissions of Inquiry" from the Concurrent list and introducing it into Part IV of the Schedule, which is headed "Interpretation". This method of dealing with the matter was retained in the 1960 Constitution. It is unnecessary to set out the exact language used in the 1957 amendment; it was slightly varied in the 1960 Constitution which is what their Lordships will have to construe. The broad effect of the change in 1957 was that the establishment and regulation of tribunals of inquiry for the purpose of any of the matters specified in each list was deemed to be "an incidental matter", and so brought within the general item covering incidental matters with which each list concludes. Their Lordships will have to consider later what exactly the result is of changing a subject from one that is separate and specified to one that falls within a general and incidental category. The first respondent contends that the change makes a significant difference to the legislative power.

The 1960 Constitution by section 64 retains with some alterations the Exclusive and Concurrent lists and the division of legislative powers initiated by section 51 of the 1954 Constitution. But the 1960 Constitution also gives power directly to Parliament, that is, the Federal Legislature, to make laws on a number of matters specified in separate and independent sections. These additional powers are categorised in two different ways. Some of them are gathered together and the independent sections enumerated in Item 43 of the Exclusive list. The effect of this is the same as if they were each made an independent item in the list. One of these is Banks and Banking, in respect of which Parliament is directly empowered by section 72 of the Constitution to make laws. The rest are gathered together in section 64 (3) of the Constitution where they are described as "matters not included in the legislative lists" and a general power to Parliament to make laws on such matters is conferred or repeated by that sub-section. This second category, which their Lordships will term the section 64 (3) category, contains such matters as emergency powers, implementation of treaties, administration of trusts and estates, film censorship and evidence.

The Schedule to the 1960 Constitution is headed "The legislative lists" and is divided into three parts,—the Exclusive list, the Concurrent list and a third part headed "Interpretation" which is common to both. The interpretation is concerned entirely with the amplification of the general and incidental item which concludes each list. Item 44, the last item on the Exclusive list, is in the following terms:—

- " 44. 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 of any function conferred by this Constitution.”

Article 1 of Part III (Interpretation) is in the following terms:—

“ 1. 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;
- (d) The establishment and regulation of tribunals of inquiry ”.

Since banking is a subject within Item 43 of the Exclusive list, it must be beyond doubt that Parliament has power to provide for an enquiry in some form into banking. But their Lordships do not have to decide whether if Parliament had authorised directly an inquiry on the same terms as the Prime Minister did on 21st July, 1961, by Government Notice No. 1446, the legislation would have been good or bad. It is difficult to see what objection could be taken at any rate to paragraph 5 of the terms of reference, namely, whether the affairs of the bank have been conducted in accordance with the Banking Ordinance, 1958. But their Lordships are not considering any specific legislation. They are concerned with a statute which confers upon the appellant, the Prime Minister of the Federation, wide powers to set up commissions or tribunals of inquiry generally. It is upon the validity of that statute that the appellant's action in ordering an inquiry into the affairs of the Bank of Nigeria depends. That is why their Lordships have not been content simply to note that banking is a Federal subject but have had to study the general lawmaking powers which the Constitution gives to Parliament.

The Act of 1961 cannot be declared invalid as a whole. Much of it is unobjectionable. For the purpose of a broad analysis it can be looked at from three aspects. There is, first of all, a group of provisions which provide for the setting up of commissions of inquiry and for the procedure which they are to follow and which deal with such matters as the use of interpreters and representation by counsel. The Act refers to commissions of inquiry where the constitution speaks of tribunals. But there is nothing in this beyond nomenclature, since section 2 (2) of the Act provides that a commission is to be treated as a tribunal. With one exception, these provisions cannot in their Lordships' opinion be directly attacked. Apart from any question on the spending of public money (and no objection was raised before their Lordships on that score) there is nothing in the constitution to prevent the Prime Minister with or without legislative authority from authorising such inquiries as he thinks fit and that is all that section 3 (1) taken by itself gives him power to do. It might offend against the comity of legislatures if one body were formally to inquire into subjects within the exclusive competence of another, but it is not forbidden by the constitution. The sole provision in this category that is vulnerable is section 3 (4) which provides that neither the Commission itself nor any action of the Prime Minister in relation thereto shall be inquired into in any court of law. The validity of this provision is the subject of the second question addressed to the Supreme Court. Their Lordships agree with the answer given to this question by the Supreme Court and with the reasoning by which it is supported. They hold this provision to be invalid.

The second aspect reveals a number of provisions scattered over the Act but contained principally in section 8 which give to the commissioners powers which may conveniently be described as compulsive powers. They are powers to take evidence on oath and to compel the attendance of witnesses and the production of documents. They are to be distinguished from merely procedural powers, such as those which involve the use of interpreters and the appearance of counsel. The characteristic of the compulsive power is that it involves an interference with the liberty of the subject. Not all the powers in section 8 are compulsive. The section contains, for example, powers to exclude the public and press and powers to award costs, payable presumably out of public money. The compulsive powers which have been attacked are those contained in section 8 (a) to (d).

The third aspect reveals provisions, also in various parts of the Act, that are supplementary to the compulsive powers and introduce sanctions in support of them. The validity of these provisions depends of course on the validity of the compulsive powers. But an additional objection has been raised to them, which is the subject of the third question addressed to the Supreme Court. The answer to that question is now agreed, so that their Lordships can dispose of this objection briefly at this stage. There are provisions which enable the Commission itself to fine or imprison for disobedience to its orders; and there are provisions which make such disobedience an act of contempt punishable by an ordinary court of law. Provisions in the former category, it is agreed, offend against certain sections of the constitution which it is now unnecessary to enumerate. Provisions in the second category are agreed to be valid in so far as the grant of compulsive powers is valid.

Thus the fundamental question which their Lordships have to determine is to what extent the grant of compulsive powers is valid. It has not been attacked as wholly invalid. There is no question of section 8 (a) to (d) being struck out of the Act. What is contended is that, while Parliament has power to set up an inquiry into any subject, it can equip with compulsive powers only a tribunal which is inquiring into a limited range of subjects; and that section 3 (1), which defines the range of subjects into which tribunals may inquire, is too wide. Thus section 3 (1) is brought back into the arena, not, so to speak, in its own defence, but because it is relevant to the attack on section 8.

Section 3 (1) defines four categories of subjects and the first is to be sharply distinguished from the other three. The first covers "any matter or thing within or affecting the general welfare of the Federal territory". In respect of such matters there is no division of legislative power and the Federal Parliament can legislate with full sovereign authority so it is not disputed that it can equip with compulsive powers any inquiry that comes within the first category. The other three relate to matters on which the legislative power is divided.

Section 8 begins with the words

"subject to the provisions of this section the Commissioners shall have and may exercise all or any of the following powers"; and there follow in subsections (a) (b) (c) and (d) the compulsive powers which are in question here. It might conceivably have been argued that if it could be shown that compulsive powers could not be granted in respect of any one of the categories in section 3 (1), section 8 (a) to (d) would be wholly invalid. But that has not been contended. Section 8 (a) to (d) has been treated, rightly in their Lordships' opinion, as separate and distinct in its application to each of the four categories in section 3 (1). Since section 8 (a) to (d) is unquestionably good in its application to the first category, the question for the Board is whether it is valid in its application to any or all of the other three categories.

The attack is made in two ways. Both start from the basis that the Federal power to legislate on tribunals of inquiry is restricted by the fact that it is not a separate and independent matter in the legislative lists but one that is incidental or supplementary. First it is said that Parliament has no power to equip with compulsive powers any tribunal of inquiry into any subject whatsoever because the conferment of compulsive powers is incapable of being an incidental or supplementary matter. Secondly, it is said, that if it can grant such powers, it can do so only to commissions of inquiry into subjects or matters which are incidental or supplementary to matters specified in the legislative lists. It is contended that the second, third and fourth categories are described so as to cast the net much wider than that.

If either attack succeeds, the appellant will fail and the first question addressed to the Supreme Court must be answered adversely to him. But it is plain that the first attack is more dangerous and far-reaching than the second. If the second alone is successful, the government may still achieve its object by presenting to Parliament an amended version of section 3 (1) with a narrower and more precise description of the categories of subjects into which inquiries can be authorised. But if the first attack is

successful, Parliament cannot authorise any really effective inquiry into the affairs of the National Bank or into any other subjects, because it can never authorise the use of compulsive powers.

Their Lordships will deal first with the first head of attack which succeeded before the Supreme Court and was the chief reason for their answering the first question adversely to the appellant. In the principal judgment it is said:—"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*." Brett, F.J. said:—" . . . the power of Parliament in relation to tribunals of inquiry 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 "

Before examining this reasoning their Lordships will consider the case on which the Supreme Court relied, *A.G. for Australia v. Colonial Sugar Limited* [1914] A.C. 237. This case has some marked similarities to the present one. It involved the interpretation of the Constitution of the Australian Commonwealth which like the Nigerian is a truly Federal Constitution. Like the Federation the Commonwealth has power to legislate only on specified subjects and on what is incidental to them. The Act with whose validity the Board was concerned was the Royal Commissions Act 1902-1912 which authorised the Governor-General to direct inquiries into any matter "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 gave to the Commissioners compulsive powers. What was in issue was not the validity of the Act as a whole but only the compulsive powers, as Fullagar, J. later pointed out. He said in *Lockwood v. The Commonwealth* [1953] 90 C.L.R. 177 at 182:—"Apart from a possible objection, based on section 81 of the Constitution, to the application of public moneys of the Commonwealth to matters outside the powers of the Commonwealth, I can think of no sound reason why the Commonwealth should not make an inquiry into any subject matter which it may choose. Where, however, the subject matter of the inquiry lies outside the field of Commonwealth power, the Commonwealth cannot constitutionally confer compulsive powers on any body set up to make the inquiry."

Haldane, L. C., who delivered the opinion of the Board in the *Colonial Sugar* case, started from the basis that power to impose under penalties new duties on persons residing in the individual states was *prima facie* vested in the legislature of the states to whom the residual power belonged. None of the specific subjects on which the Commonwealth had power to make laws for peace, order and good government, Lord Haldane said at 255, "relate to that general control over the liberty of the subject which must be shown to be transferred if it is to be regarded as vested in the Commonwealth. It is of course true that under the section the Commonwealth Parliament may legislate about certain forms of trade, about bounties and statistics, and trading corporations. Such legislation might possibly take the shape of statutes requiring and compelling the giving of information about these subjects specifically. But this is not what the Royal Commissions Acts purport to do. Their scope is not restricted to any particular subject of legislation or inquiry, and no legislation has actually been passed dealing with specific subjects such as those to which their Lordships have referred as matters to which legislation might have been directed giving sanction to some of the inquiries which the Royal Commissioners are now making". The general power permitting legislation on matters incidental to the execution of any specific power, did not, Lord Haldane said, carry the question further, for

it covered only matters which are incidents in the exercise of some actually existing power. He continued at 257:— “. . . 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”.

Although it will be necessary to give effect to some differences in the phraseology on this point between the Australian and the Nigerian Constitutions, there is much in the opinion of the Board in the *Colonial Sugar* case which their Lordships now find of great assistance to them as they address their minds to the problems in the present case. It is especially so in relation to the conception of a power or matter that is incidental to another power or matter. That is something their Lordships will have to consider later. But the case lends no support to the argument that the provision of compulsory powers can never be regarded as an incidental or supplementary matter. The Board stated plainly that in certain circumstances it could be. What was condemned was the provision of compulsory powers for inquiries which were still hypothetical.

If the argument stopped at this point, the *Colonial Sugar* case could be cited as an authority for the view that compulsive powers can be granted to tribunals of inquiry into specific matters about which Parliament is actually legislating or has legislated. But it does not stop there, because the Nigerian Constitution, differing in this respect from the Australian, specifically enacts that the establishment of tribunals of inquiry is to be deemed an incidental or supplementary matter. The question which their Lordships are now considering, that is, whether Parliament can ever grant compulsive powers, cannot in their opinion be answered one way or another by reference to the *Colonial Sugar* case. It turns entirely on what is meant by “tribunal of inquiry” in Part III of the Schedule. Does the term signify a body equipped with compulsive powers? If it does not, there is nothing else in the Constitution enabling Parliament to confer such powers. It is true that in the *Colonial Sugar* case, as their Lordships have just pointed out, the incidental power was held in certain circumstances to be exercisable for this purpose. But interpretation provisions can limit as well as amplify. If by interpretation the “incidental and supplementary matters” are expressly expanded to include bodies of inquiry without compulsive powers, it would be difficult to argue that such matters could without the aid of the interpretation provisions include bodies with such powers. If on the other hand “tribunal of inquiry” means a body with compulsive powers, then the first and comprehensive attack on section 8 (a) to (d) is repelled.

In their Lordships’ opinion the tribunal of inquiry referred to in the Schedule means a body with compulsive powers. They hold this opinion for two reasons. The first is that a tribunal of inquiry as a body equipped with compulsive powers was already known to Nigerian law. Their Lordships have referred to the Ordinance of 1940. Section 7 of that Ordinance, which contains the powers with regard to the obtaining of evidence, is in almost exactly the same terms as section 8 of the Act of 1961. This suggests very strongly to their Lordships that when the framers of the Constitution of 1960 referred to a tribunal of inquiry, they intended a body that could be equipped with such powers.

The second reason is that if they had not intended such a body, there would have been no need to have made any constitutional provision at all. It does not require a provision of the Constitution to enable anyone, whether a minister or a private citizen, to set up a body to seek information from anyone else who is willing to give it. The appointment of a committee of that sort is an ordinary ministerial act; it is not legislative in character. It is impossible to suppose that Parliament was given expressly the power to establish by legislation and to regulate tribunals of inquiry if all that was contemplated was bodies without inquisitorial powers, for the creation of a powerless body is something that any individual can do. Their Lordships

therefore respectfully disagree with the views of the Supreme Court on this point and do not think that the 1961 Statute can be attacked successfully on this ground.

Their Lordships will now consider the other head of attack. The second, third and fourth categories defined by section 3 (1) as subjects of inquiry are as follows:—

- (2) Any matter or thing within Federal competence anywhere within the Federation,
- (3) the conduct of any chief, and
- (4) the management of any department of the public service.

The Attorney-General was unable to point to any provision which gave to the Federal Parliament or Executive general control over the conduct of a chief. Nor could he justify the extent of the fourth category, which is not confined to the Federal public service but is wide enough to cover the public service of a Region. In their Lordships' opinion compulsive powers cannot be attached to inquiries in these two categories. It is however the second category which is the important one in this case for the power to direct an inquiry into banking comes within it.

It is clear from what their Lordships have already said that there are matters "within the Federal competence" which are not referred to in the legislative lists. These are the matters within the section 64 (3) category. The power to establish a tribunal depends upon it being "incidental or supplementary to any matter referred to elsewhere in this list": that is a quotation from Item 44 of the Exclusive list and Item 28 of the Concurrent list is to the same effect. There is therefore no power to establish a tribunal with compulsive powers to inquire into any matter within the section 64 (3) category. The definition "within Federal competence" is too wide. It is not for their Lordships to speculate as to why the framers of the Constitution drew a distinction between Item 43 subjects and section 64 (3) subjects, putting the former into the legislative list and leaving the latter outside. It is not a distinction drawn in the 1954 Constitution: see First Schedule Part I, Item 43. But it is clearly introduced into the 1960 Constitution and in the face of it their Lordships cannot accept the argument of the Attorney-General that the legislative power to establish tribunals of inquiry applies equally to both. Nor can they accept his argument that the additional subjects in section 64 (3) category are for this purpose unimportant and can be ignored.

This leads to the most difficult question in the case. Can the definition "within Federal competence" be read down so as to cover only matters referred to in the Legislative lists; and if so read down, would the attachment of compulsive powers to inquiries in this category be valid?

In their Lordships' opinion the definition cannot be read down. There is no special provision in the Constitution giving to the Court any power of interpretation greater than that which flows from the ordinary rule of construction. The question is therefore whether the good can be severed from the bad and so survive. Clearly, it cannot here be done under the "blue pencil" rule. There is no excess which can be struck out. Nor can their Lordships be confident that if Parliament had been made aware that compulsive powers could not be validly given in section 64 (3) subjects, it would still have wished to have given them in Item 43 subjects. The object of the Act is to confer a blanket power on the Prime Minister to direct inquiries into any matters within Federal competence instead of having to come to Parliament for specific authorisation in each case. If Parliament had been told that it could give a blanket power of enquiry only into some matters within Federal competence and not into others, it might very well have said that half a blanket was better than none and have amended the Bill accordingly. But it is possible that it might have said that if the Prime Minister could not be given the complete power he wanted, it would be better that he should ask for specific powers as and when he wanted them. It may be that the former is much more likely to have happened than the latter. But where there is the slightest doubt about what Parliament would have intended, their Lordships cannot speculate. They have themselves no legislative power and they cannot re-write the Act.

This conclusion makes it unnecessary for their Lordships to determine whether, if the second category could be re-written as "any matter specified in the Legislative lists", compulsive powers could validly be attached. But as that may be a question of great importance if further legislation on this topic is contemplated and as their Lordships have listened to much argument about it, they think it would be useful if they expressed an opinion. It would indeed be quite natural for the Constitution to give to Parliament the power to establish a tribunal of inquiry into any matter about which it could legislate. But the simple and obvious way of doing that would be to add to the end of each legislative list an item such as "the establishment and regulation of tribunals of inquiry into any of the above matters". If there were an item in that form, a general act authorising the establishment of tribunals of inquiry into any matter on the list might well be valid.

But that is not the way that was chosen. Under the Schedule as it is framed it is not enough that the inquiry should be into one of the listed matters; it is necessary also that the establishment of the tribunal should be incidental or supplementary. The function of Part III (Interpretation) is to dispose of the possible argument that the establishment of a tribunal is something that of its nature is incapable of being classed as incidental or supplementary. If it was sought without the aid of Part III to argue that any of the matters specified in Part III was incidental to some listed matter and could be provided for accordingly, the answer might have been made that things such as the creation of offences, the compulsory acquisition of land and the establishment of tribunals were subjects too important in themselves to be introduced simply as incidents. Part III excludes that possible answer. ~~But it does not elevate the four things it enumerates into separate items.~~ They are not to be treated as if they were Items 45 to 48 of the Exclusive List and also Items 29 to 32 of the Concurrent List. They are confined within the limits of Items 44 and 28 respectively. So no offence can be created, no court of law regulated, no land compulsorily acquired and no tribunal established unless the creation, the regulation, the acquisition or the establishment is incidental or supplementary to some other matter. Some connection must be shown between the two matters; and when shown, it must be examined to see whether the one matter is sufficiently close to the other to be called incidental or supplementary to it. Now, one cannot talk sensibly of an offence being incidental or supplementary to banks or banking, or to railways (Item 37) or to trunk roads (Item 39). But if there has been legislation about trunk roads, one can ask oneself whether the creation of the particular offence can properly be called an incidental or supplementary part of that legislation.

In short, their Lordships take the same view of the legislative power conferred by Item 44 as the Board took of the similar power considered in the *Colonial Sugar* case. The power is not wide enough to authorise inquiries into subjects about which Parliament might legislate in the future and Part III does not in this respect widen it. There must be actual legislation in being or a function of the Federal Government actually being discharged; only then can the connection between the two matters be examined to see whether it is sufficiently close. It can, their Lordships think, readily be appreciated that a statute authorising the Prime Minister to create any offence in relation to any subject on the legislative lists would be too wide; it would enable him to remodel the criminal law. Likewise, it can be seen that a statute authorising the Prime Minister to acquire compulsorily any land that might be needed if there were in future to be legislation on any subject in the legislative lists would be too wide; it would be tantamount to giving him power to nationalise the land. The establishment of tribunals is by comparison innocuous but the reasoning must be the same. If section 3 (1) of the Act of 1961 were to be amended to cover only matters in the legislative lists, it would still in their Lordships' opinion for the purposes of section 8 (a) to (d) be too wide.

Their Lordships have therefore in the end reached fundamentally the same conclusions as the Supreme Court. They therefore answer the questions addressed to the Court in the same way except for some slight variations to

give effect to their view that the Act is valid in so far as it authorises tribunals or commissions of inquiry of any sort within the Federal territory and tribunals or commissions without compulsive powers into Federal matters. It might of course be argued that since section 3 (1) sets up tribunals and since tribunals are of their nature bodies with compulsive powers, section 3 (1) must stand condemned quite apart from section 8. Their Lordships would not accept this argument. They have not said that wherever the phrase "tribunal of inquiry" is used, it inevitably means a body with compulsive powers. It may or may not mean that; its meaning in any case must be taken from its context. In its context in the Constitution their Lordships hold for the reasons they have given that it means a body with compulsive powers. In its context in section 3 (1) of the Act it does not mean that, for, if it did, section 8 would be superfluous.

In their Lordships' opinion the answers should be varied to read as follows, the varied parts being in italics:—

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 *section 8 (a), (b), (c) and (d)* 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, *in so far as it purports to have effect in relation to matters or things within or affecting the general welfare of the Federal territory*. Sections 8 (d), 15 (a), 18 (1) (b) are void to the extent that they empower the Commissioners to impose a sentence of fine or imprisonment.

Except so far as is required to effect these variations their Lordships will humbly advise Her Majesty to dismiss this appeal. The appellant must pay the first respondent's costs of the appeal.

In the Privy Council

SIR ABUBAKAR TAFAWA BALEWA

v.

SENATOR CHIEF T. ADEBAYO DOHERTY
AND OTHERS

DELIVERED BY
LORD DEVLIN