

CICA CIVIL APPEAL NO. 19/93

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF PROHIBITION AND CERTIORARI

BETWEEN: HURLSTON CONSTRUCTION LTD.

APPELLANT

AND: SIR PETER ALLEN, THE COMMISSIONER
OF INQUIRY

RESPONDENT

JUDGEMENT

The broad issues which the Commissioner is required to consider are not those which the Court would have to consider at the trial of the action. In the absence of pleadings we are not prepared to say that the Commissioner will have to consider other issues which will fall for determination by the Court. The mere fact that the same witnesses will appear before the Court and the Commissioner does not necessarily mean that there will be a pre-judgement by the Commissioner of issues which will have to be decided by the Court. If the litigant is likely to be prejudiced, the observation of Jordan CJ in Ex parte Bread Manufacturers Ltd. (1937) 37 S.R. (N.S.W.) 242 at 249, approved by Lord Reid in Attorney General v. Times Newspaper (1974) A.C. 293 at 296 appears apt:

"The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciations may, as an incidental but not intended by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant."

We are not therefore prepared to grant an order of prohibition pending the trial of the action. The information before us however suggests that a settlement of the action will soon be arrived at, but that a hearing by the Commissioner would put an end to negotiations. In order to facilitate those negotiations, but bearing in mind that the Commissioner is not to be unnecessarily and indefinitely fettered, we are prepared to grant an order of Prohibition for a period of three months.

To this extent the appeal is allowed and an order of Prohibition is granted for three months. There will be no order as to costs.

Full reasons will be put into writing at a later date.

THE RIGHT HON. PRESIDENT, MR. JUSTICE ZACCA, PC, O.J.
THE RIGHT HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE HENRY, J.A.