diction. Sovereignty is a concept too involved for discussion here[13] but it is submitted that the distinction is dubious in theory and that the practical problems which arise apply with equal force to both classes of legislature.

Most people would agree that subjects should not be exposed to penalties which are invalidly imposed. However this argument of convenience can cut both ways. Important legislation should not be held up – even for a short period – by the skilful use of legal procedure. It is the sort of problem where someone must be the loser and on principle it must be the subject, who is limited to his right to challenge the legislation after it has received the Royal Assent.

If this is to be the position it is obvious that the individual must have rights to compensation for injury.[14] More important still, it requires that Parliament shall not be able to avoid its responsibilities by indemnity legislation, but this is a matter on which authority is at present lacking. A failure to protect the interests of the subject would give strong support to a revival and extension of the equitable remedy.

D. J. MACDOUGALL

[13] See Friedmann "Trethowan's Case, Parliamentary Sovereignty and the Limits of Legal Change" (1950-1) 24 *Australian Law Journal* 103; Z. Cowen "Parliamentary Sovereignty and the Limits of Legal Change" (1952-3) 26 *Australian Law Journal* 237; D. V. Cowen "Legislature and Judiciary: Reflections on the Constitutional Issues in South Africa" (1952) 15 *Modern Law Review* 282, (1953) 16 *Mod.L.R.* 273.

[14] Which have been partly recognized. See *James v. The Commonwealth* (1939) 62 C.L.R. 339.

CONSTITUTIONAL LAW – ROYAL COMMISSION – CONTEMPT OF COURT – PENDING LEGAL PROCEEDINGS

Lockwood v. The Commonwealth[1] is a case arising out of the Royal Commission on Espionage set up to enquire into statements made by Vladimir Petrov regarding Russian espionage in Australia.

Lockwood applied in the High Court for an interim injunction to prevent the Royal Commissioners questioning him on the authorship and contents of certain documents, alleging various grounds, some challenging the validity of the Letters Patent appointing the Commission, some special to the plaintiff. None of them caused Fullagar J. much difficulty.

A point of passing political interest was raised in the only argument Lockwood put forward which the judge found to have "any real substance".[2] This was that the Royal Commission Act 1954 s. 3 authorizes only the appointment of a single Commissioner, whereas three had been appointed. But justification was found in

[1] [1954] A.L.R. 625. [2] *Ibid.* 626.

the Royal Commissions Act 1902-33, s. 1A. Lockwood objected that this Act had been found unconstitutional by the Privy Council.[3] Fullagar J. however though that the *ultra vires* portions could be severed, and even if they could not, the Acts Interpretation Act 1901-50, s. 15A limited the disputed section within constitutional bounds. To have had the Commission frustrated on a technicality in the midst of its proceedings would have been expensive, to put it at its lowest; and this case points to the continuing need for care in the drafting of even the simplest statutes.

The lasting interest of the case lies in dicta concerning a point on which Fullagar J. had no doubts. Lockwood had taken out a writ against Mr W. J. V. Windeyer Q.C., senior counsel assisting the Commission, alleging slander in words spoken by him before the Commission, and against the Commonwealth, alleging libel in the printing and publishing of these words. The words concerned the documents on which Lockwood wished to restrain the Commission's questions. Its further proceeding with such questions in the face of this action was said to be contempt of court, and also the breach of a common law rule, based on natural justice, that a Royal Commission could not inquire into or report upon a matter which was the subject of pending legal proceedings. But Fullagar J. rejected this reasoning, for what is expressly authorized by or under a statute can be no contempt, and the common law must give way to statute law. This result would, moreover, he said, have been in no way altered "if the Royal Commission had been appointed by the Governor-General by virtue of the prerogative and not in pursuance of any statute."[4] In support of this view *McGuiness v. A.-G. for Victoria*[5] was cited. Lockwood had referred "to certain events which took place in Victoria in 1952, when a Royal Commission had been appointed, in the exercise of the prerogative, to investigate certain allegations of corruption. One of the persons whose conduct might have been in question issued a writ claiming damages for defamation, and the Commission, which consisted of three Judges of the Supreme Court, declined to proceed further with the inquiry . . . I cannot", said Fullagar J., "help feeling that the soundness of the decision may be open to question. It would indeed savour of absurdity if an inquiry duly authorized by law could always be stultified by the simple expedient of issuing a writ out of a superior Court".[6] It is to be hoped that remarks so sensible do not go unheeded.

B. J. SHAW

[3] *A.-G. for the Commonwealth v. Colonial Sugar Refining Co. Ltd.* (1912) 17 C.L.R. 644.
[4] [1954] A.L.R. 625, 630.
[5] (1940) 63 C.L.R. 73.
[6] [1954] A.L.R. 625, 630.