presumptions in relation to proof of an individual's membership or support of an organization, clearly contemplates such issues arising in civil as well as in criminal proceedings. A further factor should be mentioned in connection with this question. We have mentioned above the general principle that where an individual challenges an administrative act prejudicially affecting him, and where the validity of the act depends on the existence of a certain fact, the onus lies on the executive authority concerned to prove the existence of such fact. This principle would apply to any challenge to the inclusion of a person's name in a list by a liquidator under Section 4(10) or an authorised officer under Section 7(2). Where, however, such list is in the custody of an officer referred to in Section 8, the terms of Section 8(2) appear to throw the onus upon the person challenging the accuracy of the list to prove that his name should not be included therein. But, as already pointed out, neither an authorised officer nor a liquidator can include a person's name in a list without affording him an opportunity to be heard. Once, therefore, a person is notified that his name is to be included in such list, we are of opinion that the most advisable course would be to apply to Court for an order restraining the liquidator or authorised officer from so acting. The onus would then lie upon the liquidator or authorised officer - subject to the presumptions mentioned in Section 12 - to prove the facts entitling him to include such person's name in the list. If however, the person in question refrains from taking such action and the list, which includes his name, is deposited, in terms of Section 8, in the custody of an officer, the onus will be shifted to him to prove that such inclusion should not have taken place.

19. As to question (c)(ii), Section 2(2) expressly lays down that the Governor-General may exercise the powers therein confided to him "without notice to the organization concerned." As we have advised above, the principle "audi alteram partem" is

prima facie implied in any statute that empowers an executive authority to do any act that prejudicially affects the individual citizen. But this rule is subject to the exclusion of the principle, either expressly or impliedly, by the terms of the statute itself. (See Sachs v. Minister of Justice (supra at p.38). In our opinion, the circumstance that Section 2(2) empowers the Governor-General to declare an organization unlawful without notice sufficiently indicates an intention of the Legislature to deny to the organization concerned a right to a hearing before action is taken against it. Precisely the same considerations apply to the exercise of the Governor-General's powers under Section 6. His powers under Section 14, however, stand on a different footing. In the first place, the Governor-General's powers here are conditional. His discretion to deem a person to be an undesirable inhabitant of the Union only comes into play if the person is in fact a communist or has in fact been convicted of one of the offences mentioned. In respect of the existence or otherwise of such facts we are of opinion that the Court's jurisdiction has not been excluded, for the same reasons as apply to the powers of the Governor-General under Section 1(iii), of the Minister under Section 5 etc. Once, however, the facts in question are established and the discretion comes into play, we are of opinion that there is nothing in the wording of the section to exclude the operation of the principle of "audi alteram partem".

20. As to question (c)(iii)(above), we have already expressed our view that Section 5 confers no power on the Minister to decide whether a person is or is not a communist. Once the fact is established, however, he has a discretion to issue a notice referred to in the Section. He is not bound by Section 17 to consider a factual report by an official committee before exercising such discretion. We do not think, however, that this circumstance has any bearing on the question whether he is bound

to/.....

to accord a hearing to the person affected. As already indicated, Section 17 confers on such person no right to a hearing before the committee referred to therein. We therefore can perceive no implication in Section 5 to exclude the "audi-alteram Partem" rule in relation to the legitimate field of the Minister's discretion. As to the Minister's power, under Section 9, to prohibit gatherings or the attendance of individuals at a gathering, however, we hold a different view. Such powers are obviously of an emergency character, and, if a particular gathering were imminent, it would defeat the whole purpose of the powers in question if the Minister were obliged to hear either the promoters of the gathering, or any person whom he proposed to prohibit from attending the same, before exercising such powers. Where the application of the "audi alteram partem" rule would defeat the very object of the power, such rule is impliedly excluded. See Sachs v. Minister of Justice (supra at p. 38). We are therefore of opinion that the Minister need afford no opportunity for the hearing of representations before exercising his powers under Section 9. So far as Section 10 is concerned we are of opinion that entirely different considerations prevail. The Minister's powers under this Section are, in our opinion, obviously of a nature that require an opportunity for representations from the individuals affected before such powers are exercised.

21. We may state in conclusion that the questions that have been put to us cover a very wide field. A very varied set of circumstances can be envisaged wherein an individual may find himself placed as the result of administrative action (whether legitimate or otherwise) under the Act. Any such particular situation will obviously call for subjective consideration in the light of the relevant facts and circumstances. The main questions that have been put to us, however, are as to the

situation that would arise if an attempt were made to appoint a liquidator of the former assets of the defunct Communist Party or if an attempt were made by the Minister to require the resignation of Consultant from the House of Assembly. In the former case, locus standi to challenge the actions of the liquidator would reside in any individual whom his actions purported to affect - e.g. if he proceeded to compile a list of former Party Members. In the latter case, if Consultant is served by the Minister with a notice under Section 5, we are of the opinion that he should immediately move the Court to set it aside. Failure to adopt this course would confront him with the choice of either complying with the notice or facing a prosecution under Section 11(f).

We do not think that he is bound to await prosecution as a means of vindicating his rights. See Attorney General of Natal v. Johnson (1946 A.D. 256 at pages 261 - 2.)

In the event of motion proceedings, of the kind envisaged above, becoming necessary, we need hardly emphasise, in view of what we have advised, that Consultant's affidavits would require drafting with special care. We suggest, therefore, that, in the eventuality envisaged, a special consultation should be arranged for the consideration of the framing of such affidavits.

G. GORDON

D. B. MOLTENO.

Chambers,
10th August 1950.