Bernard Bane *vs.* Superintendent of Boston State Hospital.

Suffolk. April 6, 1966. — April 28, 1966.

Present: Wilkins, C.J., Spalding, Cutter, Kirk, & Spiegel, JJ.

Hospital Record. Statute, Validity. *Constitutional Law,* Accountability of officials.

The records of the Boston State Hospital concerning a certain patient were not open to inspection by him or his attorney under G. L. c. 111, § 70, as amended through St. 1964, c. 653.

A statute cannot be attacked in the courts on the ground that it was enacted in violation of a procedural rule of one of the branches of the Legislature.

St. 1964, c. 653, amending G. L. c. 111, § 70, does not violate art. 5 of the Declaration of Rights of the Massachusetts Constitution.

Petition filed in the Superior Court on September 17, 1965.

The case was heard by *Pillsbury,* J.

Bernard Bane, pro se.

Willie J. Davis, Special Assistant Attorney General, for the respondent.

Wilkins, C.J. The prayer in this petition for a writ of mandamus is that the respondent superintendent of the Boston State Hospital be commanded to permit the petitioner to examine, and to obtain copies of, the records of the petitioner's involuntary "admission and detention" at that hospital in 1963. The petitioner appealed from a denial of the petition.

The Boston State Hospital is under the control of the Department of Mental Health. G. L. c. 19, § 5. Its records are subject to G. L. c. 111, § 70. The petitioner relies upon § 70, as amended by St. 1945, c. 291. That statute in its present form, however, is as amended through St. 1964, c. 653, which contains an exception expressly excluding from inspection by a patient or his attorney the records of "a

hospital or clinic under the control of the department of mental health."

The petitioner contends that St. 1964, c. 653, was enacted in violation of Senate Rule 50,[1] but the violation is not conceded. In any event, the statute cannot be thus impugned in a court of law. *Field* v. *Clark,* 143 U. S. 649, 672. *Sears* v. *Treasurer & Recr. Gen.* 327 Mass. 310, 321. *Weeks* v. *Smith,* 81 Maine, 538, 547. 81 C. J. S., States, § 39.

There has been no violation of art. 5 of the Declaration of Rights of the Constitution of the Commonwealth.

Order denying petition affirmed.

RICHARD R. CAPLES *vs.* SECRETARY OF THE COMMONWEALTH & another.

Suffolk. April 8, 1966. — April 28, 1966.

Present: WILKINS, C.J., SPALDING, WHITTEMORE, CUTTER, & SPIEGEL, JJ.

Commonwealth, Officers and employees. *Public Officer. Equity Jurisdiction,* Declaratory relief.

A suit in equity might be maintained under G. L. c. 231A for a declaratory decree resolving a controversy between the plaintiff and the defendant as to which of them was entitled to hold a public office claimed by both. [639]

Where it appeared in a suit in equity that, following suspension of an official from his office and a temporary appointment of the plaintiff to the office under G. L. c. 30, § 59, as amended by St. 1963, c. 829, §§ 1, 2, the suspended official resigned while still under suspension and thereupon the defendant was appointed to the office, it was held that the plaintiff's appointment was for the period of the suspension, that the suspension was terminated by the resignation, and that the defendant, not the plaintiff, was thereafter entitled to the office. [641]

If the commission of a public official purports to give him a tenure of his office longer than authorized by the statute under which he was appointed to the office, the commission to that extent is void. [641]

BILL IN EQUITY filed in the Superior Court on September 29, 1965.

[1] "No motion or proposition of a subject different from that under consideration shall be admitted under the color of an amendment."