M. B. Ibralebbe alias Rasa Wattan and another – – – *Petitioners*

v.

The Queen – – – – – – – – – *Respondent*

FROM

THE SUPREME COURT OF CEYLON

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL UPON PETITION FOR SPECIAL LEAVE TO APPEAL, DELIVERED THE 6TH NOVEMBER, 1963

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT RADCLIFFE.
LORD MORTON OF HENRYTON.
LORD MORRIS OF BORTH-Y-GEST.
LORD GUEST.

[*Delivered by* VISCOUNT RADCLIFFE]

On 31st October 1963 their Lordships had before them a Petition lodged by the above-named Petitioners praying special leave to appeal to Her Majesty in Council from a judgment of the Supreme Court of Ceylon upholding their convictions in a District Court upon charges of causing hurt to certain persons. It was represented to their Lordships that the appeals involved an important issue in the administration of the criminal law of Ceylon relating to alleged misjoinder of charges and that there had recently arisen considerable confusion as to the law upon this issue owing to what were said to be conflicting decisions upon the point emanating from the Supreme Court in the exercise of its criminal jurisdiction on the one hand and the Court of Criminal Appeal on the other, and also from different judges of the Supreme Court itself.

Whether or not in these circumstances their Lordships would have thought it right, without more, to advise the exercise of the special and exceptional jurisdiction of allowing an appeal in criminal matters, weight was added to the case for the petition by the fact that counsel on behalf of the Respondent, appearing for the Attorney General of Ceylon, stated to their Lordships that his instructions were that the Attorney General himself thought it highly desirable, owing to the extreme confusion of the present situation, that an authoritative decision of the Board should be obtained. He did not therefore oppose the granting of the special leave to appeal that was asked for.

It was at this point that their Lordships' attention was drawn to a recent decision of the Court of Criminal Appeal in Ceylon which appears to challenge the existence of any jurisdiction in Her Majesty in Council to entertain appeals in criminal matters arising in Ceylon. The judgment in question, with the contents of which their Lordships are familiar, is that of the Chief Justice, Basnayake C.J. delivered on the 14th October 1963 in the case of *The Queen v. Aluthge Don Hemapala*, an appeal remitted to the Court of Criminal Appeal for final disposal in accordance with an Opinion of the Judicial Committee delivered by Sir Kenneth Gresson on the 27th May 1963 and implemented by an Order in Council dated 30th May 1963.

Having regard to the views expressed in the judgment of the learned Chief Justice, which have, naturally, been studied with much concern by their

Lordships, it seemed right that, before any decision was taken as to recommending special leave to appeal on the present Petition, a full argument should take place before the Board, in order that it should be in a position to form its considered view on the question of jurisdiction that had thus been mooted. Arrangements were made accordingly. Since not only the Petitioners but also the Attorney General of Ceylon on behalf of the Respondent stated that they wished to argue in opposition to the Chief Justice's view and in support of the continuing existence of the appeal in criminal matters, counsel were instructed by the latter to appear before the Board as amici curiae and to present argument in elaboration of the legal propositions expressed by the Chief Justice. The argument on this point was heard before an enlarged Board (Lord Dilhorne L.C., Viscount Radcliffe, Lord Morton of Henryton, Lord Morris of Borth-y-Gest and Lord Guest) on the 4th and 6th November last, and at the conclusion of the hearing their Lordships announced that they were satisfied that the jurisdiction to entertain appeals from Ceylon before the Judicial Committee in criminal matters still existed and had not been abrogated by Ceylon's attainment of independence in 1947.

The proposition which is the foundation of the Chief Justice's judgment is that the right of the Sovereign to entertain appeals from territories outside the United Kingdom is a "prerogative right" enforceable by Order in Council made in the United Kingdom and that the continuance of such a right is necessarily inconsistent with the status of Ceylon as an independent political body. The essential part of his reasoning seems to be expressed in the following passage from his judgment:—"It is unthinkable that the Queen of England would do any act that would in the slightest degree impair the independence of Ceylon. When the Queen of England gave up Her right to legislate for Ceylon by Order in Council, it must be presumed that She gave up Her prerogative without reservation, and that She gave up Her prerogative right to promulgate any Order in Council having the force of law in Ceylon, for it is an established rule of construction of legal instruments that the greater includes the less. Apart from that, the right to make an Order in Council embodying the advice of the Privy Council being one that exists only in respect of colonies, that right cannot be exercised in respect of a country which is no longer a colony and is no longer subject to the suzerainty of the Sovereign of England. The resulting position then is that on the attainment of independence the prerogative right of the Sovereign of England to entertain appeals ceased when Ceylon ceased to be a colony."

Their Lordships feel no doubt that the Chief Justice's conclusion is founded upon a misunderstanding of the nature of an appeal to the Judicial Committee and of the Order in Council which forms the instrument by which the decision of the appeal is subsequently implemented. Such Orders are essentially judicial acts and it leads only to confusion to treat them as if they lay in the field of legislation, or, for that matter, of the administration of government in any ordinary sense. Nor is there any inherent connection between the judicial appeal to Her Majesty in Council which, historically, existed in respect of decisions of Courts of judicature "in the East Indies, and in the plantations, colonies and other dominions of Her Majesty abroad" (not excluding, for instance, the Channel Islands, part of the ancient Duchy of Normandy), and the status of any particular territory as a "colony" in the general sense in which that word is understood to-day. Their Lordships will enlarge upon the reasons which have led them to regard the Chief Justice's views as misconceived, but before doing so they must make one or two preliminary observations which are called for by the somewhat unexpected manner in which this issue has been brought to notice.

In the first place, their Lordships have not found it possible to reconcile the learned Chief Justice's apparent rejection of the validity of any post-1947 Order in Council affecting criminal proceedings in Ceylon with his actual treatment of the particular Order in Council to which his observations were directed. What had happened in that case was that, the appellant before the Board having been convicted of murder at a trial in the Supreme Court

at Kalatura and his appeal having been dismissed by the Court of Criminal Appeal, his appeal succeeded before the Board on the ground that the conviction was vitiated by fundamental irregularities of procedure, and an Order in Council was made on the report of the Board reversing the order of the Court of Criminal Appeal which had dismissed the appeal and remitting to that Court the decision of the question whether to quash the conviction and merely release the prisoner or to order a new trial in exercise of the statutory powers vested in the Court for this purpose. There is nothing unusual in a remit of that kind to the Court from which the appeal is brought. It restores the matter under appeal to the Court appealed from for final disposal, in the light of the Judicial Committee's rulings, and gives that Court the opportunity of further consideration of the proper order to make in any case where its existing powers allow it the choice between alternative courses of action.

The Chief Justice's judgment on the remit appears, however, to have proceeded on the basis that, while the Order in Council reversing the Court of Criminal Appeal's dismissal of the convicted man's appeal was legally effective, with the consequence that the Court should quash his conviction and direct his immediate release, that part of the Order which left it to the Court to decide whether or not to order a new trial was invalid, on the ground that " the prerogative right of the Sovereign of England in Council to entertain appeals from Ceylon [in criminal matters] ceased on Ceylon becoming an independent country ". The only explanation of this distinction, for which their Lordships have not been able to find any rational basis, is contained in the words " the reversal of the decision of the Court of Criminal Appeal and the quashing of the appellant's conviction are unaffected by our present decision, as our present decision cannot affect past acts which have taken effect ".

It would not serve any useful purpose to advert further upon what presents itself to their Lordships as an inconsistency of reasoning. For, if the true analysis of the state of affairs is that since the independence of Ceylon in 1947 the Sovereign in Council in England has had no power to make Orders in Council on judicial appeals relating to criminal matters in Ceylon, the Order in Council reversing the Court of Criminal Appeal's dismissal of Hemapala's appeal must by the same reasoning have been a nullity as made without jurisdiction and can no more stand as a valid direction to that Court than that part of it which leaves it to the Court to consider whether to quash the conviction or to order a new trial.

Secondly, their Lordships must admit their inability to detect in what respect the reasoning of the Chief Justice, if valid with regard to criminal appeals, would not also apply to appeals to the Judicial Committee in civil matters arising in Ceylon. There is no doubt that the learned Chief Justice regarded his opinion as limited to appeals in criminal matters. He says so explicitly in one of the concluding passages of his judgment. But how does his reasoning apply with less force to civil than to criminal appeals? The latter, if allowed at all, are allowed by a grant of special leave: civil appeals, on the other hand, are regulated in general by the rules as to value and subject matter which are at present contained in the schedule to Chapter 100 of the 1956 edition of the Revised Legislative Enactments of Ceylon, the Appeals (Privy Council) Ordinance, first enacted in its current form on 6th May 1910. These rules (see rule 32) are expressed as being subject to the right of Her Majesty in Council to admit any appeal on such conditions as may appear to Her to be appropriate, and would be understood, failing any new interpretation required by the judgment of the Chief Justice, as recognising and sanctioning Her right to grant special leave to appeal in any proper civil case whether or not within the limits allowed " as of right ". But each such appeal, civil or criminal, is, if admissible at all, admissible as an appeal to Her Majesty's prerogative right to act as a final resort in the administration of justice, and there is not for this purpose any significant distinction between those that are entertained only by special leave and those which are regulated and admitted in accordance with a fixed set of rules, whether emanating originally from Order in Council, charter or letters patent or legislation local to the territory itself. This point has

already been alluded to and explained by their Lordships' Board in *A.G. Ontario v. A.G. Canada* [1947] A.C. 127, where it is said by Earl Jowitt L.C. at p. 145 with regard to appeals by special leave and appeals "as of right"—"fundamentally in both classes of case the appeal is founded on that prerogative which, as long ago as 1867 in *Reg. v. Bertrand* was described as the 'inherent prerogative and right and, on all proper occasions, the duty of the Queen in Council to exercise an appellate jurisdiction'". The method of giving effect to the judgment on all such appeals is the same for all—an Order in Council made upon the report of the Judicial Committee: and, if it were correct to suppose that, after independence, the power to make Orders in Council on judicial appeals is abrogated by the bare fact of independence itself, it seems that it would be impossible to detect any valid reason why the necessary Order in Council should be less obnoxious in civil than in criminal appeals.

Yet, civil and criminal appeals from Ceylon have been entertained without interruption since 1947. Civil appeals have been admitted and leave granted under the local rules; appeals of both kinds have been heard before the Board, which until his recent death regularly included the late Mr. de Silva, a former member of the judiciary of Ceylon appointed to the Judicial Committee for the purpose of helping with those appeals; and the advice tendered by the Board to the Sovereign has been implemented by Orders in Council embodying the usual requirement that the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it might concern should take notice of the Order and govern themselves accordingly. Indeed as recently as the year 1953 the Crown in Ceylon appeared before the Board as a successful appellant from an order of the Court of Criminal Appeal (see *A.G. v. Perera* [1953] A.C. 200), and although on that occasion the respondent submitted an argument to the effect that the Judicial Committee had no jurisdiction to entertain an appeal from a judgment that had quashed the conviction of an accused person, it did not apparently occur to anyone then, any more than on other occasions, that the criminal appeal itself had disappeared with the coming of independence to Ceylon.

The requirement of the Order in Council which is made upon an appeal that all persons concerned in the territory shall take notice of it and govern themselves accordingly is complemented in Ceylon by the provisions of those legislative enactments which direct the Courts there to give effect to judgments of the Privy Council on appeal and recognise in unambiguous language the "undoubted right and authority of Her Majesty to admit or receive any appeal from any judgment, decree, sentence or order of the Court of Criminal Appeal or the Supreme Court." The words last quoted appear in section 23 of the Court of Criminal Appeal Ordinance (Revised Legislative Enactments of Ceylon 1956 Ch. 7). Similar words occur in section 333 of the Criminal Procedure Code (1956 Ch. 20). The Courts Ordinance (1956 Ch. 6) on the other hand, which deals with criminal as well as civil jurisdiction, contains in section 39 the direction that in all cases of appeal to the Privy Council allowed by the Supreme Court or by Her Majesty in Council the transcript of the record is to be forwarded to the Privy Council, and in section 40 the duty is imposed on all Courts, supreme or original, to "conform to, execute and carry into immediate effect" judgments of the Privy Council on appeal. The same duty is imposed in the same words, where criminal matters are concerned, by section 334 of the Criminal Procedure Code.

It would not be possible to ignore the significance of these statutory provisions, which form part of the law of Ceylon, on the ground that they are mere relics of pre-independence days, which have been left stranded by time on the shores of the statute book. Such an explanation is irreconcileable with the fact that they all appear in the revised edition of 1956. That revision was brought into existence under the special Act (1956 Ch. 1. enacted on 1/2/1956), which appointed (section 2) the Hon. H. H. Basnayake, Chief Justice, Commissioner to prepare a new and revised edition of the legislative enactments of Ceylon in force on 31.12.1954 or such later date as might be

proclaimed by the Governor-General. The effective date in fact became 30.6.1956, when by virtue of section 12(2) the revised laws came into force as the existing corpus of legislation of Ceylon. Among the powers conferred upon the Commissioner by the Act was the power to omit from the revised edition any legislative enactment which had been repealed expressly or by necessary implication (see section 3(1)(a)).

Their Lordships therefore cannot follow the Chief Justice in his passing reference to these statutory provisions at the close of his judgment—" the recognition ", he says, " when Ceylon was a British colony, in the statutes of Ceylon, of the prerogative right of His Majesty in Council to entertain appeals from the Ceylon Courts does not have the effect of creating a right of appeal by implication and continuing it, even after Ceylon has ceased to be a colony and the judicial prerogative of the Sovereign has ceased in respect of this country. When the very foundation of the prerogative to entertain such appeals is gone those provisions have no application to what does not exist." But, with great respect to the view so formulated, the relevant question is not whether the continuance of these enactments in the revised statute book could in itself create by implication the prerogative right to entertain appeals. There is no need to debate whether it could. The essential point to attend to, in their Lordships' opinion, is to inquire whether there is anything in the legislative or other measures which brought about the independence of Ceylon or the constitutional status resulting from those measures which by necessary implication put an end to the prerogative right to hear appeals and the complementary right to apply for them, which undoubtedly existed up to the date of that event. And in answering that question it seems highly unreal to ignore the significance of the continued presence of provisions in the revised statute book which recognise the right of appeal, since in common with the other circumstances to which their Lordships have thought it proper to allude their presence testifies plainly to the fact that, if the coming of independence did by itself impliedly abolish the judicial appeal, the implication, though now said to be necessary, has escaped for years the notice of all those most directly concerned with the administration of the appeal system.

Their Lordships must now turn to consider the nature of the appeal to Her Majesty in Council in judicial matters which, for brevity, they will refer to as the Privy Council appeal. In their opinion it has long been recognised that the Order in Council which implements the decision of such appeals is in everything but form the equivalent of a legal judgment. As such it has no analogy with an Order in Council having legislative effect or with an Order in Council that is part of the administration of Government, except in the widest general sense that each within its category derives its ultimate force from some form of sovereign authority and thus can be said to " make law ". It is necessary to say this, because it is in their view a basic fallacy to suppose that the irrevocable cession of legislative authority to the Parliament of Ceylon or the vesting of the executive power of the Island in a Governor-General acting on the advice of a Cabinet of Ministers responsible to that Parliament has by any necessary implication terminated the judicial power of Her Majesty under the system of appeals as it existed at the date of independence.

It is true, no doubt, that the Privy Council appeal existed by prerogative right, except so far as it was actually created or regulated by statute, but it is a mistake, when speaking of the prerogative in the judicial sphere, to speak of it as if its exercise were not as much Her Majesty's duty as Her right. Justice is " owed "; it is not granted by favour or accorded at discretion. When it is propounded that the prerogative right of Her Majesty to entertain appeals, or alternatively criminal appeals, from Ceylon was terminated by independence, it needs to be remembered that what must also have been determined was the pre-existing right of every inhabitant of Ceylon to invoke that appeal, if he could show that it was warranted by his situation.

The institution of the Judicial Committee by the Privy Council Appeals Act of 1833 (3 & 4 Wm.IV) had a functional effect upon the judicial powers of the Privy Council itself. It did not take long for commentators to observe

that what had happened was that the judicial powers had been transferred from the Council to what was to be in substance an independent Court of law and that the connection between the two bodies was in future no more than nominal. Thus Professor Dicey in his book "The Privy Council" (published in 1887, but in fact a reissue of his Arnold Prize Essay of 1860) is found observing on page 144 " Even those vestiges of the Council's ancient jurisdiction have been taken away by the Act 3 & 4 Wm.IV, for this measure transfers the judicial powers of the Council from the whole body, who however did not exert them, to a special Committee. Thus statute has produced the same effect on the Council's legal authority which custom has had in its political powers. In each the functions of the whole body have passed into the hands of a smaller committee, connected with the Privy Council by little more than its name."

The Judicial Committee itself has been insistent on many occasions to record and explain its independent legal status. Thus as early as 1880 Sir James Colville in *Pitts v. La Fontaine* 6 A.C.482 defined the position as follows: " when a decision of this Board has been reported to Her Majesty and has been sanctioned and embodied in an Order in Council it becomes the decree or order of the final Court of Appeal .... and .... it is the duty of every subordinate tribunal to whom that order is addressed to carry it into execution."

The two fullest statements as to the relationship between the Judicial Committee and the Privy Council and as to the Order in Council which implements the Committee's reports are that of Lord Haldane in *Alex. Hull & Co. v. M'Kenna* [1926] Ir. Rep. 402 and that of Lord Sankey in *British Coal Corporation v. The King* [1935] A.C. 500. In the former Lord Haldane spoke of the " long standing constitutional anomaly that we are really a Committee of the Privy Council giving advice to His Majesty, but in a judicial spirit ". " We are really judges ", he went on to say, " but in form and name we are the Committee of the Privy Council. The Sovereign gives the judgment himself and always acts upon the report that we make. Our report is made public before it is sent up to the Sovereign in Council. It is delivered here in printed form. It is a report as to what is proper to be done on the principles of justice, and it is acted upon by the Sovereign in full Privy Council, so that per se, in substance what takes place is a strictly judicial proceeding."

Lord Sankey's account appears at pages 510/512 of the *British Coal Corporation* case. " It is clear ", he said with reference to the 1833 Act, " that the Committee is regarded in the Act as a judicial body or Court, though all it can do is to report or recommend to His Majesty in Council by whom alone the Order in Council which is made to give effect to the report of the Committee is made.

But according to constitutional convention it is unknown and unthinkable that His Majesty in Council should not give effect to the report of the Judicial Committee, who are in truth an appellate Court of law to whom by the statute of 1833 all appeals within their purview are referred " . . .

" In this way the functions of the Judicial Committee as a Court of law were established. The practice had grown up that the colonies under the authority either of Orders in Council or of Acts of Parliament should provide for appeals as of right from their Courts to the King in Council and should fix the conditions under which such appeals should be permitted. But outside these limits there had always been reserved a discretion to the King in Council to grant special leave to appeal from a colonial Court irrespective of the limitations fixed by the colonial law: this discretion to grant special leave to appeal was in practice described as the prerogative right: it was indeed a residuum of the Royal prerogative of the Sovereign as the fountain of justice..... Although in form the appeal was still [i.e. after the Judicial Committee Acts] to the King in Council, it was so in form only and became in truth an appeal to the Judicial Committee, which as such exercised as a Court of law in reality, though not in name, the residual prerogative of the King in Council. No doubt it was the order of the King in Council which

gave effect to their reports, but that order was in no sense other than in form either the King's personal order or the order of the general body of the Privy Council."

Their Lordships take it to be clear therefore that the Order in Council which gives effect to a Judicial Committee report is a judicial order. It is an " order or decree . . . . on appeal ", to use the words of section 21 of the 1833 Act. It is mandatory in its directions to those whom it affects by virtue of the provisions of that section. The Judicial Committee Acts applied, when enacted, to all parts of the Sovereign's overseas territories covered by the enacting words and remain part of the law of such territories until validly repealed. That indeed was the reason why, before the Statute of Westminster, the Parliament of Canada could not of its own authority abolish criminal appeals from Canada, owing to the bar imposed by the Colonial Laws Validity Act (see *Naden v. The King* [1926] A.C. 482); and why on the other hand, after the Statute of Westminster, the Parliament of Canada had power to do just that thing, first with regard to criminal appeals (*British Coal Corporation v. The King* [1935] A.C. 500) and, later, with regard to appeals generally (*A.G. Ontario v. A.G. Canada* [1947] A.C. 127), and, in the course of abolishing the latter, to enact that the " Judicial Committee Act 1833 Ch. 41 of the statutes of the United Kingdom of Great Britain and Ireland 1833 and the Judicial Committee Act 1844, Ch. 69 of the statutes of the United Kingdom of Great Britain and Ireland 1844, and all orders, rules or regulations made under the said Acts are hereby repealed in so far as the same are part of the law of Canada."

The complement to the injunction contained in section 21 of the 1833 Act is, for Ceylon, the sections of its local legislation which have already been referred to, section 40 of the Courts Ordinance and section 334 of the Criminal Procedure Code. Between them, these various legislative provisions establish that the Privy Council appeal is part of the judicial system of Ceylon, a part of the structure of original and appellate Courts by which legal decisions, judgments, decrees and orders are passed and recorded.

It is not as if the Judicial Committee was in essence an English institution or an institution of the United Kingdom. On the contrary, as Lord Haldane said in *Alex. Hull & Co. v. M'Kenna* supra, it is " not a body, strictly speaking, with any location ". " It is not ", he said, " an English body in any exclusive sense. It is no more an English body than it is an Indian body, or a Canadian body, or a South African body, or, for the future, an Irish Free State body ". If and when a territory having constitutional power to do so, as Ceylon now has, decides to abrogate the appeal to the Judicial Committee from its local Courts, what it does is to effect an amendment of its own judicial structure.

It remains now to inquire whether there was anything in the establishment of independence for Ceylon that, expressly or impliedly, brought about that amendment. The instruments employed were the Ceylon Independence Act 1947 of the Parliament of the United Kingdom (11 and 12 Geo. VI C.7) and the several Orders in Council setting up the Ceylon Constitution, of which the Ceylon (Constitution) Order in Council 1946 (hereinafter referred to as the 1946 Order) is the substantive enactment. It can be said at once that nowhere is there to be found in these instruments any reference to the Privy Council appeal, its continuance or its extinguishment. Independence as such did not, of course, alter the existing corpus of law in Ceylon. The only question therefore can be whether the appeal was affected by some necessary implication derived from the fact that its continuance would be in plain conflict with what was actually established.

Their Lordships can discover nothing that bears on this in the terms of the Ceylon Independence Act. Its main purpose was to ensure that the new Parliament to be set up in Ceylon was not to be in any sense a subordinate legislature. It was to have the full legislative powers of a Sovereign independent State. Thus Acts of the United Kingdom Parliament were not to extend to Ceylon in the future, unless enacted with her consent and at her request; the Colonial Laws Validity Act 1865 was not to apply to any law made by the Parliament of Ceylon; that Parliament was to have full power

to make laws with extra-territorial effect; and, finally, no law made by the Parliament of Ceylon was to be void or inoperative on the ground of repugnancy to the law of England or to any existing or future Act of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Ceylon Parliament were to include power to repeal or amend any such Act, order, rule or regulation, so far as the same was part of the law of Ceylon (see 1st Schedule 1(2)). This was a liberating Act in the sense that it freed the Parliament of Ceylon from every one of the constitutional limitations which, traditionally, inhibited the law-making powers of subordinate legislatures in the British dominions. But the present question is not about the law-making powers of the Parliament of Ceylon; and there is nothing in the provisions quoted or in the only material provision of the Act not dealing with legislative powers, that declaring (section 1(2)) that His Majesty's Government in the United Kingdom were in future to have no responsibility for the Government of Ceylon, with which the continuance of the Privy Council appeal would be inconsistent or conflicting.

The 1946 Order is divided into nine separate parts, of which much the most considerable is, naturally, that dealing with the Legislature, Part III. Part II provides for the appointment and functions of a Governor-General: Part III, for the setting up of the Legislature: Part IV, for electoral districts: Part V, for the Executive: Part VI for the Judicature, and Part VII for the Public Service.

Part III, which embraces sections 7 to 39, begins by enacting that there is to be a Parliament of the Island consisting of His Majesty and two Chambers. By section 29 there is conferred upon the Parliament power to make laws for the " peace, order and good government " of Ceylon, subject to certain protective reservations for the exercise of religion and the freedom of religious bodies. The words " peace, order and good government " connote, in British constitutional language, the widest law-making powers appropriate to a Sovereign. Apart from the fundamental reservations specified in section 29, the Order contained only two qualifications on the full legislative authority of Parliament. One was set out in the following section, section 30, which reserved to His Majesty power by Order in Council to legislate on certain matters of defence, security and foreign relations. The other was the provision made in section 39 that Laws relating to certain Ceylon Government stocks should be capable of disallowance by His Majesty through a Secretary of State.

The reservation embodied in section 30 was relinquished in the next year by the Ceylon (Independence) Order in Council 1947 (see section 4). This came into force on the 4th February 1948, and as from that date, apart from the minor qualification introduced by section 39, the Parliament of Ceylon enjoyed unrestricted legislative power.

To turn to Part V. It is entitled " The Executive " and contains two formative sections, of which the first, section 45, declares that the executive power of the Island is to continue vested in His Majesty, exerciseable on his behalf by the Governor-General in accordance with the provisions of the Order and any other law for the time being in force, and the second, section 46, provides that the general direction and control of the government of the Island are to be in the charge of a Cabinet of Ministers appointed by the Governor-General and responsible to Parliament. The remaining sections of Part V are only supplementary.

Part VI is entitled " The Judicature ". There is nothing in this Part that deals with the structure of Courts in the Island, with appeals or with the legal system generally. It is concerned only to regulate the appointment and tenure of office of Judges of the Supreme Court (section 52) and to set up a Judicial Service Commission (sections 53–56), in which is to be vested the appointment, transfer, dismissal and disciplinary control of judicial officers.

Their Lordships can now summarise what is, in their opinion, the effect of Ceylon's attainment of independence and of the accompanying legislative provisions, so far as concerns the present right of Her Majesty to make Orders

in Council affecting Ceylon. There is no power to legislate for Ceylon: to do so would be wholly inconsistent with the unqualified powers of legislation conceded by the 1946 Order. There is no power to participate in the government of Ceylon through the medium of Orders in Council, since the control and direction of the government of the territory are in the charge of the Cabinet of Ministers, responsible to the Parliament of Ceylon, and in the Governor-General according to his constitutional powers. But the structure of Courts for dealing with legal matters and the system of appeals existing at the date of independence have not been affected by any of the instruments that conferred that status, and it follows that, inasmuch as an Order in Council made upon report of the Judicial Committee is the effective judgment to dispose of and implement the Committee's decision of an appeal, the power to make such an Order remains unabated.

Their Lordships must observe in conclusion, having regard to one or two remarks that appear in the judgment of the learned Chief Justice, that it seems to them a misleading simplification to speak of the continuance of the Privy Council appeal as being inherently inconsistent with Ceylon's status as an independent territory or as being bound up with a relationship between Her Majesty and colonial subjects. Historically, the assumption would in itself be inaccurate, and, constitutionally, it is unnecessary. For, if it is recognised, as it must be, that the legislative competence of the Parliament of Ceylon includes power at any time, if it thinks right, to modify or terminate the Privy Council appeal from its Courts, true independence is not in any way compromised by the continuance of that appeal, unless and until the Sovereign legislative body decides to end it.

For these reasons their Lordships are of opinion that the Board has jurisdiction to entertain the appeal for which the Petitioners seek special leave and in due course to recommend to Her Majesty the making of whatever Orders in Council may be required to admit it and dispose of it. Having regard to what has been said at the opening of this Opinion they have humbly advised Her Majesty to grant leave to appeal in this case.

(89060) Wt. 8052/97 110 1/64

In the Privy Council

M. B. IBRALEBBE alias RASA WATTAN AND ANOTHER

v.

THE QUEEN

DELIVERED BY

VISCOUNT RADCLIFFE

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS, HARROW

1964