1967 /20

No. 38 OF 1966

Supreme Court of Ceylon,
Application No. 8 of 1966.

In the matter of an application for a Mandate in the nature of a Writ of Mandamus under the provisions of Section 42 of the Courts Ordinance.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL
FROM THE SUPREME COURT OF CEYLON

BETWEEN

MOHAMED SAMSUDEEN KARIAPPER of Cassim Road, Kalmunai.

Petitioner-Appellant.

AND

1. S. S. WIJESINHA of No. 8, Alfred House Road, Colombo 5.
   The Clerk to the House of Representatives, The House of Representatives, Colombo.

2. S. N. SENEVIRATNE of No. 138/1, Havelock Road, Colombo.
   The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents.

RECORD
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No. 38 OF 1966

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Respondents.

RECORD
OF PROCEEDINGS

No. 1

Application for a Writ of Mandamus

No. 1
Application for a Writ of Mandamus
(*i*) Motion
11-1-66.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a WRIT OF MANDAMUS under the provisions of Section 42 of the Courts Ordinance, Chapter VI, Volume I of the Legislative Enactments of Ceylon — (1956 Revised Edition)

MOHAMED SAMSUDEEN KARIAPPER, of Cassim Road, Kalmunai.

Petitioner.

S.C. Application
No. 8 /1966

Vs.

1. S. S. WIJESINHA, of No. 8, Alfred House Road, Colombo 3.

   The Clerk to the House of Representatives, The House of Representatives, Colombo.

2. S. N. SENEVIRATNE, of No. 138/1, Havelock Road, Colombo.

   The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents.

I tender my Appointment from the Petitioner abovenamed together with his Petition, Affidavit and Documents marked P1, P1A, P2 and P3 and for reasons stated therein MOVE — that Your Lordships' Court be pleased :—

(*i*) To Grant and issue a Mandate in the nature of a WRIT OF MANDAMUS ordering the 1st and/or the 2nd Respondent to recognise the Petitioner as Member of Parliament representing the Kalmunai Electoral District lawfully in the House of Representatives and to pay to the Petitioner his remuneration, allowances, emoluments and other benefits to which the Petitioner is lawfully entitled to as Member of Parliament representing the Kalmunai Electoral District in the House of Representatives,

(*ii*) for costs, and

(*iii*) for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) AZAD RAHEEM,
Proctor for Petitioner.

Colombo, 11th January, 1966.

No. 1
Application for a Writ of Mandamus (*ii*) Petition 11-1-66.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a WRIT OF MANDAMUS under the provisions of Section 42 of the Courts Ordinance, Chapter VI, Volume I of the Legislative Enactments of Ceylon (1956 Revised Edition).

MOHAMED SAMSUDEEN KARIAPPER, of Cassim Road, Kalmunai.

Petitioner.

S.C. Application No. 8/1966.

Vs.

1. S. S. WIJESINHA, of No. 8, Alfred House Road, Colombo 3.

   The Clerk to the House of Representatives, The House of Representatives, Colombo.

2. S. N. SENEVIRATNE, of No. 138/1, Havelock Road, Colombo.

   The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents.

To :

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 11th day of January, 1966.

The Petition of the Petitioner abovenamed appearing by M. M. A. RAHEEM and his Assistant AZAD RAHEEM his Proctors states as follows :—

1. (*a*) The Petitioner was duly elected Member of the House of Representatives for the Kalmunai Electoral District at the General Election held on the 22nd of March, 1965 and on 5th April, 1965, was duly sworn and took his seat as such Member in the said House of Representatives and is entitled in law to continue to hold the office of such Member for a period of Five years from the date of such Election under and subject to the provisions of the Ceylon (Constitution) Order-in-Council.

   (*b*) The 1st Respondent is and was at all times relevant and material to this application the Clerk to the House of Representatives and is vested with statutory powers duties and functions under the provisions of the Ceylon (Constitution) Order-in-Council.

(*c*) The 1st Respondent was away from this Island from 12th November, 1965 till the 15th of December, 1965.

(*d*) By *Gazette* No. 14553 dated 11th November, 1965 the 2nd Respondent abovenamed who is the Assistant Clerk to the House of Representatives was appointed to act as the Clerk to the House of Representatives with effect from 12th November, 1965 till the return to the Island of the 1st Respondent or until further orders.

(*e*) The 1st Respondent returned to the Island on the 15th day of December, 1965 and resumed duties as the Clerk to the House of Representatives.

2. (*a*) Article 75 of the said Ceylon (Constitution) Order-in-Council provides that the remuneration and allowances payable to Members of the House of Representatives is the same as it was paid to Members of State Council unless Parliament otherwise provides.

(*b*) The monthly remuneration allowances, emoluments and other benefits due in law to all Members of Parliament were provided for in the Annual Appropriation Act passed by Parliament and are set out in detail in the Budget Estimates which form part and parcel of the Appropriation Act.

(*c*) The Appropriation Act No. 7 of 1965 and the Budget Estimates of the Revenue and Expenditure of the Government of Ceylon for the Financial Year 1st October, 1965 to 30th September, 1966 under Head No. 6 Vote 2 has made provisions for the payment to all Members of Parliament including the Petitioner remuneration allowances, emoluments and other benefits. The Petitioner is entitled to be paid his remuneration and allowances from the monies so provided by Parliament.

(*d*) The Clerk to the House of Representatives is the Officer entrusted with statutory powers, duties and functions of the Accounting Officer and of the Paying Officer of the Department of the Clerk to the House of Representatives and has to make all payments and grant all facilities and other benefits (monetary or otherwise) provided for by Parliament and due to all Members of Parliament as and when they fall due and since the Petitioner became a Member of the said House of Representatives duly discharged his public duty and paid his remuneration, allowances and emoluments and benefits due to the Petitioner up to end of October, 1965.

3. (*a*) The Petitioner states that a Bill entitled the Imposition of Civic Disabilities (Special Provisions) Bill has been purported to be passed as Law by Parliament providing *inter alia*

No. 1
Application for a Writ of Mandamus (*ii*) Petition 11-1-66. —(*Continued*).

that the Petitioner should be disqualified from sitting and voting the House of Representatives and should vacate his Office as Member of Parliament. The said Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 received the Royal Assent on 16th of November, 1965.

(*b*) The Petitioner further states at the time the said Act was introduced and debated in Parliament the Petitioner objected, protested and voted against the said Act.

The Petitioner produces hereto annexed a copy of the Hansard dated 21st October, 1965 marked P1 and the Petitioner's speech at pages 1949 to 1981 marked P1A and pleads the said document as part and parcel of this Petition.

4. (*a*) The Petitioner states that his monthly allowance as Member of Parliament is remitted by the Clerk to the House of Representatives to the Petitioner's Bankers The National and Grindlays Bank Ltd.

(*b*) The Petitioner was informed by his Bankers that his allowance for the month of November, 1965 had not been remitted at the end of November, 1965 by the 2nd Respondent who was at that time the Acting Clerk to the House of Representatives.

(*c*) On 6th December, 1965 the Petitioner communicated with the 2nd Respondent on the telephone and on inquiring of him the reason for his failure to do so the 2nd Respondent informed the Petitioner that since the Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 had been passed by Parliament and received the Assent on 16th of November, 1965 the 2nd Respondent will not be making any payment of the remuneration due to the Petitioner as Member of Parliamant from 17th November, 1965. The Petitioner immediately thereafter addressed letter dated 6th December, 1965 to the 2nd Respondent confirming the telephone conversation and stating that he was still a Member of the House of Representatives and requested and demanded of him to pay him the allowances due to him as Member of Parliament. The Petitioner has not had a reply to the said letter up to date.

The Petitioner produces hereto annexed a copy of the said letter dated 6th December, 1965 marked P2 and pleads the said document as part and parcel of this Petition.

(*d*) The Petitioner further states that after the 1st Respondent returned and resumed duties as Clerk to the House of Representatives the Petitioner addressed letter dated 23rd December, 1965 to him requesting and demanding of him too, to pay his allowances due to him as Member of Parliament. To this letter too the Petitioner has had no reply up to date.

The Petitioner produces hereto annexed a copy of the said letter dated 23rd December, 1965 marked P3 and pleads the said document as part and parcel of this Petition.

(*e*) The Petitioner further states that the 1st Respondent has not remitted the allowances due to the Petitioner as Member of Parliament for the month of December, 1965 too and refuses to issue to the Petitioner the Railway Warrant for the year 1966 to which the Petitioner is entitled as Member of Parliament.

5. The Petitioner respectfully submits that the said purported Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 is of no force or avail in law and is ineffectual to deprive the Petitioner of his position and status as Member of Parliament and his right to be paid his remuneration, allowances emoluments and other benefits in that :—

(*a*) The said Act or the relevant provisions thereof are void and in contravention of the Ceylon (Constitution) Order-in-Council and are in excess of the powers conferred on Parliament by the Ceylon (Constitution) Order-in-Council and do not constitute the exercise of legislative power but are an unwarranted assumption or exercise of Judicial and/or Punitive power in the guise of legislation against certain specified individuals of whom the Petitioner is one.

(*b*) The said Act or the relevant provisions thereof do not constitute or effect a lawful amendment of the said Ceylon (Constitution) Order-in-Council within the meaning of Section 29 thereof.

(*c*) The said Act and/or the relevant provisions thereof are not law within the meaning of Section 29 of the said Ceylon (Constitution) Order-in-Council.

6. The Petitioner respectfully submits that the 1st and/or the 2nd Respondent have wrongfully, unlawfully and illegally failed to recognise the Petitioner as Member of Parliament representing the Kalmunai Electoral District and thereby unlawfully illegally and in violation of their public duty have stopped and/or refused to pay or grant the Petitioner's allowances emoluments and other benefits that are legally due to the Petitioner as a Member of Parliament representing the Kalmunai Electoral District in the House of Representatives.

7. By reason of the aforesaid averments the Petitioner humbly prays that Your Lordships' Court be pleased to grant and issue a mandate in the nature of Writ of Mandamus ordering the 1st and/or the 2nd Respondent to recognise the Petitioner as Member of Parliament representing the Kalmunai Electoral District lawfully in the House of Representatives and to pay the remuneration, allowances emoluments and other benefits to which the Petitioner is lawfully entitled to as Member of Parliament re-

No. 1
Application for a Writ of Mandamus (ii) Petition 11-1-66. —(*Continued*)

presenting the Kalmunai Electoral District in the House of Representatives, for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased :—

(*i*) To grant and issue a Mandate in the nature of a WRIT OF MANDAMUS ordering the 1st and/or the 2nd Respondent to recognise the Petitioner as Member of Parliament representing the Kalmunai Electoral District lawfully in the House of Representatives, and to pay the Petitioner his remuneration, allowances, emoluments and other benefits to which the Petitioner is lawfully entitled to as Member of Parliament representing the Kalmunai Electoral District in the House of Representatives,

(*ii*) for costs and

(*iii*) for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) AZAD RAHEEM,

Proctor for Petitioner.

No. 1
Application for a Writ of Mandamus (*iii*) Affidavit 11-1-66

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a WRIT OF MANDAMUS under the provisions of Section 42 of the Courts Ordinance, Chap. VI, VOL. I of the Legislative Enactments of Ceylon—(1956 Revised Edition).

MOHAMED SAMSUDEEN KARIAPPER, of Cassim Road, Kalmunai.

Petitioner.

S.C. Application No. 8/1966.

Vs.

1. S. S. WIJESINHA, of No. 8, Alfred House, Road, Colombo 3.

The Clerk to the House of Representatives, The House of Representatives, Colombo.

2. S. N. SENEVIRATNE, of No. 138/1, Havelock Road, Colombo 5.
The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

No. 1
Application for a Writ of Mandamus
(*iii*) Affidavit
11-1-66.
—(*Continued*).

Respondents.

I, MOHAMED SAMSUDEEN KARIAPPER, of Cassim Road, Kalmunai, being a Muslim, do hereby solemnly sincerely and truly declare and affirm as follows :—

1. (*a*) I am the Petitioner abovenamed and the affirmant hereto.

(*b*) I was duly elected Member of the House of Representatives for the Kalmunai Electoral District at the General Election held on the 22nd of March, 1965 and on the 5th of April, 1965, was duly sworn and took my seat as such Member of the said House of Representatives and am entitled in law to continue to hold the office of such Member for a period of five years from the date of such Election under and subject to the provisions of the Ceylon (Constitution) Order-in-Council.

(*c*) The 1st Respondent is and was at all times relevant and material to this application the Clerk to the House of Representatives and is vested with the statutory powers, duties and functions under the provisions of the Ceylon (Constitution) Order-in-Council.

(*d*) The 1st Respondent was away from this Island from 12th November, 1965 till the 15th of December, 1965.

(*e*) By *Gazette* No. 14553 dated 11th November, 1965 the 2nd Respondent abovenamed who is the Assistant Clerk to the House of Representatives was appointed to act as the Clerk to the House of Representatives with effect from the 12th of November, 1965 till the return to the Island of the 1st Respondent or until further orders.

(*f*) The 1st Respondent returned to the Island on the 15th day of December, 1965 and resumed duties as the Clerk to the House of Representatives.

2. (*a*) Article 75 of the said Ceylon (Constitution) Order-in-Council provides that remuneration and allowances payable to Members of the House of Representatives is the same as it was paid to Members of State Council unless Parliament otherwise provides.

(*b*) The monthly remuneration allowances, emoluments and other benefits due in law to all Members of Parliament were provided for in the Annual Appropriation Act passed by Parliament and are set out in detail in the Budget Estimates which form part and parcel of the Appropriation Act.

No. 1
Application for a Writ of Mandamus (*iii*) Affidavit 11-1-66. —(*Continued*).

(*c*) The Appropriation Act No. 7 of 1965 and the Budget Estimates of the Revenue and Expenditure of the Government of Ceylon for the Financial Year 1st October, 1965 to 30th September, 1966 under Head No. 6 Vote 2 has made provisions for the payment to all Members of Parliament including myself, our remuneration allowances emoluments and other benefits. I am entitled to be paid my remuneration and allowance from the monies so provided by Parliament.

(*d*) The Clerk to the House of Representatives is the Officer entrusted with statutory powers, duties and functions of the Accounting Officer and of the Paying Officer of the Department of the Clerk to the House of Representatives and has to make all payments and grant all facilities and other benefits (monetary or otherwise) provided for by Parliament and due to all Members of Parliament in law as and when they fall due and since I became a Member of the said House of Representatives duly discharged his public duty and paid my remuneration, upto the end of October, 1965.

3. (*a*) I state that a Bill entitled the Imposition of Civic Disabilities (Special Provisions) Bill has been purported to be passed as law by Parliament providing *inter alia* that I should be disqualified from sitting and voting in the House of Representatives and should vacate my Office as Member of Parliament. The said Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 received the Royal Assent on the 16th of November, 1965.

(*b*) I further state at the time the said Act was introduced and debated in Parliament I objected, protested and voted against the said Act. I produce hereto annexed a Copy of the Hansard dated the 21st of October, 1965 and my speech at pages 1949 to 1981 marked P1A and plead the said document as part and parcel of this Affidavit.

4. (*a*) I state that my monthly allowance as Member of Parliament is remitted by the Clerk to the House of Representatives to my Banker's, National Grindlays Limited.

(*b*) I was informed by my Bankers that my allowance for the month of November, 1965 had not been remitted at the end of November, 1965 by the 2nd Respondent who was at that time the Acting Clerk to the House of Representatives.

(*c*) On the 6th of December, 1965 I communicated with the 2nd Respondent on the Telephone and on inquiring of him the reason for his failure to do so the 2nd Respondent informed me that since the Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 had been passed by Parliament and received the Assent on 16th of November, 1965, the 2nd Respondent will not be making any payment of the remuner-

ation due to me as Member of Parliament from 17th November, 1965. I immediately thereafter addressed letter dated 6th December, 1965 to the 2nd Respondent confirming the telephone conversation and stating that I was still a Member of the House of Representatives and requested and demanded of him to pay me the allowances due to me as Member of the Parliament. I have not had a reply to the said letter upto date.

I produce hereto annexed a copy of the said letter dated the 6th of December, 1965 marked P2 and plead the said document as part and parcel of this Affidavit.

(*d*) I further state that after 1st Respondent returned and resumed duties as Clerk to the House of Representatives I addressed letter dated 23rd December, 1965 to him requesting and demanding of him to pay my allowance due to me as Member of Parliament. To this letter too I have had no reply upto date.

I produce hereto annexed a copy of the said letter dated 23rd of December, 1965 marked P3 and plead the said document as part and parcel of this Affidavit.

(*e*) I further state that the 1st Respondent has not remitted the allowance due to me as Member of Parliament for the month of December, 1965 too and refuses to issue to me the Railway Warrant for the year 1966 to which I am entitled as Member of Parliament.

5. I respectfully submit that the said purported Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 is of no force or avail in law and is ineffectual to deprive me of my position and status as Member of Parliament and my right to be paid my remuneration, allowances emoluments and other benefit in that :—

(*a*) The said Act or the relevant provisions thereof are void and in contravention of the Ceylon (Constitution) Order-in-Council and are in excess of the powers conferred in Parliament by the Ceylon (Constitution) Order-in-Council and do not constitute the exercise of legislative power but are an unwarranted assumption or exercise of Judicial and/or Punitive power in the guise of legislation against certain specified individuals of whom I am one.

(*b*) The said Act or the relevent provisions thereof do not constitute or effect a lawful amendment of the said Ceylon (Constitution) Order-in-Council within the meaning of Section 29 thereof.

(*c*) The said Act and/or the relevant provisions thereof are not law within the meaning of Section 29 of the said Ceylon (Constitution) Order-in-Council.

No. 1
Application for a Writ of Mandamus (*iii*) Affidavit 11-1-66. —(*Continued*).

6. I respectfully submit that the 1st and/or the 2nd Respondent have wrongfully, unlawfully and illegally failed to recognise me as Member of Parliament representing the Kalmunai Electoral District and thereby unlawfully illegally and in violation of their Public duty have stopped and/or refused to pay or grant my allowances emoluments and other benefits that are legally due to me as a Member of Parliament representing the Kalmunai Electoral District in the House of Representatives.

7. By reason of the aforesaid averments I humbly pray that Your Lordships' Court be pleased to grant and issue a Mandate in the nature of WRIT OF MANDAMUS ordering the 1st Respondent and/or the 2nd Respondent to recognise me as a Member of Parliament representing the Kalmunai Electoral District lawfully in the House of Representatives and to pay the remuneration allowances, emoluments and other benefits to which I am lawfully entitled to as Member of Parliament representing the Kalmunai Electoral District in the House of Representatives, for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

Read over, signed and affirmed to at Colombo, on this 11th day of January, 1966.

(Sgd.) M. S. KARIAPPER.

Before Me,

(Sgd.).....

Justice of the Peace.

No. 2
Affidavit of the 1st Respondent — 14-2-66.

No. 2

Affidavit of The 1st Respondent

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a WRIT OF MANDAMUS under the provisions of Section 42 of the Courts Ordinance, Chapter VI, Volume I of the Legislative Enactments of Ceylon (1956 Revised Edition).

MOHAMED SAMSUDEEN KARIAPPER of Cassim Road, Kalmunai.

Petitioner.

S.C. Application No. 8 of 1966.

Vs.

1. S. S. WIJESINHA, of No. 8, Alfred House Road, Colombo 3. The Clerk to the House of Representatives, The House of Representatives, Colombo.

2. S. N. SENEVIRATNE, of No. 138/1, Havelock Road, Colombo. The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

No. 2
Affidavit of the 1st Respondent — 14-2-66.
—(*Continued*).

Respondents.

I, SAMSON SENA WIJESINHA, do hereby solemnly, sincerely and truly declare and affirm as follows :—

1. I am the Clerk to the House of Representatives and the first respondent abovenamed.

2. I produce, marked " X " and annexed hereto, a certified copy of the Original Bill which became the Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 which is now in the custody of the Registrar of Your Lordships' Court and which has endorsed on it a certificate under the hand of the Speaker of the House of Representatives that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-third of the whole number of Members of the House (including those not present), in terms of the proviso to section 29 (4) of the Ceylon (Constitution) Order-in-Council, 1946.

3. In regard to the statements contained in paragraph 2 of the Petitioner's affidavit, I state that while it is correct that it is the practice for either myself or an officer of my department to make payments provided for under Head No. 6 Vote 2 of the Budget Estimates for the current financial year, I am unaware of any statutory duty, power or function to make such payments.

Signed and Affirmed to by the deponent Samson Sena Wijesinha at Colombo on this 14th day of February, 1966. } (Sgd.) S. S. WIJESINHA,

Before Me,

(Sgd.) L. B. T. PREMARATNE,
Justice of the Peace for the Island of Ceylon.

No. 3
Judgment of the Supreme Court — 30-4-66.

No. 3

Judgment of the Supreme Court

In the matter of an application for a Mandate in the nature of a WRIT OF MANDAMUS under the provisions of Section 42 of the Courts Ordinance, Chapter VI, Volume I of the Legislative Enactments of Ceylon (1956 Revised Edition).

No. 3
Judgment of the Supreme Court — 30-4-66. —(*Continued*).

(S. C. Application No. 8/1966)

Present: SANSONI, C. J. and G. P. A. SILVA, J.

Counsel: H. W. JAYAWERDENE, Q.C., with M. T. M. SIVARDEEN, D. SENA WIJEWARDENE, and MARK FERNANDO for the Petitioner.

V. TENNAKOON, Q.C., Solicitor-General, with V. T. THAMOTHERAN, Deputy Solicitor-General and H. L. de SILVA, Crown Counsel, for Respondent.

Argued on : 16th, 18th, 21st and 30th March, 1966.

Decided on : 30th April, 1966.

SANSONI, C. J.

The petitioner, Mr. Mohamed Samsudeen Kariapper, was duly elected a member of the House of Representatives for the Kalmunai Electoral District at the General Election held in March, 1965. He has applied for a WRIT OF MANDAMUS against the Clerk and the Assistant Clerk to the House, ordering them to recognise him as the Member of Parliament for Kalmunai, and to pay him his remuneration and allowances as such Member which have not been paid since the end of October, 1965.

The discontinuance of such payment dates from the passing of the Imposition of Civic Disabilities (Special Provisions) Act, No. 14 of 1965, which received the Royal assent on 16th November, 1965. The legality of this Act (which I shall refer to as the impugned Act) has been challenged by the petitioner on the ground that it offends against the Ceylon (Constitution) Order-in-Council, 1946.

It is necessary, in view of this attack on the Act, to consider how it came to be enacted. On 11th September 1959, a Commission of Inquiry consisting of Messrs. W. Thalgodapitiya, T. W. Roberts and S. J. C. Schokman was appointed under the Commissions of Inquiry Act, Cap. 393, by the Governor-General to investigate and report on —

(*a*) whether during the period commencing on January 1, 1943, and ending 11th September, 1959 any gratification had been offered, promised, given or paid directly or indirectly to any person who then was or had been a member of the Senate, or the House of Representatives, or of the State Council, in order to influence his judgment or conduct in respect of any matter with which he in that capacity was concerned whether as of right or otherwise ;

(*b*) whether during that period any such gratification had been solicited or received, directly or indirectly, by any such person as a reward for any service rendered by him in that capacity whether as of right or otherwise.

It issued an interim report by which it found Messrs. Henry Abeywickrema, D. B. Monnekulama and R. E. Jayatilleke guilty of having received gratifications as contemplated by the terms of reference. By its final report it found Messrs. C. A. S. Marikkar, M. P. de Zoysa and the petitioner also guilty. These reports were tabled in the House of Representatives on December 16, 1960, and were ordered to be printed. They have been published as Parliamentary Series No. 1 of the Fifth Parliament.

The Commissioners pointed out in their interim report that the standard of proof required by them was proof beyond reasonable doubt. They also pointed out in that report that each term of reference was much wider in scope than S. 14 of the Bribery Act No. 11 of 1954, in that it " categorically and universally covers any act done by any Member of Parliament in his capacity as a Member of Parliament whether he has a right or not." They said in their final report : " The appointment of the Commission was due to serious allegations made in Parliament and the local press of widespread corruption by members of the Government in power, specially since the grant of independence to Ceylon. A Commission with similar terms of reference was issued to Mr. L. M. D. de Silva (now Right Honourable L. M. D. de Silva, P.C.) in 1941 which covered the period up to the end of 1942. The period under the purview of this Commission starts from 1943 . . . . . "

With regard to their procedure, they stated : " All investigations were carried out under the direction of the Commission. We received clues either written or oral. Then the Investigation Officers attached to the Commission were directed to investigate such clues. Those officers brought the results of their investigations to the Crown Counsel attached to the Commission and any further evidence, if necessary, was obtained on his instructions. The Crown Counsel reported to the Chairman whether there was a *prima facie* case, and if the Commission agreed, the person against whom the allegation had been made was summoned before the Commission, informed of the allegations against him and given an opportunity to make any statement he wished to make in explanation or in exculpation. Thereafter if the explanation seemed unsatisfactory, the matter was fixed for inquiry. By adopting this method the Commission sought to avoid the risk of being suspected of prejudice or pre-judgment." They also said this : " We decided at the outset that all hearings at inquiries should be in public. We did so because we wished not merely that justice should be done but should plainly and manifestly be seen to be done. The proceedings of the inquiries were open to the public and, we believed, were fully published in the newspapers in all three languages."

The preamble to the impugned Act recites the appointment of this Commission, the findings that the allegations of bribery had been proved against certain persons, and that it has become necessary to impose civic disabilities on the said persons consequent on the findings of the said Commission. The long title of the Act recites that it is an Act to impose civic disabilities on certain persons against whom allegations of bribery were held by a Commission of Inquiry to have been proved, and to make provision for matters connected therewith or incidental thereto.

No. 3
Judgment of the Supreme Court — 30-4-66. —(*Continued*).

The six persons who were found guilty by the Commission are mentioned in the Schedule to the Act and it is to them and them alone that the Act applies. The disabilities imposed on them are :—

(1) Disqualification for registration in registers of electors — section 2.

(2) Disqualification from voting at a parliamentary or local election — section 3.

(3) Disqualification from being a candidate at a parliamentary or local election — section 4.

(4) Disqualification from being elected or appointed as a Senator or a Member of the House of Representatives or for sitting or voting in the Senate or in the House of Representatives — section 5.

(5) Disqualification from being a Member of any local authority — section 6.

(6) If any of them was a Senator or a Member of the House of Representatives or any local authority on the day immediately prior to November 16, 1965, his seat in that capacity is deemed to have been vacant on that date — section 7.

(7) Disqualification from employment as a public servant, or from being a member of any scheduled institution as defined in the Bribery Act — section 8.

(8) If any of them was a public servant or a Member of a scheduled institution on the day immediately prior to November 16, 1965, he is deemed to have vacated his office in that capacity — section 9.

Section 10 reads :—

10. (1) Where any provisions of this Act are supplementary to, or inconsistent or in conflict with, any provisions of the Ceylon (Constitution) Order-in-Council, 1946, the said provisions of this Act shall be deemed, for all purposes and in all respects, to be as valid and effectual as though the said provisions of this Act were in an Act for the amendment of that Order-in-Council enacted by Parliament after compliance with the requirement imposed by the proviso of sub-section (4) of section 29 of that Order-in-Council.

(2) Where any provisions of this Act are supplementary to, or inconsistent or in conflict with, any provisions of any appropriate law, other than the Order-in-Council referred to in sub-section (1), the said provisions of this Act shall be deemed,

for all purposes and in all respects, to be as valid and effectual as though the said provisions of this Act were in an Act for the amendment of such appropriate law enacted by Parliament.

(3) The provisions of any appropriate law shall have force and effect subject to the provisions of this Act, and accordingly shall be read and construed subject to such modifications or additions as may be necessary to give the provisions of such appropriate law the force and effect aforesaid.

(4) In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any appropriate law, the provisions of this Act shall be read and construed subject to all such modifications or additions as may be necessary to resolve such conflict or inconsistency or, in the event of it not being possible so to do, shall prevail over the provisions of such appropriate law.

There can be no question that the Act was treated by the Legislature as coming within section 29 (4) of the Constitution which deals with Bills for the amendment or repeal of the provisions of the Constitution. There was endorsed on the Bill, when it was presented for the Royal Assent, the necessary certificate of the Speaker that the number of votes cast in favour of it in the House of Representatives amounted to no less than two-thirds of the whole number of the Members of the House (including those not present). A copy of Hansard dated 21st October, 1965 is produced along with the petition for Mandamus. It shows that the Second Reading was passed by 142 votes to 1, and the Third Reading by 130 votes to none.

The first objection taken by the Solicitor-General to the grant of the writ was based on two grounds — (1) that there is no legal duty on the Clerk of the House to pay the petitioner his remuneration and allowances, and (2) that the Clerk, when he pays Members of Parliament their remuneration and allowances, acts as a servant or agent of the Crown and Mandamus does not lie against a servant or agent of the Crown to compel him to perform a duty which he owes to the Crown. As this objection can be decided apart from any constitutional question that arises, I shall deal with it first, assuming for this purpose that the petitioner is still a Member of Parliament.

The question is whether such a Member can ask for a Writ of Mandamus from this Court to compel the Clerk of the House to pay him his remuneration and allowances. Now these amounts would be paid out of money provided by the Appropriation Act No. 7 of 1965. Section 2 of the Act authorises the sums appearing in the first schedule to be expended as specified in that schedule. Under Head VI Vote No. 2 a sum of money has been specified as payable on account of " administration charges — recurrent expenditure " of the House of Representatives. But the Act does

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not either expressly or impliedly impose a legal duty which the Clerk of the House owes to the petitioner. The matter is made clear in *The Queen v. Lords Commissioners of the Treasury* (1872) 7 Q.B.D. 387. The argument of Jessel, S.G., that the effect of the Appropriation Act is not to give any third person a right to the money, was accepted by Blackburn, J. in his judgment.

The further ground of objection, that the money voted in the Act would be received by the Clerk and paid by him to a Member of Parliament as a servant or agent of the Crown, is also valid. He is answerable to the Crown, and to the Crown alone. Cockburn, C.J. said in his judgment in the same case, referring to the jurisdiction to issue a WRIT OF MANDAMUS, "I take it, with reference to that jurisdiction, we must start with this unquestionable principle, that when a duty has to be performed (if I may use that expression) by the Crown, this Court cannot claim even in appearance to have any power to command the Crown; the thing is out of the question. Over the Sovereign we can have no power. In like manner where the parties are acting as servants of the Crown, and are amenable to the Crown, whose servants they are, they are not amenable to us in the exercise of our prerogative jurisdiction." It is not necessary to refer to any further authorities on this point because the case cited is still regarded as a leading authority.

Mr. Jayewardene argued that the Clerk is neither a servant of the Crown nor a public officer, but a servant of the House. He would, I think, be a servant of the House in so far as he has duties to perform in the House; and he is bound to obey the commands of the House but he is undoubtedly, for the purpose of the law relating to Mandamus, a public officer who has been appointed under S.28 (1) of the Constitution by the Governor-General. He is not a public officer as that term is used in the Constitution, only because S.3 of the Constitution excludes him from the category of public officers. But if any payments of public money provided by the Appropriation Act have to be made, he is the proper person to make them, and he makes them as a public officer who is answerable to the Crown.

The legal position that a person cannot ask for Mandamus against a public officer to pay him money which the latter holds as a servant of the Crown was conceded by Mr. Jayewardene. He admitted that his application must fail if the Clerk is a servant of the Crown, and if the money which the petitioner claims is money of the Crown. The petition, therefore, must fail on this ground alone.

But in deference to the arguments which we heard in respect of the constitutionality of the impugned Act, I think we should express our opinion on the question whether the petitioner is still a Member of Parliament, as he claims to be. For the decision of this question it is not necessary to pronounce specifically on all the sections of the Act, since sections 5, 7 and 10 alone are concerned in this application. If S.5 is valid the petitioner is disqualified for 7 years from November 16, 1965, for sitting or voting in the House of Representatives. If section 7 is valid he is deemed to have vacated his seat in the House of Representatives. And throughout it must be

remembered that S. 10 and the certificate of the Speaker save such provisions of the Act as involve a conflict with the Constitution. Now sections 5 and 7 are related to sections 13 and 24 respectively of the Constitution. Section 13(3) provides :—

> " A person shall be disqualified for being elected or appointed as a . . . . . member of the House of Representatives or for sitting or voting . . . . . in the House of Representatives . . . . .
>
> (*k*) if during the preceding seven years he has been adjudged by a competent Court or by a Commission appointed with the approval of the Senate or the House of Representatives or by a Committee thereof to have accepted a bribe or gratification offered with a view to influencing his judgment as a Senator or as a Member of Parliament."

Section 24(1) provides —

> " The seat of a Member of Parliament shall become vacant . . .
>
> (*d*) if he becomes subject to any of the disqualifications mentioned in section 13 of this Order.

It will thus be seen that so far as sections 5 and 7 of the impugned Act are concerned they seek to add another disqualification to those provided in S.13 of the Constitution, and to render the seat of a Member of Parliament vacant on a ground not already contained in S. 24(1) of the Constitution. This is undoubtedly an attempt to amend the Constitution, and was recognized as such by those who sought to make it. That is why the procedure prescribed in S. 29(4) was adopted ; and to make the matter clear there was enacted S. 10 which says that the Act was to be deemed to be as valid and effectual as though its provisions were an Act for the amendment of the Constitution.

Mr. Jayewardene's argument was that as the Act deprived the electors of the Kalmunai Electoral District of the services of the Member of Parliament whom they had chosen, and imposed on him penalties, such as vacation of the seat and the disqualification from sitting or voting, no Act of Parliament can do this even by a constitutional amendment. He relied on certain American decisions, none of which dealt with a similar situation. *In United States v. Lovett* (1945) 328 U.S. 303, it was held that an Act of Congress which prohibited payment of compensation to certain named Government employees charged with subversive activity was void, as it violated the Constitution. There is a certain risk in relying on American decisions which interpret provisions of that Constitution which have no parallel in our Constitution. That decision held that the Act of Congress

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was a Bill of Attainder which offended against Article 1, Section 9, Clause 3 of the Constitution, which states " No Bill of Attainder or *ex post facto* Law shall be passed." There is no provision of that nature in our Constitution, though the same result could be reached in Ceylon by attacking the Act as a usurpation of judicial power, as the Privy Council has recently shown. But always a distinction must be drawn between Acts passed in the ordinary way and those passed under S. 29(4) of the Constitution.

Another American decision cited was *Calder v. Bull* (1798) 3 U.S. 386. It considered what was an *ex post facto* law within the meaning of the Constitution, and held that the phrase applied only to penal and criminal statutes. I think that decision is still good law in America, and its effect would be to prevent the passing of an Act which inflicted a punishment for any conduct which was innocent at the time it was committed, or increased the punishment previously provided for any specific offence. The judgment of Chase J. was cited by the Privy Council in its recent judgment in *Liyanage v. The Queen* (1966) 70 C.L.W. 1. The particular sentence quoted by Lord Pearce reads : " These acts were legislative judgments ; and an exercise of judicial power," and it occurs in a passage which reads : " All the restrictions contained in the Constitution of the United States on the power of the State Legislatures, were provided in favour of the authority of the Federal Government. The prohibition against their making any *ex post facto* laws was introduced for greater caution, and very probably arose from the knowledge, that the Parliament of Great Britain claimed and exercised a power to pass such laws, under the denomination of bills of attainder, or bills of pains and penalties ; the first inflicting capital, and the other laws, lesser punishment. These acts were legislative judgments ; and an exercise of judicial power .... To prevent such and similar acts of violence and injustice, I believe, the Federal and State Legislatures were prohibited from passing any bill of attainder ; or any *ex post facto* law." The citation was undoubtedly appropriate in the Privy Council judgment because it was there held that the Criminal Law (Special Provisions Act No. 1 of 1962 and the Criminal Law Act No. 31 of 1962) were enacted with the aim of ensuring that the defendants who were then in custody should be convicted and should suffer enhanced punishment. They thus constituted, in the opinion of the Privy Council, an interference with the functions of the judiciary. They were aimed at particular known individuals who were about to be tried, and taking these and other facts into consideration they were held to infringe the judicial power. But at the same time Lord Pearce made it clear that legislation is not necessarily a usurpation or infringement of the judicial power because it is *ad hominem* and *ex post facto*. He said : " Each case must be decided in the light of its own facts and circumstances, including the true purpose of the legislation, the situation to which it was directed .... and the extent to which the legislation affects, by way of direction or restriction, the discretion or judgment of the judiciary in specific proceedings." I cannot however, see any resemblance between the substance of the impugned Act and the two Acts which the Privy Council considered in their judgment. The former Statute was enacted in order to give effect to the findings of the Commission of Inquiry which had finished its task. The latter Statutes were " a legislative plan *ex post facto* to secure the conviction and enhance the punishment of particular individuals."

But what is more important, and I think decisive, is the fact that the impugned Act was passed as a Constitutional amendment, with the Speaker's certificate to protect it, while the two Acts considered by the Privy Council were not. The Privy Council has, in this judgment and earlier, held that S.29(1) of our Constitution " was intended to and did have the result of giving to the Ceylon Parliament the full legislative powers of a sovereign independent State." The only limitation on that power is that contained in S. 29(2), as the Privy Council held in Ranasinghe's case (1964) 66 N.L.R. 73. It is beyond doubt that the words used in S. 29 (1) of the Constitution are the words " habitually employed to denote the plenitude of sovereign legislative power."

Mr. Jayewardene submitted that the impugned Act was not a law contemplated by S. 29 (1) because it was in effect a judgment or an enactment interfering with judicial power, and could not be saved even by the S. 29(4) certificate. But the answer to that argument is that an amendment of the Constitution made in accordance with S. 29(4) becomes a part of the Constitution, entitled to all the obedience due to any other part of the Constitution. It is not for the Court to say that a law passed by two-thirds of the whole number of members of the House does not conduce to peace, order and good government. The Court is not at liberty to declare an Act void because it is said to offend against the spirit of the Constitution though that spirit is not expressed in words. " It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written Constitution give that authority " — per Kania C.J. in *Gopalan v. The State of Madras* (1950) 63 L.W. 638. There is also the opinion of Isaacs and Rich JJ. in *McCawley v. The King* (1918) 26 C.L.R. 9 that " there is nothing sacrosanct or magical in the word " Constitution," the expression itself not indicating how far, or when, or by whom, or in what manner the rules comprising it may be altered. All these things must depend upon the rules themselves." Sir Owen Dixon on his appointment as Chief Justice of the High Court of Australia in 1952 said this : " The Court's sole function is to interpret a Constitutional description of power or restraint upon power and say whether a given measure falls on one side of a line consequently drawn or on the other, and it has nothing whatever to do with the merits and demerits of the measure . . . . There is no safer guide to judicial decisions in great conflicts than a strict and complete legalism."

The judgment of the Privy Council in Liyanage's case contains some very significant passages which are relevant to this part of the argument. It said, " there exists a separate power in the judicature which under the Constitution *as it stands* cannot be usurped or infringed by the executive or the legislature " and again, " Their Lordships cannot read the words of S.29(1) as entitling Parliament to pass legislation which usurps the judicial power of the judicature — *e.g.* by passing an act of attainder against some person or instructing a judge to bring in a verdict of guilty against some one who is being tried — if in law such usurpation would otherwise be contrary to the Constitution. There was speculation during the argument as to what the position would be if Parliament sought to procure such a result *by first amending the Constitution by a two-thirds majority.* But

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such a situation does not arise here. In so far as any Act passed *without resort to S. 29 (4) of the Constitution* purports to usurp or infringe the judicial power it is *ultra vires*." (the italics are mine in each case). It is that situation we are faced with now, and I have given my view after anxious consideration.

Dealing with the matter on a lower plane, the Solicitor-General also submitted that the Constitution itself provided in S. 13 (3) (*k*) for a Commission appointed with the approval of the House of Representatives or a Committee of the House to adjudge one of its Members guilty of a charge of accepting a bribe or gratification, and thereby passing judgment on him. In this case the petitioner was a Member of Parliament whom the House of Representatives, by passing the impugned Act, judged unfit to occupy his seat any longer because of the findings of the Commission of Inquiry. In my view, sections 13 and 24 of the Constitution lend support to the view I have formed that, apart from other considerations which may affect the other provisions of this Act, the Legislature was well within its powers when it enacted sections 5 and 7 with the necessary two-thirds majority. The case of "*The Queen v. Richards* (1954) 92 C.L.R. 157, which the Solicitor-General cited is not exactly in point, but it throws light on the nature of the particular power which has been exercised in sections 5 and 7 of this Act, had they and section 10 alone been enacted. Dixon C.J. pointed out in that case, which was one where the Speaker of the House of Representatives of the Commonwealth Parliament issued a warrant of arrest, that there has been throughout the course of English history a tendency to regard the powers of the House of Commons in such matters as not strictly judicial but as belonging to the legislature, as something essential or at any rate proper for its protection. I see no objection to the Ceylon House of Representatives, by a constitutional amendment, extending the power it had under S. 13 (3) (*k*) to this particular case by enacting sections 5 and 7 of the impugned Act. They do not thereby exercise judicial but legislative power, and restrospectively impose a disqualification on one who was already a Member of Parliament.

Mr. Jayewardene also attacked the procedure by which Parliament passed the impugned Act. He submitted that the Constitution should first have been amended by a separate Act which empowered the Legislature to exercise judicial power and to pass Bills of Attainder. A Bill should then have been placed before Parliament containing provisions similar to sections 2 to 9. He read the words " Bill " for the amendment or repeal of any of the provisions of this Order " appearing in S. 29 (4) of the Constitution as contemplating only a Bill which directly amended or repealed specific provisions of the Constitution, and not a Bill such as the one before us. For this argument he relied mainly on the case of *Cooper v. Commissioner of Taxes for Queensland* (1904) 4 C.L.R. 1304. The High Court of Australia held in that case that it was not competent for the Legislature of Queensland to pass any enactment inconsistent with the provisions of the Queensland Constitution Act without first specifically amending the Constitution. In effect, the High Court held that the doctrine of amendment by subsequent inconsistent enactment was not available, and that there should have been an antecedent amendment of the Constitution before any Act which came into conflict with the Constitution was passed.

In my opinion Cooper's case ceased to be of any authority after the decision of the Privy Council in *McCawley v. The King* (1920) A.C. 691, which overruled Cooper's case and held that a provision of any Act which was inconsistent with a term of the Constitution of Queensland operated as a repeal by inconsistency. In the Privy Council judgment Lord Birkenhead approved the dissenting judgment of Isaacs and Rich J.J. in *McCawley v. The King* (1918) 26 C.L.R. 9. It is useful to quote two passages from that dissenting judgment. " Implied repeal by antagonistic legislation of an affirmative character is said to be legally impossible. No doubt is raised as to the competency of the Queensland Parliament to pass the self-same Act in the same terms, in the same way, by the same royal assent. But it is said to be dependent upon the condition that it previously passed an Act expressly labelled as an amendment of the Constitution Act, and expressly repealing or altering the sections referred to. All this, it is said, arises because the Constitution Act of 1867 is labelled " Constitution." If such efficacy is given to that Act because of its label, then it is self-evidence that any other Act passed in the ordinary way, provided no specific manner or form is prescribed for such an Act, will be of equal validity if only it be similarly labelled. And so, ultimately it comes to a question of prefatory label." Also, " Does English law make any distinction between an express repeal and an implied repeal? We think not. Given the competent authority, given the absence of any stated requirements as to special method of repeal, we know of no doctrine that upholds a repeal if express, and condemns it if necessarily implied. The effect is the same. The effect of the repealing Act must therefore depend on what it does, and not on the label it affixes to itself." They quoted with approval an opinion of the Attorney-General and the Solicitor-General for England, which said : " It must be presumed that a legislative body intends that which is the necessary effect of its enactments ; the object, the purpose and the intention of the enactment, is the same ; it need not be expressed in any recital or preamble ; and it is not (as we conceive) competent for any Court judicially to ascribe any part of the legal operation of a Statute to inadvertence."

These passages which I have cited are, I think, a sufficient answer to Mr. Jayewardene's argument that both the short and the long titles of the Bill under consideration are wrong, and that the Bill should have been expressly stated to be a Bill for the amendment or repeal of the Constitution and not one for the imposition of civic disabilities. There is, however, also the case of *Krause v. Commissioner for Inland Revenue* (1920) A.D. 286 cited by the Solicitor-General where Wessels J.A. said : " If a later Act of Parliament is inconsistent with the South Africa Act, the Court may hold that the later Act impliedly varies such part of the South Africa Act as is inconsistent with the later Act .... In considering whether the Legislature intended the later Act to supersede a provision of the South Africa Act, the Court must take into consideration the whole of the later Act as well as the South Africa Act, and gather from these Acts, as well as from the effect of the legislation, what the Legislature intended when it passed the later Act."

Lord Birkenhead referred in McCawley's case to the difference between a controlled and uncontrolled Constitution. In the case of the latter, he said, the terms " may be modified or repealed with no other formality than

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is necessary in the case of other legislation," while the former " can only be altered with some special formality, and in some cases by a specially convened assembly." In this sense, the Ceylon Constitution is controlled because it prescribes in S. 29 (4) a requirement which has to be complied with in the case of Bills to amend or repeal any of its provisions. But apart from the certificate of the Speaker under that sub-section no other condition is to be found anywhere in it. That is the only procedure stipulated by the Constitution, and it would be wrong to require other formalities which are not prescribed by the Constitution itself. The restraint or limitation which Mr. Jayewardene has sought to introduce in the form of a preliminary Act is a negation of the principle of repeal or amendment by subsequent inconsistent enactment.

The Privy Council in *Bribery Commissioner v. Ranasinghe* (1964) 66 N.L.R. 73, considered section 29 (4) and pointed out that the Bribery Act No. 11 of 1954 Cap. 26 had the necessary certificate of the Speaker, because it was treated as coming within S. 29 (4). Section 2 of that Act reads :—

> 2. (1) Every provision of this Act which may be in conflict or inconsistent with anything in the Ceylon (Constitution) Order-in-Council, 1946, shall for all purposes and in all respects be as valid and effectual as though that provision were in an Act for the amendment of that Order-in-Council enacted by Parliament after compliance with the requirement imposed by the proviso of sub-section (4) of section 29 of that Order-in-Council.
>
> (2) Where the provisions of this Act are in conflict or are inconsistent with any other written law, this Act shall prevail.

Although the terms of this section are different from the terms of S. 10 of the impugned Act, it is obvious that both sections were inserted in order to comply with S. 29 (4) of the Constitution. Nowhere in that Privy Council judgment was it suggested that the Bribery Act No. 11 of 1954 was invalid because it was not preceded by a separate Act to amend or repeal any of the provisions of the Constitution. The judgment considered the validity of the Bribery (Amendments) Act No. 40 of 1958 which came into conflict with section 55 (1) of the Constitution and held it to be invalid because it did not comply with the procedural requirements imposed by the proviso to S. 29 (4) of the Constitution. It is not difficult to gather from the judgment that the amending Act would have been valid if it had the Speaker's Certificate, for Lord Pearce said, " where an Act involves a conflict with the Constitution the certificate is a necessary part of the Act making process." After explaining the difference between McCawley's case and Ranasinghe's case, Lord Pearce said that alterations of the Constitutional provisions, whether implied or express, can only be made by laws which comply with the special legislative procedure laid down in section 29 (4).

For these reasons I would dismiss this application with costs.

(Sgd.) M. C. SANSONI,
Chief Justice.

G. P. A. SILVA, J.

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In agreeing with the judgment of My Lord the Chief Justice I wish to express my own views on some of the aspects that arise for consideration in this application. Even though the decision of this matter can be confined to one or two points, I feel that the Court owes a duty to the Counsel on both sides, who have presented an exhaustive argument, to deal with all the points raised. The submissions made and the cases cited have been dealt with in some detail by My Lord the Chief Justice.

While counsel for the petitioner assailed the validity of the entirety of the Imposition of Civic Disabilities (Special Provisions) Act, the Solicitor-General at the very commencement of his argument, urged that we should not in any event declare the whole of the Act in question invalid as there were certain provisions in the Act which could remain valid even if certain other provisions may be declared invalid. He based his submission on the doctrines of severability. This question arose for decision in Ceylon in the case of *Thambiayah vs. Kulasingham* 50 N.L.R. page 25 where the point at issue was whether a certain amendment to the Ceylon (Parliamentary Elections) Order-in-Council 1946 was *ultra vires*. It was held in that case that the fact of repugnancy to the Constitution of a part of a statute did not render the remaining provisions *ultra vires*. The Divisional Bench in that case followed the principle enunciated in the case of *Shyamakant Lal vs. Rambhajan Singh et al* reported in All India Reports (1939) Federal Court 74.

These judgments show that a Court would, in dealing with an Act of Parliament, be only justified in pronouncing whether any particular provision therein is *ultra vires* or not and it would be travelling outside the scope of its powers if it pronounces the entirety of an Act of Parliament invalid unless every single provision is repugnant to an existing provision of the Constitution. An Act of Parliament will remain on the statute book until it is repealed by another Act of Parliament or until it lapses by reason of any time limit imposed on its operation by the Act itself and the Courts will be competent only to pronounce on the validity of a particular provision of an Act which is sought to be impugned by any party affected by such provisions. The Solicitor-General has also drawn attention to the case of *Ashwarden vs. Tennessey Valley Authority* (1935), 297 United States Report at page 288 in which a number of useful rules were laid down in regard to the manner in which Courts should approach constitutional questions. The principles laid down in this case serve as a guide to decide this as well as the other aspects arising in the instant case. The Privy Council has confirmed this principle of severability in the last paragraph of the judgment in *Liyanage vs. The Queen*, 70 C.L.W. 1. Having earlier, in dealing with the offending provisions of this legislation, characterised the Acts as a legislative plan *ex post facto* to secure the conviction and enhance the punishment of particular individuals and for that reason bad, the Privy Council drew pointed attention to certain other provisions of the Act which in their view could survive on this principle of severability. When therefore they pronounced the Acts to be invalid they must necessarily be taken to have pronounced to be invalid such of the provisions as were

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repugnant to the Constitution on the ground that the alterations to the existing criminal law effected by the Acts constituted an incursion into the judicial sphere. On the authority of this case and the earlier cases cited, the Solicitor-General's contention must be upheld. There are to be found in this Act provisions disqualifying the persons mentioned in the schedule from future appointments in the public Service or from election to any local body for seven years. These provisions are innocuous and will remain valid even if certain other provisions which are impugned in this case are declared to be invalid. The main questions that require consideration would fall into the following categories :— 10

(1) Whether the Parliament has the power to pass legislation which would disqualify a member from sitting and voting and from continuing as a member by reason of a certain state of facts, which existed before such member even contested the election at which he was duly elected a Member of Parliament and which was not a disqualification according to the law as it then existed.

(2) Is such an Act of the Legislature, or does such Act tantamount to, a usurpation of the functions of the Judicature and, if so, does it violate the principle of separation of powers which has 20 been recognised by our Constitution and confirmed by the judgment of the Supreme Court in the first Trial-at-Bar, *Queen vs. Liyanage and others*, reported in 64 N.L.R. 1963 as well as in the Privy Council judgment in *Liyanage vs. The Queen*, 70, C.L.W.1.

(3) Does this Act contain a law or laws within the meaning of section 29 (1)., of the Constitution.

(4) Does the Act in question constitute an amendment of the Constitution.

(5) In any event is the Clerk to the House of Representatives the 30 holder of a public office against whom a Writ of Mandamus from the Supreme Court, compelling him to perform a certain duty, lies.

In regard to the first point, it is manifest that the provisions of the Act proper have as their aim the imposition of certain disabilities on the six named individuals. Sub Section (3) (*k*) of Section 13 of the Ceylon Constitution which contains the disqualification of members of either House shows that one of the disqualifications for being elected or appointed as a Senator or Member of the House of Representatives or for sitting or voting in either House is that, *inter alia*, he has been, during the preceding seven years, adjudged by a Commission appointed with the approval of 40 that House or by a committee thereof to have accepted a bribe or gratification. This is an indication that even at the time of the drafting of the Constitution a special jurisdiction as it were was conferred on each House in the sphere of bribery, to disqualify a member of such House without the normal condition precedent, namely, a conviction by a Court. This provision has in effect given the decision of a Committee of the House the same

sanctity as a decision of a Court in regard to the acceptance of a bribe by a member. It seems to me that if such a disqualification can result from a decision of even a Committee of the House, a *fortiori*, an Act of Parliament which is passed by both Houses would result in such disqualification. When an Act of Parliament enacts that certain persons who have been found by a particular Commission of Inquiry to have been guilty of bribery shall be disqualified for being elected or appointed as Senator or a Member of the House of Representatives or for sitting or voting in the Senate or House of Representatives it must be presumed that the two houses of Parliament perused the proceedings of that Commission of inquiry and were satisfied of the correctness of the findings when both houses proceeded to pass the enactment; and thereafter the decision of the Commission, even though the latter was not appointed with the approval of the Senate or the House of Representatives, must be considered to be translated into a decision of both Houses of Parliament. Mr Jayewardena in this connection made several complaints in regard to the findings of the Commission of Inquiry one of which was even bias on the part of one of the Commissioners. Had the petitioner in the first instance made a successful attack on these findings — I do not know in which appropriate proceeding he could have done so — the situation would have merited different considerations. As it is, however, the findings of the Commission remain intact and the Parliament has based the present enactment on those findings as they stand.

The question as to the validity of *ex post facto* legislation in this case arises for consideration in this regard. For, the act or acts of bribery referred to were clearly committed and the findings thereon arrived at by the Commission even before the member concerned sent in his nomination papers for the election. Mr. Jayewardena advanced a number of cogent and powerful arguments in this connection which would have persuaded me to decide this question in his favour had it not been for the now settled view in regard to retrospective legislation. The gravamen of Mr. Jayewardena's attack was that while the words of Section 13 (3) (*k*) contemplated a situation where the decision as regards the disqualification had been taken prior to the election or appointment as a Senator or Member of the House, the present enactment effected a disqualification which was not a disqualification at the time the petitioner was duly elected as a Member of Parliament to represent his constituency and that the Parliament cannot enact law which would deprive the electors of the candidate of their choice who was duly elected. The principle that the Parliament has the power to pass retrospective or *ex post facto* legislation has now been well established *vide* the Order of Court in *The Queen vs. Liyanage and others*, 65 N.L.R. Page 73. The question was also considered in the Order of Court dated 21-6-1965 in the subsequent Trial-at-Bar No. 1 of 1965 in the following passage :— " These principles which have been the subject of judicial interpretation in England would equally apply to the Parliament of Ceylon. The only restriction placed upon the legislative power of Parliament in Ceylon is to be found in Section 29 and, in a sense, to a limited extent in Section 39 of The Ceylon (Constitution) Order-in-Council itself and so long as any Act of Parliament is duly passed and does not offend against restrictions placed in the sections referred to above, either expressly or by necessary implication, courts of law are obliged to treat such Acts of Parliament as having enacted good law, be it prospective or retrospective. We may say

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that this matter was fully argued and received careful consideration by a Bench of three Judges of this Court before whom the Trial-at-Bar No. 2 of 1962 was held and their rejection of the argument in regard to the invalidity of retrospective legislation fortified the conclusion which we ourselves have reached. On an examination of a number of decisions of the English Courts we observe that this is one of those subjects in regard to which all the decisions have been in one direction, despite the almost universal natural revulsion of Judges towards the concept of retroactive laws." I am therefore of the view that the *ex post facto* nature of the legislation does not affect its validity. The fact that this legislation touches a matter which belongs to the field of conduct of members over which the House has full control would tend to reduce the offensive nature, if any, of such legislation.

This leads me to the second point as to whether this legislation is, or is tantamount to, a usurpation of the functions of the judicature. This is an aspect that has given me considerable anxiety in this case, namely, the question whether the acceptance of a bribe being punishable under the Penal Code, the present legislation which has as its object the disqualification of a member for acceptance of a bribe, indirectly has the effect of a person being convicted by legislation whereas there should be a conviction by Court, and, if so, whether such legislation being an inroad into the judicial sphere, is *ultra vires* to the extent of the inroad so made. Mr. Jayewardena sought to argue that there was a clear separation of powers recognised by our Constitution and that, as far as the powers of the Judicature which are entrenched in the Constitution are concerned, they are unalterable and that any inroads on the Judicature by the Legislature will be invalid to the extent that they conflict with the entrenched powers of the Judicature. In his submission this was the view expressed by the Privy Council in *Liyanage vs. The Queen* referred to above. The relevant observations of the Privy Council in this connection are contained in the following passage :— " Section 29 (1) of the Constitution says :— Subject to the provision of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island." These words have ~~been~~ habitually been construed in their fullest scope. Section 29 (4) provides that Parliament may amend the Constitution on a two-thirds majority with a certificate of the Speaker. Their Lordships however cannot read the words of Section 29 (1) as entitling Parliament to pass legislation which usurps the Judicial power of the Judicature — *e.g.* by passing an act of attainder against some person or instructing a Judge to bring in a verdict of guilty against someone who is being tried — if in law such usurpation would otherwise be contrary to the Constitution. There was speculation during the argument as to what the position would be if Parliament sought to procure such a result by first amending the Constitution by a two-thirds majority. But such a situation does not arise here. In so far as any Act passed without recourse to Section 29 (4) of the Constitution purports to usurp or infringe the Judicial power it is *ultra vires*." I understand this observation to mean that, although Section 29 (1) gives the fullest scope for the Parliament to pass laws for peace, order and good government of the Island, it cannot be construed as entitling Parliament by a simple majority to pass legislation which usurps the judicial power of the Judicature for the reason that such usurpation would indirectly come in con-

flict with the Constitution and the legislation would therefore be tantamount to an amendment of the Constitution which has been careful to preserve the independence of the Judiciary in part VI thereof. The two examples given by the Privy Council in this connection, namely, the passing of an act of attainder against some person or instructing a Judge to bring in a verdict of guilty against someone who is being tried, make the view taken by the Privy Council quite clear as, in both these instances, if there was legislation intended to achieve the two purposes mentioned, they would patently be usurpations of judicial power.

Let me now examine the bearing of the instances cited by the Privy Council and the legislative judgment which they had in mind on the facts of the present case. Their Lordships went on to say " The pith and substance of both Acts was a legislative plan *ex post facto* to secure the conviction and enhance the punishment of those particular individuals. It legalised their imprisonment while they were awaiting trial. It made admissible their statements inadmissibly obtained during that period. It altered the fundamental law of evidence so as to facilitate their conviction, and finally it altered *ex post facto* the punishment to be imposed on them." In their Lordships view that cogent summary fairly describes the effect of the Acts. As has been indicated already, legislation *ad hominem* which is thus directed to the course of particular proceedings may not always amount to an interference with the functions of the judiciary. But in the present case their Lordships have no doubt that there was such interference ; that it was not only the likely but the intended effect of the impugned enactments ; and that it is fatal to their validity. The true nature and purpose of these enactments are revealed by their conjoint impact on the specific proceedings in respect of which they were designed, and they take their colour, in particular from the alterations they purported to make as to their ultimate objective, the punishment of those convicted. These alterations constituted a grave and deliberate incursion into the judicial sphere. With these observations in the forefront it is not difficult to compare and contrast the facts of the case before us in order to arrive at a conclusion whether there is any resemblance of one case to the other in any respect. In the instant case what may be termed a Royal Commission was appointed with certain terms of reference to probe reported cases of bribery among certain Members of Parliament, in terms of existing laws in regard to commissions of inquiry. The Commission was appointed at the instance of one Parliament. Those against whom allegations of bribery were made were given notice of the allegations and were represented by counsel at the sittings of the Commission. The commission arrived at certain findings which held the persons named in the schedule to the Imposition of Civic Disabilities (Special Provisions) Act to be guilty of bribery. The Parliament which was responsible for the appointment of the Commission took no action on the Commission's report. A subsequent Parliament which defeated and replaced the Parliament which appointed the Commission have thought it fit to pass the Act referred to, imposing disqualifications and disabilities against those found guilty by the Commission without making any modification or qualifiction in the report of the Commission. Can it be said in these circumstances that the Parliament which passed the present Act had any plan at all to secure the punishment of any particular individuals who had in some manner offended the government in power. Far from there

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being even the semblance of a plan, the whole ground was prepared by one Parliament and the implementation was by another which, as I said before, displaced the earlier one. There was no changing of any law, no placing of any barrier against these individuals in the way of their defences, no violation of any principle of natural justice in securing the findings against these individuals ; in short not one factor which shows that the procedure adopted in this case at the instance of one Parliament was anything out of the ordinary either in regard to the appointment of the Commission or the mode of inquiry adopted by the Commission in reaching their decision touching the six persons concerned, nor did the legislation by the other Parliament which enacted the impugned Act have any plan to disqualify the six persons of its choice as the choice had already been made by a Commission appointed during the period of its predecessor. A vital distinction between the legislation for the trial of the Coup suspects and this enactment regarding the restriction of the Act to named individuals is that, while in the Coup case the named persons were awaiting trial, with the presumption of innocence operating in their favour, the six persons named in this schedule had already been found guilty of allegations of bribery long before the Act was passed. Briefly stated, in the one case the enactment intended to regulate the trial preceded the finding against the named individuals ; in the other the finding preceded the enactment. In these circumstances I fail to see how there has been any incursion into the judicial sphere by the legislature in this case when it merely disqualified a Member of Parliament for findings of bribery which had already been finalised several years before the legislation was passed. It seems to me that the real question which arises for consideration is the objection to the *ex post facto* character of the legislation. I have dealt with this aspect already and in the state of the existing law there can be only one view in this regard.

As regards Counsel's contention that these disabilities were in the nature of penalties imposed on these six persons and that the legislature in imposing such penalties had impinged on the province of the judiciary, there is a further importnat distinction between legislation intended to punish any particular individuals who would render themselves liable to punishment under the ordinary law of the land and legislation intended to impose certain disqualifications or disabilities on present or prospective members of the House *qua* members. While in regard to the first category a Court would in certain circumstances hold the legislation to be invalid as being an encroachment on the province of the judiciary a Court will be slow to invalidate any law passed by the Parliament imposing certain disabilities or disqualifications on Members of Parliament in view of the power the Parliament has to control its own proceedings and impose its own discipline. Further the offence of bribery mentioned in Section 13 (3) (*k*) of the Order-in-Council is not the same as that contemplated in the Penal Code. There are two chapters of the Penal Code dealing with offences of bribery, namely, Chapter IX which relates to the acceptance of gratifications by public servants as a motive or reward for doing or for forebearing to do official acts and Chapter XI which relates to the acceptance of a gratification to screen an offender from legal punishment. The offence contemplated in the Order-in-Council, however, is the acceptance of a bribe by a member of either House with a view to influencing his judgment in

that capacity. It seems to me therefore that bribery among Senators and Members of Parliament is an area where each House by virtue of the Constitution itself exercises a sort of special jurisdiction and a finding by a Commission appointed with the approval of the Senate or the House of Representatives or by a Committee thereof will have the same force as an adjudication by a competent Court. What the present Act seeks to achieve is to extend this disqualification to certain persons found guilty of this same offence by a Commission of Inquiry appointed under the Commissions of Inquiry Act. Any legislation therefore in this area will carry with it a further argument in support of validity.

Implicit in the words of the Privy Council is the condition precedent that the provisions of the Constitution with regard to the Judicature are present in their existing form. This is far from saying that the powers of the Judicature which are set down in part VI are unalterable. The last sentence of the passage quoted above, namely, " In so far as any Act passed without recourse to Section 29 (4) of the Constitution purports to usurp or infringe the judicial power it is *ultra vires.*", to my mind, can also be expressed differently, namely that where an Act is passed after due recourse to Section 29 (4) of the Constitution, even though that Act usurps or infringes the judicial power, it is *intra vires.* If one were to use almost the identical phraseology of the Privy Council, it would mean that, even though any Act passed *with* recourse to Section 29 (4) of the Constitution purports to usurp or infringe the judicial power, it is *not ultra vires.* In my judgment there is no justification to draw from this passage the inference which is contended for by the learned Counsel for the petitioner namely, the unalterability of the separation of judicial power in the Constitution. Such an alteration can, I think, be validly achieved if Parliament passes the necessary legislation with a two-third majority and the certificate of the Speaker in terms of Section 29 (4) although, *as the Constitution stands at present*, there is such a separation of power which cannot be infringed by an ordinary Act of Parliament for the good reason that such an infringement will be *ultra vires*, the Constitution which alone conferred on Parliament that very power to legislate.

There is a further argument that militates against Mr. Jayewardena's contention. In giving expression to the plenitude of powers of our Legislature, Section 29 proceeded in sub-sections 2 and 3 to enumerate certain limitations in respect of such powers. The acceptance of Mr. Jayewardena's contention would necessarily lead to the implication that apart from the limitation imposed by sub-Sections 2 and 3 of Section 29 there is a further limitation which the Constitution has chosen silently to express, namely, that no law shall remove or reduce any of the powers of the Judicature which have been provided for in the Constitution and that any law made in contravention of this limitation shall to the extent of such contravention be void. It is a cardinal rule of interpretation that when certain exceptions or limitations are laid down touching any particular provision, no further exceptions or limitations should be read into the provisions — *expressio unius exclusio alterius.* This principle too would therefore dissuade a Court from accepting the argument that apart from the express limitation contained in Section 29 (2) there is a further restriction on Parliament to pass laws which conflict with the entrenched principle of separation of judicial power.

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Judgment of the Supreme Court — 30-4-66. —(*Continued*).

On the next point for consideration Mr. Jayewardena argued that this Act did not contain any law within the meaning of Section 29 (1). His submission was that, according to sub-Section 29 (4), Parliament could pass any legislation to amend or repeal the Constitution only in the exercise of its powers under Section 29 (1); that Section 29 (1) conferred on the Parliament the power to make laws for the peace, order and good government and as this Act does not contain any law or laws which are contemplated in Section 29 (1), Parliament exceeded its powers in passing this Act. His argument on this aspect too again revolved round the contention that a legislative judgment is not law as decided by the Privy Council in the judgment referred to. This Act which, according to his contention, purported *ex post facto* to secure a finding of guilty of six named individuals for bribery, being therefore a legislative judgment of the type that was referred to in the Privy Council decision, is not legislation which the Parliament could properly pass. The answer of the Solicitor-General to this contention was that the limitation on legislation, apart from those mentioned in Section 29 (2), resulted not from the word law in Section 29 (1) but from Part VI of the Constitution which secured the independence of the Judiciary. As the Constitution stood, great care has been taken to secure the independence of the Supreme Court and of all the members of the Judicial Service by vesting the power of appointment of the latter in the Judicial Service Commission. There was therefore entrenched in the Constitution a separation of legislative and executive power on the one hand from the judicial power of the State on the other so that, if there was any ordinary legislation which, although it conformed to the normal processes for the passage of legislation, constituted in pith and substance an incursion into the judicial sphere, in that the legislation brought about a certain situation in which the Judiciary, instead of independently exercising its judgment, was constrained or compelled to exercise it in a particular way, such legislation would, by reason of its repugnance to the aforesaid entrenched powers of the Constitution, be *ultra vires*. These objectionable elements, in the Solicitor-General's submission, are not present in this Act. On a careful analysis of the Privy Council decision I am inclined to favour this view. I am also inclined to accept the submission of the learned Solicitor-General that Section 29 (1) has always been interpreted to give Parliament the widest possible legislative powers known to the British Constitution subject to the limitations set out in Section 29 (2), this submission too being supported by the Privy Council judgment when it stated "These words have habitually been construed in their fullest scope." As I have already expressed the view that this enactment is not a legislative judgment and does not make any inroad into the judicial sphere I do not find it possible to accept Mr. Jayewardena's argument that this Act does not constitute a law which the Parliament is empowered under Section 29 (4) to make. It must be remembered that the Privy Council also held in the very judgment relied on by Mr. Jayewardena that every enactment which can be described as *ad hominem* and *ex post facto* does not inevitably usurp or infringe the judicial power. When one considers all the qualifications contained in the conclusions arrived at by the Privy Council in this case it seems to me that their Lordships did not base this decision on one particular fact or circumstance. Like the necessity for the presence of all the

links in a chain of circumstances the totality of which goes to prove a case of circumstantial evidence it is the presence of a number of circumstances at the same time in the Coup case, namely, the facts disclosed in the white paper, the alteration of existing laws, the limitation of the law to specific named individuals and the wresting from the Judges their proper judicial discretion regarding the punishment, that made the Privy Council characterise the Acts as legislative judgments. Just as a case of circumstantial evidence would fail owing to the absence of a necessary link in the chain of circumstances, the absence of any one of these essential circumstances may have led the Privy Council to take a different view and to hold the impugned provisions to be *intra vires* the Constitution. It will therefore be unsafe on the authority of the Privy Council decision to rush to a conclusion that Parliamant has enacted a legislative judgment by reason of the mere presence of one or more of the features that are present in the Criminal Law (Special Provisions) Act in such an enactment.

I shall now consider the next point of attack made by the counsel for the petitioner, namely, that this enactment does not constitute an amendment of the Constitution. In his submission the original Bill was on the face of it not an amendment of the Constitution but a Bill to impose civic disabilities, etc., and this description did not comply with the provisions of Section 29 (4) which requires such a Bill to bear on the face of it that it is an amendment of the Constitution. He also brought to our notice in his support one or two previous amending Acts which were described as such. He also submitted that the danger of a Bill, not bearing on its face such a description was that neither the members of the House nor the public will have notice of such an amendment which must be considered to be of greater importance than an ordinary enactment. Finally he submitted that Section 10 of this Act clearly stated that it was not an amendment but that any provisions therein which were inconsistent with the Constitution shall be deemed to be an amendment. In my view there can be either a direct amendment of a particular provision in the Constitution or one which, though not a direct amendment, may have the effect of an amendment of one or more provisions. In the latter case, it may not always be practicable to describe a Bill as an Amendment of a particular provision. Section 10 on which counsel relies is itself in my opinion, the warning for members of the House and the public that there are, or at least may be, some provisions which constitute amendments of the Constitution. I do not think that when the proviso to Section 29 (4) proceeded to set out the manner of presentation of a constitutional amendment it also intended to prescribe a particular form to be present on the face of it. If so, I should have expected such a form to be attached to the proviso or to an appendix or the proviso to use some phraseology indicating such an imperative requirement, particularly when another imperative requirement is categorically stated, namely, the certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of members of the House. This provision is in fact tantamount to two requirements for a Bill which amends or repeals the Constitution, namely, a vote of two-thirds of the whole number of members of the House and a certificate of the Speaker to that effect. If these requirements are satisfied, as they have

No. 3
Judgment of the Supreme Court — 30-4-66. —(*Continued*).

been in this case, I think that the Parliament, in terms of Section 29 (4), can amend or repeal any provision of the Constitution subject to any objection which may be raised in view of Section 29 (2). As any such objection does not arise for decision in this case, there is no justification to declare any of the provisions of the impugned Act to be invalid.

In regard to the last point on which the Counsel on either side joined issue, namely, whether the Clerk of the House of Representatives is a holder of a public office against whom a Writ of Mandamus from the Supreme Court lies, while I am not prepared, on the material placed before us, to say that a writ will not lie against him in any circumstances, in view of the fact that he is constrained both by this Act of Parliament and by the orders of the Speaker to follow the course he has adopted in this case, I do not think that this Court should issue a writ, which is a discretionary one. In any event, this question does not arise unless and until the petitioner successfully establishes the impugned provisions of the Act to be invalid.

(Sgd.) G. P. A. Silva,
Puisne Justice.

No. 4
Decree of the Supreme Court — 30-4-66.

No. 4

Decree of the Supreme Court

Elizabeth the Second, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for a Mandate in the nature of a Writ of Mandamus under the provisions of Section 42 of the Courts Ordinance.

Mohamed Samsudeen Kariapper of Cassim Road, Kalmunai.

Petitioner.

S.C.Application No. 8 of 1966.

Vs.

1. S. S. Wijesinha, of No. 8, Alfred House Road, Colombo 3. The Clerk to the House of Representatives, The House of Representatives, Colombo.

2. S. N. Seneviratne, of No. 138/1, Havelock Road, Colombo. The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents.

No. 4
Decree of the Supreme Court — 30-4-66. —(*Continued*).

This application in which the petitioner abovenamed prays for the grant and issue of a mandate in the nature of a Writ of Mandamus ordering the 1st and/or the 2nd Respondent to recognise him as Member of Parliament representing the Kalmunai Electoral District lawfully in the House of Representatives, and to pay him his remuneration, allowances, emoluments and other benefits to which he is lawfully entitled as such Member of Parliament, having come up for hearing before the Honourable Miliani Claude Sansoni, Chief Justice, and the Honourable Gardiye Punchihewage Amaraseela Silva, Puisne Justice, on the 16th, 18th, 21st and 30th days of March 1966, in the presence of H. W. Jayewardene, Esquire, Q.C., appearing with M. T. M. Sivardeen, Esquire, D. S. Wijewardene, Esquire, and Mark Fernando, Esquire, Advocates, for the Petitioner, and V. Tennakoon, Esquire, Q.C., Solicitor-General, appearing with V. T. Thamotharan, Esquire, Deputy Solicitor-General, and H. L. de Silva, Esquire, Crown Counsel, for the 1st and 2nd Respondents.

It is considered and adjudged for the reasons delivered by Their Lordships on 30th April, 1966 that this application be and it is hereby dismissed with costs.

Witness the Honourable Miliani Claude Sansoni, Chief Justice, at Colombo, the 9th day of May, in the year One thousand Nine hundred and Sixty-six, and of Our Reign the Fifteenth.

(Sgd.) LAURIE WICKREMASINGHE,
Deputy Registrar of the Supreme Court.

No. 5

No. 5
Application for Conditional Leave to Appeal to the Privy Council — 22-5-66.

Application for Conditional Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an Application for Conditional Leave to appeal to Her Majesty The Queen in Council under the Provisions of Appeals (Privy Council) Ordinance Vol. IV, Chapter 100 of the Legislative Enactments of Ceylon (1956 Revised Edition).

MOHAMED SAMSUDEEN KARIAPPER, Cassim Road, Kalmunai.

Petitioner.

S. C. Application
No. 209/1966.

S. C. Application
No. 8 of 1966.

Vs.

1. S. S. WIJESINHA, No. 8, Alfred House Road, Colombo 3. The Clerk to the House of Representatives, The House of Representatives, Colombo,

No. 5
Application for Conditional Leave to Appeal to the Privy Council — 22-5-66.
—(*Continued*).

2. S. N. SENEVIRATNE, No. 138/1, Havelock Road, Colombo 5. The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents.

To :

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 22nd day of May, 1966.

The Petition of the Petitioner abovenamed appearing by M. M. A. RAHEEM and his Assistant AZAD RAHEEM his Proctors states as follows :—

1. (*a*) On the 11th day of January, 1966 the Petitioner applied for a Writ in the nature of a Writ of Mandamus under the Provisions of Section 42 of the Courts Ordinance. The abovenamed Respondents were Respondents to the said application.

(*b*) In the said application the Petitioner averred *inter alia* as follows that :

(*i*) The Petitioner was duly elected Member of the House of Representatives for the Kalmunai Electoral District at the General Elections held on the 22nd day of March, 1965 and on the 5th April 1965 was duly sworn and took his seat as such Member in the said House of Representatives and is entitled in law to continue to hold the office of such Member for a period of Five Years from the date of such Election under and subject to the provisions of the Ceylon (Constitution) Order-in-Council.

(*ii*) The 1st and/or the 2nd Respondent had failed to recognize the Petitioner as the Member of Parliament representing the Kalmunai Constituency and failed to pay the monthly remunerations, allowances, emoluments and other benefits due in law to the Petitioner as the said Member of Parliament though demanded, since the Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 was assented to by the Governor-General on the 16th day of November, 1965. Thereby the Respondents had failed to carry out their statutory and/or Public Duties.

(*iii*) (*a*) the said Act or the relevant provisions thereof are void and in contravention of the Ceylon (Constitution) Order-in-Council and are in excess of the powers conferred on Parliament by the Ceylon (Constitution) Order-in-Council and do not constitute the exercise of

legislative power but are an unwarranted assumption or exercise of Judicial and/or Punitive power in the guise of legislation against certain specified individuals of whom the Petitioner is one.

(*b*) the said Act or the relevant provisions thereof do not constitute or effect a lawful amendment of the said Ceylon (Constitution) Order-in-Council within the meaning of Section 29 thereof.

(*c*) the said Act and/or the relevant provisions thereof are not law within the meaning of Section 29 of the said Ceylon (Constitution) Order-in-Council.

(*iv*) The Petitioner prayed for a Mandate in the nature of a Writ of Mandamus from Your Lordships' Court ordering the Respondents to recognise the Petitioner as the duly elected Member of Parliament representing Kalmunai Constituency and to pay the remuneration, allowances, emoluments and other benefits due to the Petitioner as the said Member of Parliament and for costs etc.

2. (*a*) The said application was heard before Your Lordships' Court on the 16th, 18th, 21st and 30th March, 1966.

(*b*) On 30th April, 1966 Your Lordships' Court delivered judgment refusing the said application with costs.

3. (*a*) Being aggrieved by the said judgment and decree pronounced by Your Lordships' Court the Petitioner is desirous of appealing to Her Majesty The Queen in Council under the provisions of Appeals (Privy Council) Ordinance.

(*b*) The Petitioner respectfully submits that :—

(*i*) the said judgment is a final judgment where :—

(*a*) the matter in dispute in an appeal amounts to or is of the value of Rs. 5,000/- or upwards, and/or

(*b*) the appeal involves directly or indirectly some claim or question to or respecting civil rights amounting to or of the value of Rs. 5,000/- or upwards and/or

(*ii*) the question in the appeal is one which by reasons of its great general or public importance or otherwise ought to be submitted to Her Majesty The Queen in Council for decision.

4. The Petitioner submits that as a Member of Parliament he is entitled to (*i*) Rs. 600/- per mensem as monthly remuneration, (*ii*) Rs. 100/- per mensem as clerical allowance, (*iii*) Rs. 75/- per mensem as car allowance (*iv*) free travel by Air or Rail (1st Class) (the Petitioner makes at least 10

No. 5
Application for Conditional Leave to Appeal to the Privy Council — 22-5-66.
—(*Continued*).

trips per mensem to his electorate and back costing him Rs. 35/- per trip) and (*v*) free telephone and postage besides other benefits all of which he recovered from the time he became a Member of Parliament till the refusal of the Respondents to recognise the Petitioner as a Member of Parliament representing the Kalmunai Electoral District and to pay and grant him same. Thus the Petitioner has been deprived of a sum of Rs. 4,262/50 in respect of his remuneration and allowances as from 16th November, 1965 to 30th April, 1966 and Rs. 1,400/- in respect of his travelling to and from his electorate during the period from January to April, 1966.

5. This appeal also involves the Petitioner's franchise, his civic status and rights and his right to represent the constituents of Kalmunai Electoral District as their duly elected Member of the House of Representatives and to be a Member of Parliament and also affects other essential civic rights which the Petitioner values at Rs. 10,000/-.

6. This appeal involves questions of Constitutional law, a final decision on which will have great general or public importance in relation to the powers of the Ceylon Legislature under the Ceylon (Constitution) Order-in-Council.

7. (*a*) On the 2nd day of May, 1966 the Petitioner gave due notice of the petitioner's intention to appeal to Her Majesty The Queen-in-Council in terms of Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance to each of the two Respondents by sending the following notices by telegram, under registered cover and by Certificate of Posting respectively addressed to each of the said respondents to their respective residences and to their respective offices in the House of Representatives.

(*b*) The said telegrams, registered letters and letters under Certificate of Posting have not been returned to the Petitioner by the Postal Authorities for non-delivery upto-date.

(*c*) The contents of the notices referred to above are as follows :—

> " TAKE NOTICE and Notice is hereby given to you and ..... in and under the Provisions of Rule 2 of the Schedule to the Appeals (Privy Council) Ordinance, that I intend to appeal to Her Majesty The Queen-in-Council under the Provisions of the aforesaid Ordinance from the Judgment and decree pronounced by the Supreme Court on the 30th day of APRIL, 1966 in the aforesaid application.
>
> I shall and will be applying for Conditional Leave to appeal to Her Majesty The Queen-in-Council within One month from the date of the said judgment on the grounds provided for by Rule 1 (*a*) and/or 1 (*b*) of the Schedule to the said Ordinance."

(*d*) The contents of the telegram referred to above are as follows : No. 5 Application for Conditional Leave to Appeal to the Privy Council — 22-5-66. —(*Continued*).

"TAKE NOTICE under Rule 2 of Schedule Privy Council Appeals Ordinance I intend appealing to the Privy Council from Judgment in Supreme Court Application 8 of 1966 pronounced on 30th April, 1966.

M. SAMSUDEEN KARIAPPER."

8. By reason of the aforesaid averments the Petitioner is entitled to an Order from your Lordships' Court granting the Petitioner Conditional Leave to appeal to Her Majesty The Queen-in-Council under the Provisions of Appeals (Privy Councils) Ordinance subject to such terms and conditions as to Your Lordships' Court shall seem fit and for costs.

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased to :—

(*a*) grant Conditional Leave to appeal to Her Majesty The Queen-in-Council under the provisions of the Appeals (Privy Council) Ordinance subject to such term and conditions as to Your Lordships' Court shall seem meet.

(*b*) for costs, and

(*c*) for such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) AZAD RAHEEM,
Proctor for Petitioner.

No. 6

No. 6 Minute of Order granting Conditional Leave to Appeal to the Privy Council — 21-6-66.

Minute of Order granting Conditional Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

MOHAMED SAMSUDEEN KARIAPPER of Cassim Road, Kalmunai.

Petitioner.

S. C. Application
No. 209/66 (Conditional Leave)

S. C. Application
No. 8/66 (Writ) *Vs.*

No. 6
Minute of Order granting Conditional Leave to Appeal to the Privy Council — 21-6-66.
—(*Continued*).

1. S. S. WIJESINHA, No. 8, Alfred House Road, Colombo 3, The Clerk to the House of Representatives. The House of Representatives, Colombo.

2. S. N. SENEVIRATNE, No. 138/1, Havelock Road, Colombo 5, The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents.

The application of Mohamed Samsudeen Kariapper of Cassim Road, Kalmunai, for Conditional Leave to Appeal to Her Majesty the Queen-in-Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 30th day of April, 1966 in S. C. Application No. 8 of 1966, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Senior Puisne Justice, and the Honourable Gardiye Punchihewage Amaraseela Silva, Puisne Justice, in the presence of H. W. Jayawardene, Esquire, Q.C., with M. T. M. Sivardeen, Esquire, D. Sena Wijewardena, Esquire and Mark Fernando, Esquire, Advocates for the Petitioner and H. L. de Silva, Esquire, Crown Counsel for the Respondents order has been made by Their Lordships on the 21st day of June, 1966, allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty The Queen-in-Council.

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

No. 7
Application for Final Leave to Appeal to the Privy Council — 15-7-66.

No. 7

Application for Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to appeal to Her Majesty The Queen-in-Council under the Provisions of Appeals (Privy Council) Ordinance Volume IV Chapter 100 of the Legislative Enactments of Ceylon (1956 Revised Edition).

MOHAMED SAMSUDEEN KARIAPPER of Cassim Road, Kalmunai.

Petitioner.

Final Leave
S. C. Application
No. 284/1966.

Conditional Leave
Application No. 209/66 *Vs.*

S. C. Application
No. 8 of 1966.

1. S. S. WIJESINHA of No. 8, Alfred House Road, Colombo 3. The Clerk to the House of Representatives, The House of Representatives, Colombo.

2. S. N. SENEVIRATNE, of No. 138/1, Havelock Road, Colombo 5. The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents.

To :

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON

On this 15th day of July, 1966.

The Petition of the Petitioner abovenamed appearing by M. M. A. RAHEEM and his Assistant AZAD RAHEEM his Proctors states as follows :—

1. On 21st June, 1966 Your Lordships' Court granted Conditional leave to appeal to Her Majesty The Queen-in-Council under Rule 1 (*b*) of the rules to the Schedule to the Appeals (Privy Council) Ordinance subject to the usual Conditions.

2. (*a*) On 15th July, 1966 the Petitioner has duly complied with the Conditions imposed by Your Lordships' Court by entering into good and sufficient security to the satisfaction of Your Lordships' Court in a sum of Rs. 3,000/- for the due prosecution of the appeal of the payment of all such costs as may become payable to the respondents in the event of the Petitioner not obtaining an order granting him Final Leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty The Queen-in-Council Ordering the appellant to pay the respondents' costs of the appeal (as the case may be).

(*b*) On 15th July, 1966 the Petitioner duly deposited the said sum of Rs. 3,000/- with the Registrar of Your Lordships' Court and duly hypothecated by Bond.

(*c*) The Petitioner has also duly complied with Rule 8 (*a*) of The Appellate Procedure (Privy Council) Order 1921 by depositing a sum of Rs. 300/- with the Registrar of Your Lordships' Court.

3. By reason of the aforesaid averments the Petitioner requests Your Lordships' Court be pleased to grant the Petitioner Final Leave to appeal to Her Majesty The Queen-in-Council.

No. 7
Application for Final Leave to Appeal to the Privy Council — 15-7-66.
—(*Continued*).

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased to :—

(*i*) GRANT the Petitioner Final Leave to appeal to Her Majesty The Queen-in-Council under the provisions of the Appeals (Privy Council) Ordinance and the Rules to the Schedule to the said Ordinance ;

(*ii*) GRANT costs and

(*iii*) GRANT such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) AZAD RAHEEM,
Proctor for Petitioner.

No. 8
Minute of Order granting Final Leave to Appeal to the Privy Council — 26-7-66.

No. 8

Minute of Order granting Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

MOHAMED SAMSUDEEN KARIAPPER of Cassim Road, Kalmunai.

Petitioner.

S. C. Application
No. 209/66 (Conditional Leave)

S. C. Application
No. 284/66 (Final Leave)

Vs.

S. C. Application
No. 8/66 (Writ)

1. S. S. WIJESINHA of No. 8, Alfred House Road, Colombo 3, The Clerk to the House of Representatives. The House of Representatives, Colombo.

2. S. N. SENEVIRATNE of No. 138/1, Havelock Road, Colombo 5, The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents.

No. 8
Minute of Order granting Final Leave to Appeal to the Privy Council — 26-7-66. —(*Continued*).

The application of Mohamed Samsudeen Kariapper of Cassim Road, Kalmunai, for Final Leave to Appeal to Her Majesty The Queen-in-Council from the Judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 30th day of April, 1966 in S. C. Application No. 8 of 1966, having been listed for hearing and determination before the Honourable Miliani Claude Sansoni, Chief Justice, and the Honourable Asoka Windra Hemantha Abeyesundere, Q.C., Puisne Justice, in the presence of H. W. Jayewardene Esquire, Q.C., with M. T. M. Sivardeen, Esquire and D. Sena Wijewardena, Esquire, Advocates for the Petitioner; and there being no appearance for the Respondents, order has been made by Their Lordships on the 26th July, 1966 allowing the aforementioned application for Final Leave to Appeal to Her Majesty The Queen-in-Council.

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

PART II — EXHIBITS

Volume 63 Thursday,

No. 14 21st October, 1965

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Speech made by the Petitioner in Parliament — 21-10-65.

P 1 A

Speech made by the Petitioner in Parliament

PARLIAMENTARY DEBATES

(HANSARD)

HOUSE OF REPRESENTATIVES

OFFICIAL REPORT

(Uncorrected)

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වෘසල මුදලි එම්. එස්. කාරියප්පර් (කල්මුනේ)

(கேற்முதலியார் எம். எஸ். காரியப்பர் —கல்முனை)

Gate Mudaliyar M. S. Kariapper — Kalmunai

As a Member of this House, I wish to make a few observations on this Bill.

I rise to speak on this occasion because I do not think it would be correct for me to betray the sacred trust reposed in me by the people of my electorate who have known the ins and outs of my life for the last forty years and who, in spite of the verdict of the Thalgodapitiya Commission, elected me to the honour of a seat in this House.

Mr. Speaker, everybody knows that there are two sides to a story. The Thalgodapitiya side of the story has been publicized from political platforms and through the press for the last five years. It is today for the first time that one of the Thalgodapitiya victims has an opportunity to give his side of the story. And, therefore, Sir I crave the indulgence of Hon. Members of this House to give me a patient hearing.

Sir, in this Bill, a movement is under way to encroach upon the jurisdiction of the judiciary and to pass under the guise of a Bill direct punishment upon a certain number of citizens. I would say that not merely are we side-stepping the judiciary by these direct sentences upon certain individuals, we are also retrospectively amending the Constitution. I say that the Government is, by this Bill, retroactively amending the Constitution. That is the decision of the governing party. In this situation I submit myself to the present decision.

In the passing of this Bill, I submit, this Legislature will, for the time being, be converting itself into a judicial body. I bow to that decision, and I stand here before the Hon. Members of this House in the role of an accused. I ask the House for the indulgence that is normally extended by a judge to an accused before the passing of sentence.

I would ask Hon. Members to realize the gravity of the situation, I would ask them to address their minds to the gravity of the situation. They are now in the role of judges about to pass judgment on one of their Colleagues.

Parliament has the power — I do not dispute that—to pass laws, but this Bill is a law with a difference. Laws are passed in Parliament and they are examined and interpreted by the Judiciary. But in this Bill, under the guise of passing legislation, a sentence is sought to be imposed. Therefore I say a grave responsibility rests on the shoulders of Hon. Members.

I shall now say a few words in regard to the Thalgodapitiya Commission on the findings of which this Bill is based. The Thalgodapitiya Commission, as most Hon. Members are aware—I state this for the information of the new-comers to this House—functioned as investigator; it functioned as prosecutor and it functioned as judge.

There were a number of policemen under the command of the Commission. From time to time they were asked to collect evidence to fill any existing gaps in the prosecution story. Hon. Members know that they

looked out for facts anywhere and anyhow. The Hon. Member for Dompe (Mr. F. R. Dias Bandaranaike) said on the Floor of this House that the Commission got advertisements inserted in the newspapers calling for complaints.

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

As Hon. Members know, the law of evidence is the touchstone of the administration of civilized justice. The Thalgodapitiya Commission was merely a fact-finding body and it was not bound by the laws of evidence and legal procedure. I am not blaming the Commission. It was merely a fact-finding Commission. I do not think that Mr. Thalgodapitiya, even in his wildest dreams, would have imagined that a day would come when his investigation of facts would be raised to the sanctity of a judicial decision, and a Bill brought before this House on the basis of his findings to chop off six heads.

As has been repeatedly said on the Floor of this House, the Thalgodapitiya Commission was appointed under the Commissions of Inquiry Act. Similar commissions have been appointed in the recent past. There was the Press Commission which was appointed under that Act. There was the Naval Commission which was appointed under that Act. The findings of these commissions have gone down the gutter.

The C.W.E. Commission is now sitting and is recording evidence, and I know that they are treading upon the corns of particular individuals. I see from the Order Book of this House that there is already a Motion seeking to scrap the C.W.E. Commission. But the Thalgodapitiya Commission survived because the men concerned were of no political consequence. And, from stories, from talks, that I have heard, some of those people concerned appear to have fallen between two political—[*Interruption*] with the result that today the important political parties are competing with each other in their holier-than-thou attitude to go through with this Bill. I submit that, in brief, I have placed before this House the way these commissions function.

Now, I just want to draw the attention of the Hon. Members to the manner in which the commission, on the findings of which you are basing this Bill, has been functioning. I do not want to make my own comments; it might be alleged that I am biassed. I want to read the comments of other people so that Hon. Members may know, may form a picture of the intensity of the political bias possessed by these commissioners. I will now read from the " Ceylon Daily News " of the 3rd June 1960 :

> " Witness said that he knew Ran Banda who addressed that meeting and a Muslim trader named Buhari. Witness did not see them there. Witness did not oppose Mr. Monnekulama. He voted always for the S. L. F. P.
>
> Mr. Roberts (one of the commissioners): Some people never learn."

Hon. Members, what does this reaction of one of the commissioners, when he said " Some people never learn," mean ? Is not there a political bias, I ask, behind that remark of the commissioner ? " Some people never learn " he said—because, they always vote for the Hand.

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

I will now pass on to read an extract from the " Ceylon Observer " of 5th June 1960 :

" Addressing Mr. Tiruchelvam, defence counsel, Mr. Thalgodapitiya said : Why lead evidence on the law ? Why not stick to facts ?

MR. TIRUCHELVAM : It is necessary ; I must.

MR. THALGODAPITIYA : We know all that.

MR. TIRUCHELVAM : I know, but I make these points because we cannot carry these things in our heads.

MR. ROBERTS : We have got to learn from you ?

MR. TIRUCHELVAM : I have a right to make these representations. I am learned in the law. I am acting within the law."

These remarks give an indication of what was in the minds of these commissioners at the time they were carrying out these investigations.

Now, in order to refresh our memory and also for the information of the new-comers in this House I wish to read a few extracts from HANSARD. I should like to read an English translation of a statement made by the former Member for Ratnapura, Mr. D. P. R. Weerasekera.

It is in the HANSARD of 9th November, 1960. That statement, translated, would read :

" Mr. Speaker, I wish to bring to the notice of the House a very important matter. I hope every Hon. Member will listen to what I am saying as it is a very grave matter. At a certain party, in the presence of three Members of Parliament, the Bribery Commissioner has publicly stated that it was his intention to find guilty every Member of Parliament against whom allegations of bribery had been made. The report of the Bribery Commissioner is not yet out. I wish to remind the House that it is illegal for the BriberyCommissioner to make such a statement. I trust that action will be taken against his statement which is an illegal statement made in the presence of several Members of this House."

Mr. Thalgodapitiya concluded his inquiries and published his report long afterwards.

On the same occasion, 9th November 1960, the then Minister of Finance, Mr. Felix Dias Bandaranaike, made this statement. That was before the report was published. I quote :

" On behalf of the Sri Lanka Freedom Party, I should like to state that the Bribery Commission was appointed by our Government, the Government of the late Mr. S. W. R. D. Bandaranaike. We do not hold any brief for bribery or corruption in public life and we should

take pleasure in eliminating all forms of bribery and corruption from public life, particularly if there are any such allegations against Members of Parliament. We do not want to make use of any parliamentary majority that we may happen to have in order to impose the advantage of that majority in defence of any person who does not deserve any consideration by virtue of having a finding of bribery and corruption against him.

PIA Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

But, Mr. Speaker, the point that is in issue is not that. The point raised by the two Hon. Members who spoke is something quite different. It related to the propriety or otherwise of certain members appointed to the Bribery Commission talking out of turn, talking indiscreetly and in a manner calculated to destroy public confidence in the commission itself.

I regret to inform the Hon. Members of this House that I, too, have personal knowledge as, I believe, one or two other persons do. I do not want to go into details as to how or where, but I am prepared to make that disclosure to you at any time you may care to ask. But it is my solemn duty to inform Hon. Members of the House that it has happened.

For instance—I think, I am free to disclose this—one of the members of the Commission did tell me some time ago that subject to pressure from a Caretaker Government an interim report was sent and it was said by way of apology having regard to some other request which was made unconnected with the question of the Bribery Commission.

Well, Mr. Speaker, there have been instances of that kind ; I believe there have been instances of careless and indiscreet talk, quite apart from this kind of situation, by the Commissioners themselves and I do agree that while it is very desirable in the interests of the House and a clean administration, we must not allow a single person against whom a charge is proved to vitiate the public life of this country. At the same time, we must act with great care and caution and also take the necessary steps to safeguard this House against the activities of those Commissioners who by their very actions have brought the judicial proceedings and, perhaps, the respect of this House into disrepute."—[OFFICIAL REPORT, 9th November 1960 ; Vol. 41, c. 1238—9.]

I should like to repeat that last sentence : " the activities of those Commissioners who by their very actions have brought the judicial proceedings and, perhaps, the respect of this House into disrepute."

The whole report of the Commissioners was written and published, and statements were made on the Floor of this House by two Hon. Members and one Hon. Minister.

I would also like to read from a speech made by the then Hon. Prime Minister, now Leader of the Opposition. I am not going to read her entire speech. I will read only some extracts from her speech. This is what she said :

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —*(Continued)*.

" I have followed with great interest the speeches made both in this House and in the House of Representatives on the Motion of No Confidence against the Government. I wish to state here and now, that we are determined to wipe out bribery and corruption in the public life of this country. We will not condone it either in the case of a small amount paid by a poor person to those holding public office, or in the case of large sums given by foreign firms or agencies to persons holding high office. If we were prepared to condone corruption we would not have fought two elections the hard way. We could, like some of our opponents, have sacrificed the interests of the masses for the welfare of the vested interests and filled our party's pockets. We did not do that. It is because we do not condone bribery that we did not hesitate, nor did we have any difficulty, in getting two of our party members, who were Members of Parliament, and who had been found guilty by the Thalgodapitiya Commission, to resign their seats."

She goes on to say :

" We are all aware of what happened at the elections. Our Kurunegala candidate who had been found guilty was returned. He was returned not because the voters of Kurunegala condoned bribetaking, but because they felt, as all right-thinking people felt at that time, that unfair and unjust tactics had been adopted against him and his party. The Report was treated as yet another election stunt on the part of those who released it for publication and those who published it.
. . . . . .

I agree, Mr. President with what the Hon. Leader of the Opposition said in the House of Representatives, namely, that the atmosphere with regard to the Commission has been fouled. Fouled by whom is the question. Those who befouled the atmosphere and clouded the findings of the Commission are those who made election capital of the interim report by its inopportune publication.

However, we accepted the findings of the Commission and we have acted upon it. Two Members of Parliament have resigned their seats. We have done our duty. But justice must be meted out to the individuals concerned. These men feel—may be quite wrongly but they do genuinely feel— that they have been victimized for their political views and party affiliations. . . . . However, justice must be done. It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done."—[OFFICIAL REPORT, Senate ; 2nd March, 1961 ; Vol. 16, c. 729-30.]

I am still continuing to read the speech of the former Prime Minister.

" As I told you earlier, the men found guilty by this Commission have a grievance, a genuine grievance that they have been victimized for political reasons. And there appear to be grounds for this grievance. But yet we feel that there may be sufficient evidence on which

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

they may have been rightly found guilty. It is for this reason that we are giving them the right of appeal to the Supreme Court. Whatever the findings of the Supreme Court, we feel that justice will be done and justice will also appear to be done. Is this not fair? Is this an effort to shield the bribe-taker? Let the Supreme Court impose the severest penalty of depriving a man of his civic rights if they confirm the verdict. That is all we are seeking to do . . . .

It is amusing to hear those who attacked and vilified the late Prime Minister during his lifetime, those members of the left and right wing parties who strained every nerve to sabotage his efforts on behalf of the people, now talk of the sacredness of his appointments. It may be good politics on the eve of three by-elections to pay lip service to the late Prime Minister and belabour his party in his name, but all the fine words and phrases in the world cannot hide the simple fact that the late Prime Minister could not anticipate the course of the Commission he appointed, the sinister moves of politicians, any more than he anticipated his end."—[OFFICIAL REPORT (SENATE), 2nd March, 1961 ; Vol. 16, c. 731-4.]

This is what the then Prime Minister had said.

As soon as this speech was made the " Daily Mirror " which had been carrying on a continuous campaign against the then Government published an editorial on this subject. The then Prime Minister's speech sparked off an editorial in the " Daily Mirror " of 4th March, 1961. I produce a certified copy of it. This is how it reads :

" THIS NEEDED TO BE SAID. We have been among the most outspoken critics of the Government on the bribery issue. We still maintain that the Government's great mistake was to have failed to speak its mind openly.

If they had told the country eight months ago what the Prime Minister said in the Senate last Thursday, no honest man in this country would have objected to the Thalgodapitiya Commission being scrapped . . . . She has never done anythnig better in public life than to speak out last Thursday on this bribery question.

It was a speech which came like a breath of fresh air because it was honest, courageous and devastatingly frank.

She did not mince her words. She told the country that those who fouled the air by making election capital out of this report must answer for the mess which followed.

"THAT NEEDED TO BE SAID, AND WE ARE GLAD THE PRIME MINISTER HAD THE STRENGTH TO SAY IT ".

That was the attitude of the Prime Minister of the day.

This is what the then Leader of the House (The Hon. C. P. de Silva), who is also the present Leader said :

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

" Sir, the position of the Government is that those found guilty of the offence of bribery should be dealt with as severely as provided for in our laws. Section 13 (*k*) of the Constitution provides for disqualification of an M.P. if he is found guilty by court or by a Commission appointed by Parliament. The Thalgodapitiya Commission was not a Commission appointed by Parliament, nor a court.

The Government proposal was to disqualify those against whom the charge had been held to be proved by the Thalgodapitiya Commission, after or subject to an appeal to the Supreme Court. If the Supreme Court upheld the findings of the Commission, then the judgment of the Supreme Court would have been the " judgment of a court " and the disqualification under Section 13 (*k*) would have applied. If those against whom there was a finding by the Commission did not appeal within the prescribed time, then, too, they would have been disqualified, and there would have been no denial of natural justice.

As it is the Thalgodapitiya Commission was not a court nor a Commission appointed under the Constitution. The findings of the Commission therefore have no legal validity whatsoever.

During the Ratgama and Kurunegala by-elections, the Leader of the Opposition was asking the question why the Government was seeking to give an appeal to M.P.s when there was no appeal given to peons and clerks found guilty of bribery by bribery tribunals. The Leader of the Opposition was much mistaken in the views he held, as by the amendments made to the Bribery Act in 1958 a right of appeal to the Supreme Court was given to everybody. Two such cases came up in appeal before the Supreme Court and they have attracted considerable attention.

In the Senadhira case, the Supreme Court held that the bribery tribunals, even though they were constituted under an Act of Parliament, had no power to inflict any penalties. The Supreme Court, however, held in this case that the bribery tribunal had the power to adjudicate whether the charges had been proved against the offenders, although the tribunal had no power to punish the offenders.

A second judgment of the Supreme Court—in the case of Piyadasa, decided on 31-10-62—goes even further. This judgment is not yet published in the New Law Reports because it is a very recent judgment. In this case the Supreme Court went further and stated that the bribery tribunals had no power even to come to a finding as to whether the charges had been proved or not. The Supreme Court held that such a finding would be in the exercise of a " judicial power " and that the bribery tribunals could not exercise even that degree of judicial power.

So you will see that the Supreme Court has held that a tribunal appointed under Act of Parliament has no power to come to any finding against a person accused of an offence.

In view of the judgment in the Senadhira case, the Government has sought to amend the Bribery Act so as to have all bribery cases tried by the District Court and to provide heavy penalties. This amending legislation has already been passed by the Senate and is on the Order Book of this honourable House. It will be given priority.

What we are now seeking to do is to give the Thalgodapitiya Commission, which is now *functus*, the powers it never had and to give those powers retrospectively . . . . .

If you can do that, you can also amend the Constitution and declare that the findings of the bribery tribunal in the case against Senadhira and in all the other cases where persons have been found guilty by the bribery tribunals, are retrospectively valid. Then Parliament becomes not a legislative body but a judicial body . . . .

We have recently heard a great deal about the separation of powers and about Parliament not being a judicial body but only a legislative body. That was the argument of the Opposition as well when the Government tried to impose the death sentence against Buddharakkita and Jayawardene—persons who were found guilty of a planned conspiracy to murder the Prime Minister of this country . . . .

The Members of the Opposition screamed at the very thought and idea. You protested against retrospective legislation against the assassins of a Prime Minister of this country . . . . .

You protested against retrospective legislation and quoted the Declaration of Human Rights when the Government introduced legislation in regard to the *coup d'etat* suspects who attempted to overthrow the Government of this country. You protested against retrospective legislation against the assassins of a Prime Minister of this country. You protested against retrospective legislation and quoted the Declaration of Human Rights when the Government introduced legislation in regard to the *coup d'etat* suspects who attempted to overthrow the Government of this country. Now you want, by retrospective legislation, to give the Thalgodapitiya Commission the powers it never had.

The only alternative, therefore, is to provide an appeal to the Supreme Court and to provide that as an amendment to the Constitution. This has been mis-represented as an attempt on the part of the Government to give these offenders a chance to escape. The Government does not want to protect any bribe-takers . . . . The Government has, therefore decided to prosecute the persons concerned under the Bribery Bill immediately after the amending Bill, which is now before the Parliament, is passed. Under Section 15 of the Bribery Act a person found guilty of bribery, whether he be a Member of the House of Representatives or the Senate, is liable to a sentence of seven years' rigorous imprisonment or a fine of Rs. 5,000 or both. The amendment now before the House is to bring the case before the district court instead of a bribery tribunal.

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

For these reasons the Government has decided to decline to vote on the Bill which is now before the House and which has been sponsored by the Hon. Leader of the Opposition . . . . .

We know that your arguments are about an appeal to the Supreme Court. You say that the Supreme Court is bound by certain rules of evidence and that a commission of inquiry is not bound by the rules of evidence. But I want you to remember that even the bribery tribunals were not bound by the rules of evidence and yet there was an appeal to the Supreme Court. There are many tribunals and boards of inquiry which are not bound by the rules of evidence, but which provide for an appeal to the Supreme Court. Twice in the course of this year when we tried to introduce legislation to deal with the *coup* suspects, there were protests from the Opposition that we were, by that legislation, trying to bring in even the very confessions that were made by those suspects.

If the Supreme Court can act as a Court of Appeal on the findings of the Thalgodapitiya Commission, then the judgment of the Supreme Court will be a judgment of a court within the meaning of Section 13 (*k*) of the Constitution as it now stands, and those found guilty will be automatically disqualified. If, on the other hand, you do not support an appeal, the Government is prepared to have these persons tried under the law of the land and give them their due punishment in a court of law, which will also involve their disqualification from Parliament.

The Government cannot subscribe to the Bill now before the House which seeks to disqualify those persons found guilty by a commission when that commission had no power to make even a recommendation that those found guilty should be disqualified. If they had the power even to make such a recommendation, those who were brought up before the commission, if they had any ground for believing that they were being deprived of natural justice, or that the commission was acting under any bias, would have had the right to go before the Supreme Court and ask the Supreme Court to order the commission to hold a proper inquiry. Even this right those who were accused before the commission did not have, because the commission was devoid of any power . . . .

We do not, as a party, condone any acts of bribery . . . . but it has been the declared policy of this Government, even when dealing with the very assassins of the late Prime Minister, or even the suspects of the attempted *coup d'etat*, to give them the fairest possible trial. . . . .

Even the very assassins of the late Prime Minister had their case heard by the Supreme Court, before a jury, and after that by a Court of Criminal Appeal consisting of five other Judges of the Supreme Court, and again thereafter by five very eminent Judges of the Privy Council in England. They were tried according to the normal law of the land, commencing with a magisterial inquiry.

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

Then take the case of the *coup* suspects. We have allowed them to be tried by three judges of the Supreme Court. There have been comments even against this procedure and some people have asked for trial by jury instead of a trial-at-bar. It is true we have not given them a right of appeal to the Court of Criminal Appeal for the simple reason that the trial is already before three judges of the Supreme Court and not by jury.

They will have, if found guilty, an appeal to the Privy Council in England. Therefore, you will see, Mr. Speaker, that this Government does not believe in denying natural justice even to assassins and conspirators against the State.

It may well be that in an appeal or in a trial before a court, persons found guilty by the Thalgodapitiya Commission may be found guilty and rightly found guilty. That is the justice that we expect to be done. And justice will also then undoubtedly be seem to have been done."— [OFFICIAL REPORT, 6th June, 1962 ; Vol. 50, cc. 93-104].

Mr. Speaker, I have been reading the speech of the Hon. Leader of the House in the last Parliament. I am glad that he is the Leader of the House in this Parliament as well.

Now I shall make a few comments on retrospective legislation. I am very glad to say that the Hon. Prime Minister, as Leader of the Opposition in the last Parliament, raised a protest against the enactment of retrospective legislation in connection with the *coup* suspects. He was followed by the judges of the Supreme Court who said that they shared the intense and universal aversion to *ex post facto* legislation.

Our Constitution, Mr. Speaker, is silent on retrospective legislation. It is also silent in regard to fundamental rights. In all such cases where we have a Constitution which gives no guidance, we as a democratic country have to adopt as our standard of conduct the provisions of the Declaration of Human Rights adopted by the United Nations to which Ceylon is a signatory. But what are we doing ? We are now claiming to pass a piece of legislation, but in fact, under the guise of legislation we are passing an edict or a sentence on certain particular individuals.

I am now asking the Hon. Members of this House to address their minds judicially to this Bill and take note of the opinion of three learned judges in regard to Commissions of this type and Bills of this type. I want Hon. Members to listen to me so that they may address their minds in that judicial way.

When the findings of the Naval Commission was quashed, this is what the District Judge of Colombo had laid down. I am now reading what the District Judge of Colombo wrote in his judgment quashing the findings of the Navy Commission appointed under the self-same Commissions of Inquiry Act. He said :—

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

" It must be said that there are certain canons of judicial conduct to which all tribunals and persons who have to give judicial or *quasi* judicial decisions ought to conform. The principles on which they rest are implicit in the Rule of Law and their observance is demanded by one's sense of justice. It cannot be said that there has been due regard paid to these principles of natural justice when the commissioner conducted his inquiry. The function of a commissioner is not to be a detective—

But in the case of the Thalgodapitiya Commission what did they do?

To continue the quotation :

" is not to be a detective or a spy or to approach his work with a suspicion—"

Mr. Thalgodapitiya cannot say, " I am going to convict every Member of Parliament against whom allegations of bribery are made."

To continue the quotation :

" The function of a Commissioner is not to be a detective or to approach his work with a suspicion or with a foregone conclusion that there is something wrong and with that fixed idea behind accept the evidence that suits the purpose and reject what is inconvenient.

It seems to my mind that there has been utter disregard of principles of natural justice in the conduct of the inquiry and that the findings of the Commissioner should be declared null and void."

This is, Sir, in regard to the Naval Commission. From what I had placed before this House, the Hon. Members will find how utterly biassed the Commissioners were, as seen from the speeches made by the Hon. Members in this House even before the Thalgodapitiya Commission's verdict was written. How biassed they were ! I have placed before you the reports on how the Commissioners were conducting themselves. The behaviour was worse than under that of the Naval Commission.

Now, this is what the Hon. Chief Justice of the United States of America said in regard to *ad hoc* legislation of this type. I am reading from the " Ceylon Daily News " of 24th April, 1965. Earl Warren, Chief Justice of the United States of America, told his fellow Americans that respect for the rights of minorities and the individual presents the constitution with its most exacting test.

" It often takes courage—courage and understanding— to adhere to constitutional principles particularly when the passions of the day permeate the atmosphere. It is specially when the rights of minorities are at stake that the durability of a constitution is put to its most exacting test. It is for all of us to measure up to this test. But when all else fails it is for our Courts to vouchsafe the rights of even the most despised members of society."

That is what the Hon. Chief Justice of the United States of America said in regard to *ad hoc* legislation of this nature. Now, what did our own Chief Justice, Mr. Basnayake Nilame say ?

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

කථානායකතුමා
(சபாநாயகர் அவர்கள்)
(Mr. Speaker)
Please use the correct name.

වාසල මුදලි කාරියප්පර්
(கேற் முதலியார் காரியப்பர்)
(Gate Mudaliyar Kariapper)
I am so sorry, Sir.

He is the retired Chief Justice of this country. What did Mr. Basnayake say in the case, " Azis *vs.* Thondaman " ? [*Interruption*]. You will find what he said in 1961 N. L. R. 217, at page 223.—

> " The right of a citizen to invoke the aid of the court is one that cannot be taken away by the rules of any association, or body, or persons. It is so fundamental that it cannot in my view be taken away by our legislature itself. It is unnecessary for the purpose of this judgment to elaborate this view ; it is sufficient to say that a power to legislate for peace, order and good Government, does not include a power to deny access to the courts which are the living symbols of peace, order and good Government, for the denial of such right would be a negation of the very purpose for which legislative power is conferred on the legislature."

I have now given you the opinion of three men learned in the law in regard to how you should address your mind to this question.

With regard to my own case I should like to say that it is a pity that Hon. Members have no opportunity to read the proceedings of the inquiry. I want to bring to your notice, with all due respect, that I went before the commissioners in connection with certain allegations made against me. My counsel, in introducing me, said, " Your name ? " I gave my name. Then counsel asked, " You were a Junior Minister of Justice in the late Mr. S. W. R. D. Bandaranaike's Government ? " I answered, " Yes, Sir." Then Mr. Roberts quietly said that it was a misfortune. I did not take that remark seriously. I thought it was a joke of dotage. As the inquiry proceeded, however, my defending counsel wanted to walk out of the cases, saying that he was dissatisfied with the conduct of the inquiries, which in his opinion was repugnant to the recognized rules of natural justice and against all legal procedures. But I begged of my counsel to stay on.

There was a villager from Kalmunai who was in the inquiry hall, watching the proceedings. He went out and saw how policemen were coaching the witnesses in the witness shed in order that they may corroborate those who were giving evidence in the inquiry hall. This villager came out into the premises and said, " May a thunderbolt from the heaven descent upon this inquiry hall and destroy everybody concerned." This

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

villager was immediately arrested by the police, hauled up before Mr. Thalgodapitiya, and charged with intimidation. Intimidation with what? The weapon in his hands was God. How could God be produced before Mr. Thalgodapitiya to be shown as the weapon of intimidation used by this man? Anyway, he was given a warning and was told that he will be reported to the Supreme Court for contempt of Court. You may see reference to this incident, if you refer to the proceedings of the inquiries against me.

I belong to what the Americans call " the golden age group." I did not want to contest a seat at the Elections because I thought I should rest, not because I anticipated defeat at the polls or something else. The people of my electorate insisted that I should face a contest in order to vindicate my honour *vis-a-vis* the findings against me by the Thalgodapitiya Commission. I submitted my nomination paper. At the time I submitted my nomination paper I was qualified to become a Member of this Hon. House under the Constitution. Three years before that date, there was the Thalgodapitiya Commission Report but in spite of the existence of the findings of the Thalgodapitiya Commission I was qualified under the Constitution to be a Member of this House. I stood for election. I have come to this House, thanks to my electors. They have secured for me the honour of a seat in this Hon. House. I have sat here for 8 months. According to the Constitution and the wishes of my electors, I should be here for another 4 months and 4 years. But this Bill has come like a thunderbolt and it says, " You have to quit."

You can see how retroactively the penalty is going to be imposed on me. When I heard that this Bill was going to be taken up in this House, I went to one of the high-ranking members of the Government party and I asked him, " What is this Bill? Do you approve of it? " He said " This Bill was no law, it was no justice but it was political action. The U. N. P. during its election campaign had raised the cry from every election platform that they would implement the findings of the Thalgodapitiya Commission and they are going to do it." I told the V. I. P., " I know the U. N. P. did campaign for the implementation of the Thalgodapitiya Report, but more than that, they said from every platform that they were out to secure power to re-establish the Rule of Law." They emphasized that from every platform. And if the Government was going to be consistent in their pledge, they must fulfil both pledges; they must implement the Thalgodapitiya Commission findings through the courts, and thus uphold the rule of law. In other words, they must punish those against whom the commission had brought findings, within the framework of the rule of law.

If there is anybody in this House who is more wedded to the rule of law, I think it is the Hon. Prime Minister of today. He had always been mentioning about this rule of law. In regard to this Bill, I would like to read out nine of the fundamental principles of the rule of law. There are many principles underlying this rule, but I just want to place for the consideration of the Hon. Members nine of the cardinal principles of the rule of law.

The Hon. Prime Minister of this country, I repeat, is a great respecter of the rule of law. In fact the present Government has come to power on that platform. They said they would re-establish the rule of law. This rule is certainly dear to the hearts of all lovers of democracy.

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

As I said, the rule of law is based upon a number of fundamental principles. The first is that the State is subject to the law. This means that the governing party in a country should always observe all the fundamental cardinal principles under the rule of law. They may have a steam-roller majority, they may be very powerful, but in spite of that, if they are wedded to the rule of law, they must observe all the principles. The first things that the rule of law does is to bind the State itself, the Government of the country, to observe it.

The second cardinal principle of the rule of law is that the right of an individual should be respected by the Government. The third is that every citizen against whom an accusation is brought should be afforded a fair trial in a court of law. The fourth is that the court should have power to declare laws unconstitutional after due inquiry and the judiciary should intervene particularly where rights of individual citizens were violated by the legislature. The fifth is, and this is very important, that every decision of an *ad hoc* administrative tribunal or commission of inquiry should be subject to ultimate review by ordinary courts.

More important than that is No. 6—Every finding by an administrative tribunal or commission of inquiry or court of law should be challengeable before at least one higher court.

No. 7—The rights of a citizen should not be restricted or deprived without trial in a court of law. A parliamentary democracy exists primarily to protect the individual to cherish his rights and to make clear his just principles.

No. 8 is still more important—It is most desirable that the action of the executive or the legislature shall be suspended while such action is under review by the Courts.

No. 9—Better ten guilty men escape than one innocent man suffer.

No. 10—Abstention from retroactive legislation.

Now, Hon. Members of this House, I ask you in all seriousness to address your mind to this Bill to find out if it conforms to any one of the cardinal principles of the Rule of Law that I have placed before you.

Now, Sir, Hon. Members are asked to say ' Aye ' to the verdict of the Thalgodapitiya Commission. And you are asked to say "Aye" even without being given an opportunity of reading the proceedings of that inquiry and finding out whether those proceedings justify the conclusions arrived at by this commission.

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

I appeal to Hon. Members to sit back and ponder whether this request to them is not an insult to their intelligence as Hon. Members, as honoured representatives, who have been returned by the people to this House. You are asked to accept the opinion of Mr. Thalgodapitiya and his two aged musketeers as gospel truth. We know there are Gospels in which we have faith. But are you going to categorize this Report of Mr. Thalgodapitiya as another Gospel? Are you going to act upon it? Or are you not going to call for the proceedings and satisfy your souls and your consciences that these proceedings justify the conclusions arrived at by the Commissioners? The proceedings have not been placed before you. You are just called up here and asked to pass this Bill by a two-third majority. You are the cream of the intelligentzia of Sri Lanka. Otherwise, you would not have been selected to sit in this honoured place, in this House. You have been returned by the manhood and the womanhood of this country and you will have to do justice to the confidence that has been reposed on you by your voters. You are here as responsible legislators and you have here today additional responsibility as judges too in connection with this Bill because, as I earlier said, this legislature has been converted into a judiciary for the purpose of this Bill. Are you going to accept the verdict of the Thalgodapitiya Commission and vote for it? You have a right, which I hope you are not going to deny yourself, to call for the proceedings of this inquiry and to satisfy your souls and your consciences that these proceedings do justify the verdict that has been brought against us.

I am not asking for mercy. Hon. Members, in fact, a seat in this House is much more unrestful than a chair in my farm-house at Kalmunai. But what I say to you is that you are going to create a precedent. You are going to create a precedent by legislatively giving judicial sanctity to a verdict that had been brought by a mere fact-finding commission.

I have now placed before you statements from three Hon. Members of the House and read extracts from newspapers. I have read the speeches of Mr. D. P. R. Weerasekera, Mr. Munaweera, and Mr. Felix R. Dias Bandaranaike, on the Floor of the House in regard to the manner in which these inquiries have been conducted.

Now, without reading the proceedings of those inquiries, Hon. Members are just asked to say " Aye." I know Hon. Members will refuse to be the living rubber stamps of Mr. Thalgodapitiya. Are you going to set the seal of approval on the verdict of a mere fact-finding commission without calling for and examining the proceedings of the inquiries? Are you not going to call for these proceedings before giving your verdict? Surely is it not an insult to Hon. Members to be called upon to function as rubber stamps of Mr. Thalgodapitiya!

It was only the other day that the Hon. Member for Dompe (Mr. F. R. Dias Bandaranaike) and the Hon. Member for Kotte (Mr. Stanley Tillekeratne) said that they were amused to know that this gentlemen, Mr. Thalgodapitiya, presided recently in Kandy at a meeting at which it was solemnly proclaimed that one of those who had been condemned as a bribe-taker by Mr. Thalgodapitiya was the reincarnation of Dutugemunu, who had come to save the Sinhala race! I think that reference was made on the 23rd of

last month. I ask in all seriousness whether a person of the educational attainments of Mr. Thalgodapitiya could have participated in a meeting where Mr. Marikkar, who had been condemned as a bribe-taker by him, was proclaimed as a reincarnation of Dutugemunu, unless Mr. Thalgodapitiya himself had some misgivings in his own mind in regard to the correctness of his findings. Mr. Thalgodapitiya is a very intelligent man and an educated man, and the inference that I draw from this Dutugemunu incident is that, deep down in his own conscience, Mr. Thalgodapitiya had no faith in his own findings. If that is not so, he would not have associated himself with Mr. Marikkar at a meeting where such a proclamation was made.

I know I am taking the time of Hon. Members, but Hon. Members should be fully informed in all the aspects of and the implications underlying this Bill.

It may be said that because this Bill concerns only six individuals there is no harm in passing this Bill. It is not a question of six individuals : it is a question of principle that is involved in this Bill ; it is a question of creating a precedent for the future.

I am not speaking of our present Prime Minister, but some years hence another Prime Minister with a steam-roller majority may come to this House and using this Bill as a precedent ask that a similar thing be done against certain individuals on the basis of another fact-finding commission.

The other day I spoke to some Hon. Members of this House. It is not that I went canvassing. I find it more restful to be in my own home than to be here, but, of course, I have come here to do a little service to the people of my district. I asked some Hon. Members what they thought about this Bill. Very truthfully, very sincerely and from the bottom of their hearts they said that this Bill cuts across all principles of justice. Then I asked them : " Why are you going to vote for this Bill ? Their answer was : " This is a political issue in the country. Supposing we do not vote for this Bill and we go to address some meeting, the masses will turn round and say : " These chaps shielded bribe-takers." That is a very honest fear in the minds of certain Members of Parliament, but, excuse me, that is a wrong line of thinking. You know where the fallacy lies. You are not shielding bribe-takers. You bring them under the legislation passed by this Parliament within the last one or two months to punish such people personally. I am prepared to face a trial in any court of law and not merely to lose my civic rights for seven years but even to be shot if it can be proved that I took bribes. My conscience is clear and that is why I have the strength to get up and put my case across in this Hon. House. You have got the legal machinery in your hand to deal with all Members against whom allegations of bribery are proved. They can be charged in the district court. Not merely will they lose their civic rights, but they are even going to be jailed. I personally welcome such a trial for me.

So far as Hon. Members are concerned, if this is a political issue, there is an explanation to the public. This is not a case of shielding bribe-takers ; this is a case of meting out deterrent punishment to them by prosecuting them in court.

P1A
Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

Now, I am coming to the Bill in question and the statements that have been made on the Floor of this House by two previous speakers, the Hon. Member for Dompe and the Hon. Member for Kotte. This is what the Hon. Member for Dompe said as reported in HANSARD (uncorrected) of 23rd September 1965 ; column 412 :

" . . . We on our part feel it is our duty and the bounden duty of the Government, and we shall give our fullest support to achieve that objective. We have already proved on more than one occasion, when an amendment to the Bribery Bill came before this House, what our position was. I have already mentioned to you that on that occasion you received our fullest co-operation ; your Bill was debated and passed in the course of one day in Parliament. It is due to our co-operation that it is possible for you to investigate through the Bribery Commissioner, and through the Attorney-General to take up by way of an indictment before the District Court any person who in the course of the last Government or the previous Government before that—from 1956 onwards—was guilty of bribery and corruption under the law. All this has become possible with the co-operation of the S. L. F. P. and of the whole Opposition."

That is what the Hon. Member for Dompe said. They supported that Bill under the impression that it was good enough to catch up everybody, every Member of Parliament, against whom charges of bribery and corruption are proved since 1956. The Hon. Member continued :

" As far as we are concerned, this particular commission was also introduced not by a resolution of the House but by virtue of the powers under the Commissions of Inquiry Act, a special Act under which His Excellency the Governor-General was authorized and empowered to appoint a commission for purposes of finding out the facts in relation to any particular matter. There have been many such commissions in the recent past. To quote a few instance, the Press Commission of the previous Government is of that order. The C. W. E. Commission was set up under the Commissions of Inquiry Act ; the Navy Commission which investigated into the smuggling of certain goods by certain Navy officers, was also set up under the Commissions of Inquiry Act. [OFFICIAL REPORT, 23rd September 1965 ; Vol. 63, c. 414.]

" In the same way, the Thalgodapitiya Commission, as it was then called, was appointed for the purpose of ascertaining the facts as to whether any Members of Parliament, between certain dates, had taken bribes or not."

He continued his speech and further down he says :

" I do not know whether you, Sir, or any of the other Members of this House have really studied the provisions of the Commissions of Inquiry Act. No person goes before a commission of inquiry appointed under the Commissions of Inquiry Act in the position of an accused. Under the Commissions of Inquiry Act there is no provision for a formal charge to be framed against anybody. All that a fact-finding com-

mission under the Commissions of Inquiry Act does is that it proceeds against a person as a witness. Everybody examined by the commission is a witness. You do not even have an automatic right of legal representation under that Act. You may, with the permission of the commissioners, be represented by your lawyers to watch your interests while you are being questioned.....

PIA Speech made by the Petitioner in Parliament — 21-10-65. —(*Continued*).

If you look at the Commissions of Inquiry Act you will find that there is no automatic right of representation. It is only allowed by permission of the commissioners. I am not saying that any of these persons are deprived of that right, nor am I making any objection to it. I am merely informing the Hon. Members of the House of the procedure.

We have read in the newspapers reports of the particular forms which different commissions of inquiry took. Under the Press Commission, for example, I remember the manner and form of the inquiry, and I also remember Members of the present Government raising their voices in horror and telling us how thoroughly unsatisfactory was the procedure adopted by that particular commission of inquiry when it sought to investigate the way in which the so-called national newspapers, which we regard as political newspapers, were then conducting their affairs. They were not on trial. The Lake House group of newspapers was not on trial, nor were the " Times " and the " Dawasa." Persons from each of these newspapers went before the commission of inquiry and gave evidence as witnesses. There were certain findings by that Press Commission in regard to how the newspapers had conducted themselves, but one cannot say that those newspapers were in the position of accused.

Take the case of the Navy Commission which investigated the smuggling of liquor. There were findings against various officers; there were commissions withdrawn ; there were cases still pending in regard to the withdrawal of those commissions from officers. I do not propose for a single moment to talk about the rightness or the wrongness of those decisions, but the fact is that that commission of inquiry dealt with these people on the footing that they were witnesses, not accused persons to whom notice was given of a formal charge that they had been put on trial, a charge they were called upon to meet under the law.....

Even where the C. W. E. Commission of Inquiry is concerned, the persons examined there have no right, no automatic legal right; they are merely witnesses. All that the commission is doing is to examine and investigate facts. There is no question of a charge against anybody. They have the right, with permission, to seek to take their representatives—I said that—and that is all. There is no automatic right of being informed of any charges. The findings are made subsequently in a report, the evidence of which is not published, unlike a court record, which anybody can move to obtain a certified copy of. You can look at it, see for yourself whether the judgment is

P1A
Speech made by the Petitioner in Parliament— 21-10-65. —(*Continued.*)

borne out by the facts of the evidence. But in regard to recent commissions, it is sad to relate, Members of the Opposition have had occasion to tell us more than once just how far short of these standards these commissions appointed under the Commissions of Inquiry Act have fallen. What happened? Under the Commissions of Inquiry Act, in this instance, the three commissioners functioned and held their inquiry. It is a matter of fact and, I think, a matter of record from the earlier debates too, that this particular commission was appointed by a Warrant on the 11th of September, 1959, when the country was placed in the situation of the assassination of the Prime Minister and the whole Government of the country thrown into the melting pot, so to speak, from then onwards. By December there was a dissolution of Parliament, then there was a Caretaker Government for a long period till March, followed by a general election. The Government that came into office was defeated on the first Throne Speech when a second dissolution occurred, and, ultimately, we had another Caretaker Government until July 1960. In other words, we lived in very unsettled political conditions just at that time. I am not blaming anybody for it. I am merely stating it as a question of fact.

And during this period the relevant commission sat and they arrived at certain findings. I myself do not know how anyone can say by looking at the findings that those findings are wrong. No human being can say it. Nobody has ever seen what evidence was recorded."

Nobody has ever seen what evidence was recorded.

"Nobody to this date knows what the commission did, what witnesses they examined beyond the newspaper reports that were read from day to day as the proceedings went on."

Please give me a patient hearing and listen to what the Hon. Member said. It is a question of fact. This is what he said :

"Nobody to this date knows what the commission did, what witnesses they examined beyond the newspaper reports that were read from day to day as the proceedings went on. The commissioners themselves were concerned with finding facts, and the commission was told that they must find their facts in the best possible methods. I remember, at one stage, one of the commissioners actually put a notice in the newspapers asking for information. At one stage, one of the commissioners made an announcement in the public press saying that he proposes to go round the clubs and collect as much information as he could.

One of the commissioners, the Chairman of this relevant commission, I believe, on one occasion praised one of the gentlemen in the schedule and described him as a second Dutugemunu along with others too. That does not matter.

P1A
Speech made by the Patitioner in Parliament—21-10-65. —(*Continued*).

As far as we are concerned we say that you cannot have a lack of finality in this matter. I myself at one time genuinely thought that just as much as some political parties have always argued against retroactive punishment—we heard arguments time and time again; sometimes right through the night we have been talking about retroactive punishment and about the viciousness of imposing penalties which were not in contemplation at the time; we were talking in terms of ensuring that natural justice is done and conserving rights of appeal as far as the Privy Council— it would be fair to allow a review of the findings of a Commission by some appelate tribunal, and I argued before this House, on one occasion at least when this matter was discussed, that, some such opportunity should be allowed."—[OFFICIAL REPORT], 23rd September, 1965; Vol. 63, c. 420].

I ask Hon. Members whether lapse of time changes a judicial mind in regard to matters like this? Are hon. Members going to support this Bill simply because of the lapse of time? That is really un-Bandaranaike-like! And unlawyers-like.

Let us consider a case like this: if somebody is to be charged for something after a number of years is the time which has elapsed a factor to be considered against the accused? I will give you an analogy like this! a man is charged for murder but on account of the delays in the processes of the law it takes two or three years for the accused to be brought before the Supreme Court. Then the Judge of the Supreme Court goes through the record and says, "Look here, two years have elapsed from the date you are supposed to have committed this murder. Now after the lapse of two years I am not going to be bothered about the legal procedure which will entail further delay. I sentence you therefore to be hanged."

නයිනා මරික්කාර් මයා.

(திரு. நயினா மரிக்கார்)

(Mr. Naina Marikar)

How long is the Hon. Member going to continue?

වාසල මුදලි කාරියප්පර්

(கேற் முதலியார் காரியப்பர்)

(Gate Mudaliyar Kariapper)

I will take some more time.

කථානායකතුමා

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

P1A
Speech made by the Petitioner in Parliament— 21-10-65. —(*Continued*).

The Division on this Bill will take place at 5 P.M.

I suspend the Sitting for half an hour.

The unveiling of the portrait of the late Mr. S. W. R. D. Bandaranaike will take place in a little while.

රැස්වීම ඊට අනුකූලව තාවකාලික අත්සිටුවන ලදින් අ. භා. 4.30 ට නැවත පවත්වන ලදී.

அதன்படி அமர்வு பி. ப. 4-30 மணிவரை இடை நிறுத்தப்பட்டு, மீண்டும் ஆரம்பமாயிற்று.

Sitting accordingly suspended till 4-30 P.M. *and then resumed.*

වාසල මුදලි කාරියප්පර්

(கேற் முதலியார் காரியப்பர்)

(Gate Mudaliyar Kariapper)

When we suspended the Sitting for tea, I was explaining to the House what certain Hon. Members had said earlier about this matter. I was reading extracts from the speech of the Hon. Member for Dompe. I shall read only one more extract.

> " So, Mr. Chairman, what I wish to state is this, if we are now giving you complete co-operation on behalf of the Opposition, it is not because we have not got different views in this matter. I myself speaking as a lawyer would like to state straightaway that I would have been very much happier if a cleaner procedure had been adopted, of not having to go through the Commissions of Inquiry Act, of not dealing with people like witnesses brought up before an inquiry and treated as accused facing trial and denied legal representation. That would have been a much better position."—[OFFICIAL REPORT, 23rd September 1965 ; Vol. 63, c. 427].

I will not take any more time of the House by reading the speech of the Hon. Member for Kotte who followed. He has in fact been directing his speech to a graphic description of Mr. Walter Thalgodapitiya, the chairman. This is what he says :

> " In point of fact, I must place this on record. Mr. Walter Thalgodapitiya, the Chairman of this Commission, found this Casila Abdul Samed Marikkar—the great Marikkar . . . . "—[OFFICIAL REPORT, 23rd September 1965 ; Vol. 63 ; c. 449].

He said it was this Marikkar who was proclaimed as the real Dutugemunu by Mr. Thalgodapitiya I do not want to harp on it. The newspapers carried the story some months ago during the time of the elections. He also went on to say that when their party came into power, they could also not fail to take advantage of this Commissions of Inquiry Act and appoint a Commission to investigate into the conduct of certain Members on the night of 3rd December I do not want to go into details about it. These are matters in the womb of futurity.

Whoever thought that one day after the lapse of five years the Thalgodapitiya findings will be raised to the sanctity of a judicial decision and a Bill passed towards that end ?

P1A
Speech made by the Petitioner in Parliament— 21-10-65. —(*Continued*).

Hon. Members of this House, please remember that you are today creating traditions of legislative behaviour. Every Bill that passes through this House is a tradition. We are creating traditions of legislative behaviour. Please address your mind to this question, whether this Bill is not different from other Bills that are passed by this House, whether this Bill is not an edict or sentence passed upon certain individuals, in the guise of legislation.

Hon. Members, you have the right to pass laws. You have the right to sit in judgment, but you also have the right to refuse, may I respectfully repeat, to be anybody else's rubber stamp. You have the right to get hold of the proceedings of the Thalgodapitya Commission and you have the right to satisfy your conscience if those proceedings justify the verdicts that have been arrived at. If you are denied access to those proceedings and if you are just called upon to accept those verdicts as gospel truth, please consider whether that is going to be the standard of legislative behaviour that we are going to establish as a tradition for our children and our children's children. You have the right to call for the proceedings and you have the right to call for a Select Committee of this House to go into those proceedings. There is no need to amend the Constitution for that purpose. Hon. Members of this House have the right to constitute a Select Committee of this House to go through the proceedings and disqualify any Hon. Member who has fallen from the expected standard. That is what is expected of Hon. Members of this House. Are you not going to use that privilege which is yours ?—I ask.

In the alternative you still have the right, you have the legal machinery which has been passed by the Hon. Prime Minister and his Government a few weeks ago, to bring these Thalgodapitiya Commission victims before the courts under the Bribery Act.

In fact, the Hon. Member for Dompe representing the Opposition said that they gave their fullest co-operation to the passage of the Bribery Amendment Act under the impression that all those Members of Parliament from 1956 onwards against whom allegations of bribery had been brought or against whom *prima facie* cases were made, would be committed to trial under that Act. Are you not going to do that ? Now the question is : Are you going to appoint a Select Committee of the House to go into this matter or are you calling for the Bribery Act to be put into operation against us ? These are the things I am asking Hon. Members of this House to take into consideration.

Personally speaking, I feel that the mud that was slung on me, the stigma that attached to me as a result of the findings of the Thalgodapitiya Commission, has been wiped out from me. I say so because I went before

P1A
Speech made by the Petitioner in Parliament—21-10-65. —(*Continued*).

the bar of public opinion, I went before the people of my electroate and said, " Here I am. If you consider me a bribe-taker, this is your opportunity to say so and reject me if not, this is also your opportunity to vindicate my honour " by electing me as your M. P., thus discrediting the Thalgodapitiya Report.

I was contested at the last General Election by candidates who were nominated by important political parties of this country, and on every election platform, this was the one slogan, the Bribery story of Thalgodapitiya hurled at me. And on the 23rd of March last my people gave the verdict. So, I personally feel sure that the stigma arising from the Thalgodapitiya Commission no longer attaches to me.

But, I want Hon. Members of this House to give me a chance to vindicate my honour before a court of law or before a Select Committee of this House. Even if all that is denied me, I still have the satisfaction of knowing that my honour stands vindicated before my people, before my electorate.

In no part of the world, Mr. Speaker, professing the Rule of Law or working according to the Rule of Law, has a Bill of this nature been passed, except in countries where people suspected are just lined up against a wall and shot. But I must say to the credit of our country that we have a Prime Minister who has on occasions without number proclaimed that he was going to re-establish the Rule of Law. Is this Bill compatible with the Rule of Law ?

I think, I have only three minutes left, Mr. Speaker, and I want to wind up my speech by requesting Hon. Members to address their minds judicially to this whole question. At the outset of my speech I said that for the time being you are sitting in a judicial capacity, because this House is passing a Bill which metes out direct sentence on persons or individuals without recourse to the due processes of law before a court. I, therefore, make an appeal to you, Hon. Memebers, to address your mind judicially to the two submissions I am making now.

The first submission I make is that the findings of the Thalgodapitiya Commission are null and void and of no force or avail in law. Then the question may be asked as to why I did not contest the findings of that Commission at that time. May I say, Sir, that as soon as the newspapers announced that I had been reported against, I did go to my lawyer. He was of the opinion that I cannot seek redress in a court of law because the Thalgodapitiya Commission was a mere fact-finding Commission and no disability had flowed from its findings, and I had therefore no grievance for redress. My lawyer asked me whether the Commission informed me of its findings. I said it did not. I was asked whether the Government informed me that I was going to suffer disabilities. I said they did not. I was asked whether the Governor-General had written to me stating that I would suffer from any disabilities. I said he did not. I was asked whether I was a member of any local body. I said " Yes ; I am continuing to be Member".

Thereupon, I was told that unless and until I suffered any disabilities, I had no right to go before a court of law and ask for redress. This was the opinion given to me by one of the highest legal luminaries of this Island. I find that the legal advice has been corroborated by the Hon. Leader of the House in the course of the speech he made in the last Parliament, and he still remains the Leader of the House in this Parliament as well. He cannot contradict me.

P1A
Speech made by the Petitioner in Parliament— 21-10-65. —(*Continued*).

My second submission to you and the Hon. Members is that this Bill is based on the findings of the Thalgodapitiya Commission which are null and void and have no force or avail in law. I make these two submissions for your very careful and judicial consideration. I appeal to you to take a dispassionate and judicial view of the facts that I have placed before you. I leave this matter entirely in your hands for your decision. I am confident that whatever decision you make will be made in the full realization that you are sitting as judges on a very grave issue.

Before I resume my seat I appeal to you once more to take into consideration these two submissions of mine :

(1) that the findings of the Thalgodapitiya Commission are null and void and have no force or avail in law.

(2) the Bill that is based on it is also null and void and has no force or avail in law.

I thank you, Mr. Speaker, for giving me a patient hearing. I apologize to the Hon. Members for taking so much of the time of the House. I had to do it because the matter was so important. The precedents and traditions that we establish in this country through this legislature are of such importance that any deviation from the Rule of Law is bound to have serious consequences and repercussions. That was why I had to take so much of the time of the House.

I thank you and the Hon. Members once again, and yours Mr. Speaker, for your indulgence and the opportunity you gave me to put forward my case before this Hon. House.

P2
Letter sent to the Acting clerk to the House of Representatives by the Petitioner 6-12-65.

P 2

Letter sent to The Acting Clerk to the House of Representatives by the Petitioner

HOUSE OF REPRESENTATIVES

M. S. KARIAPPER, M.P.

C/o. M. M. A. RAHEEM,
Proctor S.C. & N.P.,
No. 254, Hultsdorp Street,
Colombo - 12.
6th December, 1965.

S. N. SENEVIRATNE, ESQR., 10
The Acting Clerk to the House of Representatives,
The House of Representatives,
COLOMBO.

Dear Sir,

I have been informed by my Bankers National & Grindlays Bank Ltd. that my allowance as Member of Parliament for the Kalmunai Electoral District for the month of November, 1965 has not been remitted by you at the end of last month. I accordingly communicated with you on the telephone this afternoon to inquire of you reason for your failure to do so.

I am writing to confirm the conversation on the telephone with you 20 wherein you stated that since the Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 had been passed by Parliament and received the assent of the Governor-General on the 16th of November, 1965 you will not be making any payment of the remuneration due to me as Member of Parliament with effect from 17th November, 1965. You are aware of the proceedings filed against the Clerk to the House of Representatives and you in case No. 1494/Z of the District Court of Colombo and the position I have taken in those proceedings, *inter-alia*, that the Act No. 14 of 1965 referred to is *ultra vires* the Constitution and therefore invalid.

It is my position that I am still a Member of the House of Represent- 30 atives and your refusal to pay my remuneration is unlawful and is tantamount to a refusal on your part to discharge a public and legal duty.

In the circumstances I request you to forthwith pay my allowance and continue to do so as long as I remain a Member of the House of Representatives.

I would be pleased to know whether it is your intention to persist in not paying my remuneration.

Yours faithfully,
(Sgd.) S. M. KARIAPPER.

P 3

P3
Letter sent to the Clerk to the House of Representatives by the Petitioner 23-12-65.

Letter sent to The Clerk to the House of Representatives by The Petitioner

HOUSE OF REPRESENTATIVES

M. S. KARIAPPER, M.P.

C/o. M. M. A. RAHEEM,
Proctor S.C. & N.P.,
No. 254, Hulftsdorp Street,
Colombo — 12.
23rd December, 1965.

S. S. WIJESINHA, ESQR.,
The Clerk To the House of Representatives,
The House of Representatives,
Colombo.

Dear Sir,

On 6th December, 1965 I was informed by my Bankers National & Grindlays Bank Ltd., that my allowance as Member of Parliament for the Kalmunai Electoral District for the month of November, 1965 had not been remitted by Mr. S. N. Seneviratne, who was then acting for you as the Clerk to the House of Representatives, at the end of the last month. I accordingly communicated with him on the telephone on that afternoon itself to inquire of him reason for his failure to do so.

Thereafter I immediately addressed a letter to Mr. Seneviratne on 6th instant to confirm the conversation on the telephone with him wherein he stated that since the Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965 had been passed by Parliament and received the assent of the Governor-General on the 16th of November, 1965 he will not be making any payment of the remuneration due to me as Member of Parliament with effect from 17th November, 1965. I pointed out to him that he is aware of the proceedings filed against him and you in Case No.1494/Z of the District Court of Colombo and the position that I have taken in those proceedings, *inter alia* that Act No. 14 of 1965 referred to is *ultra vires* the constitution and therefore invalid.

It is my position that I am still a Member of the House of Representatives and his refusal to pay my remuneration is unlawful and is tantamount to a refusal on his part to discharge a public and legal duty.

P3
Letter sent to the Clerk to the House of Representatives by the Petitioner 28-12-65. —(*Continued*).

In the circumstances, I requested him to forthwith pay my allowance and continue to do so as long as I remain a Member of the House of Representatives.

I further requested him to let me know whether it was his intention to persist in not paying my remuneration, but upto date I have not received a reply from him.

I am writing this letter to inform you that my allowance has not been remitted upto date either by him or by you.

I reiterate that I am still a Member of the House of Representatives and your refusal to pay my remuneration is unlawful and is tantamount to a refusal on your part to discharge a public and statutory duty.

In the circumstances, I request you to forthwith pay my allowance and continue to do so as long as I remain a Member of the House of Representatives or let me know whether it is your intention too to persist in not paying my remuneration.

Yours faithfully,

(Sgd.) M. S. KARIAPPER.

X

X
Certified copy of the Original Bill which became The Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965.

Certified copy of the Original Bill which became the Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965.

I hereby certify in terms of Section 29 (4) of the Ceylon (Constitution and Independence) Orders-in-Council 1946 and 1947, that the number of Votes cast in favour of this Bill in the House of Representatives amounted to not less than two-thirds of the whole number of Members of the House (including those not present).

(Sgd.) ALBERT PEIRIS,
Speaker.

I assent,

(Sgd.) W. GOPALLAWA,
Governor-General,
16th November, 1965.

(S E A L)

Imposition of Civic Disabilities (Special Provisions) Act, No. 14 of 1965.

L. D.—O. 8/65.

AN ACT TO IMPOSE CIVIC DISABILITIES ON CERTAIN PERSONS AGAINST WHOM ALLEGATIONS OF BRIBERY WERE HELD BY A COMMISSION OF INQUIRY TO HAVE BEEN PROVED AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

(Date of Assent : November 16, 1965)

X
Certified copy of the Original Bill which became The Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965. —(*Continued*).

WHEREAS, under section 2 of the Commissions of Inquiry Act, a Commission of Inquiry consisting of Messrs. Walter Thalgodapitiya, Thomas Webb Roberts and Samuel John Charles Schokman, was appointed by the Governor-General by warrant dated September 11, 1959, to inquire into and report upon allegations of bribery made against certain persons who were or had been members of the Senate or the House of Representatives or the State Council constituted under the Ceylon (State Council) Order-in-Council :

And whereas the said Commission had in its Reports found that the allegations of bribery against certain of the aforesaid persons had been proved :

And whereas it has become necessary to impose civic disabilities on the said persons consequent on the findings of the said Commission :

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Imposition of Civic Disabilities (Special Provisions) Act, No. 14 of 1965. Short title

2. No person to whom this Act applies shall, for a period of seven years computed from the relevant date, be qualified to have his name entered or retained in any register of electors. A person to whom this Act applies disqualified for registration in registers of electors.

3. A person to whom this Act applies shall be incapable, for a period of seven years computed from the relevant date, of voting at any election of a member of the House of Representatives or of any local authority ; and accordingly any such person who so votes at such election in contravention of the preceding provisions of this section shall be guilty of an offence under this Act and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees, or to imprisonment of either description for a term not exceeding one month, or to both such fine and imprisonment. A person to whom this Act applies disqualified from voting at elections.

4. (1) No person to whom this Act applies shall, for a period of seven years computed from the relevant date, be qualified to be nominated as a candidate at any election of a member of the House of Representatives or of any local authority ; and accordingly the disqualification imposed by the preceding provisions of this section shall be deemed, for all purposes, to be a ground on which any nomination paper submitted by a person to whom this Act applies shall be rejected by the returning officer in the case of a parliamentary election and by the returning officer in the case of an election to a local authority. A person to whom this Act applies disqualified for being a candidate at elections.

X
Certified copy of the Original Bill which became The Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965. —(*Continued*).

(2) The nomination of any person as a candidate at any election shall, if he is disqualified from being so nominated by virtue of the operation of sub-section (1), be deemed, for all purposes, to be null and void.

A person to whom this Act applies disqualified for membership of Parliament

5. A person to whom this Act applies shall, for a period of seven years computed from the relevant date, be disqualified for being elected or appointed as a Senator or a member of the House of Representatives or for sitting or voting in the Senate or in the House of Representatives.

A person to whom this Act applies disqualified for membership of any local authority.

6. No person to whom this Act applies shall, for a period of seven years computed from the relevant date, be qualified to be elected, or to sit or to vote, as a member of any local authority.

Vacation of seats as members of Parliament or of any local authority by persons to whom this Act applies.

7. Where, on the day immediately prior to the relevant date, a person to whom this Act applies was a Senator, or a member of the House of Representatives or of any local authority, his seat as a Senator or such member, as the case may be, shall be deemed, for all purposes, to have become vacant on that date.

A person to whom this Act applies disqualified for employment as a public servant or for election or appointment or nomination to scheduled institutions or the governing bodies thereof.

8. A person to whom this Act applies shall be disqualified, for all time, from being employed as a public servant, or from being elected or appointed or nominated as a member of any scheduled institution or the governing body thereof.

Vacation of office as public servants or members of scheduled institutions or governing bodies thereof by persons to whom this Act applies.

9. Where, on the day immediately prior to the relevant date, a person to whom this Act applies —

(*a*) was a public servant, such person shall be deemed, for all purposes, to have been dismissed on that date from the public service by the person or authority empowered so to do under any appropriate law, and to have vacated his office as such servant on that date ; or

(*b*) was a member of any scheduled institution or the governing body thereof, such person shall be deemed, for all purposes, to have vacated his office as such member on that date.

Special provisions relating to this Act.

10. (1) Where any provisions of this Act are supplementary to, or inconsistent or in conflict with, any provisions of the Ceylon (Constitution) Order-in-Council, 1946, the said provisions of this Act shall be deemed, for all purposes and in all respects, to be as valid and effectual as though the said provisions of this Act were in an Act for the amendment of that Order-in-Council enacted by Parliament after compliance with the requirement imposed by the proviso of sub-section (4) of section 29 of that Order-in-Council.

(2) Where any provisions of this Act are supplementary to, or inconsistent or in conflict with, any provisions of any appropriate law, other than the Order-in-Council referred to in sub-section (1), the said provisions of this Act shall be deemed, for all purposes and in all respects, to be as valid and effectual as though the said provisions of this Act were in an Act for the amendment of such appropriate law enacted by Parliament.

X Certified copy of the Original Bill which became The Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965. —(*Continued*).

(3) The provisions of any appropriate law shall have force and effect subject to the provisions of this Act, and accordingly shall be read and construed subject to such modifications or additions as may be necessary to give the provisions of such appropriate law the force and effect aforesaid.

(4) In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any appropriate law, the provisions of this Act shall be read and construed subject to all such modifications or additions as may be necessary to resolve such conflict or inconsistency or, in the event of it not being possible so to do, shall prevail over the provisions of such appropriate law.

11. In this Act, unless the context otherwise requires — Interpretation.

" appropriate law ", in any context in which that expression occurs in this Act, means any written law, other than this Act, which makes provision in respect of any matter or thing for which provision or substantially the same provision is made in that context ;

" candidate," in relation to any election, means a person who, by himself or by any other person or persons on his behalf, seeks, under any appropriate law, nomination as a candidate at such election ;

" local authority " has the same meaning as in the Bribery Act ;

" person to whom this Act applies " means each person specified in the Schedule to this Act in regard to whom the relevant Commission in its Reports found that any allegation or allegations of bribery had been proved ;

" public servant " has the same meaning as in the Bribery Act ;

" register of electors " has the same meaning as in the Ceylon (Parliamentary Elections) Order-in-Council, 1946 ;

" relevant Commission " means the Commission of Inquiry consisting of Messrs. Walter Thalgodapitiya, Thomas Webb Roberts and Samuel John Charles Schokman, which was appointed, under section 2 of the Commissions of Inquiry Act, by the Governor-General by warrant dated September 11, 1959 ;

" relevant date " means the date of the commencement of this Act ;

X
Certified copy of the Original Bill which became The Imposition of Civic Disabilities (Special Provisions) Act No. 14 of 1965. —(*Continued*).

" Reports," in relation to the relevant Commission, means " The Reports of the Parliamentary Bribery Commission, 1959/1960," published as Parliamentary Series No. 1 of the Fifth Parliament, First Session, 1960, and tabled in the House of Representatives on December 16, 1960, and ordered to be printed on December 22, 1960 ;

" scheduled institution " has the same meaning as in the Bribery Act ;

" Senator " means a member of the Senate ;

" voting," in relation to any election, means applying to vote, or voting, at such election, and its grammatical variations or cognate expressions shall be construed accordingly.

SCHEDULE (Section II)

Henry Abeywickrema

Manameldura Piyadasa de Zoysa

Mohamed Samsudeen Kariapper

Robert Edward Jayatilleke

Casila Abdul Samed Marikkar

Dharmasena Bandara Monnekulame.

I do hereby certify that the foregoing is a true copy of the " Imposition of Civic Disabilities (Special Provisions) Act, No. 14 of 1965," Date of Assent : November 16, 1965.

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

Supreme Court Registry,
Colombo, February 14, 1966.

No. 38 OF 1966

Supreme Court of Ceylon,
Application No. 8 of 1966.

In the matter of an application for a Mandate in the nature of a Writ of Mandamus under the provisions of Section 42 of the Courts Ordinance.

In Her Majesty's Privy Council

on an Appeal from

The Supreme Court of Ceylon

BETWEEN

MOHAMED SAMSUDEEN KARIAPPER of Cassim Road, Kalmunai.

Petitioner-Appellant.

AND

1. S. S. WIJESINHA of No. 8, Alfred House Road, Colombo 5.

   The Clerk to the House of Representatives, The House of Representatives, Colombo.

2. S. N. SENEVIRATNE of No. 138/1, Havelock Road, Colombo.

   The Assistant Clerk to the House of Representatives, The House of Representatives, Colombo.

Respondents

RECORD OF PROCEEDINGS

Printed at the Caxton Printing Works Ltd., Colombo 12, 1966