

14, 1969

IN THE PRIVY COUNCIL

No. 30 of 1968

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

IN THE MATTER of a Rule under Section  
47 of the Courts Ordinance (Chapter  
6)

RAJAH RATNAGOPAL

Appellant

C A S E FOR THE APPELLANT

Record

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1. This is an Appeal by Special Leave from a Judgment of the Supreme Court of Ceylon (H.N.G. Fernando, C J., T.S. Fernando, J. and Tambiah, J.) dated the 9th day of April, 1968, whereby the said Court held that the Appellant was guilty of an offence of contempt against or disrespect of the authority of Emil Guy Wikramanayake, Q.C., a Commissioner appointed under the Commissions of Inquiry Act (Cap. 393), and imposed on the Appellant for that offence a fine of one thousand rupees, or in default a sentence of simple imprisonment for a term of one month.

pp. 201-202  
pp. 155-199  
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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
9 MAR 1970  
RUSSELL SQUARE  
LONDON, W.C.1.

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2. By a gazette notification in Gazette No.14,540 of the 22nd day of October, 1965, E.G. Wikramanayake, Q.C. (hereinafter referred to as "the Commissioner") was appointed Commissioner in terms of Section 2 of the Commissions of Inquiry Act (Cap. 393) (hereinafter referred to as "the Act") to inquire into and report on abuses in connection with certain tenders made to, or contracts entered into with, government departments by contractors between the 1st day of June 1957 and the 31st day of July 1965. The Commissioner was vested with an absolute discretion to select the contracts for inquiry and report.

pp. 1-7 1.10

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3. The principal questions for determination in this appeal are -

- (a) whether the proceedings before the Commission were invalid, inasmuch as the appointment of the Commission was ultra vires the powers conferred on the Governor-General by Section 2(1) of the Act (annexed hereto);
- (b) whether the Appellant was "residing in Ceylon" within the meaning of Section 7(c) of the Act at the time when he was served with the summons and therefore whether the Appellant was amenable to the jurisdiction of the Commissioner or liable to be summoned by him; 10
- (c) whether in showing cause before the Commissioner and as required by the Supreme Court against the charge of contempt, the Appellant was entitled to rely on bias by the Commissioner as constituting "reasonable cause" within Section 12 of the Act.

4. Relevant sections of the Commissions of Inquiry Act (Cap.393), the Courts Ordinance (Cap. 6) and the Penal Code (Cap.15) are included in an Annexure hereto. 20

5. The Appellant is a British Citizen, who was born in Ceylon. In 1949, he left Ceylon and settled down in London and bought properties and commenced businesses in the United Kingdom. He married a Ceylonese in November 1955. The wife settled down in London with him. On the 22nd day of December 1959 the Appellant became a citizen of the United Kingdom, and in terms of Section 20 of the Citizenship Act (Cap.349), he ceased to be a citizen of Ceylon on the 22nd day of December 1959 by operation of law. His wife retained her Ceylon citizenship and in 1962 she took up residence in Ceylon, mainly owing to ill-health, and in 1964, she became the largest shareholder, and in 1965, the Chairman of a Company in Ceylon, Equipment and Construction Co. Ltd. Since 1962, the wife has spent about three to five months in each year in London. The Appellant was appointed Overseas Representative of this Company. Between 1962 and 1967, he paid several visits to Ceylon at irregular intervals and of varying duration to see his family and for business reasons, and he 30 40

visits several other countries also for business purposes. The Appellant owns no properties whatsoever in Ceylon.

10 6. On the 26th day of December 1967, the Appellant arrived in Ceylon, on his British Passport No. 369310, and on a transit visa issued and endorsed in Ceylon for the period the 26th day of December 1967 to the 2nd day of January 1968. His ticket shows that he was en route to Singapore at that time. He was proceeding to Singapore for business reasons. He broke his journey in Ceylon to meet his family.

20 7. On the 29th day of December 1967, the Appellant was served with a Summons, dated the 28th day of December 1967, by the Commissioner to appear before him on the 8th day of January 1968 and to give evidence on matters relevant to the terms of reference. Under Section 7(c) of the Act, the Commissioner can summon only persons "residing in Ceylon". p. 85 11.3-35

30 8. Prior to the issue of summons, the Commissioner had written to the Permanent Secretary, Ministry of Defence & External Affairs, a letter dated the 27th day of December 1967, requesting the Permanent Secretary to take steps to prevent the Appellant from leaving Ceylon. The Permanent Secretary thereupon issued certain directives to the Inspector-General of Police, who in turn directed his officers at the Airports and Seaports on the 28th day of December 1967 that the Appellant should not be allowed to leave the Island and should be detained. The Appellant was informed of these directives by the Immigration authorities and by the Police authorities. p. 219 p. 221

40 9. The Appellant appeared on the 8th day of January 1968 before the Commissioner, and tendered an affidavit setting out reasons why he could not in law be compelled to be a witness, basing his position on his contention that he was not residing in Ceylon. He also stated certain other reasons why he did not wish to participate in the proceedings the gist of which was that since the Commissioner was a rival in business of the Company of which his wife is the Chairman and he is the Overseas Representative, and by reason of certain earlier pp. 86-90 1.19 pp. 90 1.20 - 97 1.10

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- pp. 88-89 pronouncements and actions of the Commissioner, he was convinced that the Commissioner was biased against him. Before being sworn, he declined to participate in the proceedings. He indicated his willingness to give evidence before any other Commissioner.
- pp. 86 1.25 - 10. The Commissioner without considering the Appellant's submissions, and whether they were reasonable or not, virtually overruled them on the basis that they were irrelevant and that the Appellant's remedy was to obtain an order from the Supreme Court. 10  
88 1.20
- pp. 97 1.20 - 11. The Commissioner thereupon issued a certificate, dated the 16th day of January 1968, to the Supreme Court under Section 12 of the Act that the Appellant had refused to be sworn or to give evidence, and that in his opinion he was guilty of contempt of the Commission.  
98 1.11
- pp. 98 1.15 - 12. The Supreme Court issued a rule, dated 21st day of January 1968, on the Appellant to show cause, if any, why he should not be punished under Section 47 of the Courts Ordinance (Cap.6) read with Section 10 of the Act. 20  
100 1.10
- pp. 104-131 13. The Appellant showed cause by his affidavit, dated 7th day of March 1968, in which he elaborated upon and explained the matters referred to in his affidavit submitted to the Commissioner.
14. The judgment of the Chief Justice deals with the question whether the appointment of the Commission was ultra vires the Governor-General under Section 2 of the Act. The learned Chief Justice said - 30
- pp. 171 1.21- "The maxim omnia praesumuntur rite esse acta justifies an assumption that the Governor-General will not appoint a Commission of Inquiry unless he has in mind some subject of inquiry; and such an assumption is justified also on grounds of common sense. The terms of reference in this case do specify generally an ascertainable subject for inquiry, namely whether abuses of a specified description (they are specified in the list number (a) 40  
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to (n) in the warrant) occurred in connection with tenders for Government contracts, and such contracts themselves, during a specified period. "

10 If the scope of the inquiry as set out in the terms of reference had been thus generally stated without any qualification, the objection would not have been tenable that the Governor-General had not formed the requisite opinion under paragraph (c) as to the need for the inquiry. Moreover, I agree with learned Crown Counsel that the list of "abuses" mentioned in the terms of reference involves or can involve inquiry into matters referred to in paragraphs (a) and (b) of Section 2(1) of the Act, that is to say, into the administration of any Government Department which may be concerned with tenders and Government contracts and into the conduct of public officers who may be so concerned.

20 The questions which further arise are:-

(i) whether the limitation of the subject of the inquiry to abuses in connection with "relevant" tenders and "relevant" contracts contradicts the reasonable assumption that the Governor-General was of opinion that an inquiry was necessary into the subject generally mentioned in the terms of reference;

30 (ii) whether it was unlawful for the Governor-General to commit to the Commissioner the function of deciding or selecting which tenders and contracts he would investigate for the purpose of ascertaining whether abuses of the nature contemplated by the Governor-General had occurred in connection with them.

40 I find it convenient to consider these questions by supposing that the terms of reference in this case had been drafted in a different form thus:

" Whereas I am of opinion that an inquiry should be held and information obtained as to whether abuses occurred in connection with tenders for Government contracts and with Government contracts

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during the period. . . . . :  
 I hereby appoint . . . . . to  
 be my Commissioner for the purpose of  
 inquiring into all such tenders called for,  
 and all such contracts negotiated, during  
 the aforesaid period, and of reporting  
 whether abuses of the nature referred  
 to in the Schedule hereto occurred in  
 connection with any or some or all such  
 tenders and contracts".

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Let me suppose that upon such a Commission,  
 the Commissioner ultimately submits a report -

- (a) that the number of tenders and contracts during the relevant period was so numerous that he had not been able to inquire into all of them;
- (b) that he had inquired into all important tenders and contracts, namely those which related to works involving expenditure by the Government of sums exceeding Rs. 500,000 in each case;
- (c) that he had also inquired into 20 other contracts which involved the utilisation of foreign aid, because in his opinion an inquiry into such contracts was of public importance;
- (d) that according to his findings, "abuses" specified in the report had occurred in connection with some of the contracts actually investigated.

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Upon receipt of such a report, it may be open to the Governor-General to require the same Commissioner to investigate all the previously uninvestigated tenders and contracts, and no doubt it will be open to appoint another Commissioner to make such an investigation. But the failure of the Commissioner to inquire into all the tenders and contracts in the contemplation of the Governor-General would not taint with illegality or invalidity the inquiry into, and the report of the findings concerning, the tenders and contracts into which an actual investigation took place. In other words, there can be no substance in such circumstances in the

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contention that the inquiries actually conducted by the Commissioner were not authorised by the Commissions of Inquiry Act.

10 If then an inquiry and the findings based thereon would not be unlawful or unauthorised on the ground that the Commissioner decides of his own motion to limit the scope of his investigations to some only, but not all, of the contemplated tenders and contracts, it must follow a fortiori that such a limitation would be even more innocuous if, as in the instant case, it is imposed in pursuance of special authority conferred by the warrant of appointment."

15. The Appellant respectfully submits that the judgment of the Chief Justice on this point is wrong and makes the following submissions -

- 20 (a) Commissioners in Ceylon are appointed by the Governor-General on the advice of Ministers in the exercise of the statutory powers vested in him by Section 2 of the Act, and not on resolutions of the Houses of Parliament, as in the United Kingdom. In practice, the appointees are not judges of the Supreme Court. Since the Governor-General acts under the said statutory power, he must conform strictly to the requirements of the section.
- 30 (b) It is clear from an examination of the terms of reference that the Governor-General had not determined the definite matter in respect of which he required an inquiry and report by the Commissioner and had not formed the two opinions contemplated by Section 2(1)(c) before he appointed the Commission. There was, therefore, a failure to conform to the requirements of the section.
- 40 (c) In empowering the Commissioner to select particular contracts and tenders "in his absolute discretion" for inquiry and report, the Commissioner was vested with the power of the Governor-General to decide the matter to be inquired into and reported upon.
- (d) It transpired at the argument that one of the contracts that fell within the terms of

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reference was the contract referred to in paragraph 6(p) of the Appellant's affidavit filed in the Supreme Court, and in respect of which the Commissioner had acted for the contractor in his professional capacity, and that the Commissioner had yet not thought it fit to investigate the said contract. This served to underline the illegality and impropriety of vesting in the Commissioner the power to select the contracts to be inquired into and reported upon. 10

(e) It was not a matter to which the maxim omnia praesumuntur rite esse acta could apply inasmuch as the power of the Governor-General has not been exercised within the four corners of the statute.

(f) If, as stated in the judgment, "abuses" in contracts and tenders was the matter referred to the Commissioner, the same objections as to vagueness of the matter would apply so long as the particular contracts and tenders to be inquired into regarding "abuses" are to be selected by the Commissioner. 20

(g) If Section 2(1)(a) and (b) also apply, as held in the judgment, the Commissioner had also been vested with an absolute discretion to select particular departments or the conduct of particular public officers for inquiry and report.

(h) Considering the inquisitorial nature of these Commissions of Inquiry the Legislature could not have intended that such wide discretionary powers of selection should be vested in a Commissioner. 30

(i) The hypothetical case cited by the Chief Justice cannot be equated to the present case.

16. The issue whether the Appellant was "resident in Ceylon" within the meaning of Section 7(c) of the Act is dealt with in the judgments of the Chief Justice and Tambiah J. The Chief Justice relied heavily on English revenue cases and especially on dicta from Inland Revenue Commissioner v. Lysaght (1928) A.C. 234 and 40



concluded -

p.168 l.1-18

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"In the revenue cases however, there is nothing in the relevant statutes which might indicate that residence cannot be established except when there is an intention to continue such residence permanently or indefinitely. Nor is there in our Commissions of Inquiry Act any indication that such an intention to remain in Ceylon is necessary in order to constitute residence in Ceylon. I think therefore the expression any person "residing in Ceylon" in Section 7 of our Act must be construed in the same manner as the provisions regarding residence in the English revenue laws have been construed in England. I have already indicated that the facts of the present case establish that the respondent "resides in Ceylon" even more strongly than the facts of a case such as that of Lysaght."

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Tambiah J. said -

p. 196 l.30 -  
p. 197 l.16

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"There is overwhelming evidence to show that, despite the fact that the respondent abandoned Ceylon citizenship, acquired British citizenship and resided in England, he has a residence in Ceylon where his wife and children are living. In deciding the question of residence the fact of residence as well as the intention to reside are factors which should be taken into account. It is possible for a citizen of the United Kingdom to have residence in another country for a particular period either for purposes of holiday or business. The facts proved in this case show that the Respondent's wife and children had a permanent residence in Ceylon and the respondent himself whenever he came to Ceylon resided here with his wife.

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Counsel for the respondent urged that the visits of the respondent to Ceylon were in the nature of sojourns but the evidence clearly establishes that he came and resided with his wife for a particular period of time each year ever since he abandoned Ceylon

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citizenship. Further there is evidence that for business purposes it was necessary for him to have a residence in Ceylon. Therefore I hold that he was a person resident in Ceylon within the meaning of section 7(c) of the Commissions of Inquiry Act (Cap. 393)."

17. On the issue of residence, the Appellant respectfully submits as follows:-

- (a) Due weight has not been given to the fact that the Appellant's entry into Ceylon is subject to the same control and restrictions as the entry of an alien. 10
- (b) The authorities on which the decision regarding residence was based, including Inland Revenue Commissioner v. Lysaght (1928 A.C. 234) do not touch the present question, namely, whether the Appellant was residing in Ceylon at the time when the summons was served on him on the 29th day of December 1967. The question whether he was ordinarily resident in Ceylon did not arise. If the test laid down by Viscount Cave in Levene v. Inland Revenue Commissioner (1928 A.C. 217) is applied, the Appellant was not residing in Ceylon on that date. This aspect of the matter has not been considered. 20
- (c) The test applied in Inland Revenue Commissioner v. Lysaght (supra) was peculiar to the revenue statutes as stated by some of the learned Law Lords and was not applicable to all statutes. 30
- (d) There was no degree of permanence and continuity founded on an intention to remain for an indefinite period in the Appellant's visits to Ceylon on transit visas or holiday visas, and in particular his visit in December 1967 on a transit visa valid only for seven days, and while en-route to Singapore.
- (e) No weight has been attached to the fact that a strict interpretation must be given to the word "reside" in a statute like the Act, where process may be served upon an absent defendant by notice at his residence, as 40

provided in section 11(2) of the Act. It was, therefore, a misdirection to state that there is in the Act nothing to indicate that an intention to continue residence permanently or indefinitely in Ceylon is necessary in order to constitute residence. It is submitted that the provision for substituted service in section 11(2) indicates such a requirement, together with the fact that no provision is made in the Act for service of process outside the Island.

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- (f) The decisions in English Matrimonial actions cited at the hearing would be applicable to show that the Appellant's absences in Ceylon did not constitute residence.

18. One of the arguments advanced by the Appellant during the hearing was that he committed no offence when he refused to be sworn before the Commissioner because he acted in the bona fide belief -

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- (a) that he was not residing in Ceylon when the summons was served on him, and
- (b) that the Commissioner by reason of the business rivalry and his illegal acts and pronouncements was biased against him.

The Appellant was therefore, in terms of Section 72 of the Penal Code, acting under a mistake of fact. The Chief Justice held, erroneously it is submitted, that a mistaken belief on the question of residence is a mistake of law not fact. It is further submitted that the Chief Justice erred in not considering the further matter in (b) above in relation to Section 72.

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pp. 176 - 177  
1. 44

19. The Chief Justice also dealt with the construction of Section 12(1)(b) of the Act in order to determine whether the Appellant was entitled to show reasonable cause before the Commissioner. He held

p. 177 1.45 -  
p. 179

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"firstly, that a refusal to be sworn, whatever be the purpose of or the reason for the refusal, is within the scope of the first four words of paragraph (b) of Section

p. 179 1.39-  
47

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12(1) and constitutes the offence of contempt; and secondly, that the second part of paragraph (b) does not permit reasonable cause to be shown for a general refusal to give evidence."

pp.97 1.20-  
98 1.11  
pp. 93 1.15-  
100 1.20

20. The Appellant respectfully submits that the Commissioner's certificate to the Supreme Court and the rule issued by the Supreme Court under Section 47 of the Courts Ordinance clearly indicate that the charge of contempt consisted in a general refusal to give evidence before the Commissioner and submits further that whether the charge consists of a refusal to be sworn or a refusal to give evidence, the Appellant was entitled to show cause. 10

pp. 182-199

21. The issues of law and fact relating to bias by the Commissioner were dealt with in the judgments of T.S.Fernando J. and Tambiah J. They held that bias cannot be relied on for the purpose of showing reasonable cause on a charge of contempt before the Commission. Their judgments proceed on the basis that a Commissioner appointed under the Act does not exercise judicial or quasi-judicial functions (Dias v. Abeywardena (1956) 68 N.L.R. 409) and the proper forum for disqualifying the Commissioner would be Parliament and not the Courts. 20

It is submitted that this view is wrong and vitiates the judgment on the question whether the Appellant was entitled to rely on bias as constituting reasonable cause for his conduct before the Commissioner. The learned Judges have failed to draw the distinction between (a) that species of bias which disqualifies a person from adjudicating on a particular person's rights or conduct and from exercising judicial or quasi-judicial functions, (which attract the issue of mandates in the nature of writs of Certiorari or Prohibition against him,) and (b) the other species of bias, with which the Court was concerned in this case - the bias or the reasonable suspicion of bias that was adduced by the Appellant as reasonable cause for his declining to participate in proceedings before the Commissioner, and which could have excused his conduct on the 8th day of January, 1968, even if the Judges held that the Appellant ought to 30 40

appear before the Commissioner in the future. The question whether the functionary was a person against whom Certiorari or a Prohibition would lie or not was irrelevant to the question whether the Appellant had good reason for not appearing before the Commissioner. The Appellant has not filed any proceedings before the Court but has only sought to defend himself on a charge of contempt.

10 22. Despite the conclusion reached by the two learned Judges, they both dealt with the question whether in fact the Appellant has established bias by the Commissioner. Both Judges specifically found that

(a) the Commissioner had committed irregularities and illegalities in his acts and pronouncements in regard to the Appellant and his wife; and p. 196 1.5-20

20 (b) some of the Commissioner's acts were illegal, could not be justified and were against the rule of law. p. 197 1.34-38

However, they both held that despite these acts and irregularities, the Appellant has failed to establish bias as a reasonable cause. In considering the question of bias, T.S. Fernando J. held that the test to be applied is an objective one: "Would a reasonable man, in all the circumstances of the case, believe that there was a real likelihood of the Commissioner being biased against him .....on a balance of probability." The Appellant respectfully submits -

p. 194 1.7-12

30 (a) that T.S. Fernando J. was wrong in holding that an objective and not subjective test should be applied; and

40 (b) that whether an objective or subjective test is applied the various illegal and irregular acts of the Commissioner were sufficient to discharge the burden that lay on the Appellant to establish reasonable cause on a balance of probabilities.

23. The Appellant respectfully submits that this

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Appeal should be allowed, with costs, that the said judgment of the Supreme Court of Ceylon, dated the 9th day of April 1968, should be set aside and that the conviction and sentence thereby imposed should be quashed for the following amongst other

R E A S O N S

- (1) BECAUSE the proceedings before the Commission were invalid in that the terms of reference by the Governor-General had empowered the Commissioner to inquire into and report only on the contracts and tenders selected by the Commissioner himself in his absolute discretion, and this amounted to a reference falling outside the powers vested in the Governor-General by Section 2(1) of the Act. 10
- (2) BECAUSE the Appellant was not "residing in Ceylon" within the meaning of Section 7(c) of the Act at the time when he was served with the summons and therefore not amenable to the jurisdiction of the Commissioner or liable to be summoned by him. 20
- (3) BECAUSE in refusing to take the oath before the Commissioner, the Appellant acted in the bona fide belief (a) that he was not residing in Ceylon, and (b) that the Commissioner was biased against him; and was therefore entitled to rely on Section 72 of the Penal Code.
- (4) BECAUSE on a proper construction of Section 12(1)(b) of the Act, the Appellant was entitled to show cause for refusing to be sworn or to give evidence. 30
- (5) BECAUSE the Appellant had reasonable cause under Section 12(1)(b) of the Act to refuse to be sworn or to give evidence in that he had a reasonable apprehension that the Commissioner would be likely to be biased against him in view of -
- (a) the general business rivalry between them; 40

(b) the fact that the Commissioner had committed several irregular and illegal acts in the course of the inquiry.

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- (6) BECAUSE in showing cause as required by the Supreme Court against the charge of contempt, the Appellant was entitled to rely on the matters set out in (a) and (b) of reason No.5.
  - (7) BECAUSE the Supreme Court was entitled to consider the question of bias in determining whether reasonable cause was established under Section 12(1)(b) of the Act.
  - (8) BECAUSE both on an objective or subjective test, the Appellant had discharged the burden of proving bias against him by the Commissioner.
  - (9) BECAUSE the judgment of the Supreme Court is wrong.

DINGLE FOOT

EUGENE COTRAN

A N N E X U R E

COMMISSIONS OF INQUIRY ACT

(Chapter 393)

Section 2

(1) Whenever it appears to the Governor-General to be necessary that an inquiry should be held and information obtained as to -

- (a) the administration of any department of Government or of any public or local authority or institution; or
- (b) the conduct of any member of the public service; or
- (c) any matter in respect of which an inquiry will in his opinion, be in the interests of the public safety or welfare,

the Governor-General may, by warrant under the Public Seal of the Island, appoint a Commission of Inquiry consisting of one or more members to inquire into and report upon such administration, conduct or matter.

- (2) Every warrant issued under this Act shall -
  - (a) set out the name of the member or each of the members of the commission;
  - (b) where a commission consists of more than one member, specify the member who is to be the chairman of the commission;
  - (c) contain the terms of reference of the commission; and
  - (d) include a direction whether the inquiry or any part thereof shall or shall not be held in public.

Section 7

(7) A commission appointed under this Act shall have the following powers:-



2.

- (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the commission may think it necessary or desirable to procure or examine;
- (b) to require the evidence (whether written or oral) of any witness to be given on oath or affirmation, such oath or affirmation to be that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorized in that behalf by the commission an oath or affirmation to every such witness;
- (c) to summon any person residing in Ceylon to attend any meeting of the commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;
- (d) notwithstanding any of the provisions of the Evidence Ordinance, to admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings;
- (e) subject to any direction contained in the warrant -
  - (i) to admit or exclude the public from the inquiry or any part thereof;
  - (ii) to admit or exclude the press from the inquiry or any part thereof;
- (f) to recommend that any person whose conduct is the subject of inquiry under this Act or who is in any way implicated or concerned in the matter under inquiry be awarded such sum of money as, in the opinion of the commission, may have been reasonably incurred by such person as costs and expenses in connection with the inquiry. In this paragraph, "costs and expenses" includes the costs of representation by advocate or proctor, and travelling and other expenses

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incidental to the inquiry or consequential upon the attendance of such person at the inquiry.

#### Section 10

Every offence of contempt committed against, or in disrespect of the authority of a commission appointed under this Act shall be punishable by the Supreme Court or any Judge thereof under Section 47 of the Courts Ordinance as though it were an offence of contempt committed against or in disrespect of the authority of that court.

#### Section 11

(1) Every summons shall, in any case where a commission consists of one member only, be under the hand of that member, and in any case where a commission consists of more than one member, be under the hand of the chairman of the commission;

Provided that where a person has been appointed under Section 19 to act as secretary, any such summons may, with the authority of the commission, be issued under the hand of the secretary.

(2) Any summons may be served by delivering it to the person named therein, or if that is not practicable, by leaving it at the last known place of abode of that person.

(3) Every person on whom a summons is served shall attend before the commission at the time and place mentioned therein, and shall give evidence or produce such documents or other things as are required of him and are in his possession or power, according to the tenor of the summons.

#### Section 12

(1) If any person upon whom a summons is served under this Act -

- (a) fails without cause, which in the opinion of the commission is reasonable, to appear before the commission at the time and place mentioned in the summons; or

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- (b) refuses to be sworn or, having been duly sworn, refuses or fails without cause, which in the opinion of the commission is reasonable, to answer any question put to him touching the matters directed to be inquired into by the commission; or
- (c) refuses or fails without cause, which in the opinion of the commission is reasonable, to produce and show to the commission any document or other thing which is in his possession or power and which is in the opinion of the commission necessary for arriving at the truth of the matters to be inquired into,

such person shall be guilty of the offence of contempt against or in disrespect of the authority of the commission.

(2) Where a commission determines that a person has committed any offence of contempt (referred to in subsection (1)) against or in disrespect of its authority, the commission may cause its secretary to transmit to the Supreme Court a certificate setting out such determination; every such certificate shall be signed by the chairman of the commission, or where the commission consists of only one person by that person.

(3) In any proceedings for the punishment of an offence of contempt which the Supreme Court may think fit to take cognizance of as provided in section 10, any documents purporting to be a certificate signed and transmitted to the court under subsection (2) shall -

- (a) be received in evidence, and be deemed to be such a certificate without further proof unless the contrary is proved; and
- (b) be conclusive evidence that the determination set out in the certificate was made by the commission and of the facts stated in the determination.

(4) In any proceedings taken as provided in section 10 for the punishment of any alleged offence of contempt against or in disrespect of the authority of any commission, no member of the

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commission shall, except with his own consent, be summoned or examined as a witness.

COURTS ORDINANCE

(Chapter 6)

COURTS AND THEIR POWERS

Section 47

The Supreme Court or any Judge thereof, whether at Colombo, or elsewhere, shall have full power and authority to take cognizance of and to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or any offence of contempt committed against or in disrespect of the authority of any other court, and which such court has not jurisdiction under section 57 to take cognizance of and punish, and on conviction to commit the offender to jail until he shall have purged his contempt or for such period as to the court or judge shall seem meet: and such imprisonment shall be simple or rigorous as such court or Judge shall direct, and the offender may in addition thereto or in lieu thereof, in the discretion of such court or Judge, be sentenced to pay a fine not exceeding Five thousand rupees.

PENAL CODE

(Chapter 15)

Section 72

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

Illustration

A sees Z commit what appears to A to be a murder.

6.

A in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the Act, seises Z in order to bring Z before the proper authorities. A has committed no offence though it may turn out that Z was acting in self defence.

No. 30 of 1968

IN THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE SUPREME COURT OF CEYLON

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IN THE MATTER of a Rule under  
Section 47 of the Courts  
Ordinance (Chapter 6)

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RAJAH RATNAGOPAL      Appellant

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C A S E   F O R   T H E   A P P E L L A N T

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