

P.C.
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Judgment
39, 1965

2.5 OF 1965

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

1. DON JOHN FRANCIS DOUGLAS LIYANAGE
2. MAURICE ANN GERARD DE MEL
3. FREDERICK CECIL DE SARAM
4. CYRIL CYRUS DISSANAYAKE
5. SIDNEY GODFREY DE ZOYSA
6. GERARD ROYCE MAXWELL DE MEL
7. NOEL VIVYAN MATTHYSZ
8. BASIL RAJANDIRAM JESUDASON
9. TERENCE VICTOR WIJESINGHA
10. LIONEL CHRISTOPHER STANLEY JIRASINGHE
11. VITHANAGE ELSTER PERERA Appellants

- and -

T H E Q U E E N Respondent

C A S E FOR THE RESPONDENT

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

P.C.
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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
STUDIES
- 9 FEB 1966
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LONDON, W.C.1.

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 11. VITHANAGE ELSTER PERERA
- Appellants

- and -

THE QUEEN Respondent

20 C A S E FOR THE RESPONDENT

1. This is an appeal, by Special Leave, against the Judgment and sentence of the Supreme Court of Ceylon, dated the 6th April, 1965, whereby the Appellants were each convicted, under Section 115 of the Penal Code (as amended by the Criminal Law (Special Provisions) Act, No.1 of 1962) of:
(1) conspiring to wage war against the Queen;
(2) conspiring to overawe by means of criminal force or the show of criminal force the Government of Ceylon; and (3) conspiring to overthrow otherwise than by lawful means the Government of Ceylon by law established. In consequence, each of the Appellants was sentenced to undergo rigorous imprisonment for a period of ten years and to forfeit all his property as required by law.

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The Bench (Sansoni C.J., H. N. G. Fernando S.P.J., and L.B. de Silva J.) which was constituted to try the Appellants at Bar without a Jury held almost 300 sittings and reached its

conclusions in every instance unanimously.

2. The Appellants were convicted and sentenced for offences committed by them under Section 115 of the Penal Code, as amended by the Criminal Law (Special Provisions) Act No. 1 of 1962 and the Criminal Law Act No. 31 of 1962. They were tried at Bar without a Jury under Section 440A of the Code of Criminal Procedure as amended by the said Acts Nos. 1 and 31 of 1962.

Their appeal, at this stage, is concerned mainly with the validity and effectiveness of the said Acts of 1962, the relevant questions for determination by the Board being thus stated by them in their Petition for Special Leave:- 10

"3(a) Whether under the Constitution of Ceylon" contained in the Ceylon (Constitution) Orders in Council 1946 and 1947 "the Criminal Law (Special Provisions) Act No. 1 of 1962 and/or the Criminal Law Act No.31 of 1962 or parts thereof were intra vires the Ceylon Parliament; or constituted interference with the judicial power under the guise of legislation. 20

"(b) Whether the Criminal Law Act No.31 of 1962 operated retrospectively to deprive Your Petitioners" now the Appellants "of their right to trial by Jury; if it did not so operate it is submitted that the trial Court had no jurisdiction to try Your Petitioners." 30

3. In their said Petition for Special Leave the Appellants referred to further issues which, they said, would arise if the Board held (contrary to their submission) that the trial Court had jurisdiction to try the Appellants. With these further issues this appeal will, at a later stage, be concerned if it is held (as the Respondent respectfully submits should be done) that there was no lack of jurisdiction in the trial Court to try the Appellants. 40

4. Portions of Statutes relevant to the subject matter of this stage of the appeal are included in an Annexure hereto. The general effect of the more important of these provisions is briefly

stated in the succeeding paragraphs of this Case.

10 5. The Appellants have been convicted on three counts of offences against Section 115 of the Penal Code read with Section 114 thereof. As originally enacted in 1885, Section 114 dealt with the offence of waging, or attempting to wage, or abetting the waging of war against the Queen which was punishable with death or imprisonment which could be extended to twenty years and forfeiture of all property; and Section 115 made punishable with imprisonment (which could be extended to twenty years) and fine, inter alia, any conspiracy to commit any of the offences mentioned in Section 114 or any conspiracy to overawe by means of criminal force, or the show of criminal force, the Government of Ceylon.

Annexure

20 6. Subsequent to the date - on or about the 27th January, 1962 - when the Appellants were alleged to have committed the offences of which they now stand convicted there was enacted by the Ceylon Parliament, with retrospective effect, the Criminal Law (Special Provisions) Act No.1 of 1962, (herein also referred to as "No.1 of 1962"). This Act, which is now impugned, amended the said Section 114 of the Penal Code changing the period of imprisonment for an offence under that Section from up to twenty years to a minimum period of ten years and a maximum of twenty years. Further, it amended the said Section 115 of the Penal Code by : (a) adding to the offences specified therein further offences connected with (i) the overthrowing, otherwise than by lawful means, of the lawful Government of Ceylon, and (ii) conspiracy to murder, or attempting to murder, and with wrongful confinement of the Governor-General or the Prime Minister or any other member of the Cabinet of Ministers, with the intention of inducing or of compelling him to exercise or refrain from exercising any of his lawful powers; and (b) by altering the period of imprisonment for any of the offences in the said Section 115, as amended, from up to twenty years to a minimum period of ten years and a maximum of twenty years and forfeiture of property.

Annexure

40 7. Apart from adding to the offences in the said Sections 114 and 115 of the Penal Code and changing the punishments in those Sections as

Annexure

amended, the said Act No.1 of 1962 amended also Section 440A of the Code of Criminal Procedure which dealt with the trial at Bar without Jury by three Judges of the Supreme Court of certain specified offences. By the amendment there was brought within the scope of that Section offences against the State under Part VI of the Penal Code, inclusive of the said Sections 114 and 115 (see paragraphs 5 & 6 hereof), and the existing power of the Minister of Justice to direct a trial at Bar without Jury was extended to the new offences brought within the scope of Section 440A. The said Act (No.1 of 1962) provided also - by Section 9 thereof - that where by the Minister of Justice's direction, under the said Section 440A, the trial of any offence was to be held before the Supreme Court at Bar by three Judges without a Jury the three Judges should be nominated by the Minister himself. Further, it was enacted, by Section 15 thereof, that from the conviction of a person by the Court constituted under Section 440A there would be no right of appeal to the Court of Criminal Appeal. 10 20

Annexure

8. As to evidence, the said Act No.1 of 1962, enacted, by Section 12 thereof, that, in the case of offences against the State, a statement, whether or not a confession, made by any person, could, whether or not such person was in police custody or in the immediate presence of a Magistrate when the statement was made, be proved against the person making it if it was not irrelevant under Section 24 of the Evidence Ordinance (i.e. if it did not appear to the Court to have been caused by inducements threats or promises) the onus of proving the irrelevancy being on the person asserting it to be irrelevant. Further, it was enacted that the provisions of Sections 25,26 and 30 of the Evidence Ordinance (which deal with the inadmissibility of confessions made to a police officer, and by any person while in police custody and with a confession made by one of several persons tried jointly for the same offence) were not to apply to any offences against the State - i.e. to any acts or omissions made punishable by Chapter VI of the Penal Code (inclusive of Sections 114 and 115 thereof). It was enacted also that the provisions of Section 122(3) of the Criminal Procedure Code (dealing with the inadmissibility of statements 30 40

made to police officers or inquirers in the course of an investigation of an offence) were inapplicable to statements made in the case of offences against the State which were admissible as stated above.

9. The said Act No.1 of 1962 contained three other provisions to which attention should be drawn: Annexure
(1) by Section 18 thereof it was enacted that the provisions of the Act were to have effect
10 notwithstanding anything to the contrary in any written law; (2) by Section 19 the provisions of the Act relevant to this appeal were to be deemed to have come into operation on the 1st January, 1962 - provided however that Part I of the Act (dealing with the Arrest and Detention of persons suspected of committing offences against the State) was to be limited in its application to any offence against the State alleged to have been committed on or about the 27th January, 1962 (on which date or
20 dates the Appellants were alleged to have committed the offences contained in the Information filed against them) or any matter connected therewith or incidental thereto; and (3) by Section 21 of the Act, the provisions of the Act (save Part I and Section 17 (Amendment of the Courts Ordinance) thereof) were to cease to be operative after the conclusion of all legal proceedings connected with, or incidental to, any offence against the State committed on or about the 27th January, 1962, or
30 from one year after the commencement of the Act, whichever date was later. A further provision as to its extension by Parliament from time to time is not now relevant.

10. The Criminal Law Act No.31 of 1962 (herein also referred to as No.31 of 1962) was enacted after a decision in these proceedings (hereinafter referred to) which, on the 3rd October, 1962, upheld the objection taken on behalf of the Appellants, that the said Section 9 of No.1 of 1962 (empowering
40 the Minister of Justice to nominate the three Judges of the Supreme Court before whom a trial at Bar without Jury was to be held) was an interference with the judicial power of the State (the exercise of which is vested in the Judges of the Supreme Court) and was, therefore, invalid, being in contravention of Section 52 of the Constitution (i.e. of the Ceylon (Constitution) Orders in Council, 1946 and 1947). The new Act No. Annexure

31 of 1962 repealed, inter alia, the offending Section 9 of No.1 of 1962. It repealed also Sections 4 and 8 of the earlier Act and substituted a new Section 440A in the Code of Criminal Procedure which enacted, in effect, that the trial of any person for offences against the State punishable under Sections 114, 115 or 116 of the Penal Code should be held before the Supreme Court at Bar by three Judges without a Jury. The provision in the former Section 440A for a direction by the Minister of Justice for the trial at Bar of the said offences was omitted in the new Section. The power of the Minister to make such a direction in the case of other offences was, however, provided for.

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Annexure

11. As to the vexed question of nominating Judges of the Supreme Court to preside over a trial at Bar without a Jury, the said Act No.31 of 1962, (accepting the said decision which had declared invalid Section 9 of No.1 of 1962 empowering the Minister of Justice to make the nomination) inserted a new Section 440B in the Code of Criminal Procedure which provided for the nomination of the said Judges by the Chief Justice of the Supreme Court.

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Annexure

12. Finally, No.31 of 1962 nullified the previous proceedings against the Appellants thus: it provided, by Section 6 thereof, that in regard to the amendments which it had made in the Code of Criminal Procedure and the said Act No.1 of 1962: (a) the direction, information and nomination which had been previously made should be deemed for all purposes to have had, and to have, no force or effect in law; (b) the Minister of Justice should not have, and be deemed never to have had, any power or duty to nominate, as aforesaid, the Judges for the trial at Bar without a Jury of persons named in the said previous Information in respect of the offences specified therein; and (c) any action, proceeding, etc., commenced or initiated by, or by virtue of, the said previous direction, Information or nomination and pending or incompleated on the date of the commencement of No.31 of 1962 (the 14th November, 1962) should be deemed for all purposes, never to have been instituted, commenced or initiated.

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The ground was thus cleared for the institution of fresh proceedings against the Appellants.

13. The facts leading up to the present appeal may now be briefly stated as follows :-

10 The Appellants, with others, were first called upon to answer charges contained in an Information exhibited by the Attorney-General to a Bench of three Judges of the Supreme Court (T.S. Fernando J., L.B. de Silva J. and Sri Skanda Rajah J.) constituted as the result of a direction and nomination by the Minister of Justice.

64 N.L.R.
p.340

20 Purporting to act under Section 440A of the Code of Criminal Procedure as amended by Section 4 of No.1 of 1962, the Minister of Justice directed that the twenty-four persons named in his direction (among them all the Appellants) should be tried for three specified offences against the State under Section 115 (as amended) of Part VI of the Penal Code before the Supreme Court at Bar without a Jury; and, purporting to act under Section 9 of the said Act No.1 of 1962, the Minister nominated the said three Judges to preside over the trial of the said twenty-four persons.

The direction, nomination and information were each dated the 23rd June, 1962.

30 14. Called upon to make their pleas in answer to the charges in the said Information various Counsel on behalf of the Appellants raised several preliminary objections to the jurisdiction of the Court on several grounds of which the following would now appear to be relevant:-

"This Court cannot take cognizance of the Information laid against the Defendants" [inclusive of the present Appellants] "and it has no jurisdiction to try the case because it is not a validly or properly or lawfully constituted Court; nor is it competent to hold a trial-at-Bar."

64 N.L.R.
p.340

and

40 "(a) The constitution of this Court is contrary to law, and therefore the Court has no jurisdiction to try the case".

64 N.L.R.
p.341

"(b) In any event, the direction under Section 440A of the Criminal Procedure Code and the nomination under Section 9 of the Criminal Law (Special Provisions) Act are bad in law."

64 N.L.R.
pp.340-366

15. In its Order, dated the 3rd October, 1962, the said Bench of the Supreme Court (T.S. Fernando J., L.B. de Silva J. and P. Sri Skanda Rajah J.) upholding one of the preliminary objections raised, expressed their opinion that "because -

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p.359

"(a) the power of nomination conferred on the Minister is an interference with the exercise by the Judges of the Supreme Court of the strict judicial power of the State vested in them by virtue of their appointment in terms of Section 52 of the Ceylon (Constitution) Order in Council, 1946, or is in derogation thereof, and

"(b) the power of nomination is one which has hitherto been invariably exercised by the Judicature as being part of the exercise of the judicial power of the State, and cannot be reposed in anyone outside the Judicature,

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"Section 9 of the Criminal Law (Special Provisions) Act No.1 of 1962 is ultra vires the Constitution."

Having thus pronounced on the validity of the very statutory provision which created it, the Court held that it was deprived of jurisdiction to enter upon a trial at Bar of the Appellants.

64 N.L.R.
p.359

16. The learned Judges, who had decided that they had no jurisdiction, did not make any order of discharge of the Appellants in respect of the Information filed but no further action against them was taken on that Information. The Appellants, who had previously been remanded to the Fiscal by order of the Court, were now ordered to be released therefrom. Thereafter the Appellants were held in custody in pursuance of detention orders made under the Emergency Regulations.

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65 N.L.R.
pp.75/6

17. It is relevant and instructive to note that while the learned Supreme Court Judges held, for the reasons already stated above, that Section 9 of No.1 of 1962 was invalid, they rejected the

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argument advanced against the validity of both that Section and Section 8 (Direction of Minister of Justice under Section 440A of the Code of Criminal Procedure to be final and conclusive) that -

10 "the Legislature of this country not being sovereign it was competent to a Court to examine legislation to decide whether it was actually for the 'peace, order and good government' of the country, and if it was not, to pronounce it void."

64 N.L.R.
pp.345-6

As to this argument the learned Supreme Court Judges said:-

20 "Section 29(1) of the Order in Council provides that 'Subject to the provisions of this Order, Parliament shall have the power to make laws for the peace, order and good government of the Island'. Such a power has been held 'to authorise the utmost discretion of enactment for the attainment of the objects pointed to', and a Court will not enquire whether any particular enactment of this character does in fact promote the peace, order or good government of the Colony - See Chenard & Co. v. Joachim Arissol [1949] A.C. at p.132.

30 "Mr. Ponnambalam" [Counsel for the Appellants] "sought to read Section 29(1) as a limiting clause whereas it appears to us clearly as an empowering clause. Cases decided in Ceylon or other countries of the British Commonwealth at a time when the Colonial Laws Validity Act applied would be without application today. To agree with the submission made by learned Counsel would be to negative the Sovereignty of Parliament which in this country is now limited only in the manner set out in the other sub-sections of Section 29. To extend the scope of judicial review beyond that would appear to us to place in the Courts a new power unrecognised by the Constitution at the expense of a power vested in Parliament by the Constitution."

40 The learned Judges held that the said Section 8 was intra vires the Legislature but that - for reasons already stated - Section 9 was not.

18. As to the separation of powers - Judicial Executive and Legislative - in Ceylon, on which subject both sides had advanced arguments, the

64 N.L.R.
pp.348-350

learned Supreme Court Judges said :

64 N.L.R.
p.350

"It appears to us unnecessary to go into this question at any length except to say that if by a separation of powers or functions of Government is meant a mutually exclusive separation of such powers or functions as obtains in the American Constitution or even in the Constitution of the Commonwealth of Australia, which was itself based on the American Constitution, there is no such mutually exclusive separation of governmental functions in our Constitution. Nor, on the other hand, do we have a sovereign Parliament in the sense in which that expression is used in reference to the Parliament of the United Kingdom. That a division of the three main functions of Government is recognised in our Constitution was indeed conceded by the learned Attorney-General himself. For the purposes of the present case it is sufficient to say that he did not contest that judicial power in the sense of judicial power of the State is vested in the Judicature, *i.e.* the established civil Courts of this country."

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19. As already stated the objection to Section 9 of No.1 of 1962 - that it was invalid because it interfered with judicial power and thus contravened Section 52 of the Constitution - was removed by the enactment, on the 14th November, 1962, of No.31 of 1962, the nature and effect of the provisions of which have already been briefly stated. (See paragraphs 10 to 12 hereof).

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65 N.L.R.
p.76

20. On the 21st November, 1962, the Attorney-General filed against the Appellants, and thirteen others, a new Information containing two of the charges which had appeared in the previous Information (now rendered completely and retrospectively ineffective by No.31 of 1962) and one new charge.

Subsequently the Chief Justice, in accordance with the provisions of No.31 of 1962, nominated the Judges (Sansoni J., President, H.N.G. Fernando J. and L.B. de Silva J.) to preside over the trial at Bar without a Jury of the Appellants.

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Called upon by the Bench so constituted (hereinafter also referred to as "the trial Court") to answer the charges in the new Information, each

of the Appellants tendered a plea to the jurisdiction of the Court in the following terms:-

"That this Court cannot take cognizance of the Information laid against me and it has no jurisdiction to try me or hold a trial at Bar upon the said Information."

65 N.L.R.
p.74

10 21. In rejecting the submissions of Counsel in support of the said plea in all cases, the learned Judges of the trial Court, in their Order, dated the 25th February, 1963, referred to the argument (which they did not accept) that the Courts in Ceylon were not empowered to punish acts prohibited only by ex post facto legislation. They said, with particular reference to Section 31 of the Charter of 1833 and to Section 19 of the Courts Ordinance:-

65 N.L.R.
pp.74-86

Annexure

20 "There is no warrant for presuming any underlying intention to restrict the jurisdiction of the Supreme Court to the trial and punishment of acts punishable under pre-existing law. There was quite obviously an intention to create a jurisdiction over all crimes and offences punishable under the Common Law in England. But the jurisdiction actually conferred also included the jurisdiction to try offences created by statute law as well.....

65 N.L.R.
p.81

30 "The British Parliament itself undoubtedly had, as it has today, the power to enact retroactive laws At the time of the enactment of Section 31 of the Charter there must surely have been in contemplation the possibility, however remote or deplorable, that the Legislature of Ceylon or the King in Council might be compelled to utilise this admitted power to legislate, and it is therefore unreasonable to read into Section 31 which dealt only with trial and punishment an implication that the law-making authorities would, and should, refrain from enacting retroactive laws. Similarly in our opinion the argument based upon
40 Section 19 of the Courts Ordinance must fail."

65 N.L.R.
p.81

22. Later, in their Order, the learned Judges returned to the subject of retroactive and ex post facto legislation. They said:-

65 N.L.R.
p.83

"The principle of British law regarding the powers of Parliament are stated thus by Allen ("Law in the Making", page 444):-

'There is, in English law, no constitutional restraint upon retroactive legislation, and if an enactment is unequivocally expressed to operate retrospectively, there is no power in the Courts to derogate from it Whether or not Parliament chooses to legislate retroactively is therefore a question not of the validity of statute law but of policy and statesmanship; and consequently the only de facto restraints which exist upon this kind of law are those which apply to all legislation - namely wise government and public opinion.'

23. Continuing, on the subject of retroactive and ex post facto legislation, the learned Judges said:-

65 N.L.R.
p.83

"The opinion of the Judicial Committee in Hodge v. Regina (1883) 9 App. Cas.117, 132, was that the British North America Act 1867 conferred on the Legislature of Ontario authority as plenary and as ample, within the limits presented by Section 92, as the Imperial Parliament in the plenitude of its power possessed and could bestow.

"Similarly in Ceylon the power of Parliament to enact laws 'for the peace order and good government' of Ceylon is plenary, subject only to restrictions expressed in the Constitution itself or arising by necessary implication from its express provisions.

65 N.L.R.
p.83

"If, upon consideration of what may appear to be unjust or inexpedient, we were to read into the Constitution a restriction against ex post facto law which is not expressed therein either directly or by necessary implication, we would be adding to our Constitution a limitation directly stated in the Constitutions of India France and the United States which, for good reasons or bad, was not stated in our Constitution. That would be to arrogate to the Court the power to legislate."

24. While the learned Judges of the trial Court were not in sympathy with ex post facto legislation they were clear as to its lawfulness in Ceylon. They said :-

"We share the intense and almost universal aversion to ex post facto laws in the strict sense, that is laws which render unlawful and punishable acts which, at the time of their commission, had not actually been declared to be offences. And we cannot deny that in this instance we have to apply such a law. Indeed it is remarkable that this particular law has only a retroactive effect, that it is applicable only to an alleged conspiracy in January, 1962, and that Parliament has not thought it necessary to provide that a similar conspiracy against the State which may be planned in the future will be punishable by law.

65 N.L.R.
p.84

"Nevertheless it is not for us to judge the necessity for such a law:

'Allowing for the general inexpediency of retrospective legislation it cannot be pronounced naturally or necessarily unjust. There may be occasions and circumstances involving the safety of the State, or even the conduct of individual subjects, the justice of which prospective laws made for ordinary occasions and the usual exigencies of society for want of provision fail to meet, and in which the execution of the law as it stood at the time may involve practical public inconvenience and wrong - Summum jus summa injuria. This is a matter of policy and discretion fit for debate and decision in Parliament, as to which a Court of ordinary municipal law is not commissioned to inquire or adjudicate.' (per Willes J. in Phillips v. Eyre (1870) L.R.6 Q.B.1 at p.27; Allen, "Law in the Making", pp.444-5).

65 N.L.R.
pp.84-85

25. The learned Judges of the Trial Court, concluded their observations on ex post facto legislation thus:-

"Quite recently in the case of The Queen v. Buddharakita Thera et al* a bench of five Judges of the Court of Criminal Appeal upheld a sentence of death passed upon a conviction for a murder committed at a time when under law the death penalty did not attach to the offence of murder. The penalty of death attached only by reason of legislation enacted with retroactive effect.

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(1962) 63
N.L.R. 433

"An appeal to the Privy Council against the sentence was not successful. The observations of Willes J., cited above, satisfy us of the correctness of the opinion, which was effective in The Queen v. Buddharakita Thera et al., that under the Constitution of Ceylon the Supreme Court has no power to declare invalid, as such, an ex post facto law."

26. Their pleas to the jurisdiction of the trial Court having been rejected the trial of the Appellants proceeded in the normal way. 10

65 N.L.R.
p.289

On a subsequent date the Appellants applied to be enlarged on bail pending the trial. Their application was, by an Order of the trial Court, dated the 5th February, 1963, refused. In making the said Order, the learned Judges said that the main question for consideration by the Court before it exercised its discretion was whether the

65 N.L.R.
pp.291-2

Appellants would stand their trial and not abscond. They paid special attention to: (a) the gravity of the crime; (b) the severity of the punishment upon conviction; and (c) the probability of conviction and the nature of the evidence to be offered by the prosecution which was indicated in a Statement of Facts tendered by the Attorney-General. They came to the conclusion that this was not a case in which bail should be granted because of oppression caused by the delay in bringing the Appellants to trial. They refused the application notwithstanding the plea that the social and professional status of the Appellants was high. 20

65 N.L.R.
p.293

They refused the application notwithstanding the plea that the social and professional status of the Appellants was high. 30

65 N.L.R.
pp.293-4

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65 N.L.R.
p.337

27. On a later date the Appellants applied to the trial Court for an Order that they be furnished with the following documents which, they said, they were entitled to before they tendered their general pleas to the charges in the Information and well in advance of their trial proper:-

- (a) Lists of the prosecution witnesses and documents
- (b) Copies of the statements made by all such witnesses and of all such documents. 40
- (c) Copies of statements made by the Appellants
- (d) Inspection of documents

The application was opposed by the Attorney-General on the ground that the trial by Information was summary.

By its Order, dated the 28th February, 1963, the Court directed the Attorney-General to file a list of witnesses whom he intended to call and a list of all documents he intended to produce at the trial, to copies of all of which lists the Appellants were held to be entitled. Further, they directed that the Appellants should be furnished with copies of the statements of all prosecution witnesses who were to be called at the trial and copies of all documents and statements made by the Appellants which the prosecution intended to produce in evidence.

65 N.L.R.
pp.341-2

28. One of the pleas tendered on behalf of the Appellants at the hearing of the Application referred to in the preceding paragraph questioned again the validity of the said Acts No.1 of 1962 and No.31 of 1962 on the grounds that they were ex post facto laws and made ad hominem. As to this plea the learned Judges of the trial Court said:-

"Mr. Ponnambalam urged that Acts Nos.1 and 31 of 1962 were bad, because they were directed particularly against these defendants and were enacted after the date of the alleged commission of the offences. He also urged that the power to make laws for the 'peace order and good government' of the country does not include the power to enact laws such as these.

65 N.L.R.
p.342

"This plea does not seem to us to raise any matter which we have not already dealt with in our Order" /dated the 25th February, 1963/ "on the plea to jurisdiction" (see paragraphs 21 to 25 hereof).

29. The final stage in a long and elaborate trial was reached on the 6th April, 1965, when by their Judgment of that date, the learned Judges of the trial Court unanimously found all the Appellants guilty and sentenced them as stated in paragraph 1 hereof.

For the purposes of this appeal, which is mainly concerned with matters relating to the jurisdiction of the trial Court and to the invalidity of legislation under which it acted, it

Vol.I, p.3.

is sufficient here to state that, at the conclusion of the trial, the Court found that the prosecution had proved its case which, as described by the trial Court in very brief outline, was that sometime in January, 1962, the Appellants conceived a plan to arrest Ministers of the Government then in power, together with certain prominent "Leftish politicians", and a few key officials and, relying on the military and police power available to them, to replace the said Government of the country by some authority not constituted under the then existing law.

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30. The legislation which is now impugned was made by the Ceylon Parliament by virtue of its power, under Section 29(1) of the Constitution, to legislate, subject to the provisions of the Constitution, and to matters specified in the other sub-sections of the said Section 29, for the "peace order and good government of the Island".

Relevant to the subject of "peace order and good government of the Island" is, in the Respondent's respectful submission, the disturbed condition of the country at the time when the impugned legislation was enacted.

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Vol.I, pp.
8-9

On pages 5 to 9 of Vol. I of their Judgment, dated the 6th April, 1965, which is now, by Special Leave, appealed against, the learned Judges of the trial Court refer to the disturbed conditions. They point to the political and industrial unrest which, shortly before the enactment of No.1 of 1962, had reached serious proportions, to the fact that there was talk of a "military dictatorship", to the suggestions which "were in fact being made that one solution of the current difficulties might be some form of arbitrary rule in which the Armed Services would be associated", and to the "obvious" fact that "a critical state of affairs was imminent if not already existing."

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The learned Judges, having referred to the defence allegation that Mr. Bandaranaike (a Minister in the then Government) himself intended to set up a Military Dictatorship (which allegation at a later stage, in their Judgment, they rejected), said:-

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Vol.I, p.9.

"What is important in the present context is that conditions existing and contemplated in

January, 1962, including the imposition of Censorship, the full mobilisation of the Services on security and civil duties, and the public concern, were such as in other countries had in fact given rise to attempts, whether successful or not, to overthrow democratically elected Governments and to establish some form of unconstitutional Rule."

10 31. This stage of this appeal (which, by Special Leave, is against the Judgment and Sentence of the Supreme Court of Ceylon, dated the 6th April, 1965) is concerned only with: (1) the validity of the said Acts No.1 of 1962 and No.31 of 1962 and whether or not the trial Court had jurisdiction to try and sentence the Appellants thereunder; and (2) whether No.31 of 1962 operated retrospectively to deprive the Appellants of their right to trial by Jury (assuming for this purpose that they had that right) and if it did not whether or not the trial
20 Court had jurisdiction to try the Appellants.

Special Leave to present this appeal (in this form or in two stages) was granted to the Appellants by Her Majesty in Council on the 14th July, 1965.

30 In the Respondent's respectful submission the first of the questions stated above was rightly decided against the Appellants, by the Order of the trial Court, dated the 25th February, 1963; as to the second question which appears now to have been raised for the first time, the Respondent respectfully submits that at no stage of this prosecution were the Appellants ever lawfully entitled to trial by Jury - and that in the circumstances of this case, as outlined above, the trial Court had jurisdiction to try them at Bar without a Jury.

40 32. In the Respondent's respectful submission the points now raised by the Appellants should be decided against them, ~~with costs~~, and that appropriate directions should be given for the rest of this appeal to pursue a normal course for the following among other

R E A S O N S

1. Because upon any reasonable interpretation

of the relevant Sections of the Constitution of Ceylon it is clear that the Parliament of Ceylon was empowered to enact the legislation which is now impugned (viz. Acts Nos.1 of 1962 and 31 of 1962) and consequently that the trial Court had jurisdiction to try the Appellants at Bar without a Jury for the offences which they were alleged to have committed and which were contained in the new Information filed by the Attorney-General on the 21st November, 1962. 10

2. Because consistently with the provisions of the Constitution the impugned legislation was lawfully made by the Ceylon Parliament for the "peace order and good government" of Ceylon under the legislative power bestowed upon it by Section 29(1) of the Constitution which, on any reasonable construction thereof, extends to the making of retroactive legislation ex post facto and ad hominem whenever Parliament considers, in its sole discretion, that that course is right. 20

3. Because the words in Section 29(1) of the Ceylon Constitution which empower the Ceylon Parliament to make "laws for the peace order and good government of the Island" cannot reasonably be construed otherwise than as a plenary power of the Ceylon Parliament to legislate, subject to the Constitution, for the preservation in Ceylon of "peace, order and good government", whether or not the legislation in question affects only certain individuals and not the general public; to hold otherwise would be to fetter, without reason, the Ceylon Parliament in the discharge of its exclusive and major responsibility - the maintenance of "peace order and good government" in the Island. 30 40

4. Because whether or not Ceylon was conquered ceded or settled the said legislative power is to be construed according to the plain meaning of the words used to confer the power and in the light of Ceylon's

independence as provided for by the Ceylon Independence Act, 1947 (11 Geo.6, C.7), and the Ceylon (Constitution) Orders in Council 1946 and 1947 and of conditions as they exist today.

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5. Because in Ceylon, which has a unitary Constitution and where no problems of, or associated with, the distribution of legislative powers can arise, the plenitude of legislative power implicit in the words "peace order and good government" must necessarily be given their full effect and cannot, by the interpretation and application of principles and precedents relevant only to Constitutions other than unitary or concerned only with residuary powers, reasonably be made subject to any limitations or restrictions other than those plainly imposed by the Constitution itself.
 6. Because under Section 29(1) of the Constitution the plenary power of the Ceylon Parliament to legislate for the "peace order and good government" of Ceylon is limited only by the condition that the exercise of the power should be in accordance with the other provisions of the Constitution and in particular with those contained in the other sub-sections of Section 29 none of which was contravened in the present case.
 7. Because it cannot reasonably be said that the impugned legislation discriminates either against individuals or against any community and thereby contravenes Section 29(2) or any other provision of the Constitution.
 8. Because whether or not the conditions in Ceylon prior to the enactment of the impugned legislation were such as to justify its enactment in order to maintain or promote "peace order and good government" is a matter entirely and exclusively within the province of the Ceylon Government and Parliament and cannot lawfully be enquired into by a

Court of law.

9. Because the presumption is always in favour of the validity of legislation which is not shown clearly and definitely to be inconsistent with the Constitution and in this instance the Appellants have not, and cannot, discharge the burden of establishing the said inconsistency which was, and is, upon them.

10. Because the combined effect of Act 31 of 1962, the Code of Criminal Procedure as amended by that Act, the nomination by the Chief Justice of the three Judges to try the Appellants for the offences contained in the new Information filed by the Attorney-General and the nullification of the previous proceedings which had been taken against the Appellants under No.1 of 1962, was to lawfully deprive them of any right to be tried by a Jury, assuming (without conceding) that they had that right at any time. 10
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11. Because the effect of the new Section 440A of the Code of Criminal Procedure (as substituted by No.31 of 1962) was not to repeal any provisions relating to trial by Jury in that Code or other Act but merely to supplement those provisions by providing an exception or exceptions thereto. 30

12. Because even if it be held that No.31 of 1962 repealed (but not retrospectively) the said provisions as to trial by Jury, the Appellants who had not, and who could not reasonably be said to have, acquired any prior right to be tried by a Jury, were bound by the new legislation which was in force when the new Information was filed against them even if it was non-existent when the offences were alleged to be committed; for it would be contrary to reason to suppose that a wrongdoer can, upon the commission of a wrongful act, lawfully acquire a right to be tried for his wrongful act according to the law which existed at the date of his offence and not 40

that which is in operation at the date of his arrest and/or trial.

14. Because for the reasons stated therein, the Order of the trial Court, dated the 25th February, 1963, in so far as it relates to the subject matter of this stage of this appeal, was right.

V. TENNEKOON

R.K. HANDOO

V.S.A. PULLENAYEGUM

A N N E X U R E

THE CEYLON INDEPENDENCE ACT, 1947

(11 Geo.6 C.7)

An Act to make provision for, and in connection with, the attainment by Ceylon of fully responsible status within the British Commonwealth of Nations.

[10th December 1947]

10 1. - (1) No Act of the Parliament of the United Kingdom passed on or after the appointed day* shall extend, or be deemed to extend, to Ceylon as part of the law of Ceylon, unless it is expressly declared in that Act that Ceylon has requested, and consented to, the enactment thereof.

Provision for the fully responsible Status of Ceylon
*4th Feb. 1948.

(2) As from the appointed day His Majesty's Government in the United Kingdom shall have no responsibility for the government of Ceylon.

(3) As from the appointed day the provisions of the First Schedule to this Act shall have effect with respect to the legislative powers of Ceylon.

20 4. - (1)

(2) Notwithstanding anything in the Interpretation Act, 1889, the expression "colony" shall not include Ceylon in any Act of the Parliament of the United Kingdom passed on or after the appointed day or in any such Act passed before that day, but in the same session as this Act, to provide for the independence of Burma as a country not within His Majesty's dominions.

52 & 53 Vict.
C.63

Short title
and
commencement

5. - (1) This Act may be cited as the Ceylon Independence Act, 1947.

(2) In this Act the expression "the appointed day" means such day as His Majesty may by Order in Council appoint.

FIRST SCHEDULE

Section 1

Legislative Powers of Ceylon

28 & 29 Vict.
C.63

1. - (1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the appointed day by the Parliament of Ceylon. 10

(2) No law and no provision of any law made after the appointed day by the Parliament of Ceylon shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of Ceylon shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of Ceylon. 20

2. The Parliament of Ceylon shall have full power to make laws having extra-territorial operation.

THE CEYLON INDEPENDENCE (COMMENCEMENT)
ORDER IN COUNCIL, 1947.

1. This Order may be cited as the Ceylon Independence (Commencement) Order in Council, 1947.
2. The appointed day for the purposes of the Ceylon Independence Act shall be the fourth day of February, 1948.

THE CONSTITUTION OF CEYLON

(Ceylon (Constitution and Independence)
Orders in Council, 1946 and 1947)

Legislative Powers and Procedure

Power of
Parliament
to make
laws

29. - (1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island.

(2) No such law shall -

(a) prohibit or restrict the free exercise of any religion; or

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(b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or

(c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or

(d) alter the constitution of any religious body.....

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(3) Any law made in contravention of sub-section (2) of this section shall, to the extent of such contravention, be void.

(4) In the exercise of its powers under this section, Parliament may amend or repeal any of the provisions of this Order, or of any other Order of His Majesty in Council in its application to the Island:

Provided that no bill for the amendment or repeal of any of the provisions of this Order shall be presented for the Royal Assent unless it has endorsed on it a 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 (including those not present).

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Every Certificate of the Speaker under this sub-section shall be conclusive for all purposes and shall not be questioned in any Court of law.

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PART VI

The Judicature

52. - (1) The Chief Justice and Puisne Judges of the Supreme Court and Commissioners of Assize shall be appointed by the Governor-General.

Judges of
the Supreme
Court

(2) Every Judge of the Supreme Court shall hold office during good behaviour and shall not be removable except by the Governor-General on an address of the Senate and the House of Representatives.

10 (3) The age for the retirement of Judges of the Supreme Court shall be sixty-two years:

Provided that the Governor-General may permit a Judge of the Supreme Court who has reached the age of sixty-two years to continue in office for a period not exceeding twelve months.

(4) The salaries of the Judges of the Supreme Court shall be determined by Parliament and shall be charged on the Consolidated Fund.

20 (5) Every Judge of the Supreme Court appointed before the date on which this Part of this Order comes into operation and in office on that date shall continue in office as if he had been appointed under this Part of this Order.

(6) The salary payable to any such Judge shall not be diminished during his term of office.

THE PENAL CODE

(As in force prior to 1962)
For 1962 amendments see No. 1 of 1962, post)

1st January
1885

CHAPTER VI

Of Offences Against The State

Waging or attempting to wage war, or abetting the waging of war, against the King.

114. - Whoever wages war against the King, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment of either description, which may be extended to twenty years, and shall forfeit all his property.

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Illustrations

- (a) A joins an insurrection against the King. A has committed the offence defined in this Section.
- (b) A in Ceylon abets an insurrection against the King's Government of India by sending arms to the insurgents. A is guilty of abetting the waging of war against the King.

Conspiracy to commit offence punishable by preceding Section.

115. - Whoever conspires to commit any of the offences punishable by the next preceding Section, or to deprive the King of the Sovereignty of Ceylon or of any part thereof, or of any of His Majesty's dominions or conspires to overawe, by means of criminal force or the show of criminal force, the Government of Ceylon, shall be punished with imprisonment of either description which may extend to twenty years, and shall also be liable to fine.

20

Explanation. - To constitute a conspiracy under this Section it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Collecting arms, etc., with the intention of waging war against the King.

116. - Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the King, shall be punished with imprisonment of either description for a term not exceeding twenty years, and shall forfeit all his property.

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THE CRIMINAL PROCEDURE CODE

(As in force prior to 1962. For 1962 amendments see No. 1 of 1962 and No. 31 of 1962, post)

PART V

INVESTIGATION OF OFFENCES

1st March
1899/

Chapter XII

122. - (1)
(2)

10 (3) No statement made by any person to a police officer or an inquirer in the course of any investigation under this Chapter shall be used otherwise than to prove that a witness made a different statement at a different time, or to refresh the memory of the person recording it. But any criminal court may send for the statements recorded in a case under inquiry or trial in such court and may use such statements or information, not as evidence in the case, but to aid it in such inquiry or trial.

Statements to police officer or inquirer not to be admitted in evidence.

20 Neither the accused nor his agents shall be entitled to call for such statements, nor shall he or they be entitled to see them merely because they are referred to by the court; but if they are used by the police officer or inquirer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer or inquirer, the provisions of the Evidence Ordinance, Section 161 or Section 145, as the case may be, shall apply.

30 Nothing in this sub-section shall be deemed to apply to any statement falling within the provisions of Section 32 (1) of the Evidence Ordinance, or to prevent such statement being used as evidence in a charge under Section 180 of the Penal Code.

PART VI
PROCEEDINGS IN PROSECUTIONS

CHAPTER XX

Trials Before The Supreme Court

A. - Preliminary

Trials before
Supreme
Court.

216. - (1) All trials before the Supreme Court shall be by jury before a Judge or a Commissioner of Assize, provided always that the Chief Justice may in his discretion order that any trial shall be a trial at Bar and thereupon such trial shall be held at Colombo by jury before three Judges.

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(2) In every trial before the Supreme Court the prosecution shall be conducted by the Attorney-General or the Solicitor-General or a Crown Counsel or by some advocate generally or specially authorised by the Attorney-General in that behalf.

PART IX

SUPPLEMENTARY PROVISIONS

CHAPTER XXXV

Of Proceedings by the Attorney-General

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Attorney-
General may
exhibit
informations.

385. The Attorney-General may exhibit to the Supreme Court informations for all purposes for which His Majesty's Attorney-General for England may exhibit informations on behalf of the Crown in the High Court of Judicature, but no such information shall be exhibited for any offence punishable by death or by rigorous imprisonment for three years or upwards. Such proceedings may be taken upon every such information as may lawfully be taken in cases of similar informations filed by His Majesty's Attorney-General in England so far as the circumstances of the case and the course and practice of proceeding in the said Supreme Court respectively will admit.

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CHAPTER XLIII

General Provisions

440A. - (1) In the following cases, that is to say -

Three Judges
of Supreme
Court at Bar
may try
without jury
in certain
cases.

(a) in the case of any offence under Section 120 of the Penal Code (hereinafter, unless the context otherwise implies, referred to as "sedition");

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(b) in the case of any other offence which by reason of civil commotion, disturbance of public feeling, or any other similar cause, the Minister of Justice may consider to be appropriately triable in the manner in this Section provided,

the Minister of Justice may direct that the person charged shall be tried before the Supreme Court at Bar by three judges without a jury.

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(2) A trial under this Section may be held either upon indictment or upon information exhibited by the Attorney-General and the limitations of Section 385 shall not apply to any information so exhibited.

(3) A trial under this Section shall proceed as nearly as possible in the manner provided for trials before the Supreme Court, subject to such modifications as may be ordered by the Court or as may be prescribed by rules under this Code.

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(4) A person committed for trial under this Section shall not be admitted to bail by the Magistrate except by the authority of the Attorney-General.

(5) The Court, or the presiding judge thereof, may give directions for the summoning, arrest, custody, and bail of all persons charged before the Court by information.

(6) In any trial for sedition under this Section, notwithstanding anything contained in the Penal Code, the Court may impose any sentence which might be imposed on a conviction for sedition under the law for the time being in force in England.

THE COURTS ORDINANCE

[2nd August, 1890]

Jurisdiction
and powers of
Supreme
Court.

19. - The Supreme Court shall have and exercise -

(a) an original criminal jurisdiction for the inquiry into all crimes and offences committed throughout the Island, and for the hearing, trying, and determining all prosecutions and charges which shall be commenced, and all indictments and informations which shall be presented therein against any person for or in respect of any such crimes or offences, or alleged crimes or offences;

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(b) an appellate jurisdiction for the correction of all errors as hereinafter specified, which shall be committed by any original court, and sole and exclusive cognizance by way of appeal and revision of all causes, suits, actions, prosecutions, matters, and things of which such original court may have taken cognizance.

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Criminal
Sessions,
how to be
holden.

29. - Criminal sessions of the Supreme Court shall be holden before a Judge of the Supreme Court and a jury in the manner in the Criminal Procedure Code or any Ordinance amending the same prescribed, and the said court shall at all such sessions inquire of all such crimes and offences, and hear, try, and determine all such prosecutions as by this Ordinance, or by the said Criminal Procedure Code, or Penal Code, or any Ordinance empowering or requiring it in that behalf, it is empowered and required to inquire of and hear, try, and determine:

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Proviso for
case to be
tried before
three Judges.

Provided always that in the case of any accused party committed for trial before the Supreme Court, the Chief Justice may in his discretion order and direct that the crime or offence or alleged crime or offence with which such person is charged may be inquired of, and the prosecution instituted against him in respect thereof heard, tried, and determined, before three Judges at Colombo with a Jury; and such crime or offence shall be inquired of and such prosecution shall be heard, tried, and determined accordingly.

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THE CHARTER OF 1833

[18th February, 1833]

- 10 31. And We do hereby grant declare direct and appoint that the Supreme Court of the Island of Ceylon shall be a Court of Appellate Jurisdiction for the correction of all Errors in Fact or in Law which shall be committed by the said respective District Courts, and shall have sole and exclusive cognizance by way of Appeal of all Causes, Suits, Actions, Prosecutions, Matters and Things of which such District Courts may, in pursuance of the Provisions of this Our Charter or any of them take cognizance by way of Original jurisdiction.
- 20 And We do further grant to the said Supreme Court power jurisdiction and authority to hold an original jurisdiction for enquiring of all Crimes and Offences committed throughout the said Island and for the hearing trying and determining all Prosecutions which shall be commenced against any Person or Persons for or in respect of any such Crimes or Offences or alleged Crimes or Offences.
- 30 And to provide for the due execution of the powers and authorities and jurisdictions so vested as aforesaid in the Supreme Court, it is Our further pleasure, and We do direct ordain and appoint that Civil and Criminal Sessions of the said Supreme Court shall be holden by some one of the Judges thereof in each of the Circuits into which Our said Island is or shall be so divided as aforesaid.
- 40 33. And We do further direct ordain and appoint that every Criminal Sessions of the Supreme Court to be holden on any such circuit shall be holden before such Judge and a Jury of thirteen Men, which ... Jurors shall be selected summoned and required to appear and serve in such manner and form as shall be provided by such general Rules and Orders of Court as hereinafter mentioned.
60. Provided always, that nothing in these Presents contained or any Act which shall be done under the Authority thereof; shall extend or be deemed or construed to extend to prevent Us Our Heirs and Successors by any other Letters Patent to be by Us or Them from time to time for that purpose issued
- Appellate Jurisdiction of Supreme Court.
- Original Jurisdiction of Supreme Court.
- Civil and Criminal Sessions of the Supreme Court how to be holden.
- At the Criminal Sessions thirteen Jurors to be associated with the Judge.
- Reservation of right to revoke and amend the Charter.

under the Great Seal of the United Kingdom, from revoking this Our Charter or any part thereof or from making such further or other Provision for the Administration of Justice throughout the said Island and its Dependencies at Our and Their Will and Pleasure as circumstances may require; We meaning and intending fully and absolutely to all intents and purposes whatsoever, to reserve to Ourselves Our Heirs and Successors such and the same rights and powers in and over the said Island and its Dependencies, and especially touching the Administration of Justice therein and all other Matters and Things in and by these Presents provided for, as if these Presents had not been made, anything in these Presents contained or any Law Custom Usage Matter or Thing whatsoever to the contrary in any wise notwithstanding.

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THE EVIDENCE ORDINANCE

CHAPTER II [1st January, 1896]

Of the Relevancy of Facts

- 10 24. - A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat, or promise having reference to the charge against the accused person, proceeding from a person in authority, or proceeding from another person in the presence of a person in authority and with his sanction, and which inducement, threat, or promise is sufficient in the opinion of the court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Confession caused by inducement, threat, or promise irrelevant.
- 20 25.(1) No confession made to a police officer shall be proved as against a person accused of any offence. Confession made to a police officer not to be proved against an accused person.
- (2) [Confession to forest officer or excise officer not to be proved against person making confession]
26. (1) No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Confession made by any person while in custody of a police officer not to be proved against him.
- (2) [Confession by person in custody of forest officer or excise officer not to be proved against him]
- 30 30. - When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court shall not take into consideration such confession as against such other person. Confession made by one of several persons tried jointly for the same offence.

THE CRIMINAL LAW (SPECIAL PROVISIONS) ACT.

NO. 1 OF 1962

* For 1962 amendments of this Act see No. 31 of 1962, post.

AN ACT TO MAKE SPECIAL PROVISION FOR THE APPREHENSION, DETENTION AND TRIAL OF PERSONS SUSPECTED OF HAVING COMMITTED, OR CHARGED WITH, OFFENCES AGAINST THE STATE, TO AMEND THE PENAL CODE, THE CRIMINAL PROCEDURE CODE AND THE COURTS ORDINANCE, AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Date of Assent : March 16, 1962]

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BE it 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:-

Short title.

1. This Act may be cited as the Criminal Law (Special Provisions) Act, No. 1 of 1962.

Amendment of section 440A of the Criminal Procedure Code.

4. Section 440A of the Criminal Procedure Code is hereby amended as follows:-

(For repeal and replacement of Section 440A, see No.31 of 1962, Section 3, post)

(1) in sub-section (1) of that section by the substitution -

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(a) in paragraph (a) of that sub-section, for the expression '(hereinafter, unless the context otherwise implies, referred to as "sedition")'; of the expression '(hereinafter, unless the context otherwise implies, referred to as "sedition")', or any other offence under Chapter VI of that Code;'; and

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(b) for the expression "the person charged shall be tried", of the expression "the trial of such offence shall be held";

(2) in sub-section (3) of that section, by the substitution, for all the words from "by the Court" to the end of that sub-section, of the words "by the court of trial."; and

(3) in sub-section (5) of that section, by the substitution, for the word "information.", of the following:-

"information:

Provided, however, that any such person shall not be admitted to bail except with the consent of the Attorney-General."

10 5. The First Schedule to the Criminal Procedure Code is hereby amended as follows:-

Amendment of the First Schedule to the Criminal Procedure Code.

(1) in the entry in the third column of that Schedule relating to section 113B of the Penal Code, by the substitution, for the words "if arrest", of the words "if arrest for the offence";

(2) in the entry in the -

20 (a) third column of that Schedule relating to section 114 of that Code, by the substitution, for the words "Shall not", of the word "May"; and

(b) seventh column of that Schedule relating to section 114 of that Code, by the substitution, for the words "for twenty years", of the words "which shall extend to at least ten years but shall not extend to more than twenty years";

30 (3) in the entry in the seventh column of that Schedule relating to section 115 of that Code, by the substitution, for that entry, of the entry "Death or imprisonment of either description which shall extend to at least ten years but shall not extend to more than twenty years, and forfeiture of property."; and

40 (4) in the entry in the third column of that Schedule relating to section 123 of that Code, by the substitution, for the words "Shall not", of the word "May".

Amendment of sections 114 and 115 of the Penal Code.

6. (1) Section 114 of the Penal Code is hereby amended, by the substitution, for the words "which may be extended to twenty years," of the words "which shall extend to at least ten years but shall not extend to more than twenty years,".

(2) Section 115 of the Penal Code is hereby amended as follows:-

(a) by the substitution, for all the words from "Ceylon, shall" to "to fine.", of the following:-

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"Ceylon, or conspires to overthrow, or attempts or prepares to overthrow, or does any act, or conspires to do, or attempts or prepares to do any act, calculated to overthrow, or with the object or intention of overthrowing, or as a means of overthrowing, otherwise than by lawful means, the Government of Ceylon by law established, or conspires to murder, or attempts to murder, or wrongfully confines, or conspires or attempts or prepares to wrongfully confine, the Governor-General or the Prime Minister or any other member of the Cabinet of Ministers, with the intention of inducing or compelling him to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Prime Minister or Cabinet Minister, shall be punished with death, or imprisonment of either description which shall extend to at least ten years but shall not extend to more than twenty years, and shall forfeit all his property.";

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(b) in the marginal note to that section, by the substitution, for the word "section.", of the words "section, and certain other offences against the State.".

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PART III

GENERAL PROVISIONS

8. Any direction issued by the Minister of Justice under section 440A of the Criminal Procedure Code shall be final and conclusive, and shall not be called in question in any Court, whether by way of writ or otherwise.

Direction issued by the Minister of Justice under section 440A of the Criminal Procedure Code to be final and conclusive.

10 9. Where the Minister of Justice issues a direction under section 440A of the Criminal Procedure Code that the trial of any offence shall be held before the Supreme Court at Bar by three Judges without a jury, the three Judges shall be nominated by the Minister of Justice, and the Chief Justice if so nominated or, if he is not so nominated, the most senior of the three Judges so nominated, shall be the president of the Court.

Constitution of the Supreme Court for the trial of an offence against the State at Bar by three Judges without a jury.

20 The Court consisting of the three Judges so nominated shall, for all purposes, be duly constituted, and accordingly the constitution of that Court, and its jurisdiction to try that offence, shall not be called in question in any Court, whether by way of writ or otherwise.

10. The determination of any question before the Supreme Court on a trial at Bar by three Judges without a jury shall be according to the opinion of the majority of such Judges.

Determination of questions by majority of the Court.

30 12. (1) In the case of an offence against the State, a statement, whether or not it amounts to a confession, made by any person may, whether or not that person was in the custody of a police officer at the time the statement was made and whether or not such statement was made in the immediate presence of a Magistrate, be proved as against such person if, but only if, such statement is not irrelevant under section 24 of the Evidence Ordinance:

Admissibility of statements in the case of offences against the State.

Provided, however, that no such statement shall be proved as against such person if such statement

was made to a police officer below the rank of Assistant Superintendent.

(2) In the case of an offence against the State, a statement made by any person which may be proved under sub-section (1) of this section as against himself may be proved as against any other person jointly charged with such person if, but only if, such statement is corroborated in material particulars by evidence other than a statement proved under that sub-section.

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(3) The burden of proving that any statement referred to in sub-section (1) of this section is irrelevant under section 24 of the Evidence Ordinance shall lie on the person asserting it to be irrelevant.

(4) The provisions of sections 25, 26 and 30 of the Evidence Ordinance shall not apply in the case of any offence against the State.

(5) A statement made by any person may be proved under sub-section (1) or sub-section (2) of this section notwithstanding the provisions of sub-section (3) of section 122 of the Criminal Procedure Code.

20

No right of appeal to Court of Criminal Appeal.

15. A person who is convicted on a trial held before the Supreme Court under section 440A of the Criminal Procedure Code shall have no right of appeal to the Court of Criminal Appeal, and accordingly section 4 of the Court of Criminal Appeal Ordinance shall not apply to such person.

This Act to prevail over other written law.

18. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law.

30

Retrospective operation of this Act.

19. The provisions of this Act, other than the provisions of section 17, shall be deemed, for all purposes, to have come into operation on January 1, 1962:

Provided, however, that the provisions of Part I of this Act Arrest and detention of persons suspected of committing offences against the State. shall be limited in its application to any offence against the state alleged to have been committed on or about January 27, 1962, or any matter, act, or thing connected therewith or incidental thereto.

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20. In this Act, the expression "offence against the State" means any act or omission made punishable by Chapter VI of the Penal Code.

Interpretation.

21. The preceding provisions of this Act, save and except Part I and section 17, shall cease to be operative after the conclusion of all legal proceedings connected with or incidental to any offence against the State committed on or about the 27th January, 1962, or from one year after the date of commencement of this Act, whichever is later, provided that the Senate and the House of Representatives may, by resolution setting out the grounds therefor, extend the operation of this Act from time to time for further periods not exceeding one year at a time.

Operation of this Act.

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THE CRIMINAL LAW ACT, NO. 31 OF 1962

AN ACT TO AMEND THE CRIMINAL PROCEDURE CODE, THE CRIMINAL LAW (SPECIAL PROVISIONS) ACT, NO. 1 OF 1962, AND TO MAKE SPECIAL PROVISIONS RELATING TO CERTAIN OFFENCES UNDER THE PENAL CODE.

[Date of Assent : November 14, 1962]

BE it 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:-

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Short title.

1. This Act may be cited as the Criminal Law Act, No. 31 of 1962.

Amendments to Act No. 1 of 1962.

2. The Criminal Law (Special Provisions) Act, No. 1 of 1962, is hereby amended as follows:-

(a) by the repeal of sections 4, 8, 9, 10 and 14, of that Act; and

(b) by the repeal of paragraph (1), subparagraph (a) of paragraph (2), and paragraph (4), of section 5 of that Act.

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Replacement of section 440A of the Criminal Procedure Code.

3. Section 440A of the Criminal Procedure Code is hereby repealed and the following new section substituted therefor:-

"Three Judges of the Supreme Court at Bar may try without jury in certain cases. 440A. (1) Notwithstanding anything to the contrary in any other written law or any other provision of this Code, the trial of any person for any offence punishable under section 114, section 115 or section 116 of the Penal Code shall be held before the Supreme Court at Bar by three Judges without a jury.

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(2) In the following cases, that is to say,-

(a) in the case of any offence under Chapter VI of the Penal Code, other than an

offence under section 114,
section 115 or section 116
of that Code; or

10 (b) in the case of any offence,
other than an offence
under Chapter VI of that
Code, which, by reason of
civil commotion, disturb-
ance of public feeling or
any other similar cause,
the Minister of Justice may
consider to be appropriately
triable in the manner in
this section provided,

the Minister of Justice may by Order
under his hand direct that the trial
of any person for such offence shall
be held before the Supreme Court at
Bar by three Judges without a jury.

20 (3) A trial before the Supreme Court
under this section may be held either
upon indictment, or upon information
exhibited by the Attorney-General.

30 (4) Notwithstanding anything to
the contrary in section 385 or any
other law, the Attorney-General may
exhibit to the Supreme Court infor-
mations in respect of any offences
which are required by or under this
section to be tried before the Supreme
Court at Bar by three Judges without a
jury.

40 (5) A trial before the Supreme
Court under this section shall proceed
as nearly as possible in the manner
provided for other trials before the
Supreme Court, subject to such
modifications as may be ordered by
the Court or as may be prescribed by
rules made under the Courts Ordinance.

(6) A person committed for trial
before the Supreme Court under this
section shall not be admitted to bail

by a Magistrate except with the authority of the Attorney-General.

(7) At any trial before the Supreme Court under this section, the Court, or the presiding Judge thereof, may give directions for the summoning, arrest, custody and bail of all persons charged before the Court by information exhibited under this section:

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Provided, however, that any such person shall not be admitted to bail except with the consent of the Attorney-General.

(8) The trial of any person before the Supreme Court under this section may commence or continue in the absence of such person if the Court is satisfied that he is evading arrest, or absconding, or feigning illness."

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Insertion of new section 440B in the Criminal Procedure Code.

4. The following new section is hereby inserted immediately after section 440A of the Criminal Procedure Code, and shall have effect as section 440B of that Code:-

"Special provisions regarding trials at Bar before the Supreme Court under section 216 or section 440A of this Code.

440B. (1) In every case of a trial at Bar before or by the Supreme Court under section 216 or section 440A of this Code, it shall be lawful for the Chief Justice to name the three Judges (of whom he may be one) before or by whom the trial shall be held.

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(2) At any trial before or by the Supreme Court under section 216 or section 440A of this Code, the determination of any question before the Court shall be according to the opinion of the majority of the Judges."

Amendment of the First Schedule to the Criminal Procedure Code.

5. The First Schedule to the Criminal Procedure Code is hereby amended as follows:-

(1) in the entry in the Third Column of that Schedule relating to section 113B of the

Penal Code, by the substitution, for the words "if arrest", of the words "if arrest for the offence";

(2) in the entry in the Third Column of that Schedule relating to section 114 of that Code, by the substitution, for the words "Shall not", of the word "May"; and

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(3) in the entry in the Third Column of that Schedule relating to section 123 of that Code, by the substitution, for the words "Shall not", of the word "May".

6. The following provisions shall have effect in regard to the amendments made in the Criminal Procedure Code and the Criminal Law (Special Provisions) Act, No. 1 of 1962, by this Act, and the direction, information, and nomination re-produced in the First Schedule, the Second Schedule, and the Third Schedule, respectively, to this Act:-

Special provisions regarding certain matters.

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(a) the said direction, information and nomination, shall be deemed, for all purposes, to have had, and to have, no force or effect in law;

(b) the Minister of Justice shall not have, and be deemed never to have had, any power or duty to nominate the Judges for the trial at Bar without a jury of the persons named in that information in respect of the offences specified in such information; and

30

(c) any action, proceeding, or thing instituted, commenced or initiated by, or by virtue of, the said direction, information or nomination and pending or incompleting on the date of the commencement of this Act shall be deemed, for all purposes, never to have been instituted, commenced or initiated.

FIRST SCHEDULE

DIRECTION UNDER SECTION 440A OF THE CRIMINAL PROCEDURE CODE
AS AMENDED BY SECTION 4 OF THE CRIMINAL LAW (SPECIAL
PROVISIONS) ACT, NO. 1 OF 1962.

To the Honourable the Chief Justice of the Supreme Court of
the Island of Ceylon.

I, Samuel Peter Christopher Fernando, Minister of Justice,
by virtue of the power vested in me by Section 440A (1) (a)
of the Criminal Procedure Code, as amended by Section 4 of
the Criminal Law (Special Provisions) Act, No. 1 of 1962, do
hereby direct that the trial of the following persons, to wit, 10

- (1) Don John Francis Douglas Liyanage
- (2) Maurice Ann Gerard de Mel
- (3) Frederick Cecil de Saram
- (4) Cyril Cyrus Dissanayaka
- (5) Sidney Godfrey de Zoysa
- (6) Gerard Royce Maxwell de Mel
- (7) Wilmot Selvanayagam Abraham
- (8) Bastianpillai Ignatius Loyola
- (9) Wilton George White 20
- (10) Nimal Stanley Jayakody
- (11) Anthony John Bernard Anghie
- (12) Don Edmond Weerasinghe
- (13) Noel Vivian Mathysz
- (14) Victor Leslie Percival Joseph
- (15) Basil Rajandiram Jesudasan
- (16) Victor Joseph Harold Gunasekera
- (17) John Anthony Rajaratnam Felix
- (18) William Ernest Chelliah Jebanesan
- (19) Terrence Victor Wijesinghe 30
- (20) Lionel Christopher Stanley Jirasinghe
- (21) Vithanage Elster Perera
- (22) David Senadirajah Thambyah
- (23) Samuel Gardner Jackson
- (24) Rodney de Mel

in respect of the following offences under Chapter VI of the Penal Code, to wit,

- 10 (1) That on or about the 27th day of January, 1962, at Colombo, Kalutara, Ambalangoda, Galle, Matara and other places, they with others did conspire to wage war against the Queen and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962, read with Section 114 of the Penal Code.
- (2) That on or about the 27th day of January, 1962, at Colombo, Kalutara, Ambalangoda, Galle, Matara and other places, they with others did conspire to overthrow otherwise than by lawful means the Government of Ceylon by law established and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962.
- 20 (3) That on or about the 27th day of January, 1962, at Colombo, Kalutara, Ambalangoda, Galle, Matara and other places, they with others did prepare to overthrow otherwise than by lawful means the Government of Ceylon by law established and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962,

30 be held before the Supreme Court at Bar by three Judges without a Jury.

Given under my hand this 23rd day of June, 1962, at Colombo.

(Sgd.) SAM P. C. FERNANDO,

Minister of Justice.

SECOND SCHEDULE

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

INFORMATION

Information exhibited by Her Majesty's Attorney-General.

The Queen

vs.

- (1) Don John Francis Douglas Liyanage
 - (2) Maurice Ann Gerard de Mel
 - (3) Frederick Cecil de Saram
 - (4) Cyril Cyrus Dissanayaka 10
 - (5) Sidney Godfrey de Zoysa
 - (6) Gerard Royce Maxwell de Mel
 - (7) Wilmot Selvanayagam Abraham
 - (8) Bastianpillai Ignatius Loyola
 - (9) Wilton George White
 - (10) Nimal Stanley Jayakody
 - (11) Anthony John Bernard Anghie
 - (12) Don Edmond Weerasinghe
 - (13) Noel Vivian Mathysz
 - (14) Victor Leslie Percival Joseph 20
 - (15) Basil Rajandiram Jesudason
 - (16) Victor Joseph Harold Gunasekera
 - (17) John Anthony Rajaratnam Felix
 - (18) William Ernest Chelliah Jebanesam
 - (19) Terrence Victor Wijesinghe
 - (20) Lionel Christopher Stanley Jirasinghe
 - (21) Vithanage Elster Perera
 - (22) David Senadirajah Thambyah
 - (23) Samuel Gardner Jackson
 - (24) Rodney de Mel
- Defendants. 30

This 23rd day of June, 1962.

BE it remembered that Douglas St. Clive Budd Janszé Esquire, Queen's Counsel, Her Majesty's Attorney-General for the Island of Ceylon, who for Her Majesty in this behalf prosecutes, gives the Court to understand and be informed that -

- 10 (1) On or about the 27th day of January, 1962, at Colombo, Kalutara, Ambalangoda, Galle, Matara and other places within the jurisdiction of this Court, the defendants abovenamed with others did conspire to wage war against the Queen and did thereby commit an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962, read with Section 114 of the Penal Code.
- 20 (2) At the time and places aforesaid and in the course of the same transaction the defendants abovenamed with others did conspire to overthrow otherwise than by lawful means the Government of Ceylon by law established and did thereby commit an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962.
- 30 (3) At the time and places aforesaid and in the course of the same transaction the defendants abovenamed with others did prepare to overthrow otherwise than by lawful means the Government of Ceylon by law established and did thereby commit an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962.

WHEREUPON Her Majesty's Attorney-General prays the consideration of the Court here in the premises, and that due process of law may be awarded against the defendants abovenamed, in this behalf to make them answer to Our Sovereign Lady the Queen touching and concerning the premises aforesaid.

(Sgd.) D. JANSZÉ,

Attorney-General.

THIRD SCHEDULE

NOMINATION MADE BY THE MINISTER OF JUSTICE UNDER SECTION 9 OF
THE CRIMINAL LAW (SPECIAL PROVISIONS) ACT, NO. 1 OF 1962.

WHEREAS I, SAMUEL PETER CHRISTOPHER FERNANDO, Minister of
Justice, have on the Twenty-third day of June, 1962, issued
a direction under Section 440A of the Criminal Procedure Code
as amended by Section 4 of the Criminal Law (Special
Provisions) Act, No. 1 of 1962, requiring that the trial of
the following persons, to wit,

- (1) Don John Francis Douglas Liyanage 10
- (2) Maurice Ann Gerard de Mel
- (3) Frederick Cecil de Saram
- (4) Cyril Cyrus Dissanayaka
- (5) Sidney Godfrey de Zoysa
- (6) Gerard Royce Maxwell de Mel
- (7) Wilmot Selvanayagam Abraham
- (8) Bastianpillai Ignatius Loyola
- (9) Wilton George White
- (10) Nimal Stanley Jayakody
- (11) Anthony John Bernard Anghie 20
- (12) Don Edmond Weerasinghe
- (13) Noel Vivian Mathysz
- (14) Victor Leslie Percival Joseph
- (15) Basil Rajandiram Jesudasan
- (16) Victor Joseph Harold Gunasekera
- (17) John Anthony Rajaratnam Felix
- (18) William Ernest Chelliah Jebanesan
- (19) Terrence Victor Wijesinghe
- (20) Lionel Christopher Stanley Jirasinghe
- (21) Vithanage Elster Perera 30
- (22) David Senadirajah Thambyah
- (23) Samuel Gardner Jackson
- (24) Rodney de Mel

in respect of the following offences under Chapter VI of the
Penal Code, to wit,

(1) That on or about the 27th day of January, 1962, they with others did conspire to wage war against the Queen and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962, read with Section 114 of the Penal Code.

10 (2) That on or about the 27th day of January, 1962, they with others did conspire to overthrow otherwise than by lawful means the Government of Ceylon by law established and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962.

20 (3) That on or about the 27th day of January, 1962, they with others did prepare to overthrow otherwise than by lawful means the Government of Ceylon by law established and thereby committed an offence punishable under Section 115 of the Penal Code as amended by Section 6 (2) of the Criminal Law (Special Provisions) Act, No. 1 of 1962,

be held before the Supreme Court at Bar by three Judges without a Jury:

NOW THEREFORE, I, SAMUEL PETER CHRISTOPHER FERNANDO, Minister of Justice, in pursuance of the power vested in me by Section 9 of the Criminal Law (Special Provisions) Act, No. 1 of 1962, do hereby nominate

- 30 (1) THE HONOURABLE THUSEW SAMUEL FERNANDO, C.B.E., Q.C.
(2) THE HONOURABLE LEONARD BERNICE DE SILVA
(3) THE HONOURABLE PONNUDURAI SAMY SRI SKANDA RAJAH

Judges of the Supreme Court of the Island of Ceylon, to be the three Judges who shall preside over the trial of the aforementioned persons to be held in pursuance of the aforementioned direction.

Given under my hand this 23rd day of June, 1962.

(Sgd.) SAM P. C. FERNANDO,
Minister of Justice.

TO THE HONOURABLE THE CHIEF JUSTICE, COLOMBO.

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

1. DON JOHN FRANCIS DOUGLAS
LIYANAGE
2. MAURICE ANN GERARD DE MEL
3. FREDERICK CECIL DE SARAM
4. CYRIL CYRUS DISSANAYAKE
5. SIDNEY GODFREY DE ZOYSA
6. GERARD ROYCE MAXWELL DE MEL
7. NOEL VIVYAN MATTHYSZ
8. BASIL RAJANDIRAM JESUDASON
9. TERENCE VICTOR WIJESINGHA
10. LIONEL CHRISTOPHER STANLEY
JIRASINGHE
11. VITHANAGE ELSTER PERERA
... .. Appellants

- and -

... THE QUEEN
... .. Respondent

C A S E FOR THE RESPONDENT

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.