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COMMONWEALTH, CONSTITUTIONAL, CRIME

LIYANAGE AND OTHERS -V- THE QUEEN; PC 2 DEC 1965

JULY 2, 2015 | DLS | LEAVE A COMMENT

References: [1965] UKPC 1, [1966] 2 WLR 682, [1967] 1 AC 259, [1966] 1 All ER 650

Links: [Bailii](#)

Coram: Morris of Brth-y-Gest, MacDermott, Guest, Pearson LL

The defendants appealed against their convictions for conspiracy to wage war against the Queen, and to overawe by criminal force the Government of Ceylon. It was said that the description of the offence committed had been redefined after the attempted coup in order to criminalise the defendants' acts: 'They were clearly aimed at particular known individuals who had been named in a White Paper and were in prison awaiting their fate. The fact that the learned judges declined to convict some of the prisoners is not to the point. That the alterations in the law were not intended for the generality of the citizens or designed as any improvement of the general law, is shown by the fact that the effect of those alterations was to be limited to the participants in the January coup and that after these had been dealt with by the judges, the law should revert to its normal state.' Hel: These alterations constituted a grave and deliberate incursion into the judicial sphere. Quite bluntly, their aim was to ensure that the judges in dealing with these particular persons on these particular charges were deprived of their normal discretion as respects appropriate sentences. They were compelled to sentence each offender on conviction to not less than ten years' imprisonment, and compelled to order confiscation of his possessions, even though his part in the conspiracy might have been trivial.

'If such Acts as these were valid the judicial power could be wholly absorbed by the legislature and taken out of the hands of the judges. It is appreciated that the legislature had no such general intention. It was beset by a grave situation and it took grave measures to deal with it, thinking, one must presume, that it had power to do so and was acting rightly. But that consideration is irrelevant, and gives no validity to acts which infringe the Constitution. What is done once, if it be allowed, may be done again and in a lesser crisis and less serious circumstances. And thus judicial power may be eroded. Such an erosion is contrary to the clear intention of the Constitution. In

their Lordships' view the Acts were ultra vires and invalid.'

Statutes: [Ceylon Independence Act 1947](#)

This case cites:

- Cited – [Campbell -v- Hall](#) ((1774) 1 Cowp 204, [Commonlii](#), [1774] EngR 5)
The appellant argued that, since the Crown had had no power to make laws for the colony of Ceylon which offended against fundamental principles, at independence it could not hand over to Ceylon a higher power than it possessed itself.
Held: ..
- Cited – [Dona Maria Abeyesekera Hamini and Others -v- Daniel Tillekeratne](#) PC ([1897] AC 277, [Bailii](#), [1897] UKPC 6)
Ceylon – The Board considered the validity of a retrospective Order in Council. . .
- Cited – [Ibralebbe Alias Rasa Wattan Another -v- The Queen](#) PC ([1964] All ER 900, [Bailii](#), [1963] UKPC 34)
Ceylon – the joint effect of the Order in Council of 1946 and the Act of 1947 was intended to and did have the result of giving to the Ceylon Parliament the full legislative powers of a sovereign independent State. . .
- Cited – [The Bribery Commissioner -v- Ranasinghe](#) PC ([1964] 2 WLR 1301, [1965] AC 172, [1964] 2 All ER 785, [Bailii](#), [1964] UKPC 1, [Bailii](#), [1964] UKPC 20)
S.29 of the Ceylon (Constitution) Order in Council 1946 gave the Ceylon Parliament power to make laws for the peace, order and good government of the island. S.29(4) gave it the power to 'amend or repeal any of the provisions of this Order'; but . .

This case is cited by:

- Cited – [Misick, Regina \(on the Application of\) -v- Secretary of State for Foreign & Commonwealth Affairs Admn](#) ([Bailii](#), [2009] EWHC 1039 (Admin))
The former premier of the Turks and Caicos Islands sought to challenge the constitutionality of the 2009 order which was to allow suspension of parts of the Constitution and imposing a direct administration, on a final report on alleged corruption. . .

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