ABDUL HASHEEB
V.
MENDIS PERERA AND OTHERS

COURT OF APPEAL
TAMBIAH, J. AND G.P.S. DE SILVA, J.
CA APPLICATION NO. 1092/81
P.C. GAMPAHA CASE NO. 3853
06 APRIL 1982, 14 JUNE 1982, 6, 7, 8 JULY 1982
AND 10, 13 AND 14 SEPTEMBER 1982

Judicature, Act No. 2 of 1978, SS. 46 & 47 - Application for transfer of case from one Primary Court to another - Failure to give notice in writing of the application to the Attorney-General as required by s. 47(3) of the Judicature Act - Bias - Expediency as ground for transfer of case.

Held:

It is section 46 which lays down the grounds of transfer applicable to every kind of proceeding, be it criminal or civil, *quasi* civil or *quasi* criminal. Subsections (1) and (2) of section 47 are confined to a prosecution.

The transfer contemplated in section 47(3) must be restricted to a transfer of a prosecution. An information filed under section 66 of the Primary Courts Procedure

Act is clearly not a prosecution. Hence the petitioners were not required to give notice of the application to the Attorney-General.

The tests for diqualifying bias are -

(a) the test of real likelihood of bias;
(b) the test of reasonable suspicion of bias

On the application of either test, bias on the part of the Judge has not been established.

The expression 'expedient' in section 46 means advisable in the interests of justice. As there were three connected cases pending, it would promote the ends of justice if the case is transferred to another Primary Court.

Cases referred to:

1. *In re Sidie* (1948)2 All ER 995, 998
2. *Butcher* v. *Poole Corporation* (1942)2 All ER 572, 579
3. *Rex* v. *Sussex Justices, ex parte Mc Carthy* (1924)1 KB 256
4. *R* v. *Rand* (1866) LR 1 Q B 230
5. *R* v. *Camborne Justices, ex parte Pearce* (1954)2 All ER 850
6. *Metroplitan Properties Co. (F.G.C.) Ltd.* v. *London* (1968)3 All ER 304
7. *Regina* v. *Colchester Stipendiary Magisrate, ex parte Beck* (1972)2 WLR 637
8. *In re Ratnagopal* 70 NLR 409, 435

APPLICATION for transfer of case from Gampaha Primary Court to another Primary Court.

H. L. de Silva, S. A. with *Sunil Cooray* for respondent - petitioners.

V. S. A. Pullenayagam with *Faiz Mustapha, K. Balapatabendi* and *Miss. Deepali Wjesundera* for 1st and 4th respondents.

Dr. Colvin R. de Silva with *Faiz Mustapha, S. L. Gunasekera, A. Arunatilake de Silva* and *K. Balapatabendi* for 2nd and 3rd Respondents.

Suri Ratnapala, State Counsel for Attorney-General.

Cur. adv. vult.

07 October, 1982

G. P. S. DE SILVA, J.

This is an application for the transfer of a case pending in the Primary Court of Gampaha to another Primary Court. The application is made under sections 46 and 47 of the Judicature Act, No. 2 of 1978. Counsel for the respondents, Dr. de Silva and Mr. Pullenayagam, raised a preliminary objection to the application on the ground that the petitioners have failed to give notice in writing

of the application to the Attorney-General in terms of section 47(3) of the Act. Admittedly, the respondents-petitioners (hereinafter referred to as the petitioners) have failed to give notice of this application to the Attorney-General and it was the contention of Counsel that such notice was an imperative requirement under the law. In the absence of such notice, it was the submission of Counsel, that the application had to fail. Both, Dr. de Silva and Mr. Pullenayagam, relied very strongly on the ordinary and natural meaning of the words of subsection (3) of section 47 as the basis of the preliminary objection. Section 47(3) reads as follows:-

> "Every person making an application for a transfer under this Chapter, shall give to the Attorney-General and also to the accused or complainant as the case may be, notice in writing of such application together with a copy of the grounds on which it is made. No order shall be made on the merits of the application unless and until at least 48 hours have elapsed between the receipt of such notice and the hearing of such application. Every accused person making an application for a transfer under the preceeding section may be required by the Court of Appeal, in its discretion, to execute a bond with or without surety conditioned that he will, if convicted, pay the cost of the presecution."

Counsel for the respondents laid much stress on the generality of the words "*every person* making an application for a transfer under *this Chapter . . .*". It was the submission of Counsel that section 47(3) covers every person making an application and also every application made under this Chapter. Further, it was the submission of Dr. de Silva that the words "and also to the accused or complainant as the case may be", do not in any way restrict or qualify the generality of the words, "every person making an application for a transfer under this Chapter". Counsel relied strongly on the literal rule of construction which, it was submitted, is the primary rule of construction. Mr. Pullenayagam urged that plain words must be given their plain meaning unless such meaning leads to a manifest absurdity. Counsel argued that there was nothing absurd in giving notice to the Attorney-General of an application for a transfer of a civil case, for, to use Mr. Pullenayagam's own words, "the Attorney-General has been the constant and unfailing friend of the court." Mr. Pullenayagam suggested a possible reason for giving

notice to the Attorney-General. He submitted that applications for transfer of cases often alleged bias against judicial officers who are not represented before court. It was suggested that the point of view of the judicial officer could be best presented to court through the Attorney-General and accordingly there is nothing absurd in giving notice of a transfer application even in respect of a civil matter to the Attorney-General. There has been a deliberate change in the law, and Counsel for the respondents strenuously contended that the legislature must be presumed to have said what it meant and meant what it said. The law having been changed from what it was under the Courts Ordinance and the Administration of Justice Law, No. 44 of 1973, Dr. de Silva submitted that no court is entitled to "negate" legislation through a process of interpretation.

State Counsel, Mr. Ratnapala, who appeared on behalf of the Attorney-General as amicus curiae, supported the submissions made by Dr. de Silva and Mr. Pullenayagam, that plain words should be given their plain meaning and that it is the duty of the court to give maximum effect to the language used in the section. State Counsel contended that one consequence of the literal rule is that wide language should be given a wide construction. State Counsel also submitted that all that section 47(3) requires is to give notice to the Attorney-General and not to make him a respondent.

This is a convenient point to consider the parallel provisions in the repealed Courts Ordinance and the Administration of Justice Law, No. 44 of 1973. Section 42 of the Courts Ordinance and section 44 of the Administration of Justice Law contained provisions which are very similar to section 46 of the present Judicature Act. The provisions which are parallel to section 47(1) and 47(2) of the Judicature Act were found in section 43 of the Courts Ordinance and section 45(1) and 45(2) of the Administration of Justice Law. It is section 44 of the Courts Ordinance and section 43(3) of the Administration of Justice Law which speak of an "accused person" giving notice to the Attorney-General. On the other hand, section 47(3) of the Judicature Act speaks of "every person making an application for a transfer" being required to give notice to the Attorney-General. Thus, prima facie, there appears to be a departure from the provision contained in section 44 of the Courts Ordinance and section 45(3) of the Administration of Justice Law.

It seems to me that the question that arises for consideration is, whether section 47(3) of the Judicature Act is confined to prosecutions or whether it is applicable to all proceedings, civil and criminal. This question cannot be answered by examining section 47(3) in isolation. Sections 46 and 47 have to be read together in order to ascertain the true meaning of section 47(3).

Although section 17(3) speaks of "under this Chapter" there are only two sections (sections 46 and 47) in Chapter VIII, which refer to the power to transfer cases. It is significant that section 46(1) which sets out the subject matter of the transfer, uses the expression "any action, prosecution, proceeding of matter" - - an expression of the utmost generality. The words, "proceeding or matter", signify the residuary class which may not fall within "action or prosecution". This expression occurs thrice in subsection (1) of section 46 and also occurs once in each of the subsections (2) and (3). It is also important to observe that it is section 46(1) which spells out the grounds of transfer applicable to "any action, prosecution, proceeding or matter". In other words, it is section 46 which lays down the grounds of transfer applicable to every kind of proceeding, be it criminal or civil, quasi civil or quasi criminal. Therefore, having regard to the subject matter and the amplitude of the language used, I am of the view that it is section 46 which is the general provision relating to the transfer of every kind of proceeding.

Turning now to section 47, the absence of the expression "action, prosecution, proceeding or matter" or of an expression similar to it, is significant. The difference between the two sections is also apparent on an examination of the structure of section 47. Section 47(1) is limited to "any inquiry into or trial of any criminal offence" and deals with the Attorney-General's power of transfer by the issue of a fiat. Section 47(2) speaks of the steps that may be taken by "any person aggrieved by a transfer made" under section 47(1). Thus, it is clear that subsections (1) and (2) of section 47 are confined to a prosecution.

There follows subsection (3) of section 47, which begins with the very wide words -- "Every person making an application for a transfer under this Chapter . . .Mr. H. L. de Silva, Counsel for the petitioners, submitted that the meaning of this collection of words is uncertain. Mr. de Silva posed the question, does it refer to every type of application made under "this Chapter" or to an application made in

the context of subsection (3) of section 47? In other words, does it refer to a transfer of a "prosecution" or action proceeding or matter"?

Mr. de Silva relied strongly on the words that follow -- "and also to the accused or complainant as the case may be", which, in his submission, pointed unmistakenly only to a prosecution. Mr. de Silva argued that if section 47(3) is a general provision which applies also to a civil action, then the words, "accused or complainant" will not be meaningful since there is no complainant or accused in a civil proceeding. Moreover, if section 47(2) contemplates a civil action, then there is no requirement to give notice to the opposing party, the defendant or the plaintiff as the case may be. Accordingly, Mr. de Silva urged that section 47(3) contemplates a case where the parties on record are the accused and the complainant.

What is more, the giving of notice to the Attorney-General in respect of a transfer of a prosecution is understandable, having regard to the powers conferred on the Attorney-General by the Code of Criminal Procedure Act, No. 15 of 1979. The Attorney-General has a legitimate interest in receiving notice where there is a deviation from the place of inquiry of trial prescribed in the Code or Criminal Procedure Act.

On a consideration of the submissions outlined above, I am of the view that the words, "under this Chapter" in section 17(3), should be given a meaning which is consistent with the rest of the subsection and which harmonises best with the structure of section 47 read as a whole. The phrase, "under this Chapter" takes its colour and content from the words that follow -- "and also to the accused or complainant as the case may be". It is necessary to emphasize that section 47(3) contemplates the double requirement of notice to the Attorney-General as well as notice to the accused or complainant, as the case may be. As stated by Lord Greene M.R. in *re Sidie (1)* -- "The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take these words in vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning

which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word'?" Again, in the words of du Parcq, L.J. in *Butcher* Vs. *Poole Corporation* (2),

> "It is of course impossible to construe particular words in an Act of Parliament without reference to their context and to the whole tenor of the Act."

Thus, in giving a contextual interpretation to section 47(3), there is no departure from the well-recognised canons of statutory interpretation. Having regard to the immediate context in subsection 47(3), the structure of section 47, and considering the fact that section 46 is the general provision which is applicable to every type of proceeding, I am of the view that the "transfer" contemplated in section 47(3), must be restricted to a transfer of a prosecution. An information filed under section 66 of the Primary Courts' Procedure Act, is clearly not a prosecution. I, therefore, hold that the petitioners were not required to give notice of this application to the Attorney-General. The preliminary objection is accordingly overruled.

I shall now proceed to consider the application on its merits and the basis upon which the petitioners seek to have the case transferred from the Primary Court of Gampaha to another Primary Court. Mr. H.L. de Silva, at the outset of his submissions, stated that the ground upon which he relies is section 46(1)(a) of the Judicature Act but, in the course of his reply to the submissions of Counsel for the respondents, he relied on an alternative ground as well, namely, section 46(1) (d).

The 1st to the 6th petitioners are members of one family. The 1st petitioner is the husband of the 2nd petitioner, the 3rd and 5th petitioners are the sons of the 1st and 2nd petitioners while the 4th petitioner is the wife of the 3rd petitioner and the 6th petitioner is the wife of the 5th petitioner. The land in respect of which an information was filed in terms of section 66(1) of the Primary Courts Procedure Act, No. 44 of 1979, is called "Werellawatta", situated at Yakkala in Gampaha. The case for the respondents is that this land originally belonged to one Mohideen who died in 1973 leaving a last will in terms of which his widow (4th respondent) and his two

daughters became entitled to the land. The widow and the daughters of Mohideen were negotiating to sell the property from about September 1979. The land was surveyed in October 1979 and the surveyor, in his affidavit, states that he was able to enter the land only with the assistance of the Police. Ultimately the land was sold on 31st March, 1981 by deed No. 4413, attested by Mr. Herman J.C. Perera, to A.N. Munasinghe and D. Munasinghe (hereinafter referred to as the Munasinghe brothers) who are the 2nd and 3rd respondents. Thereafter, on 3rd April, 1981, the Munasinghe brothers sought to take possession of the land but they were prevented from doing so by the 1st petitioner and his sons. This was reported to Hasheeb (1st respondent) who is the brother of the deceased Mohideen and who had assisted in the negotiations to sell the property to the Munasinghe brothers. According to the respondents, the petitioners have no right, title or interest in the land and the 1st petitioners have no right, title or interest in the land and the 1st petitioner was merely the conductor or watcher who had been employed by the deceased Mohideen. Hasheeb made a complaint to the Gampaha Police on 7th June, 1981. Sergeant Austin of the Gampaha Police, conducted inquiries into the complaint of Hasheeb and on 28th August, 1981, filed the information under section 66(1) of the Primary Courts Procedure Act, No. 44 of 1979, which is the subject matter of the present application for transfer. The petitioners, on the other hand, claim title to the land by right of prescription, inheritance and purchase, and they assert that they have been in possession of the land from the last several years. Their claim is founded partly on certain recent deeds of transfer.

Sergeant Austin of the Gampaha Police, has conducted investigations into the claim of title put forward by the petitioners and a prosecution has been instituted (Case No. 14595/B of Magistrate's Court of Gampaha) against the 1st petitioner and members of his family, alleging a conspiracy to forge the deeds relied on by the petitioners. It is to be noted that one of the accused in this prosecution for conspiracy to commit forgery is a daughter-in-law of the 1st petitioner named Punyawathie Jayakody.

At this stage, it is relevant to observe that while Punyawathie Jayakody is a party to the information filed under section 66 of the Primary Courts Procedure Act and an accused in the criminal case referred to above, she is also the complainant in a private plaint she

filed in the Magistrate's Court of Gampaha, accusing Sergeant Austin of the Gampaha Police of using criminal force on her with intent to outrage her modesty, an offence punishable under section 345 of the Penal Code. These criminal proceedings (Case No. 3832 M.C. Gampaha) were instituted on 28th August, 1981, which was the same date on which Sergeant Austin filed the information under section 66(1) of the Primary Courts Procedure Act. The allegation is that Sergeant Austin used criminal force on Punyawathie Jayakody in the course of his investigations into the complaint of Hasheeb that the petitioners were refusing to hand over possession of the land to the Munasinghe brothers.

Thus, it is seen that there were three connected cases, two in the Magistrate's Court of Gampaha (M.C. Gampaha Case Nos. 14595/ B and 3832) and one in the Primary Court of Gampaha, pending before the same Judge, since the Magistrate of Gampaha functions also as the Primary Court Judge of Gampaha -- It is in this context that the instant application for the transfer of the case pending in the Primary Court of Gampaha to another Primary Court has been made.

The petitioners, in their application for a transfer of the case, do not specifically allege that they will be denied a fair and impartial trial. Mr. H.L. de Silva submitted that, having regard to the material placed before this court, he was inviting the court to draw the inference that there was either a "real likelihood of bias" or "a reasonable suspicion of bias" on the part of the Judge against the petitioners. The matters set out in the petition as indicative of bias are:-

(a) that the Judge attended the wedding of Munasinghe's son (paragraph 6 of the petition);

(b) that when the private plaint was filed against Sergeant Austin, "the Magistrate did not issue a summons or warrant as is required by law, but fixed the case for the next working day in the expectation that the accused will then be in court as a prosecuting officer for the Gampaha Police" (paragraph 7 of the petition);

(c) the application made on behalf of the petitioners for a longer date to file their affidavits in the case before the Primary Court was refused, although the Judge was informed that the 1st petitioner

was in hospital and that seven of his sons were on remand on the allegation of forgery of deeds (paragraph 9 of the petition);

(d) the Judge failed to appreciate the submission made by the lawyers appearing for the petitioners, that there is no basis in law for the prosecution on charges of forgery and accordingly, the several orders of remand were wholly unjustified (paragraphs 10 and 11 of the petition).

Mr. H.L. de Silva invited our attention to the information filed by Sergeant Austin under section 66 of the Primary Courts Procedure Act. He stressed the fact that there was nothing in the report to indicate that there was a threat or likelihood of a breach of the peace at the time the information was filed on the 28th of August, 1981. The attempt by the Munasinghe brothers to take possession of the land was as far back 3rd April, 1981 and the complaint made by Hasheeb to the Gampaha Police was on 7th June, 1981. The information filed by Sergeant Austin, nowhere states that any incident likely to cause a breach of the peace had occurred between 3rd April, 1981 and 28th August, 1981. Since it is the apprehension of a breach of the peace which determines the jurisdiction of the court in an application made under section 66, Mr. H.L. de Silva submitted that, had the Primary Court Judge perused the information filed before him, it would have been manifest to him that the application could not have been entertained. In regard to the forgery case, Mr. de Silva submitted that, if the Magistrate had perused the reports filed by the Police as he should have done, it would have been clear to him that no offence of forgery was disclosed, for the reason that the allegation was that the impugned deeds were executed to make a false claim to title. Mr. de Silva drew our attention to the relevant journal entries and the submission made by the lawyers appearing for the accused, that this was a civil matter and that the accused should be granted bail. The Magistrate, however, refused all applications for bail and kept the accused on remand for about11/2 months.

The other case before the same Judge was the private plaint filed by the 6th petitioner, Punyawathie Jayakody, against Sergeant Austin, on a charge under section 345 of the Penal Code. Mr. de Silva invited us to examine the journal entries in this case. The plaint in this case was filed on 28.08.81, which was the very date on which Sergeant Austin filed the information under section 66 of the Primary

Courts Procedure Act. The prosecution instituted by the 6th petitioner came to an abrupt end on 12 October, 1981, when the Magistrate discharged Sergeant Austin. The journal entry of that date shows that the complainant on being questioned by court, had stated that she is not ready for trial. The Attorney-at-Law appearing for Sergeant Austin, thereupon moved for the discharge of the accused. The Magistrate, in his Order discharging the accused, stated that the complainant has not taken any steps to summon witnesses and that it appears that she is not taking any interest in the matter. Mr. de Silva strenuously contended that this was a perverse order, clearly indicative of bias on the part of the Magistrate, for it was impossible for the complainant, who was on remand on the allegation of forgery since 11.09.81 and who was present in court on 12th October from the remand jail, to have got ready for trial.

Mr. de Silva submitted that the purpose of the Police bringing a charge of forgery and moving for the remand of the petitioners was to remove the petitioners from the land in dispute and to facilitate the taking over of possession by the Munasinghe brothers. It was with the same purpose in view, Counsel contended, that Sergeant Austin filed the information under section 66 and moved for an interim order under section 67(3) of the Act. In short, his submission was that the Police were acting hand in glove with the Munasinghe brothers to ensure that the Munasinghe brothers obtained possession of the land. It was his submission that the filing of an information under section 66 of the Act was a "short-cut" which the Munasinghe brothers have adopted to obtain possession of the land. While the Munasinghe brothers with the assistance of the Gampaha Police were making every endeavour to obtain possession of the land, Counsel submitted, that the trial Judge was repeatedly making clearly wrong orders in all three cases - - orders which were, Counsel contended, always to the detriment of the petitioners and for the benefit of the respondents. Mr. de Silva argued, while he cannot prove actual bias on the part of the Judge yet, having regard to the circumstances in which the several orders were made in the three cases, the petitioners reasonably entertained an apprehensive that they would be denied a fair and impartial trial. It was the contention of Mr. de Silva that the conduct of the Magistrate in the two criminal cases, impinged on his conduct in the case pending before the primary Court.

The question that has now to be considered is whether, the facts set out in the petition (which I have enumerated above) and the conduct of the Judge, having regard to the several orders made by him in all three cases, show that the petitioners would be denied a fair and impartial inquiry. In other words, does it appear that the Judge is biased against the petitioners? At the outset of his submissions, Mr. H.L. de Silva referred to the well-known dicta of Lord Hewart, C.J. in *Rex* vs. *Sussex Justices, Ex parte Mc Carthy* (3):-

> ". . . a long line of cases shows that it is not merely of some importance but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done . . . Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice . . ."

In the subsequent authorities cited before us, two tests for disqualifying bias have been formulated:-

(a) the test of real likelihood of bias; and

(b) the test of reasonable suspicion of bias.

One of the earliest cases in which the test of real likelihood of bias was laid down is *R* vs. *Rand* (4), in which Blackburn, J. said:-

> "Wherever there is a real likelihood that the Judge would, from kindred or any other cause, have a bias in favour of the parties, it would be very wrong in him to act; . . "

A Divisional Court in *R* Vs. *Camborne Justices ex parte Pearce* (5) applied the dictum of Blackburn, J. in *R* Vs. *Rand (supra)* and ruled in favour of the "real likelihood" test. The possible difference between the two tests arose from the facts in the case. An information was laid against the applicant under the Food and Drugs Act by an officer of the Cornwell County Council. At the trial of the applicant, Mr. Thomas who had been elected a member of the County Council, acted as clerk to the Justices. After the Justices had retired to consider their verdict, the chairman sent for Mr. Thomas to advise them on a point of law. Mr. Thomas advised the Justices on the point of law but the facts of the case were not discussed at all with

him. Having given his advice, he returned to the court. An order for certiorari was sought on the basis that there was a reasonable suspicion of bias because Mr. Thomas was at the time of the trial, a member of the County Council on whose behalf the information was laid against the applicant. It was argued that there was a suspicion of bias but the court rejected that test and stated thus:-

> "In the judgment of this court, the right test is that prescribed by Blackburn, J. in *R.* Vs. *Rand,* namely that to disqualify a person from acting in a judicial or quasi judicial capacity on the ground of interest (other than pecuniary or proprietory) in the subject matter of the proceeding, a real likelihood of bias must be shown . . .The frequency with which allegations of bias have come before the courts in recent times, seems to indicate that the reminder of Lord Hewart, C.J. in *R.* Vs. *Sussex JJ ex parte Mc Carthy,* that it is 'of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done' is being urged as a warrant for quashing convictions or invalidating orders on quite unsubstantial grounds and, indeed, in some cases, on the flimsiest pretexts of bias. While indorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart, C.J., this court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done. In the present case, this court is of opinion that there was no real likelihood of bias and it was for this reason that the court dismissed the application . . "

The next important case in which the rule against bias was considered is *Metropolitan Properties Co. (F.C.C) Ltd.* Vs. *Lannon* (6). A solicitor sat as chairman of a rent assessment committee to consider an application by the landlords for increases in the rents of several flats. The solicitor's firm had acted for other tenants and the solicitor lived with his father who was tenant of a flat owned by an associate company belonging to the same group as the landlords who had sought an increase in rent. He had assisted his father in a dispute with his landlords. The rent assessment committee fixed as the fair rent of each flat, an amount which was not only below the amount put forward by the experts called at the hearing on behalf

of the tenants and the landlords, but also below the amount offered by the tenants themselves. The Court of Appeal held that, on the facts, the solicitor should not have sat as chairman. It would appear that Lord Denning was inclined to adopt the "real likelihood" test but said that it was satisfied if there were circumstances "from which a reasonable man would think it likely or probable that the justice or the chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other", Lord Denning emphasized that "the court looks at the impression which would be given to other people". "The reason" he said " is plain enough, Justice must be rooted in confidence; and confidence is destroyed when right minded people go away thinking; the Judge was biased." Edmund Davies, L.J., however, adopted the test of "reasonable suspicion of bias" and approved the dictum of Lord Hewart. Danckwerts, L.J. seemed to be inclined to adopt the Hewart approach and said that on the facts, it was "not wise" for the chairman to have acted.

Mr. Pullenayagam cited *Regina* Vs. *Colchester Stipendiary Magistrate ex parte Beck* (7) wherein Lord Widgery, C.J. characterized Lord Denning's judgment in *Lannon's case (Supra)* as "a modern statement of what is meant by bias in the sort of context with which we are now dealing". I find that de Smith's 'Judicial Review of Administrative Action', 4th Edition at pages 263 and 264, cites *Lannon's case* in support of the "reasonable suspicion" test. A similar view is expressed by Wade in his work on 'Administrative Law', (4th Edition) at page 411.

Mr. Pullenayagam submitted that not only do the English cases support the test of "real likelihood of bias" but also a Divisional Court of the then Supreme Court adopted the same test in *"in re Ratnagopal"* (8). Mr. Pullenayagam referred us to the following passage at page 435:-

> "The proper test to be applied is, in my opinion, an objective one and I would formulate it somewhat on the following lines; 'Would a reasonable man, in all the circumstances of the case, believe that there was a real likelihood of the Commissioner being biased against him?"

Mr. Pullenayagam submitted that both in principle and on authority.

the proper test to apply in relation to an allegation of bias on the part of a judicial officer was the test of "real likelihood of bias".

While I find Mr. Pullenayagam's submission not without attraction, yet, on the facts and circumstances of this case, it is not necessary to give a ruling as to which of the tests is the proper test when an allegation of bias is made against a judicial officer. The reason is that, in my view, the petitioners have failed to prove the allegation of bias on the application of either of the tests.

It is of course not necessary to prove that the judicial officer was, in fact, biased. However, even on the application of the test of reasonable suspicion, it must be shown that the suspicion is based on reasonable grounds -- grounds which would appeal to the reasonable, right thinking man. It can never be based on conjecture or on flimsy, insubstantial grounds. Adopting the words of Lord Denning in *Lannon's case (Supra),* Mr. Pullenayagam submitted that "bias" in this context would mean, "a tendency to favour one side unfairly at the expense of the other" -- a submission with which I agree.

In this view of the matter, it seems to me that the facts set out in the petition are too remote and too tenuous in charactor to found an allegation of bias on the part of a judicial officer, who it must be remembered, is one with a trained legal mind. As submitted by Mr. Pullenayagam, it is a serious matter to allege bias against a judicial officer and this court would not lightly entertain such an allegation. The several orders made by the judge in the three cases, which Mr. H.L. de Silva complained were clearly erroneous in law and indicative of bias, are to my mind, at most instances of a wrongful or improper exercise of a discretion. Whatever may be the relationship between Sergeant Austin and the Munasinghe brothers, yet it is not sufficient to impute bias to the Judge. The totality of the circumstances relied on by the petitioners, do not show that the Judge has extended favours to one side "unfairly at the expense of the other" and I accordingly hold that the allegation of bias has not been established. Thus, the first ground on which the transfer is sought (section 46(1)(a) of the Judicature Act) fails.

I turn now to the alternative ground relied on by Mr. H.L. de Silva -- that the transfer is "expedient on any other ground". I agree with Mr. Pullenayagam's submission that the expression "expedient" in the

cotext means, advisable in the interests of justice. Indeed, the purpose of conferring the power of transfer as provided for in section 46 of the Judicature Act, is to ensure the due administration of justic.

There were three cases pending before the same Judge. They were all "connected cases" in the sense that they had a bearing on the dispute in regard to the possession of "Werellawatte". The charges of forgery were based on deeds alleged to have been executed to support a false claim to title of the land in dispute. The alleged incident relating to the charge of criminal force is said to have taken place in the course of the investigations into the dispute regarding the possession of "Werellawatte". As submitted by Mr. H.L. de Silva, the petitioners in making this application for a transfer, are taking only preventive section. They are not seeking to set aside an order which they allege is bad in law. It so happened that the several orders made by the Judge, tended to operate against the 1st petitioner or one or more members of his family. Having regard to the course the proceedings took in each of these cases, and in particular, the unusual circumstances in which Sergeant Austin was discharged in the criminal force case, thereby denying the complainant of an opportunity of presenting to court her version of the incident, I am of the opinion that it would promote the ends of justice if this case is transferred to another Primary Court.

I accordingly make order that the case be transferred to the Primary Court of Minuwangoda.

In all the circumstances, I make no order as to costs.

Before I conclude, I wish to make it clear, that nothing I have said in the course of this judgment was intended in any way to reflect adversely on the integrity or the conduct of the judicial official concerned.

TAMBIAH. J. – I agree.

Transfer of case ordered.