1942 *Present :* **Howard C.J.**

In re GOONESINHA.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF CERTIORARI UNDER SECTION 42 OF THE COURTS ORDINANCE.

Writ of certiorari—Election petition—Application to quash an order made by Election Judge—Report of applicant by Judge to the Governor—Power of Supreme Court to issue writ.

The Supreme Court has no power to issue a writ of *certiorari* against the respondent, who is a Judge of the Supreme Court, and who was nominated by the Chief Justice under the provisions of Article 75 (1) of the Ceylon (State Council Elections) Order in Council, 1931, for the purpose of trying an election petition.

THIS was an application for a writ of *certiorari* to quash an order made by the respondent, who is a Judge of the Supreme Court, and who was appointed by the Chief Justice to hear the Colombo North Election Petition.

The petitioner gave evidence at the trial of the election petition in which one Dr. R. Saravanamuttu claimed that the election of Mr. Joseph de Silva, as member for the Electoral Division of Calombo North, be declared null and void.

After hearing evidence, the Election Judge declared the election of the said Joseph de Silva null and void, and certified his determination to the Governor.

On December 2, 1941, a notice was issued from the Supreme Court and served on the petitioner to show cause why he should not be reported to the Governor under Article 79 of the Ceylon (State Council Elections) Order in Council, in that he did, on or about April 21 and 22, 1941, use undue influence on Simon Rodrigo in connection with the said election.

On the 9th of March, 1942, the matter came up for inquiry when, after hearing Counsel for the petitioner, the petitioner was refused an opportunity of calling witnesses. On the 18th of March, 1942, the Judge delivered an order stating that the offences had been made out and that a report would be sent to the Governor.

R. L. Pereira, K.C. (with him *A. R. H. Canekaratne, K.C., C. V. Ranawake, U. A. Jayasundera, V. F. Gunaratne* and *S. R. Wijayatilake*). for the applicant.—On being asked to show cause under Article 79 (2) of the Order in Council the applicant desired to give evidence and call witnesses in order to show cause why he should not be reported to the Governor under Article 79. Article 79 (2) of the Order in Council makes express provision for this. But the Election Judge refused the applicant an opportunity of calling evidence on the ground that it would be futile to do so and that it would lead to the most awkward consequences if, after a candidate had been unseated, his agents were allowed to prove that no offence had been committed. The learned Judge's order, refusing to give the petitioner an opportunity to call witnesses on his behalf, was not only contrary to the fundamental rule of al judicial proceedings, that a person

charged with an offence should have an opportunity of calling evidence to clear himself, but also contrary to the provisions laid down by the Order in Council, Article 79 (2).

The learned Judge's difficulty was that if he allowed the applicant to lead evidence he might have been persuaded to hold contrary to his previous order. This anomalous situation was due to a significant irregularity in the procedure followed by him. He would not have been faced with this difficulty if he followed precisely the procedure contemplated by the Order in Council. The certificate to the Governor under Article 78, determining whether the election was void or not, should not have been issued unless and until he had given the applicant an opportunity of showing cause. Having heard the petitioner and respondent he should have suspended his judgment in the election petition inquiry till he had given an opportunity to the applicant to show cause. Then the judgment and the reports under Article 78 and Article 79 would be simultaneous. This would have obviated the difficulty with which the Judge was faced and there would have been no occasion for the applicant to canvass the Judge's finding. The learned Judge has misconstrued the *East Dorset Case*[1] and the *Cheltenham Case*[2]. In neither case had a certificate been issued to the Speaker before the inquiry into the conduct of those other than the candidate.

After the learned Judge's determination that the return of Joseph de Silva was void he had no jurisdiction to order the issue of a notice on the applicant to show cause why he should not be reported, or to proceed to hear the matter of the said notice, or to make any order to the effect that "the offence had been made out" against the applicant, or to send a report to the Governor. Once the Judge determines whether the election is void and certifies such determination to the Governor he ceases to be Election Judge. He becomes *functus officio*. *Marshall James*[3]. In *Lateef v. Saravanamuttu*[4] Dalton J. observes: "I have no doubt that under the provisions of the Order in Council the certificate and report are required to issue at the same time, namely, at the conclusion of the trial. In practice in England in reported cases one finds the certificate and report contained in one document."

The application for a writ of *certiorari* on the respondent is made under section 42 of the Courts Ordinance. The Election Court has a limited jurisdiction and the fact that a Judge of the Supreme Court is nominated to preside over such Court is incidental. The privileges and powers of a Supreme Court Judge are not vested in an Election Judge. For instance, the Courts Ordinance vests the powers and privileges of a Puisne Judge in a Commissioner of Assize, but it is silent with reference to an Election Judge. It is apparent from the scheme of the Order in Council that an Election Judge is not on the same plane as that of a Judge of the Supreme Court. The jurisdiction of an Election Judge was referred to but not decided by Garvin J. in *Tillekewardene v. Obeyesekere*[5]. Article 75 (3) of the Order in Council provides that for the summoning or compelling the attendance of witnesses and imposition

[1] *6 O'M. & H. 22.*
[2] *6 O'M. & H. 194.*
[3] *(1874) L. R. 9 C. P. 702 at 719.*
[4] *34 N. L. R. 374.*
[5] *33 N. L. R. 193.*

of penalties for giving false evidence the Election Judge shall have the same power, jurisdiction and authority as are possessed and exercised by a Judge of a District Court in the trial of a civil action. Article 75 (4) says that the Election Judge shall be attended in the same manner as a Judge of the Supreme Court sitting at Assizes. If the Election Judge is of the same status as a Puisne Judge the necessity for this provision does not arise. It may be argued on the contrary that election petitions are entitled "In the Supreme Court of Ceylon". At the stage when the petition is filed there is no Election Court in existence—hence it has to be addressed to the Supreme Court.

The words "any Court" in section 42 include an Election Court. The words "other person or tribunal" would apply to an Election Judge. Moreover, once the Election Judge became *functus officio* he merely purported to act as Election Judge and, therefore, he would be caught up by the words "other person or tribunal".

In *Queen v. Dudley & Stephens*[1] the record was brought from the Devon and Cornwall Assizes to London by means of a writ of *certiorari*. This writ could issue from a High Court to a branch of the High Court where the latter exercises a limited jurisdiction. In *James v. South Western Railway Co.* it was held that a writ of prohibition lay to the Court of Admiralty.

In view of the grave consequences to the applicant, due to the irregularity in the procedure, there should be a remedy available in our law.

Cur. adv. vult.

June 1, 1942. HOWARD C.J.—

This is an application made under section 42 of the Courts Ordinance for a writ of *certiorari* to quash an order made on March 18, 1942, by the Election Judge. The application is by petition and is supported by an affidavit by the petitioner. In this affidavit the petitioner states that, on November 11, 1941, he gave evidence at the trial of an election petition presented to the Supreme Court by one Dr. R. Saravanamuttu, claiming a declaration that the election of Mr. Joseph de Silva, as member for the Electoral Division of Colombo North, at the election held on April 26, 1941, be declared null and void and that the return of the said Joseph de Silva was undue. The petitioner further alleges that after hearing evidence and addresses by Counsel the Election Judge reserved his order on November 19, 1941. On or about December 22, 1941, the said Judge declared the election of the said Joseph de Silva was void and certified his determination to His Excellency the Governor. On December 22, 1941, a notice, according to the petitioner, was issued from the Supreme Court and served on him on January 6, 1942, asking him to show cause why he should not be reported to the Governor under Article 79 of the Ceylon (State Council Elections) Order in Council, 1931, in that he did, on or about April 21 and 22, 1941, use undue influence on Simon Rodrigo in connection with the said election and intimating that if he desired to call evidence or to have a longer date he should inform the Registrar of the said Court on or before January 10, 1942. The petitioner in paragraph 9 of his affidavit states that on or about

[1] *(1884) 14 Q. B. D. 273.* [2] *7 Exchequer Cases 287.*

January 10, 1942, a motion was filed on his behalf, giving a list of witnesses he wished to call at the hearing. In paragraph 10 of his affidavit the petitioner states that, on March 9 and 12, 1942, the matter came up for inquiry before the Judge, when, after Counsel for the petitioner and Crown Counsel as *amicus curiae* had been heard, he was refused an opportunity of calling witnesses on his behalf. On March 18, 1942, the Judge delivered an order stating that the offences had been made out against him and a report would be sent to the Governor. The application for a writ of *certiorari* is based on the following grounds :—

(*a*) That, as the trial of the election petition was concluded on December 22, 1941, when the Judge pronounced his order determining that the return of the said Joseph de Silva was void, the Judge had no jurisdiction to order the issue of a notice on the petitioner to show cause why he should not be reported or to proceed to hear the matter or to make any order to the effect that the offences had been made out against him or to send a report to His Excellency the Governor.

(*b*) That if it was competent for the Court to issue a notice as aforesaid on the petitioner—

(i) this order refusing the petitioner leave to call witnesses on his behalf was contrary to the fundamental rule of all judicial proceedings, that a person charged with an offence should have an opportunity of calling evidence to clear himself.

(ii) the learned Judge acted contrary to the provision laid down by the Order in Council in refusing to allow petitioner to call witnesses.

The petitioner also submitted that the Judge exceeded the authority conferred on the Election Judge, that the said orders were contrary to law, and that the evidence given at the trial of the inquiry into the matter of the election petition did not disclose that the offence of undue influence was committed by him.

It will be observed that the petitioner's application cites as respondent the "Honourable Mr. O. L. de Kretser of Colombo" and prays for a writ of *certiorari* under section 42 of the Courts Ordinance. The first point for consideration is whether this provision of the law gives any power to this Court to issue a writ of *certiorari* against the respondent. The respondent, who is a Judge of the Supreme Court, was nominated by the Chief Justice under the provisions of Article 75 (1) of the Ceylon (State Council Elections) Order in Council, 1931, for the purpose of trying the Colombo North Election Petition. By sub-Article (2) he is referred to as the Election Judge. By sub-Article (3) for the purpose of compelling the attendance of witnesses the Election Judge is vested with the same powers as those of a District Judge in a civil action. By sub-Article (4) it is provided that on the trial of an election petition the Election Judge shall be attended in the same manner as if he were a Judge of the Supreme Court. Under sub-Article (5) all interlocutory matters in connection with an election petition may, unless otherwise ordered by the Chief Justice, be decided by any Judge of the Supreme Court. Article 76 provides for the presentation of election petitions to the Supreme Court. Article 80 (3) provides that an election petition may be amended with

the leave of a Judge of the Supreme Court. The Sixth Schedule of the Order in Council sets out the Election (State Council) Petition Rules, 1931. In Rule 2 it is stated that "Registrar" means the Registrar of the Supreme Court. Rule 3 refers to the receipt of the petition at the "Registry of the Supreme Court". In Rule 4 (4) it is stated that the form of an election petition shall be the following. or one to the like effect will be sufficient :—

"In the Supreme Court of Ceylon.
The Ceylon (State Council Elections) Order in Council, 1931."

Rule 10 allows a person returned as a member to appoint as an agent a person entitled to practise as a Proctor of the Supreme Court. Rule 28 provides that, in the event of the Judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by another Judge. Again in Rule 31, in connection with the withdrawal of a petition, a reference is made to the Registrar of the Supreme Court. Rule 41 provides that costs shall be taxed as in the District Court. I have set out in detail these provisions of the Order in Council because, in considering this application, it is essential that there should be a correct appreciation of the status of the respondent. The jurisdiction of the Election Judge was considered in the case of *Tillekewardene v. Obeysekere* [1] where it was held that there is no appeal from the determination of an Election Judge as to the validity of an election. In his judgment, Garvin J. stated as follows :—

> "The jurisdiction exercised by the Election Judge created by the Order in Council is of a very special nature. Whether it is an extension of the ordinary jurisdiction of the Supreme Court or a separate and distinct jurisdiction vested in the Chief Justice and exercisable not by the Supreme Court or any Judge thereof but only by him or a Judge of the Supreme Court specially appointed by him must first be determined. These are questions left to be determined when they arise."

The Election Judge is a Judge of the Supreme Court, attended in the same manner as a Judge of the Supreme Court, interlocutory matters are decided by any Judge of the Supreme Court, election petitions are presented to the Supreme Court, election petitions are intituled "In the Supreme Court of Ceylon", member's agents must be Proctors of the Supreme Court of Ceylon and, if the Election Judge is disabled by illness, the trial can be recommenced before another Judge of the Supreme Court. In these circumstances I have no hesitation in coming to the conclusion that the Election Court is a branch of the Supreme Court, exercising original jurisdiction. In coming to this conclusion, I have not been unmindful of the provisions with regard to the summoning of witnesses and the award of costs. The procedure of the District Court is presumably called in aid with regard to these matters, in view of the fact that the Supreme Court does not ordinarily exercise original jurisdiction in civil matters.

If the respondent is a Judge of the Supreme Court and exercising the jurisdiction of a branch of that Court, exercising original jurisdiction by virtue of the Order in Council, does section 42 of the Courts Ordinance

[1] *33 N. L. R. 193.*

vest me with power to issue a writ of *certiorari* to quash the order mad by him on March 18, 1942? The first paragraph of section 42 is worde as follows:—

> "The Supreme Court or any Judge thereof, at Colombo or elsewhe shall have full power and authority to inspect and examine t records of any Court, and to grant and issue, according to law, mand in the nature of writs of *mandamus, quo warranto, certiorari, procedet* and *prohibition*, against any District Judge, Commissioner, Magistr or other person or tribunal."

The first point for consideration is whether the words "any Cou in that section includes the Supreme Court. "Court" is defined section 2 as follows:—

> "'Court' shall denote a Judge empowered by law to act judici alone, or a body of Judges empowered by law to act judicially a body, when such Judge or body of Judges is acting judicially."

Prima facie then "Court" would include the Supreme Court, unl there is something in the subject or context repugnant thereto. T Supreme Court does not require a special provision of law for author to inspect and examine its own records. Moreover, if "any Cour included the Supreme Court, the words "Judge of the Supreme Cou would be included in the latter half of the paragraph. In my opinio therefore, "any Court" in this paragraph does not include the Supreme Court. From the fact that a Judge of the Supreme Court is not specifically mentioned in the paragraph the inference is of necessity drawn that the writs mentioned can only be issued to inferior Courts. The words "other person or tribunal" in this context cannot, in accordance with the *ejusdem generis* rule, be understood to include a Judge of the Supreme Court.

In connection with section 42 of the Courts Ordinance I agree with the *dictum* of Soertsz J., in *Dankoluwa Estates Co., Ltd. v. The Tea Controller,*[1] where he says that this section, which gives jurisdiction to the Supreme Court to issue mandates in the nature of writs of *mandamus, quo warranto, certiorari,* &c., expressly adopts the view expressed in the English cases. The same view with regard to the powers of the High Court in India was taken in the case of *Lakshmanan Chettiar v. Commissioner, Corporation of Madras, and Chief Judge, Court of Small Causes, Madras* where it was stated in an application for a writ of *certiorari* as follows:—

> "In such a matter we act not under Statute but under the inherent powers which devolve upon us from the old Supreme Court of Madras. We, therefore, stand with regard to prerogative writs in the same position as the Court of King's Bench in England and in our opinion we ought to follow the rules laid down by that Court in the decided English cases as to the scope and limitation of its jurisdiction."

Having regard to the wording of section 42, there would appear to be no authority to grant this application. It is, however, material to examine the English cases to see whether any authority exists in English law for the issue of a writ of *certiorari* in circumstances such as these. The writ of *certiorari* is an ancient writ, issuing out of a superior Court

[1] *L. W. at p. 48.* [2] *(1927) I. L. R. 50 Mad. Series, 130.*

and directed to the Judge or other officer of an inferior Court. A long line of English cases has established the principle that the writ of *certiorari* unless expressly withheld by Statute enables superior Courts to examine the proceedings of all inferior Courts and of all Statutory authorities vested with judicial or *quasi*-judicial functions, and if upon such examination it be found that they have, under pretence of an Act, proceeded to usurp a jurisdiction greater than they have in common law, or greater than the Act warrants, to direct them to have their proceedings returned to the superior Court to the end that it may see that they keep themselves within their jurisdiction. It has been contended by Mr. R. L. Pereira that the Election Court is an inferior Court and hence one to which a writ of *certiorari* can issue from the Supreme Court because its jurisdiction is limited. It is true that a Court is an inferior Court for the purpose of prohibition whenever its jurisdiction is limited (vide *Halsbury, Hailsham Ed., vol. 9, p. 831* and cases collected thereon). It is unnecessary to consider whether the jurisdiction of the Election Judge is such as to permit of the issue of a writ of *prohibition.* Different considerations apply to the issue of a writ of *certiorari.* Such a writ can only be issued in respect of matters which are within the jurisdiction of the High Court of Justice. Proceedings will not be removed into the superior Court unless they are capable of being determined there. Therefore, the writ will not be directed to a Court which is not one of civil jurisdiction, for example, a Court-Martial, unless it be shown that civil rights are affected. It has, moreover, been held in numerous cases that the writ cannot be directed by the High Court to any tribunal which is a branch of the High Court for the purpose of quashing its proceedings. One of the earliest cases on the subject is that of *ex parte Jose Luis Fernandez*[1], where the facts were as follows: On the trial at the Assizes of an information against one C for bribery, alleged to have been committed by him at the election for a member of Parliament, a witness was called on the part of the Crown, who had been examined before a Royal Commission appointed to inquire into alleged corrupt practices at that election and who had received from the Commissioners a certificate indemnifying him against all penalties. On being asked a question he declined to answer on the ground that his answer might tend to criminate himself. He persisted in his refusal and the Judge, thereupon, committed him to York Castle for six months for having wilfully and in contempt of the said Court refused to answer the said question and further imposed on him a fine of £500. It was held that the Court of Assize, being a "superior Court", the Judge had jurisdiction to commit and was not bound to set out in his warrant the cause of commitment—his decision not being subject to review by the Court above. In the course of his judgment Willes J., after considering the authorities, said :—

> "It thus appears to me very clearly, whether I consider the origin, the history, the procedure, or the jurisdiction of the Court of Assize or the estimation in which it has even been held, that I must class it as a superior Court of a high order. Mr. Bovill has not cited a single authority or even hint to the contrary."

[1] *142 E. R. 349.*

A little later the learned Judge, speaking of Judges of Assize, said :—

> "They belonged to that superior class to which credit is given by other Courts for acting within their jurisdiction, and to whose proceedings the presumption *omnia rite esse acta* applies equally as to those of the Supreme Court of Parliament itself."

In the *Queen v. The Judges and Justices of the Central Criminal Court*[1], the Recorder of London, upon the trial and conviction of a prisoner charged with larceny, having refused to order the person with whom the stolen property was pledged to restore it to the prosecutor, the Queen's Bench Division refused to grant a *mandamus* directed to "the Judges and Justices of the Central Criminal Court" to compel the Recorder to to make such order. In the concluding words of his judgment, Pollock B. stated as follows :—

> "It seems to me, therefore, that the Court, before whom the prisoner in the present case was tried, was sitting as a Superior Court, of at least as high authority as Justices of Assize sitting under a commission of oyer and terminer and gaol delivery on circuit. There being no precedent to be found of this Court—the highest common law Court of criminal jurisdiction—ever having issued a *mandamus* to a superior Court, which the Central Criminal Court clearly is, it is enough for me to say that this rule must be discharged."

The next case is *Reg. v. Boaler*[2], where it was held that the High Court has no jurisdiction to issue a writ of *certiorari*, directed to the Central Criminal Court, to remove a conviction obtained in the Central Criminal Court for the purpose of having the same quashed. In his judgment, Lord Coleridge C.J. stated as follows :—

> "There is no authority for saying that this writ can go at all to the Central Criminal Court, which is a Superior Court. It is a court at least as high as the assizes, as the criminal court on the circuit ; and it has been held, expressly with regard to those courts, that no *certiorari* will go to bring up a conviction obtained at the Assizes, for the purpose of being quashed here."

In connection with the authority of this Court to issue a writ of *certiorari* the case of *Skinner v. The North-Allerton County Court Judge & others*[3] is most instructive. In this case a warrant of arrest was issued by the County Court Judge against the appellant, against whom a bankruptcy petition had been presented. An *order nisi* for a *certiorari* to remove into the Queen's Bench Division and quash the order and warrant on the ground of want of jurisdiction was discharged by Wright and Darling JJ., and this decision was affirmed by the Court of Appeal. The House of Lords, on appeal, held that *certiorari* does not lie to bring up an order of a County Court Judge made when exercising bankruptcy jurisdiction. In his judgment, Lord Halsbury stated as follows :—

> "Now, this County Court Judge was sitting in bankruptcy, and the confusion which is imported into it is that because, as I will assume for the moment, the Judge issued a warrant which in form was wrong,

[1] *11 Q. B. D. 479.* [2] *67 L. T. 351.*

[3] *(1899) A. C. 439.*

but could have been put right, therefore it could have been put right, not in the Court in which it was issued, but in the High Court. The absurdity of that is that the statute itself has made the County Court the High Court for this purpose. You might just as well argue that a warrant, defective in form, issued by the Court of Queen's Bench, could be set right by *certiorari*. Of course that is absurd. This is the High Court for this purpose. If the warrant was ever so bad, it was issued by a bankruptcy judge in respect of bankruptcy proceedings which were before him, of which he was seized—a warrant which he had perfect jurisdiction to issue. If there was any irregularity or inaccuracy in point of form in the warrant that did issue, that could be put right by proper proceedings, but the proper proceedings would be in that Court itself, and not proceedings by *certiorari* in the Court of Queen's Bench."

The only case that lends any support to the contention that the High Court in England could quash an order made by one of its branches is that of the *Queen v. Lee*[1]. In this case, a highway authority pleaded guilty to an indictment presented at York Assizes in respect of the non-repair of a highway. After the trial, Field J. made an order for the payment of the prosecutor's costs. A rule, making the prosecutor respondent, to the King's Bench Division to quash the order was obtained on behalf of the authority. Field J. was one of the Judges constituting the Court which made the rule absolute. The various cases I have cited were reviewed in the judgment of Hewart L.C.J., in the *King v. Justices of the Central Criminal Court ex parte London County Council*[2], where it was held that the King's Bench Division of the High Court of Justice has no jurisdiction to issue a writ of *certiorari* for the purpose of removing into that Court an order of the Central Criminal Court with a view to its being quashed. Lord Hewart, in his judgment, distinguished the case of *Reg. v. Lee* (*supra*) on the ground that from the beginning to the end of that case not one word was said upon one side or the other as to the jurisdiction of the Court to issue a writ of *certiorari* in such circumstances. Also that Field J. was satisfied that he made a slip in making the order as to costs and was nothing loth that a writ of *certiorari* should issue, the writ being directed not to the Judge himself who made the order but to Robert Lee, the prosecutor. In the course of his judgment, the learned Lord Chief Justice said as follows :—

"I think it right, however, to remark that a clear distinction is to be drawn between two matters, on the one hand the removal, by means of *certiorari*, of indictments or presentments in order to bring about what may be called the domestic or internal arrangement or rearrangement of business, and on the other hand the removal for the purpose of quashing it of an order which has been made by a Superior Court. In other words, in my opinion, the statutes and decisions in regard to mere change of venue are not upon the same plane with a proposal to bring from a Superior Court an order which has been made by that Court for the purpose of quashing it. In the one case the

[1] *11 Q. B. D. 198.* [2] *(1925) 1 Q. B. D. 43.*

superior Court is making for good reason a useful redisposition of its business: in the other case the Superior Court is invited to quash that which itself has done, and the process involves the rather ludicrous position that it calls upon Judges to show cause to themselves why they should not be directed to remove, so that it may be quashed, something which they themselves have determined. In my opinion, the beginning of the truth about this matter is to distinguish the things which ought to be distinguished. There is no authority for the proposition with which those who seek to support this *order nisi* must begin—namely, that in a case of this kind there is jurisdiction in this Court to issue a writ of *certiorari*."

In this case *Reg. v. Brooke*[1] was cited as an authority by Sir Leslie Scott, who appeared in support of the rule. Avory J., in his judgment, pointed out that the observation of Wills J., when he said "We have jurisdiction to grant a *certiorari*", only referred to the jurisdiction to grant the writ for bringing up a recognizance for enforcement and had no bearing on the question whether a Superior Court of record can issue a *certiorari* to another Superior Court of record to quash an order which has been made by that Court.

I need only refer to two other cases. In the *Queen v. Dudley & Stephens*[2], a trial at the Devon & Cornwall Assizes ended in a special verdict. The consideration of this verdict was held in London before five Judges. It was objected that the record should have been brought into the Court by *certiorari*. It was held that since the Judicature Act, *1873* (*36 & 37 Vict. c. 66*), the Courts of oyer and terminer and gaol delivery are now part of the High Court and their jurisdiction is vested in it. An order of the Court had been made to bring this record from one part of the Court into the chamber which was another part of the same Court.

Mr. Pereira relied on the case of *James v. South Western Railway Co.*[3] for authority for the proposition that a writ of *certiorari* could issue. This case was decided in 1872, that is to say before the passing of the Judicature Act, 1873. It decided that a writ of *prohibition* lies to the Court of Admiralty, although it possesses by Statute some of the powers of a Superior Court. This case was one of the issue of a writ of *prohibition* and not of *certiorari* and hence has no bearing on the facts of the present case, even if after the Judicature Act, 1873, it is still good law.

In my opinion, a branch of the Supreme Court in Ceylon is in exactly the same position as regards the issue of a writ of *certiorari* as a branch of the High Court of Justice in England. The Election Court or Judge was, therefore, in this matter in the same position as the Central Criminal Court in England. To hold otherwise would lead to the absurd position referred to by Lord Hewart in the *King v. Justices of the Central Criminal Court ex parte London County Council* (*supra*), when he says:—

> "in the other case the Superior Court is invited to quash that which itself has done, and the process involves the rather ludicrous position

[1] 14 Q. B. D. 273.

[2] 17 Exchequer Cases 267.

hat it calls upon Judges to show cause to themselves why they should not be directed to remove, so that it may be quashed, something which they themselves have determined."

In view of what I have already stated there is no jurisdiction in this ourt to issue a writ of *certiorari* directed to the respondent and the pplication must be dismissed.

In coming to this conclusion I have not been unmindful of the fact t at the action taken against the petitioner under Article 79 of the Order Council involved the latter in grave consequences in regard to his l'gal career. It was suggested by Mr. Pereira that there must be in the procedure of the Courts a remedy for the righting of an ice. With regard to this plea I can only refer to the phraseology by Willes J., in *ex parte Fernandez* (*supra*), when speaking of Judges ssize :—

"hey belonged to that superior class to which credit is given by Courts for acting within their jurisdiction and to whose pro- ngs the presumption *omnia rite esse acta* applies equally as to se of the Supreme Court of Parliament itself."

opinion these words apply with equal force to the proceedings of tion Court.

Application dismissed.