

1945

Present: **Wijewardene J.**

NANAYAKKARA *v.* GOVERNMENT AGENT, WESTERN
PROVINCE *et al.*

IN THE MATTER OF AN APPLICATION ON THE POSTMASTER-GENERAL
TO PRODUCE COPY OF A TELEGRAM IN CONNECTION WITH AN
APPLICATION FOR A WRIT OF *Mandamus* OR IN THE ALTERNATIVE
FOR A WRIT OF *Certiorari*.

*Telegram—Writ of mandamus or certiorari—Application for the production
of a telegram—Powers of Supreme Court—Criminal Procedure Code, s. 67.*

In proceedings instituted by the petitioner against the Government Agent and another praying for a writ of *mandamus* or in the alternative for a writ of *certiorari*, the petitioner applied for an order on the Postmaster-General to produce the original of a telegram alleged to have been sent by a third party to the Government Agent.

Held, the Supreme Court had no power to order the production of the telegram.

THIS was an application for the production of a telegram as an incidental step in proceedings in instituted for a writ of *mandamus* or in the alternative for a writ of *certiorari*.

H. W. Jayewardene in support.

H. A. Wijemanne C. C., for the Crown.

Cur. adv. vult.

May 23, 1945. **WIJEYWARDENE J.**—

The petitioner applies for an order on the Postmaster-General to produce the original of a telegram alleged to have been sent by one D. J. Wijeyeratne to the Government Agent, Western Province, on

December 11, 1944. The present application is an incidental step in the proceedings instituted by the petitioner against the Government Agent, Western Province, and another praying for a writ of *Mandamus* or in the alternative for a writ of *certiorari* under section 42 of the Courts Ordinance.

The petitioner's Counsel was unable to cite any statutory provision other than section 67 of the Criminal Procedure Code which empowers this Court to make an order in respect of a telegram in the custody of the Telegraph Authorities. That section refers to proceedings under the Criminal Procedure Code and is inapplicable to the present proceedings. The Petitioner's Counsel invited me to grant the application "in the exercise of the inherent powers of this Court". It is a sound legal principle that a decision given in the exercise of such powers should not be inconsistent with the express intention of the Legislature. Now Rule 171 of the Ceylon Telegraph Rules made under section 5 of the Telegraph Ordinance (*vide* Subsidiary Legislature of Ceylon, Volume 2, page 386) provides that "the originals or copies of telegrams shall not be shown, or the contents communicated, to any person other than the sender or the addressee after proof of identity, or the authorised representative of either of them". Effect has to be given to that rule except in those cases where its operation has been limited by some other provision of the law. It has to be noted that the English cases, *e.g.*, *Tomline v. Tyler*¹ with regard to the production of telegrams are not of assistance in deciding the present question as section 23 of the Telegraph Act, 1869 (32 and 33 Victoria c73), places officers of the Post Office under the same obligation as any other person to produce "in any Court of Law when duly required so to do any written or printed message or communication".

For the reasons given above, I refuse the application.

Application refused.
