1963   *Present :* Sri Skanda Rajah, J.

S. S. M. K. MANSOOR, Petitioner, *and* THE MINISTER OF DEFENCE
    AND EXTERNAL AFFAIRS and another, Respondents

*S. C. 349 of 1962—Application for the issue of a Mandate in the nature of a
Writ of Certiorari and for the issue of a Mandate in the nature of a Writ of
Mandamus under Section 42 of the Courts Ordinance*

Certiorari—*Mandamus—Affidavits submitted by the Crown—Cross-examination of the
deponent—Permissibility—Citizenship Act, s. 12 (4).*

A person who has sworn an affidavit on the Crown side in proceedings for a
prerogative writ under section 42 of the Courts Ordinance may in very special
circumstances be allowed to be cross-examined on the affidavit.

The petitioner's allegation in the present application for writs of *certiorari*
and *mandamus* was that the Minister of Defence and External Affairs did not
exercise the powers granted to her by section 12 (4) of the Citizenship Act and
that certain affidavits tendered on behalf of the respondents contained false
averments stating that the deponent had sent the relevant papers to the Minister.
There was no affidavit from the Minister.

Held, that in view of the remarkable character of the case the deponent
should be tendered for cross-examination on his affidavits.

APPLICATION for the issue of writs of *Certiorari* and *Mandamus*
on the Minister of Defence and External Affairs and on the Permanent
Secretary to the Ministry of Defence and External Affairs.

M. Tiruchelvam, Q.C., with *V. Kumaraswamy,* in support.

H. Deheragoda, Crown Counsel, for the 1st and 2nd Respondents.

January 29, 1963. SRI SKANDA RAJAH, J.—

In this matter the learned counsel for the petitioner asks that Mr. K. T.
Perera who has sworn certain affidavits be tendered for cross-examination
on the affidavits. He alleges that his instructions are that these affidavits
contain false averments and that the averment that he sent the papers to
the Prime Minister is not true.

According to English practice, very seldom a person who has sworn an affidavit in writ proceedings is allowed to be cross-examined on the affidavit. In the case of *Regina v. Stokesley, Yorkshire Justices, Ex parte Bartram* Chief Justice Goddard said : " This is probably the first case in recent history in which application has been made in Crown proceedings for leave to cross-examine on affidavits. Leave has never been given, or at least not for a great number of years. In *Rex v. Kent Justices, Ex parte Smith*, Hewart C.J. sitting with Avory and Shearman JJ. said, ' For something like fifty or sixty years no order had been made on the Crown side for the cross-examination of a deponent. It was enough to add that such an order was not likely to be made except in very special circumstances, and that no such special circumstance had been shown in the present case '." (The Weekly Law Reports Vol. 1—1956—page 254 at 257). Lord Goddard allowed leave to cross-examine and at the conclusion of the judgment he said at page 258 : " We allowed cross-examination in this case because this is a case of a remarkable character ". In my opinion the present case is also of a remarkable character for the reason that in this application it has been alleged that the papers never went to the Minister concerned, namely, the Minister of Defence and External Affairs. There is no affidavit from the Minister. I consider this an extraordinary circumstance and allow the application for cross-examination of Mr. K. T. Perera on the affidavit.

[The following order was made on the same day in respect of a similar application (S. C. No. 426 of 1962) :—]

January 29, 1963. Sri Skanda Rajah, J.—

In this case too as in application No. 349 of 1962 which I have just disposed of the petitioner's allegation is that the Minister has not exercised the powers granted to her by Section 12 (4) of the Citizenship Act and that the averments in Mr. K. T. Perera's affidavit are not true. So I make the same order as in that application. That is to say, Mr. K. T. Perera will be cross-examined on his affidavit.

Application for cross-examination on the affidavits allowed.