1952 *Present :* **Gratiaen J., Gunasekara J. and Pulle J.**

R. A. DE MEL *et al.*, Petitioners, *and* HANIFFA, Respondent

S. C. 336—Application for revision in M. C. Colombo (Joint), 39,795

Criminal procedure—Summons to produce documents—Non-compellability of an accused person to produce any document in his possession—Applicability of English law—Evidence Ordinance, ss. 100, 120 (6)—Criminal Procedure Code, ss. 6, 66, 68 (1), 282, 429.

An accused person cannot be compelled under section 66 of the Criminal Procedure Code to produce, during the pendency of criminal proceedings which have been instituted against him under Chapter 15 of the Code, any documents in his possession which may provide evidence against him.

APPLICATION to revise an order of the Magistrate's Court, Colombo (Joint).

H. V. Perera, Q.C., with *D. S. Jayawickreme* and *C. D. S. Wijeratne*, for the accused petitioners.

Colvin R. de Silva, with *G. E. Chitty, Izadeen Mohamed* and *A. S. Vanigasooriyar, for the complainant respondent.*

H. A. Wijemanne, Crown Counsel, as *amicus curiae.*

Cur. adv. vult.

April 24, 1952 GRATIAEN J.—

On 23rd April, 1951, in the Joint Magistrate's Court of Colombo, the complainant instituted criminal proceedings against the 1st accused, the 2nd accused (who is the wife of the 1st accused) and the 3rd accused charging them with having during the month of May, 1947, committed offences of conspiracy, cheating and abetment. The gist of his complaint was that the 1st accused, aided and abetted by the others, had by means of certain false representations induced him to accept the New Landing and Shipping Company Ltd. (an allegedly worthless corporation) as his debtor in place of the 1st accused.

After the complainant had been examined on oath in terms of section 150 of the Code, the Magistrate ordered process against all three accused. On 23rd May, 1951, they appeared in Court and, as the offences were not triable summarily by a Magistrate, a preliminary inquiry under Chapter 16 duly commenced on that day. The proceedings were then adjourned until 19th June, 1951.

On 31st May, 1951, in preparation for the inquiry fixed for 19th June, the complainant moved for summonses on 42 witnesses. The list of witnesses included the name of the 1st accused although he was admittedly not a compellable witness for the prosecution.

On 9th June, 1951, the complainant filed a further motion which is in the following terms:—

" With reference to my application for summons on the 1st accused (witness No. 7 in the list dated 31.5.1951) to produce certain documents in his custody, I move *under section 66 of the Criminal Procedure*

Code for a summons on the 1st accused to produce the documents enumerated (1) to (7) in the said list and also the under-mentioned documents *for inspection by the complainant on a date to be fixed by Court prior to the date of trial.*

Colombo, 9th June, 1951.

Sgd/D. HEWAGAMA.
Proctor for complainant."

(The additional documents referred to were then enumerated. They include all the 1st accused's private cheque counterfoils covering a period of 8 years; and the books and cheque counterfoils of the Company, both before and after its incorporation, for the years 1943 to 1951.)

This application, unsupported by evidence even in the form of an affidavit, was submitted to the Magistrate in Chambers who allowed it *ex parte*, and, without qualification, as far as I can judge, quite perfunctorily. A similar application ordering the 3rd accused to produce certain documents which were the property of the New Landing and Shipping Company Limited "for inspection by the complainant on a date to be fixed by Court prior to 19th June" was also allowed.

On 19th June, 1951, the Magistrate refused an *inter partes* application made before him on behalf of the 1st and 3rd accused that the earlier orders for the production by them of the documents concerned should be vacated. We have now been invited, in the exercise of our revisionary jurisdiction, to quash these orders on the ground that a Magistrate has no power under section 66 to compel an accused person to produce any document either as evidence against himself or even with a view to its possible production in evidence (after prior inspection by the complainant) by some competent witness for the prosecution in the pending criminal proceedings.

This is apparently the first occasion on which this important question has been raised in our Courts, and we are indebted to learned Counsel for the assistance which they have given us and which the occasion certainly requires.

There can be no doubt, and Dr. Colvin R. de Silva has very properly conceded, that if the law of Ceylon on this subject is the same as the English Law, the orders purporting to have been made by the learned Magistrate under section 66 of the Code were made without jurisdiction. In both countries, an accused person is not a compellable witness against himself and, at any rate in England, *on the same analogy*, he cannot (subject apparently to certain exceptions which are immaterial in the present context) "be compelled or even legally required to produce any evidence which may operate against himself". *R. v. Worsenham* [1]; *Aickles case* [2]; *R. v. Elworthy* [3]; *and Trust Houses Ltd. v. Postlewaite* [4]. If, according to this principle, the prosecution desires to prove the contents of a particular document which is in the prisoner's custody, the only procedure available to the complainant, *provided that he already has satisfactory secondary evidence to prove that document*, is to give the prisoner *notice to produce* the original. Should such notice be not complied with,

[1] *1 Ld. Raym. 705 (91 E. R. 1370).*
[2] *1 Leach C. C. 291.*
[3] *(1867) 10 Cox C. C. 579.*
[4] *(1944) 198 L. T. Jo. 182.*

secondary evidence of the contents of the document would become admissible as evidence against the prisoner. *Stone's Justice Manual (82nd Edition) Vol. 1, page 298.* It was held in *Trust Houses Limited v. Postlethwaite* (supra) that " the Court may suggest that the production of the original document is desirable, but the defendant cannot be compelled to produce it, and thus provide evidence against himself ". In other words, it is the element of compulsion, coupled with the sanctions attaching to it, which violates the English rule.

As I have previously stated, an accused person in Ceylon stands in the same position as an accused person in England with regard to his *non-compellability as a witness against himself.* Whether this rule be implicit in the provisions of section 120 (6) of the Evidence Ordinance which makes him competent only to give evidence *on his own behalf,* or whether the doctrine can be traced to the residual provisions of section 100 introducing the English rules of evidence in regard to questions not provided for in any written law in the Island, is now of only academic interest. For the principle is long established and has become a fundamental feature of our system of criminal justice. It controls the meaning of section 429 of the Criminal Procedure Code which, though containing words of the utmost generality, does not authorise a Judge or a Magistrate to compel a prisoner to enter the witness-box for examination even by the Court. *Simon Appuhamy v. Rawal Appu* [1]; *Martinus v. Dole* [2]. Indeed, the rule places the same limitation on a Magistrate who, under section 392 (2), is sometimes required to combine the incongruous functions of prosecutor and Judge in the same non-summary proceedings.

So much has been conceded on behalf of the complainant. Dr. de Silva submits, however, that section 66 of the Criminal Procedure Code introduces a deliberate departure from the English rules to the extent that it empowers any Court of criminal jurisdiction to direct an accused person, on pain of exposure to other legal sanctions, to produce (though not as a witness) an incriminating document which, upon its compulsory production, could be admitted in evidence to prove his guilt through a witness other than himself.

Dr. de Silva invited us to examine this proposition solely by consideration of the words of section 66, and without any predilection for the assumed wisdom of the English rules of evidence and criminal procedure. I certainly agree that we must approach our task judicially and not as legislators, and that we cannot with propriety apply any legal principle adopted in another country unless we be satisfied that it also forms part of the law of Ceylon. I also agree that we must resist any temptation to " usurp the legislative function under the thin guise of interpretation ". *Per* Lord Simonds in *Magor and St. Mellons v. Newport Corp* [3].

The common law rule of England that a prisoner on trial cannot be compelled *either to give or to provide evidence against himself* is regarded by the English Courts as fundamental to the " accusatorial " (as opposed to the " inquisitorial ") system of criminal procedure. It is very relevant, therefore, to remind ourselves that our Code of Criminal Procedure,

[1] *(1904) 1 Bal. Rep. 44.* [2] *(1943) 44 N. L. R. 215.*
[3] *(1951) 2 A. E. R. 839.*

and the earlier Code which it has superseded, were both designed to regulate the process of bringing offenders to justice in accordance with the "accusatorial system" which, by the will of succeeding Legislatures, has taken firm root in this country. Indeed, it has long since become part of our heritage. Although, therefore, the problem now before us is purely a problem of interpretation, a Court should not lightly assume that, within the framework of a Code of Criminal Procedure which substantially incorporates the principles of the accusatorial system, certain general words in a particular section were intended by the Legislature to withdraw from accused persons a special protection which so fundamentally distinguishes that system from other systems of criminal jurisprudence.

Section 66 of the Code is in the following terms:—

> "(1) Whenever *any Court* considers that the production of *any document or other* thing is necessary or desirable for the purposes of any proceeding under this Code by or before such Court, it may issue a summons to *the person in whose possession or power such document or thing is believed to be*, requiring him to attend and produce it or to produce it at the time and place stated in the summons.
>
> (2) *Any person* required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.
>
> (3) Nothing in this section shall be deemed to affect the provisions of sections 123 and 130 of the Evidence Ordinance, or to apply to any book, letter, post card, telegram, or other document in the custody of the Postal or Telegraph authorities".

I agree that *prima facie* the words "*any* document or thing which is necessary or desirable for the purposes of *any* proceeding under the Code" appearing in sub-section (1) and the words "*any* person" in sub-section (2) would by themselves be wide enough to catch up even a person who stands in the very special position of a man against whom criminal proceedings have been instituted and are still pending. On the other hand, the true meaning of the section cannot be extracted if we are prepared to ignore certain recognised canons of interpretation which require that some limitation must sometimes, and in an appropriate context, be placed on the literal meaning of general words appearing in a statute.

In *Minet v. Leman* [1] Sir John Romilly M.R. laid down as a principle of construction applicable to all statutes that "the general words of an Act are not to be construed so as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of leaving the existing policy untouched"; see also *Seward v. The Vera Cruz* [2]. Similarly, "it is in the last degree improbable that the Legislature would overthrow fundamental principles, infringe rights or depart from the general system of law without expressing its intention to do so with irresistible clearness". *Maxwell's Interpretation of Statutes (9th edition) page 85.* Maxwell proceeds to point out in the

[1] *20 Beav. 269 (52 E. R. 606).* [2] *(1884) App. Cases 59.*

same page that " there are certain objects which the Legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. It is not infrequently necessary, therefore, to limit the effect of the words contained in an enactment (especially general words) and sometimes to depart, not only from their primary and literal meaning, but also from the rules of grammatical construction *in cases where it is highly improbable that the words in their wide primary or grammatical meaning actually express the real intention of the Legislature* ".

It is pertinent, I think, to examine the earlier history of the rules of evidence and of procedure applicable to criminal cases in this country. The preamble to Ordinance No. 6 of 1834 (which was later repealed) recites that since the Proclamation of 23rd September, 1799, the English rules of evidence " have been gradually introduced and are generally adhered to within this Island although not expressly established by positive enactment ". Section 1 accordingly declared that these rules " shall continue to be the law of Ceylon in civil and criminal cases except when altered or modified by express enactment ". Thereafter, Ordinance No. 3 of 1846 repealed the earlier Ordinance and made " better provision for the application of the English rules of evidence to the Colony ". Again, Ordinance No. 9 of 1852 introduced certain amendments to the rules of evidence, and section 4 expressly enacted that, in accordance with the law then obtaining in England, " no accused person shall be competent or compelled to give evidence *for or against* himself ". Finally, the present Evidence Ordinance (Chapter 11) came into operation in 1895. Section 120 (6) removed for the first time the disability which prevented an accused person from giving evidence on his own behalf, but the rule against his compellability as a witness against himself was not relaxed. The Evidence Ordinance now embraces the rules of evidence applicable in this country in civil as well as criminal proceedings, and section 100 provides that " the English Law of Evidence for the time being " shall determine any question " not provided for ".

I now turn to the local enactments which are specially concerned with the rules of criminal procedure. Ordinance No. 3 of 1883 was introduced " for *regulating* the procedure of the Courts of Criminal Judicature ". Section 69 made provision for compelling the production of *any* document " for the purpose of any investigation, inquiry or other proceeding by or before any Court ", but this section was expressly made subject, *inter alia*, to the provisions of Ordinance 9 of 1852 to which I have previously referred. In due course the Ordinance of 1883 was superseded by the Criminal Procedure Code of 1898 (Chapter 16) which, subject to certain amendments, is still in force. Ordinance No. 9 of 1852 had by this time been repealed, and its provisions could not therefore control, even if the Legislature so desired, the scope of section 66 (which substantially corresponds to the earlier section 69). Instead, these new provisions are expressly made subject *inter alia* to sections 123 and 130 of the Evidence Ordinance, and, which is even more important, section 6 of the Code provides that " as regards matters of criminal procedure for which no *special provision* may have been made by this Code or by any other law for the time being in force in the Island, the law relating to criminal procedure for the time being in force in England shall be

applied, so far as the same shall not conflict or be inconsistent with this Code and can be made auxiliary thereto ".

This then is the background in which the present problem, as I see it, must be examined. I am perfectly satisfied that, at some stage or other, the special English rule which protects " an accused person "—*in the sense in which that phrase describes a person against whom criminal proceedings have actually been instituted and are pending in a court of criminal judicature*—from compulsion to produce from his custody a document whose contents are likely to provide evidence of his guilt, had become a part of our law. It is just as much a rule of evidence as it is a rule of procedure, and it is an essential feature of the system of criminal justice which was gradually assimilated in our Courts and was later adopted by succeeding Legislatures over a period exceeding 150 years. Can one then conceive that, by the use of certain general words in a section appearing in *an enactment passed merely to regulate criminal procedure*, the Legislature had designedly discarded a " principle so fundamental and so long established " ? (*per* Lord Darling in construing section 9 of the Evidence Ordinance in *Eliyathamby v. Eliyathamby et al* [1]). I do not think so, and in my opinion it is not legitimate to draw such an inference unless it be impossible to give those general words a meaning which is " consistent with the intention of leaving the existing policy of the law unaltered ".

The section of the Code which specially deals with the compulsory attendance of witnesses and with the compulsory production of witnesses at a criminal trial or inquiry before a Magistrate is not section 66 but section 282. The general words of section 66 are, in any view of the matter, of wider import. They apply to all Courts of criminal jurisdiction, and, as far as a Magistrate's Court is concerned, it is evident from the provisions of section 124 that section 66 may, apart from its other functions, be applied at a stage *prior* to the institution of criminal proceedings under Chapter 15 of the Code—namely, when police officers are concerned in the investigation (under Chapter 12) of cognizable offences or (with a Magistrate's sanction) of non-cognizable offences.

To my mind, it is implicit in the scheme of the Criminal Procedure Code that here, as in England, once proceedings have been initiated against an accused person, he is placed in a special category separating him and others in a like situation from the generality of mankind until the verdict has been pronounced. The precarious position in which he stands entitles him at the same time to protection in certain respects, and this is the basis of the *special rule* whereby he cannot be compelled or legally required to contribute to the proof of his alleged guilt by giving or providing, even indirectly, evidence against himself. In the background of our legal system, I conclude that this protection would not be withdrawn by the Legislature except in clear and explicit language. The general words of section 66, taken by themselves, do not afford irresistible evidence of a deliberate legislative decision to discard a principle which is so fundamental and of such long duration. In the result, section 6 of the Code keeps alive this special rule and protects it from the impact of section 66.

[1] *(1925) 27 N. L. R. 396 (P. C.).*

There is yet another canon of interpretation which justifies the view I have taken. " One of the safest guides to the construction of sweeping general words which would be difficult to apply in their full literal sense is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them ". *Maxwell page 31; Blackwood v. R* [1]. This Court has previously decided that the term " any person " in section 429 must be so construed as to exclude an " accused person ". Dr. de Silva has also conceded, and rightly in my opinion, that section 282 does not apply to an accused or to any documents in his custody. These circumstances form a strong argument for subjecting the general words of section 66 to a like limitation and qualification.

As against this argument, we were referred to *Rex v. Suppiah* [2], where Lyall-Grant J. held, following a decision of the Indian Courts, that an accused person is included within the general words " any person " in section 73 of the Evidence Ordinance, and may therefore be ordered to submit to his finger impressions being taken in Court for the purposes of his trial. It is significant, however, that the *ratio decidendi of Suppiah's case* was that " the Court was *not in effect compelling the accused to provide evidence against himself*, since what really constituted the evidence, viz., the ridges of his thumb, are not provided by him any more than the features of his countenance." This line of reasoning seems to indicate that Lyall-Grant J. recognised the sanctity of the rule which, in Mr. H. V. Perera's submission, limits the scope of section 66 of the Criminal Procedure Code.

We have been informed of the purpose underlying the complainant's application under section 66. He does not claim personal knowledge as to the contents of the documents which he requires to be produced by the 1st and 3rd accused, and he is admittedly not in a position at present to place before the Court any secondary evidence regarding them as part of his case. A mere notice to produce the documents under section 66 of the Evidence Ordinance, in conformity with the corresponding English practice, would therefore be profitless to him. He apparently *believes*, however, that if these documents are produced under compulsion for his inspection, there is a " strong probability " (so Dr. de Silva has been instructed to state) that at least some additional evidence will come to light to strengthen his case against the accused. I am convinced that this kind of exploratory inquisition was not contemplated by the Legislature which enacted section 66—and it is certainly not the proper function of a private prosecutor. The complainant is not vested with statutory power to investigate the alleged commission of offences either before or after the institution of criminal proceedings. Indeed, the particular offences with which the accused now stand charged are of a kind which even a police officer or " inquirer " is not empowered to investigate except on the authority of a Magistrate under section 129.

Dr. de Silva has pointed out that there are instances in which this Court has recognised the propriety of issuing search warrants under section 68 (1) of the Code during the pendency of criminal trials or warrants.

[1] *(1882) 52 L. J. P. C. 10.* [2] *(1931) 11 Law Rec. 31.*

Section 68 (1) is in the following terms:

"(1) (*a*) Where any court has reason to believe that a person to whom a summons under section 66 or a requisition under section 67 has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition; or

(*b*) where such document or other thing is not known to the court to be in the possession of any person; or

(*c*) *where the court considers that the purposes of any proceeding under this Code will be served by a general search or inspection*, it may issue a search warrant in the prescribed form and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained."

Dr. de Silva's submission, as I understood it, was that sub-section (*a*) contemplates the issue of a search warrant as an alternative procedure to the issue of a "summons to produce" under section 66; so that if a search warrant may, in appropriate circumstances, be issued to the possible detriment of an accused person, the Legislature must necessarily have considered the issue of a summons under section 66, so as to achieve the same object, to be equally legitimate. He relied on *in re Abdul Latiff* [1] and *N. R. M. Chettiar v. Darley Butler and Co.*[2], and it is necessary to examine each of these decisions in order to consider whether they assist us to solve the present problem.

In *Latiff's case*, the complainant had instituted proceedings against his partner for criminal breach of trust in respect of certain partnership assets, and pending the inquiry, he obtained a search warrant to secure the production and inspection of all the books of the partnership business. Wood Renton C.J. held, Sampayo J. concurring, that "under the third paragraph of section 68 (1)—i.e., sub-section (*c*)—the Magistrate had full power to order a general search for and inspection of all the books of the partnership if he considered the adoption of that course necessary for the purpose of these proceedings." *The Court expressly refrained, however, from deciding whether exception could successfully be taken on behalf of the accused at the trial as to the admissibility in evidence against him of the books covered by the search warrant.* In the result it is not possible to regard this authority as a precedent in this case. Wood Renton C.J. did not decide or even imply that either section 66 or section 68 (1) (*a*) had any application to the facts under consideration by him. Moreover, the possible availability of the rule against an accused person of evidence procured by this means was recognised but not adjudicated upon. Finally, the documents in respect of which the warrant issued were property in which the complainant, *qua* partner, enjoyed equal rights of ownership.

In *N. R. M. Chettiar v. Darley Butler & Co.* (supra), two connected proceedings were brought up in revision. In the first case, a person who had not yet instituted criminal proceedings against another on a contemplated charge of cheating had obtained a search warrant in respect of certain bags of rice which were alleged to have formed the subject

[1] *(1917) 19 N. L. R. 346.* [2] *(1932) 34 N. L. R. 41.*

matter of the offence. In quashing the Magistrate's order for the issue of a search warrant, Akbar J. was content to say that, on the material placed before the Magistrate, the order was illegal. In the connected case, the respondent had charged the petitioner with criminal breach of trust in respect of 1,282 bags of rice (*allegedly the property of the respondent*) which he had entrusted to the petitioner as a bailee. The Magistrate allowed the respondent's application for a general search warrant for the discovery of the rice. Akbar J. held, following *Latiff's case* and certain Indian authorities, that " a Magistrate had wide powers to issue a search warrant for the purpose of the investigation of an offence which has been disclosed by legal evidence on record ", but he commented adversely on the fact that the warrant had been obtained upon hearsay evidence. He decided, however, to make an equitable order in the interests of both parties to the pending criminal proceedings. Here again, I derive little assistance from *N. R. M. Chettiar v. Darley Butler & Co.* in the context of the present case. We are not concerned in these proceedings with the legality or otherwise of a general search warrant issued for the discovery of goods in which the complainant claimed rights of ownership.

I do not propose to indulge in the luxury of an *obiter dictum* as to the proper scope of section 68 (1) (*c*) of the Code. The only observation which is relevant to the question now before us is that its provisions cannot be construed as *ejusdem generis* with cases falling within the ambit of section 68 (1) (*a*). We have not been referred to any local decisions affecting the scope of section 68 (1) (*a*).

Dr. de Silva suggested at one stage of his argument that, as the 3rd accused was the Secretary of the New Landing and Shipping Company, Ltd., the order served on him under section 66 was in effect an order on the Company, which was not a party to the pending criminal proceedings. He therefore argued that the application against the 3rd accused was in any event not complicated by the principle affecting the 1st accused. It is sufficient, in rejecting this argument, to point out that the correct procedure for issuing process on a limited liability Company (as distinct from one of its servants) had clearly not been resorted to by the complainant. I express no opinion at this stage as to whether, in the facts of this case, a summons under section 66 would have been available against the Company. There is a passage in *Roscoe's Criminal Evidence (15th Ed.) p. 202*, which indicates that " inspection of corporation books is not granted in criminal cases *where it would have the effect of making the defendant furnish evidence to criminate himself* ", but I have not had the opportunity of examining the authorities cited in the text book.

I have reserved for the concluding stage of this judgment my consideration of certain decisions of the Indian High Courts on which Dr. de Silva has placed great reliance. Section 94 of the Indian Criminal Procedure Code, although of wider application, includes provisions similar to those caught up by section 66 of our enactment. Section 94 has been construed by the Judges in India as having departed intentionally from the English rules which refuse to compel an accused person to produce documents which may provide evidence against him in criminal proceedings. These authorities, though not binding on us, are certainly

entitled to great respect, but it is important to bear in mind that the Indian Code, with which I am not very familiar, does not contain any provision similar to section 6 of our enactment sanctioning the application of the English rules in matters " not specially provided for ". In *Jackariah v. Mohamed* [1]. Ghose J.'s judgment was largely influenced by the fact that the Indian Legislature had in certain respects " designedly introduced important differences " to the principles which are fundamental to the English system of criminal justice. He pointed out that the Legislative Council of India, in spite of Mr. Fitzjames Stephen's opposition to the introduction of provisions such as section 94 in the Criminal Procedure Bill of 1872, preferred to adopt the contrary view expressed during the debate by the Lieutenant Governor who " did not see why they should not get a man to criminate himself if they could ; why they should not do all which they could to get the truth from him ; and why they should not cross-question him and adopt *every means short of absolute torture* to get at the truth. " It is not surprising that in this background the distinguished Judges of the Indian Courts who interpreted section 94 decided that their Legislature had intentionally adopted a policy differing fundamentally from the principles of the English system ; and that " a section which was framed in the widest terms was wide enough to cover the right to serve a summons on a person accused in a case to produce a document. " *Satva Kumikar v. Nikhil Chandra* [2]. In Ceylon, by way of contrast, the provisions of section 6 of our Code and of section 100 of our Evidence Ordinance, and also the earlier Ordinances to which I have referred, strongly indicate a consistent legislative policy to adopt the essential features of the English system. For this reason, the proper approach to the problem of interpretation before us is necessarily different.

It is not desirable to attempt a pronouncement as to the scope and effect of section 66 of the Criminal Procedure Code in all its implications. I am satisfied, however, that it cannot operate against an accused person during the pendency of criminal proceedings which have been instituted against him under Chapter 15 of the Code. The orders requiring the 1st and 3rd accused to produce in Court, and for the complainant's inspection, the documents alleged to be in their possession or power were therefore made without jurisdiction and should be quashed.

I desire only to add that even in a case where section 66 does apply, a Magistrate should exercise his judicial discretion in the matter cautiously and only upon proper material, so as not to cause more hardship than the necessities of the case require. A Magistrate who is invited to make an order under section 66 in a case to which this Section applies would do well to remind himself of the elementary safeguards indicated in the judgment of Akbar J. in *N. R. M. Chettiar v. Darley Butler* (supra) and *mutatis mutandis* of Beaumont C.J. in *Hussenboy v. Vershi* [3].

GUNASEKARA J.—I agree.

PULLE J.—

In the ultimate analysis the argument on behalf of the respondent is based on the very general words of section 66 (1) of the Criminal Procedure

[1] *(1887) I. L. R. 15 Cal. 109.*
[2] *(1951) 52 Cr. L. J. of India 946 F. B.*
[3] *A. I. R. (1941) Bombay 259 F. B.*

Code and the interpretation placed on a similar provision in the Criminal Procedure Code of India by the courts of that country. The decisions of the Indian Courts are indeed of high persuasive value but, with great respect, they do not, in my opinion, compel us to interpret section 66 (1) without regard to the fundamental principles of English law affecting accused persons on which our Code of Criminal Procedure has been gradually built up.

I am convinced by the argument of Dr. Colvin R. de Silva that if, applying the recognized canons of interpretation one has no alternative but to interpret the word " person " in section 66 (1) to exclude an accused person, there is no scope for the application of section 6. The English law of Criminal Procedure can be invoked to supplement but not to override the Code. If, as a matter of interpretation, one does come to the conclusion that a person facing a trial or inquiry is not brought within the ambit of section 66 (1), then recourse to section 6 is needless. However, the presence of section 6 confirms what is otherwise apparent on a study of the historical development of the present Code that we had assimilated the cardinal principles of English criminal procedure. If our Code can be regarded as an organic unit, section 6 ordains that it shall grow with the life of the English law, presupposing, therefore, that it had already imparted its essential features to the growing organism of our law.

The argument on behalf of the respondent in effect means that under threat of sanctions a person who has appeared and pleaded to a charge is bound to furnish to his adversary instruments which may be used for his own destruction. Such an argument runs counter to the spirit of provisions both in the Code and in the Evidence Ordinance designed to place an accused person in a privileged position. When the petitioners were informed of the charges against them under section 156 they were told that if they replied that would not be recorded by the Magistrate. Is it consonant with the spirit of this section that they should next be summoned to produce documents intended to be used against them? The law keeps constantly stressing that incriminating statements alleged to have been made by an accused either to a Magistrate or other person in authority should first be proved by the prosecution to have been voluntarily made before being admitted as evidence. *Vide* section 134 of the Criminal Procedure Code and section 24 of the Evidence Ordinance. When he is in the dock his freedom to give evidence or not to give is inviolable and for that purpose the general words of section 429 of the Code have been given a restricted scope.

If a confession, be it oral or be it documentary, is shut out by section 24 of the Evidence Ordinance if the making of it has been induced by threat, is it proper to compel an accused person facing a trial or inquiry to hand over incriminating documents in his possession, some of which may contain statements of a confessional character, to have them proved against him?

In my opinion an interpretation of section 66 (1) leading to the results I have mentioned ought to be avoided.

I concur in the proposed order.

Application allowed.