1957 *Present :* Sansoni, J.

D. A. SAMARANAYAKE, Petitioner, *and* V. GRENIER *et al.*, Respondents

S. C. 462—Application for a Writ of Certiorari

Bribery Act No. 11 of 1954—Sections 5 and 10— "Arraignment"—Criminal Procedure Code, s. 219.

The word " arraignment " is not a synonym for " indictment ".

The petitioner who was convicted by a Board of Inquiry appointed under the Bribery Act alleged that the Board of Inquiry acted without jurisdiction in holding its inquiry. The allegation was based on the plea that the Attorney-General had not signed the arraignment as required by section 5 of the Bribery Act. In support of this plea there was produced a document entitled Arraignment before a Board of Inquiry and signed by a Crown Counsel for the Attorney-General. The document was nothing more than the concise statement of the particulars of the charge laid against the accused. In an affidavit of the Crown Counsel who had signed the statement it was declared (1) that the Attorney-General was satisfied on the material available to him that there was a prima facie case of bribery made out against the petitioner, and decided to

arraign him before a Board of Inquiry on the charges contained in the concise statement, (2) that the statement was signed by Crown Counsel at the instance and on the directions of the Attorney-General.

Held, that the affidavit established that the Attorney-General himself arraigned the petitioner.

APPLICATION for a writ of *certiorari*.

K. Kamalanathan, with *V. K. Palasuntheram*, for the petitioner.

D. St. C. B. Jansze, Q.C., Solicitor-General, with *V. S. A. Pullenayegum*, Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

February 28, 1957. SANSONI, J.—

The petitioner has applied to this Court for a Writ of Certiorari to have the order of a Board of Inquiry appointed under the Bribery Act No. 11 of 1954 quashed. By that order the Board found the petitioner, who was a Police Constable, guilty of the offence of bribery. The ground of the present application is that the Board of Inquiry acted without jurisdiction in holding its inquiry.

Under section 5 of the Act the Attorney-General has the power, if he is satisfied that there is a prima facie case of bribery and the offender is a public servant, to arraign the offender before a Board of Inquiry. Under section 10 the offender is entitled to be furnished with a concise statement of the particulars of the charge.

The allegation that the Board of Inquiry acted without jurisdiction is based on the petitioner's plea that the Attorney-General has not signed the arraignment, and in support of that plea there has been annexed to the petition a copy of a document entitled Arraignment before a Board of Inquiry. I think this plea arises from a misapprehension as to what an arraignment is. Wharton's Law Lexicon defines the word "arraign" as follows:—"to bring a prisoner to the bar of the Court to answer the matter charged upon him in the indictment. The arraignment of a prisoner consists of three parts, (1) calling him to the bar, and by holding up his hand or otherwise, making it appear that he is the party indicted. Holding up the hand is a mere ceremony, and is frequently dispensed with, it only being necessary for the prisoner to admit that he is the person indicted. (2) reading the indictment to him distinctly in English, that he may fully understand the charge. (3) demanding whether he is guilty or not guilty, and entering his plea, and then demanding how he will be tried, the common answer to which is, "By God and my country". The Criminal Procedure Code in section 219 refers to the arraignment of an accused in a trial before the Supreme Court and the draftsman of that section seems to have had in mind this definition of the word "arraignment", for the section reads:—

> "When the court is ready to commence the trial the accused shall appear or be brought before it and the indictment shall be read and explained to him and he shall be asked whether he is guilty or not guilty of the offence charged".

The petitioner's Counsel referred me to Stroud's Judicial Dictionary, but there again the word "arraign" is defined as " to put a thing in order or in its place ; as a prisoner is said to be arraigned when he is indicted and put to his trial ". The procedure is described there also as the appearance of the accused and his pleading to the indictment or other record. I think it is a misuse of language to treat the word " arraignment " as a synonym for " indictment ".

The entire proceeding takes place in three stages. The machinery should, in my view, be set in motion by the Attorney-General himself, but I do not consider it necessary that the Attorney-General should personally appear and take part at each of these three stages.

The document referred to and relied on in the petition as an arraignment, and which has been signed by a Crown Counsel for the Attorney-General, is nothing more than the concise statement of the particulars of the charge mentioned in section 10. That section does not require such a statement to be signed by the Attorney-General. I have been referred to my judgment in *Attorney-General v. William* [1]. In that case my brother de Silva and I held that an indictment signed by a Crown Counsel did not satisfy the requirements of sections 5 (*a*) and 8 which require the Attorney-General himself to indict a person for bribery in the case of a prosecution in any Court. The petitioner's Counsel used this judgment to support his argument that the concise statement of the particulars of the charge should have been signed by the Attorney-General himself. In view of what I conceive to be the true meaning of the word " arraign " which, I repeat, does not mean indict, the petitioner should have established that the Attorney-General did not arraign him before the Board of Inquiry. He cannot establish this in view of the affidavit of the Crown Counsel who signed the statement of the particulars of the charge. It is stated in that affidavit that the Attorney-General was satisfied on the material available to him that there was a prima facie case of bribery made out against the petitioner, and decided to arraign him before a Board of Inquiry on the charges contained in the concise statement, and that statement was signed by Crown Counsel at the instance and on the directions of the Attorney-General. This affidavit establishes that the Attorney-General himself arraigned the petitioner, and this application must therefore fail.

In view of my finding on this point, it is not necessary for me to consider the other objections urged by the Solicitor-General, namely, the delay of two years between the order of the Board and the filing of the application, and the submission by the petitioner to the jurisdiction of the Board.

The application is dismissed with costs.

Application dismissed.

[1] *(1955) 57 N. L. R. 9.*