1958 *Present :* **Sinnetamby, J.**

P. S. BUS CO., LTD., Petitioner, *and* MEMBERS AND SECRETARY OF CEYLON TRANSPORT BOARD, Respondents

S. C. 695—Application for a Writ of Quo Warranto or in the alternative for a Writ of Certiorari under section 42 of the Courts Ordinance (Cap. 6).

Quo warranto—Certiorari—Discretion of Court as to issue of a prerogative writ—Act of Parliament—Can a Court of law investigate the question whether a statute was duly passed ?—Motor Transport Act, No. 48 of 1957—Ceylon (Constitution) Order-in-Council, 1946, ss. 11 (1) (a), 19, 33, 34, 35, 38—Ceylon Constitution (Special Provisions) Act, No. 35 of 1954.

A prerogative writ is not issued as a matter of course and it is in the discretion of Court to refuse to grant it if the facts and circumstances are such as to warrant a refusal. A writ, for instance, will not issue where it would be vexatious or futile.

In the present application for a Writ of Quo Warranto or, in the alternative, for a Writ of Certiorari, the petitioner sought to challenge the validity of the Motor Transport Act No. 48 of 1957 on the ground that "the House of Representatives which was one of the bodies that passed the said Act was not constituted according to section 11 (1) (*a*) of the Ceylon (Constitution) Order-in-Council, 1946, as amended by the Ceylon Constitution (Special Provisions) Act No. 35 of 1954".

It was contended that inasmuch as one of the members of the House of Representatives had been elected to represent two electoral districts, the House of Representatives consisted of 94 elected members only, instead of 95 members, and was therefore not properly constituted. It was further urged that for this reason all its legislative acts were invalid, void and of no legal effect.

Held, that the absence of any suggestion that the passage of the Motor Transport Act through the House of Representatives was effected by a bare majority of one vote and that if there were 95 members the result would have been different was a circumstance that the Court should take into consideration in exercising its discretion.

Held further, that the Court should also take into consideration the disastrous consequences of granting the writ.

Quaere, whether a Court of law can go behind an Act of Parliament and investigate the question whether it had been duly passed by a majority vote in the House of Representatives.

APPLICATION for a Writ of Quo Warranto or, in the alternative, for a Writ of Certiorari on the Members and Secretary of the Ceylon Transport Board.

E. R. S. R. Coomaraswamy, with *B. A. R. Candappa*, *V. Nalliah* and *Hilmy Mohideen*, for the petitioner.

Cur. adv. vult.

February 6, 1958. SINNETAMBY, J.—

The petitioner in this case is the P. S. Bus Co., Ltd., which has its registered office in Kandy and held a stage carriage permit by virtue of which it was carrying on business as public carriers transporting passengers for hire along certain specified routes. The company owned the buses enumerated in the schedule attached to the petition.

With the object of nationalising the public transport services Parliament enacted Act No. 48 of 1957 by which was created a Board called the Ceylon Transport Board charged with the duty of providing "efficient regular omnibus services in Ceylon". This Act gave wide powers to the Minister of Transport to requisition and take over buses and other property belonging to various companies who were engaged in the business of providing regular omnibus services. The Minister was also authorised to make vesting orders in respect of properties, that had been used or were intended to be used by the holder of a stage carriage permit, vesting such properties in the Ceylon Transport Board. Before such an order could be made, however, the Act required an officer authorised by the Minister, by notice published in the *Government Gazette* and certain newspapers, to declare that the property in question was required by the Ceylon Transport Board. The 8th respondent who was the Secretary of the Ceylon Transport Board, being duly authorised to do so, gave the requisite notice in respect of buses belonging to the petitioner in compliance with the provisions of section 19 (1) of the Act. Respondents 1 to 6 apparently are the members of the Board though this is not quite clear from the averments in the petition. The application to this Court was for a Writ of Quo Warranto or, in the alternative, for a Writ of Certiorari to inquire by what authority or jurisdiction the 8th respondent issued a notice on the petitioner in respect of the buses specified in the schedule and for an order quashing the action of the 8th respondent in so issuing the notice.

It was contended both in the petition and at the hearing that the Motor Transport Act, No. 48 of 1957 (to give the Act its statutory title) was invalid and a nullity for the reason that

> "the House of Representatives which was one of the bodies that passed the said Act was not constituted according to section 11 (1) (*a*) of the Ceylon (Constitution) Order-in-Council, 1946, as amended by the Ceylon Constitution (Special Provisions) Act, No. 35 of 1954."

Act No. 35 of 1954 amended section 11 of the Ceylon (Constitution) Order-in-Council, 1946, and provided that the House of Representatives shall consist of 95 elected members elected by the voters of the electoral districts specified in the Proclamation made under section 43 of the Order-in-Council of 1946 and published in *Gazette* No. 9595 of 30th August, 1946. It would appear that one member, namely the Honourable R. G. Senanayake, had been elected to represent two electoral districts, viz., Kelaniya and Dambadeniya. It was contended that the number of

elected members was thus reduced to 94 and that in consequence the House of Representatives was not properly constituted. It was further urged that for this reason all its legislative acts were invalid, void and of no legal effect.

The first question that immediately arises for consideration is whether a Court of law can go behind an Act of Parliament and investigate the question of whether it had been duly passed. The learned Counsel who appeared for the petitioner was unable to cite one single case in which the prerogative writs were invoked in order to test the validity of an Act passed by the British or any Dominion Parliament. It was conceded—and, indeed, there are decisions of this Court to that effect—that in regard to prerogative writs the Supreme Court follows the practice and procedure obtaining in England. It was contended by learned Counsel that the reason why no applications for a prerogative writ were made in England was because of the sovereignty of the British Parliament and because it was not open to a court of law to question that sovereignty. This was finally established in *Prince's case*[1] and is embodied in the trite but commonplace saying that the British Parliament can do anything except make a man a woman and a woman a man. It is now clearly and firmly established that legislative acts passed by the British Parliament cannot be impeached in Courts of Law. Are the same principles applicable to acts passed by a Dominion Parliament ? In view of my decision to dispose of this application on another ground I shall deal with this question only very briefly.

Unlike the British Parliament the legislative bodies in the various dominions are creatures of Statute. They are bound by the provisions of the Acts or Orders-in-Council by which they were created and they cannot act in contravention of those provisions. This question was actively canvassed in South Africa in the case of *Harris v. Minister of the Interior*[2] which was heard by a Bench of five Judges. In that case it was held that the Parliament of the Union of South Africa was governed by the terms of the South Africa Act of 1909, which was an Act of the Imperial Parliament, creating the Union of South Africa and giving it its Parliment. Under the provisions of sections 35 and 152 of that Act, commonly known as the entrenched provisions, no law, which disqualifies persons on the ground of race or colour only from enjoying franchise rights, shall be valid unless passed by a two-third majority vote of the total membership of the Senate and of the House of Assembly in joint session. The Union Parliament by Act No. 46 of 1951, which was passed by a bare majority vote in both Houses sitting separately, imposed certain disqualifications in respect of the franchise on voters who came under the category of "non-Europeans". The Act duly received the Governor-General's assent and was officially enrolled among the Statutes of the Union. A voter, whose rights were affected by the Act, applied to Court for an order declaring the Act invalid, null and void. In the course of the hearing before the Appellate Court it was

[1] *Hood Phillips—Cases on Constitutional Law—page 1.*

[2] *(1952) 2 S. A. L. R. 428.*

submitted on behalf of the Crown that the South African Parliament was a sovereign Parliament and could by an Act passed by a bare majority vote change the rights of voters. It was urged that, after the passing of the Statute of Westminster, the entrenched provisions of the South Africa Act must be regarded as repealed, that the supreme and sovereign law making body in the Union was the Union Parliament, and that the Supreme Court of South Africa had no power to pronounce upon the validity of an Act of Parliament duly promulgated, printed and published by proper authority. The Supreme Court held that the Union Parliament was not sovereign in the sense that it could over-ride the express provisions of the South Africa Act, but that it had unrestricted power to amend that Act provided only that it complied with the requirements of sections 35 and 152. It further held that the Act of 1951 contravened the provisions of these sections and that it was therefore invalid. The learned Counsel for petitioner also referred to the recent case in Pakistan in which certain legislation was declared invalid by the Courts, because the Governor-General's assent had not been given, but as the report of this case is not available I shall not comment on it.

In Ceylon itself in the case of *Kodakanpillai v. Mudanayake*[1] the Supreme Court, and in appeal the Privy Council, considered the validity of certain provisions of the Citizenship Act No. 18 of 1948 and Parliamentary Elections (Amendment) Ordinance No. 48 of 1949 and ruled that they were *intra vires* of the Ceylon legislature.

The Ceylon Parliament like the Parliament of the Union of South Africa cannot be regarded as sovereign in the sense in which the British Parliament is so regarded. The Ceylon Independence Act passed by the British Parliament does not alter the position. This Act provided for the attainment by Ceylon of fully responsible status within the British Commonwealth of Nations. It practically re-enacted certain provisions of the Statute of Westminster, which having been passed in 1931, would apply to the Dominions then in existence like South Africa and would not apply to Ceylon. The Ceylon Independence Order-in-Council passed in 1947 was intended to give effect to the Act. It revoked *inter alia* sections 30, 36 and 37 of the 1946 Order-in-Council which had reserved certain legislative powers in the Queen, but it left unaffected the restrictions imposed by section 29 of the Order-in-Council, 1946. It also gave the British Parliament the power to legislate only at the request and with the consent of Ceylon. It is thus clear that the sovereignty of the Ceylon Parliament is not absolute as in England where any enactment can be passed by a bare majority.

In the present case it is not suggested that Parliament acted in contravention of any of the provisions of the law by which it was created. But it is contended that inasmuch as Parliament was not properly constituted all its deliberations and decisions, which would include the passage of the Motor Transport Act, are of no force or effect. The issue in the case is therefore very different to the issues that arose either in the *Harris* case in South Africa or *Kodakanpillai's* case in Ceylon. Parliament had full authority to legislate and pass by a bare majority

[1] *(1953) 54 N. L. R. 433.*

the enactment referred to as the Motor Transport Act. Once the Act had been passed, received the Royal Assent and had been gazetted the question arises as to whether it is open to any party to attack the validity of the Act on the ground that it had not been duly passed by a majority vote in the House of Representatives—for this in effect is what the contention of the applicant in this case amounts to. In regard to this matter it will be useful to state what the position is in England. It would appear that no English Court would "have jurisdiction to adjudicate upon the procedural steps resulting in the enrolment of a measure as an Act of Parliament." In the case of *Edinburgh & Dalkeith Railways v. Wauchope*[1] the House of Lords refused to declare a private Act invalid on the ground that it had been passed without the giving of notice as required by the Standing Orders of the House. Lord Campbell in the course of his judgment stated :

> " All that a Court of Justice can do is to look at the Parliamentary roll : if from that it should appear that a Bill has passed both Houses and received the Royal Assent no Court of Justice can inquire into the mode in which it was introduced into Parliament, nor into what was done previous to its introduction, or what passed in Parliament during its progress in its various stages through the House. "

If the same considerations apply to Bills passed by the Dominion legislatures it would appear that the validity of such Bills cannot be questioned in the Courts. In dealing with the question whether the enacting clause in a Bill is conclusive evidence of what it states Centlivres, C.J. in the South African case already referred to observed :

> " Had Act 46 of 1951 stated that it had been enacted by the King, the Senate and the House of Assembly in accordance with the requirements of sections 35 and 152 of the South Africa Act, it may be that Courts of law would have been precluded from inquiring whether that statement was correct."

No definite opinion was expressed by the learned Chief Justice who delivered the judgment of the Court, but the suggestion was that it would be conclusive. It is pertinent to note that in regard to sections 33 and 34 of the Order-in-Council (1946) which placed restrictions on the power of the Senate to delay or avoid legislation passed by the House of Representatives a certificate from the Speaker that the Bill is a money bill or, if it is not a money bill, that the provisions of section 34 (1) have been complied with, is declared by section 35 to be conclusive evidence of what is stated in the certificate. No such similar conclusive effect is given to the enacting words of a Bill prescribed by section 38 of the Order-in-Council. The question is a difficult one and is not free from doubt, but it can certainly be stated that the effect of the enacting words is at least to create a strong presumption in favour of validity.

[1] *(1842) 8 Cl. & Fin. 710 (Also reported in 8 Eng. Rep. 279).*

If the contention of learned Counsel for the petitioner is sound the House of Representatives cannot function when the full complement of its elected members falls below 95. Section 19 of the Order-in-Council is to the following effect :

> " Each Chamber shall have power to act notwithstanding any vacancy in the membership thereof, and any proceeding therein shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings ".

Does this section provide an answer to the difficulty ? It may be argued that section 19 is intended to cover a case where there is a vacancy caused by a member who has been duly elected dying, or becoming unseated, or vacating his seat for some other cause. What then would be the position if no nomination papers are handed in by any candidate for election to an electoral area and no one is elected to that area—as did in fact happen when the State Council elections under the Donoughmore Constitution took place. If the contention of learned Counsel is correct a Parliament so constituted would have no legal status. I find myself unable to agree with the proposition that because only 94 individual members were elected to 95 electoral seats the House of Representatives was not properly constituted.

I propose, however, to dispose of the petitioner's application on another ground which would be applicable even if the contention of the learned Counsel is sound and the views I have expressed above, untenable.

The prerogative writs are not issued as a matter of course and it is in the discretion of Court to refuse to grant it if the facts and circumstances are such as to warrant a refusal. A writ, for instance, will not issue where it would be vexatious or futile. In a case where an election to an office would not be affected by an irregularity in conducting the election the writ was refused in the case of *Rex v. Ward*[1]. It was not suggested that the passage of the Motor Transport Act through the House of Representatives was effected by a bare majority of one vote and that if there were 95 members the result would have been different. It is appreciated that the petitioner asked for a writ on different grounds of a more fundamental character, viz., that there was no valid and lawful House of Representatives in existence, but this circumstance is one of the matters a Court will take into consideration in exercising its discretion. The Court will also consider the probable consequences of granting the writ—vide 9 Halsbury P 81 (Hailsham ed.) and the cases referred to therein. In the present case the consequences of granting the writ can only be described as disastrous. It would result in all the legislation passed by Parliament since it came into existence and all its actions liable to be regarded as illegal and of no effect. It would affect the rights and liabilities of several thousands of people who conducted their business

[1] *(1873) L. R. 8 Q. B. D. 210.*

activities and their lives on the basis that legislation enacted by Parliament is valid ; it would disturb the peace and quiet of the country ; and, above all, it will bring the government of the country to a standstill. I take the view that in these circumstances even if the grounds on which the application is made are valid no Court would exercise its discretion in favour of the petitioner. I accordingly refuse the application.

Application refused.