1966 *Present :* **Sansoni, C.J., E. N. G. Fernando, S.P. J., and Tambiah, J.**

P. A. ANTHONY NAIDE, Appellant, and THE CEYLON TEA PLANTATION CO. LTD. OF LONDON, Respondent

S. C. 63/1965-C. E. Nuwara Eliya, 21,348

Rent Restriction (Amendment) Act, No. 12 of 1966-Section 4-Constitutional validity thereof-Scope and effect of the Act-Docs it infringe the principle of Separation of Powers ?-Validity of legislation rendering void pending cases and unexecuted decrees retrospectively-Distinction between judicial power of the State and jurisdiction of the Courts-Constitutional law.

Section 4 (1) of the Rent Restriction (Amendment) Act, No. 12 of 19G6, reads as follows :-

"The provisions of Sections 2 and 3 of this Act shall be deemed to have come into operation on the twentieth day of July 1962, and accordingly-

(a) any action which was instituted on or after that date and before the date of commencement of this Act for the ejectment of a tenant from any premises to which the principal Act as amended by this Act applies shall, if such action is pending on the date of commencement of this Act, be deemed at all times to have been and to be null and void,

(b) any appeal preferred to the Supreme Court from any judgment or decree of a Court in any such action as is referred to in paragraph (a) and is pending before the Supreme Court on the date of commencement of this Act shall be deemed at all times to have been and to be null and void, and

(c) proceedings shall not be taken for the enforcement of any judgment or decree in any such action as is referred to in paragraph (a), and where such proceedings have begun before the date of commencement of this Act but have not been completed on the date of commencement of this Act, such proceedings shall not be continued. "

Held, that the Section was not ultra vires of the powers of Parliament under the Constitution. It could not be contended that it was ultra, vires in that by purporting to annul decrees entered by Courts prior to the enactment of the Act, it constituted an exercise of judicial power that is vested in the Judicature and, secondly, by purporting to direct the Courts as to the manner of disposal of pending cases, it constituted an unlawful interference with the judicial power exclusively vested in the Courts. The pith and substance of the Act was to alter permanently the law relating to actions for ejectment from premises of a particular rental value, and incidentally to make that alteration retrospective. The Act is only a case of the jurisdiction of the Courts being altered both prospectively and retrospectively. Such a statute affecting the jurisdiction of civil courts of original jurisdiction can be enacted by a simple majority of Parliament.

APPEAL from a judgment of the Court of Requests, Nuwara Eliya, *C. Ranganathan, Q.C., with*

Siva Rajaratnam, T. N. Wickremesinghe and C. Chakradaran, for the Defendant-Appellant.

H. W. Jayewardene, Q.G., with D. S. Wijewardene and Ma:-k Fernando, for the Plaintiff-Respondent.

Cur. adv. vult.

September 16, 1960. **SANSONI, C.J.-**

My brother H. N. G. Fernando, in his judgment which lie has kindly shown me.has dealt with Mr. Jayewardene's argument that the Act of 1966 is ultra vires, in that it constituted an exercise of judicial power or unlawfully interfered with the judicial power of the Courts. Mr. Ranganathan submitted that this Act was only an exercise of the power of the Legislature to limit or to take away the jurisdiction which the Courts exercised. I wish to make some observations myself in view of the importance of the matter in dispute.

It is my view that the Act of 1966 deals with jurisdiction and jurisdiction alone, and that it is nothing to do with judicial power. It is a pure case of the statutory jurisdiction of the Courts being altered both prospectively and retrospectively. Sections 2 and 3 restrict that jurisdiction further in respect of future actions and lay down the law which is to apply to them. Section 4 gives these amendments retroactive effect as from 20th July 1962, and accordingly declares all pending actions filed on or after that date, and all pending appeals, to be null and void. In the case of decided actions, judgments and decrees which had not been completely executed cease to be executable, but nothing else is done to such judgments and decrees. No right or claim is ascertained or determined ; no adjudication of any kind is made ; no decision of any court is upheld or reversed.

It is always open to the Legislature to fix the point of time from which a statute or an amendment of a statute shall operate. The words " and accordingly " in section 4 are entirely appropriate, since retrospective operation was given to these amendments contained in ss. 2 and 3. All actions and appeals which were pending prior to the amendments are by section 4 declared null and void, and this is not unexpected, since the

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causes of action upon which pending actions had been filed were repealed with retrospective effect by the amendment. It is not for us to question the decision of the Legislature to give the amending Act retroactive operation. Our function is merely to decide the rights of parties according to the law as laid down by the Legislature, if such a law is not unconstitutional.

The Legislature for its part cannot dictate to the Court how it should decide a dispute. It can, however, prescribe the conditions that govern the jurisdiction of the Courts, and declare the terms under which a justiciable dispute can or cannot arise, since under our Constitution the jurisdiction of all the Courts is purely statutory. This is not to be confused with an assumption of judicial power. The two concepts are distinct. " Jurisdiction is the authority of a Court to exercise judicial power in a specific case and is, of course, a prerequisite to the exercise of judicial power, which is the totality of powers a Court exercises when it assumes jurisdiction and hears and decides a case "-See the Commentary on the Constitution of the United States of America (1963 Edition) p. 583. In Garthwaite v. Garthwaite[1 (1964) 2 W, L, R, 1108 at 1120,], Diplock, L.J. said,-" in its narrow and strict sense, the ' jurisdiction' of a validly constituted court connotes the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves of its process by reference (1) to the subject-matter of the issue or (2) to the persons between whom the issue is joined or (3) to the kind of relief sought, or to any combination of these factors." Sections 2 and 3 of the amending Act have altered those

limits in respect of actions for the ejectment of tenants.

It is clear law that a judgment given without jurisdiction is a nullity, for judicial power is capable of being exercised by a court only when it is a court of competent jurisdiction, and that means competent under some law. Alter the law retrospectively in respect of jurisdiction, and actions and appeals can be rendered null and void retrospectively. The word " deemed " has its uses for this purpose. In St. Aubyn v. Attorney-General [2 (1952) A. C. 15 at 53.], Lord Radcliffe said that the word is sometimes used to give a uomprehensive description that includes " what is, in the ordinary sense, impossible ". It is so used in section 4 to require the Courts to regard an Act which was passed in 1966 as having come into force on 20th July 1962. Pending actions, appeals, and execution proceedings are to be dealt with according to that imaginary state of affairs. This is quite in order, for as Lord Asquith of Bishopstone has said : " If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it." Hence the words " and accordingly " in section 4 of the amending Act. to ensure that there will be no mistake on this point.

I do not think it necessary, nor am I competent, to comment on the American decisions cited by Mr. Jayewardene. My knowledge of the American Constitution does not equip me for that task. But I entirely agree, with respect, in the dictum of Chase, C. J. in ex parte McCardle[1 (1869) 7 Wall 506.], when he said that when the jurisdiction of the Courts is thus taken away, " judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer." We no longer have jurisdiction, since this amending Act was passed, to hear this appeal, since the appeal itself is null and void. " Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause ", as Chase, C.J. said in the same case. But the respondent is in no better position than the appellant, since proceedings cannot be taken to enforce the decree it has obtained in the lower Court.

Having set out what I believe to be the legal position, I would dismiss this appeal without costs.

H. N. G. FERNANDO, S.P.J.-

In this case I must first refer to certain provisions of our law affecting the right of a landlord to institute an action for ejectment of a tenant. Subsection (1) of Section 13 of the Rent Restriction Act (Cap. 274 of the revised edition 1956) provided that such an action shall not be instituted in or entertained by any Court unless the action had been previously authorised by a Rent Control Board. But the subsection contained a proviso that such authorisation would not be necessary in specified circumstances which were set out in paragraphs (a) to (d) of that proviso. This subsection was a re-enactment of subsection (1) of Section 8 of the former Rent Control Act of 1942.

In 1961 Parliament passed the Rent Control (Amendment) Act No. 10 of 1961, which I shall refer to as the Act of 1961. Section 13 of the Act of 1961 altered the law previously set out in Section 13 of Cap. 274 by providing that an action for ejectment could only be instituted only on one or more of the following grounds :-

(a) that the rent of the premises had been in arrear for three months

(b) that premises have been used for an immoral or illegal purpose

(c) that wanton destruction or damage had been caused to the premises by a tenant or another person of a specified description

This alteration of the law was expressed in the Act of 1961 to have retrospective effect as from 20th July 1960, but was to be in force for only two years, that is to say until the 20th July 1962. In the result Section 13 of the principal Act was superseded temporarily for the two year period, but as from 20th July 1962 a landlord's right to institute an action for ejectment again became subject only to the restrictions set out in Section 13 of the principal Act and not to the more onerous restrictions set out in the Act of 1961.

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In May 1966 Parliament enacted the Rent Restriction (Amendment) Act No. 12 of 1966, which I shall refer to as the Act of 19(56. This Act introduced into the principal Act a new Section 12A applicable to an action for ejectment of the tenant of premises the standard rent of which does not exceed Rs. 100. The restrictions which this Section imposed were substantially the same as those contained in the temporary Act of 1961, and in addition the new Section 12A permitted a Court to refuse ejectment in certain circumstances, if arrears of rent were paid up during the pendency of an action. Accordingly as from May 10th 1966. the restrictions affecting an action for ejectment from premises having a standard rent not exceeding Rs. 100 are different from the restrictions which, under Section 13 of the principal Act, apply to actions affecting other premises.

I have now to cite in full Section 4 of the Act of 1966.

" (1) The provisions of Sections 2 and 3 of this Act shall be deemed to have come into operation on the twentieth day of July, 1962. and accordingly-

(a) any action which was instituted on or after that date and before the date of commencement of this Act for the ejectment of a tenant from any premises to which the principal Act as amended by this Act applies shall, if such action is pending on the date of commencement of this Act, be deemed at all times to have been and to be null and void,

(b) any appeal preferred to the Supreme Court from any judgment or decree of a Court in any such action as is referred to in paragraph (a) and is pending before the Supreme Court on the date of commencement of this Act shall be deemed at all times to have been and to be null and void, and

(c) proceedings shall not be taken for the enforcement of any judgment or decree in any such action as is referred to in paragraph (a), and where such proceedings have begun before the date of commencement of this Act but have not been completed on the date of commencement of this Act, such proceedings shall not be continued. "

In the instant case an action for ejectment had been instituted on 24th July, 1963 and decree for ejectment was entered in the Court of Requests on 2nd April 1965. An appeal against that decree was filed forthwith by the defendant in the action and this appeal was pending in the Supreme Court on 10th May 1966 when the Act of 1966 became law. Some argument was addressed to us regarding the standard rent of the premises but the only evidence (according to the judgment) was that the agreed rent was Rs. 25 per month, and in the absence of any allegation to the contrary it must be assumed that this was the authorised rent.

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(Premaratne v. De Silva [1 (1954) 55 N. L. S. 448.].) Accordingly, this action is prima facie affected by Section 4 of the Act of 1966. It was instituted after 20th July 1962 and before 10th

May 1966: in terms of paragraph 1 of Section 4 the action must " be deemed at all times to have been and to be null and void". This appeal preferred in the action must in terms of paragraph (b) of Section 4 " be deemed at all times to have been and to be null and void ". And in terms of paragraph (c) of Section 4 " proceedings shall not be taken for the enforcement of the decree for ejectment" entered by the Court of Requests on 2nd April 1965. In other words the action, the decree and the appeal were each a nullity and must be regarded as never having been constituted, entered and filed respectively.

The argument which was addressed to us on behalf of the plaintiff-landlord (the respondent to this appeal) is that Section 4 of the Act of 1966 was ultra vires the powers of Parliament, and it was pressed upon two principal considerations. Firstly, that Section 4, in purporting to annul decrees entered by Courts prior to the enactment of this Act, constitutes the exercise of judicial power of the State ; and secondly, that in purporting to direct the Courts as to the manner of disposal of pending cases the Section constitutes an unlawful interference with the judicial power exclusively vested in the Courts. In regard to both of these grounds reliance was placed on the principle of the Separation of Powers recognised in recent decisions.

Counsel for the plaintiff referred to many decisions in America of the State Courts of that country, and I shall examined a few of them. In The State (Tennesse) v. Fleming [(1846) 46 American Decisions 73] a person was charged with the offence of retailing spirituous liquor in contravention of an Act of 1838. A prosecution under that Act was pending in 1846, and at that stage a new Act was passed by which it became lawful under certain restrictions to retail certain spirituous liquors. The legislature also passed a resolution that " no fine, forfeiture, or imprisonment should be imposed or recovered for the offence of tippling under the Act of 1837, and that all causes pending in any of the Courts for such offence should be dismissed ". According to the report, the defendants were tried, convicted and fined after the new Act was passed, but before the promulgation of the Act and resolution. The Court stated that the Act " did not upon any principle operate so as to discharge persons guilty of retailing under the Act of 1838, but they were left liable to punishment under that Act " : " and the question, reduced to simplicity is this, can the legislature by resolution direct that an individual who stands charged with crime in a Court of justice be discharged therefrom ? ".

In answering this question, the Court relied on the rule of the Separation of Powers, which is expressly enacted in the State's Constitution, and held that the resolution of the legislature was an unwarranted assumption of judicial power:-" before conviction the Attorney-General and the Court are the only power that can discharge without acquittal, and that by nolle prosequi "

If that same question arose in Ceylon, the simple answer would be that Parliament cannot, by a resolution, alter the law, and with respect I think it should have been answered by the American Court on the same ground. In fact, the American judgment does distinguish between an Act of the legislature, and a mere resolution.

The existence in the Attorney-General of Ceylon of the power to enter a nolle prosequi shows that an official of the Executive can terminate a criminal prosecution. That being so, it seems to me that in principle there may be no objection to some other official being also empowered by an Act of Parliament to terminate a prosecution. It follows in my opinion that such an Act may even directly terminate a prosecution, provided it is not by legislation ad hominem; this matter, however, falls to be considered in the light of the recent decision of the Privy Council in Liyanoge's Case [1 (1363) 68 N. L. R. 265.].

Greenough v. Greenough [51 American Decisions 567.] concerned the validity of a Will made in 1840. The Act regulating the validity of Wills was then an Act of 1833, which provided that where the signature of a Testator is attached to a Will by some other person there must be proof

that the signature was so attached by the testator's express direction. Decisions of the Courts had so construed that Act. In 1848 however, the legislature had passed an Act providing for a lesser standard of proof for Wills and further enacted that " every last will and testament heretofore made, or hereafter to be made, except such as may have been finally adjudicated prior to the passage of this Act, to which the testator's name is subscribed by his direction, or to which the testator has made his mark or cross, shall be deemed and taken to be valid ".

The Court regarded the Act of 1840 as an attempt to overrule the construction previously placed on the Act of 1833 by the Courts, and as a mandate to the Courts " to establish a particular interpretation of a particular statute ". This, it was held, was the exercise of judicial power in settling a question of interpretation.

The will in question in this case had apparently not been the subject of a prior " final adjudication ", for if so the 1848 amendment clearly would not apply to it. It was apparently before the Courts in 1849 for the first time. That being so, what the Act of 1849 provided for the case of such a Will was that in the future it should be regarded as valid. With great respect, I cannot agree that the 1849 amendment overruled earlier constructions of the 1833 Act. It only laid down a rule of construction for the future, but applicable also to past Wills not previously the subject of adjudication. I cannot see here either the exercise of, or interference with, the judicial power. Indeed the Court's opinion to that effect was much influenced by the Court's apparently strong bias against retrospective legislation.

In any event, the decision was also based on violation of the due process clause of the Federal Constitution, the Court holding that parties had from 1840 (when the testator died) enjoyed property rights under the Will, which rights could not be taken away except by adjudication of the Courts. This ground of invalidity does not exist under our Constitution.

In Denny v. Muttoon [1 (1861) 79 American Decisions 784.], the State SupremeCourt had previously held to be illegal and invalid, for want of jurisdiction, an order of an inferior Judge declaring one Stone to be insolvent, and had enjoined the appointed assignees from administering Stone's estate. Thereafter the State Legislature passed an Act confirming the proceedings held before the inferior Judge and dissolving the injunction of the Supreme Court. This Act was subsequently held to be invalid.

The question for determination was thus stated :-" Whether the Act can confer jurisdiction over parties and proceedings which it has been judicially determined did not exist, and can give validity to acts and processes which have been declared void ".

This question was first considered in the light of the rule of the Separation of Powers, and the Court held that'" the legislature has no power to interfere with the jurisdiction of the Courts in such a manner as to change the decision of pending cases or to impair or set aside their judgments, or take cases out of the settled course of judicial proceeding. "

But in addition the Court also relied on the due process clause, holding that unless there is valid adjudication of insolvency by a competent Court, the property of a debtor cannot be said to have been taken from him by due process according to the law of the land. " If such a statute does not constitute an exercise of the judicial power by the legislature, it is certainly a violation of another fundamental principle of the Constitution. It takes away from a subject his property not by due process of law, but by an arbitrary exercise of legislative will ".

I will assume that the judgment in this case distinctly held that an Act, which is not a violation of the due process clause, must be regarded as arrogating judicial power if it purports to nullify an order of a Court made in past proceedings. But even if so, the question for our determination is

not the same as that which arose in the American Case. The Act of 1966 does not purport to confer jurisdiction retrospectively, nor is it a piece of ad hoc legislation.

Maxwell v. Goetschius [2 (1878) 29 American Reports 242.]. In the year 1833, the Supreme Court of the State of New Jersey had decided that the Judges of the Common Pleas had no authority to make an order of sale of estates in remainder and that commissioners have no authority to make such a sale and conveyance. In this case, there had been such a sale in the year 1832, and the dispute as to title (arising about 1878) was between the purchasers at that sale and the remaindermen. The claim of the purchasers was based

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on an Act of 1861 declaring that any sale of land ordered by certain Courts (including the said Court of Common Pleas) before the Act or thereafter would be binding (inter alia) on remainder men. It was held that the Act of 1861 was invalid and ineffectual in so far as it purported to validate the sale of 1832.

The Court relied, both on the Separation of Powers set out in the State Constitution of 1844 and on "' the clause in the Constitutional bill of privileges which declares that among the inalienable privileges of men shall be that of possessing and protecting property ". (The clause thus referred to was probably one in the State Constitution ; else the reference was to the due process clause in the Federal Constitution.) The Court held that this clause meant that deprivation of property can be effected only under the law of the land administered by judicial decision, and that a legislative Act purporting to vest A's title in B violated the due process clause. The reasoning, as I understand it, was that the due process clause postulates the exercise of judicial, and not legislative power. Having regard to the terms of the judgment, it cannot properly be said that the Court would have declared the Act invalid on the sole ground that it offended the principle of the Separation of Powers.

Counsel for the Appellant, in reply, relied on the decision of the United States Supreme Court in Ex parte McCardle, the report of which is not available to us. I reproduce below the reference to this case in The Constitution fof the United States (1952) prepared by the Library of Congress:-

" The McCardle Case

The power of Congress to make exceptions to the Court's appellate jurisdiction has thus become, in effect, a plenary power to bestow, withhold, and withdraw appellate jurisdiction, even to the point of its abolition. And this power extends to the withdrawal of the appellate jurisdiction even in pending cases. In the notable case of Ex parte McCardle, a Mississippi newspaper editor who was being held in custody by the military authorities acting under the authority of the Reconstruction Acts filed a petition for a writ of habeas corpus in the circuit court for Southern Mississippi. He alleged unlawful restraint and challenged the validity of the Reconstruction statutes. The writ was issued, but after a hearing the prisoner was remanded to the custody of the military authorities. McCardle then appealed to the Supreme Court which denied a motion to dismiss the appeal, heard arguments on the merits of the case, and took it under advisement. Before a conference could be held, Congress, fearful of a test of the Reconstruction Acts, enacted a statute withdrawing appellate jurisdiction from the court in certain habeas corpus proceedings. The court then proceeded to dismiss the appeal for want of jurisdiction. Chief Justice Chase, speaking for the court said : ' Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the

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power to declare the law and when it ceases to exist, the only function remaining to the Court is

that of announcing the fact and dismissing the cause.' "

The decision just cited, at the least, supports the appellant's contention that the legislature can validly inhibit the United States Supreme Court fromdetermining pending appeals. The basis of the decision appears to be that the Supreme Court's appellate jurisdiction is derived, not from the Constitution, but from Acts of Congress. But also implicit in the decision is the consideration that retrospective abolition of appellate jurisdiction does not constitute the exercise of judicial power.

I cannot lose sight of the differences between our Constitution and the Federal and State Constitutions of America, nor of the attitude towards retrospective legislation entertained by some of the State Courts in the last century. There is then the due process clause. In these circumstances, it is not easy for a court of another jurisdiction to assess how far American decisions, apparently based on the principle of the Separation of Powers, were influenced by the existence in a Statute of retrospective elements and by considerations relevant to the due process clause. It is in my view unsafe for this Court to adopt and apply American decisions declaring Statutes invalid, although such decisions can be of much assistance to confirm opinions independently reached on questions arising under our Constitution. Since in the instant case the opinion which I reach independently is that our Constitution does not render our Act of 1966 invalid, the only American decision which I feel entitled to rely upon is that in the McCardle Case.

I pass now to refer to decisions upon our Constitution, and to the scope and effect of the Act of 1966.

Piyadasa v. Bribery Commissioner[1 (1962) 64 N. L. R. 385.], Banasinghe v.Bribery Commissioner [(1962) 64 N. L. R. 449.] decided by this Court andapproved by the Privy Council (66 N.L.R. 73), Danina Umma v. Jailabdeen[(1962)64 N. L. R. 419.] and Walker Sons Co. Ltd. v. Fry[4 (1965) 68 N. L. R. 73.],are not directly of assistance in the present context. What they decided was that certain offices are judicial offices, and that the powers and functions of such an office cannot be lawfully exercised except by a person appointed thereto in terms of Section 55 of the Constitution by the Judicial Service Commission.There was accordingly no need in those decisions for the Courts to examine Acts of Parliament in the light of the question whether such Acts infringed the principle of Separation of Powers.

This question was actively examined in the case of Liyanage and others v. The Queen both by this Court[5 (1962) 64 N. L. R 313.] and more recently by thePrivy Council[6 (1965) 68 N. L. R. 256.]. In the first of the judgments (if I may attempt to summarise its effect very briefly), this Court held that the power to nominate a Bench of the Supreme Court to hear a particular case was a judicial power exercisable by the Chief Justice, and that an Act of Parliament purporting

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to authorise a Minister to exercise that judicial power constituted an arrogation of judicial power. Apart from the circumstance that the judgment decided for the first time that the principle of the Separation of Powers is implied in our Constitution, it is notdirectly relevant to the question which arises in this appeal, for there has here not been an attempt to divert to any authority other than a Court the exercise of any judicial power. More directly relevant is the second of the two judgments delivered by the Privy Council. In affirming the correctness of the earlier judgment, their Lordships held that " there exists a separate power in the Judicature which under the Constitution as it stands cannot be usurped or infringed by the Executive or the Legislature ". They then considered the question whether the Acts of 1962 (i.e. the Criminal Law (Special Provisions) Act No. 1 of 1962 and the Criminal Law Act No. 31 of 1962), usurped or infringed this separate power of the Judicature. They noted with emphasis that in the Acts Parliament had no general intention of legislating either by the creation of crimes and penalties or

by enacting rules relating to evidence ; that the Acts were clearly aimed at particular known individuals who had been named in a White Paper and were in prison awaiting their fate ; that the alterations of the prevailing law were limited to the participants in a particular alleged Coup and that the law would thereafter revert to its normal state. Their Lordships approved Counsel's attack on the Acts as being in pith and substance a legislative plan ex post facto to secure the conviction of particular individuals and concluded that " if such Acts as these were valid the judicial power could be wholly absorbed by the Legislature and taken out of the hands of the Judges ".

Let me now consider the Rent Restriction (Amendment) Act, No. 12 of 1966 in thelight of the reasoning of their Lordships' judgment in 68 N.L.R. 265, and indoing so it is necessary to appreciate firstly what was the legislative plan to which the Act gave effect. The new Section 12A which was introduced into the principal Act (Cap. 274) is a permanent provision generally applicable to all actions for ejectment from premises having standard rents not exceeding Rs. 100, and it is clear that Parliament intended that tenants of all such premises should be protected from ejectment except on specially defined grounds specified in the new Section. Having enacted this protective provision for the future, Parliament proceeded to add in Section 4 provision that the earlier Sections of the Act would have retrospective effect as from July 20th 1962. Had that been the only provision made in Section 4, what would be the proper inference to be drawn from such a provision as to the intention of Parliament ? The clear answer seems to me an intention that persons who on 10th May 1966 (when the Act of 1966 came into force), or thereafter, are in occupation of premises having a standard rent not exceeding Rs. 100, must not be ejected upon any grounds other than those enumerated in the new Section 12A. In other words Parliament legislated for the protection of occupancies existing on 10th May 1966 or commencing thereafter and intended that the protection must extend even to occupancies which were then the subject of pending actions.

There was here no intention to legislate ad hominem ; there was no White Paper enumerating the names of landlords or tenants involved in pending actions, against or in favour of whom Parliament was invited to exercise legislative power ; there was no direction or restriction affecting " the discretion or judgment of the Judiciary in specific proceedings " (68 N.L.R. at 284). Whereas the Criminal Law Acts of 1962 were construed to be in substance provisions designed to dictate to the Court the manner of exercise of its discretion or the formation of its judgment, there is no such dictation involved in Section 4 of the Act of 1966 now under consideration. Instead there is in substance a retrospective dictation that in pending cases the plaintiff never had a right of action. The pith and substance of the Act of 1966 was to alter permanently the law relating to actions for ejectment from premises of a particular rental value, and incidentally to make that alteration retrospective. There is not here present either of the grounds of invalidity (legislation ad hominem and legislation ex post facto) which were jointly present in the legislation declared invalid in Liyanage's Case. Their Lordships were careful to state that even the co-existence of these two grounds may not necessarily render an Act of Parliament invalid.

Although Section 4 of the impugned Act of 1966 purports to be retrospective, and although paragraphs (a) and (b) of the Section purport to declare null and void pending actions and appeals, the real efficacy of the Section is contained in paragraph (c), which purports to prohibit the execution of any judgment or decree already entered by a Court. This prohibition is not retrospective in a strict sense, for it only enjoins a court against ordering execution in the future. The effective protection which Parliament wished to give the tenants is protection from ejectment, and paragraph (c) is in law quite sufficient to afford that protection. No purpose would be served by a Court hearing an action or an appeal if its decree is not to be executable, for a court will not act in vain.

In considering the validity of clause (c), it is relevant to notice that the clause is complementary to the new Section 12A introduced into the principal Act (Cap. 274). That new Section limits the jurisdiction of the original civil courts to entertain actions for ejectment, and equally paragraph (c) limits the jurisdiction to order execution of past decrees for ejectment. It was not argued that Parliament cannot lawfully enact a partial abolition of the jurisdiction of the civil courts to execute decrees. In fine, the objection then is only to the abolition of jurisdiction to execute a decree previously entered, or to the faintly retrospective element in paragraph (c). This objection is in effect a resort to the principle that a party litigant is entitled to obtain from the Courts all the relief available at the time of the institution of his action under the law then prevailing. But that principle is one recognised by our common law, and not by our Constitution, and it is not denied that Parliament has the power to alter the common law even retrospectively.

I must now briefly comment upon an interesting and important argument adduced by counsel for the appellant in this case. He pointed out that while the recognition in our Constitution of the exclusive vesting of judicial power in the Judicature is now a matter beyond debate, there is not in the Constitution any limitation of the power of the Legislature to define or restrict the jurisdiction of the Courts. For instance, the jurisdiction of the Supreme Court, District Courts, Courts of Requests and Magistrate Courts is defined in the Courts Ordinance, and he argued that the Legislature has the power at any time by a simple majority to enact laws adding to or abolishing that jurisdiction, I myself had previously entertained some doubt as to the question whether such a law could for instance abolish the jurisdiction of the Supreme Court in the nature of that conferred by provisions such as Sections 42 and 45 of the Courts Ordinance, and I continue to entertain such doubts. It may well be that the Constitution has, in Section 52, recognised and adopted and thus incorporated, some provisions of the Courts Ordinance which confer jurisdiction on the Supreme Court. But for present purposes there appears to be much force in the contention that the Legislature has power to abolish the jurisdiction of the Civil Courts of original jurisdiction and thus indirectly to abolish the appellate jurisdiction of the Supreme Court, provided of course that the legislature does not attempt to arrogate such jurisdiction to itself or to transfer such jurisdiction to some authority not holding judicial office. The Constitution, as recently construed, does not permit any such arrogation or transfer by means of an Act of Parliament passed by a simple majority. But if it is the will of Parliament that there should not be, in an}' particular field, a right to invoke the judicial power of the State as exercised by an original civil court, there seems to me no objection to legislation of general application limiting the citizen's right of recourse to that court. Viewed in this light, Section 12A introduced by the Act of 1966 limited a landlord's right of recourse to the judicial power of the State and Section 4 of the Act limited that right with retrospective effect. Both limitations were within the power of Parliament to impose.

I hold that Section 4 of the Act of 1966 was not ultra vires of the powers of Parliament. Applying its provisions to this action, I hold that the action and the appeal are null and void and that the original court has no jurisdiction to enforce the judgment and decree already entered. I would make no order as to costs.

TAMBIAH, J.-

Counsel for the respondent contended that the provisions contained in section 4(1) (a), (b) and (c) of the Rent Restriction (Amendment) Act, No. 12 of 1966 are ultra vires the Constitution. In Walker Sons & Co. Ltd. v. Fry [(1965) 68 N.L. R. 73],I have already drawn the distinction between judicial power of the State and the jurisdiction of the Courts. The sovereign power of the Parliament is set out very clearly in the opinion of Lord Pearce in the case of The Bribery Commissioner v. Ranasinghe[(1964) 66 N. L. R 73.].

After stating that the general conceptions of the Constitution of Ceylon are modelled on those of a parliamentary democracy founded on the pattern of the constitutional system of the United Kingdom, he said-

" The Constitution does not specifically deal with the judicial system which was established in Ceylon by the Charter of Justice of 1833 and is dealt with incertain Ordinances, the principal being the Courts Ordinance, Cap. 6. The powerand jurisdiction of the Courts are therefore not expressly protected by the Constitution."

The judicial power of the State is the power to try disputes between subject and subject or subject and the State. Under our Constitution this power is vested ina system of courts with the Queen as the final repositary of this power.

The power to vest jurisdiction in courts is conferred on the Legislature and could be exercised by an ordinary majority of Parliament. The power to confer jurisdiction also includes the power to take away the jurisdiction conferred on the courts. If, however, the legislature confers jurisdiction on other tribunals which have to exercise judicial power then it can only be done in the manner contained in the provisions of the Constitution. In the case of The Bribery Commissioner v. Ranasinghe[(1984)66 N.L.R. 73], Lord Pearce after citingMacCawley's case (1920) A.C. 691, said-

" These passages show clearly that the Board in MacCawley's case took the view,which commends itself to the Board in the present case, that a legislature has no power to ignore the conditions of law making that are imposed by the instrument which itself regulates its power to make law. This restriction exists independently of the question whether the Legislature is sovereign, as is the Legislature of Ceylon, or whether the Constitution is ' uncontrolled ' as the Board held the Constitution of Queensland to be. Such a Constitution can indeedbe altered or amended by the Legislature, if the regulating instrument so provides and the terms of these provisions are complied with : and the alteration or amendment may include the change or abolition of those very provisions. "

There are no provisions in the Ceylon (Constitution) Order in Council of 1946 orthe Ceylon Independence Act of 1947 which restrict the Parliament to take away a jurisdiction conferred on any court. No doubt if there is a legislative plan or design by the Legislature to take away the judicial power conferred on the judicature then such legislation may be ultra vires. The present case is not one of such cases. The whole purpose of this amendment is to provide relief to tenants who live a precarious existence in houses, the rents of which are under Rs. 100. In view of the great dearth of houses it has become a problem for the people who are unable to afford to live in houses the rents of which are over Rs. 100 per mensem to find houses for occupation.

In these circumstances the Legislature has passed a law to relieve a class of people who are undergoing hardships. On reading through the Act it is clear that the intention of the Legislature is to help this class of tenants who live in such houses. No doubt the effect of the legislation would be to cause great hardship to landlords of moderate means who own only one house which is required for their own use. The Act no doubt takes away vested rights obtained by the due process of law. But it is not for the Courts to go into these matters.

Mr. Jayewardene, the Counsel for the respondent, also cited the case of The Queen v. Liyanage and referred to certain passages and contended that judicial power is vested in the courts and the effect of the amending Act of 1961 is to give directions to a court not to try pending cases and to nullify the effect of a decree passed by it. The rationale of Liyanage's case is that their Lordships

of the Privy Council found in the Criminal Law (Special Provisions) Act a pieceof ad hoc legislation which " in pith and substance was a legislative plan ex post facto to secure the conviction and enhance the punishment of the persons" whose names were mentioned in the White Paper, (vide the observations of Lord Pearce in 68 N. L. E. at 284).

Mr. Jayewardene cited American cases for the proposition that the Legislature should not interfere with the judicial power of the State. As pointed out by my brother H. N. G. Fernando J., some of these cases can be distinguished and others were dealing with certain provisions of the American Constitution which are not found in our Constitution. In the Constitution of the United States of America there are certain provisions setting out fundamental rights. In the United States a person cannot be deprived of his property or personal safety excepting by the due process of law. One should not apply the principles set out in these cases in construing our Constitution Order in Council and the Ceylon Independence Act, the provisions of which are entirely different from the provisions in the American Constitution.

If the Courts Ordinance can be amended by a simple majority, there is no reason why the Legislature by this amending Act cannot take away the jurisdiction of the courts to hear certain types of cases. As pointed out by Mr. Ranganathan the effect of this amending Act is merely to deprive the landlords whose houses fetch a rent of less than Rs. 100 to come to a court and ask for ejectment except on the grounds set out in the amending Act read along with the main Act and to render such pending actions null and void.

For these reasons I hold that the provisions of section 4 (1) (a), (b) and (c) of the Rent Restriction (Amendment) Act No. 12 of 1966 are not ultra vires the Constitution. There will be no order for costs.

Appeal dismissed.

- End -