CASES

SIERRA LEONE

JOHN JOSEPH AKAR *v.* ATTORNEY-GENERAL

TEJAN-SIE, C.J.

(First Instance. Supreme Court, C.C. 58/67. Judgment delivered on 26th October, 1967.)

ATTORNEY-GENERAL *v.* JOHN JOSEPH AKAR

SIR S. B. JONES, P., MARCUS-JONES and DOVE-EDWIN, JJ.A.
(On appeal. Court of Appeal for Sierra Leone. Civ. App. 1/68. Judgment delivered on 5th April, 1968.)

Constitutional law—Constitutionality of legislation amending citizenship law—Amendment retrospective—whether the legislation in conflict with the fundamental rights provisions of the Constitution as being discriminatory —Power of courts to strike down unconstitutional legislation—Whether such power extends to amending legislation which does not appear to contribute positively to "peace, order and good government".

Editorial Note.—We give below a note by Mr J. P. W. B. McAuslan on the facts and issues in this very important and interesting constitutional case, extracts from the judgment of TEJAN-SIE, C.J., in the Supreme Court, and the full text of the judgment of the Court of Appeal.

THE ATTORNEY-GENERAL OF SIERRA LEONE *v.* AKAR

This case raises several important constitutional points. The facts will be given first, the judgments of the Supreme Court and the Court of Appeal summarized second, and the points arising therefrom discussed third.

1. The facts

Akar was born in Sierra Leone of a Sierra Leonean mother, and a Lebanese father, who had lived in Sierra Leone for most of his life, and had never been to Lebanon. Akar himself had never been to Lebanon. When Sierra Leone became independent on April 27th, 1961, Akar automatically became a citizen by operation of the Constitution as both he and one of his parents had been born in Sierra Leone. Early in 1962, Parliament amended the citizenship provisions of the Constitution with retrospective effect to the date of independence so as to provide in effect two classes of citizens. The first class were to be those whose father, and father's father, were of Negro African descent. They were citizens as of right, and could *inter alia* stand as candidates in both national and local elections. The second class were those who like Akar were of Negro African descent on their mother's side only. They might apply for citizenship, but if it were granted, they might not stand as candidates for national or local elections until they had resided continuously in Sierra Leone for 25 years after

registration or had served an equivalent period in the armed or public services of Sierra Leone.

There was some doubt as to whether this constitutional amendment did not conflict with that part of the bill of rights in the Constitution preventing discrimination, and in order to obviate these doubts another Act was passed later on in 1962 also with retrospective effect, amending the no-discrimination section in the bill of rights so that it did not apply to laws which limited citizenship to persons of Negro African descent on the male side. Akar challenged the constitutionality of both these Acts, alleging that they were discriminatory, and as to the first, not passed in accordance with the provisions of the Constitution, which for that Act required a two-third majority of all the members of the National Assembly at the final vote on the Bill. He obtained a declaration that the Acts were *ultra vires* the Constitution on the ground of their discriminatory nature in the Supreme Court at first instance, but this decision was reversed on appeal in the Court of Appeal.

2. The judgments

The Chief Justice in the Supreme Court based his decision on two planks. Firstly, under the guise of legislation on citizenship these Acts were discriminatory legislation on eligibility to stand in national and local elections; and Parliament could not so legislate as the constitutional bill of rights prevented it. The Chief Justice relied on principles enunciated by the Privy Council in *Pillai* v. *Mudenayake*,[1] that a legislature cannot do indirectly what it cannot do directly, and that a court must examine the pith and substance of legislation to discover its true operation. Secondly, in so far as these Acts attempted to amend the Constitution they failed because, although Parliament had power to legislate for the peace, order, and good government of Sierra Leone, amendments have to be improvements to the Constitution and it is for the courts to say what are and are not improvements. These were not improvements since they deprived citizens of vested rights of citizenship. Dicta of COKE, C.J., in *Bonham's Case*[2] were used as authority to justify the court's power to strike down constitutional amendments, otherwise valid, as not being improvements.

The Court of Appeal rested its unanimous judgments on the following points. Firstly, the legislature must be presumed to have followed the correct constitutional processes in passing the first constitutional amendment Act, and the court cannot investigate those processes at all. Secondly. the retrospective operation of the legislation cured all problems of conflict with various sections of the Constitution as it then spoke from its establishment on April 27th, 1961, with the different classes of citizenship as an integral part, and the Constitution should be construed accordingly. Thirdly, the courts cannot question Parliament's competence to pass retrospective legislation. Fourthly, the Acts were not in fact discriminatory such as the Constitution forbade, but legislation on citizenship based on orthodox principles of citizenship law. Fifthly, in any event, if the Acts were discriminatory, they came within the exception to the ban on such legislation in that they were reasonably justifiable in a democratic society.

3. Comment

It will be convenient to deal with procedural points before looking to the substantive questions raised in the two judgments.

(*a*) *The legislative process and the courts.*—The judgment of the Court of Appeal on the question of investigating the amending process is difficult to

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[1] [1955] 2 All E.R. 833.
[2] (1610), 8 Co. Rep. 114.

understand, in the light of much modern authority on the power of the court to ensure that the legislature has complied with the provisions of the Constitution in amending the Constitution, and in particular the opinion of the Judicial Committee of the Privy Council in *The Bribery Commissioner* v. *Ranasinghe*,[1] a significant case since both courts referred to other Ceylonese constitutional cases in the Judicial Committee, and the Court of Appeal accepted that a provision of the Ceylon Constitution at issue in that case was similar to one in the Sierra Leone Constitution at issue in the instant case. In the Ceylon case the Judicial Committee rejected the argument that once the legislature had passed an Act, the court had to accept it and could not investigate whether it had been validly enacted, on the grounds that the court had a duty to see that the constitution was not infringed and could not decline to open its eyes to the truth.

It is true, as was pointed out by the Court of Appeal in *Akar*, that the Ceylonese Constitution provides for a Speaker's certificate to be attached to a bill to the effect that it had received the necessary two-thirds majority in its passage through Parliament, so that absence of the certificate could be said to be an indication to the court that it should investigate the manner in which the bill was passed and that this provision was absent from the Sierra Leonean Constitution, but it was not correct to deduce from that, that the Sierra Leonean courts were powerless to investigate. The requirement of a special majority for the passage of constitutional amendments is a common way of entrenching certain provisions of the Constitution, but its efficacy depends not only on the legislature observing the amending procedure, but on there being a court or equivalent body in existence which can investigate whether the legislature has observed them, and if not, strike down the resultant legislation as *ultra vires* the Constitution. The presence or absence of a Speaker's certificate is a procedural matter which may affect the ease with which a court can discharge its duty here, but does not affect its jurisdiction to do so.

(*b*) *The effect of retrospective legislation.*—It was argued that the first constitutional amendment Act of 1962 was *ultra vires* the Constitution, and the later Act, passed to amend the no-discrimination section of the bill of rights, although retrospective, could not revive the first Act. The Chief Justice accepted this argument but the Court of Appeal did not. For the Chief Justice the operative period to examine was the time when the legislation was going through Parliament; at that time Parliament had no power to deprive a person such as Akar of his citizenship, therefore the Act was *ultra vires*. Interesting though this argument is, the view of the Court of Appeal, outlined above, is to be preferred. It is precisely because of the overwhelming effect of a retrospective enactment that courts will not lightly construe an act to be retrospective, nor legislatures pass them. Whatever the position in the *punctum temporis* during which the first Act had received the Royal Assent but was not in force, supposing that such a period of time existed,[2] once the Act was in force, Akar's status was, from the beginning of the existence of the independent state of Sierra Leone, that of a non-citizen who could apply for a citizenship which, if granted, precluded his participation as a candidate in national and local elections for 25 years, and not that of a citizen by right who had been discriminated against. Just as that section of the Constitution which permits

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[1] [1964] 2 All E.R. 785. See too *A-G for New South Wales* v. *Trethowan*, [1932] A.C. 526, *Harris* v. *The Minister of the Interior*, [1952] 2 S.A. 428.

[2] The phrase and idea are taken from the judgment of *Diplock L.J.* in *Buck* v. *A-G*, [1965] 1 All E.R. 882, at p. 888. He did not consider the parties in the case had any interest on which they could have a claim in the *punctum temporis* during which the Sierra Leone (Constitution) O. in C. 1961 was in force before Sierra Leone became independent.

Parliament to provide for the deprivation of their citizenship of those persons who became citizens by registration is not *ultra vires* the no-discrimination section of the bill or rights, since they are both part and parcel of the same fundamental law of the land, nor is that section of the Constitution which permits certain non-citizens to register as citizens on certain terms as to their political rights. The Act to amend the no-discrimination section of the bill of rights was on this reasoning superfluous, since the retrospective nature of the first Act eliminated any conflict with that section. The position would have been different if one Act had provided retrospectively that persons in Akar's position ceased to be citizens as of right but could become citizens of registration, and a later Act had, without retrospective effect, deprived registered citizens of the right to stand for elections. A registered citizen could then allege that the later Act infringed the bill of rights as it discriminated against him, basing himself on the Constitution as it stood prior to the coming into force of the later Act. But retrospective legislation removed that prop from Akar, in effect making the constitution prior to the Act the same as that after the passage of the Act.[1]

(*c*) *The authority of decisions of the Judicial Committee of the Privy Council.*—The Chief Justice expressly denied that such decisions were binding on him, though accepting that they could be of persuasive authority. The Court of Appeal did not advert to the point but seemed to assume that they were binding. The old position, as set out in decisions of the Judicial Committee itself, is that, where the law is the same, the decisions are binding irrespective of the jurisdiction in which the cases arise or the status of the country concerned.[2] More modern thinking, however, tends to emphasize the cultural diversity of those countries in the Commonwealth that still allow appeals to the Judicial Committee, and the danger, especially in the area of constitutional law, of applying in one country principles of law which have been evolved in another, without careful consideration.[3] For these reasons the Chief Justice's views are to be preferred on this point.

The points of substance may now be considered.

(*d*) *The competence of the legislature of Sierra Leone to pass retrospective legislation.*—The Chief Justice considered that such legislation was against the spirit of those sections of the Constitution providing for its amendment and that Parliament acted *ultra vires* the Constitution in passing the Acts. The Court of Appeal held that there was nothing in the Constitution to stop such Acts being passed, whatever their morality might be. The Court of Appeal's view is to be preferred. The power of Parliament to make laws for the peace, order, and good government of Sierra Leone is a power which has repeatedly been held by courts throughout the Commonwealth to connote the widest law-making power appropriate to a sovereign,[4] and in *Riel* v. *R.*[5] the Judicial Committee gave a strongly worded opinion that

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[1] On this argument Akar's only chance of stopping the legislation would have been to apply to the court for an injunction to prevent the Bill from being presented for the Royal Assent, or to stop the legislative process at an earlier stage, on the grounds that Parliament had no power to pass a discriminatory enactment. It is unlikely that an injunction would issue in those circumstances though the position might be different if the allegation was that the National Assembly had not complied with like proper procedure for passing an act amending the Constitution. Cf. *Trethowen's Case* (*supra*).

[2] *Robins* v. *National Trust Co.*, [1927] A.C. 515; *Cooray* v. *R.*, [1953] A.C. 407.

[3] E.g. *Adegbenro* v. *Akintola*, [1963] 3 All E.R. 544.

[4] *O'Emden* v. *Pedder* (1904), 1 C.C.R. 91 (Aust.); *Croft* v. *Dunphy*, [1933] A.C. 156 (Canadian appeal to J.C.P.C.), *Ibralebbe* v. *R.*, [1964] A.C. 900 (Ceylonese appeal to J.C.P.C.). See generally on this whole question, Roberts-Wray, *Commonwealth and Colonial Law*, pp. 369-70, 373-5.

[5] (1885), 10 App. Cas. 675.

a court had no power to strike down a statute as beyond the competence of a Parliament because in its opinion it was not calculated as a matter of fact and policy to secure peace, order and good government. There would appear to be no factors in Sierra Leone which would make the application of that general principle of constitutional law inappropriate. It follows that Parliament had the power to pass retrospective legislation, and this point too has been the subject of emphatic judgments upholding such legislation within the Commonwealth.[1]

(*e*) *The Resuscitation of Dr. Bonham's Case and its attempted transplanting into the body politic of Sierra Leone.*—This is not a matter which can be decided by reference to authority nor indeed did the Chief Justice attempt to do so.

> "In my view, the time is ripe for Nations with written constitutions and I refer particularly to New Independent nations within the Commonwealth to bring to life as an active legal force the dictum of Coke in *Bonham's Case* . . ."

This is judicial activism with a vengeance, for, as the Chief Justice made clear, this is a power over and above that of ensuring that legislation is in conformity with the Constitution; indeed, it even goes beyond the approach of the Indian Supreme Court which has declared some provisions of the Indian Constitution unalterable.

It is difficult to be enthusiastic about the Chief Justice's approach. No convincing reason was put forward for thus elevating the judges to this position, but several may be advanced against it. If judges were to arrogate to themselves the power of deciding what legislation they would permit to be enacted irrespective of what the Constitution permitted, they would themselves be infringing the Constitution under which they hold office, and if judges could thus set aside the Constitution in the interests of some "higher law", what legal or moral authority would they have to stop governments doing likewise? Every government, especially in the new independent nations where ideas of judicial independence and impartiality are not much older than the nations themselves, would endeavour to appoint as judges only those persons whose support for the government and its legislation could be virtually guaranteed, and since governments may change, constitutionally or otherwise, judicial security of tenure would have to be whittled down. In old and new nations alike judges have a difficult enough task in deciding whether legislation conflicts with the Constitution and, in the event of a revolution, what recognition to accord to the actions of the new ruling authorities, without adding to their burdens and detracting from their security of tenure by the invocation of a higher law to which they alone have access, and to which all legislation must conform.

(*f*) *Was the legislation discriminatory, and if so, was it reasonably justifiable in a democratic society?* The Chief Justice answered those questions yes, no; the Court of Appeal, no, yes. Given the definition of discrimination in the Constitution, and applying the pith and substance test, it is hard not to accept the Chief Justice's opinion on the first question as correct. A small group of people, citizens as of right by virtue of the Constitution as originally promulgated in 1961, were singled out by reference to the race o their male parent, and grandparent, deprived of their citizenship by right, and left to apply for an inferior form of citizenship by registration to which they were not entitled as of right. The whole operation was done in such a way that the legislation could not be challenged, for though it was

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[1] *Phillips* v. *Eyre* (1870), L.R. 6 Q.B. 1. (Jamaican Act of indemnity upheld). *R.* v. *Kidman* (1915), 20 C.L.R. 425 (Australia), *Abeyesekera* v. *Jayatilake*, [1932] A.C. 260 (Ceylon). *Corbett* v. *Floyd*, [1958] E.A. 389 (Kenya).

constitutionally discriminatory at the time of its passage through Parliament, it ceased to be so the instant it came into force.

The second question is not susceptible of a clear answer, and it is to be regretted that the Court of Appeal did not elaborate on its cryptic affirmative answer to it. At best certain guides to assist in the evaluation of the legislation may be put forward. An important one would be the number of persons in the state deprived of citizenship and political rights, and their position in political life. If they numbered 1% of the population but provided 20% of M.Ps., a better case could be made for the legislation than if the proportions were reversed.[1] Another factor would be the nature of their political activity. If they generally supported those political parties in opposition to the governing party, the legislation would give the appearance of being an attempt to weaken the opposition, and so be difficult to justify. An important question would be to what extent it is permissible for racial characteristics to be the primary determining factor in citizenship legislation. Only on this last part did the courts venture an opinion. The Chief Justice took the view that the original intention of the Constitution was to establish "a multi-racial society with persons having equal rights whatever their racial origin", and that it would be "contrary to the spirit of a democratic society if the electors are debarred from choosing for their representative a fellow citizen who is otherwise unexceptionable, or have to wait until he is too old to serve them usefully". The Court of Appeal gave no specific reason for its finding on this point but its line of thinking may be deduced from its view that the legislation was not discriminatory at all as it took into account not race but descent, a normal consideration in nationality laws. Presumably it would have argued that in so far as the legislation was discriminatory, it was justifiable as it used principles recognized in the laws of many other nations.

4. Conclusion

The two judgments bring out in extreme form the contrasting attitudes of judicial activism and creativity, and judicial passivism. It is right to be slightly suspicious of these terms but they seem appropriative here to describe on the one hand, an approach that would subject the Constitution, and Parliament's law-making powers to a higher law of "right reason" interpreted by the courts and on the other, an approach which affirmed that "in the final analysis it has always been the wording of the Constitution itself that has to be interpreted and applied," and carefully eschewed any comment on the morality of the legislation. The former approach has its adherents amongst judges in most Commonwealth countries, but it is to be doubted whether it is the most skilful or prestigious. With some exceptions the new nations in the Commonwealth need little prompting to re-acquire that plentitude of power which the colonial authorities had prior to independence, altering the Constitution if need be, and if the courts should stand in their way on any but the clearest of legal grounds, their powers too will be limited. Adherents of the activist view should be more aware of the fact that courts also have to perform more humdrum but equally important tasks of settling civil disputes and administering the criminal law, both of which require legal expertise and impartiality. If courts were known to have a philosophy of active intervention in political-cum-constitutional disputes, the important criteria for judicial appointment would cease to be expertise and impartiality, and become sympathy and support for the government. It is worth pointing out in this connection that the United States of America is not only the home of the Supreme Court

[1] It is interesting in this connection to note that the Creoles, who number approximately 1% of the population, had 23% of the seats in the legislature in 1960: Kilson, *Political Change in a West African State*, p. 232.

to which body the Chief Justice looked, as do other judicial activists for their inspiration, but also of elected judges and a system of courts and justice in some of the Southern States that is a mockery of what these persons would regard as a proper legal system.

In the volatile political systems of the new states, judges are more likely to be left alone to get on with their every-day work if they are careful to interpret the constitutional laws of their country in the light of such general principles of law clearly established in such cases as are regarded as of persuasive or binding authority in their country, and in the light of its evolving social and political circumstances. This should be a sufficient and challenging task for most judges. In this case the Chief Justice would have done well to remember that he had been raised to his eminent position of the action of the leaders of the military coup who had deposed his predecessor, and were he and his colleagues to set off on too many frolics of their own, they could be as easily cast down by those leaders or their successors. Such disruption of the legal system would benefit nobody.

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Tejan Sie, C.J.: . . . It is a recognized rule of law that where a country has a written Constitution, any acts of Government to be valid must be either expressly or impliedly permitted by the terms of the Constitution. This means that, for example, no legislation is valid even though the proper procedures have been followed if it goes beyond the scope of the powers of legislating given by the Constitution to the legislature; in other words, it is bad if it is "ultra vires" the Constitution. Normally, the superior courts of a country which has a written Constitution are the "watchdogs of the Constitution" and have to rule whether any piece of legislation is or is not *ultra vires*. This has been recognized particularly by section 24 of the Sierra Leone Constitution (hereinafter called the Constitution), which I shall refer to later.

It must not be inferred from the foregoing that a Constitution is immutable. There must be provisions to make alterations to keep it in line with changes in economic and social conditions so marked in our time and also changes brought about in international relations. It is, however, a very solemn document and should not be altered without very serious deliberation and a clear recognition of the desirability of any such proposed alteration.

[The Chief Justice cited an American case, *Weens* v. *U.S.* 54 L.Ed. 793, at p. 801 (1909) and went on:]

The Constitution contains powers whereby its own provisions may be altered and with these I should deal in more detail later. At this stage, I merely say this, if one adopts the principles enumerated above, one must very jealously examine any purported alteration of the Constitution. I think that in making such examination, one is entitled to consider whether the proposed alteration violates the spirit and general intention of the Constitution, although on the face of it complying with the requirements laid down thereon by the Constitution.

[The Chief Justice stated the effect of the citizenship legislation in Sierra Leone under the 1961 independence Constitution, and section 2 of the Constitution Amendment (No. 2) Act 1962; expressed the view that the doctrine of estoppel could not operate against the plaintiff merely because he registered under the amending legislation; considered the effect of ss. 9 and 23 of the 1961 Constitution (section 23 sets out measures for the protection of the fundamental rights and freedoms of the individual); and continued:]

The altered section 1 of the Constitution certainly appears to contravene section 23(1) in that it is discriminatory by affording different treatment to persons like the plaintiff attributable to his description by race. It would seem that after section 1 had been altered Parliament had doubts as to the validity of the alteration; Act No. 39 of 1962 intituled "An Act to amend the Constitution in order to effect the avoidance of doubts" with short title the Constitution (Amendment) (No. 3) Act, 1962, was passed. Like its predecessor it was to be deemed to have come into operation on the 27th day of April, 1961. . . . On the face of it, this would seem to put matters right so far as the question of the altered section 1 contravening section 23(1) is concerned, although it still leaves the question outstanding of contravention of section 9.

[The Chief Justice then examined s. 43 of the Constitution, which regulates the manner in which Parliament may alter the Constitution, and he commented:]

So far as procedure is concerned, the legislation by Act No. 39 of 1961 appears to be in order. It now remains to consider whether it was valid in other respects. It will be seen that section 43(1) gives Parliament the power to "alter" the Constitution. What is meant by "alter" is shown in subsection 5(b) recited above. Clearly it does not envisage alteration in the sense of mere change whether such change be good, bad or indifferent. Sub-section 5(b) appears to place alterations in the following categories:

(i) Amendment
(ii) Modification
(iii) Re-enactment with or without amendment or modification
(iv) Suspension
(v) Repeal
(vi) Substitution

To some people the expressions "Amendment" and "Modification" are synonymous with the expression "change" but such people in my opinion are in error.

[The Chief Justice quoted definitions of "amend" and "modify" to be found in the Concise Oxford Dictionary and Chambers Twentieth Century Dictionary, and said:]

I think in this paragraph the word "amendment" indicates the intention behind the power of alteration—I think it even governs the word "modification" in that a modification which does not partake of the nature of an amendment would not be valid.

In short, I think that any alteration whatever form it takes has got to amount to an improvement of the existing law. I think this

applies equally to the power to alter by the making of different provision in lieu of a provision or in another word "substitution".

Let me give an example to illustrate what I mean. Section 42 of the Constitution is one of those sections which by virtue of section 43(1) may be altered by a simple majority in Parliament. Now section 42 reads as follows:—

> "Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good Government of Sierra Leone."

Suppose Parliament purported to alter this section to read:

> "Parliament may make laws for the unrest dis-order and bad Government of Sierra Leone."

The immediate reaction normally would be to say "that's absurd—Parliament is mad" and of course that reaction would be right. . . . In my view, the time is ripe for nations with written Constitutions, and I refer particularly to new independent nations within the Commonwealth, to bring to life as an active legal force, the dictum of Coke in *Bonham's* case, a dictum which has considerable history in the United States to test the validity of legislative actions of Governments to determine in varying degrees as STONORE, C.J. puts it—"That which is right." COKE said in *Bonham's* case—"When an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the Common Law will control it and adjudge such Act as void." And yet if one takes a wide interpretation of the powers of alteration given by section 43 on the face of it, it is in order. It is a different provision in lieu of the provision made by section 42. But if one takes a strict interpretation, then it fails to pass the test because it clearly is not an improvement.

Having mentioned section 42, I think it should be noted that no attempt has been made to alter it and its provisions may well be relevant to our consideration of the problems of the present case.

There now remains for us to consider what powers are given by the Constitution to this Court to question the validity of legislation. Section 24 is the relevant section. . . .

Having set forth the relevant legislation, let us examine the facts of the present case in more detail.

In the main, the defence admits the facts alleged in the Statement of Claim and in effect say that he falls within the scope of section 1(4) of the Constitution. The plaintiff has no entrenched right to qualify for membership of the House of Representatives. I think this defence really begs the question because it would seem that the issue in this case depended upon the validity or otherwise of section 1(4) itself. In the course of argument, however, it appears that the defence relies to a large extent on the Privy Council case from Ceylon—*Pillai* v. *Mudenayake*—reported in [1955] 2 All E.R. 833. This case, of course, is not binding on this Court as it is not a decision on appeal from Sierra Leone. However, it is recognized that principles enunciated in other Commonwealth cases may be examined and if they are relevant to a particular case in Sierra Leone, the reasoning whereby they have been arrived at may be adopted by Courts in

Sierra Leone not as "binding" precedent but as persuasive precedent.

I do not think the actual facts of the Ceylon case are of much assistance in deciding the present case because there the question was whether legislation which had the effect of debarring a person resident in Ceylon from having his name put on a register of electors was *ultra vires* the Constitution.

The person in question was not and never had been a citizen of Ceylon—the legislation in question debarred persons who were not citizens of Ceylon. The case is nonetheless of some assistance to this Court because of two principles enunciated in the judgment. [The Chief Justice quoted *in extenso* from the advice of the Board, and applied the principles as he saw them contained in *Pillai* to the facts of the instant case:]

. . . Let us consider what taken as a whole was the legislative plan before the purported amendments were passed. We hark back to what I said earlier on—that the intention appears to be the setting up of a multi-racial society with persons having equal rights whatever their racial origins.

Now what is the pith or substance of the amendment to the legislation commented on by the Privy Council in *Pillai's* case? Is it not in reality to exclude certain persons particularly of Lebanese origin from being elected to the House of Representatives? That it is not purely legislation on citizenship is shown by its allowing such persons to register as citizens albeit not quite the same sort of citizens as before. Could not this end have been achieved merely by an alteration of section 31 to some such effect as that for the purpose of that section the expression "citizen" should include only citizens of "Negro African descent?" I think not; such a provision would fall into the category dealt with in paragraph (f) of sub-section (4) of section 23 and would have to pass the test of "reasonably justifiable in a democratic society". Would this not be contrary to the spirit of a democratic society if the electors are debarred from choosing for their representative a fellow citizen who is otherwise unexceptionable or have to wait until he is too old to serve them usefully?

Borrowing the words of their Lordships in the *Pillai* case quoted above, Is Parliament then trying to do indirectly what it feels it cannot do directly?

[His Lordship quoted from an article by D. K. Singh in 29 Modern L.R. 273 arguing that a legislature must act in good faith and not transgress its powers through "a guise or pretence". The Chief Justice went on:]

. . . I should hold that the taking away from the plaintiff his right to stand for election to the House of Representatives, a District Council or other Local Authority without having to wait for the lapse of 25 years is *ultra vires* the Constitution and consequently null and void.

Even assuming, however, that this is simply a case of legislation on citizenship, I still see many objections. All the relevant sections of the Constitution must be considered together. I refer again to section 42 of the Constitution which provides that subject to the

provisions of the Constitution, Parliament may make law for the peace, order and good Government of Sierra Leone. As I have indicated earlier, I do not think the powers of alteration given by section 43 entitle Parliament to make any alteration irrespective of whether it is good, bad or indifferent. An alteration must in my view effect an improvement and also still be made for the peace, order and good Government of the country. Can this be said of a change in the law which deprives a man of his citizenship and then in place of it gives him the option to take some positive step himself to acquire 2nd class citizenship? If the numbers involved had been sufficiently numerous, well organized and vociferous, who knows what breaches of the peace might have occurred on the passing of such legislation?

In my mind what makes the matter worse was that the so-called amendments were retroactive. One realizes that there are occasions where retroactive legislation is necessary but it should be passed very sparingly and only when fully justified. In my view the making of the amendments by Act No. 12 of 1962 to section 1 and by Act No. 39 of 1962 to section 23 retroactive was completely unjustified and contrary to the spirit of sections 42 and 43 of the Constitution—in fact if we bear in mind my quotation earlier from the American case from where alone I am afraid we can in cases of this kind singularly draw our inspiration, we find that what is written there conflicts in large measure to the whole conception of the Constitution as treated by the Legislature in the instant case.

If, as I hold it, it was *ultra vires* for Parliament to make the Amendments retroactive then section 9 has its full significance and Parliament had no power to deprive the plaintiff of the citizenship he automatically acquired on 27th April, 1961.

My remarks on retroactivity apply equally to Act No. 4 of 1965 which purports to consolidate the Amendments. It cannot consolidate any of them which were not valid amendments in the first place. From what I have said, I do not wish it to be thought I am of the opinion that under no circumstances can the constitutional provisions regarding citizenship be altered. For example, if Parliament were to enact that so far as regards persons born after the coming into force of that particular enactment or on some future date, only persons of Negro African descent would automatically become citizens that would be a very different matter because that would not be a case of interfering with the rights already acquired by living persons. Nor do I wish it to be inferred that I think that in no circumstances would a restriction on entry into the House of Representatives etc. by reference to race be reasonably justifiable in a democratic society. I merely think that such a restriction would not have been justified at the time the purported amendments were made.

In this connexion I find it very significant that by the very terms of the purported amendment it is implied that persons of mixed race like the plaintiff are considered fit and proper to be civil servants or regular soldiers of Sierra Leone. Why let them be engaged in services in which quality of loyalty, obedience and integrity are required and yet say they are not fit to be elected to

take part in the law making of their country? In the light of this could it be said to be reasonably justifiable in a democratic society to so restrict them? For all the reasons set forth above, I am of the opinion that the plaintiff must succeed because:—

1. The purported amendment by Act No. 12 of 1962 of Section 1 of the Constitution was *ultra vires* the Constitution and therefore null and void.
2. The purported amendment by Act No. 39 of 1962 of section 23 of the Constitution was *ultra vires* the Constitution and therefore null and void.

I also hold that any consequential amendments to other sections of the Constitution, *e.g.*, the inclusion of the figure '1' on line 1 of section 31 of the Constitution is *ultra vires* and void. I am therefore prepared to grant a declaration in favour of the plaintiff consonant with my decision. . . .

Court of Appeal

Sir Samuel Bankole Jones, P.—This is an appeal from the judgment of the learned Chief Justice of the Supreme Court in which he granted the declarations sought by the plaintiff, now the respondent, against the defendant, the Attorney-General, now the appellant, who was sued in his capacity as legal representative of the Government of the State of Sierra Leone. The declarations were as follows: firstly, that the purported amendments to section (1) of the Constitution by Act No. 12 of 1962 were *ultra vires* the Constitution and therefore null and void and secondly, that the purported amendment by Act No. 39 of 1962 of section 23 of the Constitution was also *ultra vires* the Constitution and therefore null and void.

The story goes back to the 27th April, 1961, when Sierra Leone became an independent nation. By the Sierra Leone (Constitution) Order in Council, Public Notice No. 78 of 1961, provisions were made relating to citizenship in sections 1-10. Section 9, for example, granted powers to Parliament for making provisions for the acquisition, the deprivation and the renunciation of the citizenship of Sierra Leone.

The respondent, who claimed to be a citizen of Sierra Leone, was born in Rotifunk in the Moyamba District in the Southern Province of Sierra Leone on the 20th May, 1927, by an indigenous Sierra Leonean mother belonging to the Temne tribe and a Lebanese father born and bred in Senegal in Africa, who has lived in Sierra Leone for 56 years and has never been to Lebanon. It is admitted that the status of the respondent on the eve of independence was that of a British protected person as defined in the British Nationality Act 1948—see section 10(1) of the Constitution of Sierra Leone. It is also admitted that on the day of independence, by virtue of sub-section (1) of section 1 of the Constitution, the respondent became a citizen of Sierra Leone. This sub-section reads:—

"1(1) Every person who, having been born in the former Colony or Protectorate of Sierra Leone, was on the twenty-sixth day of April, 1961, a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Sierra Leone on the twenty-seventh day of April, 1961:

Provided that a person shall not become a citizen of Sierra Leone by virtue of this sub-section if neither of his parents nor any of his grandparents was born in the former Colony or Protectorate of Sierra Leone."

As such citizen of Sierra Leone, the respondent as of right qualified to become a member of the House of Representatives or of any District Council or Local Authority in Sierra Leone, if he fulfilled certain conditions.

Then came the passing by Parliament of Act No. 12 of 1962 on the 17th January, 1962, the provisions of which were specifically made retrospective as from the 27th April, 1961. The title of the Act was—"An Act to provide for the amendment of certain sections of the Constitution." The relevant provisions are as follows:—

"2. Section 1 of the Constitution is hereby amended—

(*a*) by the insertion immediately after the words 'Every person' in the first line of sub-section (1) thereof of the words 'of negro African descent'; and

(*b*) by the addition at the end therof of the following new sub-sections—

"(3) For the purposes of this Constitution the expression 'person of negro African descent' means a person whose father and his father's father are or were negroes of African origin.

"(4) Any person, either of whose parents is a negro of African descent and would, but for the provisions of subsection (3), have been a Sierra Leone citizen, may, on making application in such manner as may be prescribed, be registered as a citizen of Sierra Leone, but such person shall not be qualified to become a member of the House of Representatives or of any District Council or other local authority unless he shall have resided continuously in Sierra Leone for twenty-five years after such registration or shall have served in the Civil or regular Armed Services of Sierra Leone for a continuous period of twenty-five years."

The effect of this Act was to deprive the respondent of the citizenship which he acquired by virtue of section 1(1) of the Constitution, but albeit, the Act offered him if he chose to accept, a Sierra Leone citizenship with certain limitations attached thereto, as described in subsection (4) (supra). The respondent chose to register and did so on the 7th January, 1964, and he now holds a Sierra Leone passport which declares him a citizen of Sierra Leone and the Commonwealth.

Act No. 39 of 1962 intituled "An Act to amend the Constitution in order to effect the avoidance of doubts", was passed by Parliament on the 3rd August, 1962 and its provisions were also specifically made retrospective to the 27th April, 1962. The relevant portion reads:—

"2. Sub-section (4) of section 23 of the Constitution is hereby amended by—

(*a*) the substitution of a semi-colon and the word 'or' for the fullstop at the end of paragraph (f); and

(*b*) the addition immediately thereafter of the following new paragraph—

"(*g*) for the limitation of citizenship of Sierra Leone to persons of negro African descent, as defined in sub-section (3) of section 1 of this Constitution, and for the restrictions placed upon certain other persons by sub-section (4) of the said section."

Passed in the House of Representatives for the second time and in accordance with the provisions of sub-sections (1) and (3) of section 43 of the Constitution this 3rd day of August, in the year of our Lord one thousand nine hundred and sixty-two."

Now, the relevant portion of section 23 of the Constitution reads:—

"23. (1) Subject to the provisions of sub-sections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of sub-sections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Sub-section (1) of this section shall not apply to any law so far as that law makes provision—

(*a*)—(*e*)

(*f*) whereby persons of any such description as is mentioned in sub-section (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society."

Sub-sections (5), (6), (7) and (8) do not concern this appeal.

I do not think that it can be denied that when the Sierra Leone (Constitution) Order-in-Council, 1961, and the Sierra Leone Independence Act 1961, 9 and 10 Eliza. 2, Chapter 16, both of which were frequently referred to by counsel in the course of this appeal, came into operation, their joint effect was to give to the Sierra Leone Parliament the full legislative powers of an independent sovereign state. This Order-in-Council and the Independence Act are almost *ipsissima verba* the Ceylon Order-in-Council 1946

and the Ceylon Independence Act, 1947, as to the provisions for the legislative powers of the Parliament of Ceylon. In the case for example of *Liyanage* v. *R.*, [1966] 1 All E.R. 650, where the question of the sovereignty of the Ceylon Parliament was adverted to by the Privy Council, it was held that the legislative power of the Ceylon Parliament was not limited by inability to pass laws which even offended fundamental principles of justice. And this, I opine, applies with equal force to the Parliament of Sierra Leone. Lord PEARCE delivered the judgment of the board in that case, and at page 657E had this to say:—

> "Those powers, however, as in the case of all countries with written Constitutions, must be exercised in accordance with the terms of the Constitution from which the power derives."

I find that the second schedule of the Sierra Leone Independence Act, 1961, deals with the legislative powers of the Sierra Leone Parliament, and its section 6 provides as follows:—

> "Nothing in this Act shall confer on the legislature of Sierra Leone any power to repeal, amend or modify the constitutional provisions *otherwise than in such manner as may be provided for in those provisions.*"

The Constitution of Sierra Leone itself is to be found in the second schedule of the Sierra Leone (Constitution) Order-in-Council, 1961, referred to above. The relevant sections for the purposes of this appeal, which deal with the legislative powers of Parliament are 42 and 43, and they read as follows:—

> "42. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Sierra Leone.
>
> 43. (1) Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Sierra Leone) any of the provisions of the Sierra Leone Independence Act, 1961: Provided that in so far as it alters—
>
> (*a*) this section;
>
> (*b*) sections 11 to 25 (inclusive), section 29, section 44, sub-section (2) of section 54, section 55, sections 56, 73, 74, 75, 76, 77, 79, 80, 81, 84, 85, 86, 87 to 93 (inclusive), 94, 95, 96, 97, 98, 99, 102 and 103;
>
> (*c*) section 107 in its application to any of the provisions specified in paragraph (a) or (b) of this sub-section; or
>
> (*d*) any of the provisions of the Sierra Leone Independence Act, 1961 a bill for an Act of Parliament under this section shall not be submitted to the Governor-General for his assent unless the bill has been passed by the House of Representatives in two successive sessions, there having been a dissolution of Parliament between the first and second of those sessions.
>
> (2) For the purposes of sub-section (1) of this section, a bill passed by the House of Representatives in one session shall be deemed to be the same bill as a bill passed by the House in the preceding session if it is identical with that bill, or contains only such alterations as are certified by the Speaker to be necessary owing to the time that has

elapsed since that bill was passed in the preceding session.

(3) A bill for an Act of Parliament under this section shall not be passed by the House of Representatives in any session unless at the final vote thereon in that session it is supported by the votes of not less than two-thirds of all the members of the House.

(4) The provisions of this Constitution or (in so far as it forms part of the law of Sierra Leone) the Sierra Leone Independence Act 1961, shall not be altered except in accordance with the provisions of this section.

(5) In this section—

(*a*) references to any of the provisions of this Constitution or the Sierra Leone Independence Act 1961, include references to any law that amends, modifies, re-enacts with or without amendment or modification or makes different provision in lieu of, that provision; and

(*b*) references to the alteration of any of the provisions of this Constitution of the Sierra Leone Independence Act 1961, include references to the amendment or modification, or re-enactment, with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of different provision in lieu of that provision."

Firstly, counsel for the respondent argued that Act No. 12 of 1962 is invalid because there is no evidence on the face of it that it was passed "by the votes of not less than two-thirds of all the Members of the House" as is required by section 43(3) above. He buttressed this argument by pointing out that in the case of Act No. 39 of 1962, there is a certificate attached, to the effect that the procedural requirements of section 43(1) and (3) were fulfilled. Now, section 1(1) of the Constitution, which Act No. 12 of 1962 purported to amend, is not an entrenched clause as section 23 which requires an extra-special treatment for its amendment. However, I do not find any provision in our Constitution which requires a certificate to the effect as suggested, when an amendment is made to any of the provisions of the Constitution. Section 29(4) in the Ceylon Constitution, which is conceded to be similar to our section 43(1), has the following proviso which is not found in ours:—

> "Provided that no bill for the amendment or repeal of any of the provisions of this order shall be presented for the Royal assent unless it has endorsed on it a certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amount to not less than two-thirds of the whole number of Members of the House (including those not present). Every certificate of the Speaker under this sub-section shall be conclusive for all purposes and shall not be questioned in any Court of Law."

It is therefore my view, that in the absence of a specific provision, such as the above, in our Constitution, the maxim, *omnia praesumuntur rite et sollemniter esse acta donec probetur in contrarium* applies. We must therefore presume that Act No. 12 of 1962 was passed in accordance with section 43(3) of our Constitution and counsel's argument as to the invalidity of this Act therefore fails. Apart from this, however,

this Act complied with the provisions laid down by Act No. 63 of 1961—"An Act to make Provision for the Administrative Procedure, for the Publication Authentication and Recording of Acts of Parliament", which came into operation on the 6th January, 1962.

Secondly, counsel submitted a two-pronged proposition and in the alternative with respect to the purported amendments by Parliament of section 1(1) and section 9(b) of the Constitution. Section 1(1) has been set out earlier in this Judgment. Section 9(b) reads:—

> "Parliament may make provision—
> (*b*) for depriving of his citizenship of Sierra Leone any person who is a citizen of Sierra Leone *otherwise than by virtue of sub-section (1) of section 1 or section 4 of the Constitution.*"

Section 4 is not of importance here as it makes provision for persons born in Sierra Leone after 26th April, 1961. The first proposition is that Parliament has no power whatever to amend section 1 of the Constitution in the way it purported to have done by Act No. 12 of 1962 to the detriment of the respondent, because such an amendment would deprive him of his status of citizenship which he acquired at birth, in that he was a British protected person before independence, and by law a Sierra Leonean citizen (with all the rights and privileges which that status carried) when Sierra Leone attained independence on the 27th April, 1961. "Once a citizen always a citizen," was how counsel put in a nutshell this proposition of his. Also, included in this proposition he argued that Parliament had no power whatever to revoke or amend or modify section 9(b) by implication for the sole purpose of amending section 1 of the Constitution, so as to deprive the respondent of his status of citizenship which was his by law on the attainment of independence. His second proposition and which is in the alternative, is that if at all Parliament had the power to amend section 1 of the Constitution, it must first amend section 9(b) as to that portion which reads, "Otherwise than by virtue of sub-section 1 of section 1 of the Constitution." Not having specifically done so by a Bill introduced in Parliament to that effect, he postulated that any purported amendment of section 1 of the Constitution was *ultra vires* and of no effect, whilst section 9(b) was still alive and in full force and vigour. As to the first proposition, I refuse, with respect, to accept as the law that Parliament cannot amend section 1 of the Constitution in the manner it did by Act No. 12 of 1962. The Constitution itself states that Parliament may "alter" (and this includes an amendment) any of its provisions (see sections 43(1) and 43(5) (b) of the Constitution), but it can only do so if section 6 in the second schedule of the Independence Act is complied with. This section has been set out earlier in this judgment.

The question now is, did Parliament comply with the provisions of section 6? The answer to my mind is yes, because it obeyed the provisions of section 43(3) which stipulate the manner in which an amendment could be effected, namely by a two-thirds majority of all the members of the House. It is therefore my considered opinion that in this respect Act No. 12 of 1962 was *intra vires* the

Constitution. Whether it was a right thing, or a just thing for Parliament to have amended the Constitution in the way it did, is, in my opinion not the concern of this Court. This Court does not sit in judgment of this kind over Parliament.

It follows then that on the same footing, Parliament can amend section 9(b) or any part of it, either directly or by implication, provided that the provisions of section 43(3) are complied with.

Counsel urged that section 9(b), as to that portion which reads:—

"(*b*) otherwise than by virtue of sub-section (1) of section 1 of the Constitution,"

is a constitutional restriction and a complete prohibition imposed on the power of Parliament to amend section 1 of the Constitution. In the recent Privy Council case of *Mohamed Samsudeen Kariapper and S. S. Wijesinha*, [1967] 3 W.L.R.1460, it was said that the intention of a statute was to be gathered from its operation, and that as a general rule an inconsistent law amended, unless some provision denying the Act constitutional effect was to be found in the constitutional restrictions imposed on the power of amendment. If, as it was urged, that section 9(b) contains a constitutional restriction imposed on the power of Parliament to amend section 1 of the Constitution, then on the authority of the above case, there should be found some provision in that section which would deny Act No. 12 of 1962 constitutional effect. Is there such a provision to be found in section 9(b)? The above cited case was an appeal from the Supreme Court of Ceylon, and looking at the Ceylon Constitution dealing with legislative powers and procedure, it is to be found, for example, that constitutional restrictions were imposed on the power of the Ceylon Parliament to amend section 29(2) which reads as follows:—

> "29. (2) No such law shall—
> (*a*) prohibit or restrict the free exercise of any religion or
> (*b*) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable, or
> (*c*)
> (*d*)
> provided that in any case where a religious body is incorporated by law no such alteration shall be made except at the request of the governing authority of that body."

Immediately after these provisions is to be found a sub-section (3) which reads:—

> "Any law made in contravention of sub-section (2) of this section shall, to the extent of such contravention, be void."

No such provision is to be found in our section 9(b) which would deny its amendment constitutional effect. The conclusion therefore is that, if there is none, then Act No. 12 of 1962 must be taken to have amended section 9(b) by necessary implication for the purpose of giving effect to the amendments contained in that Act as relates to section 1 of the Constitution. The answer therefore to counsel's second proposition is that it was not necessary for Parliament to

have pioneered a Bill through the House for the purpose of specifically amending section 9(b) or any part of it.

The board in the above case, concurred with the opinion of Sir Rowdell PALMER and Sir Robert COLLIER, the law officers of the day given in 1864. Part of that opinion reads as follows:—

> "It must be presumed that a legislative body intends that which is the necessary effect of its enactments; the *object*, the *purpose* and the *intention* of the enactment is the same; it need not be expressed in any recital or preamble; and it is not (as we conceive) competent for any court judicially to ascribe any part of the legal operation of a statute to inadvertence."

Also, Sir Douglas MENZIES delivering the judgment of the board had this to say:—

> "In the course of argument a good deal was made of the doubts and complexities that must follow if the Constitution can be amended by laws which do not, as it were show their colours . . . The Board is thoroughly aware of the difficulties that are likely to result from altering the Constitution except by laws which plainly and expressly amend it with particularity. Considerations of this sort, powerful as they ought to be with the draftsman, cannot in a court of Law weigh against the considerations which have brought the Board to its conclusions that a bill, which upon its passage into law would amend the Constitution, is a bill for its amendment."

Finally, I, for my part, find it inconceivable to accept the proposition that, contrary to the express provisions in section 43 of the Constitution, there can be found any other section within its framework which could be construed as having the effect of creating a complete prohibition and an everlasting fetter on the legislative power of Parliament to amend.

In the final analysis, it has always been the wording of the Constitution itself that has to be interpreted and applied. See *Adegbenro* v. *Akintola and anor.*, [1963] 3 All E.R. 544 and at p. 551A.

However, the submission of the appellant is that no portion of section 9(b) imposes a constitutional restriction on the legislative power of Parliament. According to him, what this section does is merely to cast a duty on Parliament to make provisions for the deprivation of citizenship acquired otherwise than by section 1, sub-section (1). As to the question of making provisions for persons who come under that sub-section, this is a matter which he submitted may be done, but only subject to the provisions of the Constitution, and that this was legally accomplished by Act No. 12 of 1962. No, I prefer to construe section 9(b) as containing a constitutional restriction on the power of Parliament to deprive persons of their citizenship who by virtue of section 1 sub-section (1) of the Constitution became citizens of Sierra Leone on the 27th April, 1961. However, I do not find in that sub-section, any provision which denies constitutional effect to Act No. 12 of 1962. It is therefore my view that that Act by necessary implication amended the last three lines of section 9(b) beginning with the words "Otherwise than . . . Constitution," in order to give effect to its provisions. If I am wrong, and the appellant is right, then

section 9(b) need not at all be amended before Act No. 12 of 1962 can take effect.

Much argument was centred around the question as to whether or not Act No. 12 of 1962 was discriminatory as to race. The respondent claimed that it was so as to his race. And the learned Chief Justice had this to say about it:—

> "Now what is the pith or substance of the amendment to the legislation commented on by the Privy Council in *Pillai's case*, [1955] 2 All E.R. 833? Is it not in reality to exclude certain persons particularly of Lebanese origin from being elected to the House of Representatives? That it is not purely legislation on citizenship is shown by its allowing such persons to register as citizens albeit not quite the same sort of citizens as before."

Having carefully considered the arguments on both sides, and with respect to the learned Chief Justice, I have come to the conclusion that the Act in question was purely legislation on citizenship. A close scrutiny of it will reveal, that the only consideration taken into account by Parliament, was not race but descent, descent from a person's father's father. And this consideration is recognized in the nationality or citizenship laws of many other countries. See for example section 2 of the British Nationality Act 1958. I do not therefore agree that the Act was discriminatory as to race or at all. In any case, even if it were, there was no legal proof as to what race the respondent belonged. Again also, even if it were, then Act No. 39 of 1962, which amended section 23, sub-section 4 of the Constitution by adding a new paragraph (g) to that sub-section, placed the matter beyond all doubts.

Although counsel for the respondent conceded that Parliament has the power to pass retrospective legislations, he however contended that Act No. 12 of 1962 cannot be construed as retrospective even if Parliament intended it to be so, by reason of the fact that it preceded in time Act No. 39 of 1962. As Act No. 12 of 1962 received the Royal assent on the 17th March, 1962, counsel submitted that as from that date it was void, because by its very nature, being discriminatory, it offended section 23(1) of the Constitution. Act No. 39 of 1962, on the other hand, received the Royal assent on the 3rd October, 1962. Counsel therefore submitted that this Act was passed allegedly to take effect retrospectively when it became palpably clear to Parliament that Act No. 12 of 1962 was discriminatory. But it was too late, he said, because that Act could not have revived Act No. 12 of 1962 which was void *ab initio*. I must confess that I find this argument ingenious, but as I have held earlier that Act No. 12 of 1962 was not discriminatory, it was saved by section 23 sub-section (f) of the Constitution (supra) because in my view there was no necessity to have passed Act No. 39 of 1962, except *ex abundanti cautela*.

The law as to the effect of retrospective legislations, as I find it, is that once it is clear that Parliament intends to give retrospective effect to an Act, then it is none of the business of the Courts to question it. It matters not whether they have respect for it. They must give effect to it, even though the result may create hardship

and injustice. And this is why many Parliaments shrink from passing retrospective legislations especially if those legislations operate to interfere with vested rights and the like. The result is that when Act No. 12 of 1962 was passed retrospectively, it operated as if section 1 sub-section (1) had never been enacted. This means that on the 27th day of April, 1961, the respondent never acquired the status of the citizenship of Sierra Leone but was merely a person within the state who could, if he chose, acquire a Sierra Leone citizenship by registration, with all the limitations attached to such a status by law. The same principle applies to Act No. 39. It operated as if section 23 (4) (g) was in existence on the 27th April, 1961. What my own feelings are about this exercise by Parliament of its power of amendment, whether they be those of revulsion or shock, the fact remains that Parliament acted legally within the powers conferred upon it by the Constitution. The learned Chief Justice perhaps understandably must have felt that injustice had been done to the respondent because he said *inter alia* in his judgment:—

> "In my mind what makes the matter worse was that the so-called amendments were retroactive. One realizes that there are occasions where retroactive legislation is necessary, but it should be passed very sparingly and only when fully justified. In my view the making of the amendments by Act No. 12 of 1962 to section 1 and by Act No. 39 of 1962 to section 23 retroactive was completely unjustified and contrary to the spirit of sections 42 and 43 of the Constitution."

Whilst I share the view of the Learned Chief Justice that retrospective legislations ought to be passed sparingly, yet, with respect, I find that the Acts in question found legal justification under the provisions of the Constitution. Whether the passing of them was morally justified, is a matter on which I hesitate to express an opinion. Suffice it to say, that I have come to the conclusion that Act No. 12 of 1962 and Act No. 39 of 1962 were not *ultra vires* the Constitution and accordingly the appeal must be allowed and I so allow it.