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1947 *Present :* **Soertsz S. P. J., Canekeratne and Nagalingam JJ.**

PERERA, Petitioner, *and* JAYAWARDENE, Respondent

Election Petition No. 18 of 1947, Kelaniya

Election petition—Security for costs—Number of charges—Meaning of the word "charge"—Election Petition Rules, 1946—Rule 12.

By the word *charges* in rule 12 (2) of the Election Petition Rules, 1946, is meant the various forms of misconduct coming under the description of corrupt and illegal practices. Whatever, for example, may be the number of acts of bribery sought to be proved against a respondent, the charge to be laid against him in a petition is one of bribery.

Tillekewardene v. Obeysekere (1931) 33 N. L. R. 65 affirmed.

THIS was an interlocutory matter in connection with an election petition. It was referred to a Divisional Bench by Basnayake J. in the following terms :—

"This is an interlocutory matter in connection with the election petition presented on October 13, 1947, by one Kalugamage Anthony Perera of Kelaniya praying that the election of Junius Richard Jayewardene, member for Electoral District No. 10, Kelaniya, be declared to be void.

"The material paragraph of the petition is as follows :—

'3. Your petitioner submits that the election of the said Junius Richard Jayawardene the respondent above named was void for the following reasons :—

(1) that before and during the election the said respondent and his agents and other persons with his knowledge and consent did print, publish and distribute or cause to be printed and distributed handbills which did not bear upon the face thereof the names and addresses of their printers and publishers and that the said omission is a corrupt practice within the meaning of section 58 (1) (*c*) of the Ceylon (Parliamentary Elections) Order in Council, 1946.

(2) that before and during the election the said respondent and his agents and other persons with his knowledge or consent did make and publish false statement of fact in relation to the personal character and conduct of the other candidate referred to in para 2 above for the purpose of affecting the return of that candidate and that thereby a corrupt practice has been committed within the meaning of section 58 (1) (*d*) of the said Order in Council.

(3) that before and during the election the said respondent and his agents and other persons with his knowledge or consent, did inflcit or threaten to inflcit injury, damage, harm or loss upon a large number of electors in order to induce or compel them to refrain from voting at the said election and that thereby the corrupt practice of undue influence has been committed within the meaning of section 56 of the said Order in Council '.

" Within the time prescribed by rule 12 of the Parliamentary Election Petition Rules, 1946 (hereinafter referred to as the Election Petition Rules) the petitioner gave security for the payment of all costs, charges and expenses that may become payable by him the deposit of a sum of five thousand rupees with the Commissioner of Parliamentary Elections.

" On October 29, 1947, the respondent Junius Richard Jayawardene through his Proctor and agent lodged a statement of objections the material paragraph of which are as follows :—

' 5. It is submitted that the security allowed to have been given is of an amount less than that required by rule 12 (2) of the Third Schedule of the Ceylon (Parliamentary Elections) Order in Council, 1946, as the number of charges set out in the petition filed by the petitoner is more than three.

6. As security has not been given by the petitioner as required by the aforesaid rule it is submitted that no further proceedings should be had on the said petition '.

" The Election Petition Rule referred to above reads :—

' 12. (1) At the time of the presentation of the petition or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

(2) The security shall be to an amount of not less than five thousand rupees. If the number of charges in any petition shall exceed three, additional security to an amount of two thousand rupees shall be given in respect of each charge in excess of the first three. The security required by this rule shall be given by a deposit of money.

(3) If security as in this rule provided is not given by the petitioner no further proceedings shall be had on the petition, and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondents' costs. The costs of hearing and deciding such application shall be paid as ordered by the Judge, and in default of such order shall form part of the general costs of the petition. '

" On November 10, 1947, the matter of the objections of the respondent came up before me to be dealt with by way of an interlocutory matter under section 28 (5) of the Ceylon (Parliamentary Elections) Order in Council, 1946.

" I heard counsel for both the petitioner and the respondent and at the conclusion of the argument of the counsel for the respondent I

informed counsel that I proposed to reserve the questions which arise for adjudication on the objections lodged by the respondent to a bench of two more Judges as they appeared to me to be questions of difficulty.

" As both parties will be heard once more it is unnecessary to make any reference here either to the submissions of Counsel or the authorities cited by them.

" Briefly the respondent's main contention was that each of the paragraphs 3 (1) and 3 (2) contained more charges than one and that therefore the total number of charges in the petition being more than three the security of five thousand rupees was insufficient. He also contended that under paragraph 3 (3) of the petition the petitioner was not entitled tc seek to prove more than one specific instance of the offence of undue influence.

" The questions that arise for decision are :—

(*a*) Does paragraph 3 (1) of the petition contain more charges than one within the meaning of that expression in rule 12 of the Election Petition Rules ?

(*b*) Does paragraph 3 (2) of the petition contain more charges than one within the meaning of that expression in rule 12 of the Election Petition Rules ?

(*c*) Is the petitioner entitled to seek to prove more than one specific instance of the offence of undue influence under paragraph 3 (3) of the petition ?

(*d*) Has the security required by rule 12 of the Election Petition Rules been given on behalf of the petitioner ?

" The questions arising for adjudication are apart from their difficulty questions of considerable importance, a fact which both counsel stressed.

"I, therefore, reserve, under section 48of the Courts Ordinance, the above questions for decision by a bench of five Judges of the Supreme Court ."

H. V. Perera, K.C. (with him *D. S. Jayewickreme, C. S. Barr-Kumarakulasingham* and *H. W. Jayewardene*), in support of the application.—The question for determination is whether the petition discloses more than three charges. Only a sum of 5,000 rupees has been deposited as security and if the petition discloses more than three charges security is not given as required by Rule 12 (2) and, therefore, the petition must be dismissed under Rule 12 (3) of Parliamentary Election Rules, 1946.

The matter for decision is the meaning of the work " charge " in Rule 12 (2) In *Tillekewardane v. Obeyesekera*[1], Drieberg J. held that word " charges " in similar context meant the particular types of misconduct such as bribery treating, &c., and that, therefore, any number of acts, instances or cases of a particular label of misconduct would constitute one charge. That is to say, any number, say, a hundred instances of bribery would come under one generic charge of bribery and any number, say, a hundred cases, of treating would come under one generic charge of treating, &c.

It is submitted firstly that *Tillekewardane v. Obeyesekera* (*supra*) was wrongly decided on this point and, secondly, even if that case has to be considered as rightly decided, that there are more than three charges disclosed in this particular petition.

[1] *(1931) 33 N. L. R. 65.*

Assuming that *Tillekewardane v. Obeyesekera* (*supra*) has been correctly decided, one finds on perusal of the Parliamentary Order in Council, 1946, that section 54 defines impersonation, section 55 treating, section 56 undue influence, and section 57 bribery. Section 58 consists of various sub-heads. Section 58 (*a*) deals with impersonation, 58 (*b*) deals with undue influence, treating and bribery, 58 (*c*) deals with printing, publishing, &c., of certain pamphlets. All these acts under 58 (*a*), (*b*), (*c*) are made into corrupt practices and made punishable as such. But a distinction is clearly noticeable between acts in 58 (*a*) and (*b*), which have already been defined as offences by sections 54, 55, 56 and 57, and acts in section 58 (*c*) which are for the first time made punishable as corrupt practices by section 58. So that in the process of counting the number of charges it is possible to include any number of instances or acts any of particulars genus of misconduct which has already been defined, such as bribery, treating, &c.; but when it comes to acts under 58 (*c*). *e.g.*, printing, publishing, &c., no such enumeration is possible. Printing and publishing handbills are two different and distinct acts. See *Mc. Farlane v. Hulton*[1]. It is also quite clear that distributing is also a different kind of act. Under the Order in Council a person would be guilty of a corrupt practice if such person prints a certain type of handbill and does nothing else. So also a person who only publishes it would be guilty of a corrupt practice. Likewise the person who only distrbutes it and does nothing else would be guilty of a corrupt practice. On the basis that printing, publishing and distributing certain type of handbill is each a separate corrupt practice and, therefore, each a separate charge, there are more than three charges disclosed in this petition.

But it is clear that the decision in *Tillekewardane v. Obeyesekera* (*supra*) is incorrect. The decision is based on the English Law. The analogy is fallacious in that in Election Petitions in England a fixed sum, *i.e.*, £1,000 is given as security for any number of charges, whereas under our law security increases as the number of charges increases. The security under Rule 12 (1) is given for the payment of all costs, charges and expenses that may become playable. Surely the costs and expenses would depend on the number of acts or instances into which the Court has to inquire and not on the label or particular type of misconduct. The conclusion is irresistible that charge in Rule 12 (2) means a particular act, instance or case of any particular corrupt or illegal practice. Perhaps the decision of Drieberg J. would have been different if he had before him the recommendations of Donoughmore Commission in this respect. That report of the Commission deals with the evil which it sought to remedy by providing additional security. That Report, would be relevant to find out the evil it sought to remedy. See the judgment of Lord Halsbury in *Eastman Photographic Materials Company, Ltd. v. Comptroller of General Patents*[2]; *Assam Railway and Trading Company, Ltd. v. Commissioners of Inland Revenue*[3]; *Heydon's Case*[4]

E. G. Wickramanayake (with him *B. Aluwihare, S. E. J. Fernando* and *A. B. Perera*), for the petitioner, respondent.—The decision of Drieberg J.

[1] *L. R. 1899 1 Ch. 884 at 888.*
[2] *L. R. 1898 A. C. 571.*
[3] *L. R. 1935 A. C. 445 at 449.*
[4] *Ruling Cases Vol. XIV., p. 816.*

in *Tillekewardane. v. Obeyesekera* (*supra*) has been consistently followed in a long series of cases. Among theso are *Vinayagamoorthy v. Ponnambalam*[1]; *Jeelin Silva v. Kularatne*[2]· *Mohamed Mihular v. Nalliah etal* [3]

Generally costs awarded in election petition inquiries do not come to much more than Rs. 5,000. In some inquiries costs have come to considerably less than Rs. 5,000. So then 5,000 rupees which is usually deposited -in election petitions seems to be a very reasonable sum to cover costs, charges and expenses.

The Parliamentary Elections Order in Council differs in essential respects from the State Council Elections Order in Council even with regard to Election Rules. But there is no departure with respeot to the amount of security and increase of amount of security when there are more charges than three in Rule 12 (2). The provisions in this respect are the same in both Orders in Council. As the Legislature has introduced the same provision in the same words with respect to the same subject-matter after such words have been consistently interpreted in a certain way the Legisltture must be deemed to have adopted that interpretation. See *In Re Cathcart, Ex parte Campbell*[4] ; *Young v. Gentle*[5] ; *The Commissioners for Special Purposes of the Income Tax v. Pemsel*[6]. See also 1937 Ed. Maxwell on Interpretation of Statutes, p 26 ; 31 Hailsham, sections 624 and 626.

Though the Donoughmore Report had not been cited at the argument in *Tillekewardane v. Obeyesekera* (*supra*) the question of inconvenience to respondent by numerous charges was considered in that case.

As far as avoiding an election is concerned there is no difference between one kind of corrupt or illegal practice and another kind of corrupt of illegal practice. All are grouped together. In any event no difference can be made with regard to costs to be incurred in respect of one or another of corrupt or illegal practice. Counsel also cited *Bettesworth v. Allingham*[7].

H. V. Perera, K.C., in reply.—The rule of the Legislature to adopt the judicial interpretation in certain cases is not a canon of interpretation but an ordinary rule which must be applied reasonably. See *Barras v. Aberdeen Steam Trawling and Fishing Company, Ltd.*[8].

Cur. adv. vult.

December 8, 1947. SOERTSZ S.P.J.—

The matter now before us raises the question of the sufficiency of the security given by the petitioner under Rule 12 of the Parliamentary Election Petition Rules, 1946. It has been referred to us, a divisional bench of three Judges, at the direction of My Lord the Chief Justice. It had, in the first instance, gone before Basnayake J. who referred it to a Bench of five Judges but it was found difficult to assemble such a Bench and the matter was urgent.

[1] *(1936) 40 N. L. R. 178*
[2] *(1943) 44 N. L. R. 21.*
[3] *(1944) 45 N. L. R. 251.*
[4] *L. R. 1870 5 Ch. 703 at 706.*
[5] *L R. 1915 2 K. B. D. 661 at 668.*
[6] *L. R. 1891 A. C. 531 at 591.*
[7] *L. R. 1885 16 Q. B. D. 44.*
[8] *L. R. 1933 A. C. 402 at 446.*

The rule we have to interpret is in these terms :—

12. (1) " At the time of the presentation of the petition or within three days afterwards security for the payment of all costs, charges and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

(2) The security shall be to an amount of not less than five thousand rupees. If the number of charges shall exceed three additional security to an amount of two thousand rupees shall be given in respect of each charge in excess of the first three. The security required by this rule shall be given by a deposit of money.

(3) If security as in this rule provided is not given . . . . no further proceedings shall be had on the petition and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondent's costs, &c."

The question for consideration arises on an application made by the respondent to the petition for the dismissal of it on the ground that " security as in this rule provided " has not been given, the respondent's contention being that in the petition of the petitioner there are more than three charges disclosed and that, for that reason, the sum of Rs. 5,000 which is the sum admittedly deposited, is insufficient.

Does then the petitioner's petition disclose only three charges or does it disclose more than three charges? That depends on the meaning of the word " charges ". In paragraph three of the petition, the petitioner avers that the election of the respondent be " void for the following reasons ".

(1) That before and during the election the respondent and his agents and other persons with his knowledge or consent did print, publish and distribute or cause to be printed, published and distributed handbills which did not bear upon the face thereof the name and address of the printers and publishers, &c.

(2) That before and during the election the respondent and his agents and other persons with his knowledge or consent did make and publish false statements of facts in relation to the personal character and conduct of the other candidate . . . . for the purpose of affecting the return of that candidate, &c.

(3) That before and during the election the respondent and his agents and other persons with his knowledge or consent, did inflict, or thereafter threaten to inflict injury, damage, harm or loss upon a large number of electors in order to induce or compel them to refrain from voting, &c.

The respondent contends that in reason (1) or ground (1), on a proper interpretation of the averments therein contained, every act of printing was a distinct corrupt practice ; similarly, every act of publishing as well as every act of distributing ; so that reason or ground (1) contained *in posse* what might turn out to be hundreds or perhaps thousands of distinct corrupt practices and in that sense, hundreds or perhaps thousands of separate charges. Likewise in respect of reasons (2) and (3) there were, the respondent contended potentially, a very large number of different offences, each one of which, when presented to the Election Court for consideration, should be treated as a separate charge.

A similar question arose before Drieberg J. in the case of *Tillekawardene v. Obeyesekere*[1], in which under allegations of bribery, treating, and contracting for payment for the conveyance of voters, the petitioner proposed to adduce seventeen cases of bribery and twenty-six cases of treating and fourteen cases of payment for the conveyance of voters and the respondent moved for the dismissal of the petition on the ground that the security of Rs. 5,000 which had been given was inadequate as there were more than three charges. That learned Judge answered the question thus : " In my opinion , by the word ' charges ' in rule 12 (2) is meant the various forms of misconduct coming under the description of corrupt and illegal practices, for example, whatever may be the number of acts of bribery sought to be proved against a respondent the charge to be laid against him in a petition is one of bribery. The, fact that the security here has to depend on the number of matters submitted for inquiry in the petition does not compel us to adopt a different view of what these matters are from what is accepted in practice in England, nor does it necessitate any departures from what an election petition should state. The matters on which the petition prays for inquiry are that the respondent committed the offences of bribery, treating and conveyance of voters and so far as the petition is concerned, each constitutes a charge against the respondent ".

" It can be urged that the requirement in the form of the petition given in the rule that ' the facts and the grounds on which the petitioners rely ' should be stated, calls for an averment of each act of, *e.g.*, bribery, and that an averment generally that the respondent has been guilty of the offence of bribery is not enough ", but even on that assumption Drieberg J. held that the word " charges " is ambiguous and may be applied to the offence stated in the petition and also to each act constituting the offence though the latter are more often referred to as " cases ", or " instances " of the offence and that for the purpose of ascertaining the adequacy of the security it is the offences and not the " cases " or " instances " that matter.

Mr. H. V. Perera submitted to us that the conclusion to which Drieberg J. came is fallacious in that it is based on a false analogy, namely, the analogy of the English practice which he argues was inapplicable in asmuch as in England the security was fixed and constant irrespective of the number of charges, whereas, here the security varies in proportion to the number of charges. Mr. Perera also contended that Drieberg J. had not before him the Report of the Royal Commissioners which showed that they were much concerned to prevent multifarious and vaxatious charges.

In regard to this latter contention, although the report itself does not appear to have been referred to by citation in the course of the argument, Drieberg J., nevertheless, deals with that aspect of the matter. He says, " It was urged that it was the intention of the Legislature to require security to prevent a large number of unlawful acts being alleged on insufficient ground and to prevent a protracted trial. The object of the provision is stated in the rule itself and this is to secure a successful respondent against the costs incurred by him . . . . The

[1] *(1931) 33 N. L. R. 65.*

Legislature could not have acted in the belief that the cost of litigation is heavier here than in England ", and he went on to point out that £1,000 security had to serve in England in the *Hereford Case*[1] for 184 cases of bribery alone and in the *Norwich Case*[2] for nearly 100 such instances. On the contention of the respondent before him, the security would have had to be Rs. 367,000 and Rs. 199,000. Perhaps the report of the Royal Commissioners was not cited to Drieberg J. in the view that it was irrelevant in regard to a question of the interpretation of words and so, I believe, it would be. In *Assam Railways Ltd. v. C. I. R.*[3] Lord Wright made this statement : " It is clear that the language of a Minister of the Crown in proposing a measure in Parliament which eventually becomes law is inadmissible and the report of the Commissioners is even more removed from value as evidence of intention because it does not follow that their recommendations were accepted."

Mr. Perera sought to meet the point made by Drieberg J. regarding the magnitude of the security involved by submitting that the remedy is in the hands of the petitioners themselves. They could choose a few of the best instances and cases and rely upon them. That may be so but it is a counsel of perfection.

Elections bring candidates in contact with tens of thousands of voters and within the twenty-four days available to the petitioner for the giving of security it would hardly be possible to sift the cases sufficiently to make a final selection of them and to stand committed to them. Moreover, generally speaking, a few cases of instances of an illegal or corrupt practice could hardly create the kind of impression that an Election Tribunal would require or, at least desire, before it avoided an election with all the serious consequences that such an order would entail. That is why it would be reasonable to suppose, as Drieberg J. points out, that both in England and here " it is not an unusual feature in election petitions to find numerous instances and cases of corrupt practices relied upon ". One swallow, or for that matter several, hardly ever makes a summer in the sphere of elections. It cannot therefore be fairly said that it is not relevant to calculate, as Drieberg J. did, the figures that would result on an adoption of the manner of calculation suggessted by the respondent. It is not only not irrelevant but a circumstance that may properly be taken into account when we are considering the meaning to be given to the ambiguous word" charges " in Rule 12. An argument *ab inconvenienti*, it must be conceded, is more often than not a treacherous argument ; but not, I think, in such a case as this, for as Brett M. R. observed in the case of *Rex r. Tunbridge Overseers*[4] " With regard to inconvenience, I think it is a most dangerous doctrine ..... if an enactment is such that by reading it in its ordinary sense, you produce a palpable injustice, whereas by reading it in a sense *it can bear*, though not exactly in its ordinary sense, it will produce no injustice, then I admit one could assume that the Legislature intended that it should be so read as to produce no injustice. " Drieberg J's reading of rule 12 and his interpretation of the word " charges " in it appears to afford a good illustration of that canon of

[1] *10 M. & H. 194.*
[2] *10 M. & H. 91.*
[3] *(1935) 3 A. C. 445.*
[4] *(1884) 13 Q. B. D. 242.*

interpretation. But, today there is much stronger reason for following his ruling because when Rule 12 was re-enacted in 1946, the word " charges " reappears in precisely the same way, and it is a well established principle that when a word has received a judical interpretation and the same word is re-enacted, it must be deemed to have been re-enacted in the meaning given to it. As Sir W. M. James L.J. remarked in *Ex parte Campbell in re Cathcart*[1] : " Where once certain words in an Act of Parliament received a judicial construction in one of the superior Courts, and the Legislature has repeated them without any alteration in a subsequent statute, I conceive that the Legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given to them."

Probably it was in view of this difficulty that respondent's counsel did not persist too strongly with his objection so far as reason or ground (3) in the petition was concerned for that matter falls clearly within the *ratio decidendi* in that case. He, however, maintained that in the reasons or grounds (1) and (2) of the petition there was a multiplicity of charges for the petitioner averred therein that (1) the respondent, (2) his agents, (3) others with his consent or knowledge of (*a*) printing, (*b*) publishing, (*c*) distributing, (*d*) causing to be printed, (*e*) causing to be published, (*f*) causing to be distributed handbills, (4) the respondent, (5) his agents, (6) other persons with his consent or knowledge, did (*g*) make, (*h*) publish false statements of fact in regard to the personal conduct and character of the other candidate. Counsel was prepared to carry his contention to its logical conclusion and to say that each handbill, (*a*) printed, (*b*) published, (*c*) distributed and each atatement (*a*) made, (*b*) published constituted a separate charge. I have put the matter with this particularity in order to make explicit all that is implied in this contention. If that contention is right, then the security involved would be in the region of a million rupee mark. But counsel submits that that is irrelevant and that there is no other logical method of dealing with section 58 (1) (*c*), (*d*) and (*e*) than the method of enumeration because, unlike in the offences of bribery, treating or undue influence there is not to be found, in 58 (1) (*c*), (*d*) and (*e*), a genus to which " printing ", " publishing ", " distributing ", and " making " can be related as sub-divisions. That appears to me to be too slender a reed to rely upon for, looked at in that way, the dissemination of anonymous printed handbills in the one case and the dissemination of false statements in the other suggests itself readily as the genus the Legislature had in view.

For these reasons I come clearly to the conclusion that we ought not to depart from the ruling given by Drieberg J. but to affirm it as applicable to all the grounds or reasons that the petitioner relies on in his petition.

I would reject the objection with costs.

CANEKERATNE J.—I agree.

NAGALINGAM J.—I agree.

Objection overruled.

[1] *(1870) 5 Ch. at p. 706.*