1953 *Present* : **Nagalingam A.C.J., Gratiaen J. and Pulle J.**

E. L. SENANAYAKE, Appellant, *and* H. M. NAVARATNE *et al.*, Respondents

ELECTION PETITION APPEAL No. 1 OF 1953

Election Petition 3 of 1952, Kandy

Election Petition—False declaration as to election expenses—Ground for unseating member—Time limit for presenting election petition—" Candidate "—Corrupt practice of printing and publishing handbills, &c., without disclosing addresses of printer and publisher—Corrupt intention—Necessary ingredient—" Publisher " —Statute with retrospective operation—Scope of its effect—Ceylon (Parliamentary Elections) Order in Council of 1946, ss. 3 (1), 58 (1) (c) and (f), 70, 73A, 77, 82A and B, 83 (1), 83 (1) (b) (i) and (ii), 83 (2)—Ceylon (Parliamentary Elections) (Amendment) Act, No. 26 of 1953, ss. 5, 6.

Held, by NAGALINGAM A.C.J. and PULLE J. (GRATIAEN J. dissenting), that knowingly sending a false return of election expenses, being a corrupt practice under section 58 (1) (*f*) of the Parliamentary Elections Order in Council of 1946, falls within the ambit of sections 77 (*c*) and 83 (1) (*a*). The act of making the declaration is an act done " in pursuance or in furtherance " of that corrupt practice, and no other act is necessary before a petition can be presented within the period of twenty-eight days prescribed in section 83 (1) (*a*). The definition of " candidate " in section 3 (1) is applicable to a candidate even after his election as member.

Held, by GRATIAEN J. and PULLE J. (NAGALINGAM A.C.J. observing to the contrary), that, under section 58 (1) (*c*) of the Parliamentary Elections Order in Council of 1946, a corrupt intention must be proved in order to establish the corrupt practice of publishing handbills, posters and placards without the name and address of the publisher appearing thereon.

The Parliamentary Elections (Amendment) Act, No. 26 of 1953, has, in the absence of express provision to that effect, no relevancy to the issues involved in determining an election petition appeal which was pending at the time it was passed. Scope of its retrospective operation considered.

Per GRATIAEN J.—Section 58 (1) (*c*) of the Parliamentary Elections Order in Council of 1946 requires both the "printer" and " publisher " to be disclosed in the documents specified. The term " publisher " is not confined in the context to persons professionally engaged in the publishing trade.

APPEAL from the order of the Election Judge in Election Petition, Kandy.

H. V. Perera, Q.C., with *G. E. Chitty, C. C. Rasaratnam, G. T. Samerawickreme* and *Izadeen Mohamed*, for the respondent appellant.

2——J. N. B 31310–1,592 (11/53)

S. Nadesan, with *Stanley de Zoysa*, *A. I. Rajasingham*, *V. S. A. Pullenayagam*, *C. Mahadeva*, *A. K. Premadasa* and *J. Senathirajah*, for the petitioners respondents.

Cur. adv. vult.

December 18, 1953. NAGALINGAM A.C.J.—

This is an appeal from an order declaring the election of the appellant void on the ground that he was guilty of corrupt practices in that he—

(*a*) published handbills, posters and placards without the name of the publisher appearing thereon ; and

(*b*) knowingly made the declaration as to election expenses falsely.

The appellant contends that the finding of the learned Election Judge in respect of both these questions is erroneous.

I shall first deal with the second of the corrupt practices set out above. It is contended on behalf of the appellant as a matter of law that the corrupt practice of knowingly making a false return of election expenses is not a ground upon which either an election petition can be presented or a member unseated ; and this argument has been based mainly on the language of the proviso to sub-section (1) of section 83 of the Order-in-Council.

Now, the main provision of sub-section (1) of section 83 prescribes the time limit within which an election petition can be presented to Court, and it expressly declares in non-ambiguous language that an election petition must be presented within twenty-one days of the date of publication of the result of the election in the *Government Gazette*. In such a petition every ground set out in section 77 which would avoid an election would be capable of inclusion, whether committed before, during or after the election. It is necessary, however, to pause for a moment to consider the extent to which any corrupt or illegal practice committed after the election could be so included. The petition can include only matters which may have been committed prior to its presentation, so that only corrupt or illegal practices committed subsequent to the election but prior to the presentation of the petition may be set out in an election petition presented within the limit of twenty-one days in regard to corrupt or illegal practices committed after the election. Such a petition cannot, for instance, allege in advance a corrupt or illegal practice that may be committed after its presentation. In fact, if authority were necessary in support of this proposition it is to be found in the case of *Cremer v. Lowles* [1]. That was a case where an election petition had been presented in terms of section 6 of the Parliamentary Election Act, 1868,[2] within twenty-one days after the return of the election had

[1] *(1896) 1 Q. B. 504.*

[2] *31 & 32 Vict. c. 25.*

been made to the Clerk of the Crown in Chancery embodying not only charges of breach of trust, undue influence and other specific charges but it also *set out in general terms that other corrupt and illegal practices before, during and after the election had been committed.* Particulars were ordered to be filed, and the petitioner furnished *inter alia* particulars of illegal practices alleged to have been committed in connection with the return of election expenses. The return of the election expenses was filed after the expiry of the period of twenty-one days allowed for the filing of the petition, and in fact after the petition itself had been filed. No application to amend the petition as permitted by the relevant provision of the English Statute corresponding to section 83 (2) of our Order-in-Council had been made. On an application to strike out the particulars alleged in relation to election expenses, Lord Halsbury L.C. in allowing the application observed :

" The objection is that the charges founded on the return of expenses are not covered by the petition, to which it is answered that the charges made by the petition are so general in their character that they may be so enlarged by the particulars as to make new and independent charges.

* * * *

The charges dealt with in this statute and of which particulars may be ordered to be given are necessarily the charges made by the petition, and it is really impossible to hold that charges founded on events *which have happened since the presentation of the petition can be said to be charges contained in the petition.*

* * * *

When once the matter is carefully looked at, it becomes clear that if the petitioner's contention is right the time limit of twenty-one days for the presentation is merely colourable, for if the trial of the petition did not come on for some months after the presentation, a member petitioned against in August might be unseated for an offence committed in October and treated as an offence charged in the petition."

In the same case, Lopes L.J. remarked that—

" it is quite right that matters which have happened after the election should be included in the petition. It is very different with regard to the matters which do not happen until after the presentation of the petition itself."

And Rigby L.J. indicated what the petitioner might have done in these words :

" The petitioner ought to have exercised the power of amending the original petition or presenting one founded on the offences complained of within the time limited for so doing."

This judgment of the House of Lords on an appeal preferred to it is the last of the pronouncements on the subject and is a clear authority for the proposition that an offence committed after the presentation of the petition cannot be brought under a charge, however general in its character, made in the petition.

Furthermore, under the main provision of section 83 (1) not only c annot offences committed subsequent to the presentation of the petition be inquired into, but even offences committed prior thereto, where such offences have neither been set out in the petition nor been added to it by means of an amendment made within the time allowed for the presentation of the petition itself ; and that no amendment in respect of offences committed before the expiry of the period of twenty-one days could be permitted after that period will also be obvious.

In the *Norwich Case*[1] which came up before a Bench of two Judges, in regard to an application to amend the petition *after the expiry of twenty-one days* by alleging further grounds committed prior thereto, the Court refused the amendment, and Matthew J. observed that the Court—

> " had no power to allow of such an amendment after the lapse of twenty-one days, especially when introducing general charges of bribery, etc. The limitation of the period of twenty-one days was the basis of the Statute, and would be defeated if such amendments were allowed."

The case of *Maude v. Lowely*[2] is also to the same effect. That the case is one relating to Municipal Elections makes no difference, for the provisions (sections 3 and 13 of the Corrupt Practices (Municipal Elections) Act[3]) are similar to the corresponding provisions of the Corrupt and Illegal Practices Prevention Act[4], which relates to Parliamentary Elections. That was a case where it was sought to amend the petition after a period of twenty-one days by adding the names of new burgesses on the ground that they had been employed for payment and reward as canvassers for the purpose of the election and that their names were discovered subsequent to the presentation of the petition. The amendment was refused.

Another case relating to Municipal elections is that of *Clerk et al. v. Lowely*[5] where an application to amend the petition by adding a charge of treating committed prior to the expiry of the twenty-one days to a charge of bribery formulated in the petition was refused.

In view of the authorities the following propositions may be deduced from a consideration of the language of the main provision of sub-section (1) of section 83:—

(1) Corrupt or illegal practices committed, whether before, during or after the election but prior to the expiry of the twenty-one days from the date of publication of the result of the election

[1] *(1885) 2 T. L. R. 273.*
[2] *(1874) L. R. 9 C. P. 165.*
[3] *35 & 36 Vict. c. 60.*
[4] *46 & 47 Vict. c. 51.*
[5] *(1883) 48 T. L. R. 762.*

in the *Government Gazette* can form the subject of an election petition if such charges are included in a petition presented within twenty-one days.

(2) Such corrupt or illegal practices cannot be included in the petition even by way of amendment after the expiry of twenty-one days.

(3) Corrupt or illegal practices committed after the date of presentation of the petition cannot be made the subject of trial on such a petition, even by reference to the general terms in which the charges had been formulated in the petition.

While the main provision, it will be seen, deals exclusively with corrupt or illegal practices committed not later than twenty-one days after the date of publication of the result in the *Gazette*, the proviso to it extends the time for presenting the petition in respect of corrupt or illegal practices committed after the publication of the result and therefore also after the period of twenty-one days. Advantage cannot be taken under the extended period permitted by the proviso to present a petition in respect of a corrupt practice committed prior to the date of publication of the result. A corrupt practice committed prior to such date must, in view of what I have already stated, and can form only the subject of a petition presented within twenty-one days, although such a corrupt practice may be implemented subsequent to the expiry of the period of twenty-one days. To make my meaning clear, I should take as an illustration the case of a promise of a bribe made prior to election in order to induce the elector to vote. Now, such a promise though not carried into effect and implemented by payment of money is in itself a corrupt practice under section 57 (*a*) of the Order-in-Council. Such a promise can and may form the subject of an election petition presented within twenty-one days of the publication of the result, but it cannot be made the subject of a petition presented under the proviso to section 83 (1). If the promise were in fact implemented, say six months after the publication of the result of the election by payment of money to the voter to whom the promise was made, the payment itself is another and distinct corrupt practice and can properly form the subject of an election petition presented within the terms of the proviso. It is to be emphasized that the circumstance that the promise made anterior to the election is implemented by payment long after does not entitle a petition to be presented on the ground of the promise under the provisions of the proviso. What can in fact be the subject of a petition presented under the proviso as the corrupt practice is the payment of the sum of money, though undoubtedly it must have been in fulfilment of the earlier promise made.

It is necessary at this point to call attention to the requirement of the Order-in-Council that where payment is made to an elector on account of such elector having voted or refrained from voting, it must be established that the payment was made corruptly. In order to establish that the payment was made corruptly, it certainly would be legitimate to tender in evidence that a promise had been made anterior notwithstanding

the fact that the anterior promise, which itself, as stated earlier, was a corrupt practice, had not been made the subject of an election petition. Such a case is the *Kiddeminster Case*[1]. That is a case where the petition was presented " not under the ordinary law, that is to say within twenty-one days, but under a subsequent part of the sixth section of the Parliamentary Elections Act, 1868 " (corresponding to the proviso to our section 83). There was evidence in that case that promises both anterior to the election and on the day of the election to treat had been made by the candidate and that after the election preparations were made for the treating and the candidate provided funds for such treating. The payment of the funds was the subject of the inquiry, and that was the corrupt practice before the Court. Evidence of the anterior promise was admitted to prove the corrupt motive in providing funds for treating. It may be that the simplest method of proving that payment of a sum of money by way of bribe for having voted in the election and therefore committed subsequent to the election was made corruptly is by giving evidence of some act anterior, such as a promise made anterior to the election, but *non constat* that that is the only method of proving that a bribe given subsequently to the election for having voted at the election had been made corruptly. If, for instance, two months after the declaration of the results a candidate expressly stating that he was rewarding a voter for having voted for him paid a sum of money, no further evidence would be necessary beyond his own statement to show that the payment was made corruptly. Such a case would be within the section, for it is a payment made corruptly for having voted.

To this effect is an observation of Grove J. in the *Poole Election Case*[2]. Indeed the provision itself is abundantly clear, and if the two elements of corruptness and payment for having voted can be established in any manner, the corrupt practice is complete. The *Brecen Case*[3] may be said to lay down the proposition in a contrary sense, but if it is carefully looked at, it will be seen that what the Judge did hold there was that there was no proof of the corrupt treating, and it was a case of treating not having been done with improper motive. The Judge who decided the *Brecen Case* (supra) in the subsequent *Harwich Case*[4] may be said to have taken the opposite view, but that case again if carefully scrutinised would only reveal that he had found as a fact that the payment of the money was made corruptly. There are other cases (*Carrick Fergus*[5] and *Coventry*[6]) which may be said to establish the proposition that the corruptness must be referable to something which preceded the election, but those cases cannot be said to lay down or to negative the proposition that where the corruptness can be shown by proof of circumstances arising entirely subsequent to the declaration of the polls that the offence of corrupt practice is not committed.

It is indisputable that there are corrupt and illegal practices which can only come into existence after the expiry of the said twenty-one days, and that they need not necessarily have any connection with anything done before the expiry of that period cannot also be doubted.

[1] *(1874) 2 O.'M & H. 170.*
[2] *2 O'M. & H. 123.*
[3] *(1871) 2 O'M. & H. 43.*
[4] *(1880) 3 O'M. & H. 70.*
[5] *3 O'M. & H. 90.*
[6] *1 O'M. & H. 106.*

For instance, payment of money by an election agent in respect of expenses legitimately incurred in the conduct of an election after the expiry of twenty-eight days after the day on which the candidate is declared elected is an illegal practice, and such an illegal practice can only have its nativity after the expiry of the twenty-one days allowed for presenting the petition; or, to take an instance of a corrupt practice, a false declaration in regard to election expenses need only be made within thirty-one days of the publication of the result of the election, and in very many cases such a declaration would in practice be made after the expiry of the twenty-one days limited for the presenting of an election petition under the main provision.

Now, where it is sought to question the return of the candidate on the ground of an illegal practice as instanced above, paragraph (*b*) (ii) of the proviso would permit of such a petition being presented within twenty-eight days after the date on which the illegal payment was made. I can see nothing in the language of paragraph (*b*) (ii) for holding that such an illegal practice is excluded from being made the subject of an election petition. If such were the intention of the Legislature, it could very well have said so, and that quite easily too, but it has not chosen to do so.

It seems to me that paragraph (*b*) (ii) of the proviso would operate if the following are established :—

(1) that the petition questions the return of the candidate on the ground of an illegal practice ;

(2) that a specific allegation of payment of money or other act is made therein ;

(3) that the payment or act alleged should have been made or done after the date of publication of the result of the election ;

(4) that the payment or act was made or done in pursuance or in furtherance of the illegal practice alleged.

If these elements are proved, then an election petition may be presented within twenty-eight days of the date of payment or of the other act.

As this paragraph requires that the payment or act should have been made or done in pursuance or in furtherance of the illegal practice alleged, it is said that the illegal practice must be something distinct from the payment or act made or done, and must precede such payment or act. It is true that the term " in pursuance of " may be used to show the continuation of a process, scheme or act, but it can and does also mean the carrying out the process, scheme or act, and one single action may carry out and at the same time bring into and disclose the existence of the process, scheme or act. For instance, a man in pursuance of committing theft may pick the pocket of another. Here, the picking of the pocket would in itself be the sole action in pursuance of committing

theft and itself gives birth to and discloses the offence. It will be idle to contend that the theft itself must be something distinct from the act of picking the pocket. The phrase "in furtherance of" has a similar meaning in this context. It means " in advancement, in execution or in commission of ".

In the case of the illegal practice instanced, the unauthorized payment itself is made in pursuance or in the carrying out of the illegal practice, and brings in fact the illegal practice into existence. It is said that if this were the meaning, the words " in pursuance or in furtherance of the illegal practice " may well have been omitted. One might test this. If the paragraph were written omitting the words " in pursuance or in furtherance of the illegal practice ", it would run as follows, if one confined one's attention to the case of the candidate alone :

> " If the election petition specifically alleges payment of money or other act to have been made or done since the said day by the member whose election is questioned, the petition may be presented at any time within twenty-eight days."

It would be apparent on a reading of this truncated paragraph that the payment of money or other act need have no relation to or connection with the illegal practice upon which the petition may be presented. It is not any payment or act made or done that is intended to enlarge the time for presentation of the petition, but only a payment or act connected with the illegal practice alleged. The words in question have, therefore, been employed, it may be said, for the sake of showing the intimate connection between the payment of money or other act and the illegal practice that is alleged. In fact, the phrase " in pursuance or in furtherance of a corrupt practice " has been understood not in the sense of one act following upon another but merely as the carrying out of the act itself by English Judges.

Lord Coleridge C.J. in *Maude v. Lowely* (supra) dealing with a similar provision uses language which clearly establishes what is the proper meaning to be attached to these words :

> " The enactment is distinct that the petition must be presented within twenty-one days except in the one specified case of an offence (corrupt practice) not discovered since the election but which has taken place since the election, and in such case the petition may be presented at any time within twenty-eight days not after the discovery of the offence *but from the taking place of that which constitutes the offence.*"

It is extremely singular that in England, the home of election law, never has an attempt been made to contend, judging by the dissertations of text books writers or reported cases, that the phrase " in pursuance or in furtherance of a corrupt or illegal practice " must be construed as denoting the conception that one act must be shown to follow upon another.

I now come to a consideration of paragraph (*a*) of the proviso, which is the provision that governs the present appeal. The language of this paragraph is similar to the language of paragraph (*b*) (ii), and it is difficult to say that a different construction or different approach becomes necessary to construe it. In regard to this paragraph of the proviso, the elements necessary to be established are :

(1) that the petition questions the return upon the ground of a corrupt practice ;

(2) that a specific allegation of payment of money or other act is made therein ;

(3) that the payment or act made or done should have been made or done subsequent to the date of publication of the result of the election ;

(4) that the payment of money or act was made or done in pursuance or in furtherance of such corrupt practice.

If these exist, then a petition may be presented in terms thereof within twenty-eight days after the date of payment or act made or done.

It is not denied that the corrupt practice in regard to the declaration of election expenses consists in making the declaration knowingly and falsely. Can it then be said that the act of making the false declaration knowingly is not in itself the act done in pursuance of or in carrying out the corrupt practice ? Surely not. Indeed, given one act which in itself is a corrupt practice, what need is there for a subsequent act ? The first act is complete in itself as a corrupt practice. No subsequent act can be of the slightest aid in regard to what is already a corrupt practice. In fact, if any subsequent act be done having any connection with the prior corrupt practice, it will in itself be a corrupt practice giving rise to a new right to present another petition. I do not think that some other act than the making of the false declaration is necessary before a petition could be presented under the proviso. Besides, insistence upon such a requirement as is contended for would be to do violence to the plain words of the Order-in-Council. Section 77 expressly states that the election of a member *shall be* declared void on proof of the commission of a corrupt practice in connection with the election. The words " in connection with " are plain in themselves, and mean " in relation to ". Section 58 specifically declares that the making of a false declaration as to election expenses knowingly is a corrupt practice. That such a declaration is made in connection with the election no one will gainsay. Under paragraphs (*a*) and (*b*) of the proviso to section 83 (1), the ground for avoiding an election remains a corrupt or illegal practice even as under a petition presented within twenty-one days under the main provision. But what is further required to be set out under the proviso is the specific act which constitutes the corrupt or illegal practice but which in the case of a petition presented within twenty-one days need not so be set out. It seems to me that the object of the Legislature in

requiring the specific act to be set out is that there should be an averment in the petition presented under the proviso showing that the petition is presented within the time allowed thereunder. It could not have used the term " corrupt or illegal practice " because both those are generic terms and may include various acts each one of which would amount to a corrupt or illegal practice, and it is conceivable that in a petition presented under the proviso several acts of payment each of which constitutes an act of bribery may all be alleged in the same petition provided all those acts were committed prior to twenty-eight days of the date of presentation of the petition.

Gunasekara J. in *Kunasingham et al. v. Ponnambalam* [1] seems to have thought that the filing of the return and declarations was a separate act done in pursuance or in furtherance of the corrupt practice of making false declarations. Swan J. in *Chelvanayakam v. Natesan* [2] arrived at a view more or less analogous and held that the actual preparation of the false return was the corrupt practice, and the transmission of that return to the election officer was the other act done in pursuance or in furtherance of the corrupt practice. It is obvious that the learned Judges clearly arrived at the results they did, for no one reading the provision can help but arrive at the conclusion that the making of a false declaration knowingly was a corrupt act which the Legislature had intended to declare to be a ground for avoiding a seat. A contrary result would have evoked the remark that the statute had been subjected to a construction which would " suppress the remedy and advance the mischief ". I do not think they had the benefit of the arguments advanced before us, and I am satisfied that the true construction is that the phrase " in pursuance or in furtherance of the corrupt practice " merely refers to the carrying out of the act which constitutes the corrupt practice and not that there should be a link or connection between the corrupt practice as an isolated act, and the payment of money or other act, as another isolated act.

It was also suggested that an act done in its entirety subsequent to the election cannot form the subject of a petition presented under the proviso. In support of this proposition reference was made to paragraph (*d*) of section 77, which provides that the engagement of a person as an election agent who had been found guilty of a corrupt practice is a ground for unseating a candidate, and therefore could be made the subject of an election petition presented within twenty-one days ; based on this provision the question has been asked whether the employment of such an election agent after the expiry of twenty-one days of the date of publication of the result for the purpose, say of making the return of election expenses, could be made the subject of the petition under the proviso, and has been answered in the negative, which is the proper answer to it. From this it has been contended next that the making of a false declaration of expenses knowingly cannot similarly form the subject of a petition under the proviso, as the entirety of that act too is performed subsequent to the election. I think it is a clear case of non-

[1] *(1952) 54 N.L.R. 36*

[2] *(1952) 54 N.L.R. 304*

sequitur. In the former case why an election petition cannot be presented under the proviso is that not because the employment takes place after the election but because the Legislature has not thought it fit to make such an engagement a corrupt or illegal practice, and therefore that act does not fall within the proviso ; but in the latter case the Legislature expressly states that knowingly making a false return is a corrupt practice and the act falls expressly within the terms of the provisions contained in the proviso. The Legislature may have its own reason for not declaring the former case a corrupt or illegal practice, but that is no indication that an act which it declares to fall within the proviso is therefore not to be treated as coming within it. Election petitions have been presented in England to have an election avoided on this very ground of making a false declaration of expenses knowingly. It does not appear ever to have been contended there that the fact that such declaration is made subsequent to the election is a ground for holding that the election cannot be avoided. See the *Oxford* [1] and *Berwick upon Tweed* [2] cases, where the elections were avoided *inter alia* on the ground that the election agent had made a false declaration of expenses.

Another line of argument was advanced based upon paragraph (c) of section 77 of the Order-in-Council. It was urged that the return of election expenses was made by the appellant after his election as a member and that therefore the return of election expenses was made by him not as a candidate but as a member, and that he was therefore beyond the pale of this provision, which refers to a candidate and not to a member ; in other words that section 77 (c) must be restricted to acts done by a candidate *qua* candidate. This argument was sought to be reinforced by reference to the definition of the term " candidate ". " Candidate " is defined in the interpretation section 3 as meaning a person who is nominated as a candidate at an election or is declared by himself to be or acts as a candidate for election to any seat of the House of Representatives. It is true that this definition does not refer to a person who has been elected as a member, as in the English Act. But does it follow that the definition in the Order-in-Council does not apply to a person who has been elected a member ? Can it be said that on election he divests himself of his character of a person who is nominated as a candidate at election or is declared by himself to be or who acts as a candidate for election to any seat of the House of Representatives ? The obvious answer to the question is " No ". In fact there are other sections in the Order-in-Council where a member after his election has been referred to as a candidate, for instance section 70(3). Unless there is express provision declaring that a candidate on election shall cease to be termed a candidate, the definition continues to apply to a candidate even after his election as member, for he retains all the characteristics of a candidate as set out in definition, but what may, however, be said is that he has since acquired an added qualification in that he has been elected a member, which does not in any way detract from the character of his being a candidate. I do not think, therefore, that there is any substance in this argument.

[1] *7 O' M. & H. 49.* [2] *7 O' M. & H. 1.*

An attempt was made to show that the Election Judge has misdirected himself on the facts and that such misdirection amounts to a misdirection in law. But a narration of the facts accepted by the learned Judge establishes most conclusively that his finding that the appellant was guilty of knowingly having made the declaration in regard to election expenses falsely is unassailable.

I therefore arrive at the following results :—

(1) that the appellant did knowingly make a false declaration of election expenses ;

(2) that the making of such declaration is a corrupt practice under section 58 of the Order-in-Council ;

(3) that such corrupt practice is a ground for avoiding the election.

In view of the conclusion I have reached on this charge, I do not think it is necessary or profitable to enter upon a discussion of the arguments submitted in respect of the first charge, which would at this stage be purely of an academic character. Nor do I think it necessary that the appellant should be afforded an opportunity of placing evidence before Court in terms of section 73 (*a*) of the Order-in-Council, for whatever view one may take of the first charge, the appeal as a whole must be dismissed in view of the finding in respect of the second charge. I should, however, wish to make this observation that I am in agreement with the finding of the learned Election Judge even in respect of the first charge.

For the foregoing reasons, I hold the appeal fails. Having regard to the view of the majority, the order is that the appeal is dismissed with costs, which with the concurrence of my brother Pulle J. I fix at five hundred guineas.

GRATIAEN J.—

This appeal was filed on 18th February 1953 against a determination invalidating the appellant's election as a Member of the House of Representatives for the Kandy Electoral District. The grounds of the decision were as follows :—

(1) that he had committed a corrupt practice within the meaning of section 58 (1) (*c*) of the Ceylon (Parliamentary Elections) Order-in-Council 1946 by publishing certain advertisements, handbills, placards and posters relating to the election " which did not bear upon (their) face the names and addresses of (their) printers and publishers " ;

(2) that he had also committed a corrupt practice within the meaning of section 58 (1) (*f*) by " knowingly making the declaration as to his election expenses required by section 70 falsely ".

He complains that the decision against him on each of these allegations was contrary to law.

As to the alleged contravention of section 58 (1) (*c*), the learned election judge held that the appellant had himself " published " the documents concerned for the purposes of his election campaign, and that none of them bore his name or address as that of its " publisher ". The learned judge did not record a finding that the acts complained of were in any sense committed " corruptly " nor is it suggested that such a finding would have been justified ; he decided, however, that a corrupt intention need not be established as an element of the offence. The appellant challenges the correctness of this interpretation.

There are two additional issues of law which can conveniently be disposed of first. It has been argued that section 58 (1) (*c*) refers only to documents in which the names and addresses of both the " printer " and of the " publisher " are absent, and that there can be no contravention if the name and address of *at least one of them* had been duly inserted. Putting it at the lowest, suggested Mr. H. V. Perera, the words reasonably admit of either construction, so that the appellant is entitled to the " benefit of the obscurity "—*Binns v. Wardale* [1].

I readily accept the proposition that " a man is not to be put in peril upon an ambiguity "—*per* Lord Simonds in *London & N. Eastern Rly. Co. v. Berriman* [2], and *Howell v. Falmouth Boat Construction Co. Ltd.* [3], but, in my opinion, section 58 (1) (*c*) clearly requires the identity of both the " printer " and the " publisher " to be disclosed in printed documents of the description specified. I am also satisfied that, upon the undisputed evidence led at the trial, the appellant was in fact and in law the " publisher " of the documents concerned. When literature of this kind is distributed for promoting an election campaign, prospective voters are entitled to know whether it was released for publication by the candidate personally or by someone else ; and if by someone else, who that person was—*Schofield : Parliamentary Elections* p. 30. The legislature is concerned, for obvious reasons, to discourage election literature from anonymous, pseudonymous or pretended sources. I accordingly reject the further submission that the term " publisher " must be confined in this context to persons professionally engaged in the publishing trade. The language of the section does not justify such a purposeless distinction. Election literature always has a " publisher ".

So far, then, the judgment under appeal is unassailable. But was it correctly decided that " a corrupt practice " within the meaning of section 58 (1) (*c*) can be established without proof that a corrupt intention had accompanied the commission of the acts complained of ? In the present case, the " offending " documents were both genuine and innocuous, so that the allegation against the appellant clearly fails unless the words of the section compel one irresistibly to the conclusion that they are words of absolute prohibition—in which case a person

[1] *(1946) K. B. 451 at 457.* [2] *(1946) A. C. 278.*

[3] *(1951) A. C. 837.*

commits the prohibited acts at his peril unless (in this country) he can bring himself within the general exceptions prescribed by section 69 or 72 of the Penal Code—*Weerakoon v. Ranhamy* [1].

Before I examine this issue it is necessary to decide whether the law which applies to this appeal has been altered in any relevant respect since the appellant exercised his right to challenge the adverse determination of the learned election judge. On 25th April 1953, the Ceylon (Parliamentary Elections) (Amendment) Act No. 26 of 1953 passed into law. It amends section 58 (1) (*c*) by limiting its scope to prohibited acts committed by candidates and their election agents, and adds the following proviso :—

> " 73A. Upon the trial of an election petition respecting an election under this Order, a candidate or an election agent shall not be found by the election judge to have committed a corrupt practice referred to in section 58 (1) (*c*), in relation to any advertisement, handbill, placard or poster, if the candidate satisfies the judge that the omission of the names and addresses referred to in section 58 (1) (*c*), or any such name and address, as the case may be, arose from inadvertence or from some other reasonable cause of a like nature, and did not arise from any want of good faith."

Section 5 of the amending Act declares :—

> " 5. The amendments made in the principal Order by this Act shall be deemed to have come into force on the first day of January, 1952, and accordingly, but subject to the provisions of sub-section (6) of section 6 of this Act, the principal Order shall—
>
> (*a*) for all purposes be deemed on and after that day to have had effect, and have effect, and
>
> (*b*) be applicable in the case of any legal proceedings pending on the date of the commencement of this Act,
>
> in like manner as though that Order had on that day been amended in the manner provided by this Act ".

Section 6 permits a candidate whose election had previously been set aside for a contravention of section 58 (1) (*c*)—*i.e.*, in its unamended form—to file an appeal or, if he had already done so, an additional appeal against that determination ; and (for the pruposes of that appeal) to lead evidence if he so desires which would have been admissible at the original trial *if section 73A had at that time been on the statute book.* This novel procedure affords the unseated candidate a ground of exoneration which had not previously been available to him.

[1] *(1921) 23 N. L. R. 33.*

The appellant has in fact taken the precaution of filing a second appeal (under section 6) which need only be considered if his earlier appeal should fail. Admittedly, the special provisions of section 6 have no application to the earlier appeal.

The question immediately arises whether the amending Act (which undoubtedly has retroactive operation in many respects) has any relevancy to the determination of the earlier appeal. To what extent does section 5 give retrospective effect to the provisions of the amending Act ? The new amendments certainly affect proceedings which were pending before election judges or district judges, and I understand that they were in fact applied in one such case. I concede also that the present appeal dated 18th February 1953 cannot (subject to the important issue of relevancy) be excluded from the category of " legal proceedings pending on the date of the commencement of this Act " within the meaning of section 5 (*b*) ; nevertheless, the issue of relevancy must ultimately depend upon the true scope of our appellate functions under the Order-in-Council in relation to appeals filed before the amendment passed into law.

Our jurisdiction under section 82B is " strictly appellate " in its nature—that is to say, the Supreme Court is, for the purposes of an appeal filed under section 82A, empowered only to decide whether the determination of the election judge was right or wrong on matters of law *at the time when he arrived at his decision*. In other words, the Court does not possess the wider jurisdiction which is involved in the disposal of appeals " by way of re-hearing ".

The distinction between the functions of a Court vested with a strictly appellate jurisdiction on the one hand, and of a Court empowered to dispose of appeals " by way of re-hearing " on the other, is of special importance when fresh legislation (*even if it has some retrospective effect*) has been passed after the date of the judgment of the court of first instance but before the appeal against that judgment has been concluded. Jessel M.R. pointed out in *Quilter v. Mapleson*[1] that " on an appeal, strictly so-called, such a judgment can only be given *as ought to have been given at the original hearing* ", so that subsequent legislation, even though retroactive in other respects has, *in the absence of express provision to that effect*, no relevancy at all to the precise issues which arise in determining a pending appeal ; on the other hand, " a court of re-hearing " is empowered " to make such an order *as ought to be made according to the present state of the law* ", that is to say, taking into account all relevant material including the impact of legislation passed after the date of the judgment under appeal. The rule enunciated by Jessel M.R. was followed with approval by the Privy Council in the Ceylon case of *Ponnammah v. Arumugam*[2], where the Board refused to entertain " any appeal other than one strictly so-called, in which the question is whether the order of the Court from which the appeal is brought is right *on the materials which that Court had before it* ". In a more recent judgment, Lord Wright has observed that the rule in *Quilter's case* (*supra*) does not

[1] *(1882) 9 Q. B. D. 672.* [2] *(1905) A. C. 383.*

generally vest even Courts of re-hearing with power to apply subsequent changes in the law to issues affecting matters of " substantive right " as distinct from mere " matters of procedure or remedies "—*In re a Debtor* [1].

It might be asked whether the words " *shall be deemed to have come into force on the first day of January 1952* " and " *shall be deemed for all purposes on and after that day to have had effect* " in section 5 of the amending Act are sufficiently comprehensive to distinguish the present case from those decisions. A complete answer is to be found in *Ingle v. Farrard* [2], where the House of Lords discussed the implications of identical words appearing in a taxing statute. The issue was whether (in view of the later retroactive enactment) a person could be served with an additional assessment under section 125 of the Income Tax Act, 1918, of England, on the basis that he had been " *undercharged* " in an earlier (but concluded) assessment.

Lord Cave, Lord Shaw, Lord Sumner and Lord Carson (Lord Atkinson alone dissenting) decided in the negative. " Let it be assumed in favour of the Crown," explained Lord Cave, " that for all the purposes of the additional assessment the (subsequent Act) must be applied, and that the (assessee) *ought to be and always ought to have been* assessed to tax in respect of the sum mentioned in that assessment ; *even then you have only got half-way.* You have still to consider whether on that footing there had been an undercharge in the earlier year, and in so doing *you must apply to the assessment of that year the law which obtained when it was made* ".

Similarly, it seems to me that, even after giving the fullest retrospective effect to the provisions of the amending Act, we are still hedged in by the limitations placed by law upon the functions of judges exercising a " strictly appellate jurisdiction " ; for in that capacity we are empowered only to decide whether the learned election judge's interpretation of section 58 (1) (*c*) in his determination dated 13th February 1953 *was right or wrong in law at that date.* The amendments which were not passed until 25th April 1953 did not represent the law which the learned judge was under a duty to apply at any stage of the election trial.

I accordingly proceed to examine the question whether or not the learned election judge was wrong in law in deciding *on 13th February 1953* that a " corrupt intention " was not an ingredient of the " corrupt practice " penalised by section 58 (1) (*c*).

The Parliamentary Elections Act, 1868, The Ballot Act, 1872 and the Corrupt and Illegal Practices Prevention Act, 1883 of England were manifestly used as models by the draftsman of the Ceylon (Parliamentary Elections) Order-in-Council, 1946. Any substantial variation therefore, between a provision in the local enactment and the corresponding provision in the English statute in the same context must have been introduced designedly.

[1] *(1936) 1 Ch. 237.* [2] *(1927) A. C. 417.*

Section 18 of the English Act of 1883 prohibits the "printing or publishing etc." at an election of "bills, placards, etc." which do not bear upon the face thereof the names and addresses of the "printer and publisher", and provides as follows :—

> "18. Every bill, placard or poster, having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing or posting, or causing to be printed published or posted, any such bill placard or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, or the election agent of the candidate, be guilty of *an illegal practice*, and if he is not the candidate, or the election agent of a candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds."

Section 58 (1) (c) of the local enactment, which, be it noted, had no counterpart in the earlier Ceylon (State Council Elections) Order-in-Council, 1931, is to the following effect :—

> "Every person who—
>
> .....
>
> (c) prints, publishes, distributes or posts up, or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher . . . .
>
> *shall be guilty of a corrupt practice* . . . . ."

It will be at once observed that what in England constitutes only an "illegal practice" (against which relief may be, and according to *Rogers p. 364* "has invariably been granted") was for parliamentary elections in Ceylon declared to be a "corrupt practice". The commission of a "corrupt practice" automatically involves in either country drastic penalties and disqualifications including a prolonged deprivation of important rights of citizenship.

The learned election judge has construed section 58 (1) (c) as imposing an absolute prohibition *irrespective of whether the infringement was accompanied by "a wicked mind"*—so much so that a person who, howsoever uncorruptly, distributes at an election a perfectly innocuous placard or pamphlet (but omitting the name and address of its printer or its publisher) must inevitably (*unless he can bring himself within the limited protection afforded by sections 69 and 72 of the Penal Code*) suffer the same consequences of "guilt" as someone who from corrupt motives had interfered with the holding of a fair Parliamentary election. If

this be the interpretation which inevitably emerges from the words and the spirit of the Order-in-Council, we must of course reluctantly adopt it, however repugnant the result might be to our own notions of what is reasonable and just.

The only previous occasion on which it had become directly necessary for a judge to construe section 58 (1) (*c*) in order to decide whether or not an election should be set aside, was in *Perera v. Jayawardene*[1]. The successful candidate was admittedly answerable for the distribution by an "agent" of a number of election pamphlets each of which bore on its face the name of the "printer", but not of the "publisher". No corrupt intention on the part of either the candidate or his agent accompanied the acts complained of, which (so Windham J. was satisfied) had proceeded from their erroneous interpretation of the actual requirements of the section. Windham J. held that in those circumstances a contravention of section 58 (1) (*c*) was not established. He applied the analogy of similar rulings of the English Courts which construed the definition of the "corrupt practice" of "personation" as involving by necessary implication the special mental element of a "corrupt intention"—*The Gloucester Case*[2], *The Stepney Case*[3] and *The East Kerry Case*[4]. The draftsman of the Ceylon Order-in-Council must be assumed to have been aware of the implications of these authoritative interpretations when he took over in sections 54 and 58 (1) (*a*) of the local enactment the same definition of "personation" as that obtaining in England.

According to the *ratio decidendi* of the English decisions followed with approval by Windham J., the words "a corrupt practice means" or "shall be a corrupt practice" or any similar words are by themselves sufficient to enact that the special mental element of a "corrupt intention" is an ingredient of any "corrupt practice" prohibited by statute in relation to Parliamentary elections. The principle can be very briefly explained. As far as a "corrupt" election malpractice is concerned, that very adjective, and the stigma which it conveys, speaks for itself. In some "corrupt practices", the special mental element is sufficiently particularised in the enactment itself; in others, it must be read into the words of definition by necessary implication.

Mr. Nadesan, in the course of his very able argument, suggested that, if closely examined, these judgments had been misunderstood by Windham J. He pointed out that, according to the classic decisions in *R. v. Prince*[5], *R. v. Tolson*[6], and *Bank of New South Wales v. Piper*[7], penal statutes in England are divided into three distinct categorie :

(1) those in which the definition of an offence specifies (either expressly or by necessary intendment) a particular mental element as one of its ingredients which the prosecution must establish as part of its case ;

[1] *(1948) 49 N. L. R. 241.*
[2] *(1873) 2 O'M. & H. 59.*
[3] *(1886) 4 O'M. & H. 34.*
[4] *(1910) 6 O'M. & H. 58.*
[5] *(1875) 2 C. C. R. 154.*
[6] *(1889) 23 Q. B. D. 168.*
[7] *(1897) A. C. 383.*

(2) those in which the definition does not specify such a special mental element, and the context clearly indicates that the words of the statute are words which absolutely penalise the prohibited act ;

(3) those in which no mental element is specified as an ingredient of the offence, but the seemingly unqualified words of the statute should be construed as shifting the burden of proof by requiring the accused person to negative criminal intent.

Mr. Nadesan suggested that the offence of " personation " was in truth construed by the English Judges as an instance of the third of these categories ; and that in each of the cases quoted by Windham J. the person " accused " was exonerated only because he had satisfactorily discharged the burden of negativing *mens rea*. I am quite unable to accept this argument. In the *Stepney case* (supra) Denman J. expressly ruled that personation was " an offence which involves corruptness " ; that " it is thoroughly understood election law that unless there be corruption and a bad mind and intention in personating, it is not an offence ", and that " there is to be added to the offence of personation a corrupt intention ". Similarly, Field J. pointed out that " corruptness is the essence of the disqualification under section 36 of the Act of 1883 ", and he regarded the inclusion of personation within the category of " corrupt practices " as tantamount to the addition of the adverb " corruptly " in its definition. This decision was followed with approval by Cave J. and Vaughan Williams J. in *the Finsbury case*[1]. Finally, in *the East Kerry case* (supra), Kenny J. said, " In all charges of personation, there are two matters we should be convinced of before reporting : *first*, that someone not on the register had voted or attempted to vote in the name of a registered voter, and *secondly*, that this was done *wilfully and corruptly* . . . . "

The correctness of these unqualified propositions has never been questioned in England, and it would be very wrong indeed for me to presume at this stage to place a different interpretation upon identical words appearing in an Order-in-Council applicable to Ceylon.

The ruling in *Jayawardene's case* (supra) possesses the special merit of having reached a just and reasonable conclusion without (as far as I can judge) violating any recognised rule prescribed for the interpretation of statutory enactments. It is unfortunate, therefore, that the judgment was not acknowledged as having finally settled the law—leaving it to the legislature to change the language of section 58 (1) (*c*) if it thought that the public interest necessitated a more rigorous interpretation. We should not forget that the Parliament of Ceylon has proved very alert in stepping in whenever election judges have pronounced embarrassing rulings which are considered contrary to the assumed intendment of this particular Order-in-Council. Observe, for instance, the Parliamentary Elections (Amendment) Act, No. 19 of 1948, which was hurriedly passed to confer retrospectively a right of appeal against an election judge's

[1] *(1892) 4 O'M. & H. 171*

ruling in the *Kayts case—Kulasingham v. Thambiaiah* [1], and (for reasons which to to my mind are more obscure) the amending Act No. 26 of 1953, which came into operation while the present appeal was pending.

At the general election of 1947, not a single successful candidate was unseated for a contravention of section 58 (1) (*c*) on the basis of an interpretation contrary to that given in *Jayawardena's case* (supra); and candidates at the recent general election could not have been blamed for expecting immunity from charges under that section unless they or their agents were proved to have acted corruptly. I consider, therefore, that this was a context which almost clamoured for the application of the rule of *stare decisis*. Nevertheless, the learned election judge rejected the interpretation of Windham J. and considered himself free to follow certain *obiter dicta* of Dias J. in *Saravanamuttu v. de Mel* [2], and of Basnayake J. in *Aluvihare v. Nanayakkara* [3].

In *de Mel's case* (*supra*) one of the grounds for setting aside the impugned election was that various acts of "personation" punishable under section 58 (1) (*a*) had been abetted by the successful candidate or, in some instances, committed by his agents with his knowledge and consent. Dias J. held as a fact that these offences had been committed in pursuance of a conspiracy (to which the candidate was privy) to procure personators to vote for him at the election. Upon that finding, the ingredient of a corrupt intention stipulated by the completely relevant English decisions cited by Windham J. was conclusively established, but Dias J., in making a "passing reference" to *Jayawardene's case* (supra), "doubted" whether Windham J. had not inadvertently ignored an earlier authoritative ruling of this Court in *Weerakoon v. Ranhamy* [4].

In *Nanayakkara's case* (*supra*) the commission of an offence under section 58 (1) (*c*) had been alleged against the successful candidate and his agents, but was not established by the evidence. In the circumstances, the issue of "corruptness" did not arise. Nevertheless, Basnayake J. also pronounced an *obiter dictum* expressing the view that Windham J.'s ruling was in conflict with *Weerakoon v. Ranhamy* (supra).

I have searched in vain for some indication that Windham J. misunderstood or gave expression to any opinion which came into conflict with *Weerakoon v. Ranhamy* (supra). Bertram C.J. had there conceded in his principal judgment that in Ceylon, as in England, "where a particular state of mind is a necessary ingredient of a (statutory) offence the (prosecution) must prove that that state of mind exists" (p. 42); he then proceeded to discuss the extent to which the law of Ceylon departs from the English law relating to an entirely different category of statutory offences—namely, those containing words of "absolute and unqualified prohibition . . . . ." (p. 44). The judgment of Windham J. demons-

[1] (*1948*) *49 N. L. R. 505.*
[2] (*1948*) *49 N. L. R. 529.*
[3] (*1948*) *50 N. L. R. 529.*
[4] (*1921*) *23 N. L. R. 33.*

trably appreciated this distinction, and it was only upon an analysis of "*the intention of the legislature to be collected from the language of the statute itself*" that he declared :

> "The legislature could not have intended, in using the language of section 58 (1) (c), to say that the mere fact of doing a thing of this kind was a (corrupt practice) which was followed by such serious consequences".

In other words, he construed the section in relation to its context and according to "the fair, common-sense meaning" of the language which was used.

The view expressed by Windham J. is supported by the *ratio decidendi* of the English "personation" cases ; and it thereby respects the rule that a long-established interpretation placed upon an Imperial statute by the English Courts should be followed in a case where similar words are used in a later statute applicable to Ceylon. This doctrine applies in the Colonies, and we were recently reminded by the Privy Council that it should also be observed by "the Courts of a member of the British Commonwealth of Nations"—*Cooray v. The Queen*[1]. Indeed, the principle is especially compelling when a Ceylon Court is required to construe an enactment which was passed by the Head of the Commonwealth on the advice of the Privy Council. If, therefore, section 58 (1) (*a*) must be read as importing a "corrupt intention" as an essential element of the "corrupt practice "of personation, it is almost facetious to imagine that the legislature could have intended section 58 (1) (*c*) to be interpreted as if it read :

> "Every person who, *whether or not he had any corrupt intention in so doing*, prints, publishes etc. any advertisement etc. which refers to any election and which does not bear upon its face the names of the printer and publisher, *shall be guilty of a corrupt practice*, and shall, on conviction by a District Court, *be liable to a fine not exceeding Rs. 500 or to imprisonment of either description for a term not exceeding 6 months ;* and shall by conviction become *incapable for a period of 7 years of being registered as an elector or of voting at any election or of being elected or appointed as a Senator or Member of Parliament*".

I refuse to believe that the innocent distribution of innocuous election pamphlets was, by the will of His Majesty in Council in 1946, denounced in the same manner and to the same extent as prohibited acts corruptly committed in order to tamper with the purity of a Parliamentary election. The section can reasonably be read, and therefore ought to be read, as involving a corrupt intention—for instance, if a candidate anonymously distributes pamphlets defamatory of his opponent in order to influence the minds of voters ; or if he resorts to otherwise legitimate but anonymous propaganda so as to suppress evidence of excessive expenditure in promoting his election. These examples are not of course exhaustive,

[1] (*1953*) *54 N. L. R. 409 at 415.*

It is perfectly true that, in the interests of public safety, health or morals, behaviour of a certain kind is sometimes prohibited absolutely by statute " not for the purpose of punishing the vicious will but in order to put pressure upon the thoughtless and inefficient to do their whole duty "—*Pound*: *The Spirit of the Common Law* p. 52. But why should we suppose that merely technical infringements of the prohibition contained in section 58 (1)(*c*) had been intended to be so sternly suppressed that an innocent distributor of an election pamphlet exhibiting only its printer's name must be deprived of his cherished civic rights even though he meant no harm of any kind? The exceptions contained in sections 69 and 72 of the Penal Code would not always suffice to afford a valid defence in such a case; indeed, they would have been inapplicable in *Jayawardene's case* (supra). If the legislature intends that the Judges should administer laws that are manifestly cruel or absurd, it should clothe its intentions in unambiguous language. This enactment is certainly not such an example of wanton legislative cruelty.

Let it even be conceded (although I do not subscribe to the view) that the language of section 58 (1) (*c*) may be regarded by purists as ambiguous. If that be so, the exercise of a judicial choice is immediately invoked. Where there are two permissible constructions, " the one of which would do great and unnecessary injustice, and the other of which will avoid that injustice, and will keep exactly within the purpose for which the statute was passed, it is the bounden duty of the Court to adopt the latter construction "—*per* Lord Cairns in *Hill v. East & West India Dock Co.* [1] On this footing, we should follow the admissible construction which is " fair and reasonable ", as Windham J. has done, in preference to one which produces " a result which would be repugnant to justice and in many cases cruel and unreasonable in the extreme "—*per* Lord Macnaghten in *Arrow Shipping Co. v. The Tyre Improvement Commissioners* [2]. The language of section 58 (1) (*c*), in the context in which it appears, does not compel us to assume a legislative decision that the purity of elections demands, as the price of its preservation, an unnecessary sacrifice of persons who, without corrupt intent, bring themselves within the narrower construction. " The dictates of legal reasonableness " permit us to adopt in Ceylon, as in other countries, the civilised rule that the Courts should not be " too acute " to find that a wicked mind is not a constituent element of an election malpractice pronounced by statute to be " corrupt ".

As in the English Acts, our Order-in-Council prescribes appropriate sanctions in order to ensure that the Parliamentary elections should be free from taint. With that object, it declares that persons who resort to techniques of a vicious character (such as " bribery ") shall be guilty of " corrupt practices ", which, because of their wickedness, cannot be tolerated and against which no relief can generally be granted. Such behaviour is branded as " corrupt " because it is " done with an evil mind, with the knowledge that it is wrong, and with evil feelings and evil intention "—*The Bedford Case* (*No. 2*) [3]. In addition, the Order-in-

[1] *(1884) 9 A. C. 446.* [2] *(1894) A. C. 508.*

[3] *1 O'M. & H. 76.*

Council prescribes a lesser category of prohibited acts declared to be "illegal practices" not necessarily involving *mens rea* but in respect of which, for that very reason, statutory relief and various grounds of exoneration are available to those who commit them inadvertently or under other mitigating circumstances. The decision of Parliament to include acts of the kind specified in section 58 (1) (*c*) within the group of graver malpractices declared specifically to be "corrupt" carried with it the necessary implication that a corrupt mental element is to be read into their definition. The ruling of Windham J. in *Jayawardene's case* (supra) should not be disturbed because the suggested alternative interpretation is "contrary to every idea of justice or even common fairness"—*Reynolds v. Austin & Sons Ltd.*[1]. If one signpost points the way to a sensible interpretation and another signpost would lead us to a nonsensical result, the choise of route is obvious.

I have already expressed the opinion that the allegation under section 58 (1) (*c*) should be decided *in accordance with the law as it stood before the amending Act No. 26 of 1953 came into operation.* In the absence, therefore, of a decision by the election judge that the acts complained of were committed corruptly, it follows that this charge fails, and we must determine accordingly as a matter of law for the purpose of the present appeal.

I have resisted the temptation to indulge in an *obiter dictum* as to whether, in pending or in future litigation where breaches of section 58 (1) (*c*) are alleged, a corrupt motive must still be regarded as an ingredient of this particular corrupt practice. It would take a good deal, however, to convince me that the subsequent introduction of a proviso can have the effect of altering fundamentally the original meaning of the unamended words of a substantive section. But it is sufficient, for the purposes of the present appeal, to hold that section 58(1) (*c*) did require, at the time of the proceedings before the election judge, proof of a corrupt intention against an alleged offender. The language of the amending Act does not unequivocally deprive a "convicted" person of his accrued right to challenge the validity of his "conviction" at the time when it was entered against him. There is a strong presumption in all civilised countries against an intention on the part of the legislature to enact *ex post facto* criminal laws, and that presumption has not been rebutted by express words appearing in this amending Act. For the reasons which I have given, I would reverse that part of the learned election judge's determination which concerns the allegation that the appellant committed a corrupt practice within the meaning of section 58 (1) (*c*).

I shall now examine the decision that the election was void because, upon the facts as held by the learned judge, the appellant had on 27th June 1952 "knowingly made the declaration as to his election expenses required by section 70 of the Order-in-Council falsely", and thereby committed a corrupt practice under section 58 (1) (*f*).

[1] *(1951) 2 K. B. 135 at 144.*

This determination has been challenged on two grounds :

(1) that there was no evidence to support the finding that the appellant had committed the corrupt pactice in question ;

(2) that in any event the learned election judge had no jurisdiction to unseat the appellant for the alleged breach of section 58 (1) (*f*).

I have considered with care the arguments addressed to us by Mr. H. V. Perera on the first of these objections. The evidence is no doubt circumstantial in character, but in my opinion, the strictly appellate functions of this Court would make it impossible for us to hold, as a matter of law, that the learned election judge's decision on the facts ought to be disturbed—provided of course that he had jurisdiction to adjudicate upon this charge.

The second ground of objection has caused me considerable difficulty, but I am now completely satisfied that the Order-in-Council makes no provision for the unseating of a successful candidate by an election judge on the ground that a corrupt practice under section 58 (1) (*f*) had been committed *after the expiry of 21 days from the date of publication of the result of the election in the Government Gazette.*

My decision is based on my interpretation of the enactment, and not on my conception of what the election laws of this country ought to be. If the contrary interpretation suggested by Mr. Nadesan had been intended by the legislature, there was really no need to have resorted to such avoidable obscurity in giving expression to an idea capable of being conveyed in very simple language.

The powers of election judges depend exclusively upon the terms of the Order-in-Council which is the foundation of their jurisdiction, and " we are not to invent new principles or new procedure for the purpose of administering (it) ".—per Willes J. in *Stevens v. Tillet* [1]. An election cannot, therefore, be declared void by an election judge in Ceylon unless *inter alia* (1) an election petition had been duly presented (or amended) within the period of time sanctioned by one or other of the provisions of section 83 ; and (2) the particular ground upon which the election had been challenged is of a kind specified by section 77.

Let me recount the relevant history of this litigation. After a contested election held on 24th May 1952, the appellant was declared to be the successful candidate, and the Returning Officer made a return to that effect which was published in a *Gazette* Notification dated 28th May 1952. (sec. 50). On 16th June 1952, *i.e.*, within the 21 days sanctioned by section 83 (1), the respondents to this appeal presented a petition challenging the election on various grounds, and the jurisdiction of the learned election judge to investigate those allegations was beyond dispute. On 27th June 1952—*i.e.*, 11 days after the original petition had been entertained, the respondent, who was his own election agent, forwarded to the returning officer a return and declaration of his election expenses (section 70) ; and on 11th July 1952 a notice to that effect was duly

[1] *(1870) L. R. 6 C. P. 147.*

published in the *Government Gazette* (sec. 71). The respondents then applied on 24th July 1952 for leave to amend their original petition under section 83 (2) by including, as an additional ground for challenging the election, an allegation that the appellant had also committed a corrupt practice punishable under section 58 (1) (*f*).

The interlocutory application to amend came up before me on 25th July 1952, and the respondents relied on *proviso* (*a*) *to section 83* (*1*) in support of their claim to add this charge against the appellant. I allowed the application but granted liberty to the appellant, if so advised, to move to have my order vacated at a later date. If there was no justification to allow this amendment, it follows that the learned election judge had himself no jurisdiction to set aside the election on the additional ground relied on. A fundamental objection to jurisdiction may (as has arisen in this case) be entertained for the first time in appeal, provided of course that the plea does not depend on uninvestigated issues of fact—*Norwich Corpn. v. Norwich Electric Tramways Co.*[1].

Mr. H. V. Perera's arguments may briefly be summarised as follows :

(*a*) that although the commission of a corrupt practice within the meaning of section 58 (1) (*f*) can properly be the subject of a prosecution in a District Court with the sanction of the Attorney-General, it does not afford a ground for directly setting aside an election under section 77 ;

(*b*) that section 83 (1) proviso (*a*) applies only to corrupt practices *previously committed but implemented subsequently by a payment of money or by the doing of some similar act* ; and that the proviso has no application to corrupt practices committed exclusively after the closing of the poll.

The second argument is in a sense complementary to the first. It primarily involves an objection that the amendment of the respondents' original petition was out of time ; it also seeks to emphasise the submission that the general scheme of the Order-in-Council with respect to proceedings before election judges does not contemplate the investigation of charges that an election (not proved to have been tainted by corruption or illegality at the time that it was held) was liable to be declared void by reason of the subsequent commission of corrupt practices prohibited by the enactment. For any such offence, Mr. Perera submits, the only sanctions are criminal prosecutions and the appropriate disqualifications resulting from conviction. In other words, the proper function of an election judge (*unless his jurisdiction in any particular context is expressly enlarged*) is to determine whether or not the actual election was tainted in some way before the closing of the poll ; the jurisdiction of the criminal Courts, on the other hand, is to punish persons who commit election offences *at any time*. The distinction, if justified by the words of the enactment, is certainly not illogical.

[1] (*1906*) *2 K. B. 119.*

The Order-in-Council has admittedly been modelled on enactments passed in England, and the history of legislation relating to Parliamentary elections in that country is of some assistance to us in solving the present difficulty. In the background of all the relevant statutes is the intention to ensure as far as possible the freedom of the vote, and to punish in greater or less degree any subversive malpractices committed in connection with the promotion of election campaigns. The common law offences of bribery and corrupt treating, for instance, were subsequently defined and prohibited by statute. As evidence of new techniques emerged from time to time, fresh legislation was introduced to suppress the new mischief. The House of Commons originally exercised its own peculiar jurisdiction in matters relating to its constitution, and took cognisance of bribery and cognate offences committed at elections; but the jurisdiction was later transferred to the regular Courts of Justice. At the same time it was recognised that, apart from private considerations, the public interest required some reasonable time limit to be placed on a person's right to challenge (before an election judge) the validity of a seat in Parliament.

The Parliamentary Elections Act, 1868, of England is an important landmark in the history of the legislation under consideration. Section 3 defined " corrupt practices " as at that time meaning bribery, treating, undue influence, or any such offences as were defined by statute or " recognised by the common law of Parliament ". (It will be observed that the concepts of " illegal practices " and the introduction of the corrupt practice of " making false declarations of election expenses " were of later origin).

Section 6 (2) prescribes as follows with regard to the period within which a petition may be filed to challenge the election or return of a Member of Parliament :

> " The petition shall be presented within twenty-one days after the return has been made to the Clerk of the Crown in Chancery in England . . . . . of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, *in pursuance or in furtherance of such corrupt practices*, in which case the petition may be presented at any time within twenty-eight days after the date of such payment ".

The language of this section has been substantially taken over in the local Order-in-Council—vide section 83 (1) and proviso (*a*)—except that the word " acts " (which is of wider import) has replaced the word " reward ".

Under the Act of 1868, a petition to have a successful candidate unseated must normally, as in Ceylon, be presented within 21 days of the official notification of the result of the election. This time limit was, however, extended in cases where corrupt practices were alleged

to have been committed "*at the election*"—section 11 (14)—but where a "payment or reward" was subsequently made "*in pursuance or in furtherance of*" them; in that event, a petition may, within 28 days of the specified payment or reward, be presented (or, if previously presented, amended) so as to catch up charges involving the corrupt practices so "pursued" or "furthered".

The decision of this appeal ultimately depends upon the true meaning of the words "in pursuance or in furtherance of" appearing in *proviso (a) of section 83 (1)* of our Order-in-Council, and upon whether these words may legitimately be applied to a "false declaration of election expenses"—that is to say, a corrupt practice (complete in itself) which from its very nature is exclusively committed after an election has been concluded. It is very important to ascertain the precise meaning attaching to this phrase in the context in which it first appeared in an election statute.

At the time when section 6 (2) of the Act of 1868 was first enacted, the only recognised corrupt practices "*in pursuance or in furtherance of*" which "payments" or "rewards" could be made after an election were *bribery* and *treating*. Indeed the language of section 6 (2) was retained in England until 1949, and was eventually taken over (without alteration) in the recently enacted Representation of the People Act, 1949.

The definition of either offence specifically includes a payment or reward corruptly made to a voter in certain circumstances "for having voted". What precisely are those circumstances? Let us first consider the corrupt practice of "post-election treating", because all the English authorities in regard to that offence point in the same direction.

In the *Southampton case*[1], Willes J. said, "what is done after the election can only be material as throwing light upon some transaction before the election, and so leading to the supposition that there was before the election some breach of section 5 of the Corrupt Practices Act of 1854". Similarly, in the *Brecon case*[2], Lush J. said, "The treating which the Act calls 'corrupt' as regards a bygone election must be connected with something which preceded the election; it must be *the complement of something done or existing before and calculated to influence the voter while the vote was in his power*". In other words, there must exist the vital connection between the subsequent hospitality and the sinister "something" that had previously contaminated the voters.

In the *Cork case*[3] Gibson J. dealt with a case of post-election treating which was "largely the system and arrangement". He ruled that the essence of the corrupt practice of treating after an election was that it took place "*in pursuance of an understanding or expectation encouraged beforehand*" or, he added, "*by way of reward*". These last words could not have been intended to include a spontaneous reward given to a voter

[1] *(1869) 1 O'M. & H. 222 at 223.*

[2] *(1871) 2 O'M. & H. 43 at 45.*

[3] *(1911) 6 O'M. & H. 318 at 335.*

who had not been influenced improperly at the time that he actually cast his vote. For, as Lush J. pointed out in the *Brecon case* (supra), such rewards do not "*reflect back and taint the bygone election*"—although, if intended to secure the voter's support on future occasions, they may certainly "*imperil a future election which they were designed to influence*". There is no indication that Gibson J. was disposed, or had any occasion to doubt the correctness of this long-established principle.

We are now in a position to appreciate the meaning of section 6 (2) of the Act of 1868 in so far as it sanctions an extended time-limit for filing petitions alleging that subsequent payments or rewards had been made "in pursuance or in furtherance of" the corrupt practice of "treating". Those words obviously do not refer to post-election treating unconnected with some previously corrupt transaction which had taken place "while the vote was in the voter's power"—because such treating, not being the complement of something that had gone before, is not regarded as a corrupt practice at all *in relation to the bygone election*. On the contrary, this part of section 6 (2) only catches up cases where it is sought to establish that an election had been tainted, and was therefore void, because—

(1) voters had, before they cast their votes, been corruptly influenced by promises (or by calculated encouragement) that they would later receive hospitality for having voted in a particular way ;

(2) this express or implied promise, which had itself constituted *ab initio* a corrupt practice, was subsequently implemented by the actual receipt of the promised (or expected) hospitality.

In such a case, the proof of item (2) generally supplies the most compelling proof of item (1), and it is the corrupt practice established by item (1) which vitiated the bygone election.

In most cases, the "payment or reward" which "furthered" the earlier corrupt practice would no doubt involve the commission of an additional offence complementary to the earlier one. But even then, it is the earlier offence which forms the basis of the attack on the impugned election. There may be instances, however, where the subsequent "payment or reward" may "further" a corrupt practice without itself amounting to a distinct offence. Such a situation arose in the *Kidderminster case* [1] where the facts were as follows :—

> The petitioner alleged and proved (1) that the successful candidate had committed the corrupt practices of treating "by corruptly making divers promises (*during the election*) of meat and drink, provision and other reward *in order to induce voters to vote and to refrain from voting ;* and (2) that (*after the election*) he had made a payment of £1000 to his agent 'in pursuance and furtherance of the said corrupt practice'".

[1] *(1874) 2 O'M. & H. 170.*

The petition was presented within 28 days of the date of the payment above referred to, and the relevant provision of section 6 (2) was accordingly invoked. This payment had been made by the successful candidate to one of his agents with specific instructions to implement the pre-election promise, but the instructions were later withdrawn on legal advice. In the result, the promised hospitality did not take place.

Mellor J. declared the election void because "the (pre-election) promise amounted to a corrupt practice . . . . It was partially carried out and stopped *in medio*; but the £ 1000 which was sent (to the agent) was, *strictly speaking, a sum of money paid in furtherance and in pursuance of the corrupt contract or promise which the (candidate) had made*". He pointed out that the eventual abandonment of the scheme could not in these circumstances "purge what had been done before".

This decision perfectly illustrates to my mind the true meaning (in the context of election laws) of the phrase "in pursuance and in furtherance of".

With regard to the corrupt practice of "*post-election bribery*", the English statutes, like the local Order-in-Council, include within the definition of that offence a corrupt payment to a voter "on account of his having voted". In the *Stroud case* [1], Baron Bramwell pointed out that bribery must be "*operative on the election*", and in the *Salisbury case* [2] Baron Pollock also held that a subsequent payment to a voter, "unless connected with *some earlier communication which would lead to the inference that it was bribery*" could not avoid an election.

I agree that Lush J. appears, shortly before the decision in the *Salisbury case* (supra), to have expressed the opinion that "post-election bribery" stood on a different footing in this respect to post-election treating—*The Harwich case* [3]. "The payment of money as a reward for having voted", he said, "is corrupt in itself; it tends to be demoralising in its influence on all the parties concerned. These observations, be it noted, did not refer to the case of the successful candidate (who had been acquitted of all the allegations against his election) but were made in reference to recriminatory charges against the unsuccessful candidate who had prayed the seat. The *Harwich case* is more fully reported in *44 Law Times 187*, where it appears from Lush J.'s recorded findings of fact that certain payments had been made to voters "*as a reward for having come at the request of the candidate's agent, to give their votes for him . . . . and the voters no doubt expected to be paid for coming*". Manisty J., in his concurring judgment, explained that the mere payment by a candidate after an election to an absent voter *who had come of his own accord* would not constitute the corrupt practice of bribery but only an illegal payment. "*There must be something plus the mere payment*", he said, "*to make it a corrupt payment, and consequently bribery*".

[1] *(1874) 2 O'M. & H. 181 at 183.* [2] *(1880) 3 O'M. & H. 130.*

[3] *(1880) 3 O'M. & H. 61 at 70.*

Even if one concedes that Lush J. had taken a view as to " post-election bribery " which was contrary to the earlier decisions, we have not been referred to any decided case in which his opinion was adopted subsequently. On the contrary, in *Caldicott v. Worcester Commissioners* [1], Bingham J. re-affirmed the earlier principle, and ruled that, to support a charge of bribery in reference to a bygone election, it was necessary to have some evidence connecting the subsequent payments with something done before the election, because " one could not procure a vote for a past election by something which was complete and done only after the election ". In the most recent edition of *Russell on Crime* (1950 Ed.) the following passage appears at page 434 :

> " It seems that a payment of money to a voter after the election is over is not bribery *unless there was a corrupt promise before the election to pay him.* "

Our combined researches have not brought to light a single instance of an election which was declared void in England on the ground of subsequent bribery unconnected with an antecedent promise (or expectation influenced by prior encouragement). In any event, Lush J. had no occasion, in dealing with a recriminatory charge, to construe the words " in pursuance or in furtherance of corrupt practices " appearing in section 6 (2) of the Act of 1868.

In the *Bodmin case* [2] Lawrence J. said " In cases of bribery there is always something in the nature of a contract : ' If you give me a sovereign, I will give you a vote ' or some such understanding . . . . "

In other words, the offence necessarily involves some conduct which tainted the vote before it was given—and the offence (although at that stage difficult to prove) is then complete even though the corrupt arrangement still await implementation by payment. The opinions in *Cooper v. Slade* [3] are specially instructive. If a person promises to make a payment to a voter as an inducement to vote in a particular way, he is guilty of bribery because he " created that inducement ". If he subsequently makes a payment " pursuant to " the promise previously made as a reward for the " advantage which the statute means he should not obtain ", the payment is equally corrupt. In such cases, the offence introduces the concept of a scheme whose complete execution might well be spread out over a period of time. I am satisfied, therefore, that the essence of " post-election bribery " is that the payment was made *in exchange for a contemplated advantage previously induced.*

The words of section 6 (2) which correspond to *proviso (a) of section 83 (1)* of the local Order-in-Council have ever since 1868 retained a clear-cut meaning in the lexicon of election law in England, and the intention of the legislature is not difficult to discern. After the closing of the poll, evidence of " payments " or " rewards " often reveals for the first time

[1] *(1907) 21 Cox 404.*

[2] *(1906) 5 O'M. & H. 225 at 231.*

[3] *(1857) 6 H. L. C. 746.*

the sinister character of secret " arrangements " which, at the time of their conception, had " operated on the election ". The subsequent payments or rewards, having been made " in pursuance or in furtherance of " the earlier corrupt transactions, represent the implementation or advancemen of the earlier plan or scheme. The detection of such schemes almost invariably requires more time than in cases of open corruption. Section 6 (2) of the English Act, and the corresponding proviso of the Ceylon Order-in-Council, therefore provide a longer period within which an election petition may be presented on the basis of such allegations.

The substitution of the word " act " for " reward " in proviso (*a*) of section 83 (1) of the Order-in-Council certainly enlarges the ambit of the proviso, which thus becomes equally applicable, for instance, to subsequent acts done in furtherance of pre-election threats constituting the corrupt practice of *undue influence*. But the substitution cannot alter the meaning of the unamended phrase " in pursuance or in furtherance of ". Indeed, the proviso is essentially procedural in character ; it does not purport to influence the substantive law relating to corrupt election practices.

The offence of " knowingly making a declaration of expenses falsely " was of later origin in England. It was " *deemed to be* " a corrupt practice by section 33 (7) of the Corrupt and Illegal Practices Prevention Act 1883. By its very nature, it is essentially a post-election offence, and the words " deemed to be " emphasised that it stood in a different category to what may be described as " *corrupt practices proper* " which had in fact corruptly influenced the minds of voters before they cast their votes.

The commission of this new offence has undoubtedly been a ground for setting aside an election in England ever since the Act of 1883 was passed, and there is good reason why this should be so ; because the dishonesty involved in its commission affords most powerful evidence of undetected offences (difficult to particularise) which had previously contaminated the electorate. Accordingly, a special procedure, which did not exist in the earlier framework, was introduced so as to enable such charges to be investigated at election trials. Candidates seldom, if ever, forward their " returns of expenses " within the period of 21 days normally prescribed for the filing of election petitions, and the extension of time granted in cases falling within the later portion of section 6 (2) of the Act of 1868 had no application to such a case. Accordingly, section 40 of the Act of 1883, which also introduced for the first time the category of election offences designated " illegal practices ", provides that petitions based on such charges may be filed :

(*a*) " At any time before the expiration of fourteen days after the day on which the returning officer receives the return and declarations respecting election expenses by the member to whose election the petition relates and his election agent. "

(*b*) " If the election petition specifically alleges a payment of money, or some other act to have been made or done since the said day by the member or an agent of the member, or with the privity

of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days after the date of such payment or other act. "

. . . . . .

(3) " This section shall apply in the case of an offence relating to the return and declarations respecting election expenses in like manner as if it were an illegal practice, and also shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice. "

One immediately observes the manner in which special provision is made for challenging an election within an extended period of time, on the ground of this new post-election " corrupt practice " : it was equated for procedural purposes to an illegal practice. By virtue of Section 40 (3), the entire scheme becomes demonstrably complete. As far as I had been able to trace the English authorities, every election petition challenging an election upon an allegation of this offence has been presented under Section 40 (3) read with section 40 (1) (*a*).

Let us examine by way of contrast the corresponding procedural provisions of the Ceylon Order-in-Council :—

A. Section 83 (1) (*b*) (i) corresponds precisely to section 40 (1) (*a*) of the English Act.

B. Section 83 (1) (*b*) (ii) corresponds precisely to section 40 (1) (*b*) of the English Act.

C. *Section 40 (3) of the English Act has no counterpart in the Order-in-Council.*

We are thus confronted with a clear illustration of " scissors and paste legislation " in which, designedly or otherwise, a special provision for the inclusion of charges relating to an exclusively post-election " corrupt practice " has been left out. If the omission was deliberate, it indicates that charges under section 58 (1) (*f*) were intended to be initiated only by way of criminal prosecution unless such offences were committed within the 21 days limit prescribed by Section 83 (1) ; even if (which I dare not assume) it was accidental, the same result follows, because judges are powerless to fill in the gaps in legislative enactments by inventing fundamentally new procedures.

Mr. Perera has also relied on the significance of section 77 (*c*), by which the election of a " candidate " as a Member may be declared void on

the ground of corrupt practices only if they were "*committed in connection with the election*". He argued that those latter words necessarily exclude transactions exclusively initiated and executed *after* the election was over. That refined distinction does not convince me, but I am more disturbed by the circumstance that the Order-in-Council defines a "candidate" as meaning, "unless the context otherwise requires", a person who "is nominated as a candidate at an election or is declared by himself to be or acts as a candidate for election" (sec. 3)—*whereas in England the term is defined so as also to include "any person elected to serve in Parliament"*. This variation from the English model cannot properly be assumed to have been unintentional.

But let us assume that post-election corrupt practices punishable under section 58 (1) (*f*) are (as I believe) "committed in connection with the election" within the meaning of section 77 (*c*) ; let us also assume that the context of section 77 (*c*) "requires" the word "candidate" to be given a meaning wider than that which it has primarily received in the interpretation clause of the enactment. Even then, section 83 (1) would only permit the inclusion of such an allegation in an election petition *in those very rare cases in which a successful candidate makes his "declaration of expenses" under section 70 "within 21 days of the publication of the result of the election"*. If, instead, he postpones the making of his declaration until a later permissible date, the language of the proviso (*a*) to section 83 (1) is inadequate because it cannot apply at all to charges under section 58 (1) (*f*). In the result, the successful candidate's seat in Parliament is safe *unless the same result can be achieved by virtue of the disqualification proceeding from his conviction for that offence—section 58 (2)*.

As against this view Mr. Nadesan relies strongly on the ruling in *Kunasingham v. Ponnambalam* [1] which was followed with approval in *Chelvanayakam v. Natesan* [2]. It was decided in both these cases that the language of proviso (*a*) to section 83 (1) is wide enough to cover a charge under section 58 (1) (*f*) because "the act . . . . to be specifically alleged *may be an act that is involved in the corrupt practice itself and need not be a separate and distinct act . . . . Even otherwise, the filing of the return and declarations was a separate act done in pursuance or in furtherance of the corrupt practice* of making false declarations . . . . . ".

Having had the advantage of much fuller argument upon this question than my brothers Gunasekara J. and Swan J. had on the interlocutory applications which came before them, I respectfully disagree with this proposition. An act may be done "in pursuance of" an executory contract or agreement ; it may also be done "in furtherance of" a *scheme or plan* which (though it involves even in its inchoate form the commission of an election offence) nevertheless requires (as a scheme) further implementation to achieve complete fulfilment. But, with respect, I do not see how an *act* can "further" something which, *regarded as an "offence"* already completely committed, needs nothing more to

[1] *(1952) 54 N. L. R. 36.* [2] *(1952) 54 N. L. R. 304.*

further its execution. *A fortiori*, we would be straining unduly the meaning of a phrase (which has long since acquired a well-recognised meaning in the language of election laws) if we regard the *return of election expenses* as having taken place " in pursuance or in furtherance of " *the act or acts involved in making a false declaration before a person authorised to administer an oath or an affirmation.* I did not understand Mr. Nadesan to press this part of his argument very strenuously.

I appreciate that, in the English language, the phrase " *in furtherance of* " may " apply equally to mean the advancement of things before they come into existence and after they have begun ". *R. v. Tearse* [1]. But, as Wrottesley J. pointed out, the meaning of a phrase, in a particular statutory context, may be *controlled by its " history "*. The Court of Criminal Appeal in England accordingly decided that, in legal enactments relating to trade disputes, the words " acts in furtherance of a strike " presuppose the existence of a strike. For precisely the same reason, I would say that the language of Section 83 (1) (*a*) presupposes the prior commission of a corrupt practice which was intended to be advanced or further implemented by a later " payment " or " act ". In any event, it is manifest to my mind that the words cannot be applied to an " act " which is identifiable with the offence itself (whether already committed or not). If that had been the intention of the Legislature, I see no reason at all why the proviso should not have been enacted so as to read :

Provided that—

(*a*) an election petition questioning the return on election or return upon the ground of a corrupt practice *alleged to have been committed after the date of such return or election* by the member whose election is questioned or by an agent of the member or with the privity of the member or his election agent may, so far as respects such corrupt practice, be presented at any time *within 28 days after the* date of the commission of such corrupt practice.

The complicated concept of *an act which is done in pursuance or in furtherance of itself* (*or of something that at least includes itself*) introduces problems to which I have tried in vain to accommodate my mind.

I agree that an election may in certain circumstances be declared void on the ground that some prohibited act was committed after the date of the election. As Gunasekara J. points out in *Ponnambalam's case* (supra), the combined effect of Sections 59 (4) and 77 (*d*) might well invalidate an election if a disqualified person should be engaged as the election agent of the successful candidates " after the election". But here again, it will be observed, the procedural machinery of the Order-in-Council does not provide for every such contingency. Let us consider,

[1] *(1945) K. B. 1.*

for instance, the appointment of a disqualified election agent *22 days after the result of the election has been gazetted.* In that event, it would be just too late to present a petition under Section 83 (1); nor would any of the provisos be applicable, because the Order-in-Council has not declared what is prohibited by Section 59 (4) to be either a "corrupt" or an "illegal" practice. And yet, this hypothetical situation is certainly not beyond the realms of possibility, because the services of an election agent may still be required to perform various functions allocated to him by law after the expiry of the time limit prescribed by Section 83 (1), e.g. the obligations laid down in Section 70. It is therefore quite wrong to assume that the machinery of the Order-in-Council is devoid of gaps. The remedy lies with the Legislature and not with us.

Mr. Nadesan has submitted that certain observations made by Lord Coleridge C.J. in *Maude v. Lowley* [1] and by Lord Halsbury in *Cremer v. Lowles* [2] support the case of the respondents. *Maude v. Lowley* (supra) was concerned with an election petition presented under the Corrupt Practices (Municipal Elections) Act 1872 which contains provisions similar to those prescribed in Section 83 of our Order-in-Council. The petitioner sought, after the 21 days limit had expired, to amend his petition by adding an allegation of a distinct offence which had been committed before the date of the election. The Court held that there was no jurisdiction to allow the proposed amendment. In the course of his judgment Lord Coleridge incidentally said :—

> "The enactment is distinct, and the petition must be presented within 21 days, except in the one specified case of an offence, not discovered since the election but which has taken place since the election; and in such case the petition may be presented at any time not after the discovery of the offence, but after the taking place of that which constitutes the offence."

Similarly, Keating J. said that the section of the English Act corresponding to section 83 (1) proviso (*a*) provided for "the excepted case of *bribery since the election*". The judgments also appear in *43 L. J. C. P. 105* where the observations of Lord Coleridge (as I have reported) are less capable of supporting Mr. Nadesan's argument. Be that as it may, I cannot imagine that the *dicta* quoted by me were intended to imply that "bribery since the election" could vitiate a bygone election unless it was the complement of something which had previously influenced the minds of voters.

In *Cremer v. Lowles* (supra), the Court rules that, where a Parliamentary election petition alleging bribery, treating and undue influence had not been amended within the prescribed time limited for amendment, the petitioner could not be permitted to tender evidence of an illegal practice committed after the date of the petition. Lord Halsbury decided that it was "monstrous to suggest that on an unamended petition

[1] *(1874) L. R. 9 C. P. 165 at 173.* [2] *(1896) 1 Q. B. 504 at 507.*

brought in August evidence could be given of matters which occurred several months afterwards ". He then proceeded to make the following observations :—

> " It is said that the result of our decision is that offences committed subsequently to the presentation of the petition will escape without punishment, but this is incorrect. Any such offence may, under 46 and 47 Vict. c. 51. s. 40 be the subject of a charge against a member, which may be brought either by amendment of the petition within the time limited for amendment, or by a petition filed within the prescribed time after the offence was committed: if, for example, a petition was presented in August, and the respondent committed an illegal practice by payment of money in October, the petition could be amended and proceeded with."

Here again, this part of the judgment is somewhat differently worded in *65 L.J.Q.B. at p. 291 :*

> " Then it is said that, if that be so, the alleged offences may go altogether unpunished. But *this is not necessarily so,* because an amendment might be made *within the proper limit of time,* or a new petition may be brought."

Assuming that the earlier report is more authentic, it is quite unsafe to regard these *dicta* as purporting authoritatively to interpret the words " in pursuance or in furtherance of " in relation to a corrupt practice under section 6 (2) of the Act of 1868 or in relation to an illegal practice under section 40 (1) (*b*) of the Act of 1883. The evidence expressly rejected by the Court in *Cremer v. Lowles* involved an allegation of " illegal practices respecting the return and declaration of election expenses " for which *section 40 (1) (a)* and 40 (3) of the 1883 Act introduce a special procedure which the petitioner had not invoked within the period specified. In regard to a further allegation, however, as to " the procuring of prohibited persons to vote, and providing money for prohibited payments " the Court of Appeal made no order, but sent the case back for Lawrence J. to decide in chambers after hearing further argument.[1] It is in regard to the latter kind of charge that a considered judgment would have assisted us, because that allegation necessarily implied that " the procuring of prohibited persons to vote " had taken place before the election. If, therefore, the " prohibited payments " were allegedly made *after* the election " in furtherance of " the earlier offence, I do not doubt that an application to amend the petition within the prescribed time would have been allowed under either section 6 (2) of the Act of 1868 or section 40 (1) (*b*) of the Act of 1883.

Having considered all the arguments raised and all the authorities cited before us by learned counsel (for whose invaluable assistance we are very much indebted) I have arrived, though not without regret, at the following conclusions :

A. the words " in pursuance or in furtherance of such corrupt practice " appearing in *section 83 (1) proviso* (*a*) do not possess a meaning which permits of their legitimate application to a payment

[1] *(1896) 1 Q. B. at 505 footnote 1* and *65 L. J. Q. B. at 290.*

or act unconnected with a corrupt practice previously committed ; according to the true meaning of those words, the proviso applies only to some payment or act which is alleged to have subsequently implemented a corrupt practice committed before the election with a view to influencing improperly the mind of a voter ;

B. an allegation that a corrupt practice has been committed in contravention of section 58 (1) (*f*) is not under any circumstances covered by *section 83 (1) (a)*.

In the result, the amendment dated 25th July 1952 of the respondents' original petition dated 16th June 1952 was made out of time, and I am therefore compelled to admit that I had no jurisdiction, even provisionally, to allow that amendment. Accordingly, the learned election judge had himself no jurisdiction to unseat the appellant upon the basis of that allegation. If, as the learned judge has held, the appellant did in fact commit a corrupt practice on 27th June 1952 punishable under section 58 (1) (*f*), the only remedy open to the respondents was (and still is) to institute a prosecution against the appellant after having first obtained the sanction of the Attorney-General under section 58 (3). It is because this remedy is still available that I consider it imprudent to cause any possible embarrassment by analysing in detail the evidence which Mr. Nadesan submitted to be conclusive proof of the appellant's guilt (but which Mr. Perera on the other hand contended to be inconclusive).

I do not accept without qualification the argument of Mr. H. V. Perera that a corrupt practice exclusively conceived and consummated after the date of an election can never form the basis of an election petition. This proposition is, in my opinion, perfectly correct with respect to what I have previously described as *corrupt practices proper* (such as bribery, treating and undue influence). Offences of that kind from their very nature involve an element of corruption which was " operative on the election ", even though they were fully implemented at a later date ; because the mischief had already contaminated the votes of persons who had come under its influence. Section 77 (*c*) by itself does not in my opinion preclude statutory corrupt practices of a different kind—such as offences under section 58 (1) (*f*)—from forming the basis of an election petition if committed after the election. The right to include such charges in election petitions ultimately depends, however, on whether the procedural provisions of the enactment are wide enough to catch up the particular case. It is at this point that the scheme of the Order-in-Council seems to have broken down, and we are not vested with jurisdiction to invent a procedure to deal with a *casus omissus*.

I have not considered it necessary to consider very closely, for the purposes of this appeal, provisos (*b*) (1) and (*b*) (2) of Section 83 (1) which apply to petitions questioning a return or election upon allegations of illegal practices. Suffice it to say that proviso (*b*) (1) is in my judgment applicable to illegal practices committed before or after an election,

but within the time limit therein prescribed. With regard to proviso (*b*) (2), the words " in pursuance or in furtherance of " must necessarily have the same meaning as in proviso (*a*)—and would therefore catch up any illegal practice committed before the date of publication of the notice required by Section 71, provided that it was " pursued " or " furthered " *after that date* by a subsequent " payment " or " act ".

I would reverse the determination of the learned election judge, because in my opinion

(1) the decision against the appellant under section 58 (1) (c) was contrary to law ; and

(2) there was no jurisdiction to adjudicate upon the allegation that the appellant had committed a corrupt practice under section 58 (1) (*f*) on 27th June 1952—i.e. after the last date for presenting petitions under Section 83 (1) had expired.

In this view of the matter, I would decide that, upon the material which was properly before the learned Judge, the appellant was duly returned and elected as a Member of the House of Representatives on 24th May, 1952.

I have prepared my judgment while on circuit, and have been deprived of the opportunity of reading the judgments of my Lord the acting Chief Justice or of my brother Pulle. I understand, however, that they do not share my views as to the inapplicability of Section 83 (1) proviso (*a*) to corrupt practices punishable under Section 58 (1) (*b*). The Order-in-Council certainly presents many difficulties, and it is not perhaps surprising that " though we have entered the labyrinth together, we have unfortunately found exit by different paths ", per Lord Buckmaster in *Great Western Railway Co. v. Bater*[1]. In view of the decision of the majority of the Court, it follows that the order of the learned Judge invalidating the appellant's election must be upheld.

PULLE J.—

For the reasons set out in the judgment of Gratiaen J. I am of opinion that the finding against the appellant that he was guilty of a corrupt practice under section 58 (1) (*c*) cannot be sustained. During the course of the argument I gathered that the case of *Weerakoon v. Ranhamy*[2] was cited to Windham J. at the hearing of *Perera v. Jayawardene*[3]. In the view that Windham J. took of what constituted the essential elements of the offence it was not necessary for him to refer in his judgment to *Weerakoon v. Ranhamy* (supra) and it could not, therefore, be said that he reached a decision without regard to a relevant and binding

[1] *(1922) 2 A. C. 1 at p. 11.*

[2] *(1921) 23 N. L. R. 33.*

[3] *(1948) 49 N. L. R. 241.*

authority. It may well be, as Mr. Nadesan argued, that in England where the mental element of dishonesty or corruptness is not specifically stated in the statutory description of the offence the burden rests on the respondent to show that his action was not tainted. This shifting of the burden left unaffected the question as to what the Judge had ultimately to find, namely, whether the acts expressly prohibited were done or not done with the intention of corruptly influencing the vote.

As section 58 (1) (*c*) stood before it was amended by Act No. 26 of 1953, not only a candidate or his election agent but every person printing, publishing, distributing or posting up any advertisement, handbill, placard or poster which refers to any election and which did not bear upon its face the names and addresses of its printer and publisher was guilty of a " corrupt " practice. Now, if the words of section 58 (1) (*c*) were intended to penalise any act howsoever innocent then there is no alternative but to give effect to the intention of the Legislature. The court would not then be concerned with the seriousness of the penal consequences. I do not, however, assent to the proposition that a scale of heavy penalties provided for the breach of the provisions of a statute should be disregarded in ascertaining the proper meaning of the statute. One can visualise a number of acts coming strictly within the letter of section 58 (1) (*c*) which are irreproachable by any ethical standard. Before saying that the commission of any such act involves the forfeiture of a seat in Parliament and the deprivation of civic rights for a number of years one must examine besides the language of the provision the back ground of the law from which we derive the very concept of a corrupt practice. The expression " corrupt practice " as used, at least in reference to the acts done before and during an election, has been interpreted in England to mean the doing of such acts with a corrupt mind. I consider it perfectly legitimate to construe section 58 (1) (*c*) as Windham J. did in *Perera v. Jayawardene* (supra) by applying the ratio of the decision in the *Stepney case*[1] in which the element of corruptness was said to form part of the offence of personation, although the words " corruptly or wilfully " or " corruptly or knowingly " did not appear in the definition of the offence.

It is not necessary to elaborate the remaining topics arising out of the charge under section 58 (1) (*c*) because I am in agreement with what Gratiaen J. has said about them. The provisions of the amending Act No. 26 of 1953 could not alter the meaning of the words in section 58 (1) (*c*) as they fell to be interpreted by the learned election judge. The construction placed by Parliament on these words in 1953, if it is at all possible to ascertain what that construction is on a reading of the Act of 1953, would be irrelevant in the judicial determination of the true meaning and scope of section 58 (1) (*c*). The retrospective operation of the Act of 1953 could not give a new and retrospective meaning to section 58 (1) (*c*). How section 58 (1) (*c*) read in conjunction with the Act of 1953 should be interpreted does not in my opinion arise for determination because the success of the appellant in the first appeal on the first charge renders it unnecessary to consider the second appeal.

[1] *(1886) 4 O'M. & H. p. 34.*

On the second charge that the appellant knowingly made the declaration as to election expenses required by section 70 falsely the learned election judge came to a finding against the appellant, which he was entitled to, on the evidence placed before him. Our appellate functions limited to correcting errors in law preclude us from disturbing this finding.

The next question whether the corrupt practice is caught up by section 83 (1) (*a*) is not free from difficulties but having given the most anxious consideration to all the arguments so powerfully urged on behalf of the appellant I do not feel that the difficulties are of such a magnitude as to convince me that the offence of knowingly making a false return of election expenses cannot be brought within section 83 (1) (*a*). I would certainly hesitate to dissent from the considered opinions of two Judges of this court in *S. V. Kunasingham et al. v. G. G. Ponnambalam*[1] and *S. J. V. Chelvanayakam v. S. Natesan*[2], unless I was satisfied that they were clearly wrong.

I need not recapitulate the history of the legislation in England which rendered it possible after the passing of The Corrupt and Illegal Practices Act, 1883, (46 and 47 Vict. C. 51) to challenge an election by a petition alleging an offence relating to the return and declarations respecting election expenses. I find it fully set out in the judgment of Gratiaen J. One fact is undoubtedly obvious that both in the Ceylon (State Council Elections) Order in Council, 1931, and the Ceylon (Parliamentary Elections) Order in Council, 1946, there is no provision in terms similar to section 40 (3) of the Act of 1883. One of the questions raised at the argument was whether the omission to reproduce in terms section 40 (3) in our Orders in Council, be the omission accidental or deliberate, has resulted in there being made no provision for challenging an election on the ground of making a false return of expenses. While the omission to make express provision is a circumstance to be borne in mind, ultimately the question which has to be decided on this part of the appeal turns on whether upon a reasonable interpretation of sections 77 (*c*) and 83 (1)(*a*) the corrupt practice in question is brought within their ambit. I confess that if it can be brought I would not be shocked at the result.

In regard to the application of section 77 (*c*) I am satisfied that the corrupt practice of making a false return of expenses can be said to be one committed "in connection with the election". Making a return is a necessary adjunct of an election. Section 70 (3) renders a member who fails to transmit a return within the prescribed time liable to penalties, if he sits or votes in the House of Representatives and he is further guilty of an illegal practice under sub-section 6 which ought to be a ground for avoiding the election. It has been argued that the word "candidate" in section 77 (*c*) read with the words "was committed" point to the limitation of the jurisdiction of election courts to investigate charges of corrupt or illegal practices committed when the member was only a candidate and that, therefore, the corrupt or illegal practices must be those committed prior to the publication of the result of the election

[1] *(1952) 54 N. L. R. 36.* [2] *(1952) 54 N. L. R. 304.*

under section 50. Reliance is placed on the definition of the word " candidate " in section 3 (1). In my opinion the word " candidate " means the candidate elected as a member. I do not think I need say more than that in many places in the Order in Council the words " candidate " and " member " are interchangeable. It is also unlikely that the framers of the Order in Council intended to leave out of the purview of section 77 (c) those illegal practices like payments of money after the prescribed time in meeting liabilities justly and properly incurred. In other words, I find it difficult to reconcile myself with an interpretation which would divide corrupt and illegal practices into two classes, those which can be the basis of an election petition and those in which a prosecution of the member would be the only way of vindicating the law. I am strengthened in the view I hold by the opinion which Gratiaen J. appears to favour that if a false return is made within twenty-one days of the declaration of the result of the election, a petition challenging the election under section 77 (c) could be maintained.

I come now to section 83 (1) (a). *Prime facie* the " corrupt practice " referred to in that paragraph would include the offence of knowingly sending a false return of expenses. Can it be said that the act of making the declaration was an act done " in pursuance or in furtherance " of that corrupt practice ? A large part of the argument was devoted to the comparison of section 83 with the corresponding provisions of section 6 (2) of the Parliamentary Elections Act, 1868, and section 40 of the Corrupt and Illegal Practices Prevention Act, 1883. Section 83 had its exact counterpart in Article 80 of the Order in Council of 1931. Corrupt practices in 1931 were limited to personation, treating, undue influence, bribery and false declaration as to election expenses. It is manifest that when the draftsman of 1931 modelled himself on the English Acts he purposely omitted to make express provision similar to that in section 40 (3) of the 1883 Act. In regard to " illegal " practices being the ground for challenging an election by a petition filed after twenty-one days substantially the whole of the English provision was taken over. There was a departure in the language so far as corrupt practices went. Whereas section 6 (2) of the Act of 1868 read " and specifically alleges a payment of money or *other reward* to have been made by any member." Article 80 (2) (a) of the Order in Council of 1931 stated " and specifically alleging a payment of money or *other act* to have been made or done since the date aforesaid by the member ". The variation in the language was obviously intentional. Whereas section 6 (2) of the Act of 1868 envisaged only the corrupt practices of bribery and treating the Orders in Council of 1931 and 1946 (Article 80 and section 83) were intended to embrace a larger class of corrupt practices. The only question is whether this intention has been frustrated, so far as false returns as to election expenses are concerned, on the ground that the language used in section 83 (1) (a) (and in the corresponding Article 80) is inapt. In the absence of authority defining comprehensively the expressions " in pursuance " and " in furtherance " one is entitled to give to them one of the dictionary meanings sensible in the context. One of the simplest meanings of

either expression would be the " prosecution " or the " promotion " of the thing. Referring to a person acting " in furtherance of a strike " the Court of Criminal Appeal in England said in *Rex v. Tearse* [1], " If these words fell to be construed apart from the consideration of previous legislation and pronouncements on that legislation, it might be difficult to suggest that any restriction should be placed on the meaning of the word 'furtherance'. In English literature it is found applied equally to mean the advancement of things before they come into existence and after they have been begun, but the words 'in furtherance of a trade dispute' have a history." . In *Tearse's case* a restricted meaning was given to the phrase " in furtherance of " because in an earlier case, *Conway v. Wade* [2], which went up to the House of Lords where the words " an act done in contemplation or furtherance of a trade dispute " had to be construed, two of their Lordships stated in the particular context in which the words occurred that " an act done in contemplation " meant an act done before the dispute arose and " an act done in furtherance " meant an act done when the dispute had come into existence. It would thus be seen that the phrase " in furtherance " was given a restricted meaning because it was associated with and preceded by the words " in contemplation of ". I have not been convinced that the phrases in section 83 (1) (*a*) or, for that matter, the same phrases in section 83 (1) (*b*) (ii) should be given a restricted meaning. It is true that in England in cases falling under section 6 (2) of the Act of 1868 the phrases have been held to describe the implementation after the election of a corrupt pre-election promise to treat or a promise to give a voter a money reward or its equivalent. Such cases are obvious examples of acts done " in pursuance " or " in furtherance " of corrupt practices. Does it, however, follow *by logical necessity* that there is no scope for the application of either phrase to the corrupt practice of making a false return ? I am constrained to say " No ". This corrupt practice is one which by its nature can be committed only after the declaration of the result of the election. I see, therefore, no compelling reason why the idea of a nexus between a pre-election promise and its implementation should affect the approach to what is an independent problem, namely, whether the act of making a declaration for the purposes of section 70 of the Order in Council is an act done in pursuance or in furtherance of the corrupt practice penalised by section 58 (1) (*f*).

In the final result I hold that the appeal from the finding under section 58 (1) (*c*) succeeds and that the learned election judge had jurisdiction, by reason of the provisions in section 83 (1) (*a*), to try the charge of corrupt practice of making a false return as to election expenses.

I agree with my Lord, the Acting Chief Justice, as to the final order which would result from the conclusions at which we have arrived.

Appeal dismissed.

[1] *(1945) 1 K. B. 1 (at p. 5.)*

[2] *(1909) A. C. 506.*