1944 *Present:* **de Kretser J.**

DAHANAYAKE *v.* PIERIS.

IN THE MATTER OF THE BY-ELECTION FOR THE ELECTORAL DISTRICT NO. 45.—BIBILE.

Election petition—Respondent's contract with Government—Disqualification of respondent—Burden of proof—Transfer of contract—Scope of proviso to Article—Ceylon (State Council Elections) Order in Council, 1931, Article 9 (d).

Where the election of the respondent to the State Council was challenged under Article 9 (*d*) of the Ceylon (State Council Elections) Order in Council on the ground that he had entered into contracts with the Government of Ceylon and where the respondent claimed that he had got rid of that disqualification,—

***Held*, that the burden was on the respondent to prove that he had got rid of the disqualification or that he came within the exception provided by the Article.**

Where the respondent had entered into contracts with Government and had applied to assign the contracts to a Company that was being incorporated,—

***Held*, that the assignment of the contracts should be made with the same formality with which the contracts had been effected.**

***Quaere*, whether a private company, which may consist of two members, comes within the proviso to Article 9 of the Order in Council.**

THIS was an election petition in which the respondent's election to the Bibile seat in the State Council was challenged on the ground that he had entered into contracts with the Government of Ceylon and was thereby disqualified under Article 9 (*d*) of the Ceylon (State Council Elections) Order in Council.

N. Nadarajah, K.C. (with him *C. S. Barr-Kumarakulasingam* and *H. W. Jayawardene*), for petitioner.—The evidence clearly shows that the company floated by the respondent is a sham and had been created merely to assist the respondent to get rid of his disqualification. Even though the prospectus shows that the company was floated to acquire and run the respondent's former businesses, there is nothing to show that they have been acquired. The statutory returns have not been made to the Registrar of Companies.

One cannot say that there has been a valid or effectual assignment of the contracts. Especially in the case of the Bibile Maternity Home contract, there was in fact no valid assignment till June this year. The mere alteration in the respondent's copy is insufficient. The actual contract, *i.e.*, the one in the possession of the department, must be altered and signed afresh. The requirements laid down in the Financial Regulations must be strictly complied with—vide *Financial Regulations 765 and 766*.

Even though the contract may not be enforceable, it can still disqualify—see *Rex v. Francis*[1].

[1] *21 L. J. A. B. 304.*

If there has been a valid and effectual assignment to the company, the disqualification would yet operate. The respondent and the other members of the family are together holding and enjoying the benefits of the contract. They cannot seek to come in under the proviso to Article 9 (*d*) of the Order in Council. This provision has been borrowed from the English Act 22, *Geo. 3, c. 45* of the year 1782. The words " incorporated trading company " in the proviso must hence be given the same meaning as given to it in 1782. At that time the only incorporated companies were companies created by Royal Charter or by Statute. The modern company created under the Companies Ordinance did not come to be recognized as a corporate body till 1844—vide *Palmer's Company Law* (*17th Edition*) *pages* 1-10. See *Oakes v. Turquand* [1]. A company created under our Companies Ordinance can only come under the latter part of the proviso and, then only, if it consists of more than ten persons. The new company which the respondent has formed has less than ten members.

The disqualification operates on the date of nomination—*Cooray v. de Zoysa* [2].

H. V. Perera, *K.C.* (with him *E. F. N. Gratiaen* and *G. T. Samarawickreme*), for respondent.—The Roman-Dutch law as to the form of contracts is not now in force with us and so any contract may be established by the consensus of parties unless there is a positive requirement of statute law, that a particular form should be observed. A contract of novation need not be in any particular form nor need it even be in writing—vide *Mohamed v. Warind* [3], *Rodrigo v. Ebrahim* [4]. Wille's *Principles of South African Law*, p. 274. Although the word " assignment " is used the parties really contemplated a novation whereby a new party, namely, the company was substituted for the respondent—*Vide* Lee *Introduction to Roman-Dutch Law* (*3rd Edition*), p. 252.

The conduct of the parties and the correspondence that passed show clearly that there was offer and acceptance. In the case of the Bibile Maternity Home contract there was acceptance of the respondent's offer on behalf of himself and on behalf of the company as its managing director when the decision of the Tender Board was communicated to him by the Sanitary Engineer.

The effect of a novation is to discharge not only the original obligation but also accessories to it such as suretyships—*vide* Wille's *Principles of South African Law*, p. 274; *Voet* XLVI. 2, 10, XX. 4, 32. On novation of the contract therefore the suretyship obligation was also discharged. Even though the respondent was liable as surety for the due execution of the contract after its assignment to the company, there would be no disqualification—vide *Maidstone Case* (*Rogers Elections* (*12th Edition*) *Appendix*).

The term incorporated trading company cannot be given the meaning contended for by the petitioner as there are no companies incorporated by charter in Ceylon and the provision would therefore be nugatory. The distinction is between trading and non-trading companies—vide *Halsbury, Vol. V., p. 13.* Companies registered under the Companies

[1] *(1867) L. R. 2 H. L. at 358.*
[2] *41 N. L. R. 121.*
[3] *21 N. L. R. 225.*
[4] *26 C. L. W. 62.*

Ordinance, No. 51 of 1938, are incorporated companies; section 2 of that Ordinance sets out the "mode of forming an incorporated company". The other companies referred to in the latter part of the proviso would include unincorporated companies not registered under the Ordinance—*vide* section 343, Companies Ordinance and non-trading companies.

Section 16 (1), Companies Ordinance, makes the certificate of incorporation conclusive, *inter alia*, that "the association is a company authorised to be registered and duly registered under the Ordinance". The fact that all the shares in the company are held by the members of one family cannot affect the question *Saloman v. Saloman* [1].

Cur. adv. vult.

July 20, 1944. DE KRETSER J.—

The member for Bibile died on the 2nd October, 1943. A by-election was gazetted, nomination day being fixed for the 22nd December, 1943. On that date five candidates were nominated, viz., the petitioner, the respondent and three others. Polling was fixed for the 11th March, 1944, and the respondent was declared elected. The petitioner filed a petition on the 3rd April challenging the election of the respondent under Article 9 (*d*) of the Ceylon (State Council) Order in Council, 1931, on the ground that the respondent held contracts with the Government of Ceylon. On particulars being called for he stated what the contracts were, and at the trial his objections were further elaborated. The contract which he specially emphasized was one for the construction of a Maternity Home at Bibile. He also based objections on contracts for the building of the Guruhella Group School and Schools at Hathakme and Pussellakanda.

The evidence was to the effect that the respondent was a well-known Government Contractor and that he carried on business under his own name, also as the Uva Forwarding Agency and as a partner in the firm of D. L. Perera & Co. The exact scope of the business done by the respondent has not been fully proved, the only evidence besides the written contracts coming from the petitioner. The petitioner was more or less a stranger in the district, and purports to speak partly from information and partly from what he saw. His capacity to speak was challenged by the respondent but the respondent himself gave no evidence. It is clear, and it is admitted for the respondent, that he was anxious to rid himself of the disqualification which existed by reason of his having contracts with the Government, and he was naturally anxious to do so before nomination day. He accordingly decided to have a private company formed, consisting of himself, his two brothers, his sister, his brother's wife, and a first cousin and to transfer all his interests to this company. He seems to have employed one Mr. Mivanapalana, who is alleged to have considerable experience in promoting companies and the result was that the Memorandum of Association and Articles were handed to the Registrar of Companies on the 7th of December, and he issued his certificate the same day. The new company, called the Trading and Forwarding Agency, came into existence at once. When it commenced to do business would be quite another thing. According to the Memorandum of Association it was to acquire and carry on besides the Uva Forwarding

[1] *(1897) A. C. 22.*

Agency and the business carried on by S. A. Pieris, the respondent, the business originally carried on by D. L. Perera & Co., and later carried on by the respondent and his brothers, Sirisena and Bandusena. The Memorandum further contemplated contracts with Government departments, Local councils, the business of importers and dealers in rice, currystuffs, &c., clothing, millinery and the taking over of other businesses. Clause 8 to which the petitioner draws attention provided that the company could "amalgamate, unite, or co-operate, either generally or to any limited extent for any period (determinable, continuous or otherwise) with any corporation, company, person or persons already or hereafter to be established for or engaged in objects all of which are or shall be within the scope of or connected with any of the objects of this Company and to purchase or acquire the business or any interest in the business, or in any branch of the business, carried on by any such corporation, company, person or persons, and being a business which this Company is authorised to carry on, and for any such purpose to make and enter into any contracts, agreements, or arrangements and to undertake any liabilities". I pause to note that in this document, the Uva Forwarding Agency is said to be carried on by both the respondent and his brother, Sirisena, whereas P 4 which is the certificate of registration of the business name mentioned only the respondent, and P 5 which is the registration of the business name D. L. Perera & Co., includes besides the three names mentioned in P 12, the names of six females. Both P 4 and P 5 were declarations made in 1935. The Memorandum P 12 is signed by two of the females named and we know that Celina Pieris was the sister and that the other was the wife of the respondent's brother, Bandusena. The parties to the Memorandum, therefore, with the exception of William Daniel (the cousin) were interested in the three businesses earlier existing. The contracts in question, however, do not affect D. L. Perera & Co.

By the Articles of Association the three brothers were to be directors of the company, the respondent being the Managing Director "so long as he may choose to remain and function as such Managing Director". The remuneration of the Directors was to be determined by the directors in meeting or in terms of any agreement entered into between the company and a director or directors with the consent of the company in general meeting. The Articles do not provide whether this remuneration was to be in the form of a fixed salary or be on a commission basis, and there is no evidence on the point. It is a matter of some importance. Mr. Nadarajah for the petitioner argued that in view of Clause 8 of the Memorandum it was open to the company through its Managing Director to enter into an agreement with the respondent by which the profits under the contracts with the Government would be shared, and that the whole position would be obscure until the contracts had not merely been changed in the eyes of the Government but until due provision had been made as between the respondent and the new company. There is no evidence as to what the terms were on which his business was or would be taken over. There is a letter from the respondent on behalf of the new company to the Sanitary Engineer undertaking to carry on the contract on behalf of the new company. The contract for the Maternity

Home was entered into on the 8th of May, 1942, and the work was to be completed by the 20th of September. The time was extended till the 31st of March, 1943, so that the work, which was estimated to cost Rs. 8,834.43 should have been well advanced in December and the respondent should have received a fair percentage of its price, provision having been made for monthly payments. The respondent was the Managing Director and as such would have the main burden of the contract and the family company may well have been generous in their treatment of him. A director who receives a monthly salary stands on quite different footing from a director who is paid on a commission basis. There might well be no profit to the new company from the contracts.

Once the new company was formed on the 7th of December, prompt steps were naturally taken. By letter dated the 9th of December the respondent informed the Sanitary Engineer, who had entered into the contract for the Maternity Home at Bibile on behalf of the Government, that he desired the contract to be "altered" into the name of the new company, undertaking on behalf of the new company as its Managing Director to carry out the contract. On the Sanitary Engineer receiving this letter on the 10th of December, he acted with commendable quickness, examined the Memorandum and the Articles and sent a letter by hand to the Director of Medical and Sanitary Services recommending the transfer. That department referred him to the Deputy Financial Secretary, by reply of the same date, and on the same day the Sanitary Engineer wrote to the Deputy Financial Secretary. On the 11th the Deputy Financial Secretary replied inviting the Sanitary Engineer or his representative to be present at a meeting of the Tender Board on the 14th. Mr. David, an assistant, attended, and, on his return, minuted as follows to the Sanitary Engineer "recommendation approved subject to amendment of contracts, &c." The Sanitary Engineer says he saw this minute. The meeting of the Tender Board had been fixed for 2.30 P.M. and the chances are that he saw the minute on the 15th. He says he gave instructions that the contract should be called for from the office of the Director of Medical and Sanitary Services so that it may be altered and initialled by the parties and he left on circuit on the 16th, returning *via* Badulla to Colombo on the 22nd or 23rd of December. Meanwhile on the 18th of December his office had called for the contract and on the 18th he received a letter from the Deputy Financial Secretary stating that the Tender Board had no objection to the transfer of the contracts. This letter made no specific requirement that a fresh contract should be entered into and confined itself to its proper scope. It did, however, contemplate a subsequent transfer of the contracts and Mr. David could hardly have made the minute he did unless it had been made clear at the meeting of the Tender Board that he was not to assume that all formalities had been complied with. On this letter Mr. Alwis endorsed "inform contractor, pl.". Now, as he was away on the 18th this endorsement could only have been made after his return. A letter was sent, dated the 24th of December to the Trading and Forwarding Agency, Ltd., informing them that the Deputy Financial Secretary and the Tender Board had agreed that there was no objection to the transfer. These documents are of importance since Mr. Alwis alleges that he took with him on circuit a copy

of the contract and had requested the respondent to meet him on the 19th at Bibile, bringing his copy of the contract with him. He alleges that after lunch at the Resthouse they duly "altered" the contracts both of them initialling the two copies. Mr. Alwis' copy has disappeared. The respondent has produced his copy, marked R 6, purporting to be initialled by Mr. Alwis and himself and bearing the date 19th December, 1943. The petitioner strongly contests this alleged initialling of documents but admits there may have been a meeting, as the entry in the Resthouse book indicates that. He points to the fact that Mr. Alwis is not likely to have taken upon himself to make any change till he had received official sanction and that his letter of the 24th December negatives any previous intimation to the contractor. Mr. Alwis himself spoke of the document which was filed in the office of the Director of Medical and Sanitary Services as being *the* contract. It was the document which was stamped and to which was annexed the security bond and the specifications. Junior Counsel for the respondent was anxious to speak of five "originals" and Mr. Alwis was anxious to oblige, but it is quite clear that there was only one original and Mr. Alwis himself said so. Mr. Alwis states that at the present time three copies besides the original contract are made, making four documents in all. But he alleges that at "that time" there used to be five documents. He can quote no rule nor give any reasons for five copies. When the contract was made, he forwarded it with a "duplicate" to the Director of Medical and Sanitary Services, who returned it to Mr. Alwis' Office where it remains still. It has been produced and marked P 6D.

Now the question whether there was a fifth copy is important. There being one copy with the contractor and one with the Auditor-General as required by the Financial Regulations, and four copies being available and all but the contractor's copy not being initialled on the 19th of December there had to be a fifth copy which Mr. Alwis could take on circuit. This fifth copy has disappeared. Mr. Alwis did not impress me at all as a witness. I expected the respondent would go into the box to support him, but he abstained from doing so. The respondent's Counsel invites attention to a loose slip of paper now to be found in the file in which some clerk is alleged to have noted on the 15th of December that the agreement had been taken by the Sanitary Engineer on circuit. This clerk has not been called. The petitioner challenges the document. The file, according to Mr. Alwis, was paged only when it became necessary to produce it in Court, and it is quite clear that even then some of the paging was altered. It was, therefore, quite easy to slip in a bit of paper to support a theory which was being put forward by the respondent. I cannot, on the evidence before me, hold that any of the copies was altered or initialled on the 19th of December. This renders it unnecessary for me to do more than make a passing reference to R 6.

As soon as it was handed to me, I remarked that only one person had initialled it. I was then pointed out the lower portion of a configuration and told by the respondent's Counsel that it was the respondent's initials. I remarked that there must have been wonderful unity of mind for the two initials to so run into each other as to present one pen-stroke. When Mr. Alwis was in the box, I asked whether he could tell me where his

initials ended him and the other began, and he could not. Counsel then examined the initials under a magnifying glass and Mr. Perera remarked that there was a tear, but that had nothing to do with the matter for that came right at the top and not where the two initials are alleged to join. Even under a magnifying glass I could see no kind of pen pause or break in the line. What is more, Mr. Pieris, when he put his initials in other places always sloped his letters from left to right and wrote in a thin and spidery way, whereas in R 6 not only is the writing firm, but, quite unlike his other initials, he starts with a downward slope from right to left and it is this slope which runs so extraordinarily into the upward stroke of Mr. Alwis' "A", Mr. Alwis himself initialling much more clearly than he did on other occasions. The petitioner's Counsel was content to make no point of it. I myself could not believe Mr. Alwis and accordingly this matter was not pursued further, nor do I take it more into account than to say that it does not remove the impression created by Mr. Alwis' evidence. In my opinion there was no fifth copy ever in existence. If it was, some clerk in the office must have known of it. It must have been kept for some purpose, and what the purpose is one cannot see since on what is called the "duplicate", P 6D, appears the first alteration of the date for completion initialled by the respondent and Mr. Alwis. A further extension to the 30th of June, 1944, was initialled by Mr. Alwis in the original without a date but his initials were copied into the office copy by some clerk over the date 14th June 1944, the clerk also copying the initials over the same date to the alteration from 'The Uva Forwarding Agency' into 'The Trading and Forwarding Agency'. P 6D was, therefore, not only termed the " duplicate " but was the office copy, and that was the copy which Mr. Alwis should have taken on circuit if he was so anxious to have the alterations made and initialled with expedition.

The main questions that arise are—

(1) Was the company merely a camouflage and a pretence, there being no change whatever ?

(2) Were the contracts transferred to the company before nomination day and the respondent's disqualification removed ?

(3) Did the company come within the proviso to Article 9 (*d*) of the Order in Council ?

With the issue of the Registrar's certificate of incorporation activity of the company consisted only in the exchange of a few letters between the respondent, the Managing Director, and Mr. Alwis. None of the subsequent steps required by the Companies Ordinance were taken till May and even then some were not in due form. No nameboard was put up, as required, on its place of business, no certificate of commencement of business, no meeting of directors, no fixing of the remuneration, no allotment of shares. By April the present petition had been filed and then came the steps taken to show the existence of a company and then only did Mr. Alwis become urgent about the alteration and initialling of the original contract. The respondent was clearly disqualified, unless he could bring himself within the proviso, and this he has failed to do. It is noteworthy that no evidence has been produced of the transfer of the contracts and other business from the previous owners to the company. The report of the allotment of shares in May is not

what is required by section 43. Appropriate forms are provided but were not used. Form 7 is used where the shares are paid for in cash, and Form 8 where they are allotted for other consideration. In the latter case contracts in writing duly stamped are required by the section. In the return made shares have been allotted to 14 persons. The first five were interested in the existing businesses and it is scarcely likely the value of their rights did not form part of the consideration. The others were probably employees since they got a few shares. The vagueness of the return, with the Ordinance staring them in the face and Mr. Mivanapalana at least to guide them, seems to be deliberate and the return a mere cloak and a pretence. The respondent ought to have, and could have produced the contracts made with the shareholders, and I am entitled to infer he did not do so either because there was no transfer or the alleged transfer was made after the election or because an agreement exists by which he was to keep the whole or greater part of the profits of the existing contracts. While, therefore, the relatives were willing to provide the goat's skin for the deception to be practised by Jacob, Jacob remained Jacob and was not regenerate. As the Privy Council observed in *Norton* and *Allan Arthur Taylor* [1], no device to conceal the true nature of the transaction is entitled to prevail and Courts of Justice must be vigilant on this point. In my opinion the first question must be answered in the affirmative.

All Government officers and Government departments are governed by the Financial Regulations, which are published by the Government and are available to the public and all contractors with the Government are aware of their existence. Certainly the respondent must have been aware of them not only because he was a well-known Government contractor, but also because the evidence in this case indicates that the course pursued was that laid down in the Financial Regulations. In accordance with them, tenders are called for on a prescribed form of notice in the *Government Gazette* and three times in one or more newspapers likely to be read by tenderers. The notice gives full information to the tenderers and requires them among other things to make a deposit in cash before a tender form is issued. On a tender being accepted, the tenderer is notified and if he fails to enter into the contract and to furnish security within 10 days, the deposit is forfeited. On the contract being signed the deposit is returned. It is clear, therefore, that the tenderer may withdraw and forfeit his deposit, and that no binding contract exists at that date but only an agreement to enter into a contract. The notice also states that no contract may be assigned or sublet without the authority of the Tender Board. The written contracts are on printed forms with blanks for the details to be filled in. The Financial Regulations require the head of the department making the contract to take steps for the completion of the contract and to take a security bond, and provides that the letter from the tenderer, the schedule of prices and the bond with the conditions of the contract would then form the complete contract, the complete contract being retained by the head of the department and a copy thereof being at once forwarded to the Auditor-General. Mr. Alwis was, therefore, quite correct in saying that the

[1] *L. R. (1906), A. C. 378.*

document lodged with the Director of Medical and Sanitary Services was the contract. He would naturally keep a copy for his own guidance and the contractor might well require one for reference. These would form the four documents which Mr. Alwis states are now being used. It is true that on a tender being accepted, a contract may come into being. Building contracts need not be in writing but, where the specifications are many and the sums involved considerable, common sense would indicate a written contract. Experience endorses this view, and if need be there is the authority of 3 Halsbury, section 340. Government contracts must be in writing and the tenderer has ample notice of the fact that there is no contract complete in form until he has signed one and given security. In such circumstances the written contract is alone the contract which can be recognized. Section 91 of the Evidence Ordinance enacts that when parties put their contract, into writing, then that writing alone is evidence of the contract. This disposes of the ingenious argument raised by Mr. H. V. Perera that on the Tender Board expressing its approval the respondent's contract formed on the tender being accepted, ceased to exist and a new contract had come into being, operating by way of novation to release the respondent, who thus ceased to be disqualified. He argued that the minute made by Mr. David should not be considered but only the letter from the Deputy Financial Secretary. I cannot agree. But even if we take that letter alone, it had expressed the Board's approval of the transfer. A transfer had, therefore, to be made. It was what the respondent himself had asked for and he himself realized that till the transfer was made, he would not be released. The notice calling for tenders had informed him that no assignment would be recognized without the previous authority of the Board. Both he and Mr. Alwis quite understood the position. It was nomination day on which objections were feared. Once that hurdle was cleared the persons concerned seemed to have lapsed into a feeling of security and directed attention only to the election and no steps were taken both as regards the steps to be taken by the new company under the Ordinance and the formation of a new contract. The Registrar of Companies had to call repeated attention before he was informed regarding the registered office of the company or a return made of its directors and of its allotment of shares.

Turning to another aspect of the matter it was clearly intended to effect the release of the respondent by bringing in a new contracting party and it is clear that until the new contracting party came in, the respondent was not released. Willingness to accept a new party is not the same as a new party being accepted. Mr. Alwis was the agent of the Government and could only act in terms of the instructions given him. At no time had he before him evidence of an assignment to the company. The new contract between the company and the Government or the contract of assignment from the respondent to the company could only be effected with the same formality that the previous contract had been effected. A fresh security bond was required. Whether one considered it an assignment of the contract to the new company or a new contract by the company which took the place of the old contract, the transfer of obligations ought to be evidenced by a

contract duly stamped and binding on the new party. I do not think that merely scoring out the name of the Uva Forwarding Agency and writing the name of the new company was sufficient. Even if this be so, this was not done till the 14th of June on which date as a result of an urgent letter from Mr. Alwis, and also probably because the petitioner's Proctor nad applied for certified copies, the respondent and the petitioner's Proctor were present in Mr. Alwis' office and only then was the alteration in the document made. In my opinion there was no change prior to that date, and such a change as was made was quite inadequate. At the beginning of the contract the words "Uva Forwarding Agency, Badulla" were scored off and the words "Trading and Forwarding Agency, Badulla" substituted. The date of the contract remained unaltered thereby making it read that the company had entered into this contract even before it was formed. No fresh stamp was used and the old signature was utilized so that the document still remained signed by the " Uva Forwarding Agency ". It may be noted in passing that even the contractor's copy, R 6, made no other change than the name at the start of the contract. The contractor clearly did not attach much importance to this document. Ordinarily his copy of the specification would be sufficient for purposes of inspection. As a result the date for the completion of the contract still remains the 20th of September, 1942, *i.e.*, a date almost exactly three months earlier than the alleged transfer of the contract. It is not surprising that Mr. Perera was driven to abandon these documents and to emphasize that it did not matter whether the new company was or was not bound by the contract so long as the contracting parties had agreed to release the respondent from his contract. Mr. Alwis, according to the contract itself, was acting on behalf of the Government of Ceylon, and it was his duty to see that a real novation took place.

In the view, therefore, which I have taken the respondent was clearly disqualified both at the date of nomination and of election. It is accordingly unnecessary to pursue the interesting argument raised by Mr. Nadarajah that section 9 (*d*) of the Order in Council was taken from the English Statute XXII Geo. 3., c. 45, and that at that date by an "incorporated trading company" was meant a corporation created by Royal Charter, such as the East India Company, or one created by Act of Parliament and that therefore the same meaning should be attached to those words in the Order in Council. It is quite clear from Palmer on Company Law that private companies were recognized in the Statute dealing with companies only at a much later date. In 1782, besides the incorporated trading companies already referred to, there were companies in the sense that they were voluntary associations of persons, but the Statute only exempted where the company had more than 10 members, thus minimizing the interest of the candidate. It might be interesting when the occasion arises to consider whether members of private companies, which might consist of two members, come within the terms of the exception. The observations of Viscount Cave L.C. in *Lapish and Braithwaite* [1] are not without value on this point. The provision in Britain aims at securing the independence of members of

[1] *L. R. A. C. (1926) p. 275.*

the Legislature and their freedom from any conflict between their duty to the public and their private interests. In Ceylon it may have a wider significance.

It is unnecessary for me to deal with the contracts in respect of the three schools, for the same observations apply.

Undoubtedly the respondent comes within the general disqualification and the burden was on him to prove that he had got rid of that disqualification, and he has failed to bring himself within the exception. I hold the respondent's election was void and shall certify accordingly to the Governor. The petitioner is entitled to his costs and these will be fixed by me after consultation with Counsel.

Election declared void.