13, 1953

In the Privy Council.

No. 7 of 1952.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

GOVINDAN SELLAPPAH NAYAR KODAKAN PILLAI
~~*Plaintiff*~~ *Appellant*

versus

1. PUNCHI BANDA MUDANAYAKE
2. VICTOR LLOYD WIRASINGHA
3. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM

~~*Defendants*~~-*Respondents.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE.

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT PRINTED.

No.	Description of Document.	Date.
1	Affidavit of Periannan Sundaram	21st August 1951.
2	Affidavit of Thondaman and Velupillai	21st August 1951.
3	Affidavit of S. M. Subbiah	21st August 1951.

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~~Defendants~~-*Respondents.*

RECORD OF PROCEEDINGS.

No. 1.

No. 1. Application for a Writ of Certiorari by the Commissioner of Parliamentary Elections, 16th July, 1951.

Application for a Writ of Certiorari by the Commissioner of Parliamentary Elections.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the Matter of an Application for a mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap. 6).

S.C. Application No.

VICTOR LLOYD WIRASINGHE, Commissioner of Parliamentary Elections, Colombo ... ... *Petitioner.*

vs.

1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM Revising Officer for Electoral District 84 (Ruwanwella), Kegalla
2. GOVINDAN SELLAPPAH NAYAR KODAKAN PILLAI of 220, Yatiyantota ... ... *Respondents.*

On this 16th day of July, 1951.

To : The Honourable the CHIEF JUSTICE and the other honourable Justices of the Supreme Court.

The petition of the petitioner abovenamed appearing by Clifford

No. 1. Application for a Writ of Certiorari by the Commissioner of Parliamentary Elections, 16th July, 1951—*continued.*

Trevor de Saram, and his assistant Charles Joseph Oorloff, his proctors states as follows :—

1.—The petitioner is the Commissioner of Parliamentary Elections duly appointed under the provisions of the Ceylon (Parliamentary Elections) Order in Council 1946.

2.—On the 22nd day of January 1951, the 2nd respondent abovenamed made a claim to the Registering Officer of Ruwanwella Electoral District to have his name inserted in the register of electors for electoral district No. 84 (Ruwanwella) under the provisions of Section 12 (2) read with Section 19 of the Ceylon (Parliamentary Elections) Order in Council 1946. A certified copy of the said claim is hereto annexed marked P1 and P1 (a).

3.—On the 26th day of February 1951 the Assistant Registering Officer duly appointed for the said Electoral District No. 84 duly held an inquiry into the said claim under Section 12 (9) and decided after due inquiry that the 2nd respondent abovenamed was not entitled to have his name retained in the register of electors on the ground that the 2nd respondent was not a citizen of Ceylon within the meaning of the Citizenship Act No. 18 of 1948. A certified copy of the notes of the said inquiry and of the said decision is annexed hereto marked P-2.

4.—On the 8th day of March, 1951, the 2nd respondent appealed from the said decision under Section 13 of the said Order in Council to the 1st respondent abovenamed, the duly appointed Revising Officer for the said Electoral District No. 84 (Ruwanwella). A certified copy of the said petition of appeal is hereto annexed marked P-3.

5.—The 1st respondent after hearing Counsel for the 2nd respondent and Counsel of the said Assistant Registering Officer on the preliminary question as to the operative law laying down the qualifications of electors in Parliamentary Elections in Ceylon, held that the provisions of the Act No. 48 of 1949 which prescribe citizenship of Ceylon as a necessary qualification of an elector and the Citizenship Act No. 18 of 1948 were *ultra vires* the legislature and that the operative law was the law contained in the Ceylon (Parliamentary Elections) Order in Council 1946, as it stood before the Act No. 48 of 1949 was passed. On that basis the 1st respondent found that the 2nd respondent was a duly qualified elector and directed the name of the 2nd respondent to be included in the registers of electors. A certified copy of the 1st respondent's decision dated 2nd July, 1951, is filed herewith marked P4.

6.—The petitioner humbly submits—

(a) that there is an error of law apparent on the face of the said decision with regard to the validity of the Act of Parliament No. 48 of 1949 relating to Parliamentary franchise in Ceylon ;

(b) the said error affected the ascertainment of the question which the 1st respondent had jurisdiction to determine and the ambit of that jurisdiction.

Wherefore the petitioner prays that Your Lordships' Court be pleased—

(a) to issue a mandate in the nature of a writ of Certiorari quashing the aforesaid decision made by the 1st respondent abovenamed ;

(b) to grant the petitioner the costs of this application ; and

(c) to grant the petitioner such further or other relief as to Your Lordships' Court may seem meet.

No. 1. Application for a Writ of Certiorari by the Commissioner of Parliamentary Elections, 16th July, 1951— *continued.*

(Sgd.) TREVOR DE SARAM,
Proctor for Petitioner.

Settled by :
WALTER JAYAWARDENE,
Crown Counsel.

No. 2.

Application for a Writ of Certiorari by the Assistant Registering Officer.

No. 2. Application for a Writ of Certiorari by the Assistant Registering Officer, 16th July, 1951.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the Matter of an Application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap. 6).

S. Application No.

PUNCHI BANDA MUDANNAYAKE, Assistant Registering Officer for Electoral District No. 84 (Ruwanella), the Kachcheri, Kegalle ... ... *Petitioner*

vs.

1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM, Revising Officer for Electoral District No. 84 (Ruwanella), Kegalle.
2. GOVINDAN SELLAPPAH NAYAR KODAKAN PILLAI of 220, Yatiyantota ... ... *Respondents.*

On this 16th day of July, 1951.

To the Honourable the CHIEF JUSTICE and the other Honourable Justices of the Supreme Court.

The Petition of the Petitioner abovenamed appearing by Clifford Trevor de Saram and his assistant Charles Joseph Oorloff, his proctors, states follows :—

No. 2. Application for a Writ of Certiorari by the Assistant Registering Officer, 16th July, 1951— *continued.*

1.—The petitioner is the Assistant Registering Officer for Electoral District No. 84 (Ruwanwella) duly appointed under the provisions of the Ceylon (Parliamentary Elections) Order in Council, 1946.

2.—As Assistant Registering Officer for Electoral District No. 84 the petitioner was assigned the duties in connection with the steps to be taken by the Registering Officer under the provisions of Sections 16 and 17 of the Ceylon (Parliamentary Elections) Order in Council for the revision of the current register of electors for the Electoral District No. 84 (Ruwanwella).

3.—On the 22nd day of January 1951, the second Respondent abovenamed made a claim to the Registering Officer of the Ruwanwella Electoral District to have his name inserted in the register of electors for the Electoral District No. 84 (Ruwanwella) under the provisions of Section 12(2) read with Section 19 of the Ceylon (Parliamentary Elections) Order in Council 1946. A certified copy of the said claim is hereto annexed marked P1 and P1(a).

4.—On the 26th day of February 1951, the petitioner abovenamed duly held an inquiry under Section 12(9) of the said Order in Council into the said claim and decided, after due inquiry, that the second respondent abovenamed was not entitled to have his name written in the register of electors on the ground that the second Respondent was not a citizen of Ceylon within the meaning of the Citizenship Act No. 18 of 1948. A certified copy of the notes of the said inquiry and of the said decision is hereto annexed marked P2.

5.—On the 8th day of March, 1951, the second Respondent appealed from the said decision under Section 13 of the said Order in Council to the first respondent abovenamed, the duly appointed Revising Officer for the said Electoral District No. 84 (Ruwanwella). A certified copy of the said petition of appeal is hereto annexed marked P3.

6.—The first respondent, after hearing Counsel for the second Respondent and Counsel of the said Assistant Registering Officer on the preliminary question as to the operative law laying down the qualifications of electors in Parliamentary Elections in Ceylon, held that the provisions of the Act No. 48 of 1949, which prescribe citizenship of Ceylon as a necessary qualification of an elector, and the citizenship Act No. 18 of 1948 were *ultra vires* the legislature and that the operative law was the law contained in the Ceylon (Parliamentary Elections) Order in Council, 1946, as it stood before the Act No. 48 of 1949 was passed. On that basis the first Respondent found that the second Respondent was a duly qualified elector and directed the name of the second Respondent to be inserted in the registers of electors for the Electoral District No. 84 (Ruwanwella). A certified copy of the second Respondent's appeal and the first Respondent's decision dated 2nd July 1951 is filed herewith marked P3, and P4 respectively.

No. 2. Application for a Writ of Certiorari by the Assistant Registering Officer, 16th July, 1951—*continued.*

7.—The petitioner humbly submits :—

(a) that there is an error of law apparent on the face of the decision with regard to the validity of the Act of Parliament No. 48 of 1949 relating to Parliamentary franchise in Ceylon,

(b) that the said error affected the ascertainment of the question which the first Respondent had jurisdiction to determine and the ambit of that jurisdiction.

Wherefore the petitioner prays that Your Lordships' Court be pleased :

(a) to issue a Mandate in the nature of a Writ of Certiorari quashing the aforesaid decision made by the first Respondent abovenamed,

(b) to grant the petitioner the costs of this application, and

(c) to grant the petitioner such further or other relief as to Your Lordships' Court may seem meet.

Sgd. TREVOR DE SARAM,
Proctor for petitioner.

Settled by :—
WALTER JAYAWARDENE,
Crown Counsel.

No. 3.

No. 3. Affidavit of the Commissioner of Parliamentary Elections, 16th July, 1951.

Affidavit of the Commissioner of Parliamentary Elections.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the Matter of an Application for a mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap. 6).

S.C. Application No.

VICTOR LLOYD WIRASINGHE, Commissioner of Parliamentary Elections, Colombo ... ... *Petitioner*

vs.

1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM Revising Officer for Electoral District 84 (Ruwanwella), Kegalle

2. GOVINDAN SELLAPPAH NAYAR KODAKAN PILLAI of 220, Yatiyantota ... ... *Respondents.*

I, VICTOR LLOYD WIRASINHA, of Colombo, do hereby make oath and say as follows :—

1.—I am the Commissioner of Parliamentary Elections duly appointed under the provisions of the Ceylon (Parliamentary Elections) Order in Council 1946, and the petitioner abovenamed.

No. 3. Affidavit of the Commissioner of Parliamentary Elections, 16th July, 1951—*continued.*

2.—On the 22nd day of January 1951, the 2nd Respondent abovenamed made a claim to the Registering Officer of Ruwanwella Electoral District to have his name inserted in the register of electors for Electoral District No. 84 (Ruwanwella) under the provisions of Section 12 (2) read with Section 19 of the Ceylon (Parliamentary Elections) Order in Council 1946. A certified copy of the said claim is hereto annexed marked P1 and P1 (a).

3.—On the 26th day of February 1951 the Assistant Registering Officer duly appointed for the said Electoral District No. 84 duly held an inquiry into the said claim under Section 12 (9) and decided after due inquiry that the 2nd Respondent abovenamed was not entitled to have his name retained in the register of electors on the ground that the 2nd Respondent was not a citizen of Ceylon within the meaning of the Citizenship Act No. 18 of 1948. A certified copy of the notes of the said inquiry and of the said decision is annexed hereto marked P2.

4.—On the 8th day of March 1951, the 2nd Respondent appealed from the said decision under Section 13 of the said Order in Council to the 1st Respondent abovenamed, the duly appointed Revising Officer for the said Electoral District No. 84 (Ruwanwella). A certified copy of the said petition of appeal is hereto annexed marked P3.

5.—The 1st Respondent after hearing Counsel for the 2nd Respondent and Counsel of the said Assistant Registering Officer on the preliminary question as to the operative law laying down the qualifications of electors in Parliamentary Elections in Ceylon, held that the provisions of the Act No. 48 of 1949 which prescribe citizenship of Ceylon as a necessary qualification of an elector and the Citizenship Act No. 19 of 1948 were *ultra vires* the legislature and that the operative law was the law contained in the Ceylon (Parliamentary Elections) Order in Council 1946, as it stood before the Act No. 48 of 1949 was passed. On that basis the 1st Respondent found that the 2nd respondent was a duly qualified elector and directed the name of the 2nd Respondent to be included in the register of electors. A certified copy of the 1st Respondent's decision dated 2nd July, 1951, is filed herewith marked P4.

6.—I am advised—

(a) that there is an error of law apparent on the face of the said decision with regard to the validity of the Act of Parliament No. 48 of 1949 relating to Parliamentary franchise in Ceylon ;

(b) the said error affects the ascertainment of the question which the 1st Respondent had jurisdiction to determine and the ambit of that jurisdiction.

Sgd. Illegibly.

Signed and sworn to at Colombo
on this 16th day of July, 1951.

Before me,

Sgd. Illegibly.
A Justice of the Peace.

Annexures to Documents Nos. 1, 2, 3 and 8.

No. 4.
P1 and P1 (a) Claim Form and letter of G. S. N. K. Pillai, 22nd January, 1951.

No. 4.

P1 and P1 (a).

Claim Form and letter of G. S. N. K. Pillai.

(COPY)

35. P1

THE CEYLON (PARLIAMENTARY ELECTIONS) ORDER IN COUNCIL 1946.

FORM C.

Section 12 (2)

FORM OF CLAIM BY PERSON WHOSE NAME HAS BEEN OMITTED OR EXPUNGED FROM THE REGISTER.

TO THE REGISTERING OFFICER OF RUANWELLA ELECTORAL DISTRICT.

I, GOVINDAN SELLAPPA NAYAR KODAKAN PILLAI who possess the residential qualification at 220, Yatiyantota in the Yatiyantota Town Village Headman's division in the division of the Dehigahpal & Lower Bulathgama in the Divisional Revenue Officer's division of D.K. & L.B. or in the polling District " G " Ward in the town of the above-named Electoral District, hereby declare that my name has been *omitted/ *expunged from the register of electors/ *omitted from List B/ *included in List A/ for the above-named Electoral District, and I hereby claim to have my name *inserted/ *retained/ in the aforesaid register on the following grounds :—I am domiciled in Ceylon and qualified to be an elector under the 1946 Order in Council. The Amending Act 48 of 49 is void and *ultra vires* the legislature grounds more fully set out in annexed letter to be read as part of this claim.

2.—I further declare that I have made due application to the Registering Officer to have my name inserted in the aforesaid register of electors.

3.—My address for notice is K. G. S. Nair, 220, Yatiyantota.

Dated the 22nd day of January, 1951.

Sgd. G. S. N. K. NAIR
(Signature or thumb mark of Claimant.)

Annexures to Documents Nos. 1, 2, 3 and 8.

No. 4. P1 and P1 (a). Claim Form and letter of G. S. N. K. Pillai, 22nd January, 1951—*continued.*

Signed or marked by the above-named claimant in my presence this 22nd day of January 1951 at Yatiyantota.

Sgd. B. K. SANDANAM CHETTIAR.
(Signature of Witness.)

B. K. Sandanam Chettiar,
Halgolle Group, Yatiyantota.
(Address of Witness.)

True copy.

Sgd. Illegibly.
Assistant Registering Officer,
for Registering Officer, Kegalle.

(On the reverse of this form)

This is the identical claim marked P1 and referred to in my affidavit of the 16th July 1951.

Sgd. Illegibly.

Before me

Sgd. Illegibly.
J. P.

P1 (a)

This is the identical claim marked P1 (a) and referred to in my affidavit of the 16th July 1951.

Sgd. Illegibly.

(COPY)

Before me.

Sgd. Illegibly.
J. P.

To : The Registering Officer of the Electoral District No. 84 Ruanwella, Kachcheri, Kegalla.

Sir,

1.—I, K. G. S. NAIR of 220, Yatiyantota I am a resident of the Electoral District No. 84.

2.—I have been resident within the said Electoral District for a continuous period of over six months in the 18 months immediately prior to 1st June 1950, in the said Electoral District.

3.—I am a British subject and was one at the relevant period.

4.—I was over 21 years of age on the 1st day of June, 1950.

5.—I am in no way disqualified to be an elector entitled to be put on the Register of Electors of the said District.

Annexures to Documents Nos. 1, 2, 3 and 8.

6.—My name was included in the Register prepared in year 1949.

7.—At the revision undertaken in the year 1950 and in the list prepared thereunder notice of which was published in the Government Gazette dated January 12, 1951, my name has been included in List A on the ground that I have become disqualified to be an elector. In the same revision (List) my name has been omitted from List B.

No. 4. P1 and P1 (a) Claim Form and letter of G. S. N. K. Pillai, 22nd January, 1951—*continued.*

8.—I claim that my name should not have been included in List A and/or that my name should have been included in List B.

9.—I claim that the alternatives in the qualification to be an elector effected by Act 48 of 1949 are not valid and are of no effect in law in as much as the said Act was *ultra vires* the Legislature.

10.—I claim that the qualifications to be an elector should be determined according to the Ceylon (Parliamentary Elections) Order in Council 1946 without the same being modified or amended by Act 48 of 1949. According to the said Order in Council as unamended by the said Act 48 of 1949 I am qualified to be an elector.

I attach also a formal application in Form C.

Yours faithfully,

Sgd. G. S. N. K. NAIR.

True copy.

Sgd. Illegibly.
Assistant Registering Officer
for Registering Officer, Kegalla.

The Kachcheri,
Kegalla, 16th July, 1951.

No. 5.

P2.

Notes of Enquiry and Order of the Assistant Registering Officer.

No. 5. P2. Notes of Enquiry and Order of the Assistant Registering Officer, 26th February, 1951.

P2.

(COPY)

Yatiyantota D.R.O.'s Office—26.2.51.

Claimant No. 35. G. S. N. KODAKAN PILLAI, represented by Mr. S. CANAGARAYAR instructed by Mr. C. BALASINGHAM is present and states :

Annexures to Documents Nos. 1, 2, 3 and 8.

No. 5. P2. Notes of Enquiry and Order of the Assistant Registering Officer, 26th February, 1951—*continued.*

I have been residing at Yatiyantota continuously for 22 years. I am a British subject. I have not applied for citizenship in any other country. I am 38 years and reside at 222, Yatiyantota. During the last nine years I resided at 222, Yatiyantota. My name appears in the Electoral Register of 1947 and revised up to 1949. Prior to that my name appeared in the Electoral List prepared for State Council elections. My serial No. then was 5141. In the previous register from 1935 to 1941 my serial No. was 4707. I was a registered elector for the Yatiyantota Sanitary Board area. I have at no time been convicted for any corrupt practices in connection with elections. I am domiciled in Ceylon. I can read and write Tamil and English. I occupy two houses at Yagiyantota, Nos. 220 and 235. I pay a rent of Rs. 10/- per month for both. I hold house rent receipts. I produce them marked C1, C2, C3, C4, C5 and C6. I am in no way disqualified to be registered as a voter. I have not sought registration in any other electoral area. I am married and have been living with my wife and children at Yatiyantota. I carry on the business of a registered Textile dealer under the name of Sri Chitra Stores. I have settled down in Ceylon.

Questioned by me the claimant states : I was born in British India. Both my parents and all my other relations were born in British India. All my wife's relations are in India except my Brother-in-law who lives with me. I have not sought registration under the Citizenship Act No. 18 of 1948 or under the Indian and Pakistani Residents Citizenship Act No. 3 of 1949. I do not own any property in India. I was in India last in March 1949 and returned in April 1949, I went to India to bring back my wife after her confinement. I do not own any property in Ceylon either. I have got a permit recently to remit Rs. 25/- monthly to India for my aged mother. I have not applied for a permit earlier. My father is dead. My mother is alive. I have one brother who is in Singapore.

Sgd. P. B. MUDANNAYAKE.
Assistant Registering Officer.

I have rejected the claim as the claimant is not a citizen of Ceylon within the meaning of the Citizenship Act No. 18 of 1948 and have communicated my order to Mr. Canagarayar who represented the claimant at this inquiry. I accept the statements of fact made by the claimant before me at this inquiry.

Sgd. P. B. MUDANNAYAKE.
Assistant Registering Officer,
26.2.51

TRUE COPY

Sgd. Illegibly

Assistant Registering Officer,
for Registering Officer, Kegalle.

The Kachcheri,
Kegalla, 16th July, 1951.

No. 6.

P3.

Petition of Appeal of G. S. N. K. Pillai to the Revising Officer.

P3 (COPY)

Issued to A. G. A., Kegalle for Official purposes.
Intd.
Secretary, D.C.

To : The Revising Officer.
Electoral District No. 84—Ruwanwella.

Claim No. 35. On the 8th day of March 1951.

The Petition of appeal of GOVINDAN SALAPPA MAYAR KODAKAN PILLAI of 220 Yatiyantota, states as follows :—

1.—The Petitioner is a resident of the Electoral District No. 84, Ruwanwella.

2.—The Petitioner has been resident at Yatiyantota within the said Electoral District for a continuous period of over six months in the eighteen months immediately prior to 1st June 1950.

3.—The Petitioner was over 21 years of age on 1st day of June 1950.

4.—The petitioner's name has been on the electoral registers of electors for the said electoral district from 1935 to 1941 and from 1942 to 1946. The petitioner's name was included in the register prepared in the year 1949.

5.—The petitioner is a British subject and is domiciled in Ceylon.

6.—The petitioner was or is in no way disqualified to be an elector for the said electoral district under the provisions of the Ceylon (Parliamentary Elections) Order in Council 1946.

7.—At the revision undertaken in the year 1950 and in the lists prepared therefor, notice of which was given in the Government Gazette dated January 12, 1951, the petitioner's name was included in " List A " and was not included in " List B."

8.—The petitioner thereupon applied to the Registering Officer to have his name retained or inserted in the said Register of Electors and the Registering Officer after an inquiry held on the 26th February 1951 at the D.R.O.'s office at Yatiyantota while accepting the evidence on the facts alleged by the petitioner, rejected the petitioner's claim. The petitioner infers that the said rejection is on the ground that the petitioner was not a citizen of Ceylon.

Annexures to Documents Nos. 1, 2, 3 and 8.

No. 6.
P3.
Petition of Appeal of G. S. N. K. Pillai to the Revising Officer, 8th March, 1951—
continued.

9.—Being aggrieved by the said order of the Registering Officer the petitioner appeals on the following among other ground that may be urged at the hearing of this appeal—

(a) the order of the Registering Officer is contrary to law and against the weight of evidence adduced in the case ;

(b) the Registering Officer erred in requiring the new qualifications sought to be imposed by Act 48 of 1949 and in rejecting t e petitioner's contention that the said Act No. 48 of 1949 was void and of no effect in law in as much as it was *ultra vires* the Legislature ;

(c) the said Act 48 of 1949 is bad in law in as much as it contravened the provisions of Section 29 (1), 29 (2) (b), 29 (2) (c) and 29 (4) of the Ceylon (Constitution) Order in Council 1946.

(d) Section 3 of the said Act 48 of 1949 is further bad in law and inoperative as it is based on Act 18 of 1948 which is itself void in law as it contravenes Section 29 of the Ceylon (Constitution) Order in Council 1946 ;

(e) the Registering Officer was not entitled to remove the petitioner's name from the register of electors as the petitioner is a qualified elector according to the said Order in Council 1946, unamended by the said Act 48 of 1949.

Wherefore the petitioner prays that the order of the Registering Officer be set aside and that the petitioner's name be included or inserted in the register of electors for the electoral district 84 Ruwanwella for the year 1950.

Sgd. G. S. N. K. PILLAI,
Claimant Petitioner.

True copy.

Sgd. Illegibly.
Secretary, D.C., KEGALLE.
16.7.51.

This is the identical petition of appeal marked P3 and referred to in my affidavit of the 16th July 1951.

Sgd. Illegibly.

Before me.

Sgd. Illegibly.
J. P.

No. 7.

P4.

Judgment of the Revising Officer.

D.C. Special 1.

P4.

JUDGMENT.

In this case the petitioner appeals under Section 13 of the Ceylon (Parliamentary Elections) Order-in-Council 1946, as amended by the Ceylon (Parliamentary Elections) Amendment Act No. 48 of 1949, from the decision of the Registering Officer rejecting his claim to be registered as an elector.

The petitioner filed affidavit (P1) stating that he is a member of the Indian Community in Ceylon and is a British subject domiciled in Ceylon ; that his name was on the Electoral Register from 1935 to 1941 and from 1942 to 1946. In the revision of the Electoral Register undertaken in 1950 his name was not placed on the Register of Electors by an order of the Registering Officer. He stated that the names of " thousands of persons " belonging to the Indian Community, who have been domiciled in Ceylon, " have also been deleted from the Register of Electors by the simple " expedient of deleting practically all non-Sinhalese names." The Registering Officer filed affidavit (R1) denying that such deletion was by the adoption of any expedient and that the names of the petitioner and others of the Indian Community were not placed on the Register of Electors as, according to information gathered by the duly appointed enumerators, they were not citizens of Ceylon either by descent or by registration.

The questions argued in this appeal were :—

(1) Is Act 48 of 1949 requiring the status of citizenship as defined by Act 18 of 1948 to be an elector *ultra vires* the legislature, repugnant to Section 29 of the Ceylon Independence Order-in-Council 1947 and therefore void ?

(2) Is the Citizenship Act No. 18 of 1948 *ultra vires*, repugnant to Section 29 aforesaid and therefore void ?

The Ceylon (Constitution) Order-in-Council 1946 known as the Soulbury Constitution was in operation from October, 1947. The Ceylon Independence Act 1947 " by which provision is made for the attainment of " Ceylon of fully responsible status within the British Commonwealth of " Nations " came into operation on February 4th 1948. In order to give effect to the provisions of the Independence Act, certain provisions of the Constitution Order-in-Council 1946 were revoked and certain provisions amended. The Ceylon (Parliamentary Elections) Order-in-Council 1946 making provision for the election of members to the House of Representatives provided by the Constitution-Order-in-Council 1946 was also

Annexures to Documents Nos. 1, 2, 3 and 8.

No. 7. P4. Judgment of the Revising Officer, 2nd July, 1951— *continued.*

amended by revoking and amending certain provisions. Thereafter the Ceylon Parliament enacted the Citizenship Act No. 18 of 1948 " to make " provisions for citizenship of Ceylon and for matters connected therewith," which came into operation in November, 1948. Then Parliament enacted Act No. 48 of 1949 " to amend certain provisions of the Ceylon (Parlia- " mentary Elections) Order-in-Council 1946," amending Sections 3 and 4, and certain other sections.

The effect of all these amendments is as follows :—

(a) Under the present Constitution franchise came to be within the " permitted field of Parliament " to legislate ;

(b) to be an elector one has to be a citizen of Ceylon as provided in the Citizenship Act 18 of 1948 ;

(c) a person born in Ceylon before the appointed date November 1948 shall have the status of citizen of Ceylon by descent as provided in Section 4 of the Citizenship Act or by registration.

In order to answer the questions arising in this case, it is necessary to see what has been the development of the Franchise Law in this country. As stated by Lord Maugham in *A.G. for Alberta* vs. *A.G. for Canada*— 1939 A.C. 117, 132, " it is quite legitimate to look at the legislative history " of Ceylon, " as leading up to the measure in question." Under the 1931 Constitution known as the Donoughmore Constitution, as amended by the Ceylon (State Council Elections) Amendment Orders-in-Council 1934 and 1935, the inhabitants of Ceylon possessing Ceylon domicile of origin enjoyed universal franchise on conditions similar to those obtained in the United Kingdom, that is, the elector must be a British subject, twenty-one years of age and resident for a short and continuous period in the relevant electoral district. In 1931 the number of Indians registered as electors was 100,000 and in 1939 it was 225,000. The following passages appear in the Soulbury Report of 1945 :—

(a) (Page 59–221) : " It is probably safe to say that at least " 80 per cent. of the Indians whose names appeared in the preliminary " lists for electoral districts other than Colombo, were either born in " Ceylon or had resided in Ceylon for at least ten years ; and it is not " unreasonable to anticipate that in a comparatively short time most " of them will, if they take the trouble to appear for oral examination, " be regarded as having an abiding interest in the country, as " permanently settled in the Island and as qualified for the franchise."

(b) (At page 60– Article 223) : " We recommend that universal " suffrage on the present basis shall be retained."

(c) (At page 54 Article 188) : " From the preceding chapter it " will be apparent that the problem of the Ceylon Constitution is " essentially the problem of reconciling the demands of the minorities " for an adequate voice in the conduct of affairs—so as to ensure that " their point of view is continuously before the administration and that

" their interests receive a due measure of consideration—with the " obvious fact that the Constitution must preserve for the majority " that proportionate share in all spheres of Government activity to " which their numbers and influence entitle them. The distribution " of political power between the various Communities is determined by " the extent of the franchise (with which is connected the question of " immigration), and by the method of representation."

(d) (At page 63—Article 238) : " To the extent, however, that the " ' rights and privileges of Citizenship ' are intended to relate to " enfranchisement, we think that it should be within the competence " of the Government of Ceylon to determine the conditions under " which the inhabitants of Ceylon may acquire the franchise. The duty " of the elected representatives to voice the claims, and protect the " interests of their constituents in all matters including ' the rights and " 'privileges of citizenship,' regardless of the community to which they " belong, constitute the real safeguard. The franchise itself is only " a means to an end, and the end is to give people such a share of " political power as may enable them to redress their grievances " themselves. But their ability to do this involves the absence of any " discriminatory legislation regarding the franchise, and an adequate " measure of enfranchisement."

(e) (Article 239) : " We therefore attach importance to : (1) . . . .

" (2) the declaration of the Ceylon delegates at the Conference of " September 1941 that ' there is a body of Indians in Ceylon who by " ' birth and long association have so identified themselves with the " ' affairs of this Country that their interests are no different from " ' those of the indigenous population ' ;

" (3) the provision of Article 8 of Sessional Paper XIV which " proposes to prohibit the Parliament of Ceylon from making any law " rendering ' persons of any Community or religion liable to disabilities " ' or restrictions to which persons of other communities or religions " ' are not liable, or conferring upon persons of any community or " ' religion any privileges or advantages which are not conferred on " ' persons of other communities or religions ' ;

" (4) . . . . We think that the new constitution should contain " clauses giving effect to these two Articles."

It may be stated that Section 29 (2) of the present Constitution Order-in-Council contains the words appearing in Article 239 (3) quoted above. In the words of Lord Atkin in *Ladore* vs. *Bennet*—1939 A.C. 468, 477, the extracts from the Soulbury Report have been cited not as evidence of the facts there found, but as indicating the materials which the Government of Ceylon had before them before promoting in the legislature the statutes now impugned.

Section 4 (1) of the Citizenship Act 18 of 1948 reads as follows :— " Subject to the other provisions of this part a person born in Ceylon before

Annexures to Documents Nos. 1, 2, 3 and 8.

No. 7. P4. Judgment of the Revising Officer, 2nd July, 1951— *continued.*

" the appointed date shall have the status of a citizen of Ceylon by descent " if—(a) his father was born in Ceylon ; or (b) his paternal grandfather and " paternal great grandfather were born in Ceylon."

(Sub-Section 2) : " Subject to the other provisions of this part a person " born outside Ceylon before the appointed date, shall have the status " of a citizen of Ceylon by descent if—(a) his father and paternal grandfather " were born in Ceylon, or (b) his paternal grandfather and paternal great " grandfather were born in Ceylon."

The effect of Act 48 of 1949 which came into force on 26.5.1950 is that no person shall be qualified to have his name in the Register of Electors if he is not a citizen of Ceylon. Section 29 of the present Constitution Order-in-Council reads :

(Section 29 (1)) : " Subject to the provisions of this order " Parliament shall have power to make laws for the peace, order and " good government of the Island.

" (2) No such law shall—(a) prohibit or restrict the free exercise " of any religion or (b) make persons of any community or religion " liable to disabilities or restrictions to which persons of other " communities or religions are not made liable ; or (c) confer on " persons of any community or religion any privilege or advantage " which is not conferred on persons of other communities or religions ; " or (d) alter the Constitution of any religious body except with the " consent of the governing authority of that body ; provided that in " any case a religious body is incorporated by law, no such alteration " shall be made except at the request of the Governing authority of " that body."

(Sub-section 3) : " Any law made in contravention of sub- " section 2 of this section shall to the extent of such contravention " be void."

(Sub-section 4) : " In the exercise of its powers under this section, " Parliament may amend or repeal any of the provisions of this Order " or of any other Order of his Majesty in Council in its application to " the Island ; provided that—no bill for the amendment or repeal of " any of the provisions of this Order shall be presented for the Royal " Assent unless it has endorsed on it a certificate under the hand " of the Speaker that the number of votes cast in favour thereof in " the House of Representatives amounted to not less than two-thirds " of the whole number of members of the House (including those " not present)."

(Sub-section 5) : " Every certificate of the Speaker under this " sub-section shall be conclusive for all purposes and shall not be " questioned in any Court of Law."

There is no declaration of fundamental rights in the Constitution of Ceylon that one finds in the Constitutions of America or India. The words " for the peace, order and good government of the Island " in

section 29 (1) have constantly been adopted in the Constitutions of all British self-governing Colonies where the power to legislate is general and where they are used to describe the *Content* of that power ; these words seem to delimit the subject matter of legislation, not to enumerate the persons whom the legislation shall bind. Limitation on legislative power is placed by Section 29 (2) and any law offending against 29 (2) shall be void under 29 (3). Therefore the " disabilities or restrictions " and the " privilege or advantage" in section 29 (2) (b) and (c) must be such as are given by law. The redress given in respect of contravention of section 29 (2) caused by laws made by Parliament, which in other respects has the power to legislate " for the peace, order and good government of the Island," is a redress based on the principle of *ultra vires*, and can be sought from the Courts by section 29 sub-section (3). Are the Acts complained of in the petition assailable under this principle ? The petitioner claims that he and other persons of the Indian Community enjoyed by law the right to vote and this right has now been taken away by the combined effect of the two Acts No. 18 of 1948 and No. 48 of 1949. Under the 1948 Constitution persons of the Indian Community had the right to vote if they were British subjects and were domiciled. Now to have the vote they have to be citizens born in Ceylon before the appointed date with a father and paternal grandfather born in Ceylon.

It is important to note that the Citizenship Act is not directed against any particular community and that it contains no express words excluding persons of any community from being entitled to the status of citizenship. But considering the history of the Indian Community in this Island ; the fact that they came in at various periods before they became domiciled it cannot be denied that most of the Indians, if not practically all of them, will not pass the test of the Citizenship Act. If the effect of the Act is examined on the footing that it becomes operative, some remarkable facts emerge. A large number of the Indian Community would be disfranchised ; thereby reducing the electoral power of that Community to send members to the Legislature to voice their interests. To examine the effect of the legislation " the Court must take into account any public general knowledge " of which the court would take judicial notice and may in a proper case " require to be informed by evidence as to what the effect of the legislation " will be : " Per Lord Maugham in A.G. for *Alberta* vs. *A.G. for Canada* 1939 A.C. 117, 130.

The constitution history of Ceylon leading up to the Acts in question will show that the question of franchise was very much in the forefront from the days of the Donoughmore Constitution 1931, and leaves little doubt that the Acts are an attempt to regulate and control the franchise to the advantage of the indigenous communities and to the disadvantage of the Indian Community. " The subject matter with which the legislature " was dealing, and the facts existing at the time with respect to which the " legislature was legislating, are legitimate topics to consider, to show the " object and purpose of the legislature in passing the Act."—Per Lord Halsbury, L.C., in *Herron* vs. *R. & R. Improvement Commissioners*—1892 A.C. 498, 502.

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No. 7. P4. Judgment of the Revising Officer, 2nd July, 1951— *continued.*

The next question is whether the two Acts come within Section 29 (4) and the proviso, which provide that " no bill for the amendment or repeal " of any of the provisions of this Order shall be presented for the Royal " Assent unless it has endorsed on it a certificate under the hand of the " Speaker that the number of votes cast in favour thereof in the House of " Representatives amounted to not less than two-thirds of the whole " number of the members of the House (including those not present)." The decision in the case of *Kulasingham* vs. *Thambiayah* in 50 N.L.R. 25 is that Act No. 19 of 1948 amending the (Parliamentary Elections) Order-in-Council 1946 did not require a two-thirds majority. Neither of the Acts under examination can be said to be amendments or repeals of any of the provisions of the Constitutional Order-in-Council 1946 as amended by the Independence Act 1947, which does not contain provisions relating to the qualifications of an elector. These qualifications are to be found in Section 4 of the Ceylon (Parliamentary Elections) Order-in-Council 1946 which has been amended by Act 48 of 1949 by enacting Section 4 (1) (a) as follows :—

" is not a citizen of Ceylon . . . ." Provisions for citizenship of Ceylon are to be found in the Citizenship Act No. 18 of 1948. Therefore the two Acts in question are not assailable under Section 29 (4) and the proviso.

Nevertheless, the question arises whether these two Acts offend against Section 29 (2) (b) and (c) and are therefore *ultra vires* and void. The substance of the Acts may be within the power of Parliament, but do they under the guise of dealing with one matter in fact encroach upon the forbidden field of Section 29 (2) ? " It is well established that you are " to look at the true nature and character of the legislation, the pith and " substance of the legislation. If, on the view of the statute as a whole " you find that the substance of the legislation is within the express powers, " then it is not invalidated if incidentally it effects matters which are " outside the authorised field. The legislation must not under the guise " of dealing with one matter, in fact encroach upon the forbidden field."— Per Lord Atkin in *Gallagher* vs. *Lynn*, 1937 A.C. 863, 870.

In considering this question the following passages from " Legislative " and Executive Powers in Australia," by Wynes will be helpful :—

(At page 42) : " The test to be applied in determining whether an " enactment comes within a specific class of legislation is not exactly " the same as that which is employed in the decision whether it operates " as a violation of a direct constitutional prohibition such as the " declaration in Section 92 of the Constitution. In the first case the " essential predicate to the validity is that the law shall belong to that " class of legislation which is discriminated as Trade and Commerce " Law ; *while in the second, the prohibition may be transgressed whether " the enactment is a law which can be said to belong to that class or not.*"

(At page 43) : " The greatest difficulty which attends the con- " stitutionalist who sets out to determine the actual character of a law " in relation to the enumerated subject of a legislative power arises

" when the legislative enactment in question seeks to achieve a certain " result in an indirect manner, the means apparently adopted being " constitutionally competent, the result sought to be achieved " something which might not have been directly legislated upon. The " question how much of the enactment is political and how much really " substance is one to which a decided answer is frequently impossible. " For in all cases it is the real substance and not the mere form of the " legislation which is to be regarded, since Parliament cannot do " indirectly what it cannot do directly. Nor is it competent to " legislate by a series of Acts as to matters which it could not regulate " together. The question of substance and form is one upon which it " is not possible to lay down any specific rule applicable to all cases. " The principle has been invoked in many cases, chiefly in the United " States and Canada, and a perusal of them leads to the conclusion " that each has been decided in its own particular circumstances."

In our Constitution there are no enumerated subjects but there is a prohibition in Section 29 (2) of what laws passed by Parliament cannot do.

The Citizenship Act No. 18 of 1948 provides that citizenship shall be by descent or by registration and that (a) a person born in Ceylon before the appointed date shall be a citizen if his father was born in Ceylon or his paternal grandfather and paternal great grandfather were born in Ceylon ; and (b) a person born outside Ceylon before the appointed date shall be a citizen if his father and paternal grandfather were born in Ceylon or his paternal grandfather and paternal great grandfather were born in Ceylon. By Section 27 of the Act, the Naturalization Ordinance Chapter 243 of the Legislative Enactments, which is an Ordinance to provide for the naturalization of aliens, is repealed. Under this Ordinance a person can on application be granted the privileges of naturalization and under Section 6 be granted all the rights and privileges of a British subject, and thereupon the applicant shall, within the limits of the Island, be entitled to all political and other rights, powers and privileges and be subject to all obligations to which a natural born British subject is entitled or subject.

Now by the Citizenship Act and Act 3 of 1949 persons coming into the Island cannot be citizens except as provided in these Acts. The effect of Act 48 of 1949 amending the Electoral Law is that the franchise is conferred only on citizens. The combined effect of both these Acts is that the petitioner and a large number of Indians have been deprived of the franchise. The Acts are designed to effect one and the same purpose, namely, to restrict the franchise and their operation would without doubt disfranchised a large number of persons of the Indian Community. It cannot be denied that a large number of persons of the Indian Community who had the franchise before, do not possess the qualifications required by Section 4 of the Citizenship Act although they are domiciled in Ceylon, while on the other hand the electoral power of the indigenous communities is hardly affected as they possess the qualifications required by Section 4 of the Citizenship Act. The Act has therefore the effect of making " persons of the Indian

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" Community liable to disabilities or retrictions to which persons of other " communities are not made liable, and conferring on the persons of the " indigenous communities a privilege or an advantage which is not conferred " on persons of the Indian Community."

No. 7. P4. Judgment of the Revising Officer, 2nd July, 1951— *continued.*

A Citizen is a member of the political society which constitutes the State. The term " citizen " stands in contrast with " alien," that is, one who is not a citizen of the State or Nation in which he resides. In English Common Law citizenship was based on the place of birth or " Jus soli,' in contrast with the European Continental principle of " Jus sanguinis " which determine citizenship by parentage. The 14th amendment to the American Constitution provided : " All persons born or naturalized in the " United States and subject to the jurisdiction thereof are citizens of the " United States and of the State wherein they reside. The day that a citizen establishes permanent residence in a State he becomes a citizen of that State. All the States required a period of residence before the voting power may be exercised by a new-comer. In the City States of antiquity and of the Renaissance suffrage was considered a function of citizenship. In feudal theory it was a vested privilege of the individual inseparable from his rank in society. In the emerging Constitutional regimes of modern times it came to be considered a natural right and consequently a corollary of popular sovereignty. The Supreme Court of the United States has decided that the right to vote for representatives in Congress is derived not from the States that prescribe the voting qualifications but from the Constitution, itself, and consequently voting is one of the privileges of American Citizenship. In Ceylon too voting has become one of the privileges of citizenship by the effect of Act 48 of 1949 and therefore the Citizenship Act directly and not incidentally affects the persons of the Indian Community who are domiciled and had the vote before, by putting it beyond their power to be citizens of Ceylon and thus disfranchising them. The legislature cannot have intended to take away those rights and privileges ; on the other hand, it must have been the intention of the legislature when it enacted Section 29 (2) of the Constitution, to preserve every legal right or privilege which persons of any community or religion practically enjoyed at the time of the new Constitution and not to take them away by discriminatory legislation. It is not competent for Parliament under the guise or the pretence or in the form of an exercise of its own powers to carry out an object which is beyond its powers by trespassing on the forbidden field of Section 29 (2). As observed by Lord Haldane in the *Roman Catholic Schools* case, 1928 A.C. 366, 389 : " It is indeed true that power to regulate " merely does not imply power to abolish." The purposes intended in enacting this legislation must be attained consistently with Constitutional limitations and not by an invasion of the rights guaranteed by the Constitution. There is no escape from the conclusion that instead of being in any true sense legislation to create the status of citizenship, the Citizenship Act together with Act 48 of 1949 is part of a legislative plan to reduce the electoral power of the Indian Community. In the words of Lord

Halsbury, in *Madden* vs. *Nelson and Another*, 1899, A.C. 626, 627 : " It is " a very familiar principle that you cannot do that indirectly which you are " prohibited from doing directly."

Every Act of Parliament must be read subject to the provisions of the Constitution applicable to the case. The substance of Section 29 (2) (b) and (c) is in short that whatever disabilities or restrictions are placed, or whatever privileges or advantages are conferred on persons of one community or religion are to be taken to be equally placed or conferred upon persons of other communities or religions. The basis of Section 29 (2) is religion or community, that is to say, such discrimination as is based on Religion or community is prohibited. It recognises the existence of communities and religions in the Island and prohibits such legislation as would unfairly affect them. The Citizenship Act by setting up qualifications not possessed by persons of the Indian Community puts it beyond their power to be citizens and therefore electors. The standard established by that Act " inherently brings that result into existence," while there is virtual exemption for persons of the indigenous communities, who in fact possess the qualifications to come up to the standard. It is no doubt within the capacity of Parliament to enact the Electoral Law, but in doing so such law shall not prejudicially affect any community.

On the subject of discriminatory legislation, the following passage in the judgment of Justice Frankfurter in *Lane* vs. *Wilson*, 307 U.S. 268, is relevant : " The reach of the 15th Amendment against contrivances by " a State to thwart equality in the enjoyment of a right to vote by citizens " of the United States regardless of race or colour, has been amply expounded " by prior decisions : (1) *Guinn* vs. *United States*,—238 United States 347 " (2) *Myers* vs. *Anderson*, 238 United States, 368. The amendment " nullifies sophisticated as well as simple minded modes of discrimination, " it hits onerous procedural requirements which effectively handicap " exercise of the franchise by the coloured race although the abstract right " to vote may remain unrestricted as to race. When in *Guinn* vs. *United* " *States* the Oklahoma ' Grandfather Clause ' was found violative of the " 15th Amendment, Oklahoma was confronted with the serious task of " devising a new registration system consonant with her own political " ideas but also consistent with the Federal Constitution. We are compelled " to conclude that the legislation of 1916 partakes too much of the " infirmity of the Grandfather Clause to be able to survive. Section 5632 " of the Oklahoma Statutes makes registration a prerequisite to voting. " By sections . . . . all citizens who were qualified to vote in 1916 but " had not voted in 1914 were required to register, save in the exceptional " circumstances, between April 30 and May 11, 1916, and in default of " such registration were perpetually disfranchised. Exemption from this " onerous provision was enjoyed by all who had registered in 1914. But " this registration was held under the Statute which was condemned in " the *Guinn* case. Unfair discrimination was thus retained by automatically " granting voting privileges for life to the White citizens whom the " Constitutional Grandfather Clause had sheltered, while subjecting coloured " citizens to a new burden."

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No. 7. P4. Judgment of the Revising Officer, 2nd July, 1951—*continued.*

The passage from " A Grammar of American Politics " at page 133, by Binkley and Moss, is also relevant: " The Grandfather Clause, once " a widely used device but now of only historical interest, was first " introduced in Louisiana in 1898 a method of circumventing the " 15th Amendment. Its formula consisted of educational, property, or " other prerequisites for voting, sweeping enough to exclude practically all " Negroes as well as many Whites. The latter however were almost " completely exempted from the restriction by a provision that these " prerequisites were not to apply to lineal descendants of those who were " legal voters before 1866, the year in which Negroes were first enfranchised " in the South. After the device had been used for nearly two decades, " the Supreme Court in 1915 pronounced the Grandfather Clauses " unconstitutional as violations of the 15th Amendment; and consequently " they have not been in force for a generation. However, when they were " declared unconstitutional they had already served their purpose of " placing on the permanent registration list the lineal descendants of those " persons who had been voters before 1866."

The Citizenship Act, determining as it does the status necessary for the exercise of the franchise, " partakes too much of the infirmity of the Grandfather Clause," and operates unfairly against persons of the Indian Community who are protected by the safeguards in Section 29 (2) of the Constitution. The Constitution is not to be mocked by legislative interference with its prohibitions. As observed in *Shelley* vs. *Kraemer* (1948) 334 United States 1, 22: " Equal protection of the laws is not " achieved through the indiscriminate imposition of inequalities."

Discussing the question of the supremacy of Parliament and sovereignty, the following passage is at page 138 of " The Law and the Constitution " by Jennings: " Yet if sovereignty is supreme power, " Parliament is not sovereign. For there are many things as Dicey and " Laski both point out, which Parliament cannot do. ' No Parliament,' " says Professor Laski, ' would dare to disfranchise the Roman Catholics " ' or to prohibit the existence of Trade Unions.' Parliament is not the " permanent and personal sovereign contemplated by Bodin. It consists " of two groups of men, of which the members of one will within five years " at most cease to have anything to do with Parliament, and who, if they " wish to join ' the best Club in Europe ' once again, must offer themselves " through a complicated political organization for re-election by a " heterogeneous group of their fellow-citizens. Since, if they wish for " re-election, they may be called upon to give an account of their actions, " they must consider in their actions what the general opinion about them " may be. Parliament passes many laws which many people do not " want. But it never passes any laws which any substantial section of " the population violently dislikes."

While the above passage sets out the circumscribing limits or considerations of the British Parliament, there is a clear distinction between sovereign and non-sovereign legislatures. The Ceylon Parliament is in this sense a sovereign within its powers derived from the Constitution.

" Parliament may pass laws on any subject. The United States Congress " may pass laws of any sort on any subject within the ambit of its powers. " and so may every dominion or Colonial Legislature in the British Empire, " The only function of the courts is to determine whether a legislation is " within the limits of the powers, and these powers are wide, general powers, " which may be called powers of Government : " Jennings, at page 141 supra.

In the words of Lord Atkin in *Ladore* vs. *Bennet*, 1939 A.C. 468, 482 : " It is unnecessary to repeat what has been said many times by the courts " in Canada and by the Board, that the courts will be careful to detect and " invalidate any actual violation of constitutional restrictions under pretence " of keeping within the statutory field. A colourable device will not avail." For these reasons I am of opinion that the two questions argued in this appeal should be answered in the affirmative and that this appeal therefore should be allowed.

Accordingly, I direct the Registering Officer to include the name of the petitioner in the Register of Electors for the Electoral District No. 84, Ruanwella, for the year 1950. I also make order that the sum of Rs. 5/- being the value of the stamp affixed to the petition of appeal be refunded to the petitioner.

Sgd. N. SIVAGNANASUNDRAM,
District Judge.

Judgment delivered in open Court.

Sgd. N. SIVAGNANASUNDRAM,
District Judge.

This is the identical decision marked P4. and referred to in my affidavit dated 16th July 1951.

Sgd.

Before me.

Sgd.
J.P.

2nd July, 1951.
J. de J.S.

No. 8. Affidavit of the Assistant Registering Officer, 16th July, 1951— *continued.*

No. 8.

Affidavit of the Assistant Registering Officer.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the Matter of an Application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance (Cap. 6).

S.C. Application No.

PUNCHI BANDA MUDANNAYAKE, Assistant Registering Officer for Electoral District No. 84 (Ruwanwella), the Kachcheri, Kegalle ... ... *Petitioner*

vs.

1. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM, Revising Officer for Electoral District No. 84 (Ruwanwella), Kegalle
2. GOVINDAN SELLAPPAH NAYAR KODAKAN PILLAI, of 220, Yatiyantota ... ... *Respondents.*

I, PUNCHI BANDA MUDANNAYAKE, of Kegalle, do hereby solemnly, sincerely and truly affirm and declare as follows :—

1.—I am the Assistant Registering Officer for Electoral District No. 84 (Ruwanwella) duly appointed under the provisions of the Ceylon (Parliamentary Elections) Order in Council 1946, and the Petitioner abovenamed.

2.—As Assistant Registering Officer for Electoral Distict No. 84 I was assigned the duties in connection with steps to be taken by the Registering Officer under the provisions of Sections 16 and 17 of the Ceylon (Parliamentary Elections) Order in Council for the revision of the current register of electors for the Electoral District No. 84 (Ruwanwella).

3.—On the 22nd day of January 1951, the second Respondent abovenamed made a claim to me to have his name inserted in the register of electors for the Electoral District No. 84 (Ruwanwella) under the provisions of Section 12 (2) read with Section 19 of the Ceylon (Parliamentary Elections) Order in Council, 1946. A certified copy of the said claims is hereto annexed marked P–1 and P–1 (a).

4.—On the 26th day of February 1951, I held an inquiry under Section 12 (9) of the said Order in Council into the said claim and decided, after due inquiry, that the second Respondent abovenamed was not entitled to have his name written in the register of electors on the ground that the second respondent was not a citizen of Ceylon within the meaning of the Citizenship Act No. 18 of 1948. A certified copy of the notes of the said inquiry and of the said decision is hereto annexed marked P2.

No. 8. Affidavit of the Assistant Registering Officer, 16th July, 1951— *continued.*

5.—On the 8th day of March 1951, the second Respondent appealed from the said decision under Section 13 of the said Order in Council to the first Respondent abovenamed, the duly appointed Revising Officer for the said Electoral District No. 84 (Ruwanwella). A certified copy of the said petition of appeal is hereto annexed marked P3.

6.—The first Respondent after hearing Counsel for the second Respondent and Counsel on my behalf on the preliminary question as to the operative law laying down the qualifications of electors in Parliamentary Elections in Ceylon, held that the provisions of the Act No. 48 of 1949, which prescribe citizenship Act No. 18 of 1948 were *ultra vires* the legislature and that the operative law was the law contained in the Ceylon (Parliamentary Elections) Order in Council, 1946, as it stood before the Act No. 48 of 1949 was passed. On that basis the first Respondent found that the second Respondent was a duly qualified elector and directed the name of the second Respondent to be included in the register of electors for the Electoral District No. 84 (Ruwanwella). A certified copy of the second Respondent's appeal and the first Respondent's decision dated 2nd July 1951, is filed herewith marked P3 and P4 respectively.

7.—I am advised :—

(a) that there is an error of law apparent on the face of the decision with regard to the validity of the Act of Parliament No. 48 of 1949 relating to Parliamentary franchise in Ceylon.

(b) that the said error affected the ascertainment of the question which the first respondent had jurisdiction to determine and the ambit of that jurisdiction.

Signed and affirmed to at Colombo on this 16th day of July, 1951. } Sgd. P. B. MUDANNAYAKE.

Before me,
Sgd.
A Justice of the Peace.

No. 9.

Affidavit of G. S. N. K. Pillai before the Revising Officer.

No. 9. Affidavit of G. S. N. K. Pillai before the Revising Officer, 15th May, 1951.

P1

I, GOVINDEN SELLAPPA NAIR KODAKAN PILLAI, do hereby solemnly sincerely and truly declare affirm and say as follows :

1.—I am the Claimant in proceedings of Claim No. 35.

2.—I belong to the Indian Community which is one of the communities which forms part of the population of Ceylon.

No. 9. Affidavit of G. S. N. K. Pillai before the Revising Officer, 15th May, 1951— *continued.*

3.—I am an Indian immigrant I have settled down in Ceylon and am domiciled in Ceylon. I am a British subject.

4.—My name has appeared on the Electoral Registers from the year 1935 up to the date of preparation of the present register when my name together with the names of practically the entirety of the residents of this Electoral area who belong to the Indian Community have been deleted from the Register.

5.—It is easy in actual practice to distinguish between the name of Sinhalese and the names of persons who are Indians.

6.—The names of thousands of persons belonging to the Indian Community who have been domiciled in Ceylon have been deleted from the Electoral District in Ceylon outside the Northern and Eastern Provinces by the simple expedient of deleting practically all non-Sinhalese names and thereby great hardship has been caused to the Indian Community.

7.—Under the Indian and Pakistani Citizenship Act, members of the Indian Community were permitted to become registered Citizens if applications were made with a proof of residence in Ceylon from 1939 to date. The final date for such applications is 5th August 1951.

8.—Notwithstanding the fact that the final date for applications has not lapsed, the names of members of the Indian Community including myself have been deleted from the register in large numbers.

9.—The vast majority of the present Indian Immigrant population came to Ceylon long after the year 1852 and though a large number of the members of the Community have been born in Ceylon yet their parents were not born in Ceylon. In the case of the Indian Community unlike in the case of the Sinhalese and Ceylon Tamil Communities, the fathers of the persons who belong to this community have not been born in Ceylon as immigration of Indian Labour commenced only in 1852. Hence the Ceylon Citizenship Act while it confers the status of a Ceylon Citizen on all the members of the Sinhalese and Ceylon Tamil Communities fails to confer that status on by far the vast vast majority of the members of the Indian community settled in Ceylon.

10.—The qualifications of Citizenship prescribed in the Ceylon Citizenship Act and of the Franchise in the Ceylon (Parliamentary Elections) Order in Council 1946 as amended by Act 48 of 1949 are discriminatory against the Indian Community and against me as a member of it.

Sgd. G. S. N. K. PILLAI.

Affirmed to at Colombo on this
15th day of May 1951.

Before me.

Sgd. Illegibly.
Commissioner for Oaths

No. 10.

Affidavit of the Registering Officer.

No. 10. Affidavit of the Registering Officer, 28th May, 1951.

R 1

I, DALAWELLA GURUKANDAGE DAYARATNA of the Residency Kegalle do sincerely and truly affirm and declare as follows :—

1.—I am the duly appointed Registering Officer under the Ceylon (Parliamentary Elections) Order in Council 1946 for the following electoral District : (*a*) Mawanella (*b*) Kegalle (*c*) Ruwanwella (*d*) Dehiowita and (*e*) Dedigama.

2.—I have read the affidavit dated the 15th day of May 1951 sworn by Gocindan Sellappa Nair Kodakan Pillai and submitted to the revising officer hearing the appeal from the decision of the Assistant Registering Officer, Ruwanwella Electoral District in Claim No. 35.

3.—The lists A and B under Section 18 of the Ceylon (Parliamentary Elections) Order in Council 1946 as amended by Act No. 48 of 1949 were prepared in accordance with my directions and under my supervision for the five electoral districts mentioned in paragraph 1 above.

4.—The statement in paragraph 6 of the said affidavit of Govindan Sellappa Nair Kodakan Pillai that an expedient was adopted of deleting practically all non Sinhalese names is incorrect. The names included in list A were the names of persons who, according to the information gathered by enumerators duly appointed by me under the Ceylon (Parliamentary Elections) Order in Council 1946 were not citizens of Ceylon either by descent or by registration.

Sgd. D. G. DIYARATNE.

Affirmed to at Colombo on this 28th day of May 1951.

Before me.

Sgd. Illegibly.

Justice of the Peaee.

No. 11.

Inquiry by the Revising Officer.

No. 11. Inquiry by the Revising Officer, 16th, 29th and 30th May, 1951.

D.C. SPECIAL 1 16.5.51.

Parties present.

Mr. Advocate S. NADESAN with Mr. Advocate CANAGARAYAR instructed by Mr. BALASINGHAM for Claimant appellant.

Sir ALAN ROSE, K.C. (Attorney General with Mr. WALTER JAYAWARDENA (Crown Counsel) for the respondent.

Mr. Advocate Nadesan moves to file the affidavit by the claimant appellant (P1).

No. 11. Inquiry by the Revising Officer, 16th, 29th and 30th May, 1951—*continued.*

The Attorney General objects to paragraphs 6 and 9 and to the manner in which it has been worded. He, however, has no objection to the affidavit being filed provided that, if in the course of the argument it becomes necessary for him to either lead evidence or to file a counter-affidavit, he should be allowed to do so.

Mr. Advocate Nadesan has no objections.

I admit the affidavit subject to those conditions.

Mr. Advocate Nadesan at this stage states that he does not propose to call any evidence at this stage of the inquiry, and that it will be a matter of legal argument.

He refers to the Ceylon State Council (Elections) Order in Council 1931 as amended by the Ceylon State Council Order in Council of 1934 and 1935—Sections that deal with the franchise are sections 6, 7 and 8. Section 6 refers to the qualifications of electors. The two essential qualifications were—a person has to be a British subject or to be a domicile. These qualifications were incorporated in section 4 of the Ceylon Parliamentary Elections Order in Council of 1946. The subsequent sections of the Order in Council adopt the earlier registers complied e.g. Section 11. Provisions for revision of those registers made. 1946 Order in Council amended by Act 48 of 1949, 18 of 1948 is a Citizenship Act. It sets out the qualifications necessary for persons to become citizens in Ceylon. In these provisions domicile does not appear to be the test for registration. Section 5 of Ordinance 3 of 1949 referred to. The substitution of the concept of citizenship of Ceylon in place of a person being a British subject or being domiciled, is *ultra vires* the powers of the legislature under the Constitution. The Citizenship Act is *ultra vires* to the Constitution. No declaration of general rights in our Constitution like the Constitution of America or India, but there is some declaration in Ceylon Constitution Order in Council of 1946. Preamble referred to, Article 29 Amendment to the Elections Order in Council is a contravention to Article 29 sub-sections 2b and c. There is discrimination against the Indian Community in this Island by such an Act. They will be void under section 29 sub-section 3. The word " Community " includes the Indian Community. The Indian Community is a recognised Community in this Island. The meaning of the term " Community " necessary to be understood in its political background. Interpretation of Constitutional Law and Statutes interpreted differently by looking at political development. He cites Federal Law Journal in India 1944—7th column. He also cites Constitutional Law of the British Empire by Ivor Jennings and C. M. Young at page 190—*Henrietta Muir Edwards* vs. *The Attorney General of Canada* ; 1930 Appeal Cases p. 124. The antecedent history that led up to this Order in Council necessary to interpret the word " Community." He cites pages 14, 16, 95, 96 and 97 of the Donoughmore Commission Report. He also cites Soulbury Commission Report page 38—subject to Minorities. The Soulbury Report subject to Immigration at page 63 paragraph 238. He cites Sessional Paper 14 of 1944 appearing as an appendix in Soulbury Report—Article 8. He refers to Article 29 of the Order in Council of

1946. Sessional Paper 14—Article 13, at page 121. Ivor Jennings Constitution of Ceylon page 178.

(2) According to the British National Act not only British citizens but all Commonwealth subjects have the right to vote and stand for Parliament. If the term " British subject " is included in the Order in Council, then all the Communities will have the vote. By enacting the Act and laying the stress on Citizenship of Ceylon and leaving out the stress on British subjects, the Indian Community is affected. The necessity to register under the Citizenship Act is an illegal one. According to the qualifications laid for Citizenship rights in the Citizenship Act, it is really discriminatory and directed at the Indian Community. He cites the case of Frank Ginn and J. J. Peel against the U.S.A. reported in 238 U.S.A. Reports page 347. To test a legislation one has to see the consequences and the effect of such a legislation (at page 362 and 364). He cites 307 U.S.A. Reports at page 268—*I. A. Lane* (Petitioner) vs. *Jess Wilson.* Page 277. He cites 1950 Madras Law Journal Report page 404—*Srimathy Chanpatham Dorairaja* vs. *The State of Madras* at page 419.

(3) The effect of this legislation is to place the Indian Community in Ceylon at an utter disadvantage. Article 29 (b) of the Order in Council read out. The Indians in Ceylon are called upon to register themselves under the Indian and Pakistani Citizenship Act to become citizens, Such onerous procedure is not laid down in respect of any other Community. The right to vote is a privilege (right) conferred by the Law. The effect of the Citizenship Act requiring the Indian to register himself as a citizen, a thing that the other Communities in the Island need not do, results in an advantage being conferred within terms of Article 29c. All the communities including the Indian Community enjoyed the same rights even after this present Order in Council became Law, till the amendment to the Elections Order in Council came into existence. As a result of that the members of the other communities have an advantage which the members of the Indian Community do not have. The general effect on the Community at large has to be considered and not individual cases arising in a Community. The substitution of the limited qualifications, like the Citizenship Act, for the broad principle of a person being a British subject or a tested domicile, has resulted in one Community being definitely deprived of rights and other Communities having their rights, whereas both these communities had the same rights before this Law. The Citizenship Act is *ultra vires* the Constitution. Legislation which runs contrary to Article 29 is *ultra vires* to the constitution. So long as Article 29 is there it has to be given effect to. The Citizenship Act and also the Indian and Pakistani Citizenship Act are *ultra vires* clause 29 of the Order in Council. It is *ultra vires* the Order in Council because the effect of that is to place the Sinhalese and other Communities in the same position in which they were and take away from the Indian Community the rights which they were enjoying.

(Adjourned for lunch)

No. 11. Inquiry by the Revising Officer, 16th, 29th and 30th May, 1951—*continued.*

Inquiry resumed.

Mr. NADESAN continues : He cite 118 U.S.A. Supreme Court reports 356 *Yic Wo* vs. *Peter Hopman* at page 374. The registration of birth became compulsory only in 1892. It will be impossible to prove that the earlier ancestors were born in Ceylon. He also cites *U.S.* vs. *Classy* 1940—313 U.S.A. Reports 298.

The ATTORNEY GENERAL submits :

Rules of Interpretation important. If an Act of Parliament does something which is permissible, then it cannot be held to come into conflict with the prohibitory provisions, such as Section 29 if it is only in effect either to confer a benefit or to enforce a restriction. Then it does not fall within the provisions contained in Section 29. He cites *Door and others* against *Bennet and others*—1939 Appeal Cases 468. He cites 50 N.L.R. page 25. The Electoral Law in this country can be amended. It has always been the contemplation of the legislature to amend the Electoral Law. He cites Order in Council of Government Gazette of 17th May 1946. The Soulbury Constitution, Section 37 sets out the matters that have to be reserved. 37 (f) is important. 37 Sub-section 2 sub-section (c). The Franchise Law is not a static thing. It was always in the contemplation of the legislature. He cites Section 13 (3) (8) of Order in Council. The words " time being " in that sub-section suggest that the Election Law is not static. Section 43 referred to. The words " time being " appear there also. Section 77. The words " Law then in force " appear there. Under the Soulbury Constitution, Section 29 was already there and there would have been some cross reference to Election Law if an exception was to have been made there. In the American case, where the Grandfather Clause comes in, the date 1866 was crucial as the Immigration of the Negroes started on that date. The Court distinguishes between the direct intention and effect of the Act and the remote effect of the Act, Lord Atkin in his judgment uses the word " collateral " which shows the same thing. " Pith and substance " also is another term.

(2) Section 29 Sub-section (2) of the Order in Council referred to.

It refers to the imposition of restrictions upon a Community as a community. It relates to the conferring of benefits on persons as on a Community.

Supposing the Parliament Act was passed to say that no shall henceforth be appointed legislation falling under Section 29 must be directly and positively directed at a Community, laying a disqualification for something or other. If the purpose of the act is merely to alter the purpose of the franchise, it may be legal but politically unwise perhaps to do such a thing. In our Constitution we can narrow or amend an enactment, but it cannot be done under the American or the French Constitution. The question is not whether hardship is caused but whether the act is legal and *intra vires*. Therefore the Government can properly amend the Electoral Law. There is nothing in the Citizenship Act which confers anything on a person or withholds a benefit. It only creates the

status of citizenship. Section 4 of Citizenship Act 18 of 1948 read (?) Date is 1951. Amendment of the Ceylon Parliamentary Elections Order 48 of 1949 referred to.

It may be that certain Communities may have been disfranchised than others.

A good act cannot be made a bad act because of a motive. All the Dominions of the Commonwealth have passed Citizenship Acts from 1935 onwards. There have been Commonwealth conferences and the policy of each country is to see to its citizenship.

We have no complete Parliamentary Sovereignty. The Public Service Commission and the Judicial Service Commission are outside Parliamentary control. Protection of minorities also a limitation of Sovereignty. The purpose of Section 29 is really to prohibit any acts directed on a Community as such.

He cites *Commonwealth of Australia and others* against *The Bank of New South Wales and others*—1950 Appeal cases pages 235, 307. He cites Lord Porter's at page 312. " Legislation within a permitted field." *Henrietta Nuir Edwards* against *Attorney General of Canada*—1930 Appeal cases 136, 312. The question is whether this legislation is directed towards a Community as such.

The consideration should not be whether one Community has been numerically affected one way or the other. The effect means the necessary legal effect and not the ulterior effect economically or socially. The exclusion of a number of individuals from the roll is only a social effect.

Sgd. Illegibly.
D.J.

Further addresses on 29.5.51.

Sgd. Illegibly.
D.J.
16.5.51.

29.5.51.

Vide proceedings of 16.5.51.

Appearances as before except that Mr. Advocate C. VANNIASINGHAM also appears with Mr. Nadesan.

Further address by the ATTORNEY GENERAL.

(The Attorney General tenders an affidavit on behalf of the Respondent (R1).

Mr. Advocate Nadesan wants paragraph 4 of R1 clarified, and the learned Attorney General admits the position that several non-Sinhalese names have been excluded from the Electoral Register, as set out by the Appellant in his affidavit (P1) but that it was not as a result of any expedient adopted by the Registering Officers nor was it on the ground that they were non-Sinhalese.)

The question of amending the Electoral Law is within the special care of the present Parliament. Parliament has every hand in all matters

No. 11. Inquiry by the Revising Officer, 16th, 29th and 30th May, 1951—*continued.*

except to infringe section 29 of the Order in Council. He cites 1950 Appeal Cases at page 235. Article 92 of the Australian Constitution. He reads from page 239 Section 46 (1) of the Banking Act of 1947—Notwithstanding anything contained in other law or in any character or other instrument, the Private Bank shall not after the commencement of this Act carry on banking business in Australia except as required by this section. He reads page 307.

He cites *Grammar of American Politics* by Malcolm C. Moos page 133. He cites the case of *Henry William* vs. *the State of Mississippi*—U.S.A. Reports Vol. 170 at page 240, also pages 1012, 1013 and 1014. The *Laundry* case is in favour of the respondent's position if rightly read. There is no discrimination of the face of the legislation.

He cites 1892 Appeal cases—*City of Winnipeg* vs. *Heven and Barrat* at pages 445, 447, 456. Historical background does not matter. The test will be to look into the words of the Act and to see whether it is a colourable device or otherwise. 1932 Appeal cases page 554 at page 555. He also cites page 558. Colourable device does not apply to our position in this Country.

Majority can control the citizenship qualifications in this Country; at page 459 of the *Roman Catholic Schools* case. Indian and Pakistani Act referred to.

Adjourned for Lunch.

Addresses resumed.

The ATTORNEY GENERAL continues: Supreme Courts U.S.A. Vol. 83 page 269.

COURT:

Q. Would that be so—when the Order in Council enacted the words "Make persons of any community," the legislature was also aware of the existence of communities?

A.G.

Yes. Any change in the law must differentiate between one community and the other.

There is a presumption that the legislature is right.

He cites Legislative and Executive Powers in Australia by Wines at page 41. *Waterside Workers' Federation of Australia* against *the Commonwealth Steamship Owners*—Commonwealth Law Reports Vol. 28 1920 page 219. Privy Council case of *Velin* against *Langua*—5 Appeal cases 1879 page 118. Colourable device means bad faith. Stroud's Judicial Dictionary Vol. 1 page 337. Colourable is the reverse of bona fides.

Mr. S. NADESAN in reply:

"It is not my case that the legislature of this Country has no right to "restrict or enlarge the franchise. Francise is within the care of the "Legislature." He refers to section 37 sub-section (F) of the Soulbury Order in Council. The consideration of section 37 is irrelevant to a

consideration of the full effect of section 29. American cases cited not because of similarity of facts but to derive a certain principle which has to be applied to this case. (1) A Legislature with qualified powers (by Order in Council 29) cannot do indirectly what it cannot do directly.

(2) The Legislature cannot under the guise or the pretext of an exercise of its own powers carry out an object which is beyond its powers.

(3) For the purpose of exercising their jurisdiction the Courts always look not at the form but at the substance of the legislation complained of.

(4) The effect of a piece of legislation is a very relevant circumstance in discovering what the substance of the legislature is.

(5) The mere object of the legislature is not conclusive as to the validity of the legislation.

He cites 1924 Appeal cases 328 at page 337. A statute must be judged by its natural and reasonable effects. To find out the purpose of an Act, one has to find out the background. He cites 1929 Appeal cases 260 at page 268. 1921 Two Appeal Cases 91 at page 100. The matter depends on the effect of the legislation. 1939 Appeal cases page 117 at pages 130, 131, 132, 133. For that purpose the Court must take into account any public general knowledge, all of which the Court would take judicial notice and may in a proper case, etc.

Object of purpose also relevant. Even the legislative history is relevant to consider the effects. The appointment date with regard to the Citizenship Act legislation gives the discriminatory character to the legislation. He cites 1903 Appeal Cases 151 at page 157.

The principle is—In truth and in effect the legislation deprive someone of their rights. 1921 Two Appeal Cases 91 at page 100.

1932 Appeal Cases 41 at page 52.

1937 Appeal Cases 368 at page 376.

1937 Appeal Cases 863 at page 870.

You must look at the true nature and character of the legislation.

Sgd. Illegibly.
D.J.
29.5.51.

Further hearing tomorrow 30.5.51.

Sgd. Illegibly.
D.J.

30.5.51

Appearances as before.

Further address by Mr. NADESAN.

He cites 1930 appeal cases 117 at pages 130, 131, and 133—*Alberta* case. 1940 appeal cases 513 at pages 533 and 534. He refers to 1939 appeal cases 468 at page 482. He cites case reported in 1892 appeal cases 445. What cannot be done directly cannot be done indirectly. He mentions *Bank* case. He cites passage from Mathews on the American Constitution System 367. A Court must be blind if it looks merely at the

No. 11. Inquiry by the Revising Officer, 16th, 29th and 30th May, 1951— *continued*

language of a provision and ignores its obvious purpose, effect and operation. He refers to 1939 appeal case 117 by Lord Maugham. The American cases dealt with the Administrative Acts. The *Negro* case is very important and very relevant and not the others. The principles applicable both in England and America are the same.

This Citizenship Act and the Elections Order in Council are both discriminatory pieces of legislation directed against a particular community, the Indian or European community. The Immigrant and Emigrant Act 20 of 1948 controls immigration in the country. He cites Soulbury Report at page 63 Citizenship Act 18 of 1948. *Re* question of status he cites Mark B (?) on jurisdiction at page 100. He cites Indian and Pakistan Act, Section 4 *re* privilege. Citizenship Act 18 of 1948 referred to and also Sections 2 and 4 and Section 5 4a. There must be a purpose behind the legislation to become citizens before a certain date. In the case of Sinhalese, so far as they are concerned the entirety are benefited. What is the purpose behind this legislation, except to deprive the Indian community of the privilege of citizenship ? By an appointment date other communities are also affected. There is discrimination perpetrated by having this appointed date—15th November 1948. Why have an appointed date at all ? Therefore the Citizenship is *ultra vires.*

Re gift : It is a void gift.

The Elections Order in Council earlier gave the vote in respect of the persons who were domiciled in the Island. Citizenship based on domicile. Franchise has been restricted and not enlarged. Citizenship restrictions operate in respect of the Indian Tamil Communities and no other communities. It has no material effect on the other communities. Literacy and property qualifications can be acquired. Restrictions confined to one community by the Citizenship Act and the other communities are not affected by that as things stand to-day. That will be the position for all time. The other communities are left where they were and where they are.

One has to look at the substance of the legislation to see what it means.

He refers to the *Negro* case in the Supreme Court as being important in this connection. Amendments to the Elections Order in Council with the entirety of the Sinhalese to be on the register, but a vast section of the Indian community are deprived of that privilege.

He refers to Section 29 of the Order in Council. One now is concerned with the community. It is the community that is affected, as such, by their not being able to send representatives as they did before.

He cites 1898 appeal cases 5571 at page 575.

By Attorney General.

He refers to the recent Privy Council case of 1950. The fundamental difference between those cases highly different. Wide distinction between that and the 1950 cases. He refers to passage by Wines *re* legislation on Legislative Powers, Australia page 46. The motives of the Legislation and the consequences are irrelevant to the issue. Referring to the Canadian

cases care should be taken before attempting to apply them to Commonwealth Constitutions. No. 11. Inquiry by the Revising Officer, 16th, 29th and 30th May, 1951—*continued.*

He refers to passage by Porter.

1. Direct infringement.
2. Constructive infringement.
3. Permitted field of action.

He refers to Winnes *re* motives of legislature. Motives only can become relevant as in the case of Ham. The principle of the American case is the same. He refers to sections 91 and 92 of the Canadian Constitution.

Mr. Nadesan in reply cites Winnes at page 43.

Attorney General: In everyone of the Canadian cases it is the direct attack on the permitted field.

Order reserved for 2.7.51.

Sgd.
Illegibly
D.J.
30.5.51.

No. 12.

Judgment of the Supreme Court.

No. 12. Judgment of the Supreme Court, 28th September, 1951.

Applications 368 and 369.

Application for a Mandate in the Nature of a Writ of Certiorari under Section 42 of the Courts Ordinance by P. B. Mudannayake, Assistant Registering Officer, Electoral District No. 84 (Ruwanwella) and by V. L. Wirasinghe, Commissioner of Parliamentary Elections, Colombo on (1) N. Sivagnanasunderam, Revising Officer for Electoral District No. 84 (Ruwanwella) and (2) G. S. N. Kodakan Pillai.

Present: JAYETILEKE, C. J., PULLE and SWAN, JJ.

Counsel: Sir ALAN ROSE, K.C., ATTORNEY-GENERAL, with T. S. FERNANDO, C.C., and WALTER JAYEWARDENE, C.C. for the Petitioners.

No appearance for the 1st Respondent.

S. J. CHELVANAYAKAM, K.C., with S. NADESAN, C. VANNIASINGHAM, S. CANAGARAYAR and E. R. S. R. COOMARASWAMY for the 2nd Respondent.

Argued on: August 28, 29, 30 and 31st, 1951, and September 3, 4, 5 and 6, 1951.

Decided on: 28th September, 1951.

No. 12. Judgment of the Supreme Court, 28th September, 1951— *continued.*

The following is the judgment of the Court :—

There are two applications by the Crown before us Nos. 368 and 369 for Writs of Certiorari to bring up into this Court the order dated July 2, 1951, made by the 1st Respondent in order that it should be examined. They raise a constitutional question of great importance.

In application No. 368 the petitioner is the Assistant Registering Officer for the Electoral District No. 84 (Ruwanwella) and in Application No. 369 the Commissioner for Parliamentary Elections. In both applications the 1st respondent is the revising officer for the Electoral District No. 84 (Ruwanwella) Kegalle appointed under s. 9 of the Ceylon (Parliamentary Elections) Order in Council 1946, and the 2nd respondent is a claimant to have his name entered in the register of voters prepared under s. 11 of the Order. The Attorney-General informed us that two petitions were filed as there was a doubt as to who was the proper party to make the application. The two applications were, by consent of the parties represented at the hearing, consolidated and heard together.

On January 22, 1951, the 2nd respondent made a claim to the Registering Officer of the Electoral District No. 84 to have his name inserted in the register of electors. He alleged in his affidavit that he possessed the requisite residential qualification, that he was domiciled in Ceylon, and that he was qualified to be an elector under the Order.

On February 26, 1951, the Assistant Registering Officer for the District inquired into the said claim and decided that the 2nd respondent was not entitled to have his name inserted in the register, as he was not a citizen of Ceylon within the meaning of The Citizenship Act, No. 18 of 1948.

On March 8, 1951, the 2nd respondent appealed to the 1st respondent against the said decision under s. 13 of the Order. The 1st respondent, after considering the statements made by the 2nd respondent at the inquiry before the Assistant Registering Officer and an affidavit made by the 2nd respondent, and, after hearing argument, held that the Ceylon Parliamentary Elections (Amendment) Act, No. 48 of 1949, which prescribed citizenship of Ceylon as a necessary qualification of an elector, and the Citizenship Act, No. 18 of 1948, were invalid as offending against s. 29(2) of the Ceylon (Constitution and Independence) Orders in Council, 1946, and 1947, and that the operative law was that contained in the Ceylon (Parliamentary Elections) Order in Council, 1946, as it stood before it was amended by the amending Act. He, accordingly, held that the 2nd respondent was a duly qualified elector, and directed his name to be included in the register of electors. The determination of the appeal by the revising officer is made final and conclusive by s. 13(3) of the Order. Therefore, no appeal lies to this Court from the order made by the 1st respondent. The mere fact that the decision of the revising officer is made final and conclusive by s. 13 (3) will not by itself exclude *certiorari.*

It is unnecessary for us to consider whether the decision of the 1st respondent is subject to review by means of *certiorari* because learned Counsel for the 2nd respondent conceded that it is. We would, however, say

a few words about the tests applicable to *certiorari*, as the question whether *certiorari* lies on a ground other than defect of jurisdiction arises, incidentally, in connection with a motion made by the 2nd respondent at the hearing before us to produce three affidavits severally made by Mr. Peri Sunderam, Mr. V. E. K. R. S. Thondaman and Mr. S. M. Subbiah which contain certain statistics relating to the Indian Tamils.

Certiorari is a prerogative writ obtainable either in civil or criminal proceedings and its object is to " give relief from some inconvenience " supposed, in the particular case, to arise from a matter being disposed of " before an inferior Court less capable than the High Court of rendering " complete and effectual justice " 9 Halsbury 2nd ed. s. 1420. It is clear from the judgment of Earl Cairns, L.C., in *Walsall Overseers Ltd.* v. *London & North Western Railway Co.* (1878) 4 A.C. 30 that *certiorari* lies not only where the inferior Court has acted without or in excess of its jurisdiction but also where the inferior Court has stated on the face of the order the grounds on which it had made it and it appears that in law those grounds are not such as to warrant the decision to which it had come. The principle laid down in this case was applied in *R.* v. *Nat Bell Liquors Ltd* (1922) 2 A.C. 128 and, *R.* v. *Northumberland Tribunal* (1951) 1 All E.R. 268.

The present applications were supported on both grounds. The defect of jurisdiction seems to arise in this way. The jurisdiction of the Revising Officer is to decide the question whether the claimant is qualified to be a voter under the law. The matters in respect of which he is given jurisdiction are matters of law or of fact applicable to the concrete case he is called upon to decide. If a question arises as to what is the law which lays down the qualification of voters in general, such a question is not incidental to the concrete case, but a question as to what his jurisdiction is, because such a question arises antecedently to the exercise of jurisdiction. It is a preliminary question which arises as to what is the precise question that he has to decide in the concrete case. When he decides that preliminary question, he merely formulates the question he has to decide, and, if his decision on the preliminary question is wrong, then his error relates to the scope of his jurisdiction and is not an error in the exercise of his jurisdiction. When he, thereafter, proceeds to decide the particular case before him on the footing of the erroneous decision on the preliminary question as to what is the law which lays down the qualification of voters he acts outside his jurisdiction. This view is supported by the judgment of the Privy Council in *Estate and Trust Agencies* v. *Singapore Improvement Trust* (1937) 3 All E.R. 324. The headnote of that case adequately sums up the position. It reads :—

> " The respondent trust, a corporate body constituted by the " Singapore Improvement Ordinance, 1927, made a declaration that " a house owned by the appellant company was insanitary within " the meaning of section 57 of the Ordinance. After hearing objections " to the declaration by the appellant company, the respondent trust " submitted the declaration to the Governor in Council for approval

No. 12. Judgment of the Supreme Court, 28th September, 1951— *continued.*

" in accordance with the provisions of section 59 of the Ordinance. " The appellant company applied for a writ of prohibition, prohibiting " the respondent trust from further proceeding in respect of the " declaration, on the ground that its action was *ultra vires*—

" Held : (i) in deciding whether, after considering the objections " raised against the declaration being a true and fair representation " of the construction and condition of the dwelling, the declaration " should be revoked or submitted to the Governor in Council, the " respondent trust must be regarded as exercising quasi judicial " functions.

" (ii) The respondent trust had applied a wrong and inadmissible " test in making the declaration, and in deciding to submit it to the " Governor in Council. It was therefore acting beyond its powers, " and the declaration was not enforceable.

" (iii) after the submission of the declaration for the approval " of the Governor in Council, the respondent trust was still charged " with the performance of certain duties, to which a writ of prohibition " could apply. It was not *functus officio* and a writ of prohibition " might issue."

We shall now proceed to deal with the 2nd respondent's motion to produce the affidavits. The learned Attorney-General objected to their admission on two grounds, (1) that the evidence was irrelevant, (2) that in *certiorari* matters affidavits or any other kind of evidence is receivable only when there is an objection as to jurisdiction. He relied on the following passages in the judgment of Lord Sumner in *R.* v. *Nat Bell Liquors Ltd.* (1922) 2 A.C. 128 at page 160,

" The matter has often been discussed as if the true point was one " relating to the admissibility of evidence, and the question has seemed " to be whether or not affidavits and new testimony were admissible " in the Supreme Court. This is really an accidental aspect of the " subject. Where it is contended that there are grounds for holding " that a decision has been given without jurisdiction, this can only " be made apparent on new evidence brought ad hoc before the " superior Court. How is it ever to appear within the four corners " of the record that the members of the inferior Court were unqualified, " or were biassed, or were interested in the subject matter ? On " the other hand to show error in the conclusion of the Court below " is not even to review the decision : it is to retry the case,"

and at page 155,

" If justices state more than they are bound to state, it may, " so to speak, be used against them, and out of their own mouths " they may be condemned, but there is no suggestion that apart from " questions of jurisdiction, a party may state further matters to the " Court, either by new affidavits or by producing anything that is not " on or part of the record."

In *R.* v. *Northumberland Tribunal* (1951) 1 All E.R. 268 Lord Goddard said :—

" Observe that that is saying that evidence cannot be produced " to supplement that which is not in the record. The Court is confined " to that which is on the record."

We inquired from 2nd respondent's Counsel whether the affidavits were intended to supplement the evidence adduced by affidavit by the 2nd respondent before the 1st respondent and his reply to the question was in the affirmative. In view of the first objection by the Attorney-General we deferred our order on the motion till we heard argument on all the questions raised on the applications before us. In the course of his address Counsel for 2nd respondent reverted to the motion to produce the affidavits and sought to support it on the observations of Lord Sumner quoted above that where there is an objection as to jurisdiction further evidence can be led. He contended that the basis of the applications made by the Crown is that the 1st respondent acted in excess of jurisdiction in coming to an erroneous decision on the law, and the 2nd respondent is, therefore, entitled to place further evidence to show that the decision of the 1st respondent on the law is not erroneous. It seems to us that the argument is based on a misapprehension of the judgment of Lord Sumner which states very clearly that if the defect of jurisdiction arises because of disqualification of a justice, or on the ground of bias or some other reason, the Court could not know of it unless evidence was brought before it, and therefore, the Court could admit evidence by affidavit to show the defect of jurisdiction. In the present case the 2nd respondent placed certain materials before the 1st respondent on which he invited the 1st respondent to hold that the provision of law which was applicable to the question he had to decide was not s. 3 (1) (a) of the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, but s. 4 of the Ceylon (Parliamentary Elections) Order in Council 1946. Even if the evidence which the 2nd respondent now seeks to place before us by way of supplementing the affidavit P1 is relevant to the question before us we are of opinion that it could and it should have been placed before the 1st respondent at the hearing of the appeal by summoning the officers who were in charge of the registers. If we admit the evidence, we will have to adjudicate on it, which will amount to re-trying the case. We are of opinion that the affidavits are inadmissible and cannot be justified as falling under any of the heads stated by Lord Sumner. However that may be, we are of opinion that they are not relevant to the question that arises for decision in this case for the reasons given below. We would, accordingly, refuse the motion.

The first question we have to decide is whether the 1st respondent's decision as to what is the law which lays down the qualification of voters in general is *ex facie* erroneous. In order to decide this question it is necessary to examine the relevant legislative provisions. The Ceylon (Constitution) Order in Council 1946, popularly called the Soulbury Constitution, which was published in the Government Gazette on May 17,

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1946, conferred on Ceylon a comparatively large extension of self government. The sections to which reference need be made are 29 and 37. They read as follows :—

29. (1) Subject to the provisions of the Order, Parliament shall have power to make laws for the peace order and good government of the Island.

(2) *No such law shall—*

(a) *prohibit or restrict the free exercise of any religion ;* or

(b) *make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable ;* or

(c) *confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions ;* or

(d) alter the constitution of any religious body except with the consent of the governing authority of that body : Provided that, in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body.

(3) *Any law made in contravention of subsection* (2) *of this section shall, to the extent of such contravention, be void.*

(4) In the exercise of its powers under this section Parliament may—

amend or suspend any of the provisions of any Order in Council in force in the Island on the date of the first meeting of the House of Representatives, other than an order made under the provisions of an Act of Parliament of the United Kingdom, or amend or suspend the operation of any of the provisions of this Order :

Provided that no Bill for the amendment or suspension of any of the provisions of this Order shall be presented for the Royal Assent unless it has endorsed on it a certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of members of the House (including those not present) ; every certificate of the Speaker under this sub-section shall be conclusive for all purposes and shall not be questioned in any Court of law.

37. (1) *Subject to the provision of sub-section* (2) *of this section, the Governor shall reserve for the signification of His Majesty's pleasure any Bill which in his opinion—*

(a) relates to the provision, construction, maintenance, security, staffing, manning and the use of such defences, equipment, establishments and communications as may be necessary

for the Naval Military or Air security of any part of His Majesty's Dominion (including the Island) or any territory under His Majesty's protection, or any territory in which His Majesty has from time to time jurisdiction ;

(b) is repugnant to or inconsistent with any provision of any Order in Council relating to or affecting—

(i) the defence of any part of His Majesty's Dominion (including the Island) or any territory in which His Majesty has from time to time jurisdiction ; or

(ii) the relations between the Island and any foreign country or any other part of His Majesty's Dominions or any territory as aforesaid or any provision of any instrument made under any such Order in Council ;

(c) affects the relations between the Island and any foreign country or any other part of His Majesty's Dominions or any territory under His Majesty's protection or any territory in which His Majesty has from time to time jurisdiction ;

(d) affects the currency of the Island or relates to the issue of bank notes ;

(e) is of an extraordinary nature and importance whereby the Royal Prerogative, or the rights or property of British subjects not residing in the Island, or the trade or transport or communications of any part of His Majesty's Dominions or any territory under His Majesty's protection or any territory in which His Majesty has from time to time jurisdiction may be prejudiced.

(f) contains any provision which has evoked serious opposition by any racial or religious community and which is likely to involve oppression or serious injustice to any such community ;

(g) amends or suspends the operation of any of the provisions of this Order or is otherwise repugnant to or inconsistent with any such provision.

(2) *Nothing in sub-section* (1) *of this section shall be deemed to require the Governor to reserve for His Majesty's Assent any Bill to which the Governor has been authorised by His Majesty to assent or any Bill which in the opinion of the Governor falls within any of the following classes that is to say—*

(a) any Bill relating solely to and conforming with any grade agreement concluded with the approval of a Secretary of State between the Government of the Island and the Government of any part of His Majesty's Dominions or of any territory under His Majesty's protection or of any territory in which His Majesty has from time to time jurisdiction ;

(b) any Bill relating solely to the prohibition or restriction of immigration into the Island ; and not containing any provision,

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relating to the re-entry into the Island of persons normally resident in the Island at the date of the passing of such Bill, which in the opinion of the Governor is unfair or unreasonable ;

(c) *any Bill relating solely to the franchise or to the law of elections ;*

(d) any Bill relating solely to the prohibition or restriction of the importation of, or the imposition of import duties upon, any class of goods, and not containing any provision whereby goods from different countries are subject to differential treatment ;

(e) any Bill relating solely to the establishment of shipping services or the regulation of shipping and not containing any provision whereby the shipping of any part of His Majesty's Dominions or of any territory under His Majesty's protection or of any territory in which His Majesty has from time to time jurisdiction, may be subjected to differential treatment ;

(3) A Bill reserved for His Majesty's assent shall not take effect as an Act of Parliament unless and until His Majesty has given his assent thereto, and the Governor has signified such assent by proclamation.

It will be seen that any Bill relating solely to the franchise was not regarded as coming within the category of Bills which the Governor is instructed to reserve for the signification of His Majesty's pleasure. Such a Bill can be passed by Parliament by a bare majority.

The Ceylon Independence Act 1947 which was passed on December 10, 1947 and brought into operation on February 4, 1948, made provision for the attainment by Ceylon of fully responsible status within the British Commonwealth of Nations. This Act was followed by the Ceylon Independence Order in Council, 1947, which was brought into operation on February 4, 1948, by the Ceylon Independence (Commencement) Order in Council, 1947. In order to give effect to the Ceylon Independence Act, 1947, the Ceylon (Constitution) Order in Council, 1946, was amended and the Ceylon Independence Order in Council, 1947, was passed on December 19, 1947, which, together with the principal order and the amending order, form now the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947. It retained s. 29 (2) and revoked certain sections including s. 37 of the Ceylon (Constitution) Order in Council, 1946. Under it Parliament has the power to pass legislation in regard to any matter subject to the limitations contained in s. 29.

The Citizenship Act, No. 18 of 1948, was passed on August 20, 1948, in order to make provision for citizenship of Ceylon and for matters connected therewith, Sections 2, 4 and 5 read as follows :—

2. (1) With effect from the appointed date, there shall be a status to be known as " the status of a citizen of Ceylon."

(2) A person shall be or become entitled to the status of a citizen of Ceylon in one of the following ways only :

(a) by right of descent as provided by this Act ;

(b) by virtue of registration as provided by this Act or by any other Act authorising the grant of such status by registration in any special case of a specified description.

(3) Every person who is possessed of the aforesaid status is hereinafter referred to as a " citizen of Ceylon." In any context in which a distinction is drawn according as that status is based on descent or registration, a citizen of Ceylon is referred to as " citizen by descent " or " citizen by registration " ; and the status of such citizen is in the like context referred to as " citizenship by descent " or " citizenship by registration."

(4) (1) Subject to the other provisions of this Part *a person born in Ceylon before the appointed date shall have the status of a citizen of Ceylon by descent if—*

(a) *his father was born in Ceylon, or*

(b) *his paternal grandfather and paternal great grandfather were born in Ceylon.*

(2) Subject to the other provisions of this Part *a person born outside Ceylon before the appointed date shall have the status of a citizen of Ceylon by descent if—*

(a) *his father and paternal grandfather were born in Ceylon ; or*

(b) *his paternal grandfather and paternal great grandfather were born in Ceylon.*

(5) (1) Subject to the other provisions of this Part *a person born in Ceylon on or after the appointed date shall have the status of a citizen of Ceylon by descent if at the time of his birth his father is a citizen of Ceylon.*

(2) Subject to the other provisions of this Part, *a person born outside Ceylon on or after the appointed date shall have the status of a citizen of Ceylon by descent if at the time of his birth his father is a citizen of Ceylon and if, within one year from the date of birth, the birth is registered in the prescribed manner—*

(a) at the office of a consular officer of Ceylon in the country of birth, or

(b) where there is no such officer, at the appropriate embassy or consulate in that country or at the office of the Minister in Ceylon.

The Ceylon (Parliamentary Elections) Order in Council, 1946, was published in the Government Gazette on September 26, 1946. Sections 4(1), 5 and 7(1) read as follows :—

(4) (1) *No person shall be qualified to have his name entered or retained in any register of electors in any year if such person—*

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(a) *is not a British subject,* or is by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign Power or State ; or

(b) was less than twenty-one years of age on the first day of June in that year ; or

(c) has not, for a continuous period of six months in the eighteen months immediately prior to the first day of June in that year, resided in the electoral district to which the register relates ; or

(d) is serving a sentence of imprisonment (by whatever name called) imposed by any Court in any part of His Majesty's Dominions or in any territory under His Majesty's protection or in any territory in which His Majesty has from time to time jurisdiction, for an offence punishable with imprisonment for a term exceeding twelve months, or is under sentence of death imposed by any such court, or is serving a sentence of imprisonment awarded in lieu of execution of any such sentence ; or

(e) is, under any law in force in the Island, found or declared to be of unsound mind ; or is incapable of being registered as an elector by reason of his conviction of an offence under Section 52 of this Order ; or

(g) would have been incapable of being registered as a voter by reason of his conviction of a corrupt or illegal practice if the Ceylon (State Council Elections) Order in Council, 1931, had remained in force.

5. *Any person not otherwise disqualified shall be qualified to have his name entered in the register of electors if he is domiciled in the Island or if he is qualified in accordance with Section 6 or Section 7 of this Order ;* Provided that, except in the case of persons possessing Ceylon domicile of origin, domicile shall not be deemed to have been acquired for the purpose of qualifying for registration as an elector by any person who has not resided in the Island for a total period of or exceeding five years.

7.—(1) Any person not otherwise disqualified shall be qualified to have his name entered in a register of electors if he is in possession of a certificate of permanent settlement granted to him—

(a) in accordance with the provisions of the Ceylon (State Council Elections) Order in Council, 1931, or

(b) in accordance with this Section by the Government Agent of the province or by the Assistant Government Agent of the district in which he resides or by any other officer of the Government authorised in writing by the Government Agent or Assistant Government Agent aforesaid in accordance with such general or special directions as may be issued by the Governor.

This was amended by the Ceylon (Parliamentary Elections) Amendment Act No. 48 of 1949 which came into operation on May 26, 1950. Section 3 (1) (a) reads as follows :—

> 3.—Section 4 of the principal Order is hereby amended in sub-section (1) thereof, as follows :—
>
> (i) by the substitution for paragraph (a), of the following paragraph :—
>
> " (a) is not a citizen of Ceylon, or if he is by virtue of his " own act, under any acknowledgment of allegiance, obedience " or adherence to any foreign Power or State which is not " a member of the Commonwealth " ;

The substantial question we have to decide is whether Section 3 (1) (a) of the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, read with the Citizenship Act, No. 18 of 1948, is void as offending against s. 29 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947. The answer to this question turns on the interpretation of these provisions, primarily. s. 29. Till we discover exactly what s. 29 means it is not possible for us to reach a decision as to whether the impugned Act is in conflict with it. The rule of interpretation that is applicable is laid down in several English cases of high authority. It is sufficient for us to refer to the recent judgment of the Privy Council in *Commonwealth of Australia and others* v. *Bank of New South Wales and others* (1949) 2 All. E.R. 769. The question that arose in that case was whether Section 46 of the Australian Banking Act, 1947, offended against Section 92 of the Commonwealth of Australia Act, 1900. It is similar to the question that has arisen in this case. Lord Porter who delivered the judgment of the Board said :—

> " In whatever sense the word ' object or ' intention ' may be " used in reference to a Minister exercising a Statutory power, in " relation to an Act of Parliament it can be ascertained in one way " only, which can best be stated in the words of Lord Watson in " *Solomon* v. *Solomon & Co.* (1897) A.C. 38 :
>
> " ' In a Court of Law or Equity what the legislature intended " ' to be done or not to be done can only be legitimately ascertained " ' from that which it has chosen to enact either in express words " ' or by reasonable and necessary implication.'
>
> " The same idea is felicitously expressed in an opinion of the " English Law Officers Sir Roundell Palmer and Sir Robert Collier " cited by Isaacs J. in *James* v. *Cowan* 43 C. L. R. 409 :
>
> " ' It must be presumed that a legislative body intends that " ' which is a necessary effect of its enactments ; the object, the " ' purpose and the intention of the enactment is the same.'
>
> " Isaacs J., adds (ibid) :
>
> " ' By the necessary effect,' it need scarcely be said, those " learned jurists meant the necessary legal effect, not the ulterior " effect economically or socially."

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It appears to us to be fairly clear from the English decisions that the scope and effect of a legislative measure must be ascertained by an examination of its actual provisions and it is only when expressions used in it are ambiguous that reference can be made to extraneous materials.

Relying on certain Canadian and American decisions Counsel for the 2nd respondent contended

(a) that in order to ascertain the scope and purpose of s. 29 it is legitimate to call in aid the history of political events which led to the enactment of that section and to examine the Soulbury Commission's report and the connected sessional papers in order to satisfy ourselves whether s. 29 was intended to be a safeguard for minorities alone ;

(b) that for the purpose of determining whether the two impugned Acts violate s. 29 it is permissible to adduce evidence to demonstrate the practical effects produced in the course of the administration of the two Acts.

The first Canadian case was *Attorney-General of Alberta* v. *Attorney-General of Canada and others* (1939) A.C. 117. The question for determination in that case was whether a Bill passed by the Legislature of the Province of Alberta entitled " An Act respecting the Taxation of Banks " was *intra vires* that Legislature. The Bill imposed on every Bank, other than the Bank of Canada, transacting business in the Province an additional tax of ½ per cent on the paid up capital and 1 per cent on the reserve fund and undivided profits. The Bill was sought to be justified as falling under head (2) of section 92 of the British North America Act, 1867, which empowers a Provincial Legislature exclusively to make laws for " Direct " taxation within the Province in order to the raising of a revenue for " Provincial purposes." On behalf of the Dominion it was contended that the Bill amounted to a trespass on the exclusive legislative authority of the Parliament of Canada to make laws in respect of " banking " and " saving banks " falling under heads (15) and (16) respectively of section 91 of the Act. Counsel relied very strongly on the following passage in the judgment of Lord Maugham :—

> " The next step in a case of difficulty will be to examine the effect " of the legislation : *Union Colliery Co. of British Columbia Ltd.* v. " *Bryden* (1899) A.C. 580. For that purpose the Court must take " into account any public general knowledge of which the Court will " take judicial notice, and may in a proper case require to be informed " by evidence as to what the effect of the legislation will be."

This passage occurs in a context where their Lordships refer to various tests to be applied for the purpose of determining whether a piece of legislation, fairly considered, falls *prima facie* within Section 91 rather than within Section 92. The judgment leaves no room for the suggestion that where the language of the statute speaks clearly for itself one is permitted to rely on extraneous evidence in support of an interpretation which the words of the statute do not warrant. It is important to note that the passage in

question is prefaced by the words, " The next step in a case of difficulty " will be to examine the effect of the legislation."

In the course of examining the effect of the legislation their Lordships referred to the fact that if the Bill became operative the yield from taxation of banks carrying on business in the Province would increase from 140,000 dollars to 2,081,925 dollars per annum. Their Lordships were again applying a test to find whether a piece of legislation which on the face of it imposed a direct tax on banks was not one which properly came within the subject of banks and savings banks assigned exclusively to the Parliament of Canada. The difficulty was apparent on the face of the Bill and upon a consideration of the provisions of Sections 91 and 92. It was to find a solution to this difficulty that extraneous evidence was permitted.

The second Canadian case on which reliance was placed was *Attorney-General for Ontario* v. *Reciprocal Insurers and others* (1924) A.C. 328. In that case the Province of Ontario passed in 1922 an Act which authorised any person to exchange, through the medium of an attorney, with persons, whether in Ontario or elsewhere, reciprocal contracts, of insurance. Under a Dominion Act of 1917 it was an indictable offence for any person to solicit or accept any insurance risk except on behalf of a company or association licensed under the Insurance Act of the Dominion of 1917. The conflict arose in this manner. Contracts of insurance constituted a subject peculiarly within the legislative authority of the Province, just as much as criminal law was within the exclusive competence of the Dominion Parliament. The effect of the Dominion statute was to render nugatory the exercise of Provincial legislative authority within its own sphere. To determine which of the conflicting statutes prevailed the principle laid down was that one should ascertain the " true nature and character " of the enactment and its " pith and substance." At p. 377 their Lordships stated,

> " But where the law-making authority is of a limited or qualified " character, obviously it may be necessary to examine with some " strictness the substance of the legislation for the purpose of deter- " mining what it is that the legislature is really doing."

We do not think that these cases assist the 2nd respondent. Unlike in Canada we do not have for purposes of comparison conflicting statutes, the pith and substance of which has first to be extracted to determine on which side of the legislative boundary the subject matter of the impugned statute falls. Nor do we have enumerated lists of subjects capable of analysis and comparison dividing the permitted and prohibited fields of legislation. We would not question that the pith and substance or the true nature and character of any Act of Parliament attacked on the ground of violating Section 29 should be examined. The fundamental error in our opinion is that one should search, far afield in State papers and other political documents, for the substance or the true nature and character of the impugned statute without permitting the language of the statute to speak for itself, where such language is clear and unambiguous.

It would be wrong for us to say that the Canadian cases have no relevancy whatever to the matters that we have to decide. In so far as they

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illustrate legal principles they are of the highest authority but we cannot overlook that the problems that had to be solved in those cases were basically of a different character. When the occasion arises in Canada to impugn a statute passed either by the Central or the Provincial Legislature, it is found that the language of both Sections 91 and 92 of the British North America Act, 1867, appears to attract the subject matter of the statute. Naturally in those circumstances the extent of the encroachment becomes one of degree and a solution is reached by determining whether the statute falls more within the specific words of one section than under the general words of the other.

In this connection we would adopt the words of Sir Maurice Gwyer, C.J., quoted with approval by Lord Porter in delivering the judgment of the Privy Council in *Prafulla Kumar* v. *Bank of Commerce, Khulna,* (1947) 34 A.I.R. 60 :

> " It must inevitably happen from time to time that legislation
> " though purporting to deal with a subject in one list, touches also
> " upon a subject in another list, and the different provisions of the
> " enactment may be so closely interwined that blind adherence to
> " a strictly verbal interpretation would result in a large number of
> " statutes being declared invalid because the legislature enacting them
> " may appear to have legislated in a forbidden sphere. Hence the
> " rule which has been evolved by the Judicial Committee, whereby
> " the impugned statute is examined to ascertain its pith and substance
> " or its true nature and character for the purpose of determining
> " whether it is legislation with respect to matters in this list or in
> " that."

Three decisions of the Supreme Court of the United States were cited both before the 1st respondent and before us to show that State laws passed with the object of circumventing the fundamental rights assured to the citizens of the United States, and even aliens residing there, by the Constitution were declared to be void and that evidence was taken to prove the manner and the extent of the infringement of those rights.

The first case was *Frank Guinn and J. J. Beal* v. *United States,* 238 U.S. 347 : 59 Lawyer's Edition 1340, which was a prosecution of certain election officials of the State of Oklahoma for conspiring to deprive negro citizens of their right to vote. The statute which was attacked as invalid was an amendment in 1910 of the Oklahoma Constitution which provided that no person was to be registered as an elector or be allowed to vote, unless he was able to read and write any section of the Constitution of the State of Oklahoma. The amendment proceeded further to provide,

> " But no person who was, on January 1st, 1866, or at any time
> " prior thereto, entitled to vote under any form of government or who
> " at that time resided in some foreign nation, and no lineal descendant
> " of such person, shall be denied the right to register and vote because
> " of his inability to so read and write sections of such Constitution."

The substantial question for determination was whether the amendment discriminated against the negroes in such a manner as to constitute an

infringement of the 15th Amendment of the American Constitution. Although the impugned statute contained no express words of exclusion the learned Chief Justice, having regard to the significance of the date January 1st, 1866, had no difficulty in reading into it a provision to impose on negroes a disability by reason of their colour and condition of servitude contrary to the express terms of the 15th Amendment. The Chief Justice states, " we are unable to discover how, unless the prohibitions of the " 15th Amendment were considered, the slightest reason was afforded for " basing the classification upon a period of time prior to the 15th Amend-
10 " ment. Certainly it cannot be said that there was any peculiar necromancy " in the time named which engendered attributes affecting the qualification " to vote which would not exist at another and different period unless the " 15th Amendment was in view." It would thus be seen that the decision rested on ascertaining the true intention of the statute hidden, as it were, behind the words " January 1st, 1866."

A similar statute enacted by the State of Maryland for the purpose of fixing the qualification of voters at municipal elections in Annapolis was declared in the second case that was cited, namely, *Myer* v. *Anderson*, 238 U.S. 367 : Lawyers' Edition 1349, to be an infringement of the 15th
20 Amendment. The date selected to keep the negroes out of the vote was January 1st, 1868. Another provision in that statute which was alleged to be discriminatory was that which gave the franchise to any taxpayer, without distinction of race or colour, who was assessed on the city books for at least 500 dollars. It is interesting to note that in dealing with this aspect of the argument, the Chief Justice stated,

> " We put all questions of the constitutionality of this standard " out of view as it contains no express discrimination repugnant to the " 15th Amendment, and it is not susceptible of being assailed on " account of an alleged wrongful motive on the part of the lawmaker or
> 30 " the mere possibilities of its future operation in practice, and because, " as there is a reason other than discrimination on account of race or " colour discernible upon which the standard may rest, there is no " room for the conclusion that it must be assumed, because of the " impossibility of finding any other reason for its enactment, to rest " along upon a purpose to violate the 15th Amendment."

The third case was *Yick Wo* v. *Hopkins*, 118 U.S. 256 : 30 Lawyers' Edition 220. The proceedings there arose on a writ of *habeas corpus* by which the petitioner challenged the validity of certain Ordinances passed by the City and County of San Francisco making it unlawful for any person
40 to carry on a laundry " without having first obtained the consent of the " Board of Supervisors, except the same be located in a building constructed " either of brick or stone." It was submitted that the ordinances were void on their face and, in the alternative, that they were void because they were applied and administered so as to make unjust discriminations against a particular class of person carrying on the laundry business, of whom a very large majority were nationals of China. The enactment was held to be void on both grounds. As a matter of interpretation the Supreme Court of the

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United States did not concur in the opinion of the Supreme Court of California that the enactments did nothing more than vest a discretion in the Board of Supervisors to be exercised for the protection of the public and held that they were repugnant to the 14th Amendment, Matthews, J., said,

> " They seem intended to confer, and actually to confer, not a " discretion to be exercised upon a consideration of the circumstances " of each case, but a naked and arbitrary power to give or withhold " consent, not only as to places but also as to persons."

In a later passage he said,

> " For the very idea that one man may be compelled to hold his " life, or the means of living, or any material right essential to the " enjoyment of life, at the mere will of another, seems to be intolerable " in any country where freedom prevails, as being the essence of " slavery itself."

We are unable to see in what respects the 2nd respondent can derive any assistance from the principles governing the decisions in the American cases. The statutes in question were interpreted by the Supreme Court of the United States according to the language used. Having given a meaning to the statute, after applying the ordinary canons of interpretation, the Court had next to find whether the statute had the effect of taking away a fundamental right guaranteed by the Constitution to a citizen or an alien, as the case may be. Undoubtedly, in the case of *Yick Wo* v. *Hopkins* 118 U.S. 256 ; 30 Lawyers' Edition 220 evidence was taken of the number of Chinese who were affected by the Ordinances of the City of San Francisco. That was not for the purpose of interpreting the impugned ordinances but as evidence to sustain the allegation that, even if the ordinances were not bad on their face, they were administered so oppressively as to infringe a fundamental right given by the Constitution.

Before leaving the American decisions we wish to refer to the case of *William* v. *State of Mississippi* 170 U.S. 214 : 42 Lawyers' Edition 1012 on which the Attorney-General relied in support of his argument that one must look at the statute to see whether on the face of it the legislation is discriminatory. The question for decision was whether the laws of the State of Mississippi by which the grand jury selected to try Williams, who was a negro, on a charge of murder were repugnant to the 14th Amendment of the Constitution of the United States.

The right to be a grand or petit juror was linked to the right to vote in the State of Mississippi. The words of the section are :—

> " No person shall be a grand or petit juror unless a qualified elector " and able to read and write ; but the want of any such qualification " in any juror shall not vitiate any indictment or verdict. The " legislature shall provide by law for procuring a list of persons so " qualified, and the drawing therefrom of grand and petit jurors for " each term of the circuit Court."

The law by which an addition was made to the qualifications provided :—

" On and after the first day of January, 1892, every elector shall " in addition to the foregoing qualifications, be able to read any " section of the Constitution of this State ; or he shall be able to " understand the same when read to him or give a reasonable " interpretation thereof . . . ."

It was urged against the validity of the laws governing the franchise that, under the section last quoted, it was left solely to an administrative officer to judge who was qualified, and that it was open to him arbitrarily to judge that a person was not qualified, though in fact he was.

While there was an allegation that certain election officers in making up lists of electors exercised their discretion against negroes as such, the actual position was that jurors were not selected from any lists furnished by such election officers.

It was held that the laws in question were not invalid for the reason stated succinctly in the concluding words of the judgment,

" They do not on their face discriminate between the races and " it has not been shown that their actual administration was evil, only " that evil was possible under them."

In our opinion the decisions in the three cases relied on by Counsel do not support the proposition for which he contended, namely, that it is proper to travel outside the language of the impugned enactments, and to take evidence as to whether or not, in their ultimate effect, they are of a discriminatory character. After a careful consideration of all these authorities we have come to the conclusion that if s. 3 (1) (a) of the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, read with the Citizenship Act, No. 18 of 1948, does not offend against s. 29 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, it does not matter what effects they produce in their actual operation.

We shall now proceed to examine the two impugned Acts and to see whether they violate the provisions of s. 29. The Citizenship Act No. 18 of 1948 was enacted after various commonwealth conferences in which representatives of Canada, Australia, New Zealand, Southern Rhodesia, India, Pakistan and Ceylon took part. Among the most significant features of the Citizenship Act is one that provides a definition of a citizen of Ceylon. S. 4 (1) says that a person born before the appointed date, that is November 15, 1948, the date on which the Act came into operation, shall have the status of a citizen of Ceylon by descent if

(a) his father was born in Ceylon or

(b) his paternal grandfather and paternal great grandfather were born in Ceylon.

S. 4 (2) says that a person born outside Ceylon before the appointed date shall have the status of a citizen of Ceylon by descent if

(a) his father and paternal grandfather were born in Ceylon or

(b) his paternal grandfather and paternal great grandfather were born in Ceylon.

No. 12. Judgment of the Supreme Court, 28th September 1951—*continued.*

Section 5 (1) says that a person born in Ceylon on or after the appointed date shall have the status of a citizen of Ceylon by descent if at the time of his birth his father is a citizen of Ceylon.

It is not disputed that these sections confer a " privilege " or an " advantage " on those who are or became citizens of Ceylon within the meaning of s. 29 (2) (c) of the Constitution.

When the language of sections 4 and 5 is examined it is tolerably clear that the object of the legislature was to confer the status of citizenship only on persons who were in some way intimately connected with the country for a substantial period of time. With the policy of the Act we are not concerned, but we cannot help observing that it is a perfectly natural and legitimate function of the legislature of a sovereign country to determine the composition of its nationals. Section 3 (1) (a) of the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, links up with the Citizenship Act and says that anyone who is not a citizen or has not become a citizen is not qualified to have his name entered or retained in the register. It restricts the franchise to citizens. Can it be said that these two provisions, the words of which cannot in any shape or form be regarded as imposing a communal restriction or conferring a communal advantage, conflict with the prohibition in s. 29 of the Constitution ? This is the simple question for our decision. In approaching the decision of this question it is essential that we should bear in mind that the language of both provisions is free from ambiguity and therefore their practical effect and the motive for their enactment are irrelevant. What we have to ascertain is the necessary legal effect of the statutes and not the ulterior effect economically, socially or politically.

Section 29 (2) was enacted for the first time in the Ceylon (Constitution) Order in Council, 1946. The Attorney-General conceded, we think rightly, that the Indians are a contemplated community and that citizenship and the franchise are contemplated benefits. The language of the section is clear and precise and it is, therefore, not permissible for us to travel outside it to ascertain the object of the legislature in enacting it. We are of opinion that, even if it was the intention of the Soulbury Commission to make s. 29 (2) a safeguard for minorities alone, such intention has not been manifested in the words chosen by the legislature. In *Brophy* v. *The Attorney-General of Manitoba* (1895) A.C. 202 the Lord Chancellor said :—

> " The question is not what may be supposed to have been intended " but what has been said."

Section 29 (3) declares any law made by Parliament void if it makes

> (1) persons of any community liable to disabilities or restrictions ;
>
> (2) to which persons of other communities are not made liable.

The conditions for the avoidance of a law under this provision are both (1) and (2). If (1) is satisfied in any particular case but not (2) the law is not void. Both conditions must exist to render the law void. If a law imposing disabilities and restrictions expressly or by necessary implication applies to persons of a particular community or communities and not to

others, then such a law would undoubtedly be void, because in such acase both conditions (1) and (2) would be satisfied. If, however, a law imposes disabilities and restrictions when certain facts exist (or certain facts do not exist) and these disabilities and restrictions attach to persons of all communities when these facts exist (or do not exist as the case may be) then condition (2) is not satisfied for the reason that the disabilities and restrictions are imposed on persons of all communities. The same reasoning applies to s. 29 (2) (c) if the law is regarded as conferring privileges or advantages on persons of any community or communities because the law confers privileges and advantages on persons of any other community in the same circumstances. We think it is irrelevant to urge as a fact that a large section of Indians now resident in Ceylon are disqualified because it is not the necessary legal effect which flows from the language of the Act. Hence condition (1) is not satisfied. Even if this argument can be urged, it is clear to us that persons of other communities would be similarly affected, because the facts which qualify or disqualify a person to be a citizen or a voter have no relation to a community as such but they relate to his place of birth and to the place of birth of his father, grandfather or great grandfather which would equally apply to persons of any community. Hence condition (2) is not satisfied.

The 1st respondent has made a fundamental error in travelling outside the language of the statutes to ascertain their meaning. He appears to have considered that the proper mode of approach was to gather the intention of the legislature in passing the impugned statutes by first reading the minds of the Commissioners appointed to recommend constitutional changes rather than by examining the language of the statutes and what its plain meaning conveys. He says,

> " In order to answer the questions arising in this case it is necessary " to see what has been the development of the franchise law in this " country. As stated by Lord Sumner in *Attorney-General for Alberta* " v. *Attorney-General for Canada*, ' It is quite legitimate to look at the " ' legislative history as leading up to the measure in question.' "

It seems to us that the inherent power of a sovereign state to determine who its citizens should be and what qualifications they should possess to exercise the franchise was a consideration more germane to the issues before him than a perilous expedition to the political controversies of the past. After reading the Soulbury Commission Report and the connected Sessional Papers he seems to have formed the opinion that s. 29 was intended to be a safeguard for minorities. He then appears to have examined the affidavit P1 made by the 2nd respondent and to have been influenced by the statement in it that thousands of Indians domiciled in Ceylon have had their names deleted from the register of electors " by the simple expedient " of deleting practically all non-Sinhalese names " and regarded the action of the registering officers as part of the legislative plan to discriminate against the Indians. It is important to note that no materials were placed before him, assuming that such materials were relevant to the issues which he had to try, as to how many of the persons whose names were arbitrarily

No. 12. Judgment of the Supreme Court, 28th September, 1951— *continued.*

expunged were entitled to be restored to the register. He has overlooked the fact that when an enactment is put into force one community may be affected by it more adversely than another. A high income or property qualification may affect more adversely the voting strength of one community than another. Would that be discrimination ? If the effects of a controversial piece of legislation are weighed in a fine balance not much ingenuity would be needed to demonstrate how, in its administration, one community may suffer more disadvantages than another. To embark on an inquiry, every time the validity of an enactment is in question, into the extent of its incidence, whether for evil or for good, on the various communities tied together by race, religion, or caste would be mischievous in the extreme and throw the administration of Acts of the legislature into confusion. The 1st respondent appears to hold the view that the Indians who were qualified for the franchise under the laws prior to the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, had acquired a vested right to continue to exercise the franchise and that if any legislation, in its administration, had the effect of taking away the franchise from large sections of the community, such legislation would for that reason be discriminatory. This view cannot be supported. The Parliament of Ceylon has the power to alter the electoral law in any manner it pleases if it thinks it necessary to do so for the good government of the country subject to the narrow limitation in s. 29. It has the power to widen or to narrow the franchise. If it widens the franchise the more advanced communities may feel that they are affected, on the other hand if it narrows the franchise the less advanced communities may also feel they are adversely affected. If it is open to a person to say that as a result of the alteration the voting strength of his community has been reduced, as the Attorney-General remarked Parliament will only have the power to pass legislation as to what the polling hours or the polling colours should be.

The 1st respondent has relied on a passage in the judgment of Frankfurter, J., in *Lane* v. *Wilson*, 307 U.S. 268 : 83 Lawyers' Edition 1281, as showing that the Citizenship Act on which the franchise was made to depend was as objectionable as the " grandfather clause " which was declared in *Frank Guinn and J. J. Beal* v. *United States*, 238 U.S. 347 : 59 Lawyers' Edition 1340, to be a violation of the 15th Amendment of the Constitution. We think that comparison between the Oklahoma legislation and the Citizenship Act is ill-founded. The provision in the Oklahoma Constitution which was attacked in *Lane* v. *Wilson*, 307 U.S. 268 : 83 Lawyers' Edition 1281, had a tainted history and, besides, manifested on its face an intention to nullify the consequences of the decision in *Frank Guinn and J. J. Beal* v. *The United States*, 238 U.S. 347 : 59 Lawyer's Edition 1340. The Oklahoma Statute and the Citizenship Act present different problems of interpretation, having regard to both the language used in the Statutes and the fundamental rights assured by the Constitution of the United States which have no place in our Constitution.

For these reasons we are of opinion that ss. 4 and 5 of the Citizenship Act No. 18 of 1948, and s. 3 (1) (a) of the Ceylon (Parliamentary Elections)

Amendment Act, No. 48 of 1949, are not invalid and that the latter enactment contains the law relating to the qualification of voters.

In conclusion we would wish to express our appreciation of the assistance given to us by learned Counsel who argued the case before us.

We quash the order made by the 1st respondent on July 2, 1951 and remit the record to him so that he may make a fresh determination on the basis that neither sections 4 and 5 of the Citizenship Act, No. 18 of 1948 nor s. 3 (1) (a) of the Ceylon (Parliamentary Elections) Amendment Act No. 48 of 1949, is void under s. 29 (3) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947.

The 2nd respondent will pay the petitioners one set of costs in this Court.

No. 12. Judgment of the Supreme Court, 28th September, 1951—*continued.*

Sgd. E. G. P. JAYETILEKE,
Chief Justice.

Sgd. M. F. S. PULLE,
Puisne Justice.

Sgd. ST. C. SWAN,
Puisne Justice.

No. 13.

No. 13. Order of the Supreme Court Granting Leave to Appeal to Privy Council, 5th December, 1951.

Order of the Supreme Court Granting Leave to Appeal to Privy Council.

GEORGE THE SIXTH, by the Grace of God of Great Britain Northern Ireland and the British Dominions beyond the Seas King, Defender of the Faith.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

GOVINDAN SELLAPPAH NAYAR KODAKAN PILLAI of 220 Yatiyantota ... ... *Appellant*

against

1. PUNCHI BANDA MUDANAYAKE, Assistant Registering Officer for Electoral District No. 84 (Ruanwella) Kegalle.
2. VICTOR LLOYD WIRASINGHA, Commissioner of Parliamentary Elections, Colombo
3. NAMASIVAYAMPILLAI SIVAGNANASUNDERAM, Revising Officer for Electoral District No. 84 (Ruanwella) Kegalle *Respondents.*

S.C. Applications Nos. 368 and 369.

In the Matter of an application by the Appellant abovenamed dated 8th November, 1951, for Final Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 28th September, 1951.

No. 13. Order of the Supreme Court Granting Leave to Appeal to Privy Council, 5th December, 1951—*continued.*

This matter coming on for hearing and determination on the 30th day of November, 1951, before the Hon. Mr. E. F. N. Gratiaen, K.C., Puisne Justice, and the Hon. Mr. M. F. S. Pulle, K.C., Puisne Justice of this Court, in the presence of Counsel for the Petitioner and Respondent.

The Applicant having complied with the conditions imposed on him by the order of this Court dated 25th October, 1951, granting Conditional Leave to Appeal.

It is considered and adjudged that the Applicant's application for Final Leave to Appeal to His Majesty the King in Council be and the same is hereby allowed. 10

Witness the Hon. Sir Alan Edward Percival Rose, Kt. K.C., Chief Justice at Colombo, the 5th day of December in the year of Our Lord One thousand nine hundred and fifty-one, and of Our Reign the fifteenth.

Sgd. W. G. WOUTERSZ,
Dy. Registrar, S.C.

In the Privy Council.

No. 7 of 1952.

ON AN APPEAL FROM THE SUPREME COURT OF CEYLON.

GOVINDAN SELLAPPAH NAYAR
KODAKAN PILLAI

~~*Plaintiff*~~ *Appellant*

versus

1. PUNCHI BANDA MUDANAYAKE
2. VICTOR LLOYD WIRASINGHA
3. NAMASIVAYAMPILLAI SIRAGNANASUNDERAM

~~*Defendants*~~ *Respondents.*

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