1951 *Present:* **Jayetileke C.J., Pulle J. and Swan J.**

MUDANAYAKE *et al.*, Petitioners, *and* SIVAGNANASUNDERAM *et al.*, Respondents

S. C. 368 AND 369—APPLICATIONS FOR WRITS OF CERTIORARI UNDER SECTION 42 OF THE COURTS ORDINANCE BY P. B. MUDANAYAKE, ASSISTANT REGISTERING OFFICER, ELECTORAL DISTRICT NO. 84 (RUWANWELLA), AND BY V. L. WIJESINHA, COMMISSIONER OF PARLIAMENTARY ELECTIONS, COLOMBO, ON (1) N. SIVAGNANASUNDERAM, REVISING OFFICER FOR ELECTORAL DISTRICT NO. 84 (RUWANWELLA), AND (2) G. S. N. KODAKAN PILLAI

Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, s. 3 (1) (a)—Citizenship Act, No. 18 of 1948, ss. 2, 4 and 5—Discriminatory legislation—Meaning of—Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, s. 29—Certiorari—*Scope of writ—Admissibility of fresh evidence.*

Section 3 (1) (*a*) of the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, read with sections 4 and 5 of the Citizenship Act, No. 18 of 1948, is not discriminatory legislation imposing a communal restriction on the Indian community in Ceylon, and does not therefore offend against section 29 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947. The language of both provisions is free from ambiguity and, therefore, their practical effect and the motive for their enactment are irrelevant.

Where the language of a statute speaks clearly for itself, it is not permitted to rely on extraneous evidence in support of an interpretation which the words of the statute do not warrant.

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.

When an officer who is appointed under section 9 of the Parliamentary Elections Order in Council, 1946, to decide the question whether a claimant for registration as a voter is qualified to be a voter under the law proceeds to decide the particular case before him on the footing of an erroneous decision on the preliminary question as to what is the law which lays down the qualification of voters, he acts outside his jurisdiction and becomes amenable to a writ of *certiorari*.

In *certiorari* matters affidavits or any other kind of evidence is receivable in the Supreme Court only when there is an objection as to jurisdiction on the ground of disqualification of the members of the inferior Court, or on the ground of their bias or interest in the subject-matter. Apart from such questions of jurisdiction, a party is not entitled to produce fresh evidence to supplement that which is on the record.

THESE were two applications for writs of *certiorari* in respect of an order made by the Revising Officer for Electoral District No. 84 (Ruwanwella).

Sir Alan Rose, K.C., Attorney-General, with *T. S. Fernando* and *Walter Jayewardene*, Crown Counsel, for the petitioners, objected to a motion of the 2nd respondent to produce three affidavits.—These affidavits have not been served on the petitioners concerned. They are also inadmissible on two grounds. Firstly, they are irrelevant. The affidavits are mainly statistical and purport to show that the statute

was harsh on a certain community. If the language of a statute is not capable of an interpretation in conflict with a prohibition then statistics are irrelevant. An educational test, for example, may affect a large number of a particular community. Still the statute is not bad. The numbers affected are not relevant. Therefore these affidavits are irrelevant. Secondly, material not placed before the inferior Court cannot be put forward before the superior Court under a writ of *Certiorari* except where the question of jurisdiction is raised. Where the inferior Court was not qualified or was biassed or interested, then affidavits are receivable. See the judgment of Lord Sumner in *R. v. Nat Bell Liquors Ltd.* [1] and the judgment of Lord Goddard in *R. v. Northumberland Compensation Appeal Tribunal* [2].

S. J. V. Chelvanayakam, K.C., with *S. Nadesan, C. Vanniasingham, S. Canagarayer*, and *E. R. S. R. Coomaraswamy*, for the 2nd respondent.—This Court is not sitting in appeal over the judgment of the inferior Court. The Revising Officer had jurisdiction to say whether the statutes were *ultra vires*. This Court cannot question that.

[PULLE J.: Do you say that the Writ of *Certiorari* does not lie?]

We admit it lies, but we say that it lies within a certain ambit. This Court cannot revise the judgment of the Revising Officer. If this Court is to decide whether the statutes are *ultra vires* or *intra vires* then this fresh material is admissible.

[JAYETILEKE C.J.: Why did you not place this material before the lower Court ?]

It was not available at the time. Evidence of extraneous matter was taken in cases similar to the present case. See *Attorney-General of Alberta v. Attorney-General of Canada* [3]. If there was a want of jurisdiction, or if there was such a fundamental error of law as to be equivalent to want of jurisdiction, evidence could then be led.

[JAYETILEKE C.J. referred to *Estate and Trust Agencies v. Singapore Improvement Trust* [4].]

The question is what is the law applicable. The determination of what is the law in this case depends on facts. What is now sought to be put before Court were facts on which depended the determination of the law.

Sir Alan Rose, K.C., in reply, cited *C. S. Krishnaswamy Ayyar v. Mohanlal Binjani* [5]. Lord Sumner in *R. v. Nat Bell Liquors, Ltd.* (*supra*) only refers to excess of actual jurisdiction not constructive jurisdiction. Evidence is only rationally admissible where there is an excess of actual jurisdiction.

[The Court intimated that it would give its ruling on the admissibility of the affidavits at the conclusion of the main argument.]

Sir Alan Rose, K.C., Attorney-General, with *T. S. Fernando* and *Walter Jayewardene*, Crown Counsel, for the petitioners.—The question for decision is whether section 3 (1) (*a*) of the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, read with the Citizenship

[1] *(1922) 2. A. C. 128 at pp. 155, 160.*
[2] *(1951) 1 A. E. R. 268.*
[3] *(1939) A. C. 117 at p. 130.*
[4] *(1937) 3 A. E. R. 324.*
[5] *(1949) A.I. R. Madras 535 at p. 539.*

Act, No. 18 of 1948, is void because it offends against the prohibition contained in section 29 of the Ceylon (Constitution and Independence) Orders-in-Council, 1946 and 1947.

The prohibition in section 29 must be limited to any community as such. The test is the mere language of the prohibition itself—*Brophy v. The Attorney-General of Manitoba* [1]. A man must be able to say that he belonged to a particular community which was adversely affected by a provision of law. In looking at the effect of a statute one must look at the language and its necessary implications. The incidental effects of the statute, whether social, economic or political, are irrelevant in considering the validity of an Act. See Lord Porter's judgment in *Commonwealth of Australia v. Bank of New South Wales* [2] and Lord Atkin's judgment in *James v. Cowan* [3].

In certain cases one can travel outside the statute, that is where the reference is oblique or where the language is ambiguous. The Acts impugned in the present case bear no oblique reference to any community as such. In this connexion see the American cases *Williams v. State of Mississippi* [4] ; *Myers v. Anderson* [5] ; *Frank Guinn and J. J. Beal v. United States* [6]. Further, the authorites make it abundantly clear that where, as in the present case, there is no ambiguity on the face of the impugned statute the Court must confine itself to the statute for the purpose of interpreting it. See 31 *Halsbury (Hailsham ed.)* p. 480 ; *Craies' Statute Law*, 4th ed., p. 118 ; *Maxwell's Interpretation of Statutes*, 9th ed., p. 29 ; Lord Birkenhead's judgment in *Sutters v. Briggs* [7] ; Lord Wright's judgment in *Assam Railways and Trading Co. Ltd. v. Commissioner of Inland Revenue* [8] : *Administrator-General of Bengal v. Premlal Mullick* [9] ; and *Megh Raj v. Allah Rakhia* [10].

In America a statute may be assailed on two grounds. Firstly, the Act itself may be in conflict with a prohibition. Secondly, the operation or administration of the Act may be bad. In Ceylon, as in England, an administratively discriminatory Act is not an infrangement of the Constitution. In the present case the Revising Officer was misled by his failure to distinguish the Canadian cases and the other class of cases. See *James v. Commonwealth of Australia* [11]. Canada has a Central Legislature and Provincial Legislatures. Matters which could be dealt with by these separate Legislatures have been canalized, so to speak, by sections 91 and 92 of the British North America Act, 1867. The special technique evolved by the Canadian Courts in dealing with problems arising in cases of conflict under the Canadian Constitution cannot therefore be applied in Ceylon, where the Legislature has everything as a "permitted field", subject to the prohibition in section 29. See in this connexion *Wynes' Legislative and Executive Powers in Australia*, p. 46.

If in its operation an Act more adversely affected certain communities it does not necessarily mean that the Act itself is bad. The Court has

[1] *(1895) A.C. 202 at p. 215.*
[2] *(1950) A. C. 235 ; (1949) 2 A. E. R. 769.*
[3] *(1932) A. C. 558.*
[4] *170 U. S. 214.*
[5] *238 U. S. 367.*
[6] *238 U. S. 347.*
[7] *(1922) 1 A. C. 8.*
[8] *(1935) A. C. 445 at p. 457.*
[9] *(1895) L. R. 22 I. A. 107 at p. 118.*
[10] *(1942) A. I. R. Federal Court p. 27.*
[11] *(1936) A. C. 578 at p. 610.*

to consider only the legal effect of the Act, not its social or economic effects. What happened before an Act was passed or what happened after is irrelevant if the Act itself is plain and unambiguous.

In the present case, before a Court could be asked to hold an Act was void the second respondent had to establish two facts—first that the impugned Act imposed a disability on persons of a particular community, and second, that it did not impose the same disability on persons of other communities. The second respondent fails on both.

No appearance for the first respondent.

S. J. V. Chelvanayakam, K.C., with *S. Nadesan, C. Vanniasingham, S. Canagarayer* and *E. R. S. R. Coomaraswamy*, for the 2nd respondent.—The question is whether section 29 of the Ceylon (Constitution and Independence) Orders-in-Council, 1946 and 1947, is plain and unambiguous. Within the words of the section many interpretations are possible. What the Court has to consider is a purely legal matter, but the Court has to consider political facts—such as political history, political rights, political disputes—in arriving at the reason for the inclusion of section 29 in the Constitution. With regard to the sources of construction which may be referred to in construing a statute see the " Solio " case, *The Eastman Photographic Materials Co. Ltd. v. The Comptroller General of Patents* [1]. Section 29 was a limitation of the legislative powers of the Legislature of Ceylon. The Constitution has to be looked at as a whole to see the scope of section 29. It is necessary to consider the context in which section 29 was framed. The section was meant to protect the interests of minority communities. In the present case the question the Court has 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, offended section 29 of the Ceylon (Constitution and independence) Orders-in-Council, 1946 and 1947. That question could not be answered by merely looking at the face of the two statutes. The Legislature could enlarge or narrow down the franchise only if it was in conformity with section 29.

In some cases the question as to whether a piece of legislation was *ultra vires* or not is apparent on the face of it. In other cases the Court has to consider the evidence as to the legal effect of the piece of legislation complained of. See *Attorney-General of Alberta v. Attorney-General of Canada* [2]. Involved in the question of the legal validity of an Act is the question of its legal effect—*Lane v. Wilson* [3]: *Yick Wo v. Hopkins* [4]. If a statute is clear on the face of it but has a hidden effect, then it is competent for the Court to consider evidence to ascertain the real purpose of the statute. See *Fred Y. Oyama v. State of California* [5].

S. Nadesan, continued for the 2nd respondent—In interpreting section 29 it might be necessary to refer to some extraneous evidence or to take judicial notice of any particular fact of which judicial notice may be taken. The conferment of a benefit on a community may be apparent in the language of the statute. But there may be a case in which the language itself does not show a discrimination. The point is what the

[1] *(1898) A. C. 571 at P. 573.*
[2] *(1939) A. C. 130.*
[3] *307 U. S. 268.*
[4] *118 U. S. 256.*
[5] *332 U. S. 633.*

statute does and not what it says. One has to find out the meaning of a statute from its contents and its historical circumstances. For the purpose of ascertaining whether the word " confer " in section 29 contemplates conferment by language or conferment in fact, and for the purpose of finding out what " community " means, it is necessary to look at the legislation and to examine the circumstances under which the legislation came to be passed, so far as those circumstances appear in documents and papers which the Court is entitled to look into—*Maxwell's Interpretation of Statutes, 9th ed., p. 20 et. seq.; Kuma v. Banda* [1].

[JAYETILEKE C.J.: What are the papers you want us to read ?]

The Report of the Donoughmore Commission, the Report of the Soulbury Commission, the Ministers' Memorandum, the Despatch of Sir Herbert Stanley (Sessional Paper 34 of 1929), and the Royal Instructions issued in consequence of the Donoughmore Constitution Report.

The dicta of Lord Porter in *Commonwealth of Australia v. Bank of New South Wales (supra)* do not mean that one has to look at the language of the statute alone. One has also to consider the direct effect of the enactment. This direct effect is to be distinguished from the ulterior effect, legally or socially, which has been ruled out as inadmissible. The Citizenship Act says that only persons born before a certain date can become citizens. This is discriminatory. Irrespective of whether the Citizenship Act is *ultra vires* or not, the Elections Amendment Act is still *ultra vires* as it offended section 29 of the Constitution Order in Council. It deprives a large section of one community of the vote, while it does not so deprive any other community. A statute discriminates where it differentiates on a basis beyond an individual's control—see *34 Cornell University Law Quarterly, p. 432*, where American decisions are discussed. [Counsel also cited *Attorney-General for Ontario v. Reciprocal Insurers* [2] and *Wynes' Legislative and Executive Powers in Australia, p. 42.*]

Sir Alan Rose, K.C., in reply.—With regard to the rule of interpretation used in the Canadian cases see Sir Maurice Gwyer's judgment in *A. L. S. P. P. L. Subrahmanyam Chettiar v. Muttuswami Gounden* [3]. The problem of conflict between sections 91 and 92 of the Canadian Constitution is entirely different from the problem in our Constitution—*Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna*[4]; *In the Matter of the C. P. and Berar Sales of Motor Spirit and Lubricants Taxation Acts, 1938* [5].

The principles stated in the American decisions are helpful though those decisions are not binding on this Court. It is intellectually comforting to know that the American Supreme Court, when considering the interpretation of statutes, adopted the same rule that Lord Porter had crystallized in *Commonwealth of Australia v. Bank of New South Wales (supra)*.

[1] *(1920) 21 N. L. R. 294.*
[2] *(1924) A. C. 328 at pp. 337, 339.*
[3] *(1941) A. I. R. (F. C.) 47 at p. 51.*
[4] *(1947) A.I. R. (P. C.) 60 at p. 65.*
[5] *(1939) A. I. R. (F. C.) 1 at p. 5.*

Even if the Soulbury Commission intended to safeguard the minorities still the language of section 29 does not say so. It would have been simple to draft legislation that no law must be passed to interfere with the voting strength of a community. But this was not done.

The Elections Amendment Act connects up the Citizenship Act with the vote. The Citizenship Act can only be bad if there is something communal in it. The Amendment Act can only be bad if the Citizenship Act is bad. All that the Amendment Act did was to say that no one could vote who was not a Ceylon citizen. There is nothing communal in that. Section 5 and, indeed, section 4 of the Citizenship Act are discriminatory, but not discriminatory of a particular community. There is nothing in our law to prohibit the passing of discriminatory statutes. The Legislature can pass a law limiting the franchise to men. That would be discriminatory, but not against any particular community. The fact that a statute factually operates more harshly on one community than on another is a political matter and is not the concern of the Court.

Cur adv. vult.

September 28, 1951.

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. 12 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 statement 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 Counlil, 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.

Ceritorari 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 " [1]. It is clear from the judgment of Earl Cairns, L. C., in *Walsall Overseers Ltd. v. London & North Western Railway Co.* [2], 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.*[3] and *R. v. Northumberland Tribunal* [4]

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, thereafater, proceeds to decide

[1] *9 Halsbury 2nd ed. s. 142v.*
[2] *(1878) 4 A. C. 30.*
[3] *(1922) 2 A. C. 128.*
[4] *(1951) 1 All E. R. 268.*

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* [1]. 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 appellan company, the responded trust submitted the declaration to the Governor in Council for approval 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 fnuctions.

(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 charge with the performance of certain duties, to which a writ of prohibition could apply. I 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.[2] at page 160,

"The matter has often being 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 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 matter 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* [3] 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

[1] *(1937) 3 All E. R. 324.* [2] *(1922) 2 A. C. 128.*
[3] *(1951) 1 All E. R. 268.*

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, 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 sub-section* (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 trade 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, 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—*

(a) is not a British subject, or is by virtue of his own act, under any acknowledgment 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 named 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

(f) 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:—

(1) 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 an 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 Election) 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*[1]. 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.*[2]:

' 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*[3]:

' 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. '

[1] (*1949*) *2 All E. R. 769.* [2] (*1897*) *A. C. 38.*

[3] *43 C. L. R. 409.*

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 ' ''.

It appears to us to be fairly clear from the English decision 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 two Acts.

The first Canadian case was *Attorney-General of Alberta v. Attorney-General of Canada and others* [1]. 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 " savings 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* [2]. 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

[1] (*1939*) *A. C. 117.* [2] (*1899*) *A. C. 580.*

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.*[1] 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 determining 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

[1] *(1924) A. C. 328.*

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 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* [1]:

> " 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 intertwined 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* [2] 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."

[1] *(1947) 34 A. I. R. 60 (P. C.)*
[2] *238 U. S. 347 : 59 Lawyers' Edition 1340.*

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 Amendment. 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 *Myers v. Anderson* [1] to be an infringement of the 15th 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 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 alone upon a purpose to violate the 15th Amendment."

The third case was *Yick Wo v. Hopkins* [2]. 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 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

[1] *238 U. S. 367 : Lawyers' Edition 1349.*
[2] *118 U. S. 256 : 30 Lawyers' Edition 220.*

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 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 circumstance of each case, but a naked and arbitrary power to give or withhold consent, not only as to places but also as to person ".

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* [1] 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 *Williams v. State of Mississippi* [2] 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."

[1] *118 U. S. 256 : 30 Lawyers' Edition 220.*
[2] *170 U. S. 214 : 42 Lawyers' Edition 1012.*

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.

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 section 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* [1] 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

[1] *(1895) A. C. 202.*

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 a case 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 section 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 first 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 section 29 was intended to be a safeguard for minorities. He then appears to have examined the affidavit P1 made by the second 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 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 first 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 section 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* [1] 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* [2] to be a violation of the 15th Amendment of the Constitution. We think that the 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* [1] 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* [2]. 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 Elec-

[1] *307 U. S. 268 : 83 Lawyers' Edition 1281.*
[2] *238 U. S. 347 : 59 Lawyers' Edition 1340.*

tions) 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.

Applications allowed.