1948 *Present :* **Basnayake J.**

GUNARATNE, Appellant, *and* BABIE, Respondent.

S. C. 370—M. C. Panwila, 3,598.

Maintenance Ordinance—Corroboration of applicant's story—Incidents after alleged intimacy—Section 6.

The corroboration required by section 6 of the Maintenance Ordinance may be afforded by evidence as to incidents which took place even after the time of the alleged sexual intimacy.

APPEAL from a judgment of the Magistrate, Panwila.

C. V. Ranawake, with *A. B. Perera* and *Wimalachandra,* for the appellant.

Cyril E. S. Perera, with *B. D. Gandevia,* for the respondent.

Cur. adv. vult.

November 12, 1948. BASNAYAKE J.—

This is an action for maintenance. The applicant, who is the respondent to this appeal, claims maintenance in respect of her illegitimate child from the appellant who she alleges is its father. The learned Magistrate has accepted the evidence of the applicant and her witnesses and ordered the appellant to pay Rs. 8 per month.

[1] *(1908) 12 N. L. R. 263.* [2] *Craies Statute Law (4th ed.) 290.*

It is urged on behalf of the appellant that the applicant's evidence is not corroborated as required by section 6 of the Maintenance Ordinance. That section provides that no order shall be made on an application for maintenance in respect of an illegitimate child on the evidence of the mother of such child unless she is corroborated in some material particular by other evidence to the satisfaction of the Magistrate.

In the instant case there is not only the evidence of the applicant but also the evidence of two other witnesses which goes to show that at the material time there was sexual intimacy between the applicant and the appellant. It has been held in the case of *Ponnammah v. Seenitamby* [1] that it is sufficient if the corroborative evidence relates to the sexual intimacy between the applicant and the defendant.

As the learned Magistrate regards the other evidence as merely supporting the oral evidence which he accepts, it is not necessary to discuss that aspect of the case in detail. The learned Magistrate accepts the evidence of the witnesses, whose veracity he does not doubt.

I see no sufficient reason to interfere with the learned Magistrate's finding. As was observed by Shaw J. in *Sinaval v. Nagappa* [2] : " Maintenance cases are in the nature of civil proceedings, and the Court of Appeal, although sitting by way of re-hearing, ought to give very great weight to the finding of fact of the Magistrate who has seen the witnesses, and ought not to reverse his decision on a question of fact, unless it is clear from the evidence or from some undisputed fact that he has gone wrong ".

The respondent impugns the documents produced by the applicant as forgeries but makes no effort to prove his allegation. It is not sufficient to merely allege that a document which appears to be genuine *ex facie* is a forgery. The person impugning the document must prove that it is a forgery.

In regard to the evidence of certain incidents which occurred after the conception, I think I should refer to the case of *Dona Carlina v. Jayakoddy* [3] which learned counsel for the appellant cited. That case cannot in my view be regarded as laying down a rigid rule that corroboration can in no case be afforded by incidents which take place after sexual relations have ceased. Section 6 of the Maintenance Ordinance imposes no limitation on the nature of the corroborative evidence that may be adduced. The only requirement of that section is that the mother's evidence must be corroborated in some material particular by other evidence to the satisfaction of the Magistrate. The case of *Van Der Merwe v. Nel* [4] contains a full discussion, with reference to English, Scottish and South African decisions, of the question of corroboration in proceedings for maintenance. The view expressed by De Waal J. P. in that case that corroboration may be afforded by evidence as to incidents at the time of the alleged sexual intimacy, prior to it, or after it, in my opinion lays down the true limits of corroborative evidence that an applicant under the Maintenance Ordinance may rely on.

The appeal is dismissed with costs.

Appeal dismissed.

[1] *(1921) 22 N. L. R. 395.*
[2] *(1916) 6 Balasingham's Notes of Cases 26.*
[3] *(1931) 33 N. L. R. 165.*
[4] *(1928–29) T. P. D. 551.*

1948 *Present :* **Wijeyewardene A.C.J., Canekeratne and Windham JJ.**

THAMBIAYAH, Appellant, *and* KULASINGHAM, Respondent.

ELECTION PETITION APPEAL NO. 1 OF 1948 ; ELECTION PETITION NO. 1 OF 1947. ELECTION FOR KAYTS ELECTORAL DISTRICT NO. 44 HOLDEN ON AUGUST 23, 1947. IN THE MATTER OF AN APPEAL UNDER SECTION 82A OF THE CEYLON (PARLIAMENTARY ELECTIONS) ORDER IN COUNCIL, 1946, AS AMENDED BY THE PARLIAMENTARY ELECTIONS (AMENDMENT) ACT, NO. 19 OF 1948.

Election petition—Company having contract with Crown—Is shareholder disqualified ?—Indirect benefit—Ceylon (Constitution) Order in Council, 1946, section 13 (3) (c)—Right of appeal from decision of Election Judge—Amendment of Ceylon (Parliamentary Elections) Order in Council, 1946—Isit ultra vires?—*Parliamentary Elections (Amendment) Act, No. 19 of 1948—Ceylon (Constitution) Order in Council, 1946, section 29 (4).*

Held : (i) A shareholder of a Company having a contract with the Crown for the providing of goods or services to be used in the service of the Crown cannot be said to enjoy indirectly a benefit under the contract and is therefore not a person who is disqualified under section 13 (3) (*c*) of the Ceylon (Constitution) Order in Council, 1946.

(ii) Section 29 (4) of the Ceylon (Constitution) Order in Council, 1946, requires a two-third majority for an amendment of the provisions of that Order and no other. A two-third majority is therefore not required for the amendment of the Parliamentary Elections Order in Council, 1946.

(iii) The provisions of the Parliamentary Elections Amendment Act, No. 19 of 1948, in so far as they give a right of appeal from the determination of the Election Judge, are *intra vires*.

(iv) The provisions of the Ordinance No. 19 of 1948, in so far as they relate to a report by the Supreme Court which embodies a finding that a corrupt or illegal practice has been committed, are *ultra vires*.

Kulasingham v. Thambiayah (1948) 49 N. L R. 505 overruled.

APPEAL from the judgment of the Election Judge in Election Petition, Kayts. The judgment of the Election Judge is reported in *(1948) 49 N. L. R. 505.*

The election of the appellant as Member of Parliament for the Electoral District of Kayts was declared void by the Election Judge on the ground that he enjoyed benefits under certain contracts with the Crown at the time of the election. Shortly thereafter, the Parliamentary Elections Order in Council, 1946, was amended by the Parliamentary Elections (Amendment) Act, No. 19 of 1948, enabling an appeal to a Bench of three Judges from an Election Judge's finding on a point of law. The appellant, thereupon, appealed.

The respondent, appearing in person, raised a preliminary objection to the jurisdiction of the Court in the matter of this appeal—The question involved is not only important in regard to this appeal but is also a matter of great constitutional importance. The objection to jurisdiction is based on two grounds : Firstly, sections 3 and 4 of the Parliamentary

1——J. N. A 83338–1,044 (10/48)

Elections (Amendment) Act, No. 19 of 1948, are repugnant to section 13 (3) (*h*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, and by reason of that fact involve an amendment or repeal of the said section 13 (3) (*h*) and, therefore, sections 3 and 4 of the amending Act are invalid and *ultra vires* as the amending Act has not been passed in accordance with the proviso to section 29 (4) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947. Secondly, the Ceylon (Parliamentary Elections) Order in Council, 1946, is consequential and additional to the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, and all these Orders-in Council form one enactment and, therefore, Act No. 19 of 1948 is invalid as it has not been passed in accordance with the proviso to section 29 (4) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947.

The first submission [referred to as the preliminary objection (*b*) in the judgment] proceeds on the assumption that the Ceylon (Parliamentary Elections) Order in Council, 1946, can be amended by an ordinary majority. The amending Act, No. 19 of 1948, was passed by the majority of 55 votes to 31 votes.

Section 13 of the Constitution and Independence Orders in Council, 1946 and 1947, is exhaustive of the disqualifications of Senators and Members of the House of Representatives. By section 13 (3) (*h*) a person who, by reason of a report of an election judge in accordance with the law for the time being in force is incapable of being registered as a voter, is disqualified from being elected or appointed as a Senator or a Member of the House of Representatives. Under sections 58 (2) and 72 (1) of the Parliamentary Elections Order persons guilty of corrupt and illegal practices are incapable of being registered as voters or elected as Members or Senators. Section 82 (3) of the same Order extends the disqualification to persons reported by the Election Judge as having committed corrupt or illegal practices. The amending Act, No. 19 of 1948, leaves intact sections 58 (2) and 72 (1). The definition of Election Judge under section 78 (2) has also been left unaltered. The Legislature must be taken to have given the expression " Election Judge " in the Constitution and Independence Orders the same meaning as it gave " Election Judge " in the Parliamentary Elections Order, 1946, *i.e.*, Chief Justice or any other Judge of the Supreme Court nominated by the Chief Justice to try an election petition. Sections 81 and 82 of the Parliamentary Elections Order governed the procedure to be followed in the matter of the certificate and report of the Election Judge and the finality of the order of the Election Judge is an integral part of section 13 (3) (*h*) of the Constitution Order, 1946. But the amending Act 19 of 1948 repeals sections 81 and 82 of the Parliamentary Elections Order and enacts new sections which make inoperative the report of an Election Judge in certain cases and which create a new disqualification for election or appointment of Senators and Members as a result of a report of the Supreme Court. For example, suppose an Election Judge held a candidate innocent of corrupt and illegal practice and the Supreme Court in appeal holds the candidate guilty of a corrupt or illegal practice and makes a report to that effect. Such a finding and report would clearly be repugnant to

Section 13 (3) (*h*). Thus it is clear that sections 3 and 4 of Act No. 19 of 1948 repeal and amend section 13 (3) (*h*) of the Constitution and Independence Orders, 1946 and 1947.

The respondent cited Jennings' *Law and the Constitution pp. 113–116; 51–55* and *Corpus Juris : An Encyclopædia of American Law, Vol. 12, p. 699.* However slight the amendment of 13 (3) (*h*) is the whole enactment No. 19 of 1948 is null and void as the whole purpose of the amendment is to enact sections 3 and 4 which destroy the finality of the order of the Election Judge.

On the second submission [referred to as preliminary objection (*a*) in the judgment] that Ceylon (Constitution) Order, 1946, and Ceylon (Parliamentary Elections) Order, 1946, form one enactment, one sees that by section 30 (4) of the Constitution Order, 1946, power to add to that Order is reserved to His Majesty so that it is quite reasonable to hold that the Parliamentary Elections Order is an addition to that Order. Further, numerous provisions of the two Orders are so closely knit together that one cannot understand the provisions of the one without reference to the provisions of the other. Again, the Constitution Order would have been useless unless the Parliamentary Elections Order was enacted. Constitution means not only the framework of the Constitution but also the method of election of representatives. See Jennings' *Law and the Constitution, p.* 27.

A. E. P. Rose, K.C., Attorney-General, with *M. Tiruchelvam, Crown Counsel,* and *N. D. M. Samarakoon, Crown Counsel,* as *amicus curiae.*—The submissions of the respondent are based on misconceptions both with regard to the general character of the provisions in the two enactments and also with regard to their particular character. The first misconception is that Ceylon has a rigid constitution and that there are certain fetters upon the Parliament of Ceylon. This is quite a baseless allegation. Subject to specific safeguards against discriminatory legislation on racial and religious grounds provided for by section 29 of the Constitution Order, which have been copied from the Canadian Constitution, the power of the Ceylon Parliament to legislate is supreme. Vide *Riel v. The Queen* [1]; *The British Coal Corporation v. The King* [2]; *The Attorney-General for Ontario v. The Attorney-General for Canada* [3].

The term "Election Judge" does not have the same meaning in the two enactments. The term is defined in the Parliamentary Elections Order but the meaning of Election Judge in the Constitution Order, section 13 (3) (*h*), is any Judge who deals with election matters.

Though the two enactments are closely connected there is a fundamental difference between the two Orders. The one deals with the principles of the Constitution, the other deals with mere details. Election law was never meant to be static. The amending Act, No. 19 of 1948, changes the election law and not the fundamentals of the Constitution. In cases of doubtful significance the interpretation which would be most reasonable for practical purposes should be adopted. See Maxwell on Interpretation of Statutes (9th ed.) 198.

[1] *L. R. (1885) 10 A. C. 675 at 678.*
[2] *L. R. (1935) A. C. 500 at 518.*
[3] *L. R. (1947) A. C. 127.*

H. V. Perera, K.C., with *C. S. Barr Kumarakulasinghe* and *Vernon Wijetunge*, for the appellant.—Taking the second submission of the respondent first, the proviso to section 29 (4) which requires the two-third majority for amending, for instance, section 13 (3) (*h*) refers to the provisions of " This Order ".—There is an exhaustive definition of "This Order" in section 1 of the Constitution Order, 1946. This definition makes it quite clear that the requirement of the two-third majority for amendment or repeal is only necessary for amending or repealing the provisions of the Constitution Order and not for amending or repealing any other Order including the Parliamentary Elections Order.

As regards section 13 (3) (*h*) of the Constitution Order it is quite clear that that section cannot be amended except by the two-third majority. But amending the general law on which the section operates is not an amendment of the section. Section 13 of the Constitution Order refers expressly and by necessary implication to various laws. There is nothing in that enactment which prohibited the laws referred to in section 13 being repealed, altered or amended by a simple majority. What section 13 (3) (*h*) requires is not merely the report of an Election Judge but a report of an Election Judge which disqualifies a person under the law for the time being. If there is no such report section 13 (3) (*h*) ceases to operate, but that is not amendment of the section.

The term "Election Judge" is not a term of art. That term is defined in the Parliamentary Elections Order for purposes of that Order. But in the Constitution Order there is no definition of the term Election Judge so that the meaning of the term must be gathered from the section itself. The meaning gathered from the section is that the Election Judge referred to in the section is any Judge who deals with election matters. The Supreme Court acting under the amending Act, No. 19 of 1948, would be the Election Judge in that respect. The question that the appellant was disqualified by the report of an Election Judge does not arise in this case as there is not and could not have been such a report. But supposing that before the amending Act was passed the report of an Election Judge had disqualified a person under the law for the time being in force. In such a case, as section 13 (3) (*h*) has already begun to operate, such amending Act would have been repugnant to section 13 (3) (*h*). The principles of repugnancy or conflict in operation would come into play and the provisions of 13 (3) (*h*) will prevail and the amending Act will be void to the extent of the repugnancy or conflict and to that extent alone. Counsel cited *The Bank of Commerce Kulna Limited v. Chowdhury* [1]; *Subramaniam Chettiar v. Muthuswami Gounden* [2] *Shyamakant Ali v. Rambhajen Singh et al.* [3]; *Mac Leod v. Attorney-General, New South Wales.* [4]

The respondent, in reply.—The Election Judge referred to in section 13 (3) (*h*) can be no other than the Election Judge referred to in the Parliamentary Elections Order because Part III. where section 13 (3) (*h*) occurs came into operation after the Parliamentary Elections Order. The jurisdiction created by the amending Act is quite different to the jurisdiction created by Parliamentary Elections Order. The distinction between

[1] *(1944) 31 A. I. R. (P. C.) 18 at 21.*
[2] *(1941) A. I. R. (P. C.) 47.*
[3] *(1939) A. I. R. (P. C.) 74.*
[4] *L. R. (1891) A. C. 455.*

the Supreme Court and the Election Judge is shown in the amending Act itself. On the question of severability the amending Act has to be taken as a whole or rejected as a whole. See *In re The Initiative and Referendum Act. On appeal from the Court of Appeal of Manitoba*[1] ; *Attorney-General for British Columbia v. Attorney-General for Canada*[2]. See also *Corpus Juris*, Vol. 59, p. 642.

H. V. Perera, K.C., addressed, at this stage, on the main appeal.—The only question to be decided is whether the appellant comes under the disqualification under section 13 (3) (*c*) of the Ceylon (Constitution) Order in Council. It is common ground that the appellant is a shareholder in a joint stock company which has contracts, with the Government, of the kind which come under the section 13 (3) (*c*).

The words used in the section are simple and the meaning of those words are perfectly clear. The words " directly or indirectly " are adverbial expressions and belong to " holds or enjoys " and not to " right or benefit ". The governing words are " right or benefit under the contract ". The thing that must be held or enjoyed is a right or benefit under the contract and nothing else. The expression " under the contract " has a restricted meaning. The right or benefit must be connected to the contract by a legal nexus. See *Jackson v. The Commissioner of Stamps*[1] on the interpretation of words " under the will ".

A joint stock company under our law has a separate legal existence. It has a legal *persona* quite distinct from the persons who are its shareholders—*Salomon and Company Limited v. A. Salomon*[4]. Shareholders have no rights in the assets of the Company. Their only right is to get the dividend if and when the directors declare a dividend—Palmer's Company Law edited by Topham, pp. 13 and 211 ; *Mercy Docks Case*[5]. The limited liability Company is a comparatively modern conception. The earlier Trading Companies were not limited liability Companies. Shareholders in the earlier Trading Companies or Corporations owned the assets of the Company or Corporation jointly, more or less as partners. See 1876 Edition of Blackstone's Commentaries, p. 20 and Chapter 20.

In interpreting section 13 (3) (*c*) English cases do not help at all as they deal with different phraseology. The only direct authority on the point is the judgment of Dias J. in *Saravanamuttu v. de Mel*[6]. The observations in that case are not *obiter* but were an answer to a direct issue in the case. That case is directly in point and entirely supports the appellant's contention.

The respondent.—There is no doubt that the language of section 13 (3) (*c*) is simple, but, as it often happens, the interpretation seems to be difficult. The English Courts have been for quite a long time considering this identical question of conflict between interest and duty in the case of members of Parliament and Local Bodies and, therefore, it is quite legitimate to seek assistance from English cases.

In article 9 (*d*) of the repealed Ceylon (State Council) Order in Council of 1931, there was a proviso specially exempting a shareholder of an

[1] *L. R. (1919) A. C. 935 at 944.*
[2] *L. R. (1937) A. C. 377 at 388.*
[3] *L. R. (1930) A. C. 350.*
[4] *L. R. (1897) A. C. 22 at 52–55.*
[5] *L. R. (1865) 11 H. L. 443.*
[6] *(1948) 49 N. L. R. 529 at 568.*

incorporated Company. There is no such proviso in section 13 (3) of the Constitution Order in Council of 1946. The preamble of the Constitution Order in Council shows that that Order was enacted on the general lines recommended by the Soulbury Commission. Paragraph 321 of Soulbury Commission's Report recommends that stricter rules shall be applied to Government contracts in which members of Parliament are interested. Under these circumstances, when one considers the intention of the Legislature, the omission of the proviso exempting shareholders of Trading Corporations is significant and cannot be overlooked. It is submitted that the proviso was omitted in the process of tightening up of rules with regard to interests of members in contracts with Government.

There is no difference between right or benefit under a contract and right, title and interest in a contract. The one expression may be and is used as well as the other to denote exactly the same thing. Obviously every indirect benefit from the contract does not come under the section. There is certainly a line of division including those benefits which come under the section and excluding those benefits which do not come under the section 13 (3) (*c*). That line of division is deducible from the wording of the section, judicial decisions in similar cases, and the reasons for the enactment. The following cases may be of assistance in this connection. *Everett v. Griffiths* [1] ; *Whiteley v. Barley* [2] ; *Moul and Mayeur v. Groen nigs* [3] ; *Todd v. Robinson* [4].

It is not sufficient to deal only with the legal aspect of a Company having a separate existence and not with factual considerations. Actually it is the shareholders who get all the benefits under the contract—18th Edition, Palmers' Company Law, pp. 6, 7, 9. See also 9th Edition, Maxwell on Interpretation of Statutes, pp. 336, 337.

A. E. P. Rose, K.C., Attorney-General.—The judgment of the trial Judge is not only wrong but also impractical. The policy of the law in all countries and especially in England has been to exempt shareholders of a joint stock company from disqualification of becoming members of Parliament and other representative bodies. This has been so in spite of opinions of Judges expressed in favour of such disqualification. See *Lapish v. Braithwaite* [5] ; *Todd v. Robinson* [6]. The Election Judge's decision is directly in opposition to the well-settled law in England with respect to the same subject-matter. It is submitted that the decision is not correct, but if the interpretation of the judge is one of two possible interpretations the interpretation which favours practical convenience should have been given. See 9th Edition of Maxwell on Interpretation of Statutes, p. 198 ; *Sinnott v. The Commissioner for Whitechapel District* [7]; *Hill v. East and West India Dock Company* [8].

H. V. Perera, K.C., in reply.—Reports of Commissions are only admissible, when they are admissible at all, for the purpose of finding out the

[1] *L. R. (1924) 1 K. B. 941 at 946 and 947.*
[2] *L. R. (1888) 21 Q. B. D. 154.*
[3] *L. R. (1891) 2 Q. B. 443 at 449.*
[4] *L. R. (1884) 14 Q. B. D. 739*
[5] *L. R. (1926) A. C. 275.*
[6] *L.R. (1884) 14 Q. B. D. 739.*
[7] *(1858) 27 L. J. R. (N. S.) (C. P.) 177.*
[8] *(1884) 53 L. J. (N. S.) (Equity), 842 at 845.*

mischief which a particular provision sought to remedy—*Perera v. Jayewardene* [1]; *Assam Railway and Trading Co. Ltd. v. Commissioner of Inland Revenue* [2].

Merely because the proviso takes in joint stock companies as well as other Trading Corporations it is a fallacy to hold that joint stock companies are taken in by the main provision. See *Guardians of the Poor West Derby Union v. Metropolitan Life Assurance Society* [3]. As regards meaning of " under " see *Mortgage Insurance Corporation Ltd. v. Pound and others* [4].

Cur. adv. vult.

October 28, 1948. WIJEYEWARDENE A.C.J.—

This is an appeal under section 82A of the Ceylon (Parliamentary Elections) Order in Council, 1946, as amended by the Parliamentary Elections (Amendment) Act, No. 19 of 1948.

The appellant was certified by the Returning Officer under section 50 of the Ceylon (Parliamentary Elections) Order in Council, 1946, as the member duly elected for the electoral district of Kayts held on August 23, 1947.

The respondent who was one of the unsuccessful candidates presented an election petition to have it declared that the appellant was not duly elected and that the election was void.

It was conceded at the trial that at the time of his election the appellant was a shareholder of the Cargo Boat Despatch Company, Ltd., incorporated in Ceylon in 1936, under the Joint Stock Companies Ordinance, 1861, and that the Company had entered into two contracts of the description referred to in section 13 (3) (*c*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947. The only ground on which the election of the appellant was impugned at the trial was that the appellant as such shareholder " indirectly enjoyed a benefit under those contracts ". The Election Judge held in favour of the respondent on that ground and gave his certificate under section 81 of the Ceylon (Parliamentary Elections) Order in Council, 1946, on September 13, 1948.

It is desirable at this stage to refer shortly to the various legislative provisions dealing with the Constitution and the Parliamentary elections in Ceylon.

The Ceylon (Constitution) Order in Council, 1946, of May 15, 1946, was published in the *Government Gazette* on May 17. Part III of that Order however came into operation on July 5, 1947. Section 13 which has to be considered on this appeal occurs in Part III. The Ceylon Independence Act, 1947, was passed on December 10, 1947, and was brought into operation on February 4, 1948, by the Ceylon Independence (Commencement) Order in Council, 1947. In order to give effect to the provisions of the Ceylon Independence Act, 1947, it was found expedient to amend the Ceylon (Constitution) Order in Council, 1946, and the

[1] *(1947) 49 N. L. R. 1.*
[2] *L. R. (1935) A. C. 445 at 449.*
[3] *L. R. (1897) A. C. 647.*
[4] *(1895) 64 L. J. Q. B. 394.*

Amending Orders, and the Ceylon Independence Order in Council, 1947, was passed on December 19, 1947, revoking and amending certain provisions of this order. That Order in Council and the Ceylon Independence Act came into operation on February 4, 1948. That Order together with the Ceylon (Constitution) Order in Council and the Amending Orders form the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947.

By the Ceylon (Electoral Registers) (Special Provisions) Order in Council which came into force on May 17, 1946, the Ceylon (State Council Elections) Order in Council, 1931, was kept alive with some small amendments until it was replaced by the Ceylon (Parliamentary Elections) Order in Council, 1946, which came into operation on September 25, 1946. The Parliamentary Elections (Amendment) Act, No. 19 of 1948, which amended the Ceylon (Parliamentary Elections) Order in Council came into operation on September 30, 1948.

The respondent raised two preliminary objections before us and formulated them as follows :—

(*a*) The Ceylon (Parliamentary Elections) Order in Council, 1946, was consequential and additional to the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, as all these Orders form one Act or enactment. The Parliamentary Elections (Amendment) Act, No. 19 of 1948, which amended the Ceylon (Parliamentary Elections) Order in Council, 1946, was, therefore, invalid as it was not passed in accordance with the proviso to section 29 (4) in the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947.

(*b*) Section 3 bringing into existence the new sections 81, 82, 82A, 82B, 82C and 82D of the Ceylon (Parliamentary Elections) Order in Council, 1946, and section 4 of the Parliamentary Elections (Amendment) Act, No. 19 of 1948, are repugnant to section 13 (3) (*h*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, and thereby involve an amendment or repeal of the said section 13 (3) (*h*), and they are, therefore, invalid as they had not been passed in accordance with the proviso to section 29 (4) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947.

Now the relevant parts of section 29 (4) mentioned above reads :—

" In the exercise of its powers under this section, Parliament may amend or repeal any of the provisions of this order, or of any 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)."

This section requires the majority mentioned in the proviso only in the case of a Bill " for the amendment or repeal of any of the provisions of this Order ". Without doing violence to the ordinary meaning of words it cannot be said to refer to any Order in Council except the Ceylon (Constitution) Order in Council, 1946, as amended by the amending Orders and the Ceylon Independence Order in Council, 1947. Those words cannot possibly refer to the Ceylon (Parliamentary Elections) Order in Council, 1946. In short, " this Order " must mean " this Order " and not " another Order ".

The argument of the respondent with regard to the second preliminary objection may be summarised as follows :—

Section 13 (3) (*h*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, enacts,

> " A person shall be disqualified for being elected or appointed as a Senator or a Member of the House of Representatives or for sitting or voting in the Senate or in the House of Representatives, if by reason of his conviction for a corrupt or illegal practice or by reason of the report of an Election Judge in accordance with the law for the time being in force relating to the election of Senators or Members of Parliament, he is incapable of being registered as an elector or of being elected or appointed as a Senator or Member, as the case may be ".

Under the combined operation of section 58 (2), 72 (1) and 82 (3) of the Ceylon (Parliamentary Elections) Order in Council, 1946, the report of an Election Judge that any person has committed a corrupt or illegal practice has the effect *inter alia* of rendering such person incapable of being elected as a Member of Parliament for certain periods commencing from the date of the report. The term used is " Election Judge " and not " Election Court " as in the Corrupt and Illegal Practices Prevention Act, 1883. The term " Election Court " is defined in section 64 of that Act to mean " the Judge presiding at the trial of an election petition or, if the matter comes before the High Court, that Court ". It is the failure to adopt some such definition for " Election Judge " in the Parliamentary Elections (Amendment) Act, No. 19 of 1948, that has made it necessary to raise the second preliminary objection. The term " Election Judge " is not defined in the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, but the Legislature must have given it the same meaning which had been given in the Ceylon (State Council Elections) Order in Council, 1931, and which the Legislature repeated in the later Order, the Ceylon (Parliamentary Elections) Order in Council, 1946 [see section 78 (2)]. According to that definition the " Election Judge " is the Judge of the Supreme Court trying the election petition. The " Election Judge " mentioned in section 82 (3) of the last mentioned Order is, therefore, the " Election Judge " trying the petition and not the three Judges of the Supreme Court sitting in appeal under the new section 82A (5) of that Order. This is placed beyond doubt by the reference in the new section 82D to " the certificate of determination of an Election Judge " or " the decision of the Supreme Court " thus making it clear that the " Election Judge " is not the same as " the Supreme Court " sitting in appeal. Now, the new section 82C (2)

vests a discretion in the Supreme Court regarding the transmission of the report of the Election Judge to the Governor-General and empowers the Supreme Court to send its own report and the new section 82D gives the report of the Supreme Court the same legal effect as the report of the Election Judge. Therefore, section 13 (3) (*h*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, has, at least, been amended by the Parliamentary Elections (Amendment) Act, No. 19 of 1948,

(*a*) making the report of the Election Judge inoperative in certain circumstances and

(*b*) creating a disqualification as the result of a report by the Supreme Court.

The respondent illustrated his argument by taking a case where the Election Judge finds that the person complained against was not a person guilty of a corrupt or illegal practice and holds the election valid. On an appeal on a point of law the Supreme Court holds that such a person was guilty of corrupt and illegal practices and makes a report to that effect. In such a case the person in question would become disqualified owing to the amendment introduced by the new sections 82C and 82D and there would have been no such disqualification, if the Parliamentary Election (Amendment) Act, No. 19 of 1948, was not in force. It was argued for the appellant

(*a*) that there was no amendment of section 13 (3) (*h*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, as stated by the respondent and

(*b*) that if there was an amendment, the difficulty created by the amendment could be met by the application of the doctrine of repugnancy.

The argument that there was, in fact, no amendment of section 13 (3) (*h*) is briefly as follows :—There is nothing in the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, necessitating a Court to have recourse to the Ceylon (State Council Elections) Order in Council, 1931, or the Ceylon (Parliamentary Elections) Order in Council, 1946, for the definition of the term Election Judge. Moreover, the definition given in those latter Orders are stated expressly to be definitions for the purposes of those Orders. In the absence of a definition in the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, a Court is justified in looking at section 13 (3) (*h*) itself to find the meaning of the term Election Judge. It will be found that the Election Judge mentioned in that section is a Judge functioning, in accordance with the law for the time being in force, in proceedings relating to the elections of Senators or Members of Parliament and having the power to make a report which has the effect of making a person incapable of being registered as an elector or of being elected or appointed as a Senator or Member. After the passing of the Parliamentary Elections (Amendment) Act, No. 19 of 1948, the law in force for the time being empowers the three Judges of the Supreme Court mentioned in the new section 82A (5) of the Ceylon (Parliamentary Elections) Order in Council, 1948,

to reverse the determination of the Election Judge and to send a report in respect of the commission of any corrupt or illegal practice, such report having the effect of rendering the person reported against incapable of being registered as an elector or of being elected or appointed as a Senator or Member. Therefore, the three Judges of the Supreme Court sitting in appeal could be regarded as coming within the term " Election Judge " in section 13 (3) (*h*).

As I am not satisfied with the soundness of this method of extracting a definition of " Election Judge " from section 13 (3) (*h*) itself, I do not propose to rest my decision regarding the second preliminary objection on this argument.

The respondent's contention that section 13 (3) (*h*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, has been amended by the Parliamentary Elections (Amendment) Act, No. 19 of 1948, making the report of the Election Judge inoperative in certain circumstances is clearly untenable. Section 13 (3) (*h*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, made " the report of the Election Judge " effective as a ground of disqualification only in so far as it was " in accordance with the law for the time being in force " and as the law which gave the report of an Election Judge the same effect as a conviction for a corrupt or illegal practice was in the Ceylon (Parliamentary Elections) Order in Council, 1946, a Parliamentary Bill modifying or limiting the effect of such a report need not be passed by the majority indicated in the proviso to section 29 (4) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947.

A difficulty arises, however, when we proceed to consider the case that may arise under the new sections 82C and 82D where the decision of the Supreme Court in appeal sets aside the report of the Election Judge that a person is not guilty of corrupt or illegal practice and the Supreme Court sends its own report finding such person guilty. As I am of opinion that the term Election Judge means the Judge who tries an election petition, I think that the provisions of the Ceylon (Parliamentary Elections) Amendment Act, No. 19 of 1948, are in conflict with section 13 (3) (*h*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, in so far as those provisions make the report of the Supreme Court operate as a ground of disqualification. What is the result of that conflict ? Is the Ceylon (Parliamentary Elections) Amendment Act, No. 19 of 1948, invalid as it has not been passed in accordance with the proviso to section 29 (4) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947 ? Or is it invalid only in so far as the offending provisions are concerned ? The consideration of these questions necessitates an examination of the provisions of the Ceylon (Parliamentary Elections) Order in Council, 1946, and the Ceylon (Parliamentary Elections) (Amendment) Act, No. 19 of 1948.

An Election Judge is appointed to try an election petition. The main object of an election petition is to have the election of a Member of Parliament declared void. At the conclusion of the trial the Election

Judge determines " whether the Member whose return or election is complained of, or any other and what person, was duly returned or elected, or whether the election was void " and certifies such *determination* to the Governor-General. The Election Judge has also to report to the Governor-General all persons who have been proved at the trial to have been guilty of any corrupt or illegal practice. Where there is no election petition a person may be charged with a corrupt or illegal practice and on being convicted will be subject to the same disqualification as on a finding of the Election Judge embodied in his report [*vide* sections 78, 77, 81, 82, 58 and 73 of the Ceylon (Parliamentary Elections) Order in Council, 1946, before the amendments]. On a consideration of these provisions it is clear that the main object of an election petition and the main purpose of a trial on an election petition is to find whether the particular election is void or not. The object of the Parliamentary Elections (Amendment) Act, No. 19 of 1948, is " to amend the Ceylon (Parliamentary Elections) Order in Council, 1946, in order to confer a right of appeal on questions of law from the *determination* of an Election Judge in an election petition and to provide for matters connected therewith ". No doubt, sections 82C and 82D refer *inter alia* to a report that may be made by the Supreme Court, if it considers necessary, ragarding the commission of corrupt or illegal practices. Thus it will be seen that in the Parliamentary Elections (Amendment) Act, No. 19 of 1948, the " offending provisions " are merely ancillary and subordinate to the " innocent provisions ". There is another way of looking at these " offending provisions ". It was possible, in accordance with my views on the first preliminary objection of the respondent, for the Legislature to have amended section 78 of the Ceylon (Parliamentary Elections) Order in Council, 1946, by inserting a new definition of " Election Judge " so as to include the body of Judges hearing an appeal under the new section 82A, and such an amendment need not have been passed in accordance with the proviso to section 29 (4) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947. If that was done, the second preliminary objection could not have succeeded. In fact, it was conceded by the respondent that such a result would have followed necessarily from the Court holding against him on the first objection. Considered from that point of view it could be argued that the " offending provisions " amount in reality to an amendment of section 78 of the Ceylon (Parliamentary Elections) Order in Council, 1946.

I do not think that the difficulty created by the conflict stated above could be solved by having recourse to the doctrine of repugnancy. That doctrine would apply to a conflict between two provisions in a statute duly passed by a Legislature or between two statutes duly passed by a Legislature. It would also apply in certain circumstances where the conflict is between a statute duly passed, say, by a provincial Legislature in India and a statute duly passed by the Central Government. Such a matter came up for consideration before the Federal Court of India in *The Bank of Commerce Ltd., Khulna v. Amulya Krishna Basu Roy Chowdhury* [1]. In that case the Provincial Legislature of Bengal

[1] *A. I. R. (31) 1944 Federal Court 18.*

which had jurisdiction to legislate in respect of "Money Lending and Money Lenders" passed the Money Lenders Act giving relief to "agriculturists" in respect of loans advanced to them, including loans on promissory notes. The Indian Constitution assigned specifically to the Central Government the right to legislate in respect of promissory notes, presumably because, owing to the negotiability of promissory notes throughout the whole of India, it was thought desirable that there should be uniformity in the law relating to promissory notes. The Federal Court said in the course of the judgment,—

> "The Bengal Money Lenders Act must, taken as a whole, be held to fall within the description, legislation in respect of 'money lending and money lenders', a subject within the exclusive competence of the Provincial Legislature (entry No. 27 in List II.). As pointed out in 1940 F. C. R. 188, the fact that among the documents on which moneys may be lent, promissory notes form an important class will not justify the view that the regulations and control of money lending have to that extent been taken out of the purview of provincial legislation."

Holding as it did that the conflict in that case was "a conflict between the provisions of the local law and the provisions of a central enactment each being *intra vires* the particular legislature", the Federal Court decided that the doctrine of repugnancy was applicable in that case. In the case before us I have found that the provisions in the Parliamentary Elections (Amendment) Act, No. 19 of 1948, relating to a report by the Supreme Court, so far as it embodies a finding that a corrupt or illegal practice has been committed, was not duly passed by the Ceylon Parliament. Those provisions were, therefore, *ultra vires*. Those provisions, however, could be easily severed from the remaining provisions in the Act which are *intra vires*. They are not so interwoven into the main scheme for providing an appeal from the "determination" of the Election Judge as to make a severance impossible. In dealing with the doctrine of severability Sulaiman J. said in *Shyamakant Lal v. Rambhajan Singh et al.*[1].

> "It is a well established principle that if the invalid part of an Act is really separate in its operation from the other parts, and the rest are not inseverably connected with it, then only such part is invalid, unless, of course, the whole object of the Act would be frustrated by the partial exclusion. If the subject which is beyond the legislative power is perfectly distinct from that which is within such power, the Act can be *ultra vires* in the former, while *intra vires* in the latter."

He cited with approval the following passage from *The King v. The Commonwealth Court of Conciliation and Arbitration, ex parte Whybrow* (1910) 11 Commonwealth Law Reports 1 :—

> "I venture to think that a safer test is whether the statute with the invalid portions omitted would be substantially a different law as to the subject-matter dealt with by what remains from what it would be with the omitted portions forming part of it."

[1] *A. I. R. (1939) Federal Court 74.*

I wish to add that we are concerned in this case with the right of appeal of a person who is held to be disqualified under section 13 (3) (*c*) of the (Constitution and Independence) Orders in Council, 1946 and 1947. No question arises in this case with reference to a report by the Election Judge in respect of the commission of a corrupt or illegal practice. I have discussed the provisions of section 13 (3) (*h*) only in so far as it was necessary for the purposes of this case.

For the reasons given by me I hold against the respondent on the second preliminary objection.

The main question that arises on the appeal is whether a shareholder in a company with limited liability duly incorporated under the Joint Stock Companies Ordinance, 1861, is disqualified under section 13 (3) (*c*) of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, by reason of a contract entered into between the company and the Crown. That section (hereinafter referred to as section 13 (3) (*c*)) enacts,

> " A person shall be disqualified for being elected . . . . . as . . . . a Member of the House of Representatives . . . . if he, directly or indirectly, by himself or by any person on his behalf or for his use or benefit, holds, or enjoys any right or benefit under any contract . . . . ".

In that section " holds " should be read only with " right ", and " enjoys " with " benefit ". Though a person who holds a right under a contract may enjoy a benefit, it is not possible to speak of a person holding a benefit or enjoying a right. This was conceded by the respondent and the appellant's Counsel. As an incorporated company cannot be regarded as an agent or trustee for the shareholder, the question in this case does not involve a consideration of the words, " by any person on his behalf or for his benefit ". Further, as such a company is a distinct being or *persona* entirely different from the shareholders, the company and the Crown are the parties to the contract and shareholder has no right under the contract. Moreover, the shareholder not being a party to the contract cannot in any event be regarded as " directly by himself " enjoying a benefit under the contract. The question we have to decide is, then, whether a shareholder is a person who " indirectly by himself enjoys any benefit under the contract " entered into by the Company. The word " indirectly " is an adverb modifying the verb " enjoys " and is not an adjective qualifying the noun " benefit ". The " benefit " we have to consider, therefore, is not an " indirect " benefit under the contract. In other words, we have to ask ourselves :—

(*a*) Does a shareholder enjoy a benefit under the contract ?
(*b*) Does a shareholder enjoy such a benefit indirectly ?

I would consider now the meanings of the words " benefit ", " under " and " indirectly ". It was stated at the Bar that there was no English Statute in which the word " benefit " occurs in clauses dealing with the disqualification of members of representative institutions. The cases cited to us at the argument decided questions arising under the English

Parliamentary or Local Government Statutes containing words different from the words in section 13 (3) (*c*) as the relevant words in those statutes were either " a person who has directly or indirectly any share or interest in a contract ", or " a person interested in a contract " or " a person concerned in a contract ". The decisions of the Courts on the facts in those cases are not of much assistance to us in construing whether a person has a " benefit under a contract ". I do not think I should permit myself to be guided also by definitions given in statutes dealing with entirely different subjects. I think the benefit referred to in section 13 (3 (*c*) is a benefit of a pecuniary nature.

The word " under " in " benefit under a contract " indicates a very close connection between the benefit and the contract. It connotes a very much closer connection than the phrase " resulting from " which indicates a mere casual connection. " Under " in my view indicates a legal connection.

The word " indirectly " is a vague and unsatisfactory word. This word occurs in a penal clause and there is nothing in the context to shew that the Legislature intended to give an extensive meaning to it. I would hold that a person indirectly enjoying a benefit must be enjoying it by virtue of a tie of law connecting him with the person directly holding a right under the contract or directly enjoying a benefit under the contract.

Could then a shareholder be said to enjoy indirectly a benefit under the contract ? A shareholder is not an agent of the company. He is entitled to the dividends which have deen declared payable out of the profits, but he cannot insist on the payment of dividends, even, when the profits are amply sufficient and however much they may have been enhanced by reason of the contract, if the directors decline to declare a dividend. He has, of course, the right to restrain directors from acting unfairly by the shareholders. It is the declaration of the dividend that creates a debt from the company to each shareholder. No doubt, a shareholder is interested in the well being of the company just as a debenture holder who holds the bonds of the company is interested, because its prosperity is his security ; but the interest is the interest of a shareholder, not of a joint owner, legal or equitable, of the contract nor of one having a community of interest in the adventure being carried on in fact. He has no property in the profits of the adventure. But, because he is so " interested ", he cannot be said to enjoy indirectly a benefit under the contract.

For the reasons given above, I hold that the appellant is not disqualified under section 13 (3) (*c*).

I may mention that it was stated in the course of the argument for the respondent that an answer in the negative to the question propounded on the appeal would tend to increase the opportunities for malpractices on the part of Members of Parliament. On the other hand, it was stated for the appellant that an answer in the affirmative would prevent the State from securing the services of eminently suitable persons as Members of Parliament merely because they have chosen to invest their savings in a manner usually favoured by many provident people, whether

rich or poor. I am glad that I have been able to consider the question purely as a matter of construction of section 13 (3) (*c*) and reach a decision which harmonises that section with the statutory provisions in England as to the position of shareholders of incorporated companies as members of representative institutions. As pointed out by the Attorney-General who appeared as *amicus curiae*, the various English Governments during the last twenty years—Conservative, Liberal and Socialist—do not appear to have taken steps to alter the law in England, though Viscount Cave indicated in very strong terms in *Lapish v. Braithwaite* [1] the undesirability of permitting a person with a number of shares in a company holding contracts with a representative institution to be a member of such institution. On the other hand, we find that when it was held in *Todd v. Robinson* [2] that a shareholder had an indirect interest in a contract with his company " the Parliament immediately showed their view of the matter by providing in an Act of 1885 (48 and 49 Victoria, Chapter 53), section 2, that the position of an officer as a shareholder in a joint stock company contracting with the council was not to render him liable " under section 193 of the Public Health Act, 1875 [vide *Lapish v. Braithwaite* [3]].

I reverse the determination of the Election Judge and decide that the appellant, Alfred Leo Thambiayah, was duly elected as a Member of the House of Representatives for the Kayts Electoral District.

I set aside the order for costs made by the Election Judge and order that each party should bear his costs of and incidental to the presentation of the election petition and of the proceedings consequent thereon and his costs of appeal.

CANEKERATNE J.—I agree.

WINDHAM J.—I agree.

Appeal allowed.