1952 *Present :* **Gunasekara J.**

S. V. KUNASINGHAM *et al.*, Petitioners, *and*
G. G. PONNAMBALAM, Respondent

ELECTION PETITION No. 19—IN THE MATTER OF AN APPLICATION TO AMEND THE PETITION DATED THE 23RD DAY OF JUNE, 1952

Election petition—Amendment thereof—Computation of time for presentation of election petitions—" Within 21 days of "—False declaration as to election expenses—Constitutes corrupt practice " in connection with the election "—Ceylon (Parliamentary Elections) Order in Council, 1946, ss. 58 (1) (f), 70, 77 (c), 83 (2).

Where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded. Therefore, Section 83 (1) of the Parliamentary Elections Order in Council, 1946, requiring an election petition to be presented " within twenty-one days of " the date of publication of the result of the election in the *Government Gazette* means within twenty-one days exclusive of the date of publication.

The corrupt practice, contemplated in Section 58 (1) (*f*) of the Order in Council, of knowingly making a false declaration as to election expenses is a corrupt practice committed " in connection with the election " within the meaning of Section 77 (c) and can be the subject-matter of amendment of an election petition under Section 83 (2).

Where the corrupt practice of knowingly making a false declaration as to election expenses is alleged, the time limit for presenting the election petition is governed by proviso (*a*) of Section 83 (1). The filing of the return and declarations is a separate act done in pursuance or in furtherance of the corrupt practice, and there is nothing in the enactment to require that such act must be an act that is *eiusdem generis* with a payment of money.

THIS was an application for leave to amend an election petition.

C. S. Barr Kumarakulasinghe, with *P. Somatilakam*, *G. T. Samarawickreme*, *A. Vythialingam* and *J. V. C. Nathanielsz*, for the petitioners.

H. V. Perera, Q.C., with *N. K. Choksy*, Q.C., *E. B. Wikramanayake*, Q.C., and *H. Wanigatunga*, for the respondent.

Cur. adv. vult.

August 18, 1952. GUNASEKARA J.—

This is an application under section 83 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946, for leave to amend an election petition by the inclusion of an additional ground upon which the election is questioned. The proposed amendment consists of an allegation that the respondent —

> " was guilty of a corrupt practice under section 58 (1) (*f*) of the Ceylon (Parliamentary Elections) Order in Council, 1946, in that being a candidate and his own election agent he knowingly made declarations as to his election expenses required by section 70 of the said Order in Council falsely."

Section 83 (2) provides that an election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the Supreme Court within the time within which an election petition questioning the return or the election upon that ground may be presented. The respondent objects to the present application on the grounds that the election petition has not been presented in due time, that the allegation contained in the proposed amendment is not one upon which the election can be questioned, that the application for leave to amend the petition is out of time, and that the security that has been deposited in terms of the Parliamentary Election Petition Rules, 1946, is insufficient to cover an additional charge.

Section 83 (1) provides that (subject to certain exceptions) every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Government Gazette*. The result of this election was published in the *Gazette* of the 2nd June and the election petition was presented on the 23rd June. It is contended for the petitioners that in the computation of the 21 days the 2nd June must be excluded, and the petition has therefore been presented in due time. The argument is that of the relations that can be indicated by the preposition " of " the one indicated here is separation, so that the 21 days are distinct from the day on which the result of the election is published. It is contended that " within *one* day of the date of publication " would not mean on the day of that date, and so the 21 days too must be 21 days exclusive of that day. In support of this common-sense view Mr. Kumarakulasinghe cited *ex parte Fallon* [1], where it was held by a Bench of four Judges that a statute requiring annuity deeds to be enrolled within twenty days of the day of execution meant within twenty days exclusive of the day of execution, and Lord Kenyon C.J. said :

> " It would be straining the words to construe the twenty days all inclusively. Suppose the direction of the Act had been to enrol the memorial within one day after the granting of the annuity, could it be pretended that that meant the same as if it were said, that it should be done on the same day on which the Act was done ? "

[1] *(1793) 5 T. R. 283, 101 E. R. 159.*

It appears to be assumed in this dictum that " within 20 days of " and " within 20 days after " the execution mean the same thing. Mr. H. V. Perera contends that the reason for this assumption is that there is no practical difference between the two expressions where the period is to be computed with reference to an event that marks a point of time, and not with reference to an appreciable space of time such as a day. He maintains that the use of the word " of " has the effect of including the first day in the computation of the number of days, though " after " has the effect of excluding it. The question in *Fallon's Case*, however, was not whether the 20 days did or did not include the moment of execution, but whether they included the day of execution. I am therefore unable to agree that that case can be distinguished on the ground that there is a distinction between the two expressions that is material in the present case but which was not material in that case.

Mr. Kumarakulasinghe has also referred to other cases as supporting the view that for the purpose of computing the length of the prescribed period there is no difference between the two expressions. In the local case of *Wickramasooriya v. Appusinho*[1] Browne A. J. held that " when time from, after, or within a certain time of a particular period is allowed to do an act, the first day is excluded. " In *Williams v. Burgess*[2] the decision in *Fallon's Case* was held to be applicable to the question as to the meaning of " within twenty-one days after the execution ", and it was held that the number of days must be calculated exclusively of the day of the execution. Lord Denman, C.J. said :

> " This point is in fact decided by *Ex parte Fallon*, the authority of which is not questioned. The statute in that case directed annuities to be enrolled within twenty days *of* the execution : here, warrants of attorney are to be filed within twenty-one days *after* the execution. There is no distinction whatever between the two ; and nothing in the nature of the case to exempt it from the strictness of the ordinary conventional rule. That case being in point, we should not be justified in encouraging any doubt."

A few years later, in *Russell v. Ledsam*[3] Parke B., said " The usual course in recent times has been to construe the day exclusively, whenever anything was to be done in a certain time after a given event or date. " Having referred to this dictum, Mathew L.J. held in *The Goldsmiths' Company v. The West Metropolitan Railway*[4] that " the rule is now well established that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded ". That case was followed in the recent case of *Stewart v. Chapman*[5] where the expression " within fourteen days of the commission of the offence " occurring in section 21 of the Road Traffic Act, 1930, was construed. Lord Goddard C.J. (with whom Ormerod J. agreed) held that it seemed to him " entirely to apply to the words of this section " and that therefore the day of the commission of the offence must be

[1] *(1895) 1 N. L. R. 178.*
[2] *(1841) 10 Law J. Rep. (N. S.) Q. B. 10.*
[3] *(1845) 14 M. & W. 574.*
[4] *[1904] 1 K. B. 1.*
[5] *[1951] 2 K. B. 792.*

excluded in the computation of the fourteen days. There is thus a considerable weight of authority in support of the view for which Mr. Kumarakulasinghe contends; namely, that for the purpose of computing the length of the prescribed period there is no difference between a provision that a thing may be done within a certain time " of " and a provision that it may be done within a certain time " after " a given event or date, and that in either case the day of the event or the date must be excluded.

Mr. Perera argued that in the present case the legislature clearly intended that the day of the publication of the result should be one of the days on which a petition might be presented, and that therefore the 21 days must include that day; if that day were excluded, a petition filed on that day would be out of time, as being outside and not within the 21 days. I agree that the day of publication is one of the days on which a petition may be presented, being the first day of the prescribed period. What turns on the question of computation, however, is not whether that day falls within or outside this period, but whether the period is 2nd June to 23rd June, as it would be if the 21 days are computed exclusive of the 2nd, or 2nd June to 22nd June, as it would be if they are computed inclusive of that day. The question is not as to when the prescribed period begins, but as to when it ends upon a proper computation of it.

Mr. Perera's next argument is based on a variation in the language of section 83 (1) where it prescribes the time for presenting an election petition in certain special circumstances. A petition falling within proviso (*a*) or paragraph (ii) of proviso (*b*) may be presented " at any time within twenty-eight days after the date of " the payment or act referred to in the respective provisos; and one falling within paragraph (i) of proviso (*b*), " at any time before the expiration of fourteen days after the day of the publication in the *Government Gazette* " of the notice as to election expenses. Mr. Perera contends that the use of the word " after " in the provisos raises a presumption that the expression " within twenty-one days of " used earlier in the same section does not mean the same thing as " within twenty-one days after ". In support of this view he relies on the following passage in a judgment in an Indian case [1]:

> " Cl. (*a*) uses the words ' conceal his presence &c. '. Cl. (*b*) uses the expression ' give an account of himself '. When two distinct words are used in the same section, the ordinary rule of construction is that they do not mean identically the same thing. I therefore do not think that the two words ' presence ' and ' himself ' are interchangeable, and that the inability to give an account of himself is the exact equivalent of the omission to explain his presence at a particular time and place. "

If there is such a rule of construction as is contended for by Mr. Perera it seems obvious that it must at any rate be subject to the qualification that the two words or expressions are reasonably capable ofb eing construed to mean two different things. An illustration is provided by the very case that is cited: for no strain on language is involved in such a construction of the words " presence " and " himself ", or of the expressions " conceal his presence " and " give an account of himself ". While

[1] *A. I. R. 1928 Allahabad 33, at 37.*

several cases have been cited where " within so many days *of* " has been held to mean the same thing as " within so many days *after* ", Mr. Perera has not been able to cite any case where these two expressions have been held to mean two different things. Nor has he contended that in ordinary usage they do not mean the same thing. I am unable to see that " within twenty-one days *of* " can have a different meaning to " within twenty-one days *after* ". (The question whether it can mean " within twenty-one days *before* " need not be considered.) As regards the presumption that Mr. Perera invokes, it is pointed out in *Maxwell on Interpretation* [1] that " the presumption of a change of intention from a change of language (of no great weight in the construction of any documents) seems entitled to less weight in the construction of a statute than in any other case, for the variation is sometimes to be accounted for by a mere desire to avoid the repeated use of the same words, sometimes by the circumstance that the Act has been compiled from different sources, and sometimes by the alterations and additions from various hands which Acts undergo in their progress through Parliament ", and that it seems legitimate in construing a statute " to take into consideration that it may have been the production of many minds and that this may better account for any variety of style and phraseology which is found than a desire to convey a different intention. "

In my opinion the day of the date of publication of the result of the election in the *Gazette* must be excluded in the computation of the 21 days, and the election petition has therefore been presented in due time.

The grounds upon which an election may be questioned are set out in paragraphs (*a*) to (*e*) of section 77, and it is contended for the petitioners that the allegation that is now made falls within paragraph (*c*) which reads :

> " (*c*) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate. "

It is provided by section 70 that within thirty-one days after the date of publication of the result of an election in the *Government Gazette* the election agent of every candidate at that election shall transmit to the returning officer a return respecting election expenses, and that the return shall be verified by declarations made in a prescribed form by the candidate and his election agent. In terms of section 58 (1) (*f*) every person who, being a candidate or election agent, knowingly makes the declaration as to election expenses required by section 70 falsely is guilty of a corrupt practice. Mr. H. V. Perera contends that such a corrupt practice being necessarily one committed after the publication of the result of the election cannot be a corrupt practice that was committed " in connection with the election ", though it may be said to have been committed in reference to the election. His argument, which he bases on the context, is that the corrupt practice must be so connected with the election as to be a flaw that has already vitiated it at the time when the returning officer declared the result of the poll : for (he maintains) what the election judge is required to do upon proof of the corrupt practice

[1] *Ninth Edition pp. 326-327.*

is to declare the election " to be void ", and that is not the same thing as setting aside what may have been valid originally ; and the other grounds upon which the judge is required to make such an order are all flaws that vitiated the election before the candidate was declared to be elected. As Mr. Kumarakulasinghe points out, however, this argument is not supported by the terms of paragraph (*d*) of section 77, and does not take into account an implication contained in other provisions that the grounds are not confined to grounds existing at the time of the declaration of the result of the poll. Among the grounds specified in paragraph (*d*) is the appointment as an election agent of a person whom the candidate knew to be disqualified by conviction of a corrupt practice ; but there is nothing in the terms of that paragraph to exclude such an appointment made after the election, although under section 59 (4) an election agent may be appointed before, during or after the election. Section 63 (6), which provides that " where it has been proved to the satisfaction of the election court by a candidate that any payment made by an election agent in contravention of this section was made without the sanction or connivance of such candidate shall not be void ", clearly implies that certain payments made after the declaration of the result of the poll may be a ground for declaring the election to be void ; for payments made in contravention of the section would be payments of claims sent in to the election agent more than fourteen days after the day on which the candidate is declared elected, or other payments made more than twenty-eight days after that day. Again, it is implied in section 75 that a candidate is liable for his election agent's error or false statement in the return or declaration respecting election expenses ; for a judge is empowered to relieve him from such liability in the circumstances set out in sub-sections (1) and (3). It does not appear that in respect of these matters the candidate incurs any liability unless the corrupt practice or illegal practice committed by the election agent is regarded as one that falls within paragraph (*c*) of section 77. I am unable to accept Mr. Perera's construction of the words " in connection with the election ", and I have no doubt that the corrupt practice of knowingly making a false declaration as to election expenses is a corrupt practice committed " in connection with the election " and can be a ground upon which the election may be declared to be void. I am confirmed in this view by the circumstance that in the United Kingdom elections have been declared to be void upon this ground. See, for example, *Cheltenham (1911)* [1], *Berwick-upon-Tweed (1923)* [2], *Oxford Borough (1924)* [3].

The next question for decision is whether the application for leave to amend the petition has been made within the time within which an election petition questioning the election upon this ground could have been presented. (This application first came up for argument before Gratiaen J. on the 28th July, and upon the hearing being postponed the parties agreed that any order that might eventually be made should be regarded as having been made on that day.) It is claimed for the petitioners that the application has been made within the time prescribed by proviso (*a*) to section 83 (1) and has therefore been made in due time. In this

[1] *6 O' M. & H. 194.* [2] *7 O' M. & H. 1*

[3] *7 O' M. & H. 49.*

proviso to the rule, requiring every election petition to be presented within 21 days of the date of publication of the result in the *Government Gazette*, it is enacted that an election petition questioning the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since that date by the member whose election is questioned or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act. The application, which was made on the 25th July, alleges that " the respondent, who was his own election agent, filed his return and declarations respecting election expenses on or about the 3rd July, 1952". The objection that the application is out of time is based on a contention that there is no allegation of a payment made or other act done in pursuance or in furtherance of the corrupt practice that is alleged. It is also contended that any " other act " alleged must be one that is *eiusdem generis* with payment of money. Mr. Kumarakulasinghe replies that the act that the proviso requires to be specifically alleged to have been done in pursuance or in furtherance of the corrupt practice may be an act that is involved in the corrupt practice itself and need not be a separate and distinct act. He submits, however, that even otherwise the filing of the return and declarations was a separate act done in pursuance or in furtherance of the corrupt practice of making false declarations that is alleged in the proposed amendment, and that there is nothing in the enactment to require that the act so done must be an act that is *eiusdem generis* with a payment of money. I agree with this view, and I hold that the application has been made in due time.

The last of the grounds upon which the application is resisted is that the addition of the proposed charge would render insufficient the security that has been given in terms of Rule 12 of the Parliamentary Election Petition Rules, 1946, for the payment of all costs, charges and expenses that may become payable by the petitioners. Under paragraph (1) of the Rule such security must be given at the time of the presentation of the petition or within three days afterwards ; and paragraph (2) provides that the security shall be to an amount of not less than Rs. 5,000, and that " if the number of charges in any petition shall exceed three additional security to an amount of Rs. 2,000 shall be given in respect of each charge in excess of the first three". The election petition, which was presented on the 23rd June, contains three charges, and a sum of Rs. 5,000 was deposited as security in respect of those charges on the 25th June. It is contended for the respondent that there is no provision for the giving of additional security after the expiration of the period of three days from the presentation of the petition and therefore the petition cannot, or should not, be amended by the inclusion of a new charge. Mr. Perera points out that the giving of security is a matter of fundamental importance, for paragraph (3) of Rule 12 provides that—

> " If security as in this rule provided is not given by the petitioner, no further proceedings shall be had on the petition, and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondent's costs. "

Moreover, Rule 12 (2) provides that the security must be given by a deposit of money, and in terms of Rule 13 (1) the money so deposited vests in the Chief Justice. It is pointed out that the respondent would be deprived of the benefit of this provision in respect of any purported security that is given otherwise than in compliance with the rules.

It is quite clear that there is provision for the amendment of a petition by the addition of new charges even after the lapse of three days from the presentation of the petition, and that there is no limit to the number of charges that can be added with the leave of a Judge if the requirements of section 83 (1) are satisfied. If Mr. Perera is right in his contention that there is no provision for the giving of additional security at that stage of the proceedings, it seems to me that the result would be that no security need be given in respect of those charges ; and not that the number of charges must be limited by the amount of the security deposited in anticipation of new facts coming to light or new offences being committed. It is therefore not necessary to consider whether there is substance in the contention that additional security cannot be given after the lapse of three days from the presentation of the petition.

The application for leave to amend the petition in the manner proposed is allowed. The costs of this application will be costs in the cause.

Application allowed.