1941

Present : **Keuneman J.**

THIEDEMAN *v.* GEORGE.

521—M. C. Colombo, 22,003.

Personation—State Council election—Offence, a cognizable one under (State Council Elections) Order in Council—Penal Code, s. 169F.

Section 169F of the Penal Code is not repealed in regard to State Council Elections by section 51 of the (State Council Elections) Order in Council, 1931, as amended in 1934 and 1935, which makes personation a cognizable offence.

APPEAL from a conviction by the Magistrate of Colombo.

J. E. M. Obeyesekere (with him *M. M. I. Kariapper*), for accused, appellant.

H. W. R. Weerasuriya, C.C., for complainant, respondent.

Cur. adv. vult.

October 2, 1941. KEUNEMAN J.—

The accused in this case was charged with applying at an election held under the Ceylon Order in Council, 1931 (State Council Elections) for a ballot paper in the name of another person, viz., registered voter No. 5092, Irasingham Karthigesar, and thereby committing the offence of personation under section 169F of the Penal Code (Chapter 15). The accused was convicted, and fined Rs. 100, and now appeals.

In appeal, the point has been emphasized that the alleged personation took place at a State Council Election, and it was urged that under the Ceylon (State Council Elections) Order in Council of 1931, as amended in 1934 and 1935, personation is made a cognizable offence (see section 51), and that any one who commits the offence of personation is guilty of a corrupt practice, and is liable on conviction by a District Court in the discretion of the Court to a fine of Rs. 500, or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment. Further, by conviction such person becomes incapable for seven years from the date of his conviction of being registered as a voter, of voting at any election, or of being elected as a member, and if at that date he has been elected as a member, his election is vacated from the date of the conviction. Further, a prosecution cannot be instituted for a corrupt practice without the sanction of the Attorney-General. (See section 55.)

It is now contended that the conviction is bad on two grounds (*a*) that the prosecution was before a Magistrate, and not before a District Judge, and (*b*) that no sanction has been obtained from the Attorney-General.

For the Crown it was urged that the charge was brought under section 169F of the Penal Code, and that an offence under that section is properly triable in the Magistrate's Court and that no sanction from the Attorney-General is needed before prosecution.

Counsel for the appellant argued that section 169F of the Penal Code must be regarded as superseded and repealed, so far as it relates to State Council Elections, by the enactment of sections 51 and 55 of the Order in

Council. He relies on *Michell v. Brown*[1]. There Lord Campbell C.J. said, " If a later statute again describes an offence created by a former statute, and affixes a different punishment to it, varying the procedure, &c., giving an appeal where there was no appeal before, we think the prosecutor must proceed for the offence under the later statute. If the later statute expressly altered the quality of the offence, as by making it a misdemeanour instead of a felony or a felony instead of a misdemeanour, the offence could not be proceeded for under the earlier statute: and the same consequence seems to follow from altering the procedure and the punishment. The later enactment operates by way of substitution, and not cumulatively giving an option to the prosecutor or the Magistrate ".

This was followed in *Whitehead v. Smithers*[2], where it was further held that the whole frame of the later Act showed an intention to repeal the earlier Act. See also *Fortescue v. The Vestry of St. Matthew, Bethal Green*[3].

Counsel for the respondent argued that in Ceylon we are governed by section 9 of the Interpretation Ordinance (Chapter 2). Section 9 runs as follows :—

> " Where any act or omission contitutes an offence under two or more laws, whether either or any of such laws comes into force before or after the commencement of this Ordinance, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those laws, but shall not be liable to be punished twice for the same offence."

It is to be noted that a very similar provision exists under section 33 of the Interpretation Act, 1889 (Chapter 63).

It appears that, prima facie, it is open to the Crown to prosecute under either of the laws in force relating to personation, but the accused cannot be punished twice for the same offence.

I have examined the language of the Order in Council. Section 51, which makes personation in a State Council election a cognizable offence, which it was not under section 169F, of the Penal Code, does not appear to me to suggest that that latter section was intended to be repealed. It may on the contrary be a strengthening of that section. Certainly under section 55, on the footing that personation is a corrupt practice the fine can be greater and even imprisonment can be imposed, and jurisdiction to try a corrupt practice is vested in the District Judge, and the prior sanction of the Attorney-General is required. I also wish to emphasize in section 55 the loss of civil rights which results on a conviction for a corrupt practice. This last matter in particular leads me to the view that what was intended was not the repeal of section 169F of the Penal Code, but the provision of an alternative procedure, whereby personation at a State Council election could be treated with greater severity, and would result in the loss of civil rights. But the Legislature added certain safeguards in the case of such a prosecution, by removing the trial to the District Court, and by requiring the sanction of the

[1] *Ellis & Ellis 267, 120 E. R. 909.*
[2] *L. R. 1876, 77, 2 C. P. 553.*
[3] *L. R. 1891, 2 Q. B. 170.*

Attorney-General to the prosecution. I think the intention was to make an addition to the existing law, and not to treat the whole subject *de novo* (see Maxwell on the Interpretation of Statutes (7th Edition), page 160).

I accordingly come to the conclusion that section 169F of the Penal Code is not repealed by necessary implication. It is clearly not repealed expressly.

There is one further consideration which I may mention. In Chapter 1 of the Revised Edition of the Legislative Enactments, the Commissioner in the preparation of the revised edition, is empowered under section 3 (1) (*a*) to omit " any legislative enactment which has been repealed, expressly or specifically or by necessary implication . . . . ". But where the Commissioner not only failed to omit, but specifically included a repealed enactment, it has been held that after the requirements of section 10 (1) and (2) were complied with, the repealed Ordinance became part and parcel of the Statute Law of the Island ; see *Rex. v. Fernando*[1]. That was a case where the enactment in question had previously been repealed expressly, and where there was no authority on the part of the Commissioner to reintroduce it. I am inclined to think, that similar considerations would apply, where an Enactment impliedly repealed is re-enacted but in view of the opinion I have expressed on the other aspects of the case, I do not decide that precise point.

The appeal is dismissed.

Affirmed.