

1947

Present : Windham J.

ILANGARATNE *et al.*, Petitioners, and G. E.
DE SILVA, Respondent.

Election Petitions Nos. 4 and 5, Kandy Electoral District

Election petition—Person not party to petition—Corrupt or illegal practice—Right to be heard—Before or after decision of Judge—Right to cross-examine witness—Parliamentary Elections Order in Council, 1946, section 32.

Where a person, not a party to an election petition, is charged with corrupt or illegal practice, he must be given an opportunity of being heard and calling evidence before a decision is given as to the validity of the election. He would not in such a case have the right to cross-examine witnesses called by the petitioner.

¹ *5 Thambyah's Rep. 145.*

² (1935) 40 N. L. R. 1.

ORDER made in the course of the hearing of a Parliamentary election petition.

E. F. N. Gratiaen, K.C., with *S. Nadesan* and *G. T. Samarawickreme*, for the petitioner in Petition No. 4.

E. F. N. Gratiaen, K.C., with *B. H. Aluwihare* and *S. E. J. Fernando*, for the petitioner in Petition No. 5.

R. L. Pereira, K.C., with *U. A. Jayasundere*, *J. A. L. Cooray* and *S. J. Kadirgamer*, for the respondent in Petitions Nos. 4 and 5.

C. S. Barr Kumarakulasingham, with *Vernon Wijetuge* and *A. J. Rajasingham*, for Mr. Fred de Silva.

December 17, 1947. WINDHAM J.—

The point arises for decision as to the meaning of article 82 (2) of the Ceylon Parliamentary Elections Order-in-Council, 1946. Two points have to be determined. First, the question arises whether the opportunity given under that article to a person not being a party to an election is to be given before or after the Election Judge has determined whether he has been guilty of a corrupt or illegal practice.

I have no doubt at all on the authorities. In particular I would refer to the case of *Latiff v. Saravanamuttu* reported in 34 New Law Report page 369, that the finding of the Election Judge under article 81 and the report to the Governor under article 82 (1) ought to be made simultaneously. Furthermore, since such a report must be made by the Election Judge in the case of any person found to have committed an election offence, it would be futile for such a person to be allowed to show cause why he should not be reported at a stage after he had been found guilty of the election offence. Mr. Fred de Silva will accordingly be granted the opportunity of being heard and of giving and calling evidence under article 82 (2) before the decision on the petition is given under article 81.

The second point for decision is whether the phrase "an opportunity of being heard and of giving and calling evidence" under article 82 (2) includes the right to cross-examine the witnesses called by the petitioners. I can find no reported case where the opportunity to cross-examine has been given under that paragraph or any other paragraph similarly worded, with the exception of an English case reported in *6 O'Malley and Hardcastle, page 194*, but in that case the respondent abandoned his defence of the case during the course of the proceedings, and accordingly, the person against whom allegations of election offences were being made was left to fight the battle for himself. That is not the case here. I cannot construe the words "an opportunity of being heard" in paragraph 82 (2) to include the right to cross-examine witnesses, and it must be borne in mind that such rights as a person, not a party to the election petition, has, are conferred upon him sloely by that article.