1936 *Present:* **Akbar J.**

COORAY *v.* DE ZOYSA.

In re ELECTION FOR THE COLOMBO SOUTH ELECTORAL DISTRICT.

Election petition—Disqualification of candidate—Visiting lecturer at University College—Contract or agreement with Principal for or on account of public service—Inclusion of name in panel of examiners—Claim to the seat by the petitioner—Knowledge of facts constituting disqualification on the part of voters—The Ceylon (State Council) Order in Council, 1931, Articles 9 (d) and 77 (d).

Where the respondent at the date of his election as a member of the State Council was bound by an agreement with the Principal of the University College to deliver a course of lectures at the College for which payment was made to him from Government funds, at the end of each month on the number of lectures delivered during that month,—

***Held,* that there was a contract or agreement or commission held or enjoyed by the respondent which had been made or entered into or accepted from the Principal, University College, for or on account of the public service within the meaning of section 9 (*d*) of the Ceylon (State Council) Order in Council, 1931.**

A person whose name appears in a panel of examiners appointed for a term of years by the Education Department of Government is not a person holding a public office within the meaning of Article 9 (*c*) of the State Council Order in Council, 1931.

Where the petitioner claimed the seat under Article 77 (*d*) of the State Council Order in Council, 1931, the petitioner was bound to prove common knowledge on the part of the voters of the fact of the contract with Government on which ground alone the respondent was disqualified and not merely knowledge of the fact that the respondent was a lecturer at the University College.

THIS was an election petition in which the petitioner claimed in his petition under Article 77 (*a*) of the Ceylon (State Council Elections), Order in Council, 1931, for a declaration that the election of the respondent was void on the ground that the respondent was at the time of his election a lecturer at the Ceylon University College under a contract with the Principal of the College and as such was incapable of being elected or of sitting or voting as a member of the State Council.

Another ground of disqualification put forward was that at the time of his election the respondent was an Examiner appointed by the Education Department of Ceylon for a term of years and that he was either holding a public office within the meaning of Article 9 (*c*) of the State Council (Order in Council) or that he was holding a contract within the meaning of Article 9 (*d*).

The petitioner also claimed the seat on the ground that he had a majority of lawful votes under Article 77 (*d*).

H. V. Perera (with him *E. G. P. Jayatilleke, D. W. Fernando* and *J. L. M. Fernando*, instructed by *John Wilson*), for petitioner.—The respondent directly held at the time in question a contract or agreement made and entered into with the Principal of University College for and on account of the public service. The contract was made with the Principal, acting through Dr. Malalasekera. The University College is a

Government institution and the Principal and Dr. Malalasekera are public officers. The particular arrangement was for the respondent to deliver a course of lectures. The arrangement was made "for or on account of the public service". The educational services rendered at the University College are services rendered at a public institution. The respondent received payment out of public funds for the services rendered by him. The only question is whether this arrangement was a contract—the undertaking was to deliver a course of lectures. There was no further request once the arrangement was made—no request made to deliver a particular lecture. The delivery of any particular lecture of this course and the preparations made by the University College authorities to receive the respondent were all acts done in pursuance of the original arrangement. The offer and acceptance were at the very beginning.

The respondent's motive would not matter. There need not have been any consideration at all. Our law gives validity to promises even though there is no consideration to support them: *Attorney-General v. Abram Saibo & Co.*[1] Ignorance of the fact that respondent was contracting with the public service is immaterial. The burden was on the respondent to prove such ignorance by affirmative evidence. He has failed to do so.

The Examinership disqualifies the respondent under Article 9 (*c*) and 9 (*d*). The reply that was sent by respondent—P 16—was clearly an offer. On the acceptance of that offer by the Director by P 17 there was a contract. Suppose respondent was the only person selected. Then the Education Department would be under a legal obligation to send all their examination papers to respondent. Suppose there are three or four selected; that does not make the arrangement any the less a contract. It may be that the work is distributed; it may be that a discretion is given to the Director, that does not mean that there is no contract. Suppose the Director goes outside the panel. Every member of the panel would have a cause of action. If one member is given all the work, there is no breach of contract. The fact that the contract is unenforcible does not make any difference. The legal obligation is not negatived if you tell a person, "if you are unable to correct the papers, please return them". The Director has a panel on which to fall back.

21 Geo. V. c. 13 has no bearing on this case at all. It refers to certain contracts and defines their scope. Therefore it can have no local operation. The constitution of the House of Commons is different to that of the State Council. Public officers are entitled to be members of Parliament. In England originally there was a perfectly free choice. Then there came in a series of disqualifications. Here Counsel referred to *Rogers (1928 ed.) vol. II, p. 21 ; 41 Geo. II, c. 52, s. 4 ; Statutes at Large, 8th vol., p. 145.* In England only certain kinds of contracts with the holders of three offices or any other person whatsoever can disqualify. *22 Geo. III. c. 45.* Our enactment does not contain such an enumeration. It is not possible to entertain any doubt that every kind of contract is caught up.

When you have certain persons mentioned and then "any other person whatsoever", the phrase "any other person whatsoever" must

[1] *18 N. L. R. 417 at p. 422.*

be construed "*eiusdem generis*". There is no room for the application of the rule here. General words are to be taken *prima facie* in their usual sense. *Beal's Cardinal Rules of Interpretation, p. 355.*

Counsel also cited *Berwick's Voet bk. 19, tit. 2, ss. 33–41.*

M. W. H. de Silva, S.G. (with him *S. J. C. Schokman, C.C.*), as *amicus curiae.*—The Order in Council must be construed as a whole. If my learned friend's interpretation is adopted, it will be difficult to interpret the rest of the Ordinance.

All agreements with the Crown can be brought under two heads:—(1) Agreements for personal service. (2) Agreements not for personal service, *i.e.*, agreements to supply goods, building materials, every other kind of agreement.

If class (1) is provided for earlier, class (2) would come under Article 9 (*d*). Anything in the nature of service comes under 9 (*c*). If a person holds a public office, he comes under 9 (*c*). The only disqualification under 9 (*c*) is holding a permanent office or an agreement for a term of years. Therefore 9 (*c*) exempts the respondent. An interpretation which exempts the respondent under 9 (*c*) and disqualifies him under 9 (*d*) would be inconsistent and bad. The disqualifications under 9 (c) and 9 (*d*) are mutually exhaustive.

A contract of personal service would not come under 9 (*d*). Such a contract will not be "for or on account of the public service". These words refer to a contract in which the parties contract regarding something that is necessary for the carrying out of a public service. The man who contracts undertakes to get some thing that is necessary for a public service. One must make a distinction between contract of employment and any other contract, such as a contract for supplying material. A contract to supply coolies would fall under 9 (*d*). When a man says he supplies his own services, he means, I take employment. When he says he supplies a number of coolies he is supplying something. *22 Geo. III. c. 45* contains no reference to contracts of employment. There is no case where any person has been disqualified because he held a contract of service.

H. V. Perera, in reply.—If the learned Solicitor-General's interpretation is adopted, State Councillors will be able to enter into contracts of personal service. 9 (*d*) is intended to catch up cases where a person has any contract at all with the Crown. A person having a secret interest in a contract with the public service would not be disqualified according to the learned Solicitor-General. If the intention was to mould this Ordinance according to *22 Geo. III., c. 45,* the draftsman would not have omitted the restrictive words. The whole of section 9 (c) would not be included in section 9 (*d*). A coroner—who receives a certain appointment—cannot be brought under 9 (*d*). A person may be holding a certain appointment which would not come under 9 (*d*) but under 9 (c); or he may come under both, because he holds a contract and also an appointment. An appointment does not necessarily imply a contract. Counsel here referred to *Ford v. Newth* [1]; *Royse v. Birley* [2].

[1] *(1901) 1 Q. B. D 683 at 692.*

[2] *(1869) L. R. 4 C. P. 296.*

The words " for or on account of the public service " limit the contract to a contract in which anything is done for the establishment or maintenance of any public service. Take the case of a park. For the purpose of bringing the park into existence and maintaining it in good condition you enter into a variety of contracts. At that stage those contracts would clearly be caught up under 9 (*d*). Take the stage where something is charged from a member of the public for the use of the park. There is then a contract with the man in charge. That contract stands on an entirely different footing. The distinction is this. Could you legitimately say that that contract was " for or on account of " a public service. The money charged goes to the revenue or may ultimately provide funds for that service. It is not used for the running of the service. A public service is a certain establishment.

The Respondent.—There is a close resemblance between the House of Commons and the State Council. In England an election begins with the issue of writ. Election day is not the date of the writ or nomination. The word " election " is used in a very general sense. (*Ballot Act, 1872; 33, 36, Victoria, Sch. 1, p. 1.*) The election is not complete till the return has reached the clerk of the Crown (*Hurdle v. Waring*[1]). Here the election is not complete till results are published in the *Gazette.* Therefore the date of the election is March 10. At that date the respondent had no contracts.

The letter P 16 is dated December 17, 1934. P 17 by which the Director informed the respondent that he had been placed on the panel is dated August 1, 1935. Even if P 16 contained an offer, there was sufficient time for the offer to lapse. P 17 does not mention previous correspondence. The terms of the contract, if any, were not settled. On each occasion on which the respondent accepted papers there was a contract. Therefore, at the material time there was no contract; the last contract was in November, 1935.

The contract regarding the lecturership was with Dr. Malalasekera. Dr. Malalasekara made the arrangements. The respondent would have done what he said. The receipt of payment from the Principal does not matter. A and B can contract and they can agree that a third party will pay. University College is a sort of trust till a university comes into being. There is no legislative enactment recognizing University College. If University College is not a Government institution, the contract was not " for or on account of the public service ".

The Solicitor-General.—Once the agreement is complete, it is merged in the appointment. When respondent became a public servant, his contract disappeared. (*Dunn v. The Queen*[2].)

H. V. Perera, in reply.—When the office is accepted the contract is complete and you take up your duties under it. *Dunn v. The Queen* refers to the right of the Crown to dismiss. The right of dismissal is an implied term of the contract and is based on public policy. (*6 Halsbury p. 460, para. 548.*)

[1] *(1874) L. R. 9 C. P. 435.*

[2] *(1896) 1 Q. B. 116*

H. V. Perera (on the second part of the petition).—The petitioner claims the seat under Article 77 (*d*). We rely on the words of section 82 (1) (*f*) under which a vote is thrown away—

(1) when a voter gives his vote to a candidate knowing certain facts, or

(2) when a voter gives his vote not personally knowing certain facts but when certain facts are notorious.

By this section a lage number of voters may be disenfranchised. A fact is notorious when it is a matter of common knowledge. If the disqualifying facts are a matter of common knowledge, it does not lie in the mouth of the voter to say, "Give me back my vote". The civic right that is given is not the right to cast a vote but the right to elect a person. The voter must take the trouble to find out whether his candidate is duly qualified. The right to vote must be exercised not blindly but intelligently. If it is not exercised intelligently, the voter cannot be heard to complain. It may be that the Legislature thought that they should restrict the present universal franchise in this indirect way. Counsel cited *Beresford-Hope v. Lady Sandhurst* [1]; *Hobbs v. Morey* [2]. Any wilful and perverse throwing away of votes is not necessary in our law.

What is the time at which the candidate's disqualification should be known to the voters? Article 82, sub-section 1, (*f*) refers to knowledge at a particular time—at the time the votes are given—the time of the poll.

The time of nomination is the time at which the candidate should have qualification. The election may be completed on the nomination day itself. Election begins with nomination and ends with the declaration of the result of election. The words in Article 32 "forthwith adjourn the election" clears up the position. It is enough if disqualification exists at any time during the whole period of election except where the disqualification *necessarily* ceases during the course of the election. Counsel cited *Roger, p. 59; Ballot Act, 1882, p. 419; Ford v. Newth* [3]; Article 74 of Ceylon (State Council Elections) Order in Council, 1931.

The Respondent, in reply.—Notoriety is something more than ordinary knowledge. If it is a thing that ordinarily happens, it is not something that arrests your attention. Otherwise, it cannot be notorious.

The voters must know that respondent is a lecturer in a Government institution and that he holds a contract of a disqualifying type. The fact that the voters knew was that respondent was a lecturer, not that he had a contract. If the contract disqualified him, then that fact must be notorious. There was no publication in the newspapers. The electorate consisted of 39,000 voters of whom 60 per cent. are Sinhalese. Of these, no one knows how many voted or how many were women. There is the possibility that respondent got his votes from people who were not Sinhalese. The petitioner has not proved that posters similar to P 25 reached voters of other communities. Respondent cited *Halgreen v. Burge and another* [4]; *Roger's vol. II., p. 24; V. & R., p. 60; Hurdle and another v. Waring* [5]; *Drinkwater v. Deakin* [6].

[1] *23 Q. B. D. 79.*
[2] *(1904) 1 K. B. 74.*
[3] *(1901) 1 Q. B. D. page 683 (1899) 1 Q. B. 852.*
[4] *(1932) S. A. C. P. D. p. 226.*
[5] *(1874) L. R. C. P. 435; (1890) 7 T. L. R. P. 50.*
[6] *(1874) L. R. 9 C. P. 642.*

M. W. H. de Silva, S.-G., in reply.—Article 77 says what the prayer in a petition should be. In a petition where a seat is claimed there must be a prayer for a scrutiny. Scrutiny is of two forms; where a vote is challenged and where you challenge all the votes. There is a technical defect here; the petition should ask that votes should be struck off.

In construing the important words of Article 82 (1) *f* not only must the ordinary meaning be used but also the context in which the words occur must be considered. The words are "causing the disqualification". The fact that the respondent was a lecturer is a fact. Do the words include other facts which could be inferred? What has to be proved is that the facts that *cause* the disqualification should be known. Two things must therefore be known; the facts bringing about a disqualification and the idea of a disqualification must be attached to those facts. There is not one case in which the idea of disqualification was not attached to the facts causing disqualification. You cannot take the electorate by surprise. The lecturership should have been known to the electorate as a matter causing a disqualification. In Lady Sandhurst's case she was objected to at nomination.

Facts which are notorious are so brought to the notice of a person that he cannot help noticing them. The fact which is notorious must be notorious to the electorate. There was one case in which a contract was held to be notorious: *Cox v. Ambrose*[1]. In this case such steps were taken to bring the matter to the electorate that no one had any excuse for not knowing it. In Lady Sandhurst's case the fact that she was a woman must have been known to every voter who voted for her. The Court must be in a position to presume that everybody knew the facts causing disqualification. Suppose 10,000 persons who got poster—P 25—voted for petitioner. Then not a single vote can be struck off. It is not enough to show as my learned friend does that the fact causing disqualification was well known; it must be proved that it was known to everybody. If it is a fact which has to be assumed, there is a greater burden on petitioner to show that everybody knew about it. This is a drastic remedy which is asked. If it was only notorious that respondent was a lecturer, but not under a contract, that is not enough. The fact that University College is a Government Institution must be clearly notorious. Otherwise, the fact that he was a lecturer would not be a disqualification. And it must be notorious that the contract was "for or on account of the public service".

H. V. Perera, in reply.—The learned Solicitor-General has said that the idea of a disqualification must be attached to the facts. That is not an argument but an attempt to legislate. There is no such intermediate way; knowledge of the facts is enough. In other words, learned Solicitor-General tries to say that the word "notorious" implies something very much more than well or commonly known. "Notorious" means a matter of common knowledge. One has to give the ordinary meaning to the word.

The fact of a fact being notorious is proved by inference. The test is not whether everybody knew it or that everybody can be presumed to know it. It is not necessary for the petitioner to show that everybody

[1] *(1872) 60 L. J. Q. B. 114.*

had constructive knowledge of it. In *Cox v. Ambrose* (*supra*) the most that one can infer is that the fact was known to a large number of persons. What the petitioner has to prove is that the disqualifying fact was known to a large majority of people.

Cur. adv. vult.

July 16, 1936. AKBAR S.P.J.—

The petitioner and the respondent were candidates at the State Council election held on February 22, 1936, at which election the respondent (who had polled 12,551 votes as compared with 10,764 votes in favour of the petitioner) was declared to be duly elected. The petitioner claims in his petition under Article 77 (*a*) of the Ceylon (State Council Elections) Order in Council, 1931 (hereinafter referred to as the Election Order in Council) for a declaration that the election was void. He also claims the seat on the ground that he had a majority of lawful votes under Article 77 (*d*).

As the petitioner's second claim can only succeed if he succeeds on the first part of his petition it will be convenient if I deal fully with the latter first before proceeding to his second claim. I thought at first that my decision on the first part should be announced before I called upon the petitioner to enter upon the second part of his claim. I then realized that I should inquire into both parts of the whole petition and give my decision on both parts of the petition at the end, for if I were to hold against the respondent on the first part, he might drop out of the proceedings and the Court would be deprived of the assistance which the respondent might be able to give in the elucidation of the important facts which had to be first gone into on this part of the case.

Let me now deal with the question whether the election was void on the ground urged, namely, that the candidate was at the time of his election a person disqualified for election as a member under Article 74 (*a*) of the Election Order in Council. This is how the petition in paragraph 5 sets forth the ground of disqualification:—"5. The said respondent was at the time of his election a Lecturer at the Ceylon University College under a contract between the respondent and the Principal of the University College and as such was at the time of his election a person holding or enjoying a contract or agreement or commission made or entered into with or accepted from a person for or on account of the public service and the said respondent was and is incapable of being elected or of sitting or voting as a member of the State Council".

The ground put forward by the petitioner at the hearing was that the respondent was disqualified at the time of the election under Article 9 (*a*) of the State Council Order in Council, 1931, the relevant part of which contains more or less the same words as in paragraph 5 of the petition set forth by me above.

The first question I have to decide is a question of fact whether at the time of the election the respondent held or enjoyed in the whole or in part any contract or agreement or commission made or entered into with or accepted from any person for or on account of the public service.

In paragraphs 3 and 4 of his petition the petitioner also put forward another ground of disqualification, viz., that at the time of the election

the respondent was an Examiner appointed by the Education Department of Ceylon for a term of years and that he was disqualified on the ground either that he was holding a public office under the Crown in the Island (Article 9 (c) of the State Council Order in Council) or that he was holding a contract (Article 9 (*d*) of the State Council Order in Council). On the question of the lecturership two witnesses gave evidence on behalf of the petitioner and the respondent offered no evidence on this part of the inquiry. Dr. G. P. Malalasekera, a Lecturer in Oriental Languages, and Mr. Gulasekharam, the Registrar of the University College, testified to the following facts. The University College was conducted by the Ceylon Government and provision for the running of the College was made every year in the estimates. The Financial Secretary provided the funds from time to time—lump sums of Rs. 40,000 being paid at a time to the bank earmarked for the University College and its expenses. Payments were made from this account on cheques drawn and signed by any two of the following officials, viz., the Registrar, the Principal, and the Chief Clerk, and all the cheques were franked with the words "on Government Account". All the expenses incurred in the running of the University College including the salaries of the Professors and the Lecturers and the Visiting Lecturers were paid from this fund furnished by the Government on cheques signed as above stated. At the commencement of each academic year (which began in July and closed on March 31 of the following year) a circular letter was sent to each Professor or Lecturer in charge of each faculty of the College inquiring whether they required assistance and if so what assistance, as it was not possible for the regular permanent staff to cope with the whole work. In 1934, Dr. Malalasekera informed the Principal that he wanted twelve lectures a week in addition to those given by him and his assistant Rev. Siddhartha, but the Principal would only allow him seven lectures a week for that academic year. The choice of arranging for these extra lectures by competent persons was left to Dr. Malalasekera but the right of final approval was with the Principal. Dr. Malalasekera arranged with the respondent for the delivery by him of two lectures per week for the academic year 1934-1935, one series to the Inter Arts class and the other series to the B.A. class, The lecturers so engaged from outside the regular staff were called Visiting Lecturers and were paid a fee of Rs. 10 per lecture. The respondent agreed to lecture on the text book selected for the Intermediate Examination in Sinhalese and in the B.A. class on Sinhalese literature only. There were about six students in the B.A. class and about twenty in the Inter Arts and they took the whole course of lectures by the respondent with a view to sitting for the examination held by the London University, if they were found fit to sit for an examination at the end of the course. These students paid for their whole course, which included the lectures delivered by Visiting Lecturers, and their fees were paid to the revenue. As the respondent had to deliver a course of lectures for the whole academic year he had to study his subjects and map out his lectures which were to be delivered each week at fixed times mentioned in the time table of lectures for the College students which was prepared at the beginning of each academic year. Copies of these time tables for the year 1934-1935 and the year 1935-1936 were put in and the name of the

respondent appears in them as having to deliver lectures every Saturday to the Intermediate Class from 10–11 A.M. and the Final Class from 11–12 noon. A regular attendance register was kept showing the attendance of the students at the lectures given by the respondent as they had to attend 80 per cent. of the lectures before they were allowed to take up their examinations. At the end of each month the Visiting Lecturers, including the respondent, notified the authorities the number of lectures delivered by them, and cheques were sent to them signed in the manner stated by me, on cheques franked with the words "On Government Account". The first letter sent by respondent was put in (P 4) dated August 1, 1934, addressed to the Principal, University College, and informing him that the respondent had delivered three lectures. P 5 dated February 29, 1936, was addressed to the Registrar, University College, and stated that the respondent had delivered ten lectures in February, 1936. P 9 dated January 25, 1936, is addressed to the Registrar, University College,, and conveys the information that six lectures were delivered in January, 1936, and is signed "A. P. de Zoysa, Visiting Lecturer". A specimen copy of the receipt signed by the respondent (P 8) was put in. It is to this effect. "Received from the Controller of Finance and Supply the sum of Rupees . . . . currency being in full my fees as Visiting Lecturer in . . . . from . . . . to . . . . Signature".

In 1935 provision had been made for an Assistant Lecturer to Dr. Malalasekera as it was hoped to fill this post up in July, 1935, on the return of a certain student from England but as he did not return Dr. Malalasekera made the same arrangement for the delivery of a fresh course of lectures to the Intermediate and Final classes by the respondent for the first term (July to September, 1935). As the permanent appointment was not made at the end of the first term the arrangement made with the respondent for the first term was continued for the rest of the academic year till February 28 or 29, 1936, when the respondent resigned.

By document P 38 dated April 16, 1935, the respondent wrote to the Principal, University College, offering his services as Visiting Lecturer in philosophy "if you have not yet made arrangements for lecturers in philosophy at the University College for the coming session". He added in that letter that he had made a special study of some branches of philosophy during his stay in England and that he had had experience in teaching logic. That letter came to nothing as the Principal had already made other arrangements. By P 10 (undated, probably February 15 or 17, 1936) the respondent wrote to the Registrar inquiring whether Saturday (February 22, the date of the election for the Colombo South Electorate) was a holiday, to which a reply was sent that Saturday (February 22) was not a holiday. By letter P 12 dated February 28, 1936, addressed to the Principal, the respondent informed him that "I shall have to discontinue my lectures at the University College as a Visiting Lecturer in Sinhalese". To which the Principal replied thanking the respondent "very warmly for your kindness in assisting the College as a Visiting Lecturer". By P 5 dated February 29 (a Saturday) as already stated by me the respondent informed the

Registrar that he had delivered ten lectures. As there were five Saturdays in February, 1936, the respondent had lectured the full number of lectures according to the time table and he was paid by a cheque for Rs. 100. By letter P 13 of March 9, 1936, the respondent wrote as follows :—" I feel I am not legally justified in allowing myself to be paid for the two lectures I delivered at the University College after I was elected as a member of the State Council. I shall thank you if you can send me a cheque for Rs. 80 and hand over the balance Rs. 20 for any charitable fund or institution. I hope to be excused for the inconvenience caused to you ". The Registrar stated in evidence that with this letter the respondent returned the cheque for Rs. 100. By P 14 dated March 18, 1936, the Principal sent the respondent Rs. 80 by cheque as " you do not desire to receive payment for the two lectures given by you after your election to the State Council ". As regards the balance Rs. 20 respondent was informed that " no payment can be made from the public revenue except for a purpose authorized by the State Council in the annual or supplementary estimates. The sum of Rs. 20 will therefore lapse to revenue unless you are prepared to accept the full amount originally tendered to you ".

The facts which I have set forth, especially the documents, prove conclusively that the University College is a Government institution, providing for the higher education of the youth of the Island and that it is managed and conducted by the Government by its own officers by means of funds provided by the Government each year. The respondent made a suggestion that the University College was conducted by a council composed of several unofficial members and officials. But this was negatived by the evidence of the Registrar who stated as follows :—" The Ceylon Government manages the University through certain of its servants —the Principal and others who work under him. I do not mean by Government, the State Council. It is not correct to say that the College Council manages the University College. That body is purely an advisory body—it has nothing to do with finances ".

I cannot give effect to the respondent's suggestion in view of the overwhelming evidence in this case, which is all one way, for no evidence was offered by the respondent himself or on his behalf on this part of the case. The evidence also clearly shows an arrangement by which the respondent agreed to deliver and did deliver a course of lectures not only for the year 1934-1935, but for the year 1935-1936 till the respondent's resignation on February 28, 1936. These lectures were all to be delivered at fixed times each Saturday in accordance with time tables drawn up at the beginning of each academic year and payment was made each month at the rate of Rs. 10 for each lecture delivered during the month. The payment was made on cheques stamped " On Government Account " and the respondent acknowledged the receipt of the money from the Government. These are all indications of the existence of a contract and I cannot see how I can give effect to the various pleas raised by the respondent that there was no contract. His first suggestion was that he only agreed to oblige Dr. Malalasekera as a friend and that he had never met the Principal personally and that the Rs. 10 paid per lecture was grossly inadequate. Whatever the motive of the respondent may be in

taking up the lectures, his letters to the Principal and the Registrar of the University College and his receipts of Government cheques show that he was fully aware with whom he had contracted. His very first letter P 4 dated August 1, 1934, giving the number of lectures delivered by him during the first month of the course was addressed to the Principal, University College. *P* 12 discontinuing his course of lectures was addressed to the Principal and that letter shows that there was no point in discontinuing the arrangement unless the respondent recognized the fact that there was "a contract or agreement or commission" existing which had to be determined legally by giving notice.

The respondent further argued that the contract came into existence each Saturday when he began to deliver the lecture and ended when he had delivered it. The evidence however shows that the contract came into existence when he agreed with Dr. Malalasekera to deliver the whole course of lectures during the academic year in accordance with a fixed time table. Payment was according to this contract to be made at the end of each month on the number of lectures delivered during that month. There is ample authority in law to support the view that an arrangement of this kind is a contract under our law. In the *Attorney-General v. Abram Saibo & Co.*[1], the agreement was between the defendant and the General Manager of the Ceylon Government Railway that the defendant should supply rice for one year at a specified price "in such quantities as may from time to time be required for the general service of the railway"; that the deliveries should be made upon orders signed by the Railway Storekeeper; that the General Manager should pay for the rice supplied on the 15th day of the month following the delivery; and this was held to be a contract. Similiarly in *Dodwell & Co. v. U. S. Shipping Board Merchant & Fleet Corporation*[2], where the agents of the defendants made an offer through a broker to carry cargo between certain ports during a stated period at certain rates and the plaintiffs agreed to ship two hundred tons of cargo each month during the period at the rates offered, it was held that there was a binding contract.

Similarly in the South African case *Soeker v. Colonial Government*[3], the fact that the respondent was to be paid monthly on the number of lectures delivered, was merely a term in the contract made at the beginning of the academic year.

The Roman-Dutch law did recognize the contractual relationship that would be established when the services of professional men and scientific experts were retained. As Maasdorp says in his 3rd volume at page 275, these contracts would fall more properly under the heading of mandate or agency than contracts of purely personal service. At page 326 he classifies agencies into three classes; judicial agencies, *e.g.*, advocates and proctors; *quasi*-judicial, *e.g.*, executors, guardians, &c., and extra-judicial, all other kinds of agencies whatsoever, whether commercial or otherwise. In chapter 23, Maasdorp deals with three kinds of contracts of agency which may be for the benefit of the principal, the agent and a third party combined or of a third party alone or of the third party and the agent or of the principal alone or of the principal and the third party or of the principal and the agent (see also Walter Pereira's *Laws of Ceylon, p. 571*).

[1] *18 N. L. R. 417.* [2] *36 N. L. R. 1.* [3] *3 Buchanan's Appeal cases 207.*

In the case now before me the University College was established as a department of the public service to provide for the higher education of the students, who paid fees for such education. All the three parties profited by this provision—the Government who got the fees and had a voice in the direction of the higher studies, the students who got the benefit of the education, and the visiting lecturers who got their fees and the prestige of calling themselves lecturers as the respondent did in this case.

In my opinion the evidence satisfactorily establishes the fact that there was a contract or agreement or commission held or enjoyed by the respondent which had been made or entered into with or accepted from the Principal of the University College for or on account of the public service, within the meaning of Article 9 (*d*) of the State Council Order in Council. That paragraph of Article 9 refers to any contract, agreement or commission made or entered into with or accepted from any person, and the only limitation on the general nature of the contract or the person with whom it is made is that it must be for or on account of the public service. As I have already stated the University College was established by Government to provide for the higher education of the inhabitants, and the provision of lectures was the immediate object of that part of the public service which the University College stood for and represented. The contract by which the respondent agreed with the Principal to give his lectures to the Intermediate and Final students in consideration of payment was therefore made by the Principal for and on account of the public service. The branch of the public service which the Ceylon Governmernt Railway, for instance, represents provides a cheap and expeditious method of transport for passengers and goods. Any contract for or on account of this branch of the public service would include any contract which will help or further the object for which this public service was established. It would include a contract for the supply of coal for the use of the Railway engines, or a contract for service by an engineer, or any other servant which will contribute to the maintenance of that public service, but it will not include contracts by which in payment of a sum of money a passenger gets a ticket to convey him from one place to another by train. Similarly it will not include a contract for the establishment of a telephone in a private person's house or office. It will include, however, a contract by which in payment of a rent a person allows the telephone authorities to fix an erection on his premises, for the convenience of the telephone authorities. The following extract from the Parliamentary Debates of February 18, 1925 (page 1086) is interesting in this connection:—

> "72. Captain T. O'Connor asked the Attorney-General whether, in view of the fact that by the *Statute 22 Geo. III. c. 45*, any person undertaking a contract with a Government Department shall be incapable of being elected to the House of Commons, or of sitting or voting therein, he proposes to introduce legislation to safeguard the Members of the House of Commons who have contracts with the Postmaster-General for the installation of telephone service in their residence or places of business?

The Attorney-General (Sir Douglas Hogg): If my hon. and gallant friend examines the *Statutes,* he will find that the disqualification is limited to contracts made for or on account of the public service. There is, therefore, no need for the legislation which he suggests.

Captain O'Connor: Has the right hon. and learned gentleman considered the case of people who have contracts with the Post Office, by which they permit the erection of telephone staffs on their houses, and receive payment therefor?

The Attorney-General: No. Sir".

22 Geo. III. c. 45 referred to in the above extract is of importance in this case and as it was referred to by the respondent in his argument, I quote it here more or less in full: "Any person who shall directly or indirectly himself or by any person whatsoever in trust for him or for his use or benefit or on his account undertake, execute, hold or enjoy, in the whole or in part, any contract, agreement or commission made or entered into with, under or from the commissioners of His Majesty's Treasury, or of the Navy or Victualling Office, or with the master-general or board of Ordnance, or with any one or more of such commissioners, or with any other person or persons whatsoever, for or on account of the public service, or shall knowingly and willingly furnish or provide in pursuance of any such agreement, contract or commission which he or they shall have made or entered into as aforesaid, any money to be remitted abroad or any wares or merchandise to be used or employed in the service of the public, shall be incapable of being elected or of sitting or voting as a Member of the House of Commons during the time that he shall execute, hold or enjoy any such contract, agreement or commission or any part or share thereof, or any benefit or emolument arising from the same".

It will be seen that the words in the first six lines of Article 9 (*d*) occur in the English Act, but the scope of the Ceylon Article is general in terms and not restricted as in the English Act. As there was a doubt in the interpretation of the English Act, that is to say, as I understand it, whether the principle of interpretation *ejusdem generis* should apply or not, this doubt was removed by *21 Geo. V. c. 13* which mentioned the doubt and declared that the earlier act extends "only to contracts, agreements or commissions for the furnishing or providing of money to be remitted abroad or wares and merchandise to be used or employed in the service of the public".

It is interesting to note here that this act became law on March 27, 1931, and our Orders in Council were passed by His Majesty in the Privy Council just seven days before, *i.e.*, March 20, 1931. Under the English law therefore only contracts to furnish or provide money to be remitted abroad or wares and merchandise to be used or employed in the service of the public could disqualify. Any other contract would not be a ground for disqualification. When the State Council Order in Council was passed on March 20, 1931, by His Majesty, Article 9 (*d*) contained no limitation at all with regard to any contract except in so far as they were limited by the words "for or on account of the public service". As regards the holding of a public office as a ground for disqualification, the scheme of the English law is different to that of the local law. Chapter I.

of vol. 2 of *Rogers on Election* gives a list of English Acts passed from time to time disqualifying the holders of certain offices and enabling the holders of certain other offices to sit. Our law is to be found in Article 9 which gives nine different heads of disqualifications disjunctively, the word "or" occurring after each paragraph. Under paragraph (c) the holding of any public office is a disqualification and the very next paragraph (*d*) makes the holding of a contract of the kind held by the respondent a disqualification. By Article 4 the expression "persons holding public office under the Crown in the Island" is not to include persons who are not in the permanent employment of the Crown in the Island but is to include persons serving the Crown in the Island for a term of years. As the respondent was not in the permanent employment of the Crown in the Island when he was a visiting lecturer in the year 1935-1936 and as that employment was not for a term of years, he would not be disqualified under Article 9 (c). But does that conclude the matter? If he was not disqualified under (c) does it mean that (*d*) is not to be applied to his case? As this involved a difficult question of law I noticed the Solicitor-General who appeared as *amicus curiae* and his argument was of very great help to me in the elucidation of not only this point but also the other points of law which have to be decided in this inquiry. The Solicitor-General argued that 9 (c) alone applied to the respondent and not 9 (*d*). He urged that 9 (*d*) only applied to contracts for the supply of material and not to contracts of service. He however admitted that if the respondent had agreed to supply half a dozen lectures that would be caught up by the words of Article 9 (*d*), but that 9 (*d*) would not apply when the respondent had contracted to deliver the lectures himself, on the ground that 9 (c) was intended to cover such cases in its entirety. There are no words in the whole of Article 9 limiting paragraphs (c) or (d) in this way. On the other hand paragraph (*d*) refers to any kind of contract so long as they are for or on account of the public service, which are the only words of limitation on the kinds of contracts contemplated. Further, paragraph 9 (*d*) contains a proviso as follows: "provided that nothing herein contained shall extend to any pension or gratuity granted from the public revenue or other funds of the Island in respect of past public service".

One of the motives impelling a person to enter the public service is the pension or gratuity which is always paid by the Government on retirement, and which therefore forms part of the consideration for the contract of employment, if the foundation for the holding of that office is a contract. The draftsman therefore had in his mind the idea of a contract of service when he drafted Article 9 (*d*) and inserted the proviso. I am asked by the Solicitor-General to add a new proviso to paragraph (*d*) excluding all contracts of personal service of employment from the purview of Article 9 (*d*). I must interpret the Order in Council from the provisions of the Order in Council and if the provisions are clear the Order in Council cannot be controlled by reference to the object (real or presumed) (see *Beal's Legal Interpretation, p. 318,* and the cases cited). In *Fordyce v. Bridges*[1], Lord Brougham said, "we must construe the statute by what appears to have been the intention of the legislature. But we must

[1] *(1847) 1 H. L. C. 1.*

ascertain that intention from the words of the statute, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute ".

Huddleston B. in *Crofts v. Taylor* [1], said, " I am satisfied that he have nothing to do with the general object of the enactment if the words used are clear; they are clear here, and we ought not to enter upon a refined consideration of the question whether they carry out the object of the statute ".

As I have said there are no words in Article 9 (*d*) limiting it in the sense contended by the Solicitor-General. As a matter of fact during the last stages of his argument he conceded that a contract with an expert for a year to give expert advice on payment of his fees, say on the Hydro-Electric Scheme would come within the ambit of Article 9 (*d*), on the ground that the supplying of his advice would be similar to a contract for the supply of materials.

His next argument was that even if there was a contract of service, the actual entering of the service created a new situation, namely, an employment by the Crown which entirely destroyed the contract. He cited the case of *Dunn v. The Queen* [2], in support of his argument, as in that case the right of the Crown to dismiss its servant at pleasure was recognized. It will be seen however from the judgments of Lord Esher and Lord Herschell that far from holding that the contract of service was destroyed or merged in the employment they held that the right of the Crown to dismiss at pleasure was based on public policy and must be taken to have been imported into the contract of service. Lord Esher quoted with approval the remarks of Lord Watson in *Dohse v. The Queen,* " I am of opinion that such a concluded contract, if it had been made, must have been held to have imported into it the condition that the Crown has the power to dismiss ".

In the Privy Council case *Gould v. Stuart,* [3], the judicial committee said : " It is the law in New South Wales as well in this country that in a contract for service under the Crown, civil as well as military, there is, except in certain cases when it is otherwise provided by law, imported into the contract a condition that the Crown has the power to dismiss at its pleasure ". It is not necessary for me to decide whether the law in Ceylon relating to the Crown's right to dismiss its servants is the same as the English law but even assuming it to be so, the contract of service was not destroyed nor did it merge in the employment, owing to this prerogative right of the Crown to dismiss its servants at pleasure. Under the law of this Island the Supreme Court has recognized the contractual nature of some kinds of employment by Government and the right of the servant to sue the Government for wages, salary, for work, &c. (see *Fraser v. The Queen's Advocate* [4]).

The Solicitor-General further argued that the intention to exclude contracts of service or employment from Article 9 (*d*) was clear from the juxta-position of paragraphs (c) and (*d*) and from the definition in Article '. Although the two paragraphs appear one after the other, the word " or " is inserted between the two. It is true that persons holding public office

[1] *(1887) 19 Q. B. D. 524.*
[2] *(1896) 1 Q. B. 116.*
[3] *(1896) A. C. p. 575.*
[4] *1863-1868 Ram p. 316.*

are stated not to include persons who are not in the permanent employment of the Crown and to include those serving for a term of years. If such employment could only occur on the basis of a contract the Solicitor-General's argument would be entitled to some consideration. But the theory of the English law, on the model of which the Order in Council was drafted, as stated in *Halsbury's Laws of England, vol. 6, paragraph 548*, is as follows:—"All public officers are appointed by and derive their authority from the King either mediately or immediately, and he can compel his subjects to serve in such offices as the public good and the nature of the constitution require, refusal to perform a public duty, when legally called upon to do so, being a punishable offence". So that according to the English law the basis of an employment by the Crown may either be a contract or the command of the King.

The very definition in Article 4 exempts the Speaker, the Ministers of the State Council, &c., on the footing that although there is no contract at the root in spite of the payment of salaries, there may be a question whether they are not persons serving the Crown for a term of years. Similarly the definition excludes officers and soldiers of the Defence Force. One can also conceive of such employment in times of emergency. Government can also appoint Unofficial Police Magistrates under the Courts' Ordinance and Inquirers under the Criminal Procedure Code, 1898, with a right to draw fees for their services. All local headmen draw salary now but this was not so till about ten years ago.

There are other examples of persons in Ceylon who may be said to hold public office under the Crown in the Island where there is no contract as the basis of the service but only the command of the Government. For instance, in times of disorder under the Police Ordinance, 1865, special constables may be appointed who may be paid for their services.

As there was a doubt whether an Unofficial Police Magistrate appointed under section 84A of the Courts Ordinance, 1889, had the power to act under Chapter VIII. of the Criminal Procedure Code in dispersing unlawful riotous assemblies the Government has sometimes appointed private persons as Police Magistrates who may have to be paid from the public revenue for their services. The difficulty in Article 4 is created by the exemption from disqualification to which persons not in the permanent employment of the Crown in the Island are entitled, for in the case of persons serving for a term of years, they are disqualified. In the latter case it does not matter whether the service is based on a contract or not; it would be a disqualification either under paragraph (*d*) or (*c*).

The case of those who are not in the permanent employment of the Crown really ranks with the other cases of exemptions from disqualification mentioned in Article 4, *e.g.*, the Speaker, Ministers and officers and soldiers of the Defence Force, in all of which contractual relationships are not established. Even in the case of Crown Proctors and Crown Advocates, the appointment may be purely honorary.

The commonest example of a person holding a non-permanent employment under the Crown is that of a person who is appointed to act temporarily for another person without any remuneration, *e.g.*, an advocate or proctor who is appointed to act for the permanent judge for a short period.

Thus, the legal position in the case is this. There are no words restricting the general nature of the contract in Article 9 (*d*) so long as it is for or on account of the public service, and the draftsman may well have had in mind when he drafted the definitions in Article 4 only the case of persons in the temporary employment of the Crown which employment is not based on contract when he exempted them from the disqualification. It seems to me that if I were to give effect to the Solicitor-General's argument I would not be interpreting the law but legislating. I might mention the undesirability as Counsel for the petitioner urged, of members of the State Council holding remunerative contracts with Government for personal service for a year or a shorter period at a time, in matters which would bring their duty into conflict with their interest. This of course is not the reason for the opinion to which I have come on the question of law which I have been discussing.

Under the old Order in Council of 1923, Article XV., the kind of contracts mentioned in Article 9 (*d*) was not a disqualification, although under Article XVII. it was a ground for rendering a seat vacant after election. In this connection I may mention that by the Amendment Order in Council, 1928 (see *Gazette*, December 14, 1928) His Majesty passed an indemnifying Order in Council saving the editor of the Sinhalese dictionary from all penalties, &c., incurred by him by reason of a contract, or of having accepted an office.

Under the existing Order in Council a contract was not only a disqualification for election but also a ground for unseating the member after election (Article 15). And this may have been the reason why the respondent resigned his lecturership on February 28, 1936, after the result of his election was announced on February 24, 1936, under Article 45 (7) of the Election Order in Council. The results of all the elections, including the respondent's were published in the *Gazette* of March 10, 1936, under Article 47. Under that Article the Legal Secretary causes the name of the member elected to be published. Although this date is of importance in fixing the time for other purposes, I cannot agree with the respondent that the disqualification must be proved to have existed on March 10, 1936. To my mind although Mr. Perera may be right in arguing that it will be sufficient for his purpose if the disqualification existed on any date from the date of nomination till the date of the announcement of the result of the election by the returning officer (see *Ford v. Newth* [1]), it will be sufficient to consider the legal position on February 24, 1936. On that date the contract on which the respondent's lecturership was based still existed for the respondent only wrote his letter of resignation on February 28, 1936. He even lectured on February 29, 1936, and gave the number of lectures as ten for February, for which he was paid Rs. 100. In view of his own letter P 13 of March 9, 1936, in which he stated that he did not feel legally justified in being paid Rs. 20 for the two lectures delivered by him after his election, I cannot see how he can argue that the date of election according to his own account was not February 24, 1936, but March 10, 1936. Nor can I accept his explanation offered in his evidence that the lecture he delivered on February 29, 1936, was in place of the lecture he partly delivered on

[1] *(1901) 1 K. B. D., p. 683.*

February 22, 1936. The respondent's action in writing these letters shows to my mind that he was under a mistaken notion that the law was the same as the law under the Order in Council of 1923, under which a contract with Government was not a ground for disqualification but was only a ground for unseating a member after election. The conclusion to which I have come is that the respondent was disqualified under Article 9 (*d*) when he was elected on February 24, 1936, and therefore his election was void.

In view of this finding of mine it is really unnecessary to discuss the other ground of disqualification set forth in paragraphs 3 and 4 of the petition, viz., the fact that respondent was an examiner appointed by the Board of Education. But as evidence has been led and the matter has been argued, I think I should briefly indicate why it was not a disqualification. Paragraph 3 of the petition asserts that the examinership was a disqualification under Article 9 (*c*) and paragraph 4 that it was a disqualification as it was based on a contract under Article 9 (*d*). In support of the objection that the examinership was based on a contract an advertisement by the Director of Education dated December 6, 1934, (P 15) in the Ceylon Daily News of December 12, 1934, was put in, calling for applications from persons who were prepared to act as examiners and Moderators in the Junior and Senior School Certificate and the professional examinations in English, Sinhalese and Tamil, of the Department. On December 17, 1934, by letter P 16 the respondent offered his services as examiner and Moderator in Sinhalese for the above-mentioned examinations. In that letter he stated that he had been the examiner in Sinhalese for the London University and Cambridge University exmainations and also that he was at that time a part-time lecturer of the Ceylon University College, lecturing "on Sinhalese literature to students preparing for the B.A. examination".

By P 17 the Director informed the respondent that he had been placed for a period of three years on the panel of examiners in Sinhalese at Departmental examinations. This examinership the respondent gave up on March 4, 1936, by his letter P 20. Now this letter P 17 is dated August 1, 1935, and does not refer either to the advertisement nor to respondent's offer in P 16. As a matter of fact even before the advertisement of December 6, 1934, examination scripts had been sent to the respondent for correction and he had been paid at the rate of 15 cents for each script corrected. P 18 shows that this had been done on seven occasions before P 17, namely, April, 1934, July, 1934, August, 1934, November, 1934, March, 1935, April, 1935, and July, 1935. It was the Director who placed the respondent on the panel by P 17 and the Director was not called to prove that the appointment was made in consequence of the respondent's offer in P 16. P 17 does not refer to respondent's offer in P 16 and the interval between the two letters is over seven months and it may well be the appointment was made not because the respondent had offered his services but because the Director knew he was a competent examiner as he had been employed on no less than seven occasions prior to the appointment. Moreover the terms of the appointment contained in P 17 are too vague as explained by Mr. de Saram of the Education Office. The panel contained a number of names, and 250 scripts were

sent in rotation, the choice being left to the Director and the Director may never send any papers to the respondent, for the respondent had no right to insist on any papers being sent to him. Moreover (see R 3) when papers were sent to any one of the panel he had the right to return the papers and to refuse to correct them. The only effect of the appointment is that the examiner is entitled to payment only if he corrects the papers. This shows that the appointment was not an acceptance of the offer in P 16, as there was nothing to show that the offer was an offer of all these vague terms which flowed from the appointment in P 17. The evidence also shows that the offer began with the sending of the 250 scripts to the examiner and the acceptance when he corrected them.

In my opinion letter P 17 does not prove that there was a contract for three years. There was a separate contract when the scripts were sent and were corrected. As the last occasion on which the respondent was paid for correcting papers was November 12-14, 1935, there was no contract existing at the time of the election or the nomination (January 15, 1936) even if I take the fact that payment on these scripts was made on January 7, 1936. Paragraph 3 of the petition stated that the examinership was a disqualification under Article 9 (*c*) as the respondent's appointment to the panel on August 1, 1935, for three years was the holding of a public office. The expression " persons holding public office under the Crown in the Island " —it will be remembered—includes persons serving the Crown for a term of years. I do not agree with the argument for I think the draftsman only contemplated and included persons serving the Crown for a term of years, when they were whole-time officers. He certainly never intended to include persons appointed to a panel of examiners with the uncertainty and vagueness associated with such appointments, as the evidence discloses.

I now come to the second part of the petition, which raises equally difficult questions of law. The petitioner claimed the seat under Article 77 (*d*) of the Election Order in Council on the ground that he had a majority of votes. He should really have asked for a scrutiny under Article 77 (*d*), which he did not do in his petition. This was however only a technical objection, because paragraphs 6 and 7 are explicit and convey all the information required for a knowledge of the grounds for such a claim. As a matter of fact no objection was taken on this ground. Paragraph 5 asserts the lecturership which was based on a contract as the ground of disqualification. Paragraph 6 states that this disqualification or the fact causing the said disqualification were matters of notoriety at the time of the election and were well known to all persons who voted for the respondent at the time of voting and that they had notice thereof. Paragraph 7 states that for this reason the votes given for the respondent were of no effect and that therefore the petitioner had a majority of lawful votes. The procedure on a scrutiny is laid down in Article 82 and therefore the law on the subject in Ceylon has been given statutory effect, unlike the law in England, which is dealt with by the common law. Indeed it appears to me from the English cases that this common law is still in a state of development in Great Britain. Article 82 (1) is divided into six paragraphs and the first five deal with the striking off of votes of individual voters owing to the disqualification of those

voters specified in the five sub-heads. The sixth sub-head is as follows:— It provides for the striking off of " (*f*) votes given for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification or after sufficient public notice of the disqualification or when the disqualification or the facts causing it were notorious ". It will be seen that this sub-head deals with five different types. The first two types deal with knowledge on the part of the voters whose vote it is sought to strike off, and before this can be done the election Court must be satisfied that that particular voter knew of the disqualification or knew of the facts causing the disqualification. Even when the voter was ignorant of the legal effect of the disqualification, if the petitioner can prove that the voter had knowledge of the facts which in law cause the disqualification this would be enough, as the law presumes that every person knows the law. In the third type the petitioner must prove to the satisfaction of the election Court that the voter or the voters specified or all the voters of the electorate had sufficient notice of the disqualification. And the last two types deal with cases where either the disqualification or the facts causing it were notorious. It is sought by the petitioner to bring his claim for the seat under the very last type of Article 82 (*f*), namely, that the facts causing the disqualification were notorious and that those who voted for the respondent threw away their votes.

It will be convenient for me at this stage to indicate briefly the English common law on the subject by reference to English cases and text books. The remarks of Parker in his *Treatise on Election Agents, pp. 278-280* show that the English case law has been gradually developed. The leading cases are *Drinkwater v. Deakin*[1] and *Beresford-Hope v. Lady Sandhurst*[2]. In the former case Brett J. dissented from the judgment in *Reg. v. Mayor of Tewkesbury* and stated as follows:—" I accept that which seems to me to have been always admitted to be the law before the case of *Reg. v. Mayor of Tewkesbury,* viz., the proposition which I have expressed, as generally applicable to all cases where notice of the law as affecting any subject-matter is material, that is to say, where by the law, if certain facts exist incapacity exists, and where by the law, if the law were known to the elector, his vote would be thrown away if he persisted in voting for the disqualified candidate, he cannot, if the facts exist to his knowledge, or if he have notice of the facts equivalent to knowledge, which by law produce incapacity for election in the candidate, render his vote valid by asserting that he did not know that the facts by law produced such incapacity, or that his vote would be thrown away if he voted for such candidate ".

Drinkwater v. Deakin was approved of in Lady Sandhurst's case. In Lady Sandhurst's case, she was returned as a member of the County Council; the electors were of course aware of the fact of her being a woman but they were not aware that this fact constituted disqualification; no express notice of disqualification had been given. The Court held that Lady Sandhurst was disqualified on the ground that she was a woman and that the votes given for her had been thrown away. The Chief Justice Lord Coleridge stated as follows:—" The fact from which the

[1] *L. R. 9 C. P. 642.*

[2] *23 Q. B. D. 79.*

incapacity arose must have been known to every one who voted for Lady Sandhurst; therefore everyone voted at his peril, because there existed that fact to which the law annexes the incapacity of being elected. I apprehened that both in *Goslin v. Veley and Drinkwater v. Deakin* and in other cases it has been laid down over and over again, that if the fact exists which creates an incapacity and it is known, and must be known, to those persons who voted for a candidate who is so incapacitated, votes given under those circumstances are thrown away. As it is put in one of the judgments, such votes are fairly enough thrown away, because the persons would not do the only thing they ought to do to give effect to their votes, namely, to vote for a properly qualified candidate. The distinction which is drawn in the case of *Drinkwater v. Deakin* and in other cases is not a subtle one, it is a perfectly plain one. Where the incapacity is an incapacity of status so annexed by law to the candidate it requires no proof; the fact of its being an incapacity to which the law annexes the legal consequence is known to every person who votes, and the persons who vote and who are aware of the fact to which incapacity is attached, must in reason be held to be aware of the consequence which attaches to their voting. The case of *Drinkwater v. Deakin* and other cases of the same kind are cases where the fact of incapacity had to be ascertained. In the case of *Drinkwater v. Deakin* the fact of the incapacity was not, in the judgment of the Court, ascertained. In that case it was held that there must be sufficient and conclusive notice given to a sufficient number of people to invalidate the election and to seat the rival candidate. On that case I decide without hesitation, that the votes given for Lady Sandhurst were thrown away ".

It will be noticed that the disqualification in that case was one of status. In *Cox v. Ambrose* [1], the disqualification was a contract, but the fact that the respondent was a party to the contract and that petitioner had objected to his candidature was well known to almost all the electors. The respondent himself published posters and sent circular letters to nearly all the electors referring to the objection to his candidature. The details of the evidence will be found at page 115, and the evidence was presumably so overwhelming that no point was made about it for the respondent at the appeal. In that case too *Drinkwater v. Deakin* (*ubi supra*) was followed.

Parker at page 279 says as follows referring to the cases:—" Sometimes the disqualification arises on a fact of such notoriety, or of so patent a nature, as that each elector may fairly be supposed to have express individual knowledge of it ; or, in other words, as that the notoriety of the incapacity is tantamount to notice (see *R. v. Blissell* [2]; *R. v. Derby, Councillors of* [3] and see *Hobbs v. Morey* [4]). Such was the case where the candidate refused to take the qualification oath, formerly required, when requested so to do (*Leominster C. & D. 1*) ; and such was formerly the case where one of the candidates was the returning officer at the election in question (*Southampton, Heyw. Co. 535 ;* see *ante, p. 275*), or a woman (*Gosling v. Veley* [5]; *Beresford-Hope v. Lady Sandhurst* (*supra*). The novel

[1] *60 L. J. Q. B. D. 114.*
[2] *1 Ree 279.*
[3] *7 A. & E. 419.*
[4] *(1904) 1 K. B 71.*
[5] *7 Q. B. 439.*

creation of an office of profit under the Crown was held to be "notorious" (*Fife, 1 Lud. 455*); and a candidate has been petitioned against on the ground that it was "notorious" that he was an infant (*Flintshire, 1 Peck. 526*). It has also been laid down that knowledge of the disqualification may be established by "notoriety" as well as by express notice (*2nd Clitheroe, P. R. & D 285*). "It will, however, be found that in alll the above cases except *Southampton* (*Heyw Co. 535*), and except *Beresford-Hope v. Lady Sandhurst,* in which case the candidate was a woman, express notice was given to the electors, and that the minority candidate was not unseated on mere proof of the "notoriety" of the facts creating the disqualification".

Roger in vol. 2, p. 83, after referring to the cases says as follows:— "The result of the above decisions is that an elector, who votes for a disqualified candidate, with knowledge either of the disqualification or of the facts creating the disqualification, throws away his vote; and such knowledge will be presumed where the disqualification or the facts creating the disqualification are notorious."

It is clear therefore that the draftsman modelled paragraph (*f*) of Article 82 on this statement by Roger. The petitioner is therefore entitled to ask an election Court to strike off his opponent's votes if he can prove that the disqualification or the facts causing it were notorious. But this fact must be proved to my satisfaction. I accept the definition of "notorious" given by Mr. Perera, namely, that it means that it was a matter of common knowledge. The electorate had 38,842 voters (men and women) on its roll of whom 12,551 polled for the respondent and 10,764 for the petitioner, 10 ballot papers being spoilt. There is no definite evidence, but Mr. de Silva, clerk in the Registrar's office, said that nearly 75 per cent. of the voters were Sinhalese, although he was not definite. Wellawatta, one of the divisions, had the largest number of voters and in this area there was a large number of Burghers and Tamils. Many witnesses were called to prove that 10,000 posters similar to P 25 were distributed prior to the election. This poster is in Sinhalese and among the qualifications of the respondent it states that Dr. A. P. de Zoysa is Kathika Achariya Dura in the Lanka University College. The word Kathika means by itself "talks" and Achariya means "teaching" according to the majority of the witnesses, but the two words do not occur together in the dictionaries and the copy of the Dinamina put in (P 35) of August 7, 1926, shows that the word was coined by putting the two words together to apply to Rev. Sumangala, who was then an Assistant Lecturer in the University College. Evidence was led for the petitioner to prove that not only were the posters posted and distributed, but that from two or three platforms at election meetings it was announced that the respondent was a lecturer in the University College, the actual English words being used by one or two speakers who spoke in Sinhalese and even by the respondent. Further, that in several villages and places the respondent or his friends went round from house to house canvassing and informing the voters that the respondent was a lecturer in the University College. Even assuming that all this evidence was sufficient evidence to prove the publication of the fact, namely, that the respondent was Kathika Achariya Dura in the Lanka University College or that he

was lecturer, University College (uttered in English), at two or three meetings was this enough? All the witnesses were men and they did not speak directly as regards publication to the women voters. Nor was there any evidence that the fact was published to the Tamil, Muslim and other non-Sinhalese voters (numbering nearly one quarter of the voters) in their own language or that the words were understood by them. No notice of the disqualification was given by the petitioner to the voters. Did the words "Kathika Achariya Dura, Lanka University College" convey the idea of a contract to the voters or that the contract was with the Government? Was it a notorious fact that the University College was a Government institution? One witness Wagista said, "I understood the phrase "Kathikachariya" as a lecturer. I do not know if the man was a paid lecturer or if he had a contract with Government, University College being a Government concern any one attached to it would be disqualified—about the disqualification I knew after the election petition". Another witness Costa said, "They (the respondent's supporters) told me he was teaching in some school and was holding the chief post—(what is the school?). The University College, Cinnamon Gardens—our people knew it. I do not know if they knew it was a Government institution". Another witness Boteju betrayed some uncertainty at first as regards the Government control of the University College, though he corrected it later. Thegis Appu said, "I did not know Kathika Achariya to mean a Government post but the poster said, 'now lecturer in the University College', and I understood it was a Government post". G. D. P. Appuhamy said, "Kathikachariya is not ordinarily used".

Sapramadu who had been obviously called to testify to the fact that the respondent at a meeting stated that he was a lecturer in the University College refused to admit that he heard the respondent say so. "I cannot say if he did so or not". He at one time confused the Technical College with the University College. The witness Costa mistook the Royal College for the University College. As I have already stated the respondent was disqualified because he held a contract with Government in respect of his visiting lecturership at the University College under Article 9 (*d*). He was not disqualified under Article 9 (*c*). The facts published were that the respondent was Kathikachariya Dura, Lanka University College. Under Article 82 (*f*) the facts causing the disqualification must be proved to have been notorious. What was proved was that the publication was made to the Sinhalese voters in several divisions. Whether the fact of the lecturership was published to the women voters was not proved by evidence, and I have been asked to infer that it was so published. I am also asked to infer that that fact was commonly known, to the non-Sinhalese voters. I am further asked to infer that the University College was as a matter of common knowledge known to be a Government institution; and that the unusual word Kathikachariya Dura was commonly known to mean not only a lecturer, but that it meant a lecturer whose services were made use of by Government, owing to the words Lanka University College being joined with the words Kathikachariya Dura. The English words "University College" may have meant nothing to many of the voters, or they may not have understood the

College to be a Government College, as almost all the colleges in Ceylon are privately owned. Further, the word Kathikachariya Dura may not have suggested the idea of a contract under which the respondent was paid fees by Government. It may have only suggested that it was a title of honour or that the post was honorary or that it had something to do with elocution or oratory. What the petitioner had to prove was common knowledge on the part of the voters of the fact of the contract with Government on which ground alone the respondent was disqualified. Article 82 (*f*) requires proof of the notoriety of the facts causing the disqualification, that is to say, the facts which directly and immediately cause the disqualification.

In my opinion the evidence falls far short of this proof, for there can be no doubt that in a place like Ceylon the voters cannot be excepted to reach that high standard of education or intelligence which voters in Great Britain always exhibit. The petitioner therefore fails on this part of his petition. As each party has partly won in this election inquiry I make no order as to costs and each party will bear his own costs.

My decision is that the election of the respondent is void on the ground that he was disqualified at the time of the election under Article 9 (*d*) and that the claim of the petitioner to the seat fails and that each party should bear his own costs.

Respondent's election declared void.

Petitioner's claim dismissed.