1936 *Present :* **Koch J.**

SOMASUNDERAM *v.* KOTALAWALA

IN THE MATTER OF THE ELECTION FOR THE BADULLA ELECTORAL DISTRICT

Election petiton—Lease of house by elected member to Medical Department—Contract for or on account of the public service—Time of election—Ceylon (State Council) Order in Council, 1931, Article 9 (d) and 72.

Where the respondent at the time of his election to the State Council was the owner of premises which were hired on a monthly tenancy by the Director of Medical and Sanitary Services as an office for the Medical Officer of Health,—

Held, that the respondent was holding a contract entered into with the Director of Medical and Sanitary Services for or on account of the Public Service within the meaning of Article 9 (*d*) and that he was disqualified for election as a member of the State Council.

Held, further, that the time of election contemplated by Article 72 (*e*) may be either nomination or election day but not the day on which the result of the election is published in the *Government Gazette.*

THE respondent was nominated as a candidate for the Badulla Electoral District on January 15, 1936. The poll was held on February 27. On the following day the respondent was declared elected and the result was announced in the *Government Gazette* of March 10.

The respondent was the owner of the premises "Bridge View", which was engaged by the Director of Medical and Sanitary Services as an office for the Medical Officer of Health, Badulla. The tenancy lasted from January 1, 1930, to March 31, 1936. The rent for March, 1936, was not accepted by the respondent.

The petitioner alleging the above facts prayed that the election be declared void on the ground that the respondent was disqualified to be a member of the State Council under Article 9 (*d*) of the Ceylon (State Council) Order in Council, 1931.

H. V. Perera (with him *R. L. Pereira, K. C.*, and *N. Nadarajah*), for the petitioner.—Under Article 42 (*e*) of the Ceylon (State Council Elections) Order in Council, 1931, if at the date of the election, it is void, that would be sufficient to render the election void. An election commences with the nomination. It is not necessary to ascertain the precise time.

The principle underlying Article 9 (*d*) of the Ceylon (State Council) Order in Council, 1931, is that there should not be any conflict of interest. The evidence shows that the respendent directly held a contract entered into with the Director of Medical and Sanitary Services. It is immaterial whether the former waived the rent for March, 1936. It is not necessary to discuss the effect of monthly tenancies as the tenant occupied the premises till March, 1936.

The contract considered in *Cooray v. Zoysa*[1] is not so definite as this one.

The building was utilized in connection with the anti-malaria campaign and it clearly falls within the category of contracts entered into "for or on account of the public service".

Under the old Order in Council a person was not disqualified on this ground but was liable to a penalty. Counsel cited *Ford v. Newth*[2]; *Horford v. Lynskey*[3].

N. E. Weerasooriya (with him *C. W. Perera* and *T. S. Fernando*), for the respondent.—The authorities cited are not applicable as the English Act is not identical with the Ceylon Order in Council.

The "time" in Article 74 (*e*) of the Ceylon (State Council Elections) Order in Council does not mean the time of the poll, but it refers to the publication in the *Gazette* under Article 47. Judicial notice of the result of the election can be taken under section 57 (7) of the Ceylon Evidence Ordinance, 1895. There may be other acts as the declaration of the number of votes after the poll by the Returning Officer, but the time of election refers only to the publication in the *Gazette* and never refers to the declaration by Returning Officer.

Article 9 (*d*) of the Ceylon (State Council) Order in Council has not been interpreted anywhere. *Cooray v. Zoysa* (*supra*) deals with an entirely different case.

It is submitted that the respondent had a contract with the Medical Officer of Health and not "for or on account of the public service". The burden is on the petitioner to prove this conclusively as the prceedings are *quasi*-criminal—see *Lateef v. Saravanamuttu*[4]. The question of proof in election cases has been dealt with in *12 Halsbury (2nd ed.) p. 439, s. 854;* and by Martin B. in Warrington *(1896) 1 O.M. & H. 42 at 44; Lichfield's case (1880) 3 O.M. & H. 136.*

It is the right of every citizen to vote or represent a constituency. If that right is removed it must be done in clear and express terms as held in *Royse v. Birley*[5].

Even if the contract was entered into "for or on account of the public service", the article 9 (*d*) does not contemplate contracts of this nature.

[1] *5 C. L. W. 111.*
[2] *(1901) 1 Q. B. 683.*
[3] *(1899) 1 Q. B. D. 852.*
[4] *(1932) 34 N. L. R. 369.*
[5] *(1869) 20 L. T. 786 at 792.*

The *proviso* to that article cannot control the main article. It contemplates a person who holds or enjoys a commission. The words "contract or agreement" must be consistent with the word "commission". The word "commission" is defined by Abbot C.J. in *King v. Dudmen*[1]. In certain cases it may amount to a contract. Contracts and agreements are distinguished in *Anson (13th ed.) pp. 2 and 3.* These words are necessary to include certain kinds of commissions. The words used in the English Act would include a contract of this nature but not the words used in the present article.—See *Ystradyfodwg* and *Pontypridd Main Sewerage* Board *v. Benstead*[2].

[KOCH J.—Why should not each word be given its full meaning?]

They must be judged by their associates.

The English Act. 22 Geo. III. c. 45, s. 1, was intended to disqualify people who contracted to supply goods. During the long period when this Act was in force, there was not a single case where it was held that a landlord was disqualified. In the Ceylon Order in Council many words had been omitted so that the remaining words are more appropriate for commissions. The *proviso* is also consistent because it deals with the pensions of officers. It is in the nature of a commission. Further, the duty of the Medical Officer of Health is not to engage offices. Hence this contract would not be "for or on account of the public service".

The nature of the contract is a monthly tenancy. At the end of the month there is a renewal of the contract. Once possession had been given by the respondent in 1930, his part of the contract was over. There was no evidence that he had to do any thing further. The position of the respondent was merely that of a creditor who had to receive money. Theoretically the landlord may have certain duties to perform, but there were none in this case. Here, there is contract which is not continuous. The article does not contemplate such a contract. In *Royse v. Birley*[3], the goods had been delivered and there was only payment to be made. As far as the landlord was concerned it was an executed contract. See *Thomson v. Pearce*[4].

S. J. C. Schokman, C. C. (with him *M. W. H. de Silva, Deputy Solicitor-General*) as *amicus curiae.*—There is no English case where a contract of tenancy was considered; but during the war, private premises were requisitioned for war purposes and a special Act, 7 and 8 Geo. V. c. 25, s. 9, was passed to remove the disqualification.

H. V. Perera.—A creditor is not a contractor. The duties of a landlord are specified in *Wille on Landlord and Tenant, p. 253.* Once this is taken into a account, the landlord is not merely in the position of a creditor. The contract of tenancy is a continuing contract. Akbar J. interpreted the meaning of the "time" of the election in *Cooray v. Zoysa.*

N. E. Weerasooria, in reply.—No one knows under what circumstances the English Statute, *7 and 8 Geo. V. c. 25,* was enacted. Counsel cited *Ystradyfodwg and Pontypridd Main Sewerage Board v. Bensted* (*supra*); *Tranton v. Astor*[6]; *Rogers on Elections, vol. 2, p. 24.*

Cur. adv. vult.

[1] *4 B. & C. 850 at 854.*
[2] *(1907) A. C. 264 at 268.*
[3] *(1869) 20 L. T. 786.*
[4] *(1819) 1 B. & B. 25.*
[5] *(1936) 5 C. L. W. 111 at p. 124.*
[6] *(1917) 33 T. L. R. 383 at 385.*

September 30, 1936. KOCH J.—

The petitioner and the respondent were candidates for election at the State Council election held on February 27, 1936, for the Baduulla Electoral District. The respondent was declared by the Returning Officer duly elected on February 28, 1936. He had polled 15,795 votes as against the petitioner who only polled 7,000 odd. The nomination day was fixed for January 15,1936, when the petitioner and the respondent stood nominated for the electoral district and the election was adjourned in order to enable a poll to be taken on February 27, 1936. The result of the polling was duly announced in the *Government Gazette* on March 10, 1936. Within twenty-one days of this announcement the petitioner on March 27, 1936, filed his election petition and complied with the necessary formalities and requirements prescribed by the Ceylon (State Council Elections) Order in Council of 1931.

In this petition the petitioner states that the election was void under Article 74 (*e*) of the aforesaid Order in Council as the respondent was at the time of his election a person disqualified for election as a member. This disqualification the petitioner avers was due to the fact that the respondent was at the time of his election holding a contract or agreement made and entered into with the Director of Medical and Sanitary Services or the Medical Officer of Health in Uva Province, for or on account of the public service, and that the contract or agreement referred to was a contract of tenancy by which the said respondent let for hire the premises called "Bridge View" situate in Badulla town for the purpose of providing office accommodation for the Medical Officer of Health, Uva, and his staff. He further avers that this tenancy began in January, 1930, and without interruption continued up to the date of his petition and was still continuing.

I am satisfied that on the evidence led by the petitioner the premises "Bridge View" in Badulla town was engaged by the Director of Medical and Sanitary Services as an office for the Medical Officer of Health, Badulla, on a monthly tenancy renewable from month to month as from January 1, 1930, at a rental of Rs. 55 per month. I am also satisfied that this tenancy continued uninterrupted up to March 31, 1936, subject to the qualification that owing to the depression the monthly rental was reduced in 1931 to Rs. 45. I am further satisfied that this reduced monthly rental was paid to and accepted by the respondent up to the end of February, 1936.

The evidence clearly shows that the monthly rental was payable at the end of each month and that the procedure adopted (which is the usual procedure) was for the respondent to receive these rents at the end of each month as they fell due by signing a voucher that was prepared and perfected for the purpose at the office of the Medical Officer of Health, Badulla. This practice was regularly followed up to the end of February, 1936, but on March 29, 1936, the respondent gave notice to the Director of Medical and Sanitary Services terminating the tenancy on April 30, 1936, with the request that he would feel obliged if the tenancy could be terminated earlier as he had been declared elected member of the State Council for Badulla on March 28, 1936. The Director in pursuance of this request made immediate arrangements for the shifting of the office

of the Medical Officer of Health from "Bridge View" to another bungalow and "Bridge View" was vacated at the end of March. The March rent for "Bridge View" was sent from the head office at Colombo of the Director of Medical and Sanitary Services in March to the Medical Officer of Badulla for payment to the respondent but the respondent had failed to attend and sign this voucher and to receive this rent. This rent was returned by the Medical Officer of Health to the head office. The reason why the respondent was not specially called upon by the Medical Officer of Health (Dr. Ferdinands) to sign the voucher and receive payment was due, he says, to the fact that he learnt that the respondent having been declared elected on February 28, 1936, was averse to receiving the rent for the month of March. This sum of Rs. 45 though returned by the Medical Officer of Health to the head office has been and is still available to the respondent who undoubtedly is entitled to this sum, and can at any time hereafter legally claim the same so long as it is not prescribed. The fact that the rent for March, 1936, had not been received by the respondent into his hands cannot obviously affect the continuance of the contract of tenancy up to March 31, 1936, as a contract of tenancy can only be legally terminated by the giving of due notice or by mutual consent. On the facts established I have no hesitation in holding that the respondent in the capacity of landlord was a party to a contract of tenancy in respect of premises "Bridge View", Badulla, and that this contract of tenancy commenced on January 1, 1930, and continued up to March 31, 1936.

Now who is the other party to this contract? The respondent's Counsel first contended that this other party was no other than the Medical Officer of Health, Badulla. He argues that the Medical Officer of Health was the actual tenant as he himself was in occupation and as the various vouchers signed by the respondent were typed in the office of the Medical Officer of Health by an officer of his and signed by the Medical Officer of Health himself. I am not in the slightest degree impressed by this argument as the test to be applied as to who the other party to the contract was is not dependent on circumstances such as those relied on by the respondent but on the identity of the actual party with whom the contract of tenancy was actually entered into. There can be no doubt whatsoever on the evidence of Dr. S. T. Gunasekera, Acting Director of Medical and Sanitary Services, and the evidence of Doctors Dissanayake and Ferdinands supported as it is by the documents P1 to P15 that this contract of tenancy was entered into by the respondent with the Director of Medical and Sanitary Services for the purpose of providing office accommodation for the Medical Officer of Health, Badulla. It is true that the evidence discloses that "Bridge View" was selected by the then Medical Officer of Health of Badulla, Dr. Dissanayake, but that was on instructions from the Director because the Medical Officer of Health happened to be on the spot and perhaps was the best judge as to whether the building would suit him as an office. The fact that the selection of the premises was left to the agent of a principal is no reason for inferring that the contract of the landlord was with that agent. I am clear in my mind that on the evidence there can be no question that this contract of tenancy was between the respondent and the Director of the

Medical and Sanitary Department. In fact the respondent's Counsel, Mr. Weerasooria, later in his argument felt contrained to admit that this was so.

The ground as I have stated bofore on which the petitioner relies is that this contract which was entered into with the Director of Medical and Sanitary Services was for or on account of the public service, a requirement that is set out in Article 9 (*d*) of the Ceylon (State Council) Order in Council of 1931. On this point I am satisfied that the Department of Medical and Sanitary Services is one of the Departments of the Public Service and therefore a part of that service, and that this contract was entered into by the Director not for his own private purposes but for and on account of the public service. There is the evidence of the Acting Director on this point and there is also his evidence that the rents were paid from public funds. This evidence is supported by the evidence of Mr. J. P. de Vos, Assistant Accountant of the Department of Medical and Sanitary Services, and Mr. D. A. Fernando, Audit Examiner, as well as the documents produced relevant to that point. Even assuming that this contract was entered into with the Medical Officer of Health, Badulla, and not with the Director of Medical and Sanitary Services, I cannot see how this will make any difference as I am firmly of opinion that the Medical Officer of Health in thus contracting was acting not in his personal capacity or for his personal benefit but for and on account of the Department of Medical and Sanitary Services of which he was a member and therefore for and on account of the public service. No authority has been cited by respondent's Counsel to satisfy me that a contract made by a person with the public service should be entered into by that person with some particular specified officer of the public service, and so far as I am aware there is no such provision in any of our Ordinances unlike the special provision in section 456 of the Civil Procedure Code which says that all actions by or against the Crown shall be instituted by or against the Attorney-General.

The evidence called by the petitioner and the documents relied on by him clearly proved that the intention of the respondent in entering into the contract of tenancy was to do so with the public service, through its representative the Director of Medical and Sanitary Services. In fact the respondent in his letters P 1, P 6 and P 13, refer to his bungalow being required and used for the purposes of the Anti-Malarial Campaign. In *Royse v. Birley*[1], Brett J. referring to the corresponding section in the English Statute (*22 George III. c. 45*) says, "I think that to render its provisions applicable a contract must be entered into with the knowledge that it was with the agent of the Government". I have no hesitation in saying that the Director of Medical and Sanitary Services was acting in respect of this contract as the agent of the Government and that the respondent was well aware that the Director was acting as such agent.

Counsel for the respondent stoutly maintain that granted the respondent entered into a contract of tenancy and granted that that contract was with the Director of Medical and Sanitary Services and granted that the premises leased were put to public use, nevertheless the position falls short of such a contract having been entered into with a person for or on

[1] *(1869) 20 Law Times Reports 786 at p. 792.*

account of the public service. He contends that contracts "for or on account of the public service" are contracts which contemplate that something should be done under that contract by the other party (in this case the respondent) for the benefit or the use of the public service, and that the acts contemplated do not therefore include the mere letting out of the premises on a contract of tenancy no matter whether such premises were intended to be used for the public service. He says that the other parties contemplated are persons such as Government contractors and public contractors. He cites *Rogers on Elections, vol. 2, 20th ed., pp. 21 to 25 and 21 Halsbury, Old ed., p. 658, s. 1177.* I do not find here anything that definitely defines the particular nature of the act that the other party should do for the use and benefit of the public service so as to bring that act within the meaning of the words "for and on account of the public service". I find that the passages and the cases therein referred to deal only with contracts under which goods, wares, merchandise, and commodities are supplied without any pointed reference to the fact that it is such type of contract and such type only that can be said to be "for or on account of the public service". There is however sufficient material there to show that contracts made with Commissioners of the Treasury or the Navy or the victualling officers or generally on account of the public service disqualify the other party from being elected or sitting which would rather indicate that contracts made with the head of a Government department for the benefit of the public service are rightly made with the recognized authority.

Assuming that Mr. Weerasooria is right in maintaining that the contract contemplated necessarily involves the doing of an act for the use and benefit of the public service, I am of opinion that the letting of a house to the head of a department of the public service and maintaining it in a habitable condition during the period of occupation amounts to the doing of an act for the use and benefit of the public service. This idea is sustained by my brother Akbar J. in his judgment in *Cooray v. De Soysa*[1]. He there says, "Any contract for or on account of the public service would include any contract which will help or further the object for which this public service was established". Surely the letting out of the premises in question in order that it might be used as an office for the Medical Officer of Health, Badulla, is a contract which will help and further the object for which the public service was established. Moreover my brother in differentiating between contracts that could not be said to be "for or on account of the public service" (such as a contract of conveyance entered into by a passenger by buying a railway ticket or a contract for the establishment of a telephone in a person's house) and contracts which can be rightly said to be "for or on account of the public service" instances the following as coming under the latter head, viz., a contract by which on payment of a rent a person allows the telephone authorities to fix an erection in his premises for the convenience of the telephone authorities. If my brother is right in the instance he has given (and my opinion is that he is right) is there any difference between that instance and the case under review? In the case instanced by my

[1] *5 C. L. W. 111 at p. 118.*

brother the premises were let under contract to the telephone authorities to fix an erection for the convenience of the telephone authorities. In the case under review the premises were let under contract to the Medical authorities to fix an office for the convenience of the Medical authorities. I am therefore of opinion that the contract in question was entered into by the respondent "for or on account of the public service".

The next point raised by Counsel for the respondent is that under the Article setting forth the disqualification, viz., 9 (*d*) of the Ceylon (State Council) Order in Council, 1931, a contract of tenancy cannot be included under the words "any contract or agreement or commission". His argument is that the word "commission" controls the words "contract or agreement" and that the words contract and agreement must be read merely as explanatory of the words "commission". He continues the argument by insisting that the one word to be considered in 9 (*d*) is the word "commission", and that before the petitioner can succeed, he must bring this contract of tenancy within the word "commission". He contends that the petitioner has failed to do so because the word "commission" in this context means a trust or authority and as tenancy is not a trust or authority it cannot be brought within the legal meaning of the word "commission". I may be disposed to agree that the word "commission" implies what Mr. Weerasooria says it does but I find the greatest difficulty in subscribing to his argument that the word "commission" is the only word to be considered in 9 (*d*) and that the words "contract or agreement" have been inserted as purely explanatory of the word "commission". In the first place the words "contract or agreement" precede the words "or commission" and to my mind this order of arrangement would rather suggest that if the question of one word controlling another can be introduced at all the earlier word would control the later and not the later word the earlier. The words as they appear are "any contract or agreement or commission made or entered into". It will be seen that there is the disjunctive "or" between each of these words "contract'," "agreement", or "commission" which to my mind in connection with the rest of the context has been advisedly inserted by the draftsman with the object of setting out these words as definite and separate words each to be taken and read by itself and legal effect given to each on that footing. I have given full consideration to the very ingenious argument of Mr. Weerasooria and the cases he has cited on this point. But I regret that I am firmly convinced that his argument cannot prevail. To uphold it will be to drive a coach and four through the express words "contract or agreement", for, I cannot bring my mind to agree that these words were inserted purely for the purpose of explaining the word "commission" which has a definite legal meaning and does not require any assistance from words such as contract or agreement to make one aware of what that meaning is. On the contrary my opinion is that if the words contract or agreement are to be considered as being merely explanatory I fear that far from the meaning of the word "commission" being thereby clarified, the effect would be to mystify it. Nothing could have been easier for the draftsman if he intended to limit the holding or the enjoying in whole or in part to "commission" only

to use the word "commission" only without any reference to contract or agreement and to explicitly define that word in Article 4 where a number of terms and words are defined.

It is hardly likely that the proviso "nothing herein contained shall extend to any pension" would have been inserted in this connection were it not for the fact that otherwise it might be reasonably construed that a person enjoying a pension does so as the result of a contract express or implied. This proviso would not have been necessitated if the identity of the word "contract" was lost in the word "commission".

The next argument of respondent's Counsel was that assuming that contract agreement and commission were each differently and seperately contemplated under Article 9 (*d*) it was not intended that the words "contract" or "agreement" should include a contract of tenancy. His point was that the words contract or agreement referred to in this Article only contemplated contracts to supply. He says that the words in our enactment have been chipped off from section 1 of *22 George III, c. 45* and that being so the implications of that section only should be adopted in our section. The section in the English Statute runs as follows:—

> "Any person . . . . who shall undertake, exercise, 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 of the Victualling Officer or with the Master General or the Board of Ordinance or with any one or more of such persons whatsoever for or on account of the public service."

Mr. Weerasooria contends that the words "or with any other person or persons whatsoever" must be read *eiusdem generis* with the persons specified previously in that act and as the contracts contemplated with such persons were limited by decisions of Court to supplies only, the same limitations should apply to our Article. In this connection I am not prepared to say that it is clear that the words " with any person or persons whatsoever" are *eiusdem generis* of the persons previously mentioned. I say so because the statute *21 George V. C. 13* which became law on March 27, 1931, was passed to remove any such doubt.

I do not see that the cases cited by him on this point actually limit such contracts to those for supplies only, although it is true that every one of the cases he refers to deals with contracts for supplies. The principle of *eiusdem generis* which it is argued does apply to the English Statute cannot apply to our statute because there are no such "preceding" persons specified and there is therefore no room for the introduction of this principle into our statute. I have only to ascertain therefore whether the word contract appearing in our Article read in connection with the context is wide enough to include a contract of tenancy. The words are "any contract" which must mean any contract whatsoever in the absence of any words limiting the range of such contracts, and there does not appear any such limiting word in our Article.

I am indebted to Mr. Schokman, Crown Counsel, who appeared as *amicus curaie* for a very helpful authority. He drew my attention *amicus curiae* for a very helpful authority. He drew my attention to Courts (Emergency Powers) Act, 1917, c. 25, s. 9 (1) (7 & 8 *George V.*). This statute was expressly passed during the war to prevent

any prejudice being created against a sitting member of the House of Commons who by reason of the emergencies of the Great War may have been required to supply property or permit the use thereof by a Government department for purposes connected with the war. This statute in section 9 (1) expressly set forth that none of the provisions of the House of Commons Disqualification Act of 1782 (which has been previously referred to in this judgment as *22 George III.*) shall be construed so as to extend to a contract or agreement entered into during the Great War as to the price of compensation to be paid for any property so requisitioned or taken. To my mind it is perfectly clear that the relevant provision in that statute refers to any property of whatsoever description movable or immovable. If *22 George III. c. 45, s. 1,* was confined only to commodities or supplies, there would have been no necessity for that provision to have been couched in such general terms as to include immovable property. After careful consideration therefore of opinion that the the words "any contract" are wide enough to include a contract of tenancy.

Mr. Wéerasooria next very strongly pressed his contention that the tenancy of "Bridge View" for and during the month of March, 1936, was, from a contractual point of view and so far as his client the respondent was concerned, an executed contract. That what only remained for his client to do was to receive the rent which fell due at the end of that month and that this amounted only to a right to payment and did not involve any obligation whatsoever on his part towards his tenant; in short that the respondent was purely a creditor and nothing more. Proceeding on this footing Mr. Weerasooria cited in support the Manchester Election Petition case of *Royse v. Birley* (1869) already referred to. He relied on the decision there that the words holding or enjoying a contract made for or on account of the public service within the meaning of *22 George III. c. 45, s. 1* (previously referred to) required that such contract must at the time of the election be an executory one; that therefore under a contract for the supply of goods where the goods had been delivered to and accepted by the Government before the election and at the time of the election nothing remained to be done under the contract except for the Government to pay the price which previously had become ascertained and was payable, the contractor in that case was held not to be disqualified in as much as at the time of the election the contract was executed. He also cited the case of Tranton and Astor (1917) 33 *Times Law Reports* 383. This case concerned the insertion of an advertisement in the newspaper called the Observer, the proprietor of which was Major Astor. This was done as the result of an alleged order given by a Government department for the insertion of a Government advertisement. Major Astor was at the time sitting and voting in the Commons House of Parliament and it was sought by Tranton to recover a large sum by way of penalty against the defendant for having so sat and voted when he was disqualified from doing so. Justice Low who decided that case was of opinion that the advertisement was inserted as the result only of a Government order and that there was no evidence that the order was ever accepted except by reason of the insertion. He was therefore of opinion that the moment the advertisement was inserted the contract was executed and that all

that remained to be done was for the defendant to receive payment. In these circumstances he was of opinion that the sitting or voting which was proved to have taken place between the insertion and the actual payment was not penalized under the Act. In the course of his judgment he dealt with the case of *Royse v. Birley* (*supra*) and expressed his approval of the decision in that case. Justice Low was further of opinion that the Act was not intended to include casual or transient transactions although they may be the subject of contracts, and that the kind of contract intended was of a continuing and lasting character and would not include for instance ordinary sales or purchases across the counter.

Another case cited by Mr. Weerasooria was *Thompson v. Pearce* [1], where it was held that every dealer who had a relation to the public service however remote is not disqualified from sitting in Parliament. In this case the dealer had supplied articles of clothing specified in an order issued to him by a Colonel for the use of his regiment and the facts showed that the order had been executed and that the Colonel was debited in the defendant's books to the amount of the order. All that remained under the contract to be done was payment. There can be very little doubt that where a contract has been wholly performed by the parties to it and all that remains is a matter of payment the contract can rightly be said not to be executory but actually executed and would not be such as is contemplated by the statute. The same principle, I admit, would apply to our Article 9(*d*). The difficulty however in the way of Mr. Weerasooria is that the contract of tenancy in the present case had at no period of time prior to March 31, 1936, been executed. For, a tenancy contract unlike a contract for the sale of goods is a contract of a continuing nature until the final day of its determination and during the period of its continuance involves several mutual rights and obligations of a landlord towards his tenant and of a tenant towards his landlord. These mutual rights and obligations are well known. The landlord has to protect the tenant in his occupation of the building and to see that he has peaceable possession of it as long as the tenancy continues. He has further to keep the premises in a habitable state of repair so that the tenant may have the use of them for the purposes for which they were let to him. He would also be responsible to pay compensation to the tenant for any loss caused to the tenant through defects in the property leased and also an obligation on the termination of the tenancy to permit the tenant to remove movable property brought in by him and also in certain cases to pay compensation for improvements effected by the tenant. On the other hand the tenant is under obligation to use the premises only in the way that it was intended he should use it when the contract was entered into. He should also while occupying cause no damage to the premises. He should further effect such minor repairs as would be necessary from time to time and as were not intended that the landlord should effect and should further pay the rent agreed upon as it fell due. These mutual rights and obligations undoubtedly existed through the month of March and up to the end of the last day of that month. I therefore cannot see how it can be seriously argued that all that remained to be done during

[1] (1819) *Broderip and Bingham's Reports*, *vol. 1, p. 25.*

the month of March was, so far as the landlord was concerned, to receive the rent and thus bring this contract within the principle of the judgments just dealt with.

I may further say that the respondent's Counsel argued that under Article 74 (*e*) of the Ceylon (State Council Elections) Order in Council of 1931, the time of his election meant the time when the Returning Officer under Article 47 caused the name of the member elected to be published in the *Government Gazette* and not the time when he was either nominated or declared duly elected by the Returning Officer. I regret I cannot agree with this contention. Firstly, because this very Article states that "the Returning Officer shall without delay report the result of the election to the Legal Secretary". The "result of the election" can only be reported when the election is over. Secondly because the date of publication of the result of an act cannot reasonably be considered to be the date of the act unless there is special provision to that effect and there is no such provision here. Thirdly in Article 31 it is stated that if only one candidate stands nominated on nomination day the Returning Officer shall declare that candidate elected and report the result to the Legal Secretary. This would show that the election was over in those circumstances on nomination day. Finally in Article 32 (1) there is provision that if more than one candidate stands nominated on that day the Returning Officer "shall forthwith adjourn the election" to enable a poll to be taken. This provision can only reasonably mean that the election which commenced on nomination day will be concluded when the poll has been taken. I am therefore of opinion that the time of his election may be either nomination day or election day or any time between these two days but not by any means the day of publication in the *Government Gazette* of the result of the election.

Moreover even if the date of publication in the *Government Gazette*, namely, March 10, 1936, is regarded as the time of the respondent's election I fail to see how this can help the respondent as the contract of tenancy in question was existing at this date and continued to exist for three weeks later.

Mr. Weerasooria relying on *Warrington's case* (*1869*) *1 O'm & H 42* and *Anson v. Dyott* (*1869*) and the judgment of Drieberg J. in *Peris v. Saravanamuttu*[1], pressed upon me that I should view this trial not as a civil proceeding but rather in the character of a criminal or *quasi*-criminal proceeding and that therefore before upsetting this election I ought to be satisfied beyond all reasonable doubt that the election is void. I think Mr. Weerasooria was right and I have therefore adopted the principle set out in these judgments in coming to a decision as to whether the election is void or not.

I have no doubt whatsoever that for the reasons I have given the election of the respondent is void on the ground that he was disqualified at the time of his election under Article 9 (*d*) of Ceylon (State Council) Order in Council, 1931, and that the prayer of the petitioner should succeed. The petitioner will be entitled to the costs of this trial.

Election declared void.

[1] *33 N. L. R. 229.*