1971 *Present :* H. N. G. Fernando, C.J., Silva, S.P.J., and Alles, J.

N. S. ELLAWELA, Appellant, *and* P. B. WIJESUNDERA, Respondent

ELECTION PETITION APPEAL NO. 3 OF 1970

Election Petition No. 3 of 1970—Ratnapura (Electoral District No. 139)

Parliamentary election—Disqualification for being elected as a Member of Parliament—Ceylon (Constitution) Order in Council (Cap. 179), s. 13 (3) (f)—Meaning of the words "completed the serving of a sentence of imprisonment for a term of three months"—Legal effect of a partial remission of sentence under the Prison Rules—Effect of commutation, by the Governor-General, of a part or whole of a sentence of imprisonment imposed by a Court—Criminal Procedure Code, ss. 328 (1), 328 (4), 329—Effect of a free pardon—Letters Patent (Cap. 388), Article 10—Interpretation of a statute—Whether the "parliamentary history" of the statute may be considered.

By section 13 (3) (*f*) of the Ceylon (Constitution) Order in Council, 1946 (Cap. 379)—

> "A person shall be disqualified for being elected . . . as a Member of the House of Representatives . . . if he is serving or has, during the period of seven years immediately preceding, completed the serving of a sentence of imprisonment (by whatever name called) for a term of three months or longer imposed by any court . . . for an offence punishable with imprisonment for a term exceeding twelve months or is under sentence of death imposed by any such court, or is serving, or has during the period of seven years immediately preceding, completed the serving of a sentence of imprisonment for a term of three months or longer awarded in lieu of execution of any such sentence :
>
> Provided that, if any person disqualified under this paragraph is granted a free pardon, such disqualification shall cease from the date on which the pardon is granted."

The appellant was convicted of an offence punishable with imprisonment for a term exceeding twelve months, and was sentenced to imprisonment for a term of three months. After his conviction had been affirmed by the Supreme Court in appeal, he was committed to prison on 2nd March 1968, and was released after a day on his entering into a bond pending an appeal to the Privy Council. He was again admitted to prison on 30th April 1968 after leave to appeal against the conviction was refused by the Privy Council. He remained in prison until 13th July 1968 on which date he was discharged from prison having earned a remission under the Prison Rules. In the result, he was actually imprisoned, not for the term of three months specified in the sentence imposed on him by a court, but only for a period of 76 days.

Held by FERNANDO, C.J. and ALLES, J. (SILVA, S.P.J., dissenting), that, inasmuch as there was only a partial remission under the Prison Rules of the last part of the term of 3 months' imprisonment, the appellant, although he was actually imprisoned only for a period of 76 days, completed the serving of a sentence of three months' imprisonment within the meaning of section 13 (3) (*f*) of the Constitution. Accordingly, he was disqualified for election as a Member of Parliament during the period of 7 years after his release from prison.

1*——K 6750—2,255 (9/71)

In interpreting Section 13 (3) (*f*) of the Constitution reference may be made to the background history of Section 9 (1) (*f*) of the former State Council Order in Council.

ELECTION Petition Appeal No. 3 of 1970—Ratnapura (Electoral District No. 139).

C. Thiagalingam, Q.C., with *Maureen Seneviratne, Prins Gunasekera, Peter Jayasekera* and *Pranitha de Alwis*, for the respondent-appellant.

R. R. Nalliah, with *U. A. S. Perera* and *V. Shanmuganathan*, for the petitioner-respondent.

Cur. adv. vult.

June 16, 1971. H. N. G. FERNANDO, C.J.—

The appellant in this case was convicted of an offence punishable with imprisonment for a term longer than 12 months, and was sentenced to imprisonment for a term of three months. After his conviction had been affirmed by the Supreme Court in appeal, and after leave to appeal against that conviction was refused by the Privy Council, he was admitted to Prison on 30th April 1968; and remained in Prison until 13th July 1968 on which date he was discharged from Prison having earned a remission. In the result, he was actually imprisoned, not for the term of three months specified in the sentence imposed on him, but only for a period of 76 days.

The question which arises in this appeal is whether the appellant was during the period of 7 years following the date of his discharge from Prison, disqualified for election as a Member of Parliament. The learned trial Judge held that he was so disqualified. The disqualification under consideration is imposed in paragraph (*f*) of sub-section (3) of section 13 of the Constitution, and the first two grounds of disqualification contemplated in that paragraph are the following :—

"A person shall be disqualified for being elected ..... as a Member of the House of Representatives—

If he is serving a sentence of imprisonment for a term of three months or longer imposed by any Court..... for an offence punishable with imprisonment for a term exceeding twelve months—

Or if he has, during the period of seven years immediately preceding, completed the serving of a sentence of imprisonment for a term of three months or longer imposed by any Court..... for an

offence punishable with imprisonment for a term exceeding twelve months."

* * * *

"Provided that, if any person disqualified under this paragraph is granted a free pardon, such disqualification shall cease from the date on which the pardon is granted."

The effect of the ground of disqualification secondly mentioned above was considered in the case of *Samaraweera v. Jayewardena* [1]. In that case a person had been sentenced to imprisonment for a period of one year, but by reason of a remission of sentence he was released after he had been in prison for a period of 3 months and a few more days, and the question which arose for determination was whether he had "completed the serving of a sentence of imprisonment imposed by the Court". Sansoni C.J. and Tambiah J. rejected the contention that a person cannot be said to have completed the serving of the sentence imposed unless he was imprisoned for every single day of the term specified in the sentence. Sansoni C.J. expressed his opinion as follows :—

"All that the words mean is that the prisoner should have finished serving the sentence in the sense that there should be nothing left for him to do in the matter of serving it. He obviously cannot insist on remaining in prison if the law requires that he be released. The serving of the sentence has, then, in every respect been completed. If one were to adopt the other view there would be few cases where a prisoner could be said to have completed serving his sentence of imprisonment, because in the great majority of cases there would be remissions by operation of law, viz., by reason of good conduct. The words used are not 'served every day of the term of the sentence of imprisonment' or similar words; but if the argument for the appellant is to be accepted that is how the provision should have been drafted."

Tambiah J. in holding that the term of imprisonment passed by the Court had been completed said that "a person completed the service of his sentence in prison if he has served part of it and had been released by a competent authority by operation of law". Sirimane J. in a dissenting judgment was of opinion that a person who is sentenced to a period of imprisonment "must serve that period of imprisonment before he can be said to have completed serving that sentence". In his opinion a remission of part of a sentence has the result that a person obtains his release from prison "not as a result of having completed the serving of the sentence of imprisonment, but having served a part of that sentence and having earned a remission of the balance which he does not have to serve."

[1] *(1966) 69 N.L.R. 241.*

With much respect I find myself in agreement with the majority of the Bench which decided the case of *Samaraweera v. Jayewardena*. There is one matter which I would emphasize more strongly than was done in that case.

The proviso to paragraph (*f*) states that if a person disqualified is granted a free pardon, such disqualification shall cease from the date on which the pardon is granted. But there is no reference in the proviso to cases of remission of sentence, despite the fact that it is well known that remissions are very commonly earned. If the argument be correct that a person who serves only a remitted sentence does not complete the service of the sentence imposed by the Court, then in effect the disqualification will cease automatically on the date of release upon a remission. If that be so, we would have the surprising result that a mere remission would have the identical effect which the Legislature thought fit to attach expressly to a free pardon.

The Prerogative power of pardon is declared in Article 10 of the Letters Patent (Cap. 388), under which the Governor-General may grant to a convicted offender, "a pardon, *either free or subject to lawful conditions*". Now the Proviso to s. 13(3)(*f*) of the Constitution is restricted in terms only to a *free pardon*; so that a conditional pardon, even though it has the effect of terminating a period of imprisonment, does not under the Proviso relieve a person of the disqualification contained in paragraph (*f*). But we are invited in this appeal to hold that the earning by the appellant under Prison Rules of a remission of a few days of the term of his sentence conferred on him an advantage which the Proviso does not attach even to the grant of a conditional pardon by the Governor-General in the exercise of prerogative power.

Consideration of the express enactment in the Proviso to paragraph (*f*) strongly negatives any intention that the remission earned in this case should have the effect which is claimed by Counsel for the appellant.

The correctness of the view expressed by Sansoni C. J. and Tambiah J. that a person, who is released upon a remission of part of a sentence of imprisonment, nevertheless "completes the serving of the sentence" is borne out by observations made by the Supreme Court of India in *Sarat Chandra v. Khagendranath*[1] as to the legal effect of a remission in Indian and English law :—

> "An order of remission does not wipe out the offence, it also does not wipe out the conviction."
>
> "An order of remission thus does not in any way interfere with the order of the court ; it affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo

[1] *(1961) A. I. R. Vol. 48 (S. C. 334).*

the full term of imprisonment inflicted by the Court, though the order of conviction and sentence passed by the Court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court."

"In law the order of remission merely means that the rest of the sentence need not be undergone, leaving the order of conviction by the Court and the sentence passed by it untouched."

Sirimane J. in his dissenting judgment cited a statement of Bose J. in an earlier Indian case that "the effect of an order of remission is to wipe out the remitted portion of the sentence altogether and not merely to suspend its operation....." This statement was considered in the more recent Supreme Court decision and the following comment was made :—

> "That case (the one decided by Bose J.) is no authority for the view that the order of remission amounts to changing the sentence passed by a competent court and substituting therefor the sentence of imprisonment already undergone up to the date of release following the order of remission."

It must be noted that the facts of the case of *Samaraweera v. Jayawardena* are distinguishable from the present facts. In the former case, the person concerned had in fact been in prison for a period much longer than 3 months. Both Sansoni C.J. and Tambiah J. noted the absurdity which might result from a construction that a person who is sentenced to a long term of imprisonment, and who is actually in prison also for a term longer than 3 months, will not be disqualified if he is ultimately released on remission. Such an absurdity however does not arise in the present case, for here the appellant was actually in prison for a period of less than 3 months. Counsel for the appellant in the present case relied very strongly on this distinction, arguing that even if the majority judgments in *Samaraweera v. Jayewardena* are correct on the facts of that case, paragraph (*f*) has to be differently construed in relation to a case in which by reason of a remission a person sentenced to imprisonment is actually in prison only for a term which is less than 3 months.

In this connection, my brother Silva suggested during the argument that the "stigma" in consequence of which the disqualification was intended to attach has two features : *first*, the fact that a person is convicted of a grave offence, and *second*, that he is actually "a jail bird" for more than 3 months. With respect, the language of the section does not reveal that this second feature was in contemplation. Undoubtedly the fact of a conviction for a grave offence is of prime importance and is

the first feature of the "stigma"; but the second matter expressly mentioned in paragraph (*f*) is not the actual period of detention in prison, but *the imposition by the Court of a sentence* of imprisonment for a term of 3 months or longer. These are clearly two features of the "stigma". Even if there was in contemplation the additional feature, that a person must actually be in prison for a term of 3 months, this can only be implied if the language of the paragraph so permits.

I have set out earlier in this judgment the two grounds of disqualification firstly mentioned in paragraph (*f*). On examination of these two grounds, it will be found that the paragraph in its application to any convicted person, contains really only one ground of disqualification operative at different stages.

Paragraph (*f*) firstly enacts that a person is disqualified if he is serving a sentence of imprisonment for a term of 3 months or longer imposed by a Court for an offence punishable with imprisonment for a term exceeding 12 months. It is readily apparent that all the words and phrases which follow the word "sentence" are necessary to describe the requisites of a disqualifying sentence. It is obvious that, to be a disqualifying sentence, a sentence must be one—

> of imprisonment,
>
> for a term of 3 months or longer,
>
> imposed by a Court,
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> for an offence punishable with imprisonment for a term exceeding 12 months.

Counsel for the appellant was compelled to agree that when a disqualifying sentence is imposed, the first ground of disqualification operates because a person is serving *the imposed sentence*, and that the possibility of a subsequent remission does not affect the existence of the disqualification. Counsel had also to agree that the correct grammatical analysis of the language of the first ground of disqualification is that the phrase "for a term of 3 months or longer" has grammatically to be read with "sentence", and not that this phrase is to be read with the words "is serving". Thus it is clear that thus far it is not permissible to read the language as being "is serving for a term of 3 months or longer".

Nevertheless, Counsel contended that the language must be read in that very manner when we come to consider the second ground of disqualification, namely (as now italicized) that a person "*has completed the serving* of a sentence of imprisonment *for a term of 3 months or longer* imposed by a Court". Such a reading will of course support the argument that the 7-year disqualification attaches only to a person who has actually been in prison for more than 3 months. But so to read the language would be to transgress rules both of Grammar and of Legal Interpretation.

There is here a sentence with a subject ("he"), two alternative verbs ("is serving") and ("has completed the serving of"), and an object ("a sentence"). If then the words and phrases which follow the word "sentence" have been used merely to describe *the requisites* of the sentence which a person is serving, how can it be said that those very words and phrases are used to describe *the period* of the sentence which a person has served, and not the requisites of the sentence which he has served ?

I am satisfied from the language of paragraph (*f*) that the 7-year disqualification attaches to a person who has completed the serving of a disqualifying sentence *imposed by the Court*. Sirimane J. himself in his dissenting judgment stated the disqualification in that form. Consideration of the history of our law on this matter of disqualification confirms the construction just stated.

Section 9 (1) (*f*) of the State Council Order in Council provided that a person is disqualified for election to the State Council "if he is serving a sentence of penal servitude or imprisonment imposed by any Court..... for an offence punishable with hard labour or rigorous imprisonment for a term exceeding 12 months. Under that provision the disqualification attached only while a person "is serving a sentence", and there was no disqualification during any period after release from prison. Before the present Constitution was enacted the Board of Ministers of the then State Council proposed what is known as "the Minister's draft" of a new Constitution, and it was in section 19 of that draft that a proposal was made that the disqualification should attach upon a conviction and a sentence for a term of imprisonment for 3 months or longer, and for the continuation of the disqualification for a term of 7 years after the termination of the imprisonment. This proposal was accepted in paragraph 318 of the Soulbury Report, but the Commissioners thought it preferable that *the form* of the disqualification be the same as in section 9 of the State Council Order in Council. This explains why, when s. 13 (3) (*f*) of the Constitution was drafted, the proposal of the Ministers for the subsequent 7-year disqualification was given effect by means of an amendment of the language employed in section 9 of the State Council Order in Council. The draftsman's object therefore was to change the former law under which a porson was disqualified only while serving a "disqualifying sentence", and to provide that under the new law such a porson will also be disqualified for 7 years after the termination of the imprisonment. This further disqualification was expressed in the language "after he had completed the serving of a sentence.....". Considering the purposes for which and the occasion on which this language was employed, it seems to me that the intention was merely to state that a person convicted of a grave offence and sentenced to a term of imprisonment for 3 months or longer will be disqualified while serving that sentence and will continue to be disqualified for 7 years after he ceases to serve that sentence.

Thus the language of the section does not intrinsically reveal any intention that the actual period spent in prison is a matter relevant to the disqualification; and the history of the law relating to the disqualification establishes only an intention to continue the period of disqualification beyond the point when a person is serving a disqualifying sentence.

For these reasons I hold that although the appellant was actually imprisoned only for a period of 76 days, he completed the serving of the sentence for a term of 3 months imposed by the Court, and that he was disqualified for election as a Member of Parliament during the period of 7 years after his release from prison.

Counsel for the appellant considered it harsh and unreasonable that the appellant has been unseated despite his having been elected by a very large majority of votes. This was one ground upon which Counsel urged that paragraph (*f*) should be construed in a manner favourable to the appellant. It will perhaps be helpful to note in this connection that under the Indian Law (the Representation of the People Act 1951), a disqualifying sentence has a similar "harsh" operation. Such a sentence disqualifies a person for election to the Legislature for 5 years after release from prison, despite the fact that a part of the sentence may be remitted.

The appeal is dismissed with costs.

POST SCRIPT

I have read the dissenting judgment of my brother Silva, and I share the regret which he expresses at our inability to reach agreement on the decision of this appeal.

My brother's conclusions appear to depend much on his consideration of cases in which sentences of death or of imprisonment are *commuted by the Governor-General.* But my judgment did not take such cases into consideration, because the arguments of Counsel for the appellant did not (according to my recollection) depend on a consideration of such cases. Since silence on my part as to the application of paragraph (*f*) of s. 13 (3) in such cases of commutation might cause some misunderstanding as to my own views, I think it desirable to add this post-script to my judgment.

I have first to emphasize that the sole question which is decided by my judgment is that the appellant in the instant case completed the serving of the sentence of imprisonment for a term of three months imposed by a Court, despite the fact that he was actually released from prison, on account of a remission *earned under the Prison rules*, after he had been imprisoned only for 76 days.

That being so, my judgment must not in any future case be relied on in support of propositions which I have not stated or even considered. Thus :—

(1) My judgment does not express or imply the opinion that a person sentenced to death, but whose death sentence is commuted by the Governor-General to one of imprisonment, is serving or at some time completes the serving of the death sentence. My eyes alone would have aided me to avert such a disaster : because paragraph (*f*) states expressly that such a person is not serving the death sentence, but is serving the "sentence of imprisonment awarded in lieu of execution of the sentence" of death.

(2) My judgment does not suggest in any way that, if a sentence for a term of three months or longer imposed on a person by a Court is commuted by the Governor-General to a term say of two months, the person must be regarded as having completed the serving of the sentence imposed by the Court. Far from expressing any such opinion, I have not once in my judgment used the word "commute" or the word "commutation", and I have nowhere referred to the exercise of the powers of the Governor-General to commute sentences.

Indeed, having now given some consideration to the consequence of the commutation by the Governor-General of an original sentence of imprisonment, I am much inclined to the opinion that, in the language expressed in paragraph (*f*), the convicted person then serves, not the sentence imposed by the Court, but instead the sentence "awarded (by the Governor-General) in lieu of the execution of such (original) sentences".

The opinions which I have just stated do not depend on any implications as to the intention of the Legislature, but instead on the express provisions of the paragraph (*f*). This becomes apparent when paragraph (*f*) is re-produced with only the insertion of marks showing the separate cases of disqualification stated in the paragraph :—

"(*f*) if he/is serving or has, during the period of seven years immediately preceding, completed the serving of a sentence of imprisonment (by whatever name called) for a term of three months or longer imposed by any court in any part of Her Majesty's dominion or in any territory under Her Majesty's protection or in any territory in which Her Majesty has from time to time jurisdiction, for an offence punishable with imprisonment for a term exceeding twelve months, or/is *under sentence* of death imposed by any such court, or/is serving, or has during the period of seven years immediately preceding, completed the serving of a sentence of imprisonment for a term of three months or longer awarded in lieu of execution of *any such sentence*."

The third case of disqualification stated in the paragraph is the case of a person who is serving or has..... completed the serving of "a sentence of imprisonment for a term of three months or longer awarded in lieu of the execution of *any such sentence*". I have little or no doubt that the words "*any such sentence*" here refer back, not only to a sentence of death, which is mentioned in the second case, stated in the paragraph, but also to any sentence mentioned in the first case stated in the paragraph.

It is obvious that, if a sentence of death is commuted to one of imprisonment, the offender will be disqualified only if the sentence awarded in commutation is for a period of three months or longer. Equally, in my opinion, if a sentence of imprisonment for some long period is commuted, the offender will be disqualified only if the sentence awarded in commutation is for a term of three months or longer. In both these cases of commutation, the offender serves, not the sentence imposed by the Court, but instead that awarded of the Governor-General in commutation, and it is the serving of the sentence so awarded which causes the disqualification.

Thus it seems to me that the Legislature has expressly contemplated that where there is commutation, the question of disqualification must depend on the term specified in the sentence awarded in commutation by the Governor-General.

But in my view this analysis can afford an additional and even decisive ground for rejecting the contention of Counsel for the appellant in this case. Since express provision in paragraph (*f*) contemplates that a commuted sentence awarded by the Governor-General is distinct from and displaces the original sentence, then the maxim *expressio unius est exclusio alterius* may well be applicable to prevent a Court from reading into the paragraph any implication that a mere remission of a part of an original sentence also constitutes the "award" of a new and distinct sentence. A remission under the Prison Rules is not the award or the imposition of a sentence, but only at the best a cancellation of the last part of the term of a sentence imposed by a Court. Until the date of release on remission the offender is undoubtedly serving the court's sentence because no other sentence has been awarded against him.

(3) My judgment gave no consideration to the question whether a person must be regarded, for the purposes of paragraph (*f*), as serving or having served a sentence imposed by a Court, if in fact the whole of the sentence is remitted by the Governor-General. If there is such a total remission of the Court's sentence, but the person concerned is nevertheless received into Prison because of administrative delays or bungling, the true legal position may very well be that the Court's sentence is not served at all because the order of complete remission absolves the person from the legal liability to serve it, and that accordingly the person never even commences to be disqualified by paragraph (*f*).

But in a case like the present one, in which there is only a partial remission under the Prison Rules of the last part of a term of imprisonment for a term of three months imposed by a Court, I have not the slightest doubt that during his period of actual detention the person is serving the sentence imposed by the Court and is disqualified during that period for election to Parliament. My judgment has stated my reasons for the conclusion that the further or continued disqualification for 7 years thereafter attaches despite the partial remission of the term of the Court's sentence.

G. P. A. SILVA, S.P.J.—

I have had the advantage of perusing the judgment prepared by My Lord the Chief Justice and it is with regret that I have to disagree with him.

It is common ground in this case that the respondent to the original Election Petition, Mr. Nanda Ellawela, who is the appellant in this Court, was, during the period of seven years immediately preceding the election, convicted of offences punishable with imprisonment for a term exceeding twelve months and sentenced to a term of 3 months imprisonment. It is also agreed on both sides that the appellant in fact served this sentence and was lawfully released after being in prison for 76 days. The only controversial question that arises for consideration in this appeal therefore is whether, by reason of the fact that the sentence of three months imprisonment imposed by Court was physically reduced by some lawful process of remission to the shorter period of 76 days, the appellant freed himself from the disqualification for election as a Member of the House of Representatives in terms of section 13 (3) (*f*) of the Ceylon (Constitution) Order in Council, or whether the disqualification attached to him, despite such reduction, by reason of the original sentence.

In order to reach a decision in this matter it is necessary in the first place to consider the object of this provision. It is fairly clear that the legislature intended by this provision to attach to an aspirant to the House of Representatives or the Senate a disqualifying stigma. This stigma would attach to a person who has not merely been convicted of an offence punishable with over 12 months imprisonment but also is serving or has completed the serving of a sentence of imprisonment for a term of 3 months or longer imposed by any Court. The essence of the disqualification thus lies in the duration of the term the person has served in prison and not the mere conviction. I shall state why I say this. On the same set of facts, for instance, if an adult and a young person are convicted in the same case where the offence is punishable with imprisonment for over twelve months and the Court decides to avoid a prison sentence for the young person and deals with him differently while the adult is sentenced to imprisonment and he completes serving the sentence for a term of 3 months, the latter will be disqualified from election as a Member of Parliament but not the former. Similarly a person who has completed the serving of a sentence of imprisonment in respect of a like

offence for a term of three months is disqualified while one who has completed serving a sentence for a term of two and a half months is not. The accent then, as I see it, is placed on the duration of the period of imprisonment which the person has completed serving as a result of the sentence and not on the conviction of an offence, however grave.

The fact that the limit of this duration has been fixed arbitrarily by the legislature and not been decided by reference to any particular norm fortifies me in my view that the emphasis is on the period of incarceration.

I am further persuaded in this belief by the thought that the legislature has not taken the course of laying down the conviction and the imposition of a term of imprisonment only as the ground of disqualification but made the completion of a certain term of imprisonment a *sine qua non* of the disqualification. If the accent was on the sentence for a particular term, the legislature could certainly have done so with greater clarity and economy of language by providing that a person who is convicted and sentenced to imprisonment for a term of 3 months or longer in respect of an offence punishable with imprisonment exceeding 12 months shall be disqualified for 7 years, the disqualification to commence from the date he is released from prison after serving his sentence.

The view expressed by My Lord the Chief Justice is that the words "for a term of three months or longer" as well as the other terms and phrases that follow the word "sentence" in the section describe the requisites of a disqualifying sentence. Even assuming that this view is correct, when the actual period of a sentence imposed by Court is reduced in its execution to a shorter period by operation of any rule of law or by a process recognised by law, in my view the court's sentence assumes a different form and the sentence which the person on whom it is imposed serves is the latter sentence. If for instance, a sentence of one year's imprisonment is reduced by the process of remission exercised by the Governor-General in terms of section 328 (1) of the Criminal Procedure Code to a period of six months, the sentence which the person concerned serves would be a term of six months. In this view of the matter there would be justification in coming to the conclusion that, in the process of change from one sentence to another of a different kind or different duration according to law, the original sentence imposed by any Court is metamorphosed into another sentence which is actually served and that, at that stage, the sentence which is served becomes the sentence that is imposed on the prisoner and a divergence between the sentence imposed and the sentence served does not arise. One must never overlook in interpreting this section, that the Sovereign or Her representative or any other authority in exercising the right of reducing the sentence imposed by the Court by the substitution of another sentence or by remission of a part of the sentence, does so only in terms of powers provided for by law such as are found in section 328 or 329 of the Criminal Procedure Code and the Prison Rules. It is to be noted that even the royal prerogative

is mentioned in section 328 (4) of the Criminal Procedure Code, even though specific provision need not have been made for it, and legal recognition is given to the right of the Queen to grant pardons, reprieves, respites or remissions of punishments. It is however only a Court that can in the first instance convict and impose a sentence on any person and hence the necessity remains to refer in section 13 (3) (*f*) of the Order in Council to the imposition of a sentence by any Court.

The submission was made during the argument of this appeal that, even if a person sentenced by any Court to a particular term of imprisonment enters the portals of the prison before an order of remission of the whole of the sentence by the Governor-General—as distinct from a pardon—reaches him and he is thereafter released from prison after a few days when such order is received by the prison authorities, yet in law he has completed the particular term of imprisonment imposed by the Court. I have great difficulty in accepting this submission To my way of thinking, whether it be a case in which the Governor-General, in terms of section 328 (1) of the Criminal Procedure Code, has remitted the whole of the prison sentence but his order of remission does not reach the prison authorities until the prisoner has actually served a short period of imprisonment or in a case in which the Governor-General remits a part of the sentence of imprisonment in terms of the same section, after the prisoner has partially served the sentence, the duration of the sentence served by the prisoner is the period he has in fact been in prison and not the original sentence of the court. The principle is unaffected whether the remission of a part of the sentence is granted by the Queen or on an order made by the Governor-General or in terms of Prison Rules, which are the three modes of remission recognised by our law. The submission of counsel to which I have referred was presumably made because the first step in the execution of the sentence of imprisonment has been taken when the person sentenced enters the prison. From whichever angle I consider this matter I am unable to persuade myself to accept this proposition. To take an extreme case, such an interpretation will compel one to the absurd situation that if such a person who has been sentenced to a term of imprisonment by a Court reports at the prison and is merely taken charge of by the prison authorities and is even immediately released thereafter as a result of the order of remissiou by the Governor-General, he has nevertheless completed serving the sentence of imprisonment imposed by the Court. That would mean that he has completed the serving of the sentence even before he has commenced to serve it. To my mind the proposition that a person who enters prison and returns home the same day or the next day or even after serving a part of the sentence as a result of a remission of a part of it has completed his full term of imprisonment, in the sense of having served a term of the same duration as imposed by the court, is unrealistic and not in accord with reason, although he has completed serving his sentence in the sense that he has no further liability thereunder. I shall have occasion to advert to this aspect later on.

I stated earlier that, if the sentence imposed by a court is reduced by a process recognised by law to a shorter term, the actual term which the person sentenced serves is the latter sentence. I should like now to examine further the implications of a remission granted by one of the processes sanctioned by law namely, a remission by the Governor-General, as similar considerations would apply to a sentence reduced by any other legal process. A further question that arises for consideration in this connection is whether the Governor-General's order of remission or commutation too constitutes a sentence. If that were so, there would be more justification for the conclusion that when a sentence of the court is remitted or commuted the original sentence imposed by the court assumes a different form and that a person who has been sentenced to a term of imprisonment by a court and whose sentence has been commuted or remitted to a shorter term serves the latter sentence. Sections 328 (1) and 329 of the Criminal Procedure Code provide as follows :—

328 (1) " When any person has been sentenced to punishment for an offence the Governor-General may at any time without conditions or upon any conditions which the person sentenced accepts suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced."

329 " The Governor-General may, without the consent of the person sentenced, commute any one of the following sentences for any of the commuted sentences indicated."

The sentences indicated are :—sentence of death to a sentence of rigorous imprisonment for life or for any other term ; rigorous imprisonment to any lesser term of rigorous imprisonment or any term of simple imprisonment not exceeding the term to which such person might have been sentenced. Whenever the Governor-General acts in pursuance of these powers he is undoubtedly imposing on the persons concerned his own sentences even though he had no power to do so in the first instance. If, in the exercise of such powers for instance, the imprisonment of a person for six months imposed by a Court is commuted to one of two months I should have no hesitation in holding that such person is not disqualified from being elected as a Member of the House of Representatives even though the original sentence of the Court was a term of six months imprisonment. To decide differently would be to disregard the specific provisions of our own law conferring certain powers on the Governor-General. If this view is correct as I believe it to be, when the section refers to the serving of a sentence such sentence would be synonymous with the actual period served by a prisoner in respect of his sentence and no further question can arise as to any variance between the sentence imposed by the Court and the sentence served. Even according to this different line of approach to the problem, the conclusion is irresistible that the material consideration in this matter is the actual duration of the term of imprisonment the person has served and not the term of the sentence of imprisonment at the time it is imposed or pronounced by the Court. This seems to me to

stand to reason ; for, a sentence imposed by a Court can be varied or reduced for a multiplicity of reasons recognised by law such as remissions for industry and good conduct according to prison rules, remissions by the Governor-General, commutations by the Governor-General or remissions by Her Majesty. Even without the necessity of a strict interpretation, therefore, the words of section 13 (3) (*f*) " has completed the serving of a sentence of imprisonment for a term of three months or longer " would in these circumstances mean the actual period of incarceration which a person has completed serving. I feel reassured of the correctness of this view even by reason of the last few words of section 13 (3) (*f*) " completed the serving of the sentence of imprisonment for a term of three months or longer awarded in lieu of execution of any such sentence ". I have not the slightest doubt that the sentence referred to in these concluding lines can only refer under our law to the sentence imposed by the Governor-General ; for, it is only he who can impose a sentence *in lieu of* the execution of " such " sentence, the word " such " having reference to the sentence of death imposed by the Court earlier mentioned. This provision in the last four lines of the section would thus mean that, if the sentence imposed on the person by the Governor-General in lieu of the death sentence imposed by a Court is less than three months in any particular case, such person would not suffer from the disqualification referred to in the section. If the sentence reduced as a result of the intervention of the Governor-General in terms of the law is the material sentence for the purposes of this part of the section I can find no valid reason to consider differently a sentence reduced to a shorter term (than what was originally imposed by a Court) in terms of any other provision of law such as the Prison Rules. There would thus be no warrant to consider the 76 days imprisonment served by the appellant as a term of three months imprisonment, in the absence of any good ground to show that the term of three months was reduced to 76 days for a reason which was not founded on law. The appellant is therefore not liable to the disqualification which is imposed by the section.

There was, during the argument of this appeal, some speculation as to the meaning of " is serving " in this section and whether a person sentenced to a term of imprisonment for a term of three months by any Court in respect of a conviction for an offence punishable with over 12 months imprisonment is not in any event disqualified if he is in the process of serving that sentence. I have no difficulty in answering this question in the affirmative and would add that the person here suffers a disadvantage that the person who has served such a sentence would not, if the latter has, by reason of a remission, in fact served for less than three months and been released. The same handicap would confront a person who is under sentence of death at the time of an election. He will obviously be disqualified from being elected if at the time of the election he is under a sentence of death although, after consideration of an application by him, the Governor-General may some time later commute the sentence of death to one of two months imprisonment in

lieu thereof after which commutation he will be free of the disqualification attaching to the section. The reason for the difference in the impact of the sentence in each case is that, when a person either commences to serve a sentence of three months imprisonment or more imposed by a court or is under sentence of death, there is no necessary presumption that the respective sentences will either be remitted or commuted ; for, a remission or commutation does not occur as a matter of course. One has therefore to assume that the sentence pronounced by the court in each instance will take effect—as indeed it can.

Unless one places the construction which I have sought to do on the effect of a remission or commutation, one would meet with serious inconsistencies in interpreting this section. It was agreed by the full Court during the argument that if the whole of a disqualifying sentence (of any person) is remitted by the Governor-General before he enters prison he is not disqualified under this provision because he does not in that event serve a sentence of imprisonment. It seems to me that if the yardstick for disqualification is the imposition of a disqualifying sentence by the Court and the remission of a part of such sentence which reduces it to less than three months is not to be taken into account in considering the disqualification, as observed by my Lord the Chief Justice, there would be no logical reason to take into account the remission of the whole of the prison sentence when the person convicted will not enter prison at all. If we do, we shall be faced with the inconsistent position that when a person serves a shorter term than three months as a result of a remission, the court sentence being three months, we disregard the remission but when he does not serve a prison sentence at all as a result of a remission we give full effect to it. Again, according to section 13 (3) (*f*) itself, when a death sentence is commuted to a sentence of imprisonment by the Governor-General, the yardstick for disqualification or otherwise is the sentence imposed by the Governor-General and not the sentence imposed by the Court. If the Court's sentence is the decisive factor for the purpose of the disqualification these varied impacts cannot occur consequent on a remission. This situation which constantly baffled me throughout the argument of this appeal, does not arise if, as I have pointed out earlier, the court's sentence, as modified by any remission, is considered to be the decisive factor for disqualification in the interpretation of the section. It is hardly necessary to emphasise that the interpretation placed by a court on any Statute must be capable of consistency in every situation that will arise thereunder.

I would now approach this problem from yet another angle. I questioned counsel for the respondent during his reply whether he could point to any serious fallacy in the view that the section means that in order to suffer the disqualification a person should not only be sentenced to a term of three months or longer but should in fact serve a minimum period of three months. I asked this question as I felt that the crux of the disqualification lay in the physical duration of the imprisonment. Counsel ventured a reply which was not a complete answer. A useful

way of testing this proposition would be to pose the question whether a person who, being convicted of an appropriate offence, is sentenced to a term of three months' imprisonment and serves the entire period of this sentence is in the same position as one who, in similar circumstances, earns a remission and is released before the end of the three months as in the case of the appellant. In my judgment the view is irresistible that a distinction has to be made between the two. For, in the second case the sentence was reduced by a process sanctioned by our own law and when it turned out to be a sentence short of three months, the stigma attaching to a period of three months' imprisonment ceased to exist and the person who suffered this sentence is, to my mind, not disqualified under section 13 (3) (*f*) while the one who served the entire period of three months is disqualified. For, it must be presumed that the authority other than the court, in exercising the power that the law had conferred, has done so after full consideration of the merits, and therefore the case of the person whose sentence of *imprisonment of three months* is reduced to a shorter period should be distinguished from the other whose sentence of three months is left intact. It is only on this principle that a person who has been sentenced to death by the Supreme Court is cleared of his disqualification in certain circumstances, namely, where the Governor-General has awarded the sentence of imprisonment of less than three months in lieu of the execution of the sentence of death. If this is possible, *a fortiori* a person whose sentence of three months is reduced to a shorter term should enjoy the same benefit. If this was not the intention of the Legislature, it occurs to me that it could with the least difficulty have said that a person is disqualified if he is convicted and sentenced to a period of three months or longer in respect of an offence which is punishable with over twelve months' imprisonment, without reference to the serving of the sentence. This is a further consideration which supports the view that the words "complete the serving of a sentence for a term of three months or longer" in the section contemplate the physical serving of a sentence for three months or more, whatever the sentence may be. The case cited by learned counsel for the respondent, *Khagendranath Nath v. Umesh Chandra Nath*,[1] in fact supports my view and the corresponding section in India illustrates the form of legislation which I have in mind. So does the decision on which both counsel relied for different purposes: *Sarat Chandra Rabha v. Khagendranath Nath.*[2] Section 7 of the Indian Act which deals with the subject of disqualification for membership of Parliament says: "A person shall be disqualified for being chosen as, and for being a Member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State . . . .

(*b*) If, whether before or after the commencement of the Constitution, he has been convicted by a Court of India of any offence and sentenced to imprisonment for not less than two years, unless a period of five years, or such less period as the Election Commission may allow in any particular case, has elapsed since release."

[1] *A. I. R. 1958 Assam, 183.* [2] *A. I. R. 1961 S. C. 334.*

Sarjoo Prasad C.J. in interpreting this section observed : — " The emphasis in the section is on the conviction by a court in India of any offence in which he is sentenced to imprisonment for not less than two years.

In that case, *prima facie*, the disqualification will attach to the person so convicted and sentenced. A remission of punishment in respect of the unexpired portion, even if validly granted under section 401 of the Criminal Procedure Code is not the same thing as a sentence passed by the court. . . . . That may enable him to earn his release earlier than the period of sentence imposed by the Court but that earlier release does not affect the actual sentence passed in the case. . . "

This is an unexceptionable observation with which I would respectfully agree. If any remission obtained on account of prison rules or in the exercise of his powers by the Governor-General or an amnesty, as generally understood in this country, was to be disregarded our legislature could have employed language similar to that of the Indian enactment and I should have then had no difficulty in giving the interpretation contended for by counsel for the respondent. The existence of a provision such as the one in India in any legislature fortifies me still further in the view which I have reached for the several reasons I have set out. For, our legislature too could have adopted such language if it was the intention of the legislature to make the conviction *simpliciter* the ground of disqualification.

If one may not fall into the error of oversimplification, there is another simple yet fascinating argument from which my conclusion appears to derive some support. The disqualification of seven years under section 13 (3) (*f*) is reckoned from the day on which a person completes the serving of the sentence of three months or longer. As stated by his counsel, the respondent-appellant was committed to prison first on the 2nd March 1968, and was released after a day on his entering into a bond pending an appeal to the Privy Council ; he was again admitted to prison on the 30th April 1968 after the Privy Council order and was lawfully discharged from prison on the 13th July 1968. Therefore if the disqualification under the section should attach to him, it would begin to run from the 14th July 1968. As the first requisite of the disqualification is that he should have completed the serving of a sentence of three months or longer, a seemingly simple but nevertheless conclusive initial approach for a court having to consider the problem of the disqualification would be to ask the question for how long he had served in prison prior to the date on which the seven-year period began to operate, namely, the 14th July 1968. If one were to consider realities leaving alone legal fictions for a moment, the incontrovertible answer to this question has to be that he has served for 76 days which in fact is less than 3 months. Has the appellant then completed the serving of a sentence of 3 months imposed by a court or even by any other authority which is the conclusive factor in determining the disqualification ? An answer is hardly necessary.

I would wish at this stage to consider the question whether it is necessary and appropriate to summon the aid of the background history of this disqualifying provision for the purpose of the interpretation of the section. In the interpretation of statutes there has been a considerable difference of opinion, firstly, on the correctness of having recourse to the history of a statute and, secondly, as to the occasion when as well as the extent to which such recourse, if any, should be had. It is a generally accepted principle that a court must in the first instance endeavour to gather the meaning of a statute by what it says and it is only if difficulties are encountered in reasonably interpreting it according to the ordinary rules of construction will it be permissible to refer to the state of the law at the time such statute was passed. Even so, the aid that should be obtained from such reference is very limited. Where the words of a statute are plain, however, it would not be permissible for a court to be guided by its history or by grounds of public policy and such other matters. Even where the meaning is obscure, it is very doubtful whether the parliamentary history of the statute can legitimately be used to assist its construction. I should wish to cite two passages here from Craies on Statute Law, 6th Edition, which, though not conclusive, throw some light on this matter. At page 127, on the subject of "History as an aid to interpretation", he says:—"It was said by Alderson B. in *Gorham v. Bishop of Exeter*, that 'we do not construe Acts of Parliament by reference to history', and Farwell L.J. said in a later case, 'The mischief sought to be cured by an Act of Parliament must be sought in the Act itself. Although it may perhaps be legitimate to call history in aid to show what facts existed to bring about a statute, the inferences to be drawn therefrom are exceedingly slight'." Again at page 128, in regard to the use of Debates in Parliament, the following passage occurs:—"It is not permissible in discussing the meaning of an obscure enactment, to refer to 'the parliamentary history' of a statute, in the sense of the debates which took place in Parliament when the statute was under consideration. As was said by Willes J. in *Millar v. Taylor*: 'The sense and meaning of an Act of Parliament must be collected from what it says when passed into law, and not from the history of changes it underwent in the House where it took its rise. That history is not known to the other House or to the Sovereign'."

While it is difficult to lay down a hard and fast rule in regard to this matter as conflicting opinions have been expressed by courts in different parts of the world, it seems to me that, if a reasonable construction can be given to the plain words of a statute, recourse to the previous history of the law would be unnecessary. It is on this basis that I have considered the question before us as it appears to me that a meaningful construction can be given to the relevant words without reference to the previous history of the law. Furthermore, the question that we are called upon to decide is, in my view, not one which can be resolved by a reference to the previous history of the legislature.

As considerable interest centred round the meaning of the word " completed " in this section during the hearing, I wish now to deal with that matter. Certain criticisms were directed in the course of the argument at the view expressed by Sirimane, J. in the case of *Samaraweera v. Jayawardena* [1], which, if accepted, necessarily led to the most undesirable result that a person who served even a number of years in prison after conviction for a grave offence would not be liable to the disqualification contemplated by section 13 (3) (*f*) if, before leaving prison, he had succeeded in obtaining a remission of a fraction of his sentence. I am myself unable, with respect, to subscribe to the view expressed by Sirimane, J. and my conclusion is based on the construction that a person part of whose sentence is remitted has completed serving his sentence when he lawfully leaves the prison. This construction will avoid the mischief which Sirimane, J. himself appreciated when he chose to add the observation that it would be a matter for the attention of the legislature. It is a cardinal rule of interpretation that a court should, in interpreting a statute, avoid a construction that leads to an absurdity if any other reasonable construction is possible. As it is the invariable practice that any sentence of imprisonment imposed by a court on a person is reduced to a shorter term of actual serving in prison, if the construction placed by Sirimane, J. is accepted as correct, hardly ever will any person be disqualified under section 13 (3) (*f*), however grave the offence is that he has committed and whatever may be the length of the term of imprisonment imposed on him. Furthermore, a person convicted of a comparatively trivial offence and sentenced to three months' imprisonment who serves the full sentence without any remission being granted will be disqualified while a person who has been sentenced to, say, 15 years and is released at the end of 10 years after earning a remission of 5 years will not be disqualified. I do not think that the legislature could ever have contemplated such an absurdity when another reasonable construction can well be placed. The views expressed by Sansoni, C.J. and Tambiah, J. in that case commend themselves to me and I would respectfully agree with their views on this aspect of the question. It seems to me that the construction which I have sought to place on the material words of the section will not render any legislative change necessary as the existing provision is adequate to fulfi its object.

The question incidentally arises as to whether there could be any other reason for the use of the words " completed the serving of a term " in this section. I think the word " completed " has been considered necessary by the legislature for at least one reason. If, for instance, a person sentenced to imprisonment by a court for a term of three months or longer breaks jail and is at large, although he is out of prison, he has not completed the serving of his sentence and would therefore be disqualified from seeking election to either House at all. If he wishes to overcome the 7 years disqualification from the date of completion of his sentence, the only course would be for him to surrender himself to prison

[1] *(1966) 69 N. L. R. 241 at 259.*

and spend the remaining part of his sentence until he is lawfully released therefrom and the disqualification will commence from the date of such release and continue for seven years thereafter. Supposing again a long-term prisoner obtains permission from the relevant authority to leave the prison with a guard for a purpose considered to be legitimate, such as attending a funeral, and thereafter disappears. As in the earlier case he would never qualify for election to either House until he reappears in prison and completes serving the balance period. Completing the serving of the sentence would thus mean the completing of prison life in respect of any particular sentence by the prisoner according to law. It would therefore appear that it was necessary to use the word " completed " for the reason that, in order that the disqualification may operate, a person should, on completion of the sentence imposed, have spent three months or more in prison. If he has not completed the serving of any part of his sentence he will have to be treated as one who is serving his term because he is always liable to be apprehended and imprisoned until he completes the balance term for which he is liable under the sentence. It is only when he has lawfully completed serving his sentence that the period of imprisonment as well as the duration of the disqualification will be ascertainable. If he does not so complete his sentence he will not qualify to be a Member of Parliament even after seven years from the day on which he comes out of prison.

As I did not wish lightly to disagree with the considered views expressed by My Lord the Chief Justice, I have examined this question with more than ordinary care from every angle which occurred to me as important. Whatever be the avenue through which I approach the problem however I find compelled to arrive at the same inescapable destination. Even if my conclusion is only one of two possible conclusions, an important question of principle arises. It is a generally accepted canon of construction that where two meanings can be given to a set of words each adequately satisfying the language and great harshness is produced by one of them, a court would incline to the meaning that avoids the harshness. Thus if the words of the section under consideration are equally capable of two interpretations one of which affects the rights of an individual and results in harshness while the other avoids it, it behoves the court to lean towards the latter view. In this instance, the rights affected are not only the rights of the respondent-appellant to remain as a Member of Parliament but also the inalienable right of every single one of the 22,633 voters to cast his vote and return to the House of Representatives a candidate of his choice. In consonance with this well established rule of construction, therefore, even if what I have expressed above is one of two possible views, the decision of the court must necessarily be in favour of the appellant.

For the above reasons, I would allow the appeal with costs, reverse the decision of the Election Judge and hold that the appellant was duly elected as a Member of Parliament for the Electoral District of Ratnapura.

ALLES, J.—

I agree that this appeal should be dismissed but in view of the conflicting views expressed by the Judges in the case of *Samaraweera v. Jayewardene* [1], I would like to state why the judgment of the majority (Sansoni, C.J. and Tambiah, J.) appears to me to correctly state the law.

Under Section 9 (1) (*f*) of the State Council Order in Council the disqualification only attached to a person "serving a sentence". If a person completed serving his sentence for the entire period or only a portion of it, having earned a remission for the balance period, the disqualification ceased on his release from prison. The Legislature, therefore, not unnaturally, considered it desirable that not only persons "serving a sentence" but also persons who had "completed the serving of imprisonment..... for a term of three months or longer imposed by any Court..... for an offence punishable with imprisonment for a term exceeding twelve months....." should also be disqualified—such persons not being fit persons to represent the electors in the supreme legislative assembly in the land. This is the language that has been introduced into Section 13(3) (*f*) of the Ceylon (Constitution) Order in Council. The disqualification that attaches to the prospective member in the latter part of this Section is therefore, not dependent solely on the sojourn of the prisoner within the prison walls for the requisite period, but also flows from the decision of a competent Court, which thought it fit to impose a sentence of three months or more on the offender, in view of the serious nature of his crime. The remission of that sentence by the Executive for administrative reasons cannot affect the expression of disapproval reflected in the imposition of the sentence by the Court for a period of three months or more. Such being the case, even if there is a remission of the sentence imposed, the offender would nevertheless have *completed the serving of the sentence*. With respect I would agree with the observations of Sansoni C.J. in *Samaraweera v. Jayewardene* that had the position been otherwise the words used might have been "served every day of the term of the sentence of imprisonment or similar words". For the same reason I am unable to agree with the dissenting judgment of Sirimane, J. that a sentence of imprisonment is "wiped out by an order of remission" and that therefore a person cannot be said to have served his sentence. With all respect to Sirimane, J. I do not think that the remission of a sentence can ever "wipe" out a sentence that has been imposed by a competent Court. It can only result in the period of incarceration for which the offender was sentenced being reduced for reasons over which the Court has no control. Moreover the effective words of the section are not the "serving" of the sentence but the "completion of the service of the sentence". The latter words would contemplate not only the serving of a sentence for the full period imposed.

[1] *(1966) 69 N. L. R. 241.*

on him by the Court but also any lesser period as a result of a remission. In either case the prisoner would have completed the serving of his sentence.

I am also in agreement with my Lord the Chief Justice that had it been the intention of the Legislature to permit a remission of a sentence to affect the period of disqualification the proviso to Section 13 (3) (*f*) would have been expressed in different language.

The view that commended itself to the majority of the Bench which decided the case of *Samaraweera v. Jayewardene* gives effect to the plain language found in Section 13 (3) (*f*) and leaves no room for the strained interpretation contended for by learned Counsel for the appellant.

I would dismiss the appeal with costs.

Appeal dismissed.