1953 *Present :* **Weerasooriya J.**

G. G. PONNAMBALAM, Objector, *and* S. V. KUNASINGHAM *et al.*, Respondents

Preliminary Objections by Respondent to Election Petition No. 19 of 1952 (Jaffna)

Election Petition—Several petitioners—Appointment of agent—Amount of stamp duty payable—Security for costs, etc.—Persons who should deposit and receive it—Amendment of petition—Determination of date of amendment—Validity of amendment—Power of trial Judge to question it—Quantum of security to be deposited in case of amendment—Parliamentary Election Petition Rules, 1946, Rules 9, 12, 13 (1)—Ceylon (Parliamentary Elections) Order in Council, 1946, s. 83 (2).

Two petitioners on a single election petition "jointly and severally" appointed an agent under Rule 9 of the Parliamentary Election Rules. Both of them had a common interest in obtaining a declaration in terms of the prayer that the election of the respondent be declared void.

Held, that the instrument of appointment of agent should be stamped with the duty payable on a single power of attorney and not three powers of attorney.

"Where a power of attorney is granted in one document by several grantors in favour of one person, the question whether the document constitutes one power of attorney or several distinct powers has to be determined by reference to the interest which each grantor has in the matter in respect of which the grant is given, and where such interest is common to all the grantors the position in law would seem to be that the document constitutes a single power of attorney."

Held further : (i) In regard to deposit of security for costs, etc. of an election petition, payment of it by the petitioner's appointed agent which is expressly stated to be made on behalf of the petitioner is a payment by the petitioner within the meaning of Rule 12 (3) of the Election Petition Rules.

(ii) Where an election petition is sought to be amended by the addition of a new paragraph the terms of which are set out in the application for leave to amend, the date of amendment of the original petition—for the purpose of determining whether it was amended within the time specified in section 83 (2) of the Parliamentary Elections Order in Council—is the date on which the application for leave to amend it is allowed by the Judge. No further act on the part of the petitioner by way of amendment is necessary.

(iii) The validity of an order allowing an application for leave to amend an election petition cannot be questioned by the Judge who subsequently tries the election petition.

(iv) When an election petition is amended, the petitioner need not give security afresh in respect of the charges included in the original petition. The only fresh security which he must give within three days after the amendment is in respect of the additional charges.

(v) Where the Commissioner of Elections has given authority to his Office Assistant to receive on his behalf deposits of security in connection with election petitions, payment of security made to the Office Assistant is payment to the Commissioner within the meaning of Rule 13 (1) of the Election Petition Rules.

ORDER made in respect of certain preliminary objections taken by the respondent to Election Petition No. 19 of 1952 (Jaffna).

N. E. Weerasooria, Q.C., with *E. B. Wikramanayake, Q.C.*, *H. Wanigatunga*, *H. W. Jayewardene*, *F. R. Dias* and *R. R. Nalliah*, for the respondent-objector.

C. S. Barr Kumarakulasinghe, with *C. Vanniasingham*, *G. T. Samarawickreme*, *A. I. Rajasingham* and *J. C. Nathaniel*, for the petitioners respondents.

H. N. G. Fernando, Acting Solicitor General, with *R. S. Wanasundera*, Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

October 26, 1953. WEERASOORIYA J.—

This is an enquiry into certain objections taken by the respondent in his application dated the 2nd October, 1953, to the hearing of the original petition dated the 23rd June, 1952, and the amended petition dated the 18th August, 1952, and filed on the 19th August, 1952.

Although in the respondent's application twelve grounds of objections are set out, Mr. Weerasooria, who appeared for him at this inquiry, restricted his submissions to only four grounds which may be formulated as follows :—

(1) The appointment of an agent by the petitioners by their writing dated the 23rd June, 1952, is bad in law in that the said writing has not been duly stamped in terms of Rule 9 of The Parliamentary Election Petition Rules, 1946 ;

(2) Security in a sum of Rs. 5,000 in respect of the original petition has not been deposited by the petitioners in terms of Rule 12 of the said rules ;

(3) The petition dated the 23rd June, 1952, has not been amended within the time specified in s. 83 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946, in that the amendment thereof by the petitioners filed on the 19th August, 1952, was effected out of time ; and

(4) Security in respect of the petition as amended has not been deposited by the petitioners in terms of Rule 12 and Rule 13 of the said rules.

Rule 9 of the rules provides for the appointment of an agent by the petitioners on an election petition by a writing to be left at the office of the Registrar of the Supreme Court, and the rule also requires that the writing " shall be stamped with the duty payable thereon under the law for the time being in force ". The writing which has been filed by the petitioners at the office of the Registrar appointing Proctor V. Navaratnam as their agent bears stamps of the value of Rs. 6. It is common ground that the law for the time being in force relating to the stamp duty payable on a writing appointing an agent under Rule 9 is Item 37 (1) under Part 1 of Schedule A of The Stamp Ordinance (Cap. 189), according to which the stamp duty is Rs. 5. Mr. Barr Kumarakulasingham explains that the reason for the writing in the present case bearing stamps of the value of Rs. 6 was in order to meet a possible contention that the duty payable is under para (1) of Head F of Part 2 of Schedule A of the Stamp Ordinance which provides for a stamp duty of Rs. 6. He, however, now agrees that the writing in question is stampable under Item 37 (1) already referred to. For the respondent it is contended that while under Item 37 (1) the stamp duty of Rs. 5 is payable on a single or joint power of attorney, where two grantors join in giving separate powers of attorney, even though the grantee be one and the same person and the grants are embodied in one document, there are in reality two powers of attorney and the stamp duty payable would be Rs. 10. Mr. Weerasooria concedes that it was open to the two petitioners under Rule 9 to have made a joint appointment of an agent and that in such an event the stamp duty payable on the instrument would be only Rs. 5. But he submits that in the present case the petitioners not only made a joint appointment but each of them went further and granted a separate power of attorney as well, and in support of his argument he points to the language used in the instrument whereby the petitioners " jointly and severally nominate, appoint and authorise Mr. Vaithianathapillai Navaratnam . . . . to act as our and each of our agent . . . . and to appear for us or either of us . . . . " His submission is that in this single instrument are incorporated three powers of attorney, one of which is a joint power while the other two are separate powers granted by each petitioner, and that a stamp duty of Rs. 15 is payable thereon. In this connection he referred me to the case of *The British Ceylon Corporation, Ltd. v. The United Shipping Board et al.* [1], and the case

[1] *(1934) 36 N. L. R. 225.*

of *James v. Karunaratne* [1]. Both these cases dealt with the filing of appeals by more than one appellant through the medium of a single petition of appeal which was stamped as for one petition of appeal. It was held in each case that the petition of appeal was insufficiently stamped and the appeal was rejected. In the case of *Bilindi et al. v. Wellawa Attadasi Thero* [2], however, it was held by the Privy Council that several defendants in an action who put forward a common defence may grant a joint proxy in favour of the same Proctor. Where a power of attorney is granted in one document by several grantors in favour of one person, the question whether the document constitutes one power of attorney or several distinct powers has to be determined by reference to the interest which each grantor has in the matter in respect of which the grant is given, and where such interest is common to all the grantors the position in law would seem to be that the document constitutes a single power of attorney. It was held in the case of *Allen v. Morrison* [3] that a power of attorney by all the members of a mutual insurance club nominating an attorney to execute policies on behalf of the club required only a single stamp. It is clear that Rule 9 contemplates a joint appointment of an agent by several petitioners on a single election petition. The petition which has been filed in the present case shows that both the petitioners have a common interest in obtaining a declaration in terms of the prayer that the election of the respondent be declared void. In my opinion the use of the words "jointly and severally" in the appointment, having regard to the context in which these words occur, does not have the effect contended for by Mr. Weerasooria, and I, therefore, hold that the appointment has been duly stamped. The first ground of objection accordingly fails.

The second ground of objection deals with the security in a sum of Rs. 5,000 deposited in respect of the three charges contained in the original petition. Mr. Weerasooria draws attention to the terms of the receipt filed by the petitioners under Rule 13 (1) in respect of this deposit, according to which the deposit was made by Proctor Navaratnam (who is the agent appointed under Rule 9) "on behalf of" the petitioners, and he contends that such a deposit was not duly made under Rule 12 (3) which requires that the security should be given by the petitioner. In support of his contention Mr. Weerasooria cited the case of *Costa v. Jayewardene* [4]. But according to the first head note in the report of that case, what was held there was that under the corresponding Rule 12 of the Election (State Council) Petition Rules, 1931, a deposit of money by way of security must be made in the name of the petitioner even when it is made by some other person, which is precisely what has been done in the present case. I have read the judgment in the case cited and am satisfied that the head note correctly sets out the effect of Justice de Kretser's judgment. What happened in that case was that although the security was deposited by the Proctor who filed the election petition in the case, the only information given as regards the deposit, as far as could be gathered from the receipt filed, was that it was security in respect of the election petition. As pointed out by Justice de Kretser,

[1] *(1935) 37 N. L. R. 154.*
[2] *(1945) 47 N. L. R. 3.*
[3] *8 B. & C. 565.*
[4] *(1943) 44 N. L. R. 341.*

the receipt did not even state that the deposit was on behalf of the petitioner. In the present case the receipt shows that the deposit was made by Proctor Navaratnam on behalf of the petitioners and " by way of security for payment of all costs, charges and expenses that may become payable by . . . . the petitioners in connection with election petition No. 19 of 1952 filed by them . . . . . " There is nothing in the evidence of Mr. de Silva, the Office Assistant to the Commissioner of Elections who was called as a witness by the respondent, to contradict the terms of this receipt, and I hold that the sum of Rs. 5,000 referred to in the receipt was security given by the petitioners as required by Rule 12 (3). This ground of objection, therefore, fails.

The third and fourth grounds of objection remain to be considered. The third ground of objection raises the question whether the original petition was amended within the time specified in s. 83 (2) of the Ceylon (Parliamentary Elections) Order in Council 1946, and in this connection it is necessary to refer briefly to the steps taken by the petitioners towards the amendment of the original petition by the addition of a new paragraph 3 (*d*) containing a charge of corrupt practice based on the allegation that the respondent knowingly made the declaration as to election expenses required by s. 70 of the Order in Council falsely.

On the 24th July, 1952, the petitioners filed, *inter alia*, an application for leave to amend the original petition by the addition of the paragraph 3 (*d*) referred to above. The application contained a prayer that " leave . . . . to amend their said petition dated 23rd June 1952 " be granted, and that " their said petition dated 23rd June 1952 be amended " by the addition of a new paragraph 3 (*d*), the terms of which were set out. It is common ground that under s. 83 (2) of the Order in Council the last day for amending the original petition in the manner proposed was the 30th July, 1952. This application came up for inquiry before Justice Gratiaen on the 28th July, 1952, but it did not proceed to inquiry on that date in view of an agreement arrived at between counsel for the parties. The terms of the agreement as placed on record by Justice Gratiaen were that " whatever order that is made upon the application in terms of the petitioners' prayer shall be regarded as though it had been made today ". It is fairly clear that one of the considerations which induced counsel to arrive at this agreement was that even if the application were to be taken up for hearing on the 28th July the order of the Judge could not conveniently be given earlier than after the last day (the 30th July, 1952) for amendment of the original petition. In view of this agreement the hearing of the application was deferred for a later date and in due course it came up before Justice Gunasekara on the 6th, 7th and 8th August, 1952, and on the 18th August, 1952, he made his order that the " application for leave to amend the petition in the manner proposed is allowed ". Mr. Weerasooria stated that in raising the objection now under consideration the respondent was not trying to resile from this agreement on the ground that it was not a valid agreement. His submission, however, was that s. 83 (2) of the Order in Council contemplated the effecting of an amendment by the petitioners after leave to amend had been obtained, and that even if leave to amend

be deemed to have been obtained on the 28th July, 1952, a further act on the part of the petitioners was necessary by way of amendment of the original petition, that such act had not been performed by the petitioners within the time allowed by law and that therefore there was no amended petition which the Election Judge has jurisdiction to try. In this connection he drew my attention to a document, dated the 18th August, 1952, but filed by the petitioners on the 19th August, 1952, which purported to be a " fair copy of the amended petition ". He submitted that in so far as the filing of this document may be regarded as the act of the petitioners amending the original petition, it was done too late. The submission of Mr. Barr Kumarakulasingham, on the other hand, is that on Justice Gunasekara making his order that the " application for leave to amend the petition in the manner proposed is allowed ", the original petition stood amended as from the date of that order in the manner indicated in the application to amend filed by the petitioners on the 24th July, 1952, and that no further act on their part by way of amendment was necessary. The Acting Solicitor General, who represented the Attorney General as *amicus curiae* in these proceedings, also adopted this submission, and on a consideration of the matter I agree with the submission of the counsel for the petitioners, and I hold that the order of Justice Gunasekara is tantamount to an amendment of the original petition by the addition of the charge contained in the proposed paragraph 3 (*d*) set out in the petitioners' application dated the 24th July, 1952, and such amendment must be deemed to have been made on the 28th July, 1952. If my view that the order of Justice Gunasekara is tantamount to an amendment of the original petition in the manner indicated is correct, a question may, perhaps, arise whether it was open to him to make an order of this nature after the lapse of the time provided by law for the amendment, but this is not a question which I feel it is within my competence, either as an Election Judge or as a Judge of the Supreme Court, to go into. It is a well established rule of law that a Judge cannot in the same cause disregard a previous order made by another Judge having superior or co-ordinate jurisdiction—vide the observations of Scrutton J. (as he then was) in *Papworth v. Battersea Borough Council*[1]. When Justice Gunasekara made his order allowing leave to amend the petition it must be regarded as one made on the basis that the application before him was for leave for an amendment which could be effected within the time specified in s. 83 (2) of the Order in Council as I can hardly conceive, if I may say so with respect, that he would have made the order on the basis that what had to be decided by him was the purely acadamic question whether the amendment may be allowed irrespective of whether it could or could not be made within the specified time. If his order amounted to an order of amendment of the original petition, as in my view it did amount to, the validity of that order cannot be questioned in these proceedings. I accordingly hold that leave to amend having been obtained on the 28th July, 1952, the amendment for which leave was granted was also effected on that date, and it was therefore within time. The third ground of objection, accordingly, fails.

[1] *1915 L. J. 84 K. B. D. (Part 2) 1881 at p. 1885.*

The fourth ground of objection deals with the security in respect of the amended petition. The submissions of Mr. Weerasooria under this ground were to some extent linked with his submissions under the third ground of objection. In the first place he stated that if, as contended for by him, the petitioners had, on obtaining leave to amend, to do a further act effecting the amendment, the only thing done by them towards the performance of that obligation was the filing, on the 19th August, 1952, of the document already referred to, and that under Rule 12 (in so far as that rule is applicable to an amendment of a petition by the addition of a new charge where the original petition already contained three charges) additional security in respect of the new charge had to be given within three days after the filing of that document, which the petitioners failed to do. His next submission was that on a petition being amended by the addition of a new charge, there comes into existence a new petition and security in respect of all the charges in that petition would have to be given afresh notwithstanding that security in respect of such of those charges as were contained in the original petition had already been given by the petitioners.

There is, of course, authority for the view that on an election petition being amended by the addition of a new charge, there comes into existence a new petition. In the case of *Clark et al. v. Lowry* [1] Grove J. stated that his judgment was based on the fact that a new charge was added by the amendment and therefore the petition was made a new petition. That was a case where the question considered was the jurisdiction of a Judge to allow an amendment of an election petition by the addition of a new charge after the time had expired within which the petition could have been presented. The matter was governed by the provisions of the *Municipal Corporations Act, 1882* [2], which gave a certain power to amend an election petition by reference to the powers of the High Court in an ordinary action within its jurisdiction subject, however, to the provisions of that Act. It was held that inasmuch as the amendment in question had the effect of converting the petition into a new one, it should not have been allowed after the time had expired within which the original petition could have been presented.

But even if it be that in the present case a " new " petition came into existence by reason of the amendment, the security given in respect of the original petition would also be security in respect of the " new " or amended petition, and it cannot, I think, be contended that on a dismissal of that petition the security given in respect of the original petition would not be liable to meet such costs, charges and expenses as may become payable by the petitioners. In my opinion, therefore, if Rule 12 has any application to a case like the present one where an additional charge is brought in by an amendment of the original petition (and in the consideration of the fourth ground of objection I do not think it necessary for me to express a definite opinion on that question in view of the ruling that I give rejecting Mr. Weerasooria's submission that fresh security in respect of *all* the charges in the " new " or amended

[1] *48 Law Times (N. S.) 762.* [2] *45 & 46 Vict. C. 50.*

petition should have been furnished by the petitioners), the only fresh security which the petitioners need have given was in respect of the additional charge, and such fresh security had to be given within three days after the amendment was allowed by the order of Justice Gunasekara.

It is common ground that on the 31st July, 1952, (which is within time if the amendment is deemed to have been effected on the 28th July, 1952) a sum of Rs. 2,000 was deposited by Proctor Navaratnam on behalf of the petitioners as " security for the payment of all costs, charges and expenses that become payable by the petitioners by virtue of the amendment by the addition of a further charge . . . . " as stated in the receipt filed bearing that date. Mr. Weerasooria submits that this sum of Rs. 2,000 was neither paid by the petitioners nor was it paid to the Commissioner of Elections, and that in neither respect, therefore, was there compliance with the relevant provisions of Rules 12 (3) and 13 (1). The first of these two submissions is however disposed of by my earlier ruling that a payment by the petitioners' appointed agent, Proctor Navaratnam, which is expressly stated to be made on behalf of the petitioners, is a payment by the petitioners. As regards the second of these submissions, Mr. Weerasooria relies on the evidence of Mr. de Silva, the Office Assistant to the Commissioner of Elections, that the payment was made to him on the 31st July, 1952, at a time when the Commissioner was away from Colombo on circuit. Under cross-examination Mr. de Silva, however, stated that he had the authority of the Commissioner to receive on his behalf deposits of security in connection with election petitions whenever the Commissioner was away on other duties, and that this particular sum was received by him under that authority.

I am unable to interpret Rule 13 (1) as bearing the meaning that the manual act of receiving the payment should be by the Commissioner himself, even on the basis that receiving payment is a statutory duty falling on the Commissioner. I should think that it would be open to the Commissioner, even if he should be in his office in Colombo, to instruct his office assistant to receive payment on his behalf in an anteroom ; and likewise it would be open to the Commissioner to instruct his office assistant to receive payments on his behalf on any particular day on which the Commissioner may be absent from his office. Mr. Weerasooria brought to my notice the case of *Lieversz v. Kannangara*[1] where it was held that a deposit of a sum of money with an Assistant Shroff of the Colombo Municipal Council was not a compliance with s. 30 of the Colombo Municipal Council (Constitution) Ordinance which required that the deposit should be with the returning officer. But it is to be observed that in the same case it was also held that there would be a sufficient compliance with the requirements of s. 30 if the deposit was so made that the returning officer would have control over the money. In the present case there can be no doubt that the money which was handed over to the Office Assistant of the Commissioner of Elections was money over which the Commissioner himself had control.

[1] *(1943) 45 N. L. R. 55.*

The fourth ground of objection also, therefore, fails. In the result all the objections raised by the respondent are over-ruled. The trial of the original petition, as amended, will be proceeded with on the four charges contained therein. The respondent will pay to the petitioners their costs of this inquiry, which are fixed at Rupees one thousand eight hundred and thirty seven and cents fifty by agreement of parties.

Objections overruled.