1959 *Present :* **Basnayake, C.J., Pulle, J., and H. N. G. Fernando, J.**

K. RAMASAMY PILLAI, Appellant, *and* COMMISSIONER FOR REGISTRATION OF INDIAN AND PAKISTANI RESIDENTS, Respondent

S. C. (Citizenship) 835—Application C. 3200

Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949—Section 6 (2) (iii)—"Disability or incapacity"—Interpretation of a statute—Admissibility of reference to extraneous matter.

In an application for citizenship under the Indian and Pakistani Residents (Citizenship) Act—

Held, that the fact that the applicant (a non-Muslim) had contracted two marriages in India was not a disability or incapacity within the meaning of section 6 (2) (iii) of the Indian and Pakistani Residents (Citizenship) Act, although both wives were still alive.

Where the meaning of the words of a statute is not ambiguous, the parliamentary history of the statute is not admissible to explain it.

APPEAL under section 15 of the Indian and Pakistani Residents (Citizenship) Act.

N. K. Choksy, Q.C., with *C. Pathmanathan* and *B. J. Fernando*, for Applicant-Appellant.

B. C. F. Jayaratne, Crown Counsel, with *R. S. Wanasundera*, Crown Counsel, for Respondent-Respondent.

Cur. adv. vult.

[1] *(1912) 15 N. L. R. 407.*

March 25, 1959. BASNAYAKE, C.J.—

This is an appeal under section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, (hereinafter referred to as the Act), by one Krishnapillai Ramasamy Pillai, an applicant for registration under section 4 (1) of the Act. It came up for hearing in the ordinary course before my brother T. S. Fernando who reserved, under section 48 of the Courts Ordinance, for the decision of more than one Judge of this Court, the question whether the applicant in this case has fulfilled the requirements of section 6 (2) (iii) of the Act as it appeared to him to be a question of doubt or difficulty. I thereupon made Order under section 48A of that Ordinance constituting a bench of three Judges for the decision of the question so reserved.

According to the particulars stated in the affidavit and the deposition of the applicant he is a person born at Tattaparai in South India but now living in Colombo. He first came to Ceylon in 1927. By occupation he is a tailor and he was at the date of his application on 20th June 1951 Head Ladies' Tailor at Hirdaramani Ltd. He is 41 years of age and has two wives the first of whom he married on 12th June 1930 and the second on 15th March 1945. He has no children by his first wife, but has three daughters by his second wife born on 22nd November 1946, 29th April 1948, and 10th May 1950.

His first marriage was solemnized by a Hindu Brahmin at Tattapara where he was then resident. There is no record of the marriage, nor is the marriage registered. The second marriage was solemnized at the Hindu Temple Choultry, Madras, by the Temple Priest. Neither is there a record of that marriage nor is it registered. Apart from the applicant's bare word that he has two wives there is no material before us to show that he is married according to the law of India even once. There is also no material before us to establish that he is entitled to marry more than one wife according to the law of his country. But proceeding on the assumption that he is legally married according to the law of India and that according to the law of that country the applicant, who claims to have been continuously resident in Ceylon during the period of seven years commencing on 1st January 1939 and ending on 31st December 1945, is entitled to marry a second time during the subsistence of the first marriage, I shall address myself to the question reserved for decision by my brother.

At the inquiry into the applicant's application the Deputy Commissioner informed him that the following were the matters for inquiry :—

"1. whether he is free from any legal disability, the contrary is indicated by the fact that, not being a Muslim, he has contracted a second marriage in contravention of the laws of Ceylon;

2. whether his first wife Mangammal was resident in Ceylon from 1st January 1939 to 1946 without absence exceeding 12 months on any single occasion;

3. whether his second wife Rajammal was resident in Ceylon from 15th March 1946 to March 1948 and 1949, without absence exceeding 12 months on any single occasion;

4. whether he had permanently settled in Ceylon: the contrary is indicated by the fact that, in seeking to remit money abroad, he declared himself to be temporarily resident in Ceylon."

After the applicant had deposed to certain facts relevant to his application, the Deputy Commissioner made the following order:—

"On the evidence before me, I hold that applicant is under legal disability in that, not being a Muslim, he has contracted 2 marriages in contravention of the laws of Ceylon and is now living in Ceylon with both his wives. I also hold that the applicant is not permanently settled in Ceylon. I do not therefore consider it necessary for me to inquire into the points 2 and 3 in my notice namely the residence of applicant's 2 wives (Mangammal and Rajammal). Application is refused. I inform applicant accordingly."

It is not clear why the Deputy Commissioner held that the applicant was under "legal disability", nor is there any indication why he used that expression or what he meant by it. He perhaps had section 6 (2) (iii) of the Act in mind. That section provides that a condition for allowing an application for registration under the Act shall be that the applicant shall satisfy the Commissioner that the requirements (i), (ii), (iii) and (iv) of subsection (2) of that section are fulfilled in the case of the applicant. We are here concerned with requirement (iii) which reads "that the applicant is free from any disability or incapacity which may render it difficult or impossible for the applicant to live in Ceylon according to the laws of Ceylon". Learned counsel for the applicant submitted that the applicant had stated in his affidavit that he is free from any disability or incapacity which may render it difficult or impossible for him to live in Ceylon according to the laws of Ceylon, that he had lived in Ceylon since his second marriage in 1945 and had not found that the fact that he had two "wives" rendered it difficult or impossible for him to live here according to the laws of this country.

Learned Crown Counsel submitted that the fact that the applicant had two "wives" was a disability or incapacity which rendered it difficult or impossible for the applicant to live in Ceylon according to its laws. Learned Crown Counsel endeavoured to conjure up various difficulties that might arise in certain eventualities. He stressed in particular the difficulties the appellant would have if he ever sought a divorce. The requirement is that the applicant should satisfy the Commissioner that at the time of the application he is free from disability or incapacity which may render it difficult or impossible for him to live in Ceylon according to the laws obtaining at that time. Requirement (iii) deals with a factual situation in existence at the time the Commissioner considers the application. It does not deal with situations that might arise in future. The

Deputy Commissioner has given no reasons for his conclusion that the applicant is under a "legal disability". He seems to think that the fact that, not being a Muslim, he has contracted two marriages places *him under a "legal disability"*. *He is mistaken in so thinking.* He is also mistaken in thinking that the applicant has contravened the laws of Ceylon. None of the submissions of learned Crown Counsel satisfy me that the applicant is under a "disability or incapacity".

"Disability" and "incapacity" are well known expressions in English law, and when used in our statutes should be given the same meaning—*Waharaka Investment Co. Ltd. v. Commissioner of Stamps* [1]. The former is defined in Sweet's Law Dictionary as "the absence of legal ability to do certain acts or enjoy certain benefits; such as the disability to sue, to take lands by descent, to enter into contracts, to alien property etc.". Disability is classified by the learned author into general and special disability. "Disability is called general when it disables the person from doing all acts of a given kind, or special when it disables him from doing a specific act. Examples of general disability occur in the case of outlaws and convicts, who cannot bring any action or suit in their own right, and lunatics and infants, who cannot alien property or enter into contracts except for necessaries."

The same author states that "incapacity" is the opposite of "capacity" and therefore equivalent to disability. He defines capacity thus: "A person is said to have legal capacity when he can alter his rights and duties by the exercise of his own will. Hence idiots and lunatics are said to have no legal capacity, and infants and married women have a restricted capacity: in other words, they are under disability". Tomlins' Law Dictionary defines "disability" thus: "An incapacity in a man to inherit any lands, or take that benefit which otherwise he might have done . . . . There are also other disabilities, by the common law, of *idiotcy, infancy*, and *coverture*, as to grants etc. And by statute in many cases; as *papists* are disabled to make any presentation to a church etc. which disability is continued by 10 G. 4 C. 7; *officers* not taking the oaths are incapable to hold offices; *foreigners*, though naturalized, to bear offices in the government." The same author defines "capacity" as "An ability, or fitness to receive; and in law it is where a man, or body politic, is able to give or take lands, or other things, or to sue actions." It would appear from the above citations that "disability" and "incapacity" are synonymous expressions.

Is the fact that the applicant has two wives (which the Commissioner has accepted as correct) a "disability" or "incapacity" within the meaning of those expressions? If it is not then the applicant need do no more than he has done. My answer to the question posed by my brother T. S. Fernando is that the applicant is free from any disability or incapacity which may render it difficult or impossible for him to live in Ceylon according to its law and that he has therefore fulfilled the requirement of paragraph (iii) of subsection (2) of section 6 of the Act.

[1] *(1932) 34 N. L. R. 266 at 272.*

Before I leave this judgment I think I should not omit to refer to learned Crown Counsel's invitation to us to read the Sessional Paper containing the discussions which preceded the enactment of the Act. He relied in particular on the correspondence that was exchanged between the Governments of Ceylon and India. We refused to accede to his request as we did not think that a situation which required the adoption of such an exceptional course had arisen. Here the words of the statute can be given a meaning as I have ventured to do without resorting to extraneous aid. Learned Crown Counsel's contention was that it was legitimate to examine extraneous matter to ascertain the intention of the legislature. Now what exactly is meant by the expression " intention of the legislature " ? Lord Halsbury described this expression as

> " a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. " (*Salomon v. Salomon & Co. Ltd.*) [1]

Although there are instances in which this Court has resorted to extraneous aid in construing an enactment, the most notable of which are *Balappu v. Andiris* [2] and *Kuma v. Banda* [3], a bench of three Judges refused to do so in the case of *Mudanayake v. Sivagnanasunderam* [4]. In that case several judicial *dicta* of the English Courts were considered. Though it is unnecessary for the purpose of this judgment to refer to them the following words of Lord Porter in *Commonwealth of Australia v. Bank of New South Wales* [5] bear repetition—

> " But, in whatever sense the word ' object ' or ' intention ' may be used in reference to a Minister exercising a statutory power, in relation to an Act of Parliament it can be ascertained in one way only, which can best be stated in the words of Lord Watson in *Salomon v. Salomon & Co.* (1897) A. C. 22 at 38 :
>
> > ' In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. '

The same idea is felicitously expressed in an opinion of the English law officers Sir Roundell Palmer and Sir Robert Collier cited by Issacs J. in *James v. Cowan* [6] :

> ' It must be presumed that a legislative body intends that which is the necessary effect of its enactments : the object, the purpose and the intention of the enactment, is the same. '

[1] (*1897*) *A. C. 22 at 38.*
[2] (*1910*) *13 N. L. R. 273.*
[3] (*1920*) *21 N. L. R. 294.*
[4] (*1951*) *53 N. L. R. 25.*
[5] (*1950*) *A. C. 235 at 307.*
[6] *43 C. L. R. 386, 409.*

The same learned judge adds:

> 'By the "necessary effect", it needs scarcely be said, those learned jurists meant the necessary legal effect, not the ulterior effect economically or socially.'

There is no indication that the Privy Council departed from the principle observed by this Court in *Mudanayake's* case (*supra*) when it was heard before it. (See *Kodakan Pillai v. Mudanayake* [1].) In this connexion it is not out of place to refer to the words of Lord Wright in *Assam Railways and Trading Co. v. Commissioners of Inland Revenue* [2]—

> "It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the Report of Commissioners is even more removed from value as evidence of intention because it does not follow that their recommendations were accepted."

Courts both here and elsewhere have departed occasionally from these rules, but those exceptions do not affect the rule that is now too well established to admit of doubt that the intention of Parliament is not to be judged by what is in its mind, but by its expression of that mind in the statute itself.

This appeal will now go back for the hearing of the other questions arising on it.

PULLE, J.—

I have had the advantage of reading in advance the judgments of my Lord the Chief Justice and my brother H. N. G. Fernando and I agree with them that the answer to the question referred to us is that the applicant has fulfilled the requirement of section 6 (2) (iii) of Act No. 3 of 1949.

Learned Counsel for the Crown envisaged a number of difficulties that might arise in applying the common law of the country relating to marriage and the law of inheritance to a non-Muslim who is married to more than one wife. In short it was argued that as the appellant was a Hindu he could not be assimilated to any monogamous community in Ceylon. If it was the intention of the legislature to deny citizenship to persons in the position of the appellant, it has failed to express that intention. Once it is conceded that the appellant could have contracted a lawful marriage while an earlier one was still subsisting, it cannot be said that he is at present suffering from a "disability" or an "incapacity" within the meaning of section 6 (2) (iii). Even if one gives a meaning to the expression "disability or incapacity" most favourable to the Crown, it cannot be said that such "disability or incapacity" may render it difficult or impossible for the applicant to live in Ceylon according to the laws of Ceylon.

[1] *(1953) 54 N. L. R 433.* [2] *(1935) A. C. 445 at 453.*

H. N. G. FERNANDO, J.—

This appeal against an order refusing an application for registration as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, was first argued before a single Judge who, under Section 48 of the Courts Ordinance, reserved for the decision of two or more Judges the question "whether the applicant in this case has fulfilled the requirements of Section 6 (2) (iii) of the Act (of 1959)".

The applicant had stated in his application that he had contracted two marriages, the first on 12th June 1930 and the second on 15th March 1945, and it is manifest that the second marriage was contracted during the subsistence of the first, and that both wives are still alive. In his order refusing the application, one of the grounds of refusal stated by the Deputy Commissioner is that the applicant "is under legal disability in that, not being a Muslim, he has contracted two marriages in contravention of the laws of Ceylon". It is evident that the Deputy Commissioner had in mind the paragraph (iii) of sub-section (2) of Section 6 of the Act which requires an applicant to satisfy the Commissioner "*that he is free from any disability or incapacity which may render it difficult or impossible for him to live in Ceylon according to the laws of Ceylon*".

Both marriages of the appellant took place in India, and it is conceded that under the Law of India (where the parties were domiciled at the relevant time) the second marriage was validly contracted notwithstanding the subsistence of the first. It is also rightly conceded that the second marriage of the applicant is recognized as valid by the Law of Ceylon, upon the principle of Private International Law that a marriage will be regarded as valid, if it was duly contracted in the country of the domicile of the parties and in accordance with the law of that country. There is no principle of the Common Law of Ceylon nor any statutory enactment which denies validity to the applicant's second marriage or in any way prohibits his residence in Ceylon with his two wives or renders such residence difficult or impossible. Hence it is clear that, by living or residing in Ceylon with his two wives and the children of the two marriages, the applicant is not contravening the Law of Ceylon in any manner.

The disqualification contemplated in paragraph (iii) is the existence of some "*disability or incapacity*" having the effect or consequence stated in that paragraph. Counsel for the applicant has argued that the disabilities or incapacities known to the Law of Ceylon are minority, lunacy, bankruptcy and the like, and that paragraph (iii) must be taken to contemplate some condition or status which is at least *ejusdem generis* with such known disabilities and incapacities. But even if the expression is construed in a very wide sense, it is difficult to see how the fact that a man has contracted a second, yet valid, marriage, constitutes either a "disability" or an "incapacity". On the other hand, even upon the assumption that this applicant is under some disability or incapacity by reason of the two marriages, is it a consequence that it will be *difficult or impossible for him to live in Ceylon according to the laws of Ceylon?* No such difficulty or impossibility has been brought to our notice.

Crown Counsel has invited us to examine certain official documents. He states that these documents will show clearly that before the Act of 1949 was introduced in the Legislature in the form of a Bill the officials and authorities concerned in the preparation of the Bill and its consideration in draft form had intended that the provision now found in paragraph (iii) of section 6 (2) of the Act should operate to disqualify a non-Muslim who had contracted a second marriage during the subsistence of a first. We have no reason to doubt the accuracy of Crown Counsel's statement but since the language of the provision in question is quite incapable of any construction which might render it applicable to the circumstance of the present case, reference to any such documents would serve no purpose even if such reference were permissible. I would cite in this connection the observations in Maxwell on Interpretation of Statutes, 10th Edition at page 27 ; " But it is unquestionably a rule that what may be called the parliamentary history of an enactment is not admissible to explain its meaning. Its language can be regarded only as the language of the three Estates of the realm, and the meaning attached to it by its framers or by individual members of one of those Estates cannot control the construction of it. Indeed, the inference to be drawn from comparing the language of the Act with the declared intention of its framers would be that the difference between the two was not accidental but intentional ".

At the best reference to extraneous matters might assist in the interpretation of a statute if its meaning is ambiguous and it is necessary to decide which of two or more possible constructions should be adopted ; or else if a possible construction of the language involves absurdity. But where it is contended that language should be given a meaning completely different from any possible meaning which can reasonably be assigned to that language, extraneous matters cannot be used to support such a contention.

For these reasons I would answer in the affirmative the question reserved for the consideration of this bench. The substantive appeal will be listed for further argument in the ordinary course upon the other matters which arise for determination.

Appeal to be listed for further hearing.