

1948

Present: Basnayake J.

KULASINGAM, Petitioner and THAMBIAYAH, Respondent.

IN THE MATTER OF THE PETITION OF AIYATHURAI VARUNA KULASINGAM OF JAFFNA UNDER SECTION 77 OF THE CEYLON (PARLIAMENTARY ELECTIONS) ORDER IN COUNCIL, 1946, TO HAVE THE ELECTION OF ALFRED LEO THAMBIAYAH TO REPRESENT THE ELECTORAL DISTRICT OF KAYTS (No. 44) DECLARED TO BE VOID.

*Election Petition—Company having contract with Crown—Shareholder disqualified—Indirect benefit—Ceylon (Constitution) Order in Council, 1946—Section 13 (3) (c).*

A shareholder of a Company having a contract with the Crown for the providing of goods or services to be used in the service of the Crown is a person who is disqualified under section 13 (3) (c) of the Ceylon (Constitution) Order in Council, 1946.

THIS was an election petition challenging the return of the respondent as Member of Parliament for the Electoral District of Kayts.

*Petitioner in person.*—The respondent is disqualified by contracts P5 and P3 for being a Member of Parliament, in view of section 13 (3) (c) of the Ceylon (Constitution) Order in Council, 1946. As a shareholder of the Cargo Boat Despatch Company, Ltd., the respondent enjoyed a benefit indirectly from the contracts. Under the proviso in section 3 of the House of Commons Disqualification Act, 1782 (22 Geo. 3, c. 45) no disqualification is attached to incorporated trading companies. The function of a proviso in a statute is dealt with in *Madras and Southern Mahratta Railway Co., Ltd. v. Bezwada Municipality*<sup>1</sup>. The wording of the Ballot Act—Article 582 of Vol. 12 of Halsbury's Laws of England (Hailsham Ed.)—is different from our enactment.

The benefit in the present case is an indirect one. It is a benefit *de facto* resulting from the contracts. Certain English decisions on similar enactments are helpful—*Todd v. Robinson*<sup>2</sup>; *Dimes v. Proprietors of Grand Junction Canal*<sup>3</sup>; *City of London Electricity Lighting Co., Ltd. v. London Corporation*<sup>4</sup>; *Lapish v. Braithwaite*<sup>5</sup>. The benefit contemplated in section 13 (3) (c) is not limited to pecuniary benefit. It must be understood in its widest sense—*England v. Inglis*<sup>6</sup>. One has to look to the object to be attained. The object obviously was to prevent the conflict between interest and duty that might otherwise inevitably arise—*Hutton v. Wilson*<sup>7</sup>; *Barnacle v. Clark*<sup>8</sup>; *In re Pollard's Settlement*<sup>9</sup>.

Whereas in Article 9 (d) of the repealed Ceylon (State Council) Order in Council of 1931, there was a proviso exempting a shareholder of an incorporated company, there is no such proviso in section 13 (3) (c) of the Order in Council of 1946.

*H. V. Perera, K.C.*, with *C. S. Barr Kumarakulasinghe, Vernon Wijetunge*, and *T. W. Rajaratnam*, for the respondent.—The mere fact that there is no proviso exempting companies in the new enactment as in the old State Council Order in Council cannot be brought out to show

<sup>1</sup> (1943) 28 C. L. W. 65.<sup>2</sup> (1884-5) 14 Q. B. D. 739.<sup>3</sup> (1852) 3 H. L. C. 759.<sup>4</sup> (1901) 1 Ch. D. 602; (1903) A. C. 434 at 442.<sup>5</sup> (1925) 1 K. B. 474 at 484.<sup>6</sup> (1920) 2 K. B. 636.<sup>7</sup> (1889) 22 Q. B. D. 744 at 748.<sup>8</sup> (1900) 1 Q. B. D. 279 at 283.<sup>9</sup> (1896) 2 Ch. D. 552.

that the omission was made with the intention of catching up all company shareholders. The company in question was a limited liability company and had a separate legal personality, and, as such, the benefits derived by it are not the benefits of the shareholder unless it is shown that the company was acting as the agent or secret nominee of the respondent, as in the case of *Saravanamuttu v. de Mel*<sup>1</sup>.

In section 13 (3) (c) of the (Constitution) Order in Council, 1946, the words "directly" or "indirectly" being adverbs must be taken to qualify the "holding or enjoying" the benefit. There is a difference between a person indirectly enjoying a benefit under a contract and a person enjoying an indirect benefit under a contract. In the latter case the benefit may be an indirect *de facto* benefit, but where a person is said to indirectly hold or enjoy a benefit under a contract, it must be shown that the indirectness is a legal indirectness and there must be a legal nexus as in the case of a trust or agency. A company is not *per se* the agent of the shareholder, and the shareholder is only entitled to a dividend if and when declared and has no legal connection either directly or indirectly with the benefits that accrue to the company under a contract. *Vide Salomon v. Salomon & Co*<sup>2</sup>.

As Managing Director, the respondent got a fixed salary and not a commission on the profits of the company and, as such, the fact that the respondent was Managing Director of the company is irrelevant.

The quantum of shares is also irrelevant. Viscount Cave's observation in *Lapish v. Braithwaite*<sup>3</sup> was a mere suggestion for the Legislature to be watchful of a large shareholder, and the quantum of shares cannot be made an issue on a mere suggestion which has not yet been acted upon by the Legislature.

Section 9 (d) of the State Council Order in Council of 1931 differs from section 13 (3) (c) of the Order in Council of 1946, for very good reasons. There is a vast difference between a Member of Parliament and a former Member of the State Council. In the old State Council every member was a member of an executive committee. The cases cited by the petitioner are inapplicable in the present case unless the words which are to be interpreted are exactly similar. See *Venkata Subamma v. Ramayya*<sup>4</sup> and *Bank of England v. Vagliano Brothers*<sup>5</sup>. The words in our section 13 (3) (c) are taken from the operative part of the English House of Commons Disqualification Act, 1782 (22 Geo. 3, c. 45). A broader interpretation has to be given to the operative part of an enactment—*Lapish v. Braithwaite*<sup>6</sup>; *Todd v. Robinson*<sup>7</sup>; *Nulton v. Wilson*<sup>8</sup>.

*Petitioner in reply.*—The right or benefit contemplated by section 13 (3) (c) is not necessarily a *de jure* right or *de jure* benefit. The term should be given the widest meaning, for there is no qualifying adjective to either "right" or "benefit". The word "right" is used in contradistinction to the word "benefit".

*Cur. adv. vult.*

<sup>1</sup> *S. C. Minutes of August 23, 1948 (Election Petition).*

<sup>2</sup> (1897) *A. C. 22 at 56.*

<sup>3</sup> (1926) *A. C. 275 at 279-80.*

<sup>4</sup> (1932) *A. I. R. Privy Council 92.*

<sup>5</sup> (1891) *A. C. 107.*

<sup>6</sup> (1926) *A. C. 275.*

<sup>7</sup> (1884-5) 14 *Q. B. D. 739 at 745.*

<sup>8</sup> (1889) 22 *Q. B. D. 744.*

September 13, 1948. BASNAYAKE J.—

The petition in this case has been presented under section 79 (c) of the Ceylon (Parliamentary Elections) Order in Council, 1946 (hereinafter referred to as the Elections Order), by one Aiyathurai Varuna Kulasingam who alleges that he was an unsuccessful candidate at the election of a Member of Parliament for the Electoral District of Kayts (No. 44) held on August 23, 1947.

He prays that the election of the successful candidate, one Alfred Leo Thambiyah, the respondent to this petition, be declared void under paragraphs (c) and (e) of section 77 of the Elections Order in that—

- (a) the corrupt practice of bribery was committed in connection with the said election with the knowledge or consent of the respondent, or by the agent or agents of the respondent, and
- (b) the respondent was at the time of his election a person disqualified for election as a member.

The petition was presented on September 19, 1947. The petitioner did not appoint an agent under rule 9 of the Parliamentary Election Petition Rules, 1946 (hereinafter referred to as the Election Petition rules), but at first chose to act for himself. Later he appointed one Ponnambalam Kandiah, a proctor of this Court, as his agent and on the date of the trial revoked the appointment as he desired to conduct his case in person. Under rule 10 of the Election Petition rules, by writing dated October 10, 1947, the respondent appointed as his agent one John Wilson (Jnr.), a proctor of the Supreme Court.

On November 21, 1947, the respondent filed a statement of objections to the said petition on the ground that the security was not given in accordance with Election Petition rule 12. On the same day he made an application in writing under Election Petition rule 5 for an order for particulars in the following terms—

“ I further move that the petitioner be ordered to furnish full particulars in writing to John Wilson (Jnr.), at 365, Dam street, Colombo, 31 days before the trial of the above petition, stating :

- (a) the contract or contracts referred to in paragraph 3 (a) of the petition mentioning date or dates and by whom or with whom the said contracts were entered into,
- (b) what benefits the respondent was enjoying under the said contract or contracts, what services were provided or furnished as referred to in the said paragraph and when,
- (c) the names of all persons alleged in paragraph 2 (b) of the petition to have been bribed and by whom, through whom they were bribed with the address and electoral number, if any, the occupation of each person, bribing or bribed, the time or times, and the place or places where each act of bribery took place and the nature, amount and value of the bribe.”

On December 12, 1947, the respondent's application for the particulars and his motion that the petition be dismissed for non-compliance with Election Petition rule 12 were heard and decided by my brother Nagalingam. In view of the decision of a bench of three judges in the

case of *Perera v. Jayewardene*<sup>1</sup>, the counsel for the respondent did not press his objection. The petitioner agreed to furnish the particulars required by the respondent, and my brother made the following order—

“ I direct that the particulars called for be furnished 10 days before the date of trial exclusive of the dates of filing and delivery of particulars, the date of trial and of all Sundays and all public holidays.”

On March 15, 1948, the petitioner filed the particulars in regard to the allegation under section 77 (e) of the Elections Order and on April 26 and August 17, 1948, the particulars in regard to the allegation under section 77 (c).

At the trial, which commenced on August 23, 1948, the respondent took objection to the particulars in regard to the allegation of bribery on the ground that the order of my brother Nagalingam had not been complied with. Although the petitioner had nearly eight months within which to comply with my brother's order he had not taken the trouble to do so. I therefore upheld the objection of respondent's counsel and ruled that the petitioner was not entitled to lead evidence in regard to the allegation of bribery.

The trial was therefore confined to the ground specified in section 77 (e). In his particulars, the petitioner alleged that the respondent was a shareholder and the Managing Director of the Cargo Boat Despatch Company, Limited (hereinafter referred to as the Company), a company with limited liability incorporated in Ceylon on May 11, 1936, under the Joint Stock Companies Ordinance, 1861, which had entered into two contracts of the description referred to in section 13 (3) (c) of the Ceylon (Constitution) Order in Council, 1946 (hereinafter referred to as the Constitution Order).

According to the annual return (P8) made by the Company the nominal share capital of the Company was Rs. 1,000,000 divided into 20,000 six per cent. cumulative preference shares of ten rupees each and 80,000 ordinary shares of ten rupees each. On December 7, 1946, 13,200 preference shares had been taken up and they stood in the name of the respondent. Of the ordinary shares, 45,308 had been taken up by 30 persons one of whom was the respondent, who held 550 such shares. It is in evidence that for the year April 1947 to March 1948, the Company declared an interim dividend of 10 per cent. on these shares and that the respondent received a sum of Rs. 10,999·20 after deduction of income tax.

The first of these contracts dated July 15, 1947, is between the Cargo Boat Despatch Company, Ltd. and Louis Abraham Wijesinghe acting for and on behalf of the Government of Ceylon with the authority of His Excellency the Governor (hereinafter referred to as P5) and is for the performance of the service of taking delivery from the landing company in accordance with the practice prevailing in the Port of Colombo of all Government cargo, subject to certain specified exceptions, landed from vessels arriving in the Port of Colombo between the first day of May, 1947, and the thirtieth day of September, 1947 (both days inclusive) and delivering such cargo with the utmost despatch at the places indicated by the Deputy Superintendent of Stores or any person or persons acting

<sup>1</sup> (1947) 49 N. L. R. 1.

under his authority. The exceptions are foodstuffs, coal, wooden sleepers, crossing timbers, and teak logs for the Railway Department and local timber shipped by the Forest Department from other ports in Ceylon to Colombo. The contract specifies the details of the service to be performed and the conditions of such service. For the services rendered under this contract during the months of May, June, July, August, and September, 1947, the Company was paid Rs. 17,990.02.

The second contract signed by the respective parties on August 6 and 7, 1947 (hereinafter referred to as P3) between the Company and Kovindapillai Alvapillai, acting for and on behalf of the Government of Ceylon, provides for the performance by the Company of the services of the carriage and haulage, from ship's side in the port of Colombo to shore, the warehousing and loading into transports, of food or other cargoes, and all such services as may be incidental thereto. The duration of the contract is not fixed in P3, but it is to endure until terminated by three calendar months' notice by either party. The remuneration payable under the contract is left to be mutually agreed upon between the contracting parties from time to time. Details regarding the service and the further conditions thereof are specified. Between August 5, 1947, and July 31, 1948, a sum of Rs. 636,009.92, more or less, was paid (P4) to the Company under this contract.

The petitioner's submission that P5 and P3 come within the ambit of the words "any contract made by or on behalf of the Crown in respect of the Government of the Island for the furnishing or providing of money to be remitted abroad or of goods or services to be used or employed in the service of the Crown in the Island", was not disputed by the respondent's counsel. Upon a reading of the documents I have myself formed the conclusion that they are contracts made on behalf of the Crown in respect of the Government of the Island for the providing of services to be used or employed in the service of the Crown in the Island.

The question that remains for decision is whether the respondent directly or indirectly held or enjoyed at the time of his election any right or benefit under P5 and P3. It was not claimed by the petitioner that the respondent held or enjoyed any right under those contracts, but he maintained that as shareholder of the Company the respondent indirectly enjoyed a benefit thereunder. It cannot be gainsaid that a shareholder of a company indirectly benefits from its activities. The contracts made in pursuance of its objects are designed to bring profit. The profits earned by it doubtless benefit the shareholders.

The petitioner referred me to a number of English cases, in support of his submission that as a shareholder of the Company the respondent was a person who indirectly enjoyed a benefit under the contracts. Although the statutory provisions discussed in those cases are not in exactly the same terms as the provision I have to construe, they are helpful in deciding the matter in issue and go to confirm the view I have formed.

The earliest of the cases is *Todd v. Robinson*<sup>1</sup>. The defendant was a shareholder in the Blyth and Cowpen Gas Company for some years. An agreement had been in force since 1872 between the Gas Company

<sup>1</sup> (1884-5) 14 Q. B. D. 739.

and the Local Board for the supply of gas. In July, 1882, the Local Board by resolution asked for an extension of the service, and the defendant, as clerk to the Board, communicated this resolution to the Company. The gas was supplied and the amount payable to the Company for the full season for which the supply was provided was £311.13s. The benefit accruing to the defendant as shareholder from the contract was merely nominal. Brett M.R. held that the defendant as shareholder of the Gas Company was a person indirectly interested in the contract. He was influenced in his decision by the language of an amending Act, which excluded from the ambit of the section shareholders in a company having a contract with a local authority. He also placed some reliance on the case of *Dimes v. Proprietors of Grand Junction Canal*<sup>1</sup> wherein it was held that a judge who was a shareholder in a company was disqualified on the ground of interest from deciding a cause to which the company was a party. Cotton L.J. expressed himself thus :

“ The defendant was a member and shareholder of the gas company ; the profits of the gas company go to the benefit of the shareholders, and this circumstance is conclusive to shew that the defendant is within the Act.”

The next case is *City of London Electric Lighting Company Ltd. v. London Corporation*<sup>2</sup>. That was a decision under section 42 of the City of London Sewers Act, 1848 (11 & 12 Vict. c. 163) which provided that no person, being a Commissioner, or a member of the Court of Aldermen or of the Common Council of the City, shall be directly or indirectly interested or concerned in any contract which shall be made or entered into by or on behalf of the Commissioners. Rigby L.J. in construing section 42 observes at page 612 :

“ As to the meaning of s. 42, the important point for decision is whether a corporator or shareholder of an incorporated company is or is not interested directly or indirectly in any contract entered into with the corporation or company. It was admitted on behalf of the plaintiff company that as a general rule he is so interested ; and indeed to deny that would be equivalent to saying that in case of a contract with an incorporated company no person whatsoever is interested though the whole fortunes of the corporators or shareholders may depend upon the contract—a contention which is manifestly absurd.”

In approving the decision of the Court of Appeal, Lord Robertson observed in the House of Lords<sup>3</sup> :

“ But the Acts of 1848 and 1851 both deal with the case of commissioners being shareholders in companies, and it is impossible to deny that a shareholder in a limited company comes under s. 42. This is enough for the decision of the present case.”

The next case which is relevant to the present discussion is *Lapish v. Braithwaite*<sup>4</sup>. The facts of the case in the words of Bankes L.J. are as follows<sup>5</sup> :—

“ At all material times the appellant was an alderman of the City of Leeds, and he was also managing director of, and a large shareholder

<sup>1</sup> (1852) 3 H. L. C. 759 ; 10 E. R. 301.    <sup>3</sup> (1903) A. C. 434 at 442.

<sup>2</sup> (1901) 1 Ch. D. 602.    <sup>4</sup> (1925) 1 K. B. 474.

<sup>5</sup> (1925) 1 K. B. 474 at 484.

in, a limited liability company carrying on business at Leeds. This company had a capital of £250,000. It did an extensive business and it had a contract with the Corporation of Leeds for the supply of a large quantity of earthenware goods, which contract was running at the time when the appellant is alleged to have acted as alderman although disqualified. The only evidence that the appellant took an active part in reference to the making of the contract consisted in the fact that he was one of the two directors of the company who signed the document as witnesses to the affixing of the company's seal. The correspondence which led up to the contract was conducted by the secretary of the company. The appellant was paid a fixed salary as managing director,"

In the course of his judgment the learned Lord Justice observes :

" A managing director who is also a shareholder has indirectly an interest in the contract made between his company and a council because he is a shareholder. As managing director merely he has no share in the contract."

Atkin L.J. who disagreed with Bankes and Scrutton L.JJ. on the main issue that a managing director of a company has no interest in a contract as such observes in regard to a shareholder :

" That a shareholder in a company has an interest in a suit in which the company is litigant was decided in *Dimes v. Proprietors of the Grand Junction Canal* [(1852) 3 H. L. C. 759] where a decree of Lord Cottenham L.C. was set aside on the ground that the Lord Chancellor was a shareholder in the Canal Corporation. . . . The interest of a shareholder in the company party to a contract appears to me to give him an interest direct or indirect in the contract within the words of the disqualifying clause."

The cases to which I have referred demonstrate that a shareholder of a company has an interest in its contracts in so far as he indirectly gets the benefits accruing therefrom directly to the company. The word "benefit" in section 13 (3) (c) of the Constitution Order is not limited by any such word as pecuniary. It must therefore be understood in its widest sense. The case of *England v. Inglis*<sup>1</sup>, in my view, can be taken as indicating the scope of the word "benefit" in an enactment such as the one I have to construe. In that case it was held that the contract of the corporation with the defendant's son for the supply of spectacles to the schools controlled by the education committee helped to advertise the defendant's business as a jeweller and an optician and that the defendant thereby derived benefit in the shape of widespread advertisement and the probability of increased custom because the son carried on business from his father's shop and in his father's time although he contracted directly with the local authority, ordered the spectacles from his father's wholesale dealers in London in his own name, paid for them by his own cheque, received the corporation's cheques made out to him and paid them to his own account. Roche J. in the course of his judgment observes at page 641 :

<sup>1</sup> (1920) 2 K. B. 636.

“As to the benefit accruing to the defendant from its performance, the judge was, in my opinion, entitled to come to the conclusion that the burden was not sustained for nothing and that there was the possibility, and even probability, of an actual resulting benefit which has been summed up as useful advertisement.”

The petitioner also drew my attention to certain judicial dicta as to the object of legislation of this kind. In *Hutton v. Wilson*<sup>1</sup> Lindley L.J. says referring to the words “concerned in the contract”:

“To interpret words of this kind, which have no very definite meaning, and which perhaps were purposely employed for that every reason, we must look at the object to be attained. The object obviously was to prevent the conflict between interest and duty that might otherwise inevitably arise.”

Justice Darling in adopting the dictum of Lindley L.J. observes in the case of *Barnacle v. Clark*<sup>2</sup>:

“The object of this legislation seems to be very clearly stated by Lindley L.J. in his judgment in *Hutton v. Wilson* [22 Q. B. D. 744], and I entirely agree with the view there expressed. It is intended that the members of public bodies shall be free from any suspicion of deriving profit, directly or indirectly, by reason of the position they hold.”

In the case of *Lapish v. Braithwaite* to which I have already referred Bankes L.J. in commenting on section 12<sup>3</sup> of the Municipal Corporations Act, 1882, observes at page 485:

“There is no doubt as to the intention of the Legislature in framing this section. It was to secure as far as was thought necessary that aldermen and councillors should not place themselves in positions in which their duty and their interest conflicted, and to remove a possible source of temptation.”

<sup>1</sup> (1889) 22 Q. B. D. 744 at 748.

<sup>2</sup> (1900) 1 Q. B. D. 279 at 283.

<sup>3</sup> Section 12, *Municipal Corporations Act, 1882* (45 and 46 Vict., c. 50):

“(1) A person shall be disqualified for being elected and for being a councillor, if and while he—

- (a) Is an elective auditor or a revising assessor, or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council; or
- (b) Is in holy orders, or the regular minister of a dissenting congregation; or
- (c) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council;

“(2) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

- (a) Any lease, sale, or purchase of land, or any agreement for the same; or
- (b) Any agreement for the loan of money, or any security for the payment of money only; or
- (c) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or
- (d) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or
- (e) Any railway company, or any company incorporated by Act of Parliament or Royal Charter, or under the Companies Act, 1862.”



Lord Justice Atkin who delivered the dissenting judgment in the case observes at page 502 :

“ I am the more encouraged to take this view by the reflection that it obviously promotes, while the appellant's view obstructs, the principle of public policy which underlies the statute. In 1872 ‘ for further securing the freedom and independence of Parliament ’ the Legislature made provision<sup>1</sup> disqualifying from being a member of the House of Commons any person who directly or indirectly himself undertook, executed, held or enjoyed in whole or in part any contract on account of the public service during the period during which he so undertook or enjoyed the benefit of such contract. The provision in the Municipal Corporations Act, 1835, is conceived in the like spirit. The object is manifest. It is to obtain for the public body concerned the disinterested advice of its members, so that they are not put in a position where their duty and interest conflict. It is intended also to prevent the possibility of members' votes and other matters being influenced by the promise or receipt of beneficial contracts. And it is further intended to secure the honour and dignity of the corporation itself by securing that there shall be no suspicion of the integrity of its members, and no ill-will amongst burgesses not members of the corporation, because they are passed over in business in preference to favoured councillors. No suspicion of corruption has been suggested in this case. But the facts disclosed make it clear that all the evils sought to be avoided may be present if such a position as the defendant's in this case is not within the Act.”

The petitioner invited me to infer from the absence in section 13 (3) (c) of the Constitution Order of a proviso in favour of a shareholder of an incorporated company similar to that in Article 9 (d) of the repealed Ceylon (State Council) Order in Council, 1931 (hereinafter referred to as the repealed Order) that the existing law was designed to include the class of persons excepted by the repealed Order.

Learned counsel for the respondent argued that there was a difference between a profit-sharing corporation and an incorporated company. He submitted on the authority of the *Mersey Docks Case*<sup>2</sup> and the case of *Venkata Subamma and another v. Ramayya and others*<sup>3</sup> that section 13 (3) (c) of the Constitution Order must be interpreted without reference

<sup>1</sup> *House of Commons (Disqualification) Act, 1872 (22 Geo. 3, c. 45), s. 1 :*

“ Any person who shall, directly or indirectly, himself, or by any person whatsoever in-trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract, agreement, or commission made or entered into with, under, or from the Commissioners of His Majesty's Treasury, or of the Navy or Victualling Office, or with the Master General or Board of Ordinance, or with any one or more of such Commissioners, or with any other person or persons whatsoever, for or on account of the public service, or shall knowingly and willingly furnish or provide in pursuance of any such agreement, contract or commission which he or they shall have made or entered into as aforesaid, any money to be remitted abroad or any wares or merchandise to be used or employed in the service of the public, shall be incapable of being elected, or of sitting or voting as a member of the House of Commons, during the time that he shall execute, hold, or enjoy, any such contract, agreement, or commission, or any part or share thereof, or any benefit or emolument arising from the same.”

<sup>2</sup> (1865) 11 H. L. 443 ; 11 E. R. 1405.    <sup>3</sup> (1932) A.I.R. Privy Council 92.

to Article 9 (d) of the repealed Order. He also referred me to the following Observations of Lord Davey at page 56 in the case of *Salomon v. Salomon & Co.*<sup>1</sup>:

“The ground on which the learned judges seem to have chiefly relied was that it was an attempt by an individual to carry on his business with limited liability, which was forbidden by the Act and unlawful. I observe, in passing, that nothing turns upon there being only one person interested. The argument would have been just as good if there had been six members holding the bulk of the shares and one member with a very small interest, say, one share. I am at a loss to see how in either view taken in the Courts below the conclusion follows from the premises, or in what way the company became an agent or trustee for the appellant, except in the sense in which every company may loosely and inaccurately be said to be an agent for earning profits for its members, or a trustee of its profits for the members amongst whom they are to be divided.”

He further argued that the fact that the respondent was the managing director was irrelevant as was the fact that he owned a large block of shares. I was also referred to the judgment of my brother Dias in the case of *Saravanamuttu v. de Mel*<sup>2</sup>. Learned counsel further submitted that the position of a member of the House of Representatives was different from that of a member of the State Council. Under the repealed Order the members of the Legislative assembly were also members of executive committees which had executive functions. He also submitted that the provision under discussion should be interpreted with due regard to the realities of life, and that if the petitioner's contention was sound those who held shares in such companies as Cargills Ltd. and Times of Ceylon Co. Ltd. with whom the Government entered into business transactions both large and small would be disqualified. Learned counsel also stated from the Bar that if the petitioner's contention succeeded it would affect a number of others besides the respondent. But those are not considerations I can take into account in construing the section. As was observed by Lord Davey in *City of London Electric Lighting Company v. London Corporation*<sup>3</sup> “the stringency of the section is not a reason for a Court of law to decline to give effect to it or construe it otherwise than according to the plain meaning of the words”. Learned counsel construed the section as extending to contracts collateral with the contract with the Crown. He distinguished the cases cited by the petitioner as being cases dealing with members of local authorities and stated that the evil sought to be avoided in the case of those institutions which were of a parochial nature did not exist in the case of Parliament, and that the observations of judges in regard to local authorities should not be regarded as extending to the case of Parliament.

A share is a term indicating a right to participate in the profits of a particular joint stock undertaking<sup>4</sup>. The profits are divided in the form of a dividend, which means *prima facie* a share of the profits available for distribution. Paying a dividend is an act of the shareholders

<sup>1</sup> (1897) A. C. 22.

<sup>2</sup> S. C. Minutes of 23rd August, 1948.

<sup>3</sup> (1903) A. C. 434 at 440.

<sup>4</sup> *Morice v. Aylmer*, (1884) L. R. 10 Ch. 155.

and is regulated by the Articles of the Company. How can it then be said that a shareholder of a company such as the one we have in this case does not indirectly receive a benefit under its contracts? The judicial opinions I have quoted above support the view that a shareholder has an indirect interest in the contracts of the company. I have in mind particularly the words of Rigby L.J. and Lord Robertson. It is not irrelevant to this discussion to record that in the English Local Government Act of 1933 the Legislature has taken into account the judicial opinions expressed from time to time and enacted by section 76 (2) of that Act that a person who by himself or any nominee of his is a member of a company or other body with which a contract is made shall be treated as having indirectly a pecuniary interest in a contract. I observe that my brother Dias in the case of *Saravanamuttu v. de Mel (supra)* remarks in passing: "The fact that he as a shareholder may ultimately benefit by this contract by the dividends he may receive, is too remote a benefit to disqualify him under section 13 (3) (c) of the Order in Council." My brother rests his decision on another ground and his observations must therefore be regarded as *obiter*, especially as the question at issue in the instant case does not appear to have been as fully argued before him as it was before me.

The benefit contemplated by this section is, as I have stated earlier, not necessarily a pecuniary benefit<sup>1</sup>. The word "benefit" is a wide expression. It means an advantage of whatsoever kind whether resulting in profit or not. A person may indirectly enjoy a benefit under a contract without being a party to it or without any profit resulting from the contract. It is conceivable as was observed by Atkin L.J. in *Lapish v. Braithwaite (supra)* that a person may have an interest in a contract derived from a company without even having an interest in the company. But one cannot escape the fact that one of the incidents of the law of corporations is that in respect of personal property vested in the corporation, the individual members though not owners of that property or any part of it, are each interested in the property, as they may derive individual benefit from its increase. In order that a person may indirectly enjoy any benefit under a contract it is not necessary that the very profits derived therefrom should reach his pocket, for then the benefit would be direct. It is not necessary that the benefit should be one flowing from the contract by a tie of law, whether directly or through another person, nor is it necessary to prove that the contract produced any profit or that any profits from the contract in question actually reached the pocket of such person<sup>2</sup>.

It is needless to speculate as to the reason why in the Constitution Order no exemption was created in respect of shareholders of incorporated companies contracting with the Crown. The omission of such an important provision cannot be regarded as accidental but must be taken to have been intentional<sup>3</sup>. The consequence is that persons such as the respondent come within the ambit of the section. The granting of such

<sup>1</sup> *In re Pollard's Settlement (1896) 2 Ch. D.552.*

<sup>2</sup> *Forbes v. Samuel (1913) 3 K.B. 706.*

<sup>3</sup> *Craies' Statute Law (4th Edn.) p. 133: The Queen v. Price (1870-71) 6 L. R. Q. B. 411 at 416.*

an exemption is a matter for the legislature. In making such a provision, if it is decided to do so, it might be well to bear in mind the observations of Viscount Cave in *Lapish v. Braithwaite*<sup>1</sup> wherein he says :

“ When in the year 1869 the exception in favour of a shareholder was first enacted, it was no doubt the view of the legislature that a council ought not to lose the services of a capable member only because he held a few shares in some company with which the council desired to enter into contractual relations, and it was probably considered that an interest of that kind would be unlikely to exercise any prejudicial effect on the action of a member in his corporate office. But since that date the practice of forming businesses into limited companies has been greatly extended. There are now many companies in which most or substantially all of the shares are held by one man, who may also be the principal or governing director of the company, so that the business is his business in all but name ; and if by reason of the exception in s. 12, sub-s. 2, such a man can remain a member of a municipal body with which his company is in contractual relations, the section will lose much of its force and value. It is not for your Lordships to suggest the manner in which this danger should be met, but it appears to me that the Legislature might well consider whether the section should not be strengthened either by extending the disqualification to persons who hold a substantial proportion of the shares in a contracting company or in some other way.”

I find myself unable to uphold the submission of learned counsel for the respondent that in the discussion of this question one should not look at the corresponding provision of the repealed Order while I agree that the words of section 13 (3) (c) of the Constitution Order should not be given a wider meaning than the corresponding words of Article 9 (d) of the repealed Order merely because there is no exception in the constitution Order. In the interpretation of statutes it is not improper, in certain circumstances, to refer to repealed enactments *in pari materia*<sup>2</sup>. The repealed Order devoid of the proviso in my view carries with it the same implications as the provision under consideration. The omission of the proviso is an indication that the legislature in re-enacting Article 9 (d) did not intend to create any exception to the rule, which was not appreciably different then. The existence of the proviso in the repealed Order shows that the legislature assumed that a member who was a shareholder in a company having a contract of the kind specified in the article was within the disqualification and that the legislature considered that the language of Article 9 (d) of the repealed Order must be construed in the sense in which the petitioner claims it should be<sup>3</sup>.

The object of legislation of this nature is admirably stated in the remarks of Atkin L.J. which I have quoted earlier. The House of Commons (Disqualification) Act, 1782 (22 Geo. 3, c. 45) by which our legislation appears to have been influenced, in its Preamble states that.

<sup>1</sup> (1926) A. C. 275 at 279-280.

<sup>2</sup> *Alison and others v. Burns*, (1889-90) 15 A.C. 44 at 51.

<sup>3</sup> *The Queen v. Price* (1870-71) 6 L. R. Q. B. 411.

<sup>3</sup> *Todd v. Robinson* (1884-85) 14 Q. B. D. 739, *Brett, M. R.*, at 745.

the Act is enacted for further securing the freedom and independence of Parliament. One may presume that similar legislation in this country is designed to achieve the same end.

I declare that the election of the respondent as Member of Parliament for the Kayts electoral district is void on the ground that he was at the time of his election a person disqualified for election as a Member for the reason that he indirectly enjoyed a benefit under a contract made on behalf of the Crown in respect of the Government of the Island for the providing of services to be used or employed in the service of the Crown in the Island.

I order the respondent to pay the petitioner all costs actually incurred by him for the purpose of establishing this charge.

*Election declared void.*

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