1966 *Present :* **Sansoni, C. J. H. N. G. Fernando, S.P.J., and L, B. de Silva, J.**

D. E. WIJESEKERE and another, Appellants, and **K. D. D. PERERA,** Respondent

Election Petition Appeal No. 1 of 1965-Bavtdaragama

L. S. PERERA, Appellant, and **D. S. SAMARASINGHE,** Respondent

Election Petition Appeal No. 2 of 1965-Kolonnaiva

G. A. S. PERERA and another, Appellants, and **SIRIMAVO D. BANDARANAIKE,** Respondent

Election Petition Appeal No. 3 of 1965-Attanagalla

Election petitions-Security for costs-Computation of number of" charges "-Meaning of expressions " Charge " and " Grounds of avoidance of an election "-Ceylon (Parliamentary Elections) Order in /Council (Cap. 381), ss. 77, 82-Parliamentary Election Petition Rules, 1946 (Schedule 3 of Cap. 381), Rules 4, 12.

(i) In an election petition alleging the commission of corrupt practices or illegal practices contemplated in section 77 (c) of the Parliamentary Elections Order in Council, all allegations of the commission of the same corrupt practice or the same illegal practice by a candidate, or his agent, or with his knowledge and consent, constitute only one charge for the purpose of giving security for costs in compliance with Rule 12 of the Parliamentary Election Petition Rules, irrespective of the number of alleged commissions of the same practice specified in the petition or intended to be proved at the trial. For example, two or more acts of the same corrupt practice of bribery constitute only one "charge".

(ii) An allegation in terms of section 77 (a) of the Parliamentary Elections Order in Council that " the majority of the electors were or may have been prevented from electing the candidate whom they preferred " constitutes a " charge " for the purposes of Rule 12 cf the Parliamentary Election Petition Rules. Further, it constitutes only one " charge ", irrespective of the nature or the number of facts or matters by reason of which it is alleged that the majority of the voters were or may have been prevented from electing tha candidate whom they preferred. Accordingly, general bribery, general intimidation, general treating, misconduct, act of God, etc. are merely causes or reasons upon which a Judge can be satisfied that there was prevention of free voting, and do not constitute separate " charges " for the purposes of Rule 12.

ELECTION Petition Appeals Nos. 1, 2 and 3 of 1965-Bandaragama, Kolonnawa and Attanagalla.

H. W. Jayewardene, Q.G., with A. G. Gooneratne, Q.C., J. W. Subasinghe. H. D Tambiah and Ranjan Gooneratne, for the Petitioner in Appeal No. 1.

H. V. Perera, Q.G., with H. W. Jayewardene, Q.C., and H. D. Tambiah, for the Petitioner in Appeal No. 2.

A. H. C. de Silva, Q.G., with Izzqdeen Mohamed and A. G. M. Uvuis, for the Petitioner in Appeal No. 3. "

Colvin R. de Silva, with K". Shirtya, Hanan Ismail Felix Dias Bandaranaika and Miss Manouri de Silva, for the Respondents in Appeals Nos. 1, 2 and 3.

J. G. T. Weeraratne, Senior Crown Counsel, with N. B. D. S. Wijesekera. Crown Counsel, as amicus curiae in Appeals Nos. 1. 2 and 3.

Cur. adv. vult

February 5, 1966. **H. N. G. FERNANDO, S.P.J.-**

These appeals involve the construction of certain provisions of the law relating to Parliamentary Election Petitions which are set out below :-

Section- 77 of the Ceylon (Parliamentary Elections) Order in Council, 1946 (Chapter 381)

Section 77 " The election of a candidate as a Member shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely :-

(a) that by reason of general bribery, general treating, or general intimidation, or other misconduct, or other circumstances, whether similar to those before enumerated or not, the majority of electors, were or may have been prevented from electing the candidate whom they preferred ;

(b) noncompliance with the provisions of this Order relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such noncompliance affected the result of the election;

(c) that a corrupt practice or illegal practice was committed in connexion with the election by the candidate or with his knowledge or consent or by any agent of the candidate ;

(d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person
had within seven years previous to such engagement been found guilty of a corrupt practice by a District Court or by the report of an Election Judge ;

(e) that the candidate was at the time of his election a person disqualified for election as a Member."

Rules 4 and 12 of the Parliamentary Election Petition Rules, 1946.

Rule 4 "(1) An election petition shall contain the following statements :-

(a) It shall state the right of the petitioner to petition within section 79 of the Order.

(b) It shall state the holding and the result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

(2) The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed for drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the court or a Judge.

(3) The petition shall conclude with a prayer as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, as the case may be, and shall be signed by all the petitioners.

(4) The following form, or one to the like effect, shall be sufficient:-

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

The Ceylon (Parliamentary Elections) Order in Council, 1946. Electionfor ..... (state electoral district) holden on the
.....day of..... 19.... The petition of A, of..... (or of A., of.... and B., of..... as the case may be), whose names are subscribed.

(1) Your petitioner A is a person who voted (or had a right to vote as the case may be) at the above election (or claims to have had a right to be returned at the above election or was a candidate at the above election) and your petitioner B. (here state in like manner the right of each petitioner).

---

(2) And your petitioner states that the election was holden on the..... day of..... 19..... when A. B., C. D., and E. F. were candidates, and the Returning Officer has returned A. B. asbeing duly elected.

(3) And your petitioners say that (here state the facts and grounds on which the petitioners rely). Wherefore your petitoners pray that it might be determined that the said A. B. was not duly elected or returned, and that the election was void (or that the said E. F. was duly elected and ought to have been returned, or as the case may be).

(Signed) A.
B. "

Rule 12 (1) "At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

(2) The security shall be to an amount of not less than five thousand rupees. Ifthe number of charges in any petition shall exceed three, additional security to an amount of two thousand rupees shall be given in respect of each charge in excess of the first three. The security required by this rule shall be given by a deposit of money.

(3) If security as in this rule provided is not given by the petitioner, no further proceedings shall be had on the petition, and the respondent may apply to the Judge for an order directing the dismissal of the petition and for the payment of the respondent's costs. The costs of hearing and deciding such application shall be paid as ordered by the Judge, and in default of such order shall form part of the general costs of the petition. "

It is common ground that, for the purpose of the computation under Rule 12 of the number of charges in an election petition, the expression " charges " in Rule 12 includes within its scope an allegation in an Election Petition of the commission of a corrupt or illegal practice contemplated in paragraph (c) of Section 77, and of the engagement of an election agent, canvasser or agent in breach of paragraph (d), and of the disqualification contemplated in paragraph (e). The questions in dispute are :-

(1) Whether in an election petition alleging a corrupt practice contemplated in Section 77 (c), e.g. bribery, two or more allegations of the same corrupt practice constitute two or more separate " charges " for the purposes of Rule 12, or else only one such " charge ".

---

(2) Whether in a petition alleging that (in terms of Section 77 (a)) " the majority of the electors were or may have been prevented from electing the candidate whom they preferred ", that allegation is a " charge " for the purposes of Rule 12.

(3) If question (2) is answered in the affirmative, whether each "cause" relied on in the petition in support of the allegation made in terms of Section 77 (a), e.g. general bribery, general intimidation, general treating, misconduct, act of God, etc. constitutes a separate " charge " for the purposes of Rule 12.

The requirement of the deposit of security in respect of an election petition was first made in the Election Petition Rules framed under the Legislative Council Order in Council of 1923, which required a deposit of Rs. 5,000 in every case. Subsequently that requirement was retained in the corresponding Rule made under the State Council (Elections) Order in Council of 1931, but with the new provision that " If the number of charges in any petition shall exceed three, additional security to an amount of two thousand rupees shall be given in respect of each charge in excess of the first three. " The existing Rule 12, of the current 1946 Rules, is a re-enactment of the 1931 Rule.

In the petition filed in 1931 in the case of Tillekewardene v. Obeyesekere [1 (1931) 33 N. L. R. 65], there were allegations against the successful candidates of bribery, treating, and payment for the conveyance of voters, each of which acts was either a corrupt practice or an illegal practice. In furnishing particulars concerning these allegations, the petitioner stated seventeen cases of bribery, twenty-six cases of treating and fourteen cases of payment for the conveyance of voters. The respondent then moved for the dismissal of the petition on the ground that the security of Rs. 5,000 was insufficient, there being more than three charges in the petition. The question thus raised was the same as that which I have stated at (1) above. Drieberg J. held that " whatever be the number of acts of bribery sought to be proved against a respondent the charge to be laid against him in a petition is one of bribery ". It followed that the several cases stated in the particulars as to treating and conveyance of voters each constituted only one " charge " of a corrupt and illegal practice.

The same question was, on a reference by a single Judge, decided by a bench of three Judges in Jayawardene v. Perera[. 2(1947) 49 N. L. R, 1.]who followed the construction adopted by Drieberg J. One additional ground relied on by that Bench was that Rule 12 of the Rules under the State Council (Election) Order in Council had been re-enacted without alteration in the

Parliamentary Election Rules, and that the new legislation had by implication accepted Drieberg J 's construction of the expression. " charge ". Although we are not bound by the decision in 49 N. L. R. I,. I see no reason to differ from it, particularlysince I endorse the additional ground on which that decision was based.

246

At a late stage of his argument, counsel for the respondents in these appeals sought to justify the dismissal of petitions on a ground not referred to in any of the judgments under appeal, namely that in each of the three petitions there were allegations of at least one corrupt practice alleged to have been committed by the candidate or his agent or with his knowledge and consent. Each such allegation of the commission of a corrupt practice by the candidate, by his agent, and with the candidate's knowledge and consent respectively, constitutes, it was argued, a distinct charge, and the allegations together constitute at least three distinct charges for the purposes of Rule 12. The same argument was presented to the Bench of three Judges in Perera v. Jayawardane (supra). In summarising the arguments of counsel for the respondent-candidate, Soertsz J. stated :-

"He, however, maintained that in the reasons or grounds (1) and (2) of the petition there was a multiplicity of charges for the petitioner averred therein that (1) the respondent, (2) his agents, (3) others with his consent or knowledge (quaere were guilty) of (a) printing, (6) publishing, (c) distributing, (d) causing to be printed, (e) causing to be published. (/) causing to be distributed handbills, (4) the respondent, (5) his agents, (6) other persons with his consent or knowledge, did (g) make, (h) publish false statements of fact in regard to the personal conduct and character of the other candidate. Counsel was prepared to carry his contention to its logical conclusion and to say that each handbill (b) printed, (6) published, (c) distributed and each statement (a) made, (b) published constituted a separate charge. I have put the matter with this particularity in order to make explicit all that is implied in this contention. If that contention is right, then the security involved would be in the region of a million rupee mark"

This statement shows that the argument before the Court was at least two-fold. Firstly, that each allegation of any one of the acts lettered (a) to (d) by Soertsz J. constituted a distinct charge ; and secondly that each allegation of the commission of any such act constituted several distinct charges because the candidate, his agent and other persons were severally accused of committing acts of the same description. The first argument was the same as that involved in the earlier case decided by Drieberg J. But the second was a new argument identical with that which counsel has advanced before us.

What the Bench of three Judges decided in Perera v. Jayawardene was that " weought not to depart from the ruling given by Drieberg J.. but to affirm it as applicable to all the grounds or reasons that the petitioner relies on in his petition ". One such ground or reason, was that different persons were alleged to have committed acts of the same description. The decision therefore included in effect a ruling that allegations of a multiplicity of acts of the same description alleged to have been committed by different persons did not involve a multiplicity of charges.

247

For reasons which I have earlier stated with reference to the rulings of Drieberg J. and its adoption in Perera v. Jayawardene, the rejection in the latter case of the argument just discussed must be regarded as binding on us. It is only reasonable that petitioners and their advisers should in depositing security be guided by an authoritative decision on such matters. And if in a particular case, security furnished in conformity with such a decision were to be held insufficient, the right of a citizen to challenge an election would be denied to him not through his error but because of his reliance on that decision. The circumstances are eminently such as call for the application of the principle of stare decisis.

I turn now to Section 77 (a) and to the second question for decision in these appeals. In Silva v. Karaliadde [1 (1931) 33 N. L. R. 85.] Drieberg J. hadapparently to deal with a submission that allegations of general bribery, general treating and general intimidation (which were referable to paragraph (a) of Section 74, which is now Section 77), were not distinct from allegations of bribery, treating and intimidation alleged as corrupt practices in the same petition. He rejected that submission, and in doing so he used the expression " charges " to describe allegations made in terms of paragraph (a) of Section 74 (now Section 77).

In Tillekewardene v. Obeysekere [2 (1931) 33 N. L. R. 65.] decided a few weeks later, Drieberg J. said that in his opinion the word " charges " in Rule 12 meant various forms of misconduct coming under the description of corrupt or illegal practices. But this statement was made obiter. In that case there was no need to decide whether an allegation in a petition, based upon any ground of avoidance other than a corrupt or illegal practice, would constitute a " charge " for the purpose of Rule 12. In the Bandaragama petition now under appeal, Abeyesundere J. has expressed the opinion that an allegation of " misconduct " in terms or paragraph (a) of Section 77 can include an allegation of a corrupt and/or an illegal practice and can accordingly attract additional security. An allegation (in terms of Section 77 (a)) of any other misconduct is not in his view a " charge" . On the other hand Hearne J. in Silva v. Kularatne[3 (1942) 44N. L. R. 21.]quite definitely regarded the ground of avoidance under paragraph (a) as a " charge " for the purpose of the former Rule 12. Since that rule was subsequently re-enacted in the existing Parliamentary Election Rules withoutmodification, it should in my opinion be assumed, even in the face of doubt as to the true meaning of the word " charges ", that the Legislature accepted the ruling of Hearne J. that the ground of avoidance under paragraph (a) is a " charge ". In fact, the petition in the case he decided could not have been dismissed but for that ruling. For reasons which will presently appear, I am satisfied that the ground of avoidance specified in Section 77 (a), when taken in a petition, is a " charge " for the purposes of Rule 12.

The third question for our decision is one of greater difficulty. Two earlier opinions which touch on the matter were both obiter, Drieberg J. in Silva v. Kamliadde (supra) having described allegations of general bribery, general treating and general intimidation as " charges " and Hearne J. in Silva v. Kulamtne (supra) having expressed the opinion that all allegations in terms of paragraph (a) constituted only one charge. This opinion of Hearne J. was recently followed by Sriskanda-rajah J. in Piyadasa v. Ratwatte [1 (1965) 67 N. L. R. 473.] without assigning specific reasons.

In Perera v. Bandaranaike [2 (1965) 67 N. L. R. 644.] and Perera v. Samarasinghe[3 (7965) 67 N. L. R. 530.] (both now under appeal) the petition in each case stated that " by reason of misconduct..... and other circumstances, the majority of the electors were or may have been prevented from electing the candidate of their choice " ; it was held in both cases that the allegation of " misconduct " and the allegation of " other circumstances " each constituted a " charge " for the purposes of the provisions in Rule 12 pertaining to security.

In the first of these cases, Sirimane J. was of opinion that " every one of the grounds set out in Section 77 (a) constitutes a separate and distinct charge " ; in his view, " a charge in an election petition is a complaint, i.e. something which the petitioner has reason to complain of, which prevented the majority of electors from electing the candidate whom they preferred". In adopting the same view in the second case T. S. Fernando, J. stated :-

" The complaint need not necessarily be against the elected candidate. It could take in "other circumstances, e.g. acts of God, on proof of which, with proof also that the majority of voters were or may have been prevented thereby from electing the candidate of their choice, the election is void."

It will be seen that in both these cases, emphasis was laid on that part of the allegation in a petition, based upon the first four lines of paragraph (a) of Section 77, which avers such circumstances as general bribery, misconduct and/or other circumstances, and it was held that such an averment constitutes a complaint equivalent to a " charge ". Since reliance is placed on these judgments on the language of paragraph (a) of Section 77, it is in my opinion important to consider the scope and effect of that paragraph.

Section 77 is not in any way concerned with the content of an election petition. The section may be described as one which sets out the jurisdiction of an Election Judge to declare an election void. It provides that an election shall be declared to be void " on any of the following grounds which may be proved to the satisfaction of the Election Judge ", and proceeds in paragraphs (a) to (e) to set out the several

---

grounds of avoidance. What then is or are the grounds set out in paragraph (a) which require and empower an Election Judge to declare an election void ? It seems to me that in point ofgrammar, there is only one ground set out in paragraph (a), namely the ground that, " the majority of the electors were or may have been prevented from electing the candidate of their choice". The first four lines of the paragraph are an adverbial clause referring to the manner or the circumstances in which electors can or may be prevented from electing the candidate they prefer. In point of law, a declaration by an Election Judge stating only that an election " is void on the ground that there had been general intimidation " would fail to set out the ground of avoidance, since a finding that there has been general intimidation will not suffice to found the declaration of avoidance. The legal basis which must underlie the declaration is that the Election " is void on the ground that the majority of the electors were or may have been prevented from electing the candidate of their choice". I shall for convenience refer to this ground as " the prevention of free-voting ".

The part of paragraph (a) which I have referred to as the adverbial clause specifies firstly certain acts, i.e. general bribery, general treating, general intimidation and misconduct which may be found by an Election Judge to have caused "the prevention of free-voting ", and two of the decisions under appeal have held that an averment of each of any one of these acts constitutes a charge-. So also the allegation in each of the petitions that " other circumstances " prevented free-voting was held to be a separate charge. Now this latter allegation can be relevantly made in a petition because the adverbial clause secondly refers to " other circumstances " which may be held by the Judge to have been the cause of the prevention of free voting. One observation that Ijnake in passing is that if every allegation made in terms of the adverbial clause is a charge, then the allegation concerning "other circumstances" might well constitute two or many more than two charges, such as in a case where the petitioner intends to rely on two or more " other " circumstances, e.g. a cyclone and a sudden serious epidemic and the lack of voting facilities at polling stations. But at the stage of filing a petition and of furnishing security the question whether only one, or more than one, charge is involved in the allegation will be known only to the petitioner. How then is the correct amount of security to be determined by the Judge ? In the two petitions now under consideration, there was a bare reference to " other circumstances " without particularisation. If, as has been common ground in this appeal, the sufficiency of security has to be determined upon the allegations in the petition, and not by reference to particulars furnished subsequently, there is no means by which the court can with certainty decide whether or not the allegation of " other circumstances " involves only one " charge " or more than one. Even if a petitioner had in fact intended to rely on two or more different sets of circumstances he can successfully stave off a challenge to the sufficiency of his security by merely informing the Judge that he intended to rely

---

only on one set of circumstances. If he is not to be permitted to vouch for his intention, then his petition will have to be dismissed on the ground that the allegation of "other circumstances" can involve a countless number of " charges " attracting an indeterminable amount of security.

The "other circumstances" may be any "circumstances whether similar to those above enumerated or not ", i.e. an Election Judge may be satisfied that there was a prevention of free voting by reason of any circumstances whatever. In other words, although the legislature firstly refers to some possible causes of the prevention of free voting, it concedes to judicial discretion the power to find that free voting was prevented by any other cause whatsoever, the specified circumstances of bribery, treating, intimidation and misconduct being only examples of prevention which are common at elections. This unusual feature of paragraph (a) confirms me in the view that the first four lines are merely a description of the reasons upon which a Judge can be satisfied that the ground of prevention of free voting is established. The actual description, having regard to its concluding words, is equivalent in substance to " by reason of any circumstances whatsoever ". The absence of any statutory definition of possible causes is easily explained. Firstly because no exhaustive specification of causes was thought to be possible, and secondly because, at the time of the enactment of the Election Law (originally in 1931), jurisdiction to declare an election void, whether on the ground specified in Section 77 (a) or on any other ground, was vested solely in Judges of the Supreme Court to whom a wide discretion could reasonably be allowed.

I hold for these reasons that paragraph (a) of Section 77 contains only one single ground of avoidance of an election, namely the prevention or likely prevention of free voting. There remains to consider whether, nevertheless, there can be more than one "charge" laid in a petition with reference to paragraph (a).

The judgment in Perera v. Samarasinghe [1 (1965) 67 N. L. R. 531.] contains thisstatement:- " it is now settled that under clause (c) (of Section 77) several charges could be laid in a petition. It follows that a single ground may sometimes involve several charges ". What is implicit in this statement is the opinion that even if paragraph (a) must be held to contain only a single ground of avoidance, yet, as is also the case under paragraph (c), two or more charges may be laid on that single ground.

With respect, I must observe that the reason why several charges may be laid with reference to paragraph (c) is that this paragraph contains not only a single ground of avoidance, but several such grounds. That a candidate committed a corrupt practice is one ground, that he committed an illegal practice is another. Moreover, the expression " corrupt practice " is a term of art employed to denote a number of distinct election offences, created by the Order in Council, e.g., treating, undue influence, bribery, making false statements, abetment of personation. Therefore that

---

expression is employed in paragraph (c) of Section 77 only as the equivalent for a comprehensive list of all those distinct offences, the commission of any one of which is a ground of avoidance. The same is the case with regard to each offence which is an "illegal practice ". While agreeing that allegations in an election petition that a candidate has committed two or more of these offences will constitute distinct " charges " for the purpose of Rule 12, I cannot for the reasons stated agree that paragraph (c) of Section 77 contains only a single ground which may involve several charges. On the contrary, paragraph (c) contains several distinct grounds, each involving a distinct charge.

I should here refer to one source of misconception on the point under consideration. It is argued that just as each alleged corrupt practice e.g., bribery, undue influence or false statements may be the subject of a distinct charge laid with reference to paragraph (c) of Section 77, so also alleged

general bribery, or general treating, or general intimidation will each be the subject of a distinct charge if laid with reference to paragraph (a). This argument fails to take account of the fact that an allegation in terms of paragraph (c) is only and simply that a corrupt or illegal practice, that is any one of the several offences of either category, has been committed. There is no allegation in such a case of any other fact which has to be proved to have existed by reason of, or to have been caused by, the commission of the offence charged. On the other hand, the fact which constitutes the ground of avoidance specified in paragraph (a) is the prevention of free voting. Whereas an election is avoided under paragraph (c) on mere proof of the commission of the offence of the corrupt practice of bribery by a candidate, an election is avoided under paragraph (a) on proof of the prevention of free voting, evidence of acts of bribery, intimidation, misconduct or other circumstances being in this latter case only matters before the Court which, together with other facts or inferences, can constitute proof of such prevention.

In reaching the conclusion that a complaint of something (the italics are mine) which prevented free voting is a charge, Sirimane J. does not appear to have considered the appropriateness of the alternative and primary construction that the " charge " which the Election Judge finds proved under paragraph (a) is that "the majority of the electors were prevented from electing the candidate of their choice", and that the something was merely proof of such prevention, within the definition of "proved" in the Evidence Ordinance.

Let me take the case of a public officer who is called to meet an allegation that he is unfit to continue in office because of inefficiency, and/or ill-health, and/or misconduct. Surely it would not be incorrect to say that the charge against the officer is that he is unfit to continue in office ? Speaking loosely, his inefficiency, misconduct or ill-health may be called a charge, but it seems to me demonstrable that such a description is not strictly correct. In the case I have taken, a disciplinary Board might hold that the officer was inefficient or had misconducted himself, but may nevertheless decide that the inefficiency or misconduct does not

---

render the officer unfit for service. If then a Board, which sits to decide whether the officer is 'unfit for office, decides that he is in fact fit, how can it be said that the ' ',charge" against him (in the legal sense of the terms) was proved. On the contrary, the true position would be that the charge of unfitness brought against the officer was not proved, even though the evidentiary fact of inefficiency was proved. In the same way, an Election Judge may hold that there had been general bribery at an election, but yet conclude that there had not been actual or likely prevention of free voting : if so it cannot be said that the charge made in the petition was proved. In my opinion, the expression " charge " in Rule 12, as in any criminal or quasi-criminal statute, means an allegation of some act or omission, proof of which must necessarily entail a judicial order imposing the penalty or consequence which the statute attaches to that act or omission.

Had paragraph (a) of Section 77 been a provision of the Criminal Law, there is no doubt that the prevention of free voting is the factum probandum or the fact in issue, while matters like general bribery, treating, misconduct or other circumstances are only facto, probantia or facts relevant to prove the fact in issue. Since Rule 12 employs the expression "charge", which has a well known meaning in the Criminal Law, then, in determining what " charge " is involved in paragraph (a) of Section 77, it is prima facie reasonable to determine this matter as nearly as possible as it would be determined in construing a statutory provision of the Criminal Law. If then the prevention of free voting is in the ordinary legal sense a charge which a Judge may find to be proved in terms of paragraph (a) of Section 77, that charge when made in an election petition must be taken into reckoning in determining the sufficiency of security deposited by a petitioner. The allegations of evidentiary facts mentioned in the charge can themselves be regarded only as being charges within a charge, but according to my understanding the Criminal Law does not recognise such an allegation as a charge.

Yet another argument of counsel for the Respondents was based on the consequences which in his submission might flow from the averment in a petition that there had been prevention of free voting " by reason of misconduct on the part of the Respondent". It was submitted that the word misconduct occurring in paragraph (a) of Section 77 included within its scope all corrupt and illegal practices, and that an allegation in a petition of "misconduct on the part of the respondent;" left the door open to the petitioner to introduce at the trial evidence that the respondent had committed one or more corrupt practices, proof of the commission of which per se would necessarily involve the avoidance of the election. Counsel argued therefore that, when an allegation of misconduct by the respondent in terms of paragraph (a) of Section 77 is linked with the allegation of free voting, there are in fact at least two charges, one of the prevention of free voting caused by the misconduct, and another of the commission of at least one corrupt or illegal practice by the respondent.

The opinion which I have already expressed that the only " charge " which an Election Judge can hold to be proved in terms of paragraph (a)

---

is the charge of the prevention of free voting, in my view, answers these submissions of counsel. But they are also met by other considerations.

In each of the two petitions which includes a paragraph containing the linked allegations to which counsel referred, there first occur other paragraphs which expressly contain charges of the commission of corrupt practices, which charges are in those paragraphs not linked with an allegation of the prevention of free voting, and which accordingly are clearly referable only to paragraph (c) of Section 77. In each petition it is clear therefore that the petitioner is expressly charging the respondent with the commission of two corrupt practices. That being so when the petitioner in a subsequent paragraph alleges that there was prevention of free voting by reason of misconduct on the part of the respondent he is not in that paragraph accusing the respondent of the commission of a corrupt or illegal practice. In other words there is not in the petition any charge referable to paragraph (c) other than those which expressly aver the commission of a corrupt practice. That being so, it seems to me that in such cases, an Election Judge will not ordinarily permit evidence to be led of a corrupt practice by the respondent which is not expressly charged in the petition.

I need not here disagree with counsel's submission that if there turns out to be at the trial of a petition proof of the commission of a corrupt or illegal practice not expressly charged in the petition an Election Judge might nevertheless declare the election to be void or make a report under Section 82 having for all practical purposes the effect of avoidance. If such an order or report can lawfully be made because of evidence admitted to prove an allegation of the prevention of free voting caused by misconduct, it can equally well be made in cases where evidence relevant to some specific charge in a petition, or even evidence led in defence by a respondent, has the unexpected consequence of proving the commission of a corrupt or illegal practice not anticipated in charges made in the petition. On counsel's own submission, if it is correct, a report under Section 82 can be made even against a petitioner himself or against an unsuccessful candidate who is not himself a petitioner. The possibility that a Trial Judge might properly admit evidence which might ultimately constitute proof of a corrupt or illegal practice not expressly charged in a petition is not in my opinion a consideration relevant to the reckoning by the Petitioner and by the Court, at a stage before trial, of the number of " charges " which the Petition contains.

Counsel repeatedly insisted that he was content to argue that an allegation of the prevention of free voting by reason of misconduct on the part of the respondent involved two charges and no more ; but he was reluctant to concede the logical consequence of his argument. If it must be held that the linked allegation of misconduct is equivalent to a charge of a corrupt practice, that can

only be for the reason that to allege misconduct is to make a charge of some act, not yet specified. An allegation of misconduct if it is a charge is thus equivalent to charges of all possible forms of corrupt or illegal practices, which are about twenty in number.

Moreover, if the linked allegation of misconduct is a charge because evidence of certain acts may be admitted in proof of the allegation, the same allegation is surely also a charge in that it may permit evidence of all forms of possible misconduct which might have resulted in the prevention of free voting. The argument logically therefore must be that the linked allegation of misconduct can involve a countless number of charges and will therefore attract as security a countless number of units of Rs. 2,000. In effect therefore, if the argument is accepted, the four or five lines in Rule 12 which provide for additional security denies to a petitioner the right to state quite simply in his petition that " the majority of the electors were prevented from electing the candidate whom they preferred, by reason of misconduct on the part of the respondent ". I am quite unable to agree that Rule 12 was ever intended to have this drastic consequence. The argument ad absurdum which appealed to Soertsz J. in Perera v. Jayawardene appeals to me equally in this context.

I can see no compelling reason to depart from what I have termed the primary meaning of the expression "charge", i.e., the allegation of a ground of avoidance. On the contrary, the adoption of that meaning has in the case of paragraphs (6), (c), (d) and (e) the reasonable and satisfactory result that each ground of avoidance set out in those paragraphs can found one distinct charge attracting security under Rule 12. Paragraph (c) alone can give rise, on a rough computation, to about sixteen distinct charges, and these together with the single charges which can arise under each of the other four paragraphs of Section 77 make a total of twenty possible charges. In theory therefore the amount of security which Rule 12 can require can total Rs. 39,000. Much is already achieved in favour of respondents to election petitions by the requirements in Rule 12, when the term " charge " is given the ordinary legal meaning. I can see no reason why an unusual meaning should be given to the term in order to enhance the burden which those requirements already impose on a citizen exercising his right to challenge an election.

I would answer as follows the questions which arise on these appeals :-

(1) All allegations in a petition of the commission of the same corrupt practice or the same illegal practice by a candidate, or his agent, or with his knowledge and consent, constitute only one charge for the purposes of Rule 12, irrespective of the number of alleged commissions of the same practice specified in the petition or intended to be proved at the trial.

(2) An allegation in an election petition that the majority of the electors were or may have been prevented from electing the candidate whom they preferred constitutes a charge for the purposes of Rule 12.

(3) An allegation referred to in the answer (2) above, constitutes only one charge for the purpose of Rule 12, irrespective of the nature or the number of the facts or matters by reason of which it is alleged in the petition that the majority of the voters were or may have been prevented from electing the candidate whom they preferred.

I would hold that each of the Election Petitions Nos. 1, 6 and 37 of 1965 contained only three charges and that the security of Rs. 5,000 furnished in each case was sufficient. I would reverse the orders of dismissal made in each case, and direct that each of the petitions be tried anew. The order for costs made by the Election Judge in each case is set aside, and the Petitioner in each

case will be entitled to the costs of the contest as to the sufficiency of security and to costs of appeal.

SANSONI, C. J.-I agree.

L. B. DB SILVA, J.-I agree.

Appeals allowed.

- End -