Sri Lanka
BRIBERY AND CORRUPTION
(Historical Judgements)

Published by

LANKA LAW

www.lankalaw.net

1. ** **P.K.Premasinghe v. B.A.H.Bandara - [1966] LKSC 26; (1966) 69 NLR 155 (22 June 1966)**:
    - Mr. Justice O'Brien emphasized the gravity of a bribery charge and the need for clear and satisfactory evidence to establish such a charge due to the serious consequences it entails, such as voiding an election and imposing severe penalties under the Parliamentary Elections Act, 1868.

2. ** **Saravanamuttu, P. v. De Mel, R.A. - [1948] LKHC 51; (1948) 49 NLR 529 (23 August 1948)**:
    - This case involved specific charges of bribery alleged in an election context. The Order in Council defined "bribery" and made it a "corrupt practice," which, if committed by a candidate or with his knowledge or consent, or by any agent of the candidate, could lead to the voiding of the election.

3. **Tillekewardene v. Obeyesekere - [1931] LKSC 6; (1931) 33 NLR 65 (18 September 1931)**:
    - The petitioner alleged that the respondent was guilty of offenses including bribery. The case distinguished between a "charge" and a "case," with the former becoming the latter upon investigation and proof.

4. ** **Dharmadasa v. Director General, Commission To Investigate Allegations of Bribery Or Corruption and Another - SLR - 64, Vol 1 of 13 October 1995**:
    - This case involved the conviction of a public servant for bribery under Section 19 of the Bribery Act. The Supreme Court considered the accused's right to impartial and adequate consideration of his case and the consequences of the Magistrate's failure to do so.

5. ** **Rambukwelle v. Silva - [1924] LKHC 23; (1924) 26 NLR 231 (9 December 1924)**:
    - The case discussed the legal and moral implications of bribery, referencing a leading case where a candidate was

misled into believing that certain actions were permissible by law.

6. ****Tarnolis Appuhamy Et Al. v. Wilmot Perera - [1948] LKSC 21; (1948) 49 NLR 361 (3 May 1948)**:
    - This case distinguished between the Indian and Ceylonese (now Sri Lankan) legal approaches to bribery, focusing on the respondent's lack of corrupt motive in making payments to temples and societies, which were seen as acts of benevolence rather than bribery.

Other Related Cases (Click link to download Case file)

- DG Bribery Commission V Ranaweera Wanasinghe Wanninayake Herath Mudiyanselage Gamini – CA Revision Application CPA/0136/22
- A M A HAMEED AND ANOTHER V THE QUEEN
- ARAMBAWATTAGE PIYASENA RODRIGO V THE COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION
- CHANDRAPALA PERERA V THE ATTORNEY GENERAL
- DHARMADASA V DG BRIBERY COMMISSION
- DIRECTOR GENERAL BRIBERY COMMISSION V LOKUBADU DAYACHANDRA GAMINI JAYASOORIYA
- DISSANAYAKE ARACHCHIGE KARUNARATHNE V THE REPUBLIC OF SRI LANKA
- DR. RANJIT FERNANDO V ATTORNEY GENERAL
- GAMINI JAYASINGHE V DIRECTOR GENERAL PREVENTION OF BRIBERY AND CORRUPTION
- HENDRICK SILVA V IMBULDENIYA
- JAGATH CHANDANA WEERASINGHE V THE COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION
- KARUNARATNE V THE QUEEN

KATHUBDEEN V REPUBLIC OF SRI LANKA

KESARA SENANAYAKE V THE ATTORNEY GENERAL AND THE BRIBERY COMMISSION

KURUSUTHTHU AROKYANADAR V COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY AND CORRUPTION

LOKU BOGAHAWATTAGE GEDERA JUSTIN WEERARATNE AND ASARAPULIGE UDULAWATHIE V DIRECTOR GENERAL BRIBERY COMMISSION

METTANANDA TUDOR PERERA WIJERATNE V DIRECTOR GENERAL BRIBERY

MOHAMED USOOF MUTHU MOHAMED V THE ATTORNEY GENERAL

MOSES V THE QUEEN

NAGESWARAN V THE REPUBLIC OF SRI LANKA
NARADINGHE BUWELIKADA MALKANTHI V THE DIRECTOR GENERAL BRIBERY COMMISSION

PADMATILAKE (SGT) V DIRECTOR GENERAL BRIBERY COMMISSION

PERERA V THE ATTORNEY GENERAL

PODI SINGHO V THE QUEEN

RAFAYEL V THE STATE

RATNAPURA VIJITHA NANDA THERA V THE ATTORNEY GENERAL

TENNAKOON V DISSANAYAKA

THE ATTORNEY GENERAL V WILLIAM

THE BRIBERY COMMISSIONER V RANASINGHE

THE KING V YAYEWARDENE

VITHANAGE GUNAWARDENE V DIRECTOR GENERAL BRIBERY COMMISSION

WANASINGHE V THE ATTORNEY GENERAL

WIJERATNE BANDARA V DIRECTOR GENERAL PREVENTION OF BRIBERY AND CORRUPTION

WIJERATNE V ATTORNEY GENERAL

Wimalaratne, J.,Wanigasekara V. Republic of Sri Lanka | S.C.65/75 – D.C Colombo 246/B

Mohamed Auf V. The Queen | S.C.5/67-D.C.Kandy, B/3 H.C.Colombo Case No:B924/94 | Rathnapura Vijitha Nanda Thera V. The Attorney General

HC.MCA No.113/2012 | Accused – Rannaidege Dharmasiri Ekanayake

CA/253/2010 | H/C Colombo 1486/04 | Accused – Makawitage Lakshman Pathiraja Samarasinghe

P.K.Premasinghe v. B.A.H.Bandara - NLR - 155 of 69 [1966] LKSC 26; (1966) 69 NLR 155 (22 June 1966)

1966 Present **: G. P. A. Silva, J.**

P. K. PREMASINGHE, Petitioner**,** *and* **B. A. H. BANDARA,** Respondent

Election Petition No. 5 of 1965-Electoral District No. 123 (Badulla)

Election petition-Allegation of making false statement about candidate-Allegation of agency-Requirement of proof beyond reasonable doubt-Corrupt practice- Illegal practice-Ceylon (Parliamentary Elections) Order in Council, 1946 (Cap. 381), ss. 58, 12 (1) (2), 77, 82, 82 C (2) (b).

In an election petition, a charge of making a false statement of fact in relation to the personal character and conduct of a candidate must be proved beyond reasonable doubt. Such a charge is also a corrupt practice falling into the same category as bribery, treating, undue influence, etc., which are enumerated in section 58 of the Parliamentary Elections Order in Council and there is no justification to make a distinction in the onus of proof in respect of these different corrupt practices.

Don Philip v. Ilangaratne (51 N. L. R. 561) not followed.

An allegation of agency too must be proved by the petitioner beyond reasonable doubt.

ELECTION Petition No. 5 of 1965-Electoral District No. 123 (Badulla).

Izadeen Mohamed, with *H. D. Tambiah*, for the petitioner.

Jaya Pathirana, with *Prins Gunasekera, Hannan Ismail* and *Stanley Tillekeratne*, for the respondent.

Cur. adv. vult.

June 22, 1966. **G. P. A. SILVA, J.-**

By his petition dated the 9th of April, 1965, Pihille Kankanamge Premasinghe, a voter of the Badulla Electoral District, whom I shall hereafter refer to as the petitioner, has challenged the election of Bamunusinghe Aratchige Heen Bandara who was returned as the duly elected Member of the said Electoral District and whom I shall refer to hereafter as the respondent. The election of the respondent was assailed on the following three grounds :-

(1) that the said respondent by himself, his agent or agents and/or other persons acting on his behalf or with his knowledge and/or consent was guilty of bribery before, during and after the said election ;

(2) that the said respondent was by himself, his agent or agents and /or other persons acting on his behalf or with his knowledge and/or consent guilty of undue influence before, during and after the said election ;

(3) that the said respondent by himself, his agent or agents and/or other persons acting on his behalf or with his knowledge and/or consent made and/or published before or during the said election false statements of fact in relation to the personal character and/or conduct of H. M. Jinadasa, a candidate at the said election, for the purpose of affecting the return of the said H. M. Jinadasa at the said election.

Counsel for the petitioner, at the commencement of the inquiry into the petition, for certain reasons of convenience, wished to lead evidence of these charges with the order reversed, that is to say, making or publication of false statements, undue influence and bribery, respectively, in that order and I permitted him to do so.

Mr. Pathirana, counsel for the respondent, who launched an attack on every aspect of the petitioner's case, succeeded in driving a wedge into every corner-stone of this case. So successfully did he attack the petitioner's case in respect of the charges of bribery,

undue influence and part of the false evidence charges that the petitioner's counsel was compelled to withdraw these charges at the end of the respondent's case. Counsel for the petitioner, Mr. Mohamed, who realised the weakness of his case in respect of these charges at this stage acted very properly when he withdrew all the charges which he could not sustain instead of persisting in the original case with which he came to court and by this course of action he has considerably assisted this court.

One aspect of the withdrawal of these charges, however, is that it carries with it a possible though not a necessary implication. It suggests :-

(1) that the petitioner could not support the position taken up earlier in regard to P 17 and P 18 which were alleged to be typed and signed letters of the respondent;

(2) that these documents were either diabolical forgeries or that they were fabricated, for the purpose of misleading the electorate, on official House of Representatives notepaper which the respondent had left signed in blank for a different purpose, and which had reached the hands of Jinadasa or his agent by questionable means;

(3) that the charge levelled against Jinadasa or his agents by the respondent of forging his signature and making false documents could not be refuted;

(4) that the fairly large superstructure of oral evidence regarding the charges of bribery and undue influence against the respondent or his agents which was sought to be built on the foundation of P 17 was rejected by the petitioner himself;

(5) that the candidate Jinadasa or someone on his behalf was prepared not merely to fabricate such a document as P 17 but, by means of such fabrication, to involve the respondent in a very serious charge not merely of bribery but of bribery of several public servants, namely, the Grama Sevakas of the area, and the perversion of the whole administrative machinery of their respective divisions. I may say that even if counsel for the petitioner had not

taken the step of withdrawing these charges, I should have had no hesitation in rejecting the evidence on which those charges were founded. If there was admittedly such a volume of both oral and documentary evidence which was false or at least unreliable-for the oral evidence alone, if reliable, could have established the charges of bribery and undue influence without any assistance from the document P 17- why then this court has to be even more cautious than in the normal case in assessing the rest of the available evidence in support of the only charge that is left for consideration.

Before I examine the evidence, it is necessary for me to consider certain questions of law regarding the burden of proof on which both counsel have addressed me at length. In view of the very conflicting submissions made by counsel on either side on the burden of proof required of a petitioner in respect of a charge of making false statements I think I should deal with the question in some detail. Counsel for the respondent submitted that Nagalingam J. was in error when he held in the case of Don Philip v. Ilangaratne [1][(1949) 51 N. L. R. 561.] that, where the allegation is that the respondent or his agents are guilty of making false statements of fact, the falsity of the statement is prima facie established when there is a denial on oath, and that it is for the party who asserts that a statement alleged to be false is true to establish beyond reasonable doubt the truth of that statement. For the submission he made he relied on the decision of Sri Skanda Rajah J. in the Bentara-Elpitiya Election Petition case in which he examined and disagreed with the reasoning of Nagalingam J. in the earlier case. It would appear from the judgment of Nagalingam J. that he too agreed with the necessity of proof beyond reasonable doubt in respect of bribery or treating and that it was only in respect of false statements that he contemplated a different standard. Even here as was conceded by the counsel for the petitioner, who naturally relied strongly on the pronouncement of Nagalingam J., the fact of making the statement had to be established beyond reasonable doubt. Once this fact was established and there was a denial on oath that the statement was false, the view taken by Nagalingam J. was that the burden of proving the truth of the impugned statement was shifted to the respondent. This is a view with which I find it difficult to agree. In the first place, where the denial on oath by the candidate affected or anyone else on his behalf is not allowed by

the respondent to remain unchallenged and where the assertion of falsity of the statement complained of is successfully shaken in cross-examination, whether it be by a general impeachment of the credit of the witness concerned or by the production of documentary evidence in the course of such cross-examination which will contradict the denial on oath, then there is no question of prima facie proof of falsity. Secondly, in view of what I state below regarding the degree of proof necessary in my opinion to establish a charge contained in an election petition, I am compelled, with respect, to disagree with the dictum of Nagalingam J. on this matter.

The contention of counsel for the respondent, in support of which he cited several cases, was that the burden of proof that a petitioner has to discharge in respect of every element of an offence is the same as that expected of the prosecution in a criminal case. This principle, so far as criminal law is concerned, is now fairly well settled and it is hardly necessary to go into cases such as King v. Fernando [2][(1947) 48 N. L. R. 249.] cited by counsel to show that the burden shifts to an accused person only after the prose-cut on has established its prima facie case beyond reasonable doubt and the accused has pleaded the benefit of a general exception. I shall therefore confine my attention to a scrutiny of the important judgments in earlier election petition cases.

In the case of Ilangaratne v. G. E. de Silva [1][(1948) 40 N. L. R. 169.], Windham J. held to be proved only those charges in respect of which the evidence satisfied him beyond reasonable doubt. After giving seven reasons for his conclusion, he went on to say at page 175: "On all these grounds I am convinced beyond reasonable doubt, and I find as a fact, that the respondent did at the Mapanawatura meeting on August 27,1947, during the election campaign, make the above false statement of fact in relation to the personal character and conduct of the candidate Ilangaratne. That it was made for the purpose of affecting the latter's return admits of no reasonable doubt, having regard to the circumstances in which it was made." In respect of some of the other charges he held that the evidence did not convince him or that it did not prove the charge positively and that it did not raise more than a suspicion and he dismissed those charges. Concerning another charge of undue influence resulting from the threat he observed : " These

considerations make it highly probable that the threat (to see that a voter would be out of an estate if he did not work for the respondent) was made. Nevertheless, viewing the conflicting evidence as a whole, I am not satisfied beyond a reasonable doubt as to where the truth lay. In these circumstances I cannot hold the charge to be proved. The same considerations apply in the case of the next incident where the evidence consisted of the sole testimony of the witness Augustine Peiris against the denial of the respondent. According to Peiris . . . . . the respondent came into the Post Office and said to him ' I have authentic proof that your father is working against me. I have been responsible for giving you this Post Office. I shall see that it is shifted from here'. Again the words ring true to character. But in view of the paucity of evidence-one man's word against another's-I cannot say that the charge has been proved beyond reasonable doubt. And in such charges, a strong suspicion is not enough."

In the case of Aluwihare v. Nanayakkara [2][(1948) 50 N. L. R. 529. 4 1 O'Mally & Hardcastle 42 at 44.], it was held by Basnayake J. that the standard of proof required of a petition at an election inquiry must be higher than required in a civil case and not lower than that required in the case of a criminal charge and, citing a number of English cases in support, added (at page 533) that in a wide range of cases which are strictly not criminal the standard of proof is the same as for a criminal case. He held further that where allegations of offences statutory or otherwise which carried with them severe penalties were made in proceedings which were strictly not criminal, the trend of judicial decisions was to require proof beyond reasonable doubt in respect of such allegations.

In Chelvanayakam v. Natesan [3][(1954) 56 N. L. R. 271], this view was confirmed by de Silva J. when he held that election offences must be strictly proved.

The English decisions appear to be even more emphatic in their insistence on a standard of proof beyond reasonable doubt. In the Warrington case*, Baron Martin in giving judgment for the respondent stated:- " I adhere to what Mr. Justice Willes said at Lichfield, that a Judge to upset an election ought to be satisfied beyond all doubt that the election was void, and that the return of a

member is a serious matter, and not to be lightly set aside." In the Londenderry case [1][1 O'Mally & Hardcastle 274 at 278.], with reference to a charge of bribery, Mr. Justice O'brien said :-" The charge of bribery, whether by a candidate or his agent, is one which should be established by clear and satisfactory evidence. The consequences resulting from such a charge being established are very serious. In the first place it avoids the election, ... In the next place, the 43rd and 45th sections of the Parliamentary Elections Act, 1868 impose further and severe penalties for the offence, whether committed by the candidate or by his agent. Mere suspicion, therefore, will not be sufficient to establish a charge of bribery, and a judge, in discharging the duty imposed upon him by the statute, acting in the double capacity of judge and juror, should not hold that charge established upon evidence which, in his opinion, would not be sufficient to warrant a jury in finding the charge proved."

From all these decisions, barring that of Nagalingam J. with which I have disagreed, it is reasonable to draw the following conclusions :-

1. that any charge laid against a successful candidate by a petitioner in an election petition should be proved beyond reasonable doubt before a court could satisfy itself of such charge ;

2. that suspicion however strong it may be does not amount to proof of any charge;

3. that even a high degree of probability is not sufficient to constitute the proof required to establish a charge and ;

4. that a court should be slow to act on one witness' word against another's even if the word of the person who supports a charge rings true when that constitutes the only evidence of such charge.

Although these decisions furnish abundant authority to require from a petitioner proof beyond reasonable doubt in respect of his allegations in the petition there is another consideration, not so far dealt with in any of the cases cited by counsel, which strikes me as being decisive in this matter. I base my conclusion on a o study of the sections of the Ceylon (Parliamentary Elections) Order in

Council themselves. Quite irrespective of the presentation of an election petition, section 58 of this Order makes a person guilty of a corrupt practice, among other things, if he -

(1) commits the offence of treating, undue influence or bribery, or

(2) makes or publishes, before or during an election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate,
these offences being defined in the immediately preceding sections. Similarly, the sections that immediately follow section 58 make certain acts or omissions illegal practices. A person committing any of these offences before, during or after an election, as the case may be, is liable to be prosecuted with the sanction of the Attorney-General in terms of section 58 (3) and section 72 (2) respectively and, on conviction by a District Court, is punishable with imprisonment and/or a fine as prescribed by sections 58 (1) and 72 (1) respectively. In addition to a conviction and sentence by the District Court, sections 58 (2) and 72 (1) impose on a person convicted of such an offence the incapacity of not being registered as an elector and not being appointed as a Senator or a Member of Parliament for a specified period from the date of conviction.

I shall now turn for a moment to the provisions regarding election petitions. Under section 77 of the Order-in-Council, an election can be declared void by an Election Court on proof of precisely the same (among other) grounds as those in respect of which any person can be charged and convicted in a criminal court. Section 82 requires an Election Judge, at the conclusion of a trial of an election petition, to make a report setting out whether any corrupt or illegal practice has or has not been proved to have been committed and section 82 C (2) (b) subjects a person who has committed a corrupt or illegal practice to the same incapacities as if at the date of the report of the Election Judge he had been convicted of that practice. It would thus appear that a person can be visited with the severe penalties of certain civic disabilities in respect of the same act, namely, a corrupt or illegal practice in one of two ways, one by a prosecution in a court of law and the other by a finding of an Election Judge. If without an election petition being even filed a

person who has committed a corrupt or illegal practice is prosecuted before a criminal court, the standard of proof that will be required for a conviction of such person will be the same as in any other criminal charge, namely, proof beyond reasonable doubt. If the law should be that the standard of proof for establishing charges on an election petition is lower than that required in a criminal trial and that such charges can be proved by a balance of probability, the resulting position will be that the same grave consequences of losing certain civic rights can befall the same person by being found guilty of the same charges by a preponderance of probability in one court and by proof beyond reasonable doubt in the other. It seems to me that there is an inherent fallacy in such a proposition and I will not subscribe to it. It would be revolting to one's sense of justice if such a person's guilt of a corrupt or illegal practice, which will be visited with the very same punishments can be established by means of an election petition with a different and lower standard of proof than by means of a trial before a criminal court.

The only just course which commends itself to a court of law therefore is to require the same standard of proof, whether the result is reached via a prosecution or via an election petition.

When I consider the question of making or publishing false statements in the light of this view which I have formed, I find no difficulty in deciding that an allegation of false statements against a respondent too like any other charge must be proved beyond reasonable doubt. For, a charge of making false statements is also a corrupt practice falling into the same category as bribery, treating, undue influence, etc., which are enumerated in section 58 of the Order and there is no justification to make a distinction in the onus of proof in respect of these different corrupt practices. This approach to the problem-and I hope I am not wrong in my approach -fortifies me in the view I have already expressed in dissenting from the judgment of Nagalingam J. in Don Philip v. Ilangaratne.

With this conclusion in the background let me consider the submission made by counsel for the petitioner that the standard of proof regarding agency is not as heavy as that required to establish substantive charges of election offences. In this matter he relied on the judgment of Sri Skanda Rajah J. in the Balangoda Election

Petition case, in which he revised the previous view he took in the Bentara-Elpitiya Election Petition No. 26 of 1965 and held that though the other elements of a charge should be established by the petitioner beyond reasonable doubt, he need not do so in regard to agency. On this matter of agency he adopted what was stated in the Worcester case [1][(1892) Day's Election cases 89.], to the effect that enough evidence may have been given to put the onus of disproving it upon the respondent. The reason given by Sri Skanda Rajah J. for adopting this view was that efforts were directed, more often than not, to conceal agency, thereby rendering it very difficult for a petitioner to establish agency. While I am prepared to agree that agency must be given a very wide meaning in election law and not a restrictive meaning in the sense that agency may be proved by surrounding circumstances and not necessarily by an express appointment, with all deference to my brother, I am disinclined to relax the requirement as to the degree of proof even in the case of agency. For, agency is as much an essential element of the offence as any other when the charge is that a candidate through his agent committed an election offence. It will therefore be illogical, consistently with the view I have formed, for a court which insists on the proof of an election offence beyond reasonable doubt to be satisfied with a lower standard of proof in respect of one of the essential ingredients. If I may draw an analogy from a trial of a criminal offence, the vicarious liability sought to be established in an election case against a respondent to a petition through an agent is similar to such liability being brought home to an accused in the footing of a common intention or through an unlawful assembly or conspiracy charge with others. In any one of these cases the elements that would establish vicarious liability should be proved beyond reasonable doubt in the same way as the other ingredients that would establish the substantive offence with which the accused are charged. I therefore hold that the allegation of agency too must be proved by a petitioner beyond reasonable doubt.

As I have indicated before, the fact of agency may be established by circumstantial evidence and there is no requirement to prove an express appointment. This view has often been taken by the English courts and I see no reason to doubt the correctness of it. A court has, however, to be careful to satisfy itself that the adverse inferences drawn against a respondent in the matter of agency are

the only inferences which can reasonably be drawn from the circumstances proved, before it decides that a disputed person is an agent.

With these observations in the legal aspects that arise for decision, I shall now proceed to consider the evidence in respect of the only charge of making and/or publishing the false statement contained in P 9.

[His Lordship then examined the evidence at length, and concluded :-]

For the reasons stated above, the only charge which was proceeded with by the petitioner fails and the petition is therefore dismissed. I accordingly hold that the respondent Bamunusinghe Aratchige Heen Bandara, whose election as Member of Parliament for Badulla is complained of, was duly elected. Since only two of the three substantial charges were seriously pursued till the conclusion of the evidence, the evidence of bribery offered by the petitioner being negligible, I order the petitioner to pay two-third of the taxed costs to the respondent.

In conclusion, I wish to thank all the counsel who appeared at this inquiry for their valuable assistance. Mr. Mohamed acted very honourably in the best traditions of the Bar when he withdrew the charges which he did not feel justified in proceeding with on the evidence and facilitated the task of this court. Mr. Pathirana conducted the case with restraint and commendable thoroughness and acted with a high sense of propriety in dealing with the witnesses for the petitioner and the unsuccessful candidate Jinadasa. For all these qualities which both counsel displayed and for the willing co-operation extended to me in the course of this prolonged inquiry, I am in their debt. I also take this opportunity of expressing my gratitude to the staff of the court and to the Bandarawela Police for the efficient manner in which all the necessary arrangements were made for the convenience of the court during this inquiry.

Election petition dismissed.

Saravanamuttu, P. v. De Mel, R.A. - NLR - 529 of 49 [1948] LKHC 51; [1948] 53; (1948) 49 NLR 529 (23 August 1948)

1948 *Present :* **Dias J.**

P. SARAVANAMUTTU, *Petitioner, and* **R. A. DE MEL,**
Respondent.

In the Matter of the Trial of Election
Petition No. 13 of 1947 (Election
for Colombo South Electoral
District).

Election Petition-Fundamental rights of the citizen involved in inquiry-Onus of proof-Abetment of personation-Until recently unknown to our law-Corrupt practice-Ingredient of corrupt intention-Sealed packets-When they may be opened-Election cards-Their uses and abuses-Ceylon (Parliamentary Elections) Order in Council, 1946, ss. 58 and 48 (10).

An election petition enquiry is not merely a contest between two litigants.It is a matter in which the whole electorate has a vital interest.

A charge of impersonation or bribery must be proved beyond all reasonable doubt. Where, however, a disqualifying contract is alleged the burden of proof on the petitioner is to prove his case by a preponderance of probability or on the balance of evidence.

Abetment of impersonation is an election offence introduced for the first time in Ceylon by section 58 (1) (a) of the Parliamentary Elections Order in Council, 1946.

It is irregular for the Registrar-General to break open any sealed packets without special authorization from the Supreme Court under section 48 (10) of the Order in Council.

Queerer, whether an act cannot be held to be a corrupt practice within the meaning of section 58 of the Parliamentary Elections Order in Council, 1946, unless done with a corrupt mind.

Per Dias J.'-" It is a question meriting the attention of Parliament whether the printing, manufacture or distribution of election cards, badges, &c, should not be prohibited by law and their use made a ground for avoiding an election".

Evidence-Letter written by convicted impersonator to the respondent from goal- Failure of tote respondent to produce that letter-Secondary evidence-Inferences which arise from the respondent's failure to reply-Evidence Ordinance, s. 8- Circumstantial evidence-Quantum of proof-Taking statements from opponent's witnesses-Not proper-Accomplice-Corroborative evidence. The translation of a vernacular document, although it cannot be used as secondary evidence of the original, can, however, be used by the translator to refresh his memory when giving secondary evidence of the contents of the original.

In business matters, if a person states in a letter to another that a certain state of facts exists, the person to whom the letter is written must reply if he does not agree with or means to dispute the assertions. Otherwise, the silence of the latter amounts to an admission of the truth of the allegations contained in that letter.

It is not proper that persons who have been, or are likely to be, subpoenaed by one side should be got by the other side to make statements or to sign prepared statements.

Corroboration of the evidence of an accomplice need not extend as regards the whole story told by him. It will suffice if the accomplice is corroborated on one or more material particulars as regards the person lie implicates.

Ceylon (Constitution) Order in Council, 1946-(Scope of section 13 (3) (c)-Disqualifying contracts-Is the Crown hound by Defence Regulations ?-Inchoate contract.

Shortly before the election of the respondent as a Momber of Parliament, a contract was entered into between a certain Company and the Director of Food Supplies acting for and on behalf of the Government of Ceylon. Clause 1 of the contract provided that " in consideration of the payment of remuneration at such rates as made from time to time be mutually agreed upon between the Director and the Company " the Company undertook to perform and carry out for the Government, inter alia, the carriage and haulage in the port of Colombo from the ship's side to shore of goods and cargoes imported, purchased or otherwise acquired by or on behalf of the Government and to deliver the same into the Customs premisos, &c. Clause 2 provided that the Company " shall undertake to carry out the services specified in Article 1 in respect of such food or other cargoes as may be allocated to them for carriage, warehousing and delivery by the Director in writing ". The Company further undertook to commence work within three hours of the receipt of such notice of allocation. The contract was signed on behalf of the Company by the respondent's wife in hor capacity as a director of the Company, and for the Crown by the Director of Fond Supplies.

There was evidence to show that the Company, when it entered into the contract, was acting as the secret agent or nominee of the respondent and that under the contract, the respondent indirectly enjoyed rights and benefits denied to the other shareholders.

Held, (i) that section 13 (3) (c) of the Constitution Order in Council, while it imposes a disqualification on a person holding or enjoying a right or benefit under a particular kind of contract, does not make the contract itself invalid.

(ii) that the contract between the Company and the Director of Food Supplies was not rendered invalid by reason of the existence of Defence Regulation 43a which permits only the Port Controller to allocate work amongst the various lighter age companies. The Crown is not bound by any statute or statutory regulation except by express reference or necessary implication.

(iii) that there was not merely an agreement to enter into future contracts ; on the contrary, a valid contract was created from which rights and benefits

flowed to both contracting parties.

(iv) that, under section 13 (3) (c) of the Constitution Order in Council, the respondent was disqualified for being elected as a Member of Parliament.

Before election day the respondent had made an offer regarding a disqualifying contract. After the date of election he withdrew the offer before it had been accepted :-

Held, that there was no contract in existence at the time of respondent's election.

At the date of election respondent was under a legal obligation to pay certain money to the Imperial Government through the Ceylon Government in respect of a claim for damages which had been made against the respondent by the Imperial Government :-

Held, that such an obligation was not within the ambit of section 13 (3) (c) of the Constitution Order in Council.

This was an election petition challenging the return of the respondent as Member of Parliament for Colombo South Electoral District. The petitioner claimed that the election was void on the following grounds :-

(a) that the respondent or his agents named in the particulars, or some other person or persons with his knowledge or consent committed a " corrupt practice " in connection with the election by abetting the commission of the offence of personation.

(b) that " the corrupt practice " of bribery was committed in connection with the election by the respondent, or with his knowledge or consent, or by his agents named in the particulars.

(c) that the respondent was at the time of his election disqualified for election in so far as he directly or indirectly by himself or any person or persons on his behalf or for his use or benefit, held or enjoyed rights or benefits under a contract or contracts made by or on behalf of the Crown in respect of the Island for the furnishing or providing of services to be used

or employed in the service of the Crown as contemplated by section 13 (3) (c) of the Ceylon (Constitution) Order in Council. 1946.

C. S. Barr Kwnarakulasinglie, with *A. I. Rajasingham* and *Sam.*

Wijesinha, for the petitioner.

E. G. Wikrainanayake, with *D. S. Jayewickreme, E. A. G. de Silva, G. T. Samarawickreme, Cecil de S. Wijeyeratne,* and *G. Perera,* for the respondent.

Alan Rose, K. C., Attorney-General, with *M. Tiruchelvam, Crown Counsel, as amicus curiae.*

Cur. adv. vult.

August 23, 1948 Dias J -

The respondent, Reginald Abraham de Mel, was at the General Election held on September 20, 1947, returned as a member for the House of Representatives for the Colombo Electoral District No. 3, known as Colombo South Electoral District. The results were declared on September 22, 1947, and were as follows : -

Mr. R. A. de Mel (the respondent) symbol	6,452 votes
Mr. P. Saravanamuttu (petitioner) Flower	5,812
Mr. Bernard de Zoysa . Chair	3,774
Mr. M. G. Mendis Hand	1,936
Mr. V. J. Soysa . Cup	95 "
	18,069

The respondent's majority over the petitioner was 640. is said to number about 32,000 voters. The electorate is said to number about 32,000 voters.

On October 10, 1947, the petitioner filed a petition alleging that the respondent was not duly elected and returned, and claimed that the election was void on the following grounds :-

(a) that the respondent or his agents named in the particulars, or some person or persons with his knowledge or consent committed " a corrupt practice " in connection with the election by abetting the commission of the offence of personation.

(b) that " the corrupt practice" of bribery was committed in connection with the election by the respondent, or with his knowledge or consent, or by his agents named in the particulars.

(c) that by reason of general treating the majority of the electors were or may have been prevented from electing the candidate whom they preferred ; and

(d) that the respondent was at the time of his election disqualified for election in so far as he directly or indirectly by himself or any person or persons on his behalf or for his use or benefit held or enjoyed rights or benefits under a contract or contracts made by or on behalf of the Crown in respect of the Government of the Island for the furnishing or providing of services to be used or employed in the service of the Crown as contemplated by s. 13 (3) (c) of the Ceylon (Constitution) Order in Council, 1946.

The petitioner further claimed that he was duly elected and ought to have been returned. This claim as well as the charge of general treating were abandoned by the petitioner ; and the case went to trial on the charges (a), (b) and (d). The recriminatory objections filed by the respondent were in consequence abandoned.

The trial of this case took 67 working days, in the course of which 149 witnesses were called by the petitioner and 42 by the respondent.

In a proceeding such as this certain fundamental rights of the citizen are involved. Therefore, an election petition enquiry is not merely a contest between two litigants. It is a matter in which the whole electorate, not to say the whole country, has a vital interest. As Bertram C.J. indicated in Rambukwelie v. Silva[1], in the trial of an election petition the public interest has also to be regarded. It is not an investigation in which the petitioner

and sitting member alone are concerned. The voters also have rights as well as the candidates. The electorate is entitled to have the result of the election declared according to law. In such enquiries two great principles are always sought to be maintained- firstly, that the election should be free ; and secondly that the character of the candidate should be pure in regard to the election-Saravanamuttu v. Joseph de Silva [2].

An election petition enquiry, however, is not a civil proceeding, but in certain ways possesses the character of a criminal trial in which the petitioner is the prosecutor and the respondent is the accused-Peiris v. Saravanamuttu [3]. Therefore, the Court, particularly in dealing with the charges of impersonation and bribery, must deal with the charges as if they are made in a criminal trial. The respondent must at every stage of the case be presumed to be innocent of all offence, while it is the duty of the petitioner to prove his charges beyond all reasonable doubt by evidence which is clear and reliable-Saravanamuttu v. Joseph de Silva [4]. All reasonable doubts must be resolved in favour of the respondent. Respecting the last charge in regard to the alleged disqualifying contracts, I agree with the learned Attorney-General, who assisted the Court as amicus curiae, that the burden of proof on the petitioner in regard to that charge would be to prove his case by a preponderance of probability or on the balance of evidence. The Charge, of Abetment of Impersonation : Originally this species of election offence was unknown in Ceylon. In Rambukwelie v. Silva[1] Bertram C.J. said : " The charges of personation could not be proceeded with, owing to a defect in the Order in Council which does not make a candidate responsible for personation which he or his agent may have abetted ". The law has now been altered. Section 54 of the Ceylon (Parliamentary Elections) Order in Council, 1946, (hereafter referred to as the Order in Council) provides :-

" Every person who at an election applies for a ballot paper in the name of some other person. or who having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation. "

This section penalizes the principal offender, namely the person who commits the impersonation. This offence is committed when the impersonator applies torn a ballot paper. It is not necessary that a ballot

paper should but actually handed to the impersonator. The offence is complete when the impersonator asks for a ballot paper in the name of some other person, or when the offender having voted once at the election applies at the same election for a ballot paper in his own name. The abetment of impersonation is penalized by section 58 (1) (a) of the Order in Council. Every person who aids, abets, counsels, or procures the commission of the offence of personation is made guilty of " a corrupt practice ".

In passing, reference should be made so the case of Perera v. Jayewardene [2] where it was held that it is an essential ingredient of the offences enumerated in section 58 of the Order in Council that the offender should do the criminal act " with a corrupt mind ". It was held following the Stephney Election Case [3] that where a statute does not unequivocally provide that a corrupt mind is not an essential ingredient for an offence, an act cannot be held to be "a corrupt practice " unless done with a corrupt mind. I may be permitted to point out that this decision does not take into account the Four-Judge decision in Weerakoon v. Ranhamy 4 which authoritatively dealt with the general principle regarding the necessity to prove mens rea in statutory offences which do not specifically enact that mens rea is an ingredient of the offence created. The Full Bench pointed out that offences in which no specific state of mind forms an essential ingredient of the offence in the definition fall into two classes : (a) Prohibitions which are absolute and unqualified, whatever the motive for doing them may be, and (b) Offences in which, although no special state of mind is defined as being a necessary ingredient for criminal liability, the absence of mens rea is, nevertheless, a good excuse. In the former class of case the offender does the prohibited act at his peril. The nature of his motives, intentions or his men's rea are immaterial when once the acts reus has been proved. In the latter class of offences the plea that there was no mens rea is really one in justification. Once the prosecution has established the ingredients required by the statute, it is for the accused to prove the absence of mens rea. Where a statute creates an offence without making mens rea a necessary ingredient, it is often difficult to decide into which category such a case falls. The Supreme Court pointed out that this was to be determined by an examination, not only of the words of the enactment, but of its purpose and subject-matter. The intention of the statute to ignore or exclude the element of mens rea in respect of certain of its provisions

and to make it an absolute prohibition may be gathered (a) from the fact that the public interest was intended to be paramount, and that any individual inconvenience should give way to it; and (b) from the fact that nvens rea is expressly required in respect of breaches of other provisions in the same statute-see Casie Chatty v. Ahamadu [1] and Rex v. Wegodapola [2]. It is, however, unnecessary to consider this matter further, because even if the facts of the present case are held to be governed by Perera v. Jayewardene (supra) there can be no question but that the allied abettors must have acted with a corrupt mind provided the alleged facts are established. However, as this question may come up for decision in future cases, I think it right to draw attention to these matters which merit further consideration. The recent English case of Harding v. Price[3] will also have to be considered.

Section 77 of the Order in Council provides that the election of a candidate as a member shall be declared to be void on an election petition on any of the grounds specified in that section, which may be proved to the satisfaction of the Election Judge. Section 77 (c) indicates one such ground, namely " That a corrupt practice or illegal practice was committed in connection with the election by the candidate, or with his knowledge or consent or by any agent of the candidate ".

Therefore, under the charge of abetment of personation, the burden of proof rests heavily on the petitioner to establish beyond reasonable doubt to my satisfaction that "a corrupt practice" was committed in connection with this election by the respondent, or with his knowledge or consent, or by any agent of the respondent. In other words, it is for the petitioner to establish to my satisfaction :-

(a) that some person committed the offence of personation within the meaning of section 54 ;

(b) that such person was abetted, aided, counseled, or was procured to commit that offence-

(i) either by the respondent himself ; or

(ii) by some person or persons with the knowledge or consent of the

respondent ; or (iii) by any agent of the respondent, whether with or without the knowledge or consent of the respondent.

Foot Notes:

[1](1915) 18 N.L.R. 184.
[2] (1941) 42 N. L. R. at p. 464. In this case the question whether mens rea was a necessary ingredient of the offence of abduction was considered by the Court of Criminal Appeal.
[3] (1948) A. E. R. 383. See also Weerakoone v. Ranhamy (1921) 23 N. L. R. 33. Horan v Arumugam (1916) 2 CWR. 177. Wickremasinghe v. Ferdinand us (1915) 5 B.N.C.17. Sheikaly v. Lisa Hamy(1971) 14N.L.R.349. Perumal v. Arumugam (1939) 40 N L R 532, and Fonseka v. Fernando (1934) 36 N. L. R. 16.

Both sides are agreed that in regard to (b) (iii) the petitioner's case must be confined to the particulars furnished to the respondent.

Before proceeding to consider the specific cases under this charge, it is necessary first to consider certain matters which appear to be generally relevant to the charge. Democracy in this Island is still in its early stages. The Courts in Ceylon have on more than one occasion referred to the ignorance and peculiar mentality of those to whom the suffrage has been granted. In the year 1930 in Fernando v. Cooray[1] it was observed that the education of the ordinary voter as to the proper use of the vote had hitherto been almost non-existent, and that they have had no opportunity until very recently of looking at matters with any idea of public spirit. " It will doubtless take many years to instill any such idea into large sections of the less educated voters. If such is the frame of mind of so many of the voters, all the greater the responsibility resting on the candidates for election and their agents ". In the light of the evidence given in this case it is open to question whether the education of the ignorant and ill-educated voter has made much progress since 1930. So recently as 1941 in Saravanamuttu v. Joseph de Silva[2] the Court was constrained to point out that the electorate in Ceylon still consisted largely of ignorant and illiterate persons.

The respondent, who has fought several elections previously, began his campaign in July, 1947. He, therefore, had nearly three months in order to

court the suffrage of the electors. He was his own election agent. Mr. Andrew de Silva, Proctor, was his friend and legal adviser before, during and subsequent to the election. The evidence clearly proves that the respondent was well alive to the dangers which beset the path of a candidate. He himself is a lawyer. The letter R 18 dated July 3, 1947, to his printer clearly shows that the respondent had carefully studied the provisions of the law and was giving instructions to the printer that no orders for printing were to be executed on his behalf without the respond dent's special authority. It is also clearly established that the respondent, who is a business man on a very large scale, had doubts as to whether the New Landing and Shipping Company, of which he was the proprietor and which was entering into contracts with the Crown in regard to the landing of goods from ships in the harbor to the warehouses on shore, might not disqualify him. It is admitted that, foreseeing this danger, he was careful to take competent legal advice as to the best manner in which such a disqualification might lawfully be avoided. These facts clearly indicate that the respondent not only had a large experience of political elections but also that he was well alive as to what he should or should not do. His commodious house, Deny Court, in Kollupitiya, on the Galle Road, were his headquarters. He employed a large election staff. His election expenses show thirty workers including several ladies. The evidence, however, indicates that his staff was in fact much larger. He obtained a number of copies of the Electoral Register P 1. Six copies of each section of the relevant electorate were typed in his office, and a band of workers Armed with such lists went from house to house canvassing for votes and checking up whether the voters were resident in the houses named in the official register. These canvassers made notes on their lists of persons who either were dead or who were absent or who no longer resided at the addresses given in the official register. The respondent caused his printer to supply him with 45,000 copies of election cards, like the exhibit P 11. If the electorate only numbered about 32,000 persons, it is difficult to understand why 45,000 cards were required. The respondent's explanation is that his agent, Felix Boteju, gave that order without his instructions. This, however, is not borne out by his letter R 18 to the printer which clearly indicated that the latter was to execute no order except on the respondent's express instructions. It is to be observed that the explanation given by the respondent was not put to the printer when he gave evidence.

The respondent caused a card to be written out and filled in for each elector in the electoral register. The canvassers then made a subsequent visitation taking with them their checked lists and the relevant cards. A further check was thus made as to whether the electors were residing at their addresses, and cards were handed to those who were in residence. Naturally, after the work was completed, each canvasser had left in his possession a certain number of undelivered cards in regard to persons who were dead, or who had left their residences, or who were not contacted by the canvassers. These balance cards, instead of being destroyed, were brought back and retained by the respondent. These facts have not only been clearly established but are not contested. It is not in dispute that the checked lists and the undelivered cards were bundled together and kept in a trunk or box not in the respondent's office at D'eyn Court-a building which is about 50 yards distant from the main house-but, for greater safety, in the main building itself.

The reason why the respondent preserved these useless cards has not been satisfactorily explained. The witness Mr. George R. de Silva and the respondent, who admits that the former was his mentor and model, both say that in their election campaigns they were in the habit of preserving these useless cards ; but neither of them has given satisfactory explanation for adopting such a procedure. Mr. Bernard de Zoysa, who contested the respondent in this election, has stated that he destroyed the balance of the election cards which his canvassers brought back. The petitioner stated that he did not write out election cards for dead and missing people, i.e., his election cards were only written out after his canvassers had checked the voters. Learned Counsel for the respondent was constrained to admit that while the preservation of these useless election cards may indicate negligence on the part of his client, yet it did not prove anything worse. On the other hand, Counsel for the petitioner submits that the preservation of these cards amounts in the circumstances to abnormal conduct, i.e., conduct which an honest and prudent candidate would not adopt in the course of an election. Counsel for the petitioner submits that where a person acts abnormally and there is no satisfactory reason for the deviation from normal conduct, there must be some motive underlying such conduct. The case for the petitioner is that these cards were deliberately preserved and utilized by the respondent or by his agents, or by persons with the knowledge or consent of the respondent, in order to facilitate

impersonation at the election. The case for the petitioner is that persons were brought into the Colombo South Electoral

District from outside that area on polling day, that they were given these cards, and that they were abetted, counseled or procured to impersonate the persons shown in those cards.

As I have observed before, the respondent is a lawyer, and in proctor Andre de Silva he had another lawyer to advise him right through the campaign. They should have been aware of the observations of de Kretser J. in Saravanamuttu v. Joseph de Silva [1] where the danger of these " election cards " was pointed out: ".... .... Much, if not all, of the trouble would have been avoided if there had not existed.... .... cards indicating which side the voters were supporting.. The cards serve another purpose for those who desire to impersonate are furnished with an easy means of knowing and bearing in mind the names of those whom they are to impersonate. It seems to me that the practice of using these cards is a gross violation of the secrecy of the ballot which the law provides for, and that ignorant voters, instead of being protected, are led to disclosing their choice, not merely by coming in the cars of the respective candidates but right up to the time when they are given their ballot papers. In my opinion, rules should be framed prohibiting the distribution of cards and regulating entry to the polling station ". I entirely agree with these views of a very experienced Judge. In Britain the use of bands of music, torches flags, banners, cockades, ribbons and other marks of distinction are expressly forbidden [2]. It is a question meriting the attention of Parliament whether the printing, manufacture or distribution of election cards, badges, &c, should not be prohibited by law and their use made aground for avoiding an election. Had such a law been in force, the respondent might not have found himself in his present predicament.

The case for the petitioner is that on the night of September 19, 1947, i.e., on election eve, the respondent caused persons to be brought into the Colombo South Electoral District from outside that area, and that such persons were congregated at certain centers, particularly at No. 246, Havelock Road, an old house belonging to the respondent's wife but over which the respondent exercised control by paying taxes, &c. It is further the case for the petitioner that the election cards of deceased and missing,

persons, who had not been contacted by the canvassers, were brought from D'eyn Court to No. 246, Havelock Road, from which impersonators armed with such cards were taken or conveyed to various polling booths and either voted or attempted to vote for the respondent. It is alleged that such impersonators were brought from places like Slave Island, Angulana, Moratuwa, Green Street, Grandpass, and so on-all places outside the Colombo South area. It is further alleged that a building called the New Respect Club, off the main Colombo-Galle Road, was a " sub-impersonation factory ", while other centres for impersonation were probably established elsewhere. The case for the petitioner is that these impersonators were procured by the respondent and his agents, and that the alleged impersonations were abetted either by the respondent, or by persons unknown to the pertitioner with the knowledge or consent of the respondent, or by the agents of the respondent. This, in short, is the case for the petitioner on this charge. The question is whether the petitioner has succeeded in establishing to my satisfaction, beyond reasonable doubt, the ingredients necessary to be proved in order to unseat the respondent.

This charge comprises 15 specific cases of alleged impersonations. It may be premised that if the petitioner succeeds in establishing any one of these charges beyond reasonable doubt, the respondent must be held guilty of a corrupt practice.

[His Lordship then dealt with the cases of B. Hendrick, Luvinahamy and Mrs. M. M. I. L. Rodrigo (Erin Brenda Perera) and, after holding without hesitation that these three persons were guilty of the offeDce of impersonation and that they were abetted in the commission of that offence by certain agents of the respondent, continued :-J

The Case of R. A. Roslin Nona.

H. Sopyhamy was registered voter No. 0717. It is beyond all dispute that at about noon on election day R. A. Roslin Nona, calling herself H. Sopyhamy, appeared at the Kanatte Car Parkpolling station and claimed to vote. When she did so Mr. David de Silva, the petitioner's agent in the female section of that polling station, challenged her. He says that thereupon Nissanka Piyasili, who was the respondent's polling agent in the female section, protested and complained that Mr. David de Silva was

harassing voters unnecessarily. The presiding officer, Mr. C. H. Holmes, has no independent recollection of this incident. He recollects that several persons had been challenged, and he remembers that a woman calling herself Sopyhamy was referred to and that he handed five or six males and females to the Police. The presiding officer's journal P 151 is a meager document. This is the entry in the journal:-

" The agents objected to about four female voters as impersonators. Their declarations were taken and they were handed to the Police for investigation. Some of the objections were frivolous. During the poll there were signals by means of whistles and calls from private houses and lanes that certain persons were impersonating. I warned the agents that if they were in communication with people outside for purposes of creating disturbances within and retarding work or with the intention of annoying voters, I would turn such persons out of the polling station ".

Nissanka Piyasili characterizes David de Silva's evidence as false. According to him he was in the male section while the respondent's agent in the female section was Edwin Fernando. This was not put to David de Silva in cross-examination nor has Edwin Fernando been called. According to Nissanka Piyasili, he was in the male section near the entrance and he had nothing to do with the female section. The defence witness, Sam Silva, has stated that Nissanka Piyasili is a person who will do anything for money. The letter P 349 dated July 30, 1946, addressed to the petitioner by Nissanka Piyasili, states that he is intending to print in the September copy of his magazine an article on Mr. Saravanamuttu and invites him to send a block of his portrait. He also asks for " generous contribution to meet the printing bill and also of making the block ". Nissanka Piyasili admits that he has been to see the petitioner and that the petitioner had replied to him. The exhibit P 350, dated August 12, 1946, written by Nissanka Piyasili to the petitioner, requests the latter to send him his contribution as promised. The suggestion is that the witness is displeased with the petitioner who gave him only Rs. 25 and did not give him a more generous contribution. The cheque P 196 dated April 15, 1947, issued by the respondent for a sum of Rs. 200 to cash or bearer contains Nissanka Piyasili's endorsement showing that he received that money. The witness admits that comparatively speaking the respondent is of a more generous nature than the petitioner and that he has a kinder heart and a

kinder smile than the petitioner. Then there is the cheque P 263 of April 28, 1947, issued by the respondent for a sum of Rs. 50 to cash or bearer which bears the endorsement of Nissanka Piyasili. The witness admits that be has been in the habit of getting sums of money from the respondent. He says they are loans-a fact which is open to doubt. In support of this statement Nissanka Piyasili produced his cheque R 57 of April 30, 1947, for the sum of Rs. 200 payable to cash or bearer, but which still remains in his possession. The counterfoil of the cheque is not produced and this cheque might have been written on the day he gave evidence. This document proves nothing. The witness does not explain why this cheque is in his possession and has not passed through the bank. The witness contradicts Oliver and the other witnesses as to the circumstances under which Oliver spoke at the meeting in support of the respondent at Wanathamulla. The witness has stated that he associates with great men and that " there is a perfect understanding between the respondent and himself ". He admits that during a municipal election, in one issue of his magazine he extolled the virtues of the witness Sam Silva and within 15 days of publishing that article he extolled a person called Greco as a more suitable person. In fact, Nissanka Piyasili is a person whoso evidence I am unable to accept on any disputed question of fact. Therefore, I have no hesitation in accepting the evidence of Mr. David de Silva as being the truth and that when he challenged R. A. Roslin Nona, Nissanka Piyasili protested.

Roslin Nona was allowed to vote and, following the usual practice, the register clerk destroyed the election card, which she brought.

Roslin's statement to the Police is the exhibit P 144. As she has retracted that statement in this Court, it is not substantive evidence to prove any fact. Its sole effect is to discredit Roslin's credit as a witness. This is what she said: -

" Today at about 1 p.m. one L. K. Caroline Nona of Thimbirigasyaya brought me to Kanatte Road... and she instructed me to go and vote for Mr. R. A. de Mel. She asked me to give my name as Hettiaratchige Sopihamy and apply for a voting paper. I went and gave my name as Hettiaratchige Sopihamy and applied for a ballot paper. I was challenged. I signed a declaration form and voted. My correct name is Ranasingbe Aratchige

Rosalin Nona. I produce my rice ration book (which contains her real name) at the request of the Police."

In her evidence before this Court she has sworn that she did not make that statement. Her present testimony is that she admits she impersonated. A woman in her garden called Carolina gave her three rupees and one of the petitioner's cards, not one of the respondent's cards. She says she was asked to vote for Mr. Saravanamuttu and for the " malla " and that she voted for the flower. Subsequently, she was not sure whether she voted for the flower or for the respondent. Carolina has been called and she totally denies the allegations made by Roslin Nona. In cross-examination Carolina stated that on election day she was not living in Thimbirigasyaya but at Mariakaday. The other evidence proves that Roslin Nona together with Catherina Perera., the mother of a man called Ekmon Seneviratne, were seen on election day in a truck displaying the respondent's emblems conveying female voters to the poll. This is the evidence of Edward Singho. There is also the evidence of Amarasena who positively identifies Roslin Nona as a woman he saw hanging about D'eyn Court after this election petition was filed. He also says that he saw the respondent speaking to her. She is alleged to have told the respondent " We have gone there " and the respondent asked her " Is the matter finished ? ", to which Roslin Nona replied " I want a job ", to which the respondent said " We will see to it later ". Amarasena also says that he saw Marcus Dias and the woman getting into a car and go somewhere, and that after 15 or 20 minutes they returned with some papers, and that it was then that the above conversation took place. I express no opinion as to the truth or otherwise of Amarasena's evidence which I will deal with presently. I wish to say, however, that the respondent characterizes Amarasena's evidence on this and on every other fact to which he testifies as being absolutely false, and I will have to consider the question whether Amarasena is a person on whose credit the Court can at all rely. I therefore consider Roslin Nona's case independently of Amarasena's evidence.

The presiding officer's journal P 141 shows that the respondent visited the Kanatte Car Park polling station three times on election day, namely, between 9.10 and 9.15 a.m., at 11.30 a.m., and again between 4.25 and 4.35 p.m. Therefore, if Roslin Nona was there about noon she would have probably seen the respondent visiting that polling station. The respondent,

however, denies that he saw her and this is probably true. The relevancy of this evidence will become manifest presently.

Roslin Nona's bailsman in the Borella Police Station is Sam. Silva, the witness. The defence contends that Sam. Silva was discovered as a bailsman by Roslin's brother-in-law, U. D. Paulis, at 4 p.m. This is contradicted by the defence witness Police Sergeant Amerasekera who says that it was Roslin Nona herself who gave him the name of Sam. Silva, and as he was anxious to have this young girl liberated on bail he made search for Sam. Silva and ran him to earth at the Borella junction. Sam. Silva corroborates Amarasekera. The importance of this point is that Sam. Silva, who is an agent of the respondent, was discovered not through the agency of U. D. Paulis but from what Roslin Nona herself told the Police. It will be seen presently that Roslin Nona had reason to believe that the respondent knew all about "Sam. Silva.

Roslin Nona, was charged in the Magistrate's Court. She wag convicted on her own plea and sentenced to undergo three months' rigorous imprisonment, She served the sentence in Welikade Jail until the amnesty on Dominion Day led to her release. She says: " 1 pleaded guilty as nobody came." What that mean is she had no alternative but to plead guilty because the persons from whom she expected support in her necessity did not come to her assistance,

From Welikade Jail Roslin Nona wrote a letter to the respondent is January, 1048, that is to say three months after this election petition had been filed, The respondent admits the receipt of this letter, but it ii not forthcoming because he says the letter has been destroyed. Therefore, the petitioner had to prove to letter by means of secondary evidence,

All letters written by prisoners are censored. If the letter is in the vernacular a translation is made and preserved in the flies. The Supreme Court has held that the translation of a vernacular document cannot be used as secondary evidence of the original, The translation, however, could be used by the translator to refresh his memory when giving secondary evidence the contents of the original. That translation is the exhibit P 148,

The secondary evidence which has been led is that Roslin Nona wrote to

Mr, R, A, de Mel at his Colombo address stating that she was suffering in jail because she voted for Mr. de Mel by impersonating another. She also told the respondent that before she went to the Magistrate's Court she had called at the respondent's house and handed to him the summons in her case, She further said that the Magistrate ordered her bail and that it was Sam. Silva who bailed her out-implying thereby that Sam. Silva was a person whose name would be familiar to the respondent. She further stated in her letter that she was detected at the Khanate polling booth and she asked Mr. de Mel whether he too had not seen her there. She appealed to Mr, de Mel on the ground that not only she but her child were suffering and that she had never been to prison before. She further added that some relatives of hers had been to see her in jail and had told her that Mr, de Mel would come to see her. She therefore made an ad mimrieordiam appeal to Mr, de Mel to come and see her and ameliorate her life in jail.

The receipt of this letter having been admitted by Mr. de Mel, two questions arise. Did he read the letter or did he not read the letter ? I find it difficult to accept the respondent's evidence that because he does not understand Singhalese, and as he is pestered with such letters, he consigns them to the waste paper basket unread. The respondent is a public man who has been twice Mayor of Colombo. It is quite inconceivable that, even if he did not know to road Singhalese, he would not have got the letter translated by one of his many dependants residing in his house, It is admitted by learned Counsel for the respondent that had this letter been read it demanded a reply. What Roslin Nona wrote to the respondent is either true or it is false. If it is false, one would expect a man in the position of the respondent, over whose head a serious charge of abetment of impersonation was then hanging, to at once have replied characterizing the allegations in that letter as being utterly false and disclaiming all knowledge of the statements of fact made in that letter. The inference which flows from not replying to letters has been pointed out on more than one occasion by the Supreme Court. In business matters, if a person states in a letter to another that a certain state of facts exists, the person to whom the letter is addressed must reply if he does not agree with or means to dispute the assertions-The Colombo Electric Tramways and Lighting Co., Ltd., v. Pereira[1] and wijewardene v. Don John [2]. Of course there are exceptions to this rule. For example, failure to reply to mere begging letters when the circumstances show that there was no necessity for the

recipient of the letter to reply can give rise to no adverse inference against the recipient. I cannot close Roslin Nona's letter as being one which did not oval for a reply from the respondent, particularly having regard to the fact that at the time he received the letter this charge was hanging over his head. Explanation 2 to section 8 of the Evidence Ordinance says :-

" When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct is relevant."

Illustration (f) to that section says :-

"The question is whether A robbed B. The fact that after B was robbed C said in his presence ' The Police are coming to look for the man who robbed B ' and that immediately afterwards A ran away are relevant."

In this case it is as if Roslin Nona told de Mel : "I impersonated another on your behalf. Unfortunately I was detected. I brought the summons to your house and handed it over to you. I am now suffering for what I did for your benefit. Please come and do something for me ", and the respondent made no reply and did not deny the allegation. The inference I draw is that there was no reply to this letter because there was no reply which could be sent. In my opinion, the silence of the respondent is an admission of the truth of the allegations contained in that letter. I reject the suggestion made on behalf of the respondent that Roslin Nona, having been induced to impersonate by some agent of Saravanamuttu, wrote the letter to de Mel and not to Saravanamuttu because de Mel was elected and not Saravanamuttu. I think this suggestion is fantastic. The petitioner has pointed out that the conduct of the respondent in not replying to Roslin's letter is all the more significant in view of the statements he broadcast to the electorate in his manifesto, P 362, where he calls himself " The friend in need of the poor and helpless and a person dedicated to the service of the people ".

When the petitioner supplied particulars of the alleged acts of simper so nation, Roslin Nona's case was held over because adequate particulars of this case had not been given. These were subsequently given. Therefore, when the petitioner's Counsel opened his case he abstained from making any reference to the facts relating to Roslin's case. When the enquiry began

Roslin was absent. On May 5, 1948, the Court ordered a warrant to issue on her. On the same day a warrant was also asked for in regard to the man called Edmond Seneviratne. This application the Court refused holding that there had been no proper attempt to serve summons on him.

Roslin Nona was arrested and produced in Court on May 12, 1948- one week after the warrant had issued for her arrest. On the same day Ekmon Seneviratne appeared in Court. Roslin was partly examined on May 12, 1948, and her cross-examination was put off for the next day. She was ordered to furnish bail and was directed to go with a fiscal's officer to her home and point out a certain person.

The petitioner alleges that between May 5, 1948, and May 12, Roslin. Nona had boon kept concealed by Ekmon. Seneviratne in Ekmon's house. The petitioner's submission is that the respondent and his legal advisers at that period were under the belief that secondary evidence of Roslm's letter to the respondent could only be proved by calling Roslin herself and that her concealment was therefore due to this fact. The evidence clearly indicates that the petitioner's allegation is true, namely, that Ekmon Seneviratne kept this woman under concealment and that she was accidentally discovered by the police or the Fiscal's officers when she was returning to Ekmon's house after a bath. In this connection it is also relevant to note that the petitioner took out a summons on the respondent to produce the letter which Roisiin wrote to him from jail. It is alleged that this process could not be served on the respondent. Therefore, the petitioner resorted to a stratagem. He lured the respondent to the house of one Colonne while the petitioner's agents and the fical's officer lay in wait to serve the process on him when he left Colonne's house. It is alleged that the respondent having been warned at Colonne's house turned his car round and drove off at a rapid rate chased by the petitioner's ear containing the fiscal's officer. The chase proceeded all down the length of Bailors Road, but when the respondent's car tried to negotiate the righthand turn at the junction between Bullers Road and the Gallo Road near the Mejestic Theatre, the respondent's car stopped, whereupon the fiscal's process server succeeded in serving the process. The respondent denies that he fled to avoid service of process, but the evidence of quite disinterested witnesses, like the process server and the police constable on point duty at the junction makes it quite plain that the petitioner's car followed the

respondent's car and that service of process was effected at that junction.

As I have pointed out, Roslin's examination was not concluded on May 12. It is alleged that something rather serious happened that night, and the allegation has been made that Roslin Nona was taken by night from her house in the respondent's car No. CE 5801 for the purpose of tampering with her evidence. The allegation is strenuously denied by the defence.

Certain facts are beyond all possibility of dispute. We find that at 9.35 P.M., on May 12, the petitioner telephoned to Superintendent of Police, Mr. Robins, and made a certain complaint. In consequence of that complaint Mr. Robins issued certain orders to the Naharanpitiya police station via the Cinnamon Gardens police station as the telephone at the former station was out of order. In consequence of these directions. Police Constable Scharenguivel was sent out on what is called an ambush patrol. He swears that he saw a car bearing the number 5801 coming along, but owing to its speed he could not distinguish the two letters. He admits that this car slowed down and that when the driver saw him he accelerated and disappeared. That car was closely followed by car No. Z. 4351 which is the petitioner's car. This car stopped and the driver spoke to Scharenguivel. The suggestion is that car No. 5801 contained Roslin Nona, and its driver finding that the police were on the look out, he drove off. The respondent in his evidence says that his car No. CE. 5801 was in that vicinity on that night as it was conveying an asthmatic to his house. Why the respondent should give his car in the dead of night to an asthmatic in order to convey him home in somewhat difficult to understand. Even more curious is the fact that this asthmatic has not been called, and although this being a matter specialty within the knowledge of "the respondent and a fact of some importance to his case, this witness has not appeared. It is further stated that the respondent's car was at the house of his senior Counsel where he had gone to attend a consultation. It is to be noted, however, that the respondent owns two other cars. There is another foot. We find that at 3.10 a.m., on May 13, 1948, the witness Podiappu Hamy went to the Naharanpitiya police station. There he made the following statement:-

" This evening at about 9 or 9.30 p.m. Mr. P. Saravanamuttu asked me to go near the house of Mr.R. A. de Mel and keep a watch. After about 10 minutes of my arrival near the bungalow, I saw Mr. R. A. de Mel's car No.

CE. 5801 come from Bagatelle Road and go into his bungalow. I was in oar Z. 4351. After about 15 minutes the car came out and went towards Bambalapitiya. I followed. It turned towards Bullets Road heading towards Naharanpitiya. At Jawatte I saw two police constables. I did not stop there but followed on. Near Bolamesawatte the oar slowed down but saw two policemen there and drove on without stopping. I stopped my oar and spoke to the two police constables and told them that it was Mr. R. A. de Mel's car and followed on. This oar went to Kanatte Road, turned to Cotta Road and after that it turned back and came on to Bullers Road and then turned towards Wellawatta on Galle Road. Went up to Lunawa following the oar. I turned back, came near N. E's workshop and lay in ambush. Then I saw the car. I again followed. The oar came back to Mr. de Mel's bungalow. I saw Nissanka (Nissan-ka Piyasili) and Marcus Dias along with the driver in the car. I came to make this entry on instructions from Mr. Saravanmuttu."

This statement is one recorded under Section 121 of the Criminal Procedure Code, and being a first information can be used for any legitimate purpose, e.g., to corroborate the maker of that statement.

It is clear from these facts that something happened on the night of May 12, and that there were two incidents. The petitioner says that when Roslin Nona left the courts after giving evidence, he decided to have the woman shadowed. He therefore directed the witness K. H Perera to shadow Roslin. Perera says he saw Roslin and another at about 7 p.m, getting into the car CE. 5801 and drive off towards Havelock Town. He then went to the Naharanpitiya police station but they refused to take any action saying " Can't a woman go in a car ?". Perera therefore went back to Saravanamuttu's house by bus and reported what had happened. It was then that Mr. Saravanamuttu contacted Superintendent Robins. K. H. Perera was directed to go back to Naharanpitiya police station, and this time his statement was recorded. This statement is the exhibit P 148 which reads as follows :-

" Roslin Nona a witness in the election petition. came to Bolamesawatte about 8,30 p.m. Car No. CE 5801 was at Torrington Avenue junction. Roslin Nona also went off towards Havelock Road." Roslin Nona denies all this, but as I have already pointed out, her testimony unless

independently corroborated is of no value at all. The second incident is concerned with Poddiappu Hamy, the driver of Mr. Saravanamuttu's car who made the statement P 210. His evidence is that he was directed to take Mr'. Saravanamuttu's car somewhere between 9,30 p.m. and 10 p.m. and to keep watch at the respondent's gate. His evidence is in line with the statement he made in P 210 and need not be repeated. He says that when the oar finally came back after going to Lunawa it stopped at de Mel's gate and Marous Dias and Nisnankti Piyasili got out of that oar and came towards Poddiappu Hamy's car while de Mel's ear turned into D'eyn Court, Witness then thought that discretion was the better part of valour and he retreated, particularly as Marcus Dias has the reputation of being a rowdy. It was then that Poddiitppu Homy made the statement P 210.

All this evidence has been characterised as being a fabrication, Having regard to all the facts and circumstances I cannot so hold, I am of opinion that some attempt was made to contact Roslin Nona that night before her examination continued on the following day. The conclusion I reach in regard to Rosiin Nona's case is that she has committed the offence of impersonation and that she was abetted to commit this offence by Ekmon Seneviratne in whose house she sought sanctuary when the warrant was out against her.

Is Ekmon Seneviratne an agent of the respondent ?

Witness de Jonk, who until about the middle of September was on the respondent's election staff at D'eyn Court, swears that Ekmon Seneviratne used to come to D'eyn Court practically every night. Witness Edward Singho states that in the Torrington Avenue area Ekmon was de Mel's chief worker, and that he has seen Ekmon accompanying de Mel when the latter went out canvassing in that area. He says he has seen Ekmon independently going from house to house canvassing for votes on behalf of the respondent. He further says that he saw Justin Boteju and Sam, Silva going about on the respondent's business in Ekmon's car. He has. seen Ekmon's mother, Catherina Hamy, on pollong day transporting female voters, and he saw Ekmon himself transporting voters on election day. The witness, Samaraweera, gives similar evidence. Piyasena, the printer, has sworn that Ekmon came as messenger on behalf of the respondent, and the exhibit P 190 B shows the entry against respondent altered to the name of

Ekmon Seneviratne. On the day the results of the election were declared (September 22) we find the impersonator, Hendriek, from Market Passage, Slave Island, going to see Ekmon Seneviratne in the Jawatta area. Hendrik's explanation is that he had given Ekmon Seneviratne a ride in his rickshaw on credit and he went all that way to collect the fare. To anyone having experience of the Colombo rickshaw-pullers it seems incredible that any rickshaw-puller would convey passengers on credit and then walk several miles on a subsequent day to collect his fare. Hendriek, having transacted his business with Ekmon Seneviratne, got into a lorry belonging to the respondent, which happened to be passing quite by chance in which amongst a crowd of the respondent's supporters was the woman Millie Nona, also from Market Passage, Slave Island. The suggestion for the petitioner is that Hendriek not only impersonated people at the Holy Family Convent but elsewhere, and that he had gone to see Ekmon to collect the consideration due to him. There is no evidence whatever to support this suggestion although the reason given by Hendriek for going to see Ekmon will not bear examination. The respondent's evidence with regard to Ekmon Seneviratne is unsatisfactory. He does not admit whether Ekmon worked for him or not. He first said he did no work for him. He then said he did hardly any work for him, and at another time he said that Ekmon di'.l not do much work for him. I am of opinion that Ekmon was one of the respondent's chief agents in the Jawatta area during this election. I. therefore find that Roslin Nona was abetted in the offence she committed by one of the respondent's agents.

[His Lordship then dealt with eleven other cases of impersonation, namely, of M. Abraham Gunewardene, Norman of Angulana, Cecilia Perera of Green Street, H. Dona Veronica Peris of Grandpass, Gimarahamy of Market Passage, Slave Island, U. Justin, Kusumawathie, Ransohamy, E. A. Jane Nona, Caroline Perera and D. Roslin and continued :-]

This body of evidence involves fifteen independent cases of alleged impersonation. I have given reasons for finding that in each of these cases the alleged principal offender has been proved to have committed the offence of impersonation beyond all reasonable doubt. The evidence also leaves no room for doubt that there existed a reconverted scheme or conspiracy on the part of a person or a body of persons to procure persons and to abet them to impersonate voters in order to secure extra votes for

the respondent. These fifteen independent chains of circumstantial evidence are so strong and cogent that it is impossible to regard these impersonations as being due to mere chance or coincidence. A body of circumstances by undersigned coincidence is sometimes capable of proving a proposition with the certainty of mathematics. The cumulative effect of all this evidence when regarded as one whole gives rise to such decisive conclusions which are beyond the power of any advocate, however able, to explain away on the basis of mere chance, accident, or coincidence.

Counsel for the respondent in the course of the inquiry put questions to some of the witnesses suggesting that these fifteen cases represent a trap which had been set by supporters of the petitioner by procuring impersonators and a supply of the respondent's election cards, in order to ensnare the respondent and to unseat him if he was successful at the election. In his closing address, however, Counsel abandoned this suggestion. He conceded, for purposes of argument that it was clear that there must have existed a scheme to abet impersonators to vote for the respondent. Counsel argued that it would be sufficient to secure the acquittal of the respondent on the first charge if he could advance a reasonable hypothesis consistent with his client's innocence, provided it covered all the incriminating circumstances. He submits that the evidence may establish the existence of a scheme to abet impersonation by these fifteen persons, and that the evidence may even create a strong suspicion against the respondent. According to him, there are four possibilities. These persons may have been abetted (a) by the respondent himself, or (b) by agents of the respondent named in the particulars, or (c) by persons with the knowledge or consent of the respondent; or (d) they may have been abetted by persons acting in the interests of the respondent in order to secure his election, but without his knowledge or consent. Learned Counsel pressed this fourth alternative as being a probable and possible view which covered all the facts, and would create reasonable doubts in favour of the respondent. According to this submission, there existed a body of misguided supporters of the respondent, who unknown to him, and without his consent or approval, set about to procure impersonators, paid them money, supplied them with the respondent's cards, taught them what to do and say, and sent them on election day to vote for the respondent by impersonating genuine voters.

It is a sound proposition of law that in a case of circumstantial evidence, in order to convict a person, the Court must be satisfied beyond all reasonable doubt that the evidence is only consistent with the guilt of the accused, and that it is totally inconsistent with any reasonable hypothesis of his innocence. It is quite insufficient for the accuser merely to establish a strong case of suspicion against the person accused. A " reasonable doubt", however, does not mean a fantastic or fanciful doubt. A reasonable doubt is one which creates sensible or sound doubts based on common sense and good grounds.

In the light of these principles let us examine the submission of learned Counsel, that while there was a conspiracy on the part of a body of the supporters of the respondent to secure his election by means of impersonation, nevertheless; reasonable grounds exist for doubting that what was done was by himself, or by his agents, or with his knowledge or approval. If this submission has been proved, or even if it only creates a reasonable doubt as to the truth of the case for the petitioner, then, undoubtedly this charge fails, and the respondent is entitled to be absolved from it.

There are 11 men and 4 women involved in these impersonations. Three men and five women were detected at the Jawatta polling station. Three women were arrested at the Colts' pavilion. One man and one woman were detected at the Holy Family Convent. One woman was detected at the Campbell Place polling station and another at the Kanatte Oar Park. The majority of these fifteen personas come from widely distant places outside the Colombo South District, like Slave Island, Kotte, Angulana, Panehikawatta, Wellampitiya, Green Street, Grandpass, and Angoda. They were all supplied with eleotion cards of the respondent, relating to genuine voters who either are missing or did not care to vote. All of them, with the exception of one, admit that they impersonated. They make this admission although, in regard to some of them, charges are still hanging over their heads in the Courts. The majority of them when arrested told the Police that they had been asked to vote for " de Mel", white at this inquiry they try to show that the police by some defect of hearing recorded "' de Mel " when what they actually said was " Malla " (the Flower). It is incredible that so many police officers should be hard of hearing, Bather it shows that

a determined attempt had been made to induce these persons to vary their stories. It is incredible that these persons, coming from places so widely separated, would have allowed themselves to be accosted in broad daylight in the open streets, and consent, without fee or reward first obtained, to leave their business and agree to commit what they well knew was a serious offence. It is also highly improbable that a band of persons would have boldly set out on election day in broad daylight to waylay and accost likely persons, and run the grave risk of selecting an incorruptible person and being detected either by tat polio or the rival candidates, or being handed over to the police by one of the persons they accosted. It is far more probable that these persons had been contacted some time before Election Day, brought to same safe place where they could be rewarded and taught what to do and say without fear of detection. I find it difficult to believe that these fifteen persons, at the mere request of strangers and without having first been liberally rewarded, would have left their lawful business and set out to impersonate and run the risk of being detected and goaled.

According to the submission of Counsel for the respondent, these misguided supporters of the respondent must have contacted the impersonators on some day before the election, According to him, once the polling was over, they lost all further interest in the impersonators who were left to fend for themselves. Their interest, however, revived when a large number of these impersonators was arrested, and there arose the risk of the conspirators being detected. That is why, it is submitted, that while the impersonators had difficulty in finding bail, this was found for them, after which they were tampered with and made to change the stories they told the police, and a proctor found to defend thorn. In other words, there were two separate conspiracies. The first was to abet these persons to impersonate. The second, which was independent of the first, was to take such measures as would protect the conspirators from exposure. I am unable to agree with learned Counsel. I agree that the evidence dearly proves that a conspiracy existed; but it was one conspiracy and not two. Toe abettors, whoever they may be, conspired not only to get the respondent elected, but also once he was elected, to see that he was not unseated, and to take all measures by finding bail and legal aid for the impersonators, and even tampering with their evidence, to see that their object was not frustrated.

If the submission made for the defence is correct, what follows ? The conspiracy must have been hatched some days before election day. The conspirators, unknown to the respondent, had to contact the impersonators. This could not be done on the election day itself. They had to obtain a supply of the respondent's undelivered cards without bus knowledge, including the cards found in the possession of the impersonators, and the seventy-two cards, P 31, found in the New Respect Club as well as the exhibits P18 to P 30. They had to collect the impersonators at some safe place, arrange the reward which was to be given, pay them that reward, distribute the cards, and teach each impersonator what his or her new identity was and what he or she would have to say to the officers at the polling stations. I cannot believe that these conspirators were so short-sighted that they did not foresee the possibility that some of these impersonators might be detected and arrested.

Who is the man who is lucky to have such a body of friends and supporters who, unasked, would engage in a criminal conspiracy of this kind, spend their money lavishly, and run the risk of being detected and punished ? Why should Felix Boteju who, according to the respondent, had left his services on September 9 in a huff, join these unknown friends of the respondent on election day by voluntarily coining forward to bail four persons who committed impersonations to benefit the. respondent against whom he had a grudge. According to the respondent this is a mystery ". According to the petitioner there is no mystery about it at all. Felix Boteju was the respondent's chief agent on election day, and was engaged in the respondent's business when he stood bail for these persons. According to the petitioner, even on September 22 when the results were announced, Felix Boteju was still the respondent's chief agent, and in a transport of joy, he embraced the man whom his efforts bad enabled to win this contest. Why did Mrs. Rodrigo telephone to D'eyn Court on the day before her case in the Magistrate's Court, and why in Mr. Nicholas' hearing did she refer to " our case "? Why did Mrs. Rodrigo before going to Court interview Mr. Andrew de Silva, the proctor for the respondent, and why did she, from the Court, go straight to the respondent's house and from there go to the house of Oliver ? Why did R. A. Rosaline Nona from goal write to the respondent soliciting his aid in the trouble she had become involved through helping the respondent ? Why did the respondent having received that letter not at once write to Rosaline Nona denying or repudiating the

statements of foot contained in that letter? What inference flows from the incident in the garage in the sea-side house in which Cecilia Perera was involved? What is the explanation of the visits of Gimara Hamy and Cecilia Perera. to the respondent's house ? What is the inference to be drawn from the incident on the night of May 12, 1948, when R. A. Rosaline Nona was seen to enter the respondent's car in the dead of night ? Can these facts be explained away on any hypothesis consistent with the view that the respondent was unaware of or did not approve of the conspiracy hatched by his misguided friends ? Felix Boteju is a person who could give material evidence for the respondent on this question whether what was done bad his knowledge or approval. The petitioner has left no stone unturned to secure his arrest. The respondent has done nothing in the matter. The conclusion is irresistible that not only was there a conspiracy to abet impersonation, but also that this was hatched with the knowledge and approval of the respondent. In the case of Cecilia Perera, the evidence when fairly viewed leaves no room for doubt that the respondent abetted her by rendering intentional aid to her when she was challenged at the polling station. The subsequent incident in the garage and her visit to D'eyn Court support this view.

According to the respondent, he was all along quite sanguine regarding his chances of success at the election. The circumstances point to a different conclusion, namely, that on election eve (September 19), he was by no means sure of his chances, and was in consequence anxious and restless. There were several candidates in the field. One of them was a well-known public servant who had retired from the service specially to contest this seat. If the respondent was so sure of his success, why did he preserve the useless undelivered cards together with the checked lists in a trunk in his bungalow ? Were they not preserved for the purpose of impersonation should the necessity for so doing arise ? Could those cards leave his house without the knowledge of the respondent or the members of hoe household ? A candidate, who has conscientiously nursed his electorate for several months, would normally on the eve of the election relax, so that he might be at his best on the following day. The evidence, however, makes it clear that on the night of September 19, far from relaxing, the respondent was anxious and restless. There is no reason to doubt the evidence called for the respondent that from about 8 p.m. he was going about the electorate and, finally, got home about 2.30 or 3 a.m. on election morning. I do not

believe that the respondent was continuously away from his home from 8 p.m. until 3 A.M. I believe he did return to D'eyn Court and went out again, and he could easily have done this without attracting the attention of his other workers in his office which is far from the main bungalow. Those workers were engrossed in their work. The fact that he was restless and went about from place to place is clearly proved. In my opinion, that is not the conduct of a man who, having done all that legitimately could be done, was confidently awaiting the verdict of the electors on the following day. It is rather the conduct of a jnan who was uncertain of the result. If the submission of respondent's Counsel is correct, it also follows that while his misguided friends were engaged in a conspiracy to secure votes for him by illegal means without his knowledge or consent, the respondent himself was wandering about the electorate in the dead of night. What was he doing ? The evidence of witnesses like Messrs. Robert Senanayake, Oriel de Mel, and Annealed de Mel that they last saw the respondent at about 8 p.m. on September 19 is perfectly true. It may also well be that Benjamin de Silva, the respondent's chief clerk, is speaking the truth when he says that he last saw the respondent at about 8 p.m. and he next saw him alighting from his car at about 4 a.m. Some of these witnesses did not stay at D'eyn Court all night.' Those who did, had duties allotted to them, and they were working in the office or in the grounds. It is quite possible for the respondent to have gone out, returned to the bungalow, and then gone out again without any of these witnesses becoming aware of the fact. According to the witness K. Don David, who has earned the name of the " Torch-bearer " (pandan-karaya) of a certain political party, the respondent was with him from 9 or 9.30 p.m. until 11.30 p.m. The credit of this witness has been attacked. He says that his nick-name is derived from the fact that he is an " enlightener of the ignorant ". According to him, as he is in touch with certain great personages, or as he put it, because he was " within the inner circle", people come to him to obtain favors. Unfortunately, he had cut a sorry figure in a Village Committee election in his own village, so that in the present election he gave that village " a wide berth". According to him, on the night of September 19 he divided his favors. He "worked" for a certain candidate in the Colombo Central area from about 7 p.m. to 8.30 p.m. and then " worked " for the respondent in the Colombo South area from about 9.30 p.m. up to 12.30 a.m. The witness, of course, was not working to a time-table, and his times are approximate only. It is possible that the respondent on this night did meet

this witness, but I cannot place reliance on the times given. The persons who could corroborate the respondent's evidence regarding his movements are his motor car driver and the other man who were with him in his car. Those persons have not been called. The witness Sam de Silva says that after he had retired to bed and was asleep the respondent came to his house and awoke him merely to inquire whether a certain tent had been erected. The witness is unable to fix the time of this visit. It was a purposeless journey for the respondent to make to Borella. As to what the respondent was doing until 2.30 or 3 a.m. there is no satisfactory evidence. According to the respondent he visited K. L. Perera, the Wesley College, Kalumahatmaya, Podi Wilbert, William Singho " and other places ". What was his object in doing this ? The petitioner's suggestion is that the respondent during this period was engaged with his co-conspirators in arranging for the abetments of impersonators on the next day.

For what purpose was No. 246, Havelock Road, used on election day ? The case for the respondent is that he used these premises as his headquarters for issuing petrol chits to the cars which his friends had sent him. Most of these cars, however, came with their tanks full. What was the necessity to have a special headquarters for the issue of petrol chits when that work might just as easily have been done at D'eyn Court ? The case for the petitioner is that these premises were the place where the majority of the impersonators were collected, abetted, taught what to say, given the election cards, and sent to impersonate. The evidence of witnesses like Mrs. Paul, Kaimon, and Proctor Goonatilleke prove that some more than usual activity was taking place in those premises from an early hour on election day. I do not believe that the premises were used as the headquarters for the issue of petrol chits. Mrs. Paul, Kaimon, and Proctor Goonetilleke say nothing about this, and the question was not squarely put to them under cross-examination. Why was there not a single placard or election poster displayed at these premises to show that it was a place where work was being done for the respondent ? The respondent visited the Colts' Pavilion polling station hard by on no less than three occasions on election day. Why did he not drop in at least on one of these occasions at No. 246, Havelock Road, to see how things were progressing there, or at least to cheer his supporters with a word of encouragement ? These circumstances suggest that the respondent deliberately kept away from those premises because something improper was happening there and he

consequently gave the place a wide berth.

Why did the respondent's agents and supporters furnish bail for these impersonators at the police station? Manatunga, the professional bailsman, and Costa, the other bailsman, impressed me as truthful witnesses. They have no motive or reason for stating what is false. I reject the suggestion that because Mr. Andrew de Silva's clerk does not utilize the service of Manatunga as a bailsman, therefore Manatunga and Costa are giving false evidence to implicate the respondent. Manatunga swears that he stood bail for these impersonators at the request of Andrew de Silva who paid him his fees. When the amount of his security was exhausted, Andrew de Silva agreed that Costa, another professional bailsman, should stand surety for the other impersonators. I accept this evidence as the truth. I believe Andrew de Silva engaged the services of these two bailsmen at the request of the respondent who paid their fees. It is because the respondent was privy to the conspiracy which was carried out for his benefit and he was under a moral obligation to assist these impersonators that he acted in this way.

Who engaged Proctor Jayanayake to defend the impersonators without any previous consultation with his clients? Who paid the Proctor's fees? Proctor Jayanayake has not been called. There would have been no breach of professional privilege for that gentleman to state that his fees were not paid by the respondent, if that was the fact'. It is to be noted that Proctor Jayanayake was one of the respondent's polling agents at one of the polling stations.

So far I have dealt with the case as if it were one based exclusively on circumstantial evidence. The petitioner, however, relied on a certain body of direct evidence.

H. S. Fernando (Baila Henry) and M. C. Fernando have already been dealt with. I have given reasons why I am unable to accept their testimony. There is one observation, however, which I desire to make in regard to the taking of the affidavit R 5 from M. C. Cooray on March 14, 1948. Assuming that the respondent's version is true, i.e., that M. C. Cooray voluntarily and uninvited came to see the respondent, and was not made intoxicated and brought by Felix Boteju to D'eyn Court as alleged by the

witness at the inquiry-nevertheless the respondent and Mr. Andrew de Silva, well knowing that M. C. Cooray had already given a statement to the petitioner, took from the witness the affidavit R 5. Such conduct has been held to be improper both in Britain and in Ceylon. In the case of Rambukwella v. Silva[1] Bertram C.J. said : "I think it well to draw attention to the principle laid down in the Wigan Borough Case [2] and the Montgomery Boroughs Case[3] cited in the article on " Elections " in Lord Halsbury's Laws of England on page 449 that it is not proper that persons who have been, or are likely to be, subpoenaed by one side should be got by the other side to make statements or to sign prepared statements. The breach of this principle which took place was, no doubt, due to ignorance of the principle that has been thus laid down. In spite of all temptations to the contrary, and in spite of apprehensions that the witness may have been suborned to give false evidence, it is always best that this rule should be duly observed ". The respondent and his Proctor, who are lawyers, should have been aware of this principle laid down by Bertram C.J.

Another witness the petitioner relied on to give direct evidence is Hapuarachchi, from whom the petitioner appears to have obtained a statement. Hapuarachchi, like Felix Boteju, has disappeared. Although he is a Government pensioner, he has not drawn his pension or, according to Hapuarahchci's wife, had any communication with her since he mysteriously disappeared.

The man Victor is another witness on whom the petitioner relied to give material evidence. It is clearly established that Victor was a supporter of the respondent who, with Marcus Dias, were seen by several witnesses canvassing for votes with the respondent's files and lists like the exhibits P 6 to P 8 in their hands. Mr. Bernard de Soysa is one of the witnesses who directly testified to this fact. The respondent, how- ever, says that he only came to know of Victor after this inquiry began. Yet on the respondent's list of witnesses filed on April 17, 1948, this man's name appears as a witness for the defence. The respondent admits that he may have seen Victor's name in the particulars furnished to him by the petitioner, but he made no efforts to ascertain what this so-called , agent of his was alleged to have done to furnish evidence for the petitioner. I have no doubt that Victor was one of the respondent's agents in the area. I find it clearly proved that Victor contacted the proctor for the petitioner and that he made

a statement, P 37, which I have not read, to petitioner's proctor and counsel, and handed to them P 6 to P 8 which are some of the respondent's election files containing the lists of voters for the area. Victor came into the witness box and flatly denied that he ever made a statement to the legal advisers of the petitioner or that he handed the files P 6 to P 8 to the petitioner's proctor. Learned Counsel for the petitioner and his Proctor have given evidence. I have no hesitation in holding that Victor committed perjury at this inquiry, and that he did make the statement P 37 (which is not admissible evidence) and actually handed over the files P 6 to P 8 to the petitioner's lawyers. Obviously, the witness has been got at, in the same manner in which other witnesses have been tampered with.

Finally, we have the important witness Amarasena. In dealing with the Gases of the impersonators, I have had occasion to mention the name of this witness. It is now necessary to consider the story he tells and to assess the amount of credit, if any, which attaches to his testimony.

Amarasena is a young man who volunteered for service abroad during the war. He belonged to the Army Service Corps and saw active service in the Allied Army from El Alamain to Italy. He admits that a Court Martial sentenced him to a term of imprisonment for assaulting an officer. Such an offence committed in the field during war would, one imagine, carry with it a death sentence. He was sentenced to imprisonment which the authority who reviewed the sentence reduced to eighteen months. He denies that he was convicted of any other offence. He explains that he assaulted his superior officer because the latter called him a " Black b.. d ".

Amarasena says that he made the acquaintance of one David who gave Amarasena a letter introducing the latter to Benjamin de Silva, one of the respondent's trusted clerks. Amarasena says that be interviewed the respondent towards the end of August, 1947. The respondent spoke to Amarasena and then called Felix Boteju and told him to employ Amarasena as one of his workers. Felix Boteju took Amarasena to his office at D'eyn Court and, having taken down his name and address, told Amarasena that he should report for duty on September 1.

Accordingly, on that day Amarasena began to work for the respondent under the immediate supervision and control of Felix Boteju. Amarasena

says that he went about the electorate canvassing for the respondent. When he was free, he was at D'eyn Court and supervised the election staff in the office. Thereafter, he was placed at the head of a team of men whose duty it was to go with the respondent's lists from house to house in certain areas checking whether the voters were resident at their registered addresses, and to note who were missing or who had died, &c. This work Amarasena did and, when the work was completed, he handed the checked lists to Felix Boteju.

Amarasena and his team were subsequently sent out again with the lists and the respondent's election cards. His instructions were to revisit the houses, to deliver the cards to the registered voters, and to make a final check of the typed lists. Amarasena says that when this work was completed, there was left over a number of the cards which could not be delivered because the voters either had left their addresses, or were dead, or could not be contacted. These undelivered cards and the checked lists were brought back to Felix Boteju. Amarasena says that this took place. about a week before election day.

When Amarasena brought back the lists and the undelivered cards, Boteju directed Amarasena to take both to the main bungalow and hand them over to the son-in-law of the respondent. That gentleman bundled the undelivered cared and the lists together and wrote on a piece of paper to which polling station those documents referred, and put them into a bag or trunk under the table. The witness de Junk stated that after these election cards had been written out, they were tied up and put into a trunk together with the lists from which they were entered up. It will be remembered that the respondent admits that these undelivered cards and the checked lists were so preserved. Amarasena says that he asked Felix Boteju what necessity there was to take the cards of persons who were shown in the lists as having left their addresses or who were dead. Felix Boteju then replied " Deliver the cards and bring back the balance ".

On the night of September 19, 1947 (the night before the election) Amarasena says that be was working at D'eyn Court. At 11 or 11.30 p.m., Boteju told him that the respondent wanted to see them both in the main bungalow. Amarasena says that the respondent in the course of conversation, placing his hand on Amarasena's shoulder, said " We are in a

dead heat. We must win this election at all costs. We must do some impersonation. Go with Boteju ". Thereafter, Boteju and Amara-sena took one of the care and went to a place in Slave Island near the Nippon Hotel. There Boteju contacted Millie Nona alias Aslin. This woman produced some persons of both sexes who were transported in the car to No. 246, Havelock Road. Boteju and those persons alighted at that place. According to Amarasena, thereafter right through the night he and one Munasinghe transported men and women from Slave Island to No. 246, Havelock Road. Amarasena says that he must have transported about eighty or ninety persons that night in batches of five or six per trip. Amarasena swears that Felix Boteju was in charge of No. 246, Havelock Road. Amarasena also says that about 5 a.m. on election morning a lorry came to that house with thirty or forty persons. He estimates that there must have been about two-hundred or three-hundred men and women at No. 246, Havelock Road, by the time the polls opened.

I have already discussed the evidence relating to the alibi sought to be established on behalf of the respondent in order to show ihat he was not at D'eyn Court on the night of September 19, 1947, at the time Amarasena says the respondent spoke to him regarding the impersonations. In my opinion, this alibi, when weighed in the scale against the petitioner's evidence, by no means establishes that it was not possible for the respondent to have been at D'eyn Court at the time Amarasena refers to and yet not be seen by the other workers of the respondent in the premises. The inspection of D'eyn Court shows that the grounds are spacious, the office is at the back, and the main house itself is a very large house where a member of the household may be in the house without being seen or known to be present by the other members of the household. In my opinion, the alibi fails.

In the morning, Amarasena says that Boteju sent him to D'eyn Court with a chit. The respondent then called to Leslie Boteju who gave Amarasena the bag containing the cards and the lists. This bag Amarasena took to 246, Havelock Road, and handed it to Felix Boteju.

After that, Amarasena was ordered to take voters to the polls, and he swears that the persons who had been brought to 246, Havelock Road, were conveyed to the polling stations. Many of these persons asked

Amarasena to refresh their memories regarding the names in the election cards they had in their possession, and the voter's number. On one occasion when Amarasena returned to 246, Havelock Road, at about 10 or 10.30 A.M., he saw the respondent inside those premises engaged in conversation with Felix Boteju.

The times given by Amarasena are approximate only. The respondent has endeavoured to establish another alibi in order to show that at the time referred to by Amarasena he was touring the electorate in the company of the witness Mr. M. F. Ghany, a member of the Colombo Municipal Council and who was under obligations to the respondent. According to Mr. Ghany, he went to D'eyn Court on election day between 7.45 and 8 a.m. in order to " assist" the respondent. This assistance took the form of the respondent getting into Mr. Ghany's car and visiting fifteen or sixteen polling stations. I have no doubt that the respondent did so. Mr. Ghany, however, is uncertain as to the time when he finally left the respondent. Before the luncheon interval Mr. Ghany said that the respondent left him at about 12 noon. After the luncheon interval Mr. Ghany was of opinion that the respondent left him either at 11 or 11.15 a.m. or 10 or 10.15 a.m. According to the respondent, he parted with Mr. Ghany between 11 a.m. and noon. Mr. Ghany admits that while the respondent got out of the car and entered various polling stations he did not accompany him. The witness is positive that the respondent did not visit 246, Havelock Road. As I have pointed out, the Colts' Pavilion polling station is in close proximity to No. 246, Havelock Road. The journal of the presiding officer at the Colts' Pavilion shows that the respondent visited the Colts' Pavilion on three occasions- at 8.43 A.M., at 11.15 a.m., and again at 3.50 p.m. There is something wrong because the journal of the presiding officer at the Jawatta polling station has also recorded that the respondent visited that polling station at 11.15 a.m. It is, of course, impossible for the respondent to have been at two different polling stations at the same time. It was on this second visit to the Colts' Pavilion that the respondent interfered when the impersonator Cecilia Perera was challenged. The presiding officer's journal fixes that time as being 11.20 a.m. According to Amara-sena, he saw the respondent engaged in conversation with Felix Boteju at 246, Havelock Road, at about 10 or 10.30 a.m. If, as Mr. Ghany stated, the respondent left him between 10 or 10.15 a.m., it was possible for the respondent to have gone to No. 246, Havelock Road, between 10

and 10.30 a.m. and have gone to the Colts' Pavilion at 11.15 a.m. The alibi therefore is not water-tight.

I am, however, unable to place reliance on the evidence of Mr. Ghany. This witness is under obligations to the respondent. He admits, that during the Municipal elections in November, 1946, the respondent gave him a present of four thousand rupees. He denies that this was a bribe given to him by the respondent to vote for the latter as Mayor. He admits that he collected a sum of twenty-thousand rupees from members of the Municipal Council. He says he wanted this money because his rival had spent about a lakh of rupees. Hesays this money was required in order to be given " to various workers because there was hugger on the other side ". He also added " I paid thugs not to get thugged from the other side ". The respondent admits that on February 24, 1948, he gave Mr. Ghany a loan of one thousand rupees. This was during the pendency of this case. The respondent says that Mr. Ghany's sister was to be married and a dowry had been promised and Ghany " came running to my house and told me that he was short of one thousand rupees and asked me to accommodate him ". In my opinion Mr. Ghany is a person on whose word no Court can rely. I am satisfied that Amarasena is speaking the truth when he says that he saw the respondent at 246, Havelock Road.

Amarasena says that until about 11.30 a.m. he was engaged in transporting these persons to the polls. He made one trip to the Museum polling station, and two trips to the Jawatta polling station. On his return after the third trip, he observed that there was confusion and consternation at No. 246, Havelock Road. He heard Felix Boteju telling people

" Go out and come back later ". Amarasena questioned Boteju as to what this meant. Boteju told him " Things have become bad. You also had better go and stay at the C Booth and come later." Amarasena did so, and when he returned some hours later, he found normal conditions prevailing at 246, Havelock Road. It will be remembered that the police raid on the New Respect Club took place about this time.

According to Amarasena, on election day he did seven or eight trips in all, taking impersonators to the polls involving about sixty or seventy persons. The others engaged in transporting impersonators were Munasinghe,

Leslie Boteju and others.

After the poll closed, Boteju and Amarasena took a woman worker by car to an address at Avondale Road and then returned to D'eyn Court. There an angry scene was being enacted. Immediately Felix Boteju appeared, some persons surrounded him shouting " Where are our people? They are in police custody. We want our men"- referring to those impersonators who Had been detected and were under arrest. Amarasena went in search of the respondent. In the bungalow he found Mr. de Mel confronting three or four men who were angrily throwing money on a table saying " We were promised Rs. 5 for each vote. I voted seven times and should get Rs. 35 and this is what I got ". The respondent was replying " I don't know! I don't know! " Felix Boteju then came on the scene and reported that persons had been locked up and that their frigid were demanding their liberation on bail. The respondent told Boteju " Try and bail them out ".

Boteju and Amarasena with S. H. Fernando and M. C. Cooray then went to Bambalapitiya police station but the police refused to accept bail. Boteju and Amarasena therefore returned to D'eyn Court. S. H. Fernando and M. C. Cooray say that they were two of the persons who were insisting that the persons they had brought from Angulana should be set free-particularly M. Abraham Gunawardene and Norman. At. C. Cooray says he went back to Angulana to inform Gunewardene's wife, while S. H. Fernando returned with Boteju and Amarasena. According to S. H. Fernando, he was determined not to lose sight of Boteju until his friends were set free.

Amarasena says that he had been promised a certain fee and a bonus if the respondent was successful. As this did not appear to be an opportune time for him to make this demand from the respondent, be went home. On September 23 and for several consecutive days, Amarasena says he tried to get payment from the respondent, who put him off on various pretexts. On his last visit Amarasena says the respondent asked his wife to give him Rs. 25, whereas he had to receive Rs. 100 as balance pay and Rs. 100 as a bonus. Amarasena says that he remonstrated with the respondent and finally left in anger.

Amarasena candidly admits that had the respondent kept faith with him, he would not have given him away. Having been treated in this manner,

Amarasena decided to avenge himself on the respondent by exposing him. He spoke to several people and finally contacted Mr. Saravanamuttu, the petitioner, about three weeks after the election.

Amarasena had with him the typed list P 14 belonging to the respondent which he had used on polling day. This he handed to the petitioner and told him his story.

This election petition was filed on October 10, 1947., On January 29, 1948, this Court ordered the petitioner to furnish particulars to the respondent. By this time it is suggested that Amerasena's treachery must have reached the ears of the respondent. Amerasena swears that on Saturday, February 28, 1948, Felix Boteju and Marcus Dias came in a car to Amerasena's house and induced him to accompany them to the Maliban Hotel, Borella, where arrack was consumed. After that the suggestion was made that Amerasena should go to D'eyn Court and see the respondent. Amerasena flatly refused to do so. So he was taken back to his own house, where Felix Boteju alighted ; while Marcus Dias went in the car to fetch the respondent to Amarasena's house. By this time, Amarasena says he was drunk. Mr. de Mel, Marcus Dias and Colonne came to Amarasena's house. Amarasena says that the respondent tried hard to persuade him not to give evidence in this case. He said amongst other things "You are a Sinhalese, I am a Sinhalese. Why should you give evidence for a Tamil ? " and used similar arguments. Amarasena says that he refused to retract. Finally he was persuaded to go to D'eyn Court with the respondent in his car. There a paper was produced and Amarasena was requested to sign it. On his refusing to do so, de Mel said "You are drunk. Go home and think about it and come tomorrow. I'll send you the car ". If M. C. Cooray's and H. S. Fernando's evidence can be believed the procedure adopted in inducing them not to give evidence was similar.

On the following day-Sunday, February 29, 1948, the respondent's car came to Amarasena's house, and he was taken to D'eyn Court. There were present at this interview, the respondent, his prospective son-in-law, his son, his daughter and Proctor Jayanayake. Amerasena says that great pressure was brought to bear on him to sign the statement and also to get at the petitioner's witnesses, and a reward was promised. Amarasena, however, remained unresponsive.

Thereafter, the respondent took Amarasena in his car for a drive, and in the Fort the respondent got a cheque cashed at a boutique in Baillie Street. In the car the respondent again offered money to Amarasena who refused to accept it. Finally he was dropped at Havelock Road, the respondent promising to send his car for Amarasena in the evening.

Amarasena then met Samaraweera and told him what had transpired. He was then directed to the petitioner, and Amarasena repeated his story to Mr. Saravanamuttu, who told Amarasena to go and see the respondent, and that he would arrange to have a photograph taken of the respondent's car when it called to take him to the respondent's house. Mr. Saravanamuttu says that his inability to obtain films on a Sunday frustrated this object.

At about 4 p.m. that afternoon the respondent's car took Amarasena to D'eyn Court for the last time. In the car was Colonne besides the driver. At D'eyn Court there were present the respondent, his Proctor Andrew de Silva, and Felix Boteju. Amarasena swears that he observed

R. A. Rosaline Nona hanging about the compound. The statement was again produced and Amarasena was offered sums ranging from Rs. 300 to Rs. 1,000 to sign it as well as a job in the respondent's business which he described as " My Landing and Shipping Company ". Amarasena says that Andrew de Silva finding that all attempts to make Amarasena sign the statement were useless observed to the respondent " That b...will not sign ". The respondent, however, did not give up. He requested Colonne to take Amarasena into the main bungalow where whisky and biscuits were offered him. The respondent asked Amarasena what he was going to say in Court, and Amarasena retorted " Come to the Court and find out ". The respondent then warned him that if he admitted he took bribes he would be convicted. Amarasena says that the respondent also showed him a box containing a number of cheque books, and he also showed him the counterfoil of a cheque for Rs. 100 which he had given Clone. All efforts to tamper with the witness having failed, he was sent home in the respondent's car. On March 1, 1948, Amarasena says that the petitioner took him to the C. I. D. where his statement was recorded.

The case for the respondent is that the whole story told by Amarasena is a

tissue of falsehood from beginning to end. It is denied that the respondent ever set eyes on this witness until he entered the witness box, and that he never employed him. I agree that Amarasena on his own showing is a treacherous witness and his evidence, even if he is not an accomplice of the worst type, must be accepted with the greatest caution. But before his evidence can be rejected, it is my duty to consider it and test it.

Assume that Amarasena is a false witness who has been procured by the petitioner and coached, to give false evidence about things which never happened. If so, the persons who coached the witness had a fairly accurate knowledge of the routine in the respondent's office and house. Amarasena stated that in the office there was a kind of partition effected by placing admirals. The defence witness Jayawickreme supports Amarasena about this partition. Amarasena described the position of the telephone. This was observed when the Court inspected the premises. How did Amarasena or the petitioner obtain possession of the respondent's list P 14 1 Amarasena's description of how the voters were checked and the cards were distributed is not different from what the respondent himself stated. The alleged team mates who accompanied Amarasena when he went his rounds should be available to deny that what Amarasena is saying is true. The accredited supporters and agents of the respondent in the places where Amarasena says he canvassed should be available to come forward and state that Amarasena never came there. Amarasena stated that Felix Boteju had warned him that Sama Samajists pretending to be de Mel's supporters would come and take money on the pretext of supporting de Mel. The respondent's evidence is that Mr. Goonesinha had warned him about such a thing. How did the persons who coached Amarasena know that fact? How did any stranger know that the undelivered cards were kept in a box or trunk ? If Amarasena's evidence is false, it should have been possible to obtain some evidence to show where Amarasena was on September 19 and 20. Amarasena refers to Munasinghe and Leslie Boteju. Neither of them has been called to-contradict Amarasena's evidence. The defence is that it was Benjamin de Silva who was in charge of the petrol work at 246, Havelock Road, on election day, and that Felix Boteju was not there. It was not put to Amarasena that it was Benjamin de Silva and not Boteju who was at 246, Havelock Road, on election day. Persons at the Maliban Hotel, Borella, should be available to contradict Amarasena's evidence.

Furthermore, Amarasena, although he is an unscrupulous person, gave his evidence well. He was a better witness than either the respondent or Mr. Andrew de Silva.

Amarasena on his own showing is an accomplice of a despicable type. If he can be believed, he was admitted into the inner councils of the respondent, and he now treacherously implicates his master out of revenge because the latter had not kept faith with him. As a judge of facts I, therefore, have kept prominently before my mind the cardinal principle that it is unsafe to convict any person on the uncorroborated evidence of an accomplice. I have, therefore, considered the case apart from the evidence of Amarasena, and have reached my conclusions quite independently of the evidence of this tainted witness.

Is Amarasena's story corroborated ? In other words, is there independent evidence, direct or circumstantial, which affects the respon dent and the accomplice by connecting them or tending to connect them on some material point or points in which the accomplice incriminates the respondent ? In other words, is there any independent evidence, direct or circumstantial, which implicates the respondent and confirms in some material particular, the story of the accomplice, not only that the offence of abetment of personation was committed but also that it was committed either by the respondent, or by his agents, or by persons with the knowledge or consent of the respondent. Putting it in another way, corroboration is direct or circumstantial evidence, independent of the accomplice which affects the respondent by connecting him or tending to connect him with the abetment of personation as defined by the Order in Council. This corroboration need not extend as regards the whole story told by Amarasena, for in that case there would be no need for his evidence at all. It will suffice if Amarasena is corroborated on one or more material particulars as regards the person he implicates.

In my opinion Amarasena has been so corroborated on material particulars :-

(1) He is corroborated by the witness de Jonk who says that the cards and the lists were bundled and put into a box.

(2) Amarasena says that he saw R. A. Rosaline Nona hanging about the compound at D'eyn Court. That a connexion existed between this impersonator and the respondent is proved by her letter to the respondent, and by the incidents of the night of May 12, 1948.

(3) Amarasena says that the electors' lists were subjected to a double check. The documents P 20 and P 22 found at the New Respect Club show that there was such a double check as already pointed out by me.

(4) The witness Weerasinghe corroborates Amarasena in regard to de Mel's visit to Amarasena's house on the night of February 28, 1948. Marcus Dias and Colonne were available to state that no such thing happened, and they have not been called.

(5) Amarasena says that the respondent showed him the counterfoil of a cheque for Rs. 100 issued to Colonne. That counterfoil has been produced from the respondent's custody and is the exhibit P 197 dated February 29, 1948.

(6) Amarasena says that on February 29, the respondent cashed a. cheque in Baillie Street. That cheque has been produced-P 198. The respondent says that his counterfoil book containing that cheque is lost. I disbelieve the witness Grouse that the cheque P 198 was cashed at Chatham Street on Monday. This money changer has a. desk outside the Chartered Bank, and when the bank closes that desk by arrangement with the Bank officials is kept inside the Bank. Grouse admits that his firm has authority from the Labour Department to work on Sundays. When there are ships in harbor on s Sunday, provided they can get their desk out of the Bank, they can ply their trade. The witness admits that though Banks are closed for business on Sundays, it often happens that the Bank officials work. The gates must, therefore, be opened. When this is done, the money changer's desk can be handed out by the gate-keeper. The cheque P 198 thus; could have been cashed on Sunday, but would only be entered in the money changer's books on the following day. The person who cashed the cheque is the respondent's driver. He has not been called. I cannot accept the suggestion that the petitioner having surreptitiously obtained information from the bank clerks about cheque P 197 and P 198, then fabricated the corroborative evidence of Amarasena. In. my opinion, these two

documents afford strong corroboration of one part of Amarasena's story.

(7) Gimarahamy, in an unguarded moment, admitted that she was taken in a car on the night of September 19. This supports Amarasena.

(8) The conduct of Milli Nona alias Aslin in going to the police- station and the Magistrate's Court to liberate the impersonators on bail supports Amarasena's story that it was she who supplied the impersonators who came from 246, Havelock Road.

(9) Amarasena's possession of P 14, an admittedly genuine document, corroborates his story.

(10) Felix Boteju's complaint to the Colpetty Police against Marcus Dias on the night of September 9 corroborates Amarasena.

I have considered the first charge against the respondent quite independently of the evidence of Amarasena. I find that evidence without the evidence of this witness proves that charge beyond all reasonable doubt. The evidence of this accomplice corroborated as it is on material particulars, supports the findings I have independently reached.

To sum up any findings-

After carefully weighing the evidence, oral, circumstantial and documentary, and the probabilities and arguments advanced on both sides, I reach the conclusion that the following facts have been established to my satisfaction beyond all reasonable doubt:-

(a) The fifteen persons referred to above committed the offence of personation on September 20, 1947 ;

(b) that these persons committed these offences for the benefit of the respondent;

(c) that there existed a conspiracy by a body of persons to abet these fifteen persons to commit the offence of personation for the benefit of the respondent.

(d) that the respondent was privy to this conspiracy, and that it was done with his knowledge or consent.

(e) I further find that such abetments were committed-

(i) In the case of Cecilia Perera by the respondent, at the Colts' Pavilion Polling Station. She was also abetted at 246, Havelock Road, by the agents of the respondent who were there including Felix Boteju and Amarasena ;

(ii) Hendrick and Luvinahamy were abetted by the respondent's agent Ebert alias Wilson Peris and also probably by Albert. Abetment of the impersonator Luvinahamy also took place at 246, Havelock Road, by Felix Boteju and Amarasona.

(iii) Mrs. Rodrigo was abetted by the respondent's agent, Oliver.

(iv) Gimarahamy was abetted at 246, Havelock Road, by the agents of the respondent, including Felix Boteju and Amarasena.

(v) U. Justin was abetted by the respondent's agent, Ekmon Seneviratne.

(vi) Kusumawathie and D. Rosalin were abetted at 246, Havelock Road, by the respondent's agents including Felix Boteju and Amarasena.

(vii) R. A. Rosaline Nona was abetted by the respondent's agent, Ekman Seneviratne.

(viii) The impersonators H. Dona Veronica Peris, M. Abraham Gunewardene, Norman, Caroline Perera, E. A. Jane Nona and Ranso Haniy were each abetted by unidentified persons. I find that these abetments took place in pursuance of the conspiracy aforesaid which was carried out with the knowledge or consent of the respondent.

(f) I also find that Milli Nona alias Aslin of Market Passage, Slave Island, participated in the abetment in procuring impersonators including Luvinahamy, Gimarahamy and Hendrick.

On these findings, T find the respondent guilty of the first charge.

The Charge of Bribery.

Paragraph 3 (d) of the petition charges the respondent with committing a corrupt practice, to wit, bribery in connexion with this election by himself, by his agents, or by persons with the knowledge or consent of the respondent.

Section 57 of the Order in Council defines what " bribery "is. Section 58 (1) (b) makes the commission of the offence of bribery a " corrupt practice ". Section 77 (c) enacts that the election of a candidate shall be declared void on an election petition if it is proved to the satisfaction of the Election Judge that a "corrupt practice" was committed in connexion with the election by the candidate, or with his knowledge or consent, or by any agent of the candidate.

There were thirteen specific charges of bribery alleged in the particulars. All these have now been abandoned with the exception of seven, which are said to have been committed on September 19, 1947, at a place called Wanatamulla.

These charges, unlike the first charge, depend entirely on direct evidence. It is alleged that the respondent having on September 17, cashed the cheque P 200 for Rs. 6,000 sent his agents Mr. Swithin de Mel and Hapuarachchi with a bag of money to distribute largess to the poor electors of Wanatamulla on September 19, in order to secure their votes on the following day.

The respondent says that he cashed this cheque " for emergencies ". He has explained how he spent that money. I am unable to hold that this explanation is false or improbable. It is in the highest degree improbable that in broad daylight the respondent would send two agents from morning till evening to go from house to house like Santa Claus distributing money in the manner alleged. The supporters of the rival candidates would become aware of such activities, and the fraud would easily have been detected and the culprits caught in the act. In any event, far better evidence

should, if this charge is true, have been forthcoming. Having regard to the careful manner in which the impersonations referred to in the first charge had been planned and carried out, I cannot imagine that the respondent or his agents would have been so foolish as to attempt bribery on such a large scale by day.

The witnesses who were called to support this charge did not impress me. Were it not for the fact that Mr. Swithin de Mel, in a panic that his presence might be secured by means of a warrant kept out of the way by going to the Southern Province and then crossing over to India without even telling his daughter who kept house for him, where he was going, there is nothing in this charge. The disappearance of Hapuarachchi is partly attributable to the same cause.

The evidence of the witnesses who gave direct evidence is unsatisfactory and does not justify the Court in basing an adverse finding against the respondent on testimony which has neither the ring of truth, nor bears. the stamp of probability.

I find that this charge has not been established, and I, therefore, hold that the respondent is entitled to be absolved there from.

The Contracts which are alleged to disqualify the Respondent from election.

The particulars specify four such contracts. One of these charges was abandoned at the commencement of the inquiry. Evidence was led in regard to the other three which may be described as :-

(a) The contract between The New Landing and Shipping Co., Ltd., and the Crown ;

(b) The lumbago contract ; and

(c) The respondent's agreement to pay a debt by installments.

(a) The Contract between the New Landing and Shipping Company, Limited, and the Crown.

The question for decision is whether the contract P 156 dated June 28, 1947, admittedly entered into between the Company known as the New Landing and Shipping Co., Ltd., and the Crown in regard to the landing of certain property of the Crown from ships in the harbor to the Customs warehouses on shore, is one which is caught up within the provisions of section 13(3) (c) of the Ceylon (Constitution) Order in Council, 1946, so as to disqualify this respondent from being elected as a member of the House of Representatives.

There had existed a business known as The Landing and Shipping Agency which was wound up and ceased to function in 1941. In 1942 the respondent purchased this business, added to it and registered it in his own name as sole proprietor calling it The New Landing and Shipping Company. This was not a limited liability company.

The Government of Ceylon, having no lighter age facilities of its own, has to engage the services of private companies whenever goods belonging to the Crown have to be transported from ships in the harbor to the shore. During the war, and particularly during the food crisis, this work assumed large proportions. It was also found that goods were being pilfered in transit, and it was extremely difficult to fix the responsibility for such losses on any particular person or firm. It is in evidence that various departments of the Crown were in the habit of utilizing the services of the New Landing and Shipping Company in this transportation work. The Director of Food Supplies, in particular, engaged the services of this company to land the large shipments of food which were arriving at the port of Colombo.

When the Order in Council became law, and the respondent decided to contest the Colombo South seat, he realized that the work which his lighter age company was doing for the Crown might possibly lead to his disqualification under section 13 (3) (c) of the Order in Council. He, therefore, took legal advice and decided to transfer his business to a new private company which was to be formed, namely, The New Landing and Shipping Co., Ltd., (hereafter referred to as " the Company").

The company was incorporated on May 16, 1947. The capital of the company was Rs. 1,000,000 divided into 10,000 shares at Rs. 100 per share.

Previous to the incorporation of the company, that is to say at the time when the respondent was the sole proprietor of the old company, the Director of Food Supplies had been in correspondence with the respondent and other landing companies with the object of entering into contracts in regard to this transportation work. With his letter P 232, dated April 8, 1947, the Director of Food Supplies forwarded to the respondent a draft agreement approved by the Attorney-General. This letter bears out the respondent's evidence that he had intimated to the Director that he intended to float a company under the Companies Ordinance, because the Director asks the respondent to let him know the registered name and address of the new company and also the Ordinance or statute under which it was incorporated " to enable me to prepare final copies for signature ".

Mr. Alvapillai, the Director of Food Supplies, states that a few days before June 28, the respondent saw him and said that he would get the contracts signed by his wife who was a Director. The respondent did not reply to P 232 until after the company had been incorporated. On the following day, May 17, 1947, the respondent wrote the letter P 233 to the Director stating that the name of the new company was the New Landing and Shipping Co., Ltd., and gave its address. He added that the company had been incorporated under the Companies Ordinance, No. 51 of 1938. Mr. Alvapillai, the Director of Food Supplies, states that a few days before June 28, the respondent saw him and said that he would get the contracts signed by his wife who was a director.

On June 28, 1947-that is to say about three months before the election-the contract P 156 was entered into between the company and the Director of Food Supplies acting for and on behalf of the Government of Ceylon. Clause 1 of the contract provides that " in consideration of the payment of remuneration at such rates as may from time to time be mutually agreed upon between the Director and the Company " the Company undertakes to perform and carry out for the Government, inter alia, the carriage and haulage in the port of Colombo, from the ship's side to shore of goods and cargoes imported, purchased, or otherwise acquired by or on behalf of the

Government and to deliver the same into the Customs premises, &c. Clause 2 provided that the Company " shall undertake and carry out the services specified in Article 1 in respect of such food or other cargoes as may be allocated to them for carriage, warehousing and delivery by the Director in writing ". The company further undertook to commence work within three hours of the receipt of such notice of allocation which was to be in writing signed by the Director or any other officer authorized by the Director to make such allocation. This contract was signed on behalf of the Company by the respondent's wife in her capacity as a director of the Company and for the Crown by Mr. Alvapillai, the Director of Food Supplies. The petitioner alleges that this contract disqualifies the respondent from election.

the formation and incorporation of the company ; and that on incorporation the company became a legal person distinct from and independent of the respondent and the other shareholders. I further find that at the date of his election the respondent did not " directly . for his use or benefit hold or enjoy any right or benefit " under the contract P 156.

Did the respondent at the date of his election " indirectly by himself or by any person on his behalf or for his use or benefit hold or enjoy any right or benefit " under the contract P 156 ? Putting it in another way, has the petitioner satisfied the Court that the Company when it entered into this contract was acting as the secret agent or nominee of the respondent ? It is nor for the respondent to prove that the Company was not his agent or nominee. This must be established by the petitioner by a preponderance of probability or on the balance of evidence. In deciding this question the Court must examine the surrounding circumstances including the subsequent conduct of the respondent and the Company. One relevant matter would be whether there has been any confusion between the money of the company and the funds of the respondent, and whether there is evidence to show that the respondent enjoyed benefits which were not available to the other shareholders.

It has been established that on three occasions the respondent referred to the Company as " My business ". Amarasena stated that in February, 1948, when the respondent was persuading him not to give evidence at this inquiry, he referred to the Company as " my business ", and promised him

work in the Company. In 1944 when the respondent was the sole proprietor of The New Landing and Shipping Company, the Rubber Commissioner gave him work. The respondent requested the Rubber Commissioner to give credit facilities to one Nelson de Silva, whom the respondent described as his kinsman, and agreed to be Nelson de Silva's surety. Credit was given to Nelson de Silva who defaulted. Legal action was taken against him, but Nelson de Silva was evading service of summons. In June or July, 1947, the Rubber Commissioner's Department brought pressure to bear by giving no work to The New Landing and Shipping Co., Ltd. The respondent, however, who as a mere shareholder had no concern with what work was given to the Company or not, telephoned that department and referred to the Company as " my business " and enquired why they had been treated in this way. What is more, the respondent who by then had been elected to the House of Representatives threatened to report Mr. Casinader, the head of the department, to the Minister. When living evidence in this Court the respondent said this :-

Q.-Is your Company a genuine Company or is it a camouflage ?-I cannot say it is a camouflage.

Q.-Are the shares given to Mr. Andrew de Silva and Mr. David Peiris legal shares ?-Yes. I gave Andrew de Silva one lakh rupees worth of shares, that is a one-tenth share. It is a genuine share.

Q.-You genuinely intended giving Andrew de Silva one lakh rupees worth of shares in consideration of services rendered ?-Yes.

Mr. S. C. Banker, the Manager of Messrs. Narottam and Pereira, a firm of landing agents, says that there is an association of the lighter age companies working in Colombo, and that on August 15, 1946, the respondent who was then the proprietor of The New Landing and Shipping Company was elected chairman of the association and has continued since. His qualification for election was that he represented The New Landing and Shipping Company. No notification was ever made to the association that The New Landing and Shipping Company had become defunct, and that Company is still a member of the association while the limited liability Company is not. The respondent still remains a member of the association although he has not attended meetings. He never sent a

notification that he had ceased to possess the qualifications of a member. Notifications of the meetings of the association are still sent to him. Mr. W. H. D. Perera, the Port Controller, says the respondent once came to see him with J. Alfred Fernando in connection with some landing work in February, 1948.

One of the directors -I believe the managing director-of the Company is the respondent's wife, who is described as being an invalid. The other director is a servant of the respondent. The suggestion is that they are dummies and that the respondent is the person who manages and works this Company. There is also the admitted fact that the cheque books of the Company are often kept at the respondent's residence in his safe, and not at the registered office of the Company. Amarasena says the respondent showed these cheque books to him when he promised to give Amarasena work " in his Company ".

Mr. G. St. Elmo Nathanielsz, a clerk in the Eastern Bank, swore that Mrs. de Mel and the Secretary of the new Company authorized the bank by letter that the bank could honour cheques drawn by the respondent. He stated that that letter was in the bank and he had not brought it as he had not been noticed to produce it. The witness was then directed to produce that letter. Mr. Ross, the Manager of the Eastern Bank, thereafter produced the document P 284 dated May 27, 1947. This is not the document referred to by the bank clerk, which was a letter written by Mrs. de Mel and the Secretary of the new Company, whereas P 284 is a document written by the respondent. Mr. Ross was then told that the clerk had sworn that the director and Secretary of the Company had authorized the bank to honour the signature of the respondent on account of the Company. The witness' answer was, not that there was no such letter, but that he had not that information. He was asked to produce that letter, but nothing further has been heard about the matter, and, therefore, nothing flows from it. Bank clerks as a class generally are precise witnesses. It is curious, therefore, that Mr. Nathanielsz should have made a mistake on a matter like this.

Mr. Thirunathan of the Bank of Ceylon has produced certain cheques issued by the Director of Food Supplies both before and after the Company was incorporated. These are P 268 of April 11, 1947. for Rs. 845.98 in had to be left open. What the parties say in effect is " If the Director or his

agent gives the Company notice of allocation in writing, the Company undertakes to clear the goods within three hours of the receipt of that notice. The fees and rates of pay we deliberately leave open because these may vary according to circumstances. These matters we shall agree upon from time to time ". In my opinion not only does P 156 create a valid contract, but it is a contract from which rights and benefits flow to both contracting parties.

The real question which emerges for decision is whether the Company when it entered into the contract P156 was acting as the agent or nominee of the respondent. If that question is answered in the affirmative, the disqualification created by section 13 (3) (c) arises. If the answer is in the negative, no such disqualification can arise.

There is nothing in the contract P 156 to show that the respondent enjoys any special position, right, or benefit in this contract as distinct from the other shareholders of the Company. Furthermore there is no evidence of any collateral agreement between the Company and the respondent that he was to enjoy any special rights or benefits under this contract. It is not for the respondent to give explanations. It is for the petitioner to satisfy the Court by a preponderance of probability or on the balance of evidence that the Company when it entered into this contract did so as the agent or nominee of the respondent.

Both sides have referred to the case of Salomon v. Salomon 1. The House of Lords held that upon incorporation a limited liability company forthwith became a legal persona, as distinct from the members or shareholders-see Palmer's Company Law (1942 edition), pages 45-46. The Company has been formed and duly incorporated in accordance with the provisions of the Companies Ordinance. Once the certificate of incorporation is issued, section 16 of that Ordinance makes that certificate conclusive evidence of its existence as a legal persona separate from and independent of its shareholders. Therefore, the Company and the respondent are two distinct legal persons. The fact that he as a shave-holder 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. No fraud has either been alleged or proved in regard to the incorporation of the Company. On the contrary, the evidence makes it clear that the respondent

took legal advice and spoke about the formation of the Company to Mr. Alvapillai. The motive of the respondent in having this Company incorporated is irrelevant. The fact that a person does a lawful act with the express object of avoiding a disqualification does not render unlawful that which is a lawful act. Thus it is not unlawful for a rich business man to turn his business into private limited liability company in order to avoid taxation or to escape estate duty. If a way of carrying out a transaction without incurring a liability, penalty or disability can be found (i.e., lawfully found), a person is justified in adopting it--Commissioner of Inland Revenue v. Angus2. I am, therefore, of opinion that there was nothing illegal or improper in the formation and incorporation of the company ; and that on incorporation the company became a legal person distinct from and independent of the respondent and the other shareholders. I further find that at the dates of his election the respondent did not " directly. for his use or benefit hold or enjoy any right or benefit " under the contract P 156.

Did the respondent at the date of his election " indirectly by himself or by any person on his behalf or for his use or benefit hold or enjoy any right or benefit " under the contract P 156 ? Putting it in another way, has the petitioner satisfied the Court that the Company when it entered into this contract was acting as the secret agent or nominee of the respondent ? It is nor for the respondent to prove that the Company was not his agent or nominee. This must be established by the petitioner by a preponderance of probability or on the balance of evidence. In deciding this question the Court must examine the surrounding circumstances including the subsequent conduct of the respondent and the Company. One relevant matter would be whether there has been any confusion between the money of the company and the funds of the respondent, and whether there is evidence to show that the respondent enjoyed benefits which were not available to the other shareholders.

It has been established that on three occasions the respondent referred to the Company as " My business ". Amarasena stated that in February, 1948, when the respondent was persuading him not to give evidence at this inquiry, he referred to the Company as " my business ", and promised him work in the Company. In 1944 when the respondent was the sole proprietor of The New Landing and Shipping Company, the Rubber

Commissioner gave him work. The respondent requested the Rubber Commissioner to give credit facilities to one Nelson de Silva, whom the respondent described as his kinsman, and agreed to be Nelson de Silva's surety. Credit was given to Nelson de Silva who defaulted. Legal action was taken against him, but Nelson de Silva was evading service of summons. In June or July, 1947, the Rubber Commissioner's Department brought pressure to bear by giving no work to The New Landing and Shipping Co., Ltd. The respondent, however, who as a mere shareholder had no concern with what work was given to the Company or not, telephoned that department and referred to the Company as " my business " and enquired why they had been treated in this way. What is more, the respondent who by then had been elected to the House of Representatives threatened to report Mr. Casinader, the head of the department, to the Minister. When giving evidence in this Court the respondent said this :-

Q.-Is your Company a genuine Company or is it a camouflage ?-I cannot say it is a camouflage.

Q. Are the shares given to Mr. Andrew de Silva and Mr. David Peiris legal shares ?-Yes. I gave Andrew de Silva one lakh rupees worth of shares, that is a one-tenth share. It is a genuine share.

Q.-You genuinely intended giving Andrew de Silva one lakh rupees worth of shares in consideration of services rendered ?-Yes.

Mr. S. C. Banker, the Manager of Messrs. Narottam and Pereira, a firm of landing agents, says that there is an association of the lighter age companies working in Colombo, and that on August 15, 1946, the respondent who was then the proprietor of The New Landing and Shipping Company was elected chairman of the association and has continued since. His qualification for election was that he represented The New Landing and Shipping Company. No notification was ever made to the association that The New Landing and Shipping Company had become defunct, and that Company is still a member of the association while the limited liability Company is not. The respondent still remains a member of the association although he has not attended meetings. He never sent a notification that he had ceased to possess the qualifications of a member. Notifications of the meetings of the association are still sent to him. Mr. W.

H. D. Perera, the Port Controller, says the respondent once came to see him with J. Alfred Fernando in connection with some landing work in February, 1948.

One of the directors -I believe the managing director-of the Company is the respondent's wife, who is described as being an invalid. The other director is a servant of the respondent. The suggestion is that they are dummies and that the respondent is the person who manages and works this Company. There is also the admitted fact that the cheque books of the Company are often kept at the respondent's residence in his safe, and not at the registered office of the Company. Amarasena says the respondent showed these cheque books to him when he promised to give Amarasena work " in his Company ".

Mr. G. St. Elmo Nathanielsz, a clerk in the Eastern Bank, swore that Mrs. de Mel and the Secretary of the new Company authorized the bank by letter that the bank could honour cheques drawn by the respondent. He stated that that letter was in the bank and he had not brought it as he had not been noticed to produce it. The witness was then directed to produce that letter. Mr. Ross, the Manager of the Eastern Bank, thereafter produced the document P 284 dated May 27, 1947. This is not. the document referred to by the bank clerk, which was a letter written by Mrs. de Mel and the Secretary of the new Company, whereas P 284 is a document written by the respondent. Mr. Ross was then told that the clerk had sworn that the director and Secretary of the Company had authorized the bank to honour the signature of the respondent on account of the Company. The witness' answer was, not that there was no such letter, but that he had not that information. He was asked to produce that letter, but nothing further has been heard about the matter, and, therefore, nothing flows from it. Bank clerks as a class generally are precise witnesses. It is curious, therefore, that Mr. Nathanielsz should have made a mistake on a matter like this.

Mr. Thirunathan of the Bank of Ceylon has produced certain cheques issued by the Director of Food Supplies both before and after the Company incorporated. These are P 268 of April 11, 1947. for Rs. 845.98 in favour of The New Landing and Shipping Company. This has been endorsed by the respondent as the proprietor of that Company. P 269 of April 11, 1947,

for Rs. 644 in favour of the same firm and endorsed by the respondent as proprietor. P 270 dated April 11, 1947, for Rs. 848.50 in favour of the same firm and endorsed by the respondent as proprietor. The new Company was incorporated on May 16, 1947. P 271 dated May 19, 1947, for Rs. 195.96 in favour of The New Landing and Shipping Company and endorsed by the respondent as proprietor. Also P 272 dated May 24, 1947, for Rs. 1,016.03 in favour of The New Landing and Shipping Company endorsed by the respondent as proprietor, P 273 dated May 26, 1947. for Rs. 31,108.78 in favour of The New Landing and Shipping Company endorsed by the respondent as proprietor and P 272 dated June 5, 1947, for Rs. 21,985.78 in favour of the New Landing and Shipping Company also endorsed by the respondent as proprietor and also the further endorsement " To the credit of our account, New Landing and Shipping Co., Ltd.", signed by the respondent's wife as Director. P 275 dated July 2, 1947, is for Rs. 16,058.91 in favour of the New Landing and Shipping Company. This has been endorsed "To the credit of our account for and on behalf of The New Landing and Shipping Co., Ltd.", and has been signed by Mrs. de Mel and the Secretary, and the endorsement has been guaranteed by the bank. P 276 dated July 11, 1947, is for Rs. 33,138.24 in favour of The New Landing and Shipping Company. The endorsement is "The New Landing and Shipping Company" signed by the respondent as proprietor. This cheque was negotiated with the money changer Ghany & Co., and eventually was placed to the credit of the account of Ghany & Co.

Therefore after the Company was incorporated the respondent had endorsed cheques belonging to the new Company for sums aggregating Rs. 65,459.01 which sum came into his possession and not to the Company. Out of this sum Rs. 33,138.24 was taken by the respondent after the contract P 156 was entered into. It is to be noted that the respondent might have caused the books of the Company to be produced to show that this money was credited to the Company. There is no such evidence.

Then there is the cheque P 371 dated September 13, 1947, for Rs. 10,000 drawn by the respondent in favour of J. Alfred Fernando, the Secretary of the Company. The respondent explains that this was a loan by him to the Company which was short of cash to pay the workmen. If so, why was that cheque not drawn by the respondent in favour of the Company, so that should any question arise hereafter, the fact that the money was paid to the

Company could be proved? The respondent is a lawyer. His explanation is that he gave the cheque in a hurry and did not therefore think of the legal implications. There is also the circumstance that cheque counterfoils which have been called for are said to be missing, making it difficult to ascertain for what purpose certain cheques had been issued by the respondent. In other cases, the counterfoils are blank. The respondent has been unable to give a satisfactory explanation of these things. Even certain cashed cheques which should be in the bank vaults are missing.

The return P 226 shows that the number of shares allotted for a consideration other than cash by the Company amounts to 7,990. These allotters are :-

Allottee		Shares.	Value. Rs.
The respondent	....	5,000	500,000
Andrew de Silva,	....	1,000	100,000
J. Alfred Fernando	....	990+10.	100,000
David Pieris	....	500	50,000
Merrill Fernando	....	500	50,000

What were the services which the last four persons rendered to the Company for which they were rewarded by such munificent donations? Mr Andrew de Silva was the proctor who prepared the requisite papers for the incorporation of the Company, and who put the matter through. Is a proctor who helps to incorporate a Company paid a fee of Rs. 100,000? What were the services rendered by J. Alfred Fernando for which he was donated shares worth Rs. 100,000 ? Why was Mrs. de Mel one of the directors only given 10 shares for which she presumably had to pay cash? In Topham's Company Law (10th Edition) at pages 79-80 there is this passage: -

"Shares are often allotted as fully paid in consideration of services performed by the promoters before the incorporation of the Company. If these services have enhanced the value of any property sold to the Company, the allotment is really part of the consideration for the sale of the property, and is valid. If no property sold to the Company has benefited by the services, it is difficult to see what is the consideration for the

allotment, for past services are in law no consideration, unless rendered at request; and the company could not make such a request before it was incorporated, or ratify it afterwards. Such consideration is, therefore, probably illusory ".

In the light of all the facts and circumstances, it seems that the shares given to Mr. Andrew de Silva and J. Alfred Fernando are for an illusory consideration.

After careful consideration I reach the conclusion that the contract P 156 was entered into by the Company as the secret agent or nominee of the respondent who all along was, and still is, the real proprietor of that business. I hold that on the day of his election the respondent was disqualified from being elected by reason of the fact that he indirectly by a person on his behalf, namely The New Landing and Shipping Company, Limited, and for his use and benefit, held or enjoyed rights and benefits denied to the other shareholders under the contract P 156 made by or on behalf of the Crown in respect of the Government of the Island for the furnishing or providing services to be used or employed in the service of the Crown in the Island.

(b) The Plumbago Contract.

In April, 1947, the Director of Commerce and Industry issued the circular P 291 to lumbago dealers in the Island calling for offers. On April 29, 1947, that is to say before Election Day, the respondent made an offer by his letter R 25. By letter P 293 dated August 13, 1947, the respondent extended his offer until September, 1947. At the date of his election on September 22,1947, that offer, however, had not been accepted. On October 2, 1947, the respondent withdrew his offer. It is, therefore, clear that no contract was in existence at the time of his election. This charge therefore fails.

No doubt the respondent adopted the expedient of putting forward J. Alfred Fernando who " does not own a teaspoon of plumbago " to make an offer and for which Fernando was paid Rs. 123,70545, and although it is said that Fernando in fact only retained Rs. 1,000 on this deal, I cannot hold that Fernando acted as the agent of the respondent, because Mrs. de

Mel is also a dealer in lumbago ; and it is possible that the rest of that money or the greater portion of it went to Mrs. de Mel.

This charge, which was not pressed, therefore, fails.

(c) The respondent's agreement to pay a debt by installments.

The respondent during the war having supplied to the Imperial Government plumbago which was not up to sample, in August, 1946, he admitted liability in a sum of Rs. 345,742-83-see P 290. This liability he was allowed to discharge by installments for which the Ceylon Government, as the agent for the Imperial Government, accepted post-dated cheques. The Attorney-General holds the power of attorney of the proper authority representing the Imperial Government. At the date of his election admittedly a sum of Rs. 84,000 was still due from the respondent to the Imperial Government.

Even assuming that such an obligation is " a contract " within the meaning of section 13 (3) (c) of the Order in Council, it is not within the ambit of that sub-section because it was not made "on behalf of the Crown in respect of the Government of the Island ". It is also doubtful whether an obligation of this kind can be said to be a " contract " within the meaning of that sub-section but I do not decide that point.

I hold that this charge fails.

It is necessary to draw attention to an irregularity, which was brought to light in the course of these proceedings. The Order in Council provides elaborate precautions for the preservation of the secrecy of the ballot after the poll has closed. Section 47 provides that the presiding officer after the close of the poll in the presence of the candidates and their polling agents as attend, shall seal certain documents and the ballot boxes. Thereafter it is the duty of the presiding officer to dispatch such sealed packets and the ballot boxes in safe custody to the Returning Officer.

The Returning Officer after the votes have been counted is required by section 48 (6) to seal the tendered voted in separate packets. Section 48 (9) provides that on the completion of the counting and after the result has

been declared by him, " the Returning Officer shall seal up the ballot papers and all other documents relating to the election... and shall, subject to the provisions of the next succeeding sub-section, retain the same for a period of six months, and thereafter shall cause them to be destroyed unless otherwise ordered by the Commissioner ".

Therefore, all documents relating to the election which had not hitherto been sealed have to be secured and sealed by the Returning Officer. This would include such documents like the declarations made by voters, the presiding officer's journals, &c.

Once these documents have been sealed, it is only a Judge of the Supreme Court under section 48 (10) who may make an order " that any ballot paper or other document relating to an election which has been sealed as required by this Order be inspected, copied, or produced ". The Judge may not make such an order unless he is satisfied that such inspection, copy or production is required for the purpose of instituting or maintaining a prosecution regarding an election petition. " Save as aforesaid no person shall be allowed to inspect any such ballot paper or document after it has been sealed up in pursuance of sub-section (9) ".

What happened was this. A party to this enquiry moved for a summons on the Registrar-General to produce or cause to be produced certain declarations made by the impersonators. The Court allowed the application, that is to say, it allowed a summons to issue on the Registrar-General to produce or cause to be produced these documents. Under the law the witness, unless he claims privilege, must produce the documents if they are in his possession or power. This order did not authorize him to break open any sealed packets without a special authorization from this Court under section 48 (10). What the Registrar-General did was, without consulting the Election Judge or the Attorney-General, construed the summons to produce as an authorization from this Court under section 48 (10) to open the sealed packets. This is irregular. I am satisfied that this was done bona fide, and no harm has been done. The observations of Bertram C.J., in Rambukwella v.Silva[1] and of de Crestar J. in Saravanamuttu v. de Silva [2] should be noted in this connection.

In terms of section 81 of the Ceylon (Parliamentary Elections) Order in

Council, 1946, I determine that the election of Mr. Reginald Abraham de Mel as member of the House of Representatives for the Colombo South seat is void. I further determine that at the date of his election the said Mr. Reginald Abraham de Mel was disqualified from being elected under section 13 (3) (c) of the Ceylon (Constitution) Order in Council, 1946.

I shall, therefore, in terms of section 82 of the Ceylon (Parliamentary Elections) Order in Council, 1946, report to His Excellency the Governor-General that the said Mr. Reginald Abraham de Mel has been proved to have committed the " corrupt practice " of the abetment of personation as defined by section 58 (1) (a) of the said Order in Council by himself, by his agents and by unknown persons with the knowledge and consent of the said Reginald Abraham de Mel as fully set out in this judgment, and will, in consequence, be subject to the incapacities referred to in section 82 (3).

With regard to the costs of this protracted enquiry, counsel on both sides agreed that they would each submit a statement of their expenses to me, and that after considering the matter I should make an appropriate order which both sides agreed to accept. The statement submitted by he petitioner amounts to Rs. 51,791-50 as being his actual out-of-pocket expenses. This enquiry lasted sixty-seven working days, and necessarily, therefore, the expenditure involved in working up the case, the fees of learned counsel and the proctor, the batta of the witnesses and the obtaining of certified copies and other documents must be considerable. I, therefore, fix the costs payable by the respondent to the petitioner at Rs. 30,000.

I also desire to place on record my deep appreciation of the manner in which learned counsel on both sides assisted the Court in this difficult case. I specially desire to express my thanks to the learned Attorney-General who attended Court in person to assist the Court as amicus curiae on certain questions of law.

Election declared void.

Tillekewardene v. Obeyesekere - NLR - 115 of 33 [1931] LKSC 10; (1931) 33 NLR 115 (22 September 1931)

1931 Present **: Drieberg J.**

TILLEKEWARDENE v. OBEYESEKERE.

IN THE MATTER OF THE AVISSAWELLA ELECTION PETITION.

Election petition-Furnishing of particulars-Failure to give details-Extension of time-Discretion of Court.

Where an election petition contained charges relating to payment sand contracts for conveyance of voters, the respondent is entitled to have particulars as to the persons to whom and by whom each payment and contract was made and the time, date, and place of each contract and payment.

Where particulars are not furnished within time the Court may, on cause shown, grant an extension of time.

THIS was an election petition in which the respondent moved to have further particulars of the charges stated in the petition on the ground that the particulars already furnished were inadequate.

B. F. de Silva (with him *E. B. Wickramanayake*), for petitioner.

R. L. Pereira, K.C. (with him *H.V. Perera* and *S. Seneviratne*), for respondent.

September 22, 1931. **DRIEBERG J.-**

This is an application by the respondent that the petition be dismissed on the ground that the petitioner has not fully complied with the order made that he should furnish certain particulars of the charges laid in the petition.

The respondent desired to know in connection with the charge of

payments and contracts for conveyance of voters, by whom and to whom such payments had been made and between whom the contracts for payment were made.

The petitioner has furnished the particulars on this point in tabulated form. He groups on one side all those persons to whom payments were made, or with whom contracts for conveyance were made; and on the other side he sets out those who made payments or who gave contract for conveyance.

Mr. E. L. Pereira, for the respondent, complains that this is inadequate as it is essential for his purpose to know in each case of payment who the parties to it were, and similarly in the case of each contract for conveyance who the parties to the contract were.

In my opinion this is a reasonable claim and one which is very necessary for the purposes of the respondent's case.

Mr. B. F. de Silva, for the petitioner, says that the interrogatory was not understood in the sense in which it has been now explained by the respondent, and that for that reason they did not furnish the particulars which were required.

I accept this explanation, and Mr. de Silva, for the petitioner, agrees to furnish this information.

The respondent also now asks that as regards each payment and contract for conveyance he should be furnished with information regarding the date, time, and place of each such contract or payment, the amount of each payment, and the amount agreed upon for contracts for conveyance. This information was not sought in the interrogatories, and the petitioner is, of course, not to be blamed for making no reference to these points in his answers, but the request of the respondent is a reasonable one, and I do not think his case should be prejudiced by his omitting to ask for this information in his original interrogatories.

The petitioner will supply these further particulars, together with those which I have first referred to, namely, indentifying the parties to each payment and contract, on the 22nd instant.

Mr. Pereira, for the respondent, moves that the petition be dismissed on the ground that as it includes, as he says, more than three charges, the security of Rs. 5,000 is inadequate. I reserve my order on this point.

Dharmadasa v. Director General, Commission To Investigate Allegations of Bribery Or Corruption and Another - SLR - 64, Vol 1 of 2003 [1995] LKSC 9; (2003) 1 Sri LR 64 (13 October 1995)

DHARMADASA

v.

DIRECTOR GENERAL, COMMISSION TO INVESTIGATE

ALLEGATIONS OF BRIBERY OR CORRUPTION AND ANOTHER

SUPREME COURT

GUNASEKERA, J.

WIGNESWARAN, J., AND

WEERASEKERA, J.
SC APPEAL No.. 28/2002

H.C.M.C.A. (Colombo 60) 2000

M.C. COLOMBO CASE No. B/6552/1/96
17TH SEPTEMBER, 2002

Bribery Act - Conviction of a public servant for bribery - Section 19 of the Bribery Act - Accused's right to impartial and adequate consideration of his case - Consequence of the Magistrate's failutre to consider the accused's evidence in detail - Power of Appeal Court to consider such evidence in dismissing appeal.

The accused appellant ("the accused") was a clerk attached to the District Court of Matale. He was convicted of soliciting and accepting an illegal gratification of Rs.400/- as an inducement for

obtaining the return of money furnished as bail on 4 counts alleging offences under section 19 of the Bribery Act. In addition to prosecution witnesses the accused himself gave evidence. His defence that the "illegal gratification" was forcibly introduced into his trouser pocket by the virtual complainant was rejected by the Magistrate. In appeal, the High Court affirmed the conviction but observed that the Magistrate should have given more consideration to the evidence of the accused. It was

submitted that the High Court should not have upheld the conviction in view of the "culpable" failure on the part of the trial judge to have adequately and impartially examined the evidence of the accused "

Held :

On a careful analysis of the accused's evidence no credence whatever could have been given to the evidence of the accused. Accordingly the conviction of the accused should be affirmed.

APPEAL from the judgment of the High Court

Case referred to:

1. *Chandradasa v. Queen* 72 N LR 160 at 162
2. *Jagathsena and others v G.D.D. Perera, Inspector, Criminal Investigations and Mrs. Sirimavo Bandaranaike* (1992) 1 Sri LR 371 at 379

Ranjith Abeysuriya, PC. with *Lanka de Silva* for accused-appellant

Mallika Liyanage for 1st respondent

Riyaz Hamza, State Counsel for 2nd respondent

December 13, 2002

GUNASEKERA, J.

The Appellant Medagedera Dharmadasa has been charged and convicted in the Magistrate's Court of Colombo on four counts under the Bribery Act.

(i) that on or about the 16th of December 1996 at Matale, being a public servant to wit, a Clerk attached to the District

Court of Matale did solicit a gratification of Rs. 400/- from Jayasunderage Samy Appuhamy as an inducement or reward for his performing an official act in assisting him in obtaining the return of money furnished as bail, an offence punishable under Section 19(b) of the Bribery Act.

66

(ii) that at the time and place aforesaid and in the course of the same transaction being a public servant as aforesaid, did solicit the said gratification, an offence under Section 19(c) of the Bribery Act.

(iii) that at the time and place aforesaid did accept the said gratification, an offence punishable under Section 19(b) of the Bribery Act.

(iv) that at the time and place aforesaid being a public servant did accept the said gratification, an offence under Section 19(c) of the Bribery Act.

Upon conviction after trial the Appellant had been sentenced to a term of one years' rigorous imprisonment on each count which had been suspended for a period of 10 years and a fine of Rs. 1500/- had been imposed in respect of each count.

The Appellant had preferred an appeal against the said conviction and sentence to the Provincial High Court of Colombo and after hearing the appeal the learned Judge of the High Court had affirmed the conviction, and sentence imposed on the Appellant in respect of counts 1 and 3 and acquitted him on counts 2 and 4. Further the learned Judge of the High Court in addition had imposed a penalty of Rs. 400/- in respect of count 3 in terms of section 26 of the Bribery Act.

Upon a consideration of an application for special leave to this Court against the judgment of the learned Judge of the High Court on 28.5.2002 special leave to appeal was granted upon the question as to whether the learned High Court Judge erred in law in failing to set aside the Order of the learned Magistrate, in view of the latter's failure to consider the shortcomings in the prosecution case as well

as the evidence of the Accused-Appellant. At the trial in the Magistrate's Court Jayasuderage Samy Appuhamy, Premaratne Jayasundera, A.M.W.M. Amarakoon, R.M. Premaratne and A. Liyanage testified as witnesses for the prosecution whilst the Accused Appellant gave evidence on his own behalf denying the allegations against him.

According to the evidence of the virtual complainant Samy Appuhamy he had stood as surety for one of his brothers Premaratne Jayasundera, who had been charged in Case No. 23099 in the Magistrate's Court of Matale and had deposited a sum of Rs. 5000/- as bail on 13.10.1995 (the receipt issued for depositing bail has been produced as P1). After his brother was acquitted in the said case he had made an application for the release of the bail money and had met the Accused-Appellant who was a Clerk attached to the Matale Magistrate's Court in order to have the bail money released to him. He had asked him to come on a Friday. When he met the Accused-Appellant on Friday the Accused-Appellant informed him that the learned Magistrate had not yet signed the release Order. Thereafter he had met the Accused-Appellant for two months on every Friday but had been unsuccessful in getting the money released. On one occasion when he met the Accused-Appellant he had told the complainant "these matters cannot be done for nothing" and demanded a sum of Rs. 500/-to have the bail money released. Thereafter the virtual complainant had made a written complaint to the Bribery Commissioner which complaint dated 28.11.1996 has been produced as 'P2'. Thereafter some officers from the Bribery Commissioner's Department had come and met him at his home and questioned him as to whether he had signed the letter 'P2' and after he identified 'P2' as being the complain the made to the Bribery Commissioner, his statement had been recorded and he had proceeded with the Bribery Officers to the Matale Magistrate's Court. Inspector Liyanage who led the raiding party had given him instructions in regard to what he should do in implementing the trap and had been asked to accompany Police Constable Premaratne who was to be identified as his brother. Five hundred rupee notes, the serial

numbers of which had been noted in the investigation note book had been handed over to the decoy P.C. Premaratne and the complainant had been asked to meet the Accused-Appellant and speak to him and further directed that should the Accused-Appellant ask for money that he was to collect it from the decoy Premaratne and hand it over to the Accused-Appellant. Although the complainant had gone to meet the Accused-Appellant on the 13th of December 1996 they had been informed that the Accused-Appellant was on leave and would return to work on Monday.

On 16.12.1996 the Bribery Officers had met the virtual complainant at Matale as directed. Inspector Liyanage had given him the same instructions that was given on the previous day and had requested him to accompany P.C. Premaratne to meet the Accused-Appellant and hand over the money if he asked for it. Accordingly on 16.12.1996 he had participated in the raid with the Bribery Officers. When he accompanied P.C. Premaratne the Accused-Appellant on seeing them had called the virtual complainant and asked him as to whether he had brought that, meaning money, in the presence of P.C. Premaratne, the decoy. The Accused-Appellant had informed him that the cheque had not been signed and for them to wait for a while stating that the Magistrate was still on the Bench and that he would get the cheque signed after he gets down from the Bench. When he and P.C. Premaratne were seated on a bench the Accused-Appellant had called them and asked them to go towards the canteen. When they went there the Accused-Appellant had come near them and asked them whether the money had been brought. When they replied in the affirmative the Accused-Appellant is alleged to have said "give it soon". Then the decoy Premaratne had asked the Accused-Appellant not to take Rs. 500/- but to take Rs. 400/- to which the Accused-Appellant had agreed. P.C. Premaratne had given the virtual complainant four one hundred rupee notes which money had been handed over to the Accused-Appellant. The Accused-Appellant had put that money in his shirt pocket and gone in to the latrine and closed the door. At this point of time P.C. Premaratne had signalled Inspector Liyanage and the other members of the raiding party who came near the latrine and waited there till the Accused-Appellant came out. As the Accused-Appellant came out Inspector Liyanage had identified himself and

asked the Accused-Appellant for the money that had been taken from the complainant. He had denied taking any money. On a search made I.P. Liyanage had recovered the four marked hundred rupee notes together with some other money from the Accused-Appellant's possession and he had got the Accused-Appellant to compare the numbers of the notes recovered with the numbers noted in the investigation note book and the Accused-Appellant had been arrested.

P.C. Premaratne, the decoy, testified in regard to the instructions given and the conversation that took place between Accused-Appellant, the virtual complainant and himself and with regard to the acceptance of the money by the Accused-Appellant and the recovery of the money from the Accused-Appellant by Inspector Liyanage.

Inspector Liyanage testified before the Magistrate in regard to the instructions that were given and in regard to the manner in which the raid was conducted successfully. Apart from the aforesaid witnesses, the virtual complainant's brother Premaratne Jayasundera testified in regard to the fact that the virtual complainant had stood as surety for him in the criminal case that had been instituted against him and furnished bail in a sum of Rs. 5000/-. After he was acquitted his brother had informed him that the officers from the Bribery Department had arrested the Accused-Appellant when he took a sum of Rs. 400/- in order to release the bail money.

The Accused-Appellant in his evidence stated that he joined as a Clerk in the Judicial Service in 1984 and was first posted to the Dambulla Magistrate's Court and was transferred to the Matale District Court in January 1995. He further stated that the virtual complainant Samy Appuhamy first met him in the first month of 1996 when he came to see him in connection with the release of a sum of Rs. 5000/- which had been deposited as bail money in respect of a case where his brother Premaratne Jayasundera was charged. According to him on that day he had obtained a Photostat copy of the bail deposit receipt, a five rupee stamp

and a motion requesting the release of the bail money. He had then prepared a voucher and got the virtual complainant to sign it. He also noted the virtual complainant's National Identity Card number and informed him that he would post the cheque when it was ready. He went on to say that before the cheque was ready the virtual complainant came to see him in about three days' time thereafter and then he informed the virtual complainant that this could not be done in about two or three days' time and it may sometimes take even five to six months and again informed the complainant that he would notify when the cheque was ready. He further stated that the complainant came to see him on several occasions thereafter but was

unsuccessful in getting the bail deposit released. In answer to Court the Accused-Appellant stated that the complainant last came to see him on 15th February 1996 and questioned him as to whether the said money was not being released at the instance of the Accused-Appellant's brother who had a land case against the complainant's brother in law and went away stating "that he would see about it". It was the evidence of the Accused-Appellant that the virtual complainant came to see him next on the day he was arrested i.e. on 16.12.1996 and questioned him as to whether the cheque was ready even on that day. He then checked up the registers and found that the cheque had been written but the validity period of the cheque had expired and asked the virtual complainant to wait for sometime till the Magistrate adjourned for lunch so that he could get the Magistrate to have the validity period of the cheque extended. At about 1.30 in the afternoon he had instructed an office Peon to take the cheque that was on his table to the Magistrate when he adjourned for lunch and to get the signature of the Magistrate. Thereafter he had proceeded towards the canteen with his lunch packet in his hand and when he was climbing the steps leading to the canteen the virtual complainant followed by another had come along from behind and suddenly the virtual complainant had thrust something into his trouser pocket stating "keep this". According to the Accused-Appellant he

had immediately examined what had been thrust into his pocket and had found that it was some money. He had immediately put the money on the ground. At that stage he stated that Inspector Liyanage identified himself as an officer of the Bribery Commissioner's Department and asked him for the money that was taken from the virtual complainant. He totally denied that he solicited and accepted a bribe from the virtual complainant. His position was that he had been falsely implicated due to a grievance the virtual complainant had owing to the land case between the virtual complainant's brother in law and his brother.

At the hearing of this appeal it was submitted by learned President's Counsel appearing for the Accused-Appellant that in the judgment of the learned Magistrate there had been a total failure to give any consideration to the sworn evidence of the Appellant and that the only reference thereto was an assertion in the penultimate sentence in the judgment that the defence evidence had failed to demolish or to raise a reasonable doubt in the prosecution case, and contended that as observed by Samarawickrema J. in the case of *Chandradasa v. Queen* (1) that "an impartial and adequate consideration of his case by a judge of fact is the right of every accused". In the present case it was the submission of the learned President's Counsel that the Accused-Appellant had been deprived of that right secured to him by the total failure of the learned Magistrate to have considered his own evidence.

It was also submitted by learned President's Counsel that even the learned Judge of the High Court having expressly stated that the learned Magistrate should have examined the evidence of the Accused-Appellant erred in upholding the conviction of the Accused-Appellant in spite of the culpable failure on the part of the trial Judge to have adequately and impartially examined the evidence of the Accused-Appellant.

It was further submitted by the President's Counsel that despite the purported acceptance of the evidence of the

prosecution witnesses by the trial Court the Appellate Courts are not relieved of the duty of testing that evidence both intrinsically and extrinsically as observed in *Jagathsena and others v. G.D.D. Perera Inspector, Criminal Investigations Department and Mrs. Sirimavo Bandaranaike* (2).

It was the contention of learned Counsel for the 1st respondent that the learned Magistrate who had the opportunity of seeing, hearing and observing the demeanour of the witnesses at the trial had quite correctly rejected the evidence of the Accused-Appellant although he had not set out in detail the reasons for doing so. It was submitted by learned Counsel that none of the positions taken up by the accused in his evidence relating to the reasons for his being falsely implicated, regarding the money being thrust into his pocket by the virtual complainant had even been suggested to any of the witnesses who testified for the prosecution at the trial. Learned Counsel for the 1st respondent further submitted that the learned Judge of the High Court had observed that the Magistrate should have given more consideration to the evidence of the accused before rejecting it. In his jugdement the learned High Court Judge had dealt with the evidence led and had considered the contradictions in the evidence of the virtual complainant and that of the

decoy P.C. Premaratne and had no hesitation in accepting the evidence of the prosecution witnesses and upholding the conviction of the Accused-Appellant in respect of counts 1 and 3.

Having regard to the submissions made, I am of view that it would be useful to examine the evidence of the Accused-Appellant in some detail to consider as to whether that evidence is credible. He commences the evidence by stating that the virtual complainant first met him in the first month of 1996 in order to get the bail money released. According to him about three days thereafter the complainant had come again and on several days and the last date that he came

was on the 15th of February 1996 before he was arrested on 16.12.96. During the course of the trial the record in M.C. Matale 230/99 was produced marked P5. The journal entries of that case record reveals that the virtual complainant's brother had been acquitted only 20.3.1996. Thus in regard to the date on which the virtual complainant first met him and the answer given to Court that he met him last time on 15.2.1996 before he was arrested on 16.12.1996 does not bear scrutiny.

Although the Accused-Appellant in his evidence had taken up the position that he got the virtual complainant to give him a motion requesting the release of the money on the first day itself when he met him, according to the motion P5A produced in evidence which relates to the release of the bail deposit it is to be observed that it is dated 27.5.1996. Thus it appears that his evidence in regard to this question is unacceptable.

Although the Accused-Appellant had taken up the position that he has been falsely implicated owing to a land case that his brother had with the virtual complainant's brother in law, it is to be noted from document P2, that the written complaint made by the virtual complainant to the Bribery Commissioner is dated 28.11.1996 and the journal entries in Case No. D.C. Matale L5293 which were produced marked VI by the accused himself shows that the land case between the Accused-Appellant's brother and the brother in law of the virtual complainant had been instituted on the 24th of September 1998, nearly two years after the written complaint by the virtual complainant to the Bribery Commissioner. Another significant factor that is to be noted is that although in the evidence of the Accused-Appellant, he has testified that he would notify the virtual complainant when the cheque was ready, it is to be observed that the application made by the virtual complainant on 27.5.1996 requesting the release of bail money has been journalised only on 25.10.1996 as evidence by P5B on which the learned Magistrate appears to have made Order on the same day to file the application and to release the bail

money upon the surety being identified. It is to be further noted that the cheque for Rs. 5000/- in favour of the virtual complainant, P3, although had been written on 30.10.1996 had been kept with the Accused-Appellant without it being posted to the virtual complainant or without notifying him that the cheque was ready until 16th December 1996 (the date of the trap) on which date the period of validity had been extended by 30 days.

For the reasons stated I am of the view that no credence whatever could have been given to the evidence of the Accused-Appellant. Accordingly, I affirm the conviction of the Accused-Appellant on counts 1 and 3 and the sentence imposed by the learned Judge of the High Court but direct that the period of suspension of the term of imprisonment imposed in respect of the two counts on which he had been convicted be reduced to a period of five years from ten. Subject to the above variation the appeal is dismissed.

WIGNESWARAN, J - I agree.
WEERASURIYA, J. - I agree.
Appeal dismissed subject to variation of sentence.

Rambukwelle v. Silva - NLR - 231 of 26 [1924] LKHC 23; [1924] 16; (1924) 26 NLR 231 (9 December 1924)

Present: **Bertram C.J.**

In the Matter of the Election of George E. de Silva for the Rural Division of the Central Province.

RAMBUKWELLE *v.* **SILVA**.

Election petition-Gift to secure the electoral support of a person of influence-Bribery-Guarantee of a debt-Corrupt intention-Opening of ballot box-Failure to stamp ballot papers-Fundamental irregularity-Presentation-Proof of lesser offence.

Ceylon (Legislative Council) Order in Council, 1923, Article XLV., Section 1 (c), *Article XXXVI., Rules 20 and 21*.

A gift made as an, inducement to obtain the electoral support of a person of influence is bribery within the meaning of section 1 (c) of Article XLV. of the (Legislative Council) Order in Council.

In such a case the test of a corrupt intention is whether the desire to secure the continued support of the person was a substantial element in the mind of the candidate.

A guarantee of a debt due by such a person, given by the candidate, amounts to a bribe within the meaning of the enactment.

A payment does not cease to be a bribe because it is the result of an exaction.

When the particulars of a given offence are not proved, the finding of a lesser offence is justified.

A candidate is responsible for the acts of any person whom he appoints, whether for payment or otherwise, to carry out his electoral campaign, or

whom he or his authorized agents entrust with any responsibility in connection with that campaign, even though the agent acts contrary to his express instructions.

What constitutes a man an agent must be a question of fact to be determined according to the circumstances of each particular case.

Where at a polling station, after the voting had gone on for some time, it transpired that the ballot papers had not been stamped on. the back with the official stamp as. required by rule 21 (Article XXXVI.), and the Presiding Officer, with the consent of the agents of all the candidates, opened the ballot box in breach of rule 20 of the Article for the purpose of stamping them.

Held, that it was a fundamental irregularity which affected the result of the election within the meaning of Article 40. Such an irregularity cannot be justified on the ground of an estoppel based on the acquiescence of the parties concerned.

The Order in Council does not make a candidate responsible for personation which he or his agent may have abetted, and restricts his responsibility to personation which he or his agent actually committed.

It is not proper that persons who have been or are likely to be subpoenaed by one side should be made by the other side to sign written statements.

THIS was a petition presented by Mr. P. B. Rambukwelle against the return of Mr. George E. de Silva as Member for the Rural Division of the Central Province as the result of an election held on September 27, 1924. The petition made various charges of bribery, treating, undue influence, personation, and illegal practices, and further impugned the validity of the election on the ground of certain alleged irregularities on the part of the Presiding Officer at Padiyapelella Polling Station. The charges of personation were not proceeded with, owing to a defect in the Order in Council. The facts upon which the charges were based are fully stated in the judgment of the Chief Justice.

R. L. Pereira (with him *H. H. Bartholomeusz),* for the petitioner.

Elliott, K.C. (with *Sandrasegara, K.C., Rajaratnam,* and *C. W. Perera),* for the respondent.

Obeyesekere, C.C., watched the interests of the Presiding Officer at Padiyapelella.

December 9, 1924. **Bertram C.J.**-

The petition in this case was presented by Mr. P. B. Rambukwelle, Advocate, of Kandy, against the return of Mr. George E. de Silva as Member for the Rural Division of the Central Province as a result of an election held on September 27, 1924. The petition made various charges of bribery, treating, undue influence, personation, and illegal practices, and further impugned the validity of the election on the ground of certain alleged irregularities on the part of the Presiding Officer at Padiyapelella Polling Station, and contended that on the ground of these irregularities the votes registered at Padiyapelella Polling Station should be disallowed, and that the petitioner, who would, but for these votes, have a bare majority of the recorded votes, should be declared duly elected in place of the respondent.

In consequence of this claim of the seat the respondent filed a list of recriminatory objections, and cited a great number of witnesses. But at an early stage of the proceedings it became apparent that the claim of the seat by the petitioner was misconceived, and the recriminatory objections were accordingly dropped.

The charges dealt with up to the present point in the hearing were certain charges of bribery and treating. Some of these charges of treating were closely connected with the charges of bribery, and were investigated as disclosing an alleged system of treating for which the respondent was said to be responsible. For convenience, the allegations with regard to the irregularities at the Padiyapelella Polling Station were at the same time investigated. The other charges of treating were dropped. The charges of undue influence were reserved, except one, which was considered at this stage to facilitate the other public duties of the Government Agent, whose evidence was thought to be required for the purpose of corroborating the principal witness to the charge. The charges of personation could not be proceeded with to a defect in the Order in Council, which does not make a

candidate responsible for personation which he or his agent may have abetted, but confines his responsibility to personation which he or his agent actually committed.

The principal charge which was considered was a charge of bribery said to have been personally committed by the respondent, Mr. George E. de Silva. The principal witness, both on this charge and certain other connected charges, was a certain E. W. Abeygoonesekere, otherwise known as Eddie Ralahamy, who described himself as manager and secretary of a local school, vice-president of the Young Men's Buddhist Association, and vice-president of the local branch of the Maha Jana Sabha. It was apparent even without the aid of the unsavoury record of this witness, or his equivocations; and tergiversations under cross-examination, that he was entirely unworthy of credit, except in so far as his evidence was specifically corroborated. The course of action, which he attributed to himself, was treacherous, fraudulent, and unscrupulous, and from the moment of his entry into the box he inspired distrust. He was, however, an experienced electioneer and of great influence in his own district. He was thus described by an intelligent witness: " Mr. Abeygoonesekere belongs to the most influential family in the district. He is personally looked up to by the villagers in the district. He is a very influential man. Any request coming from him would be treated with respect and complied with." Mr. A. C. G. Wijeyekoon, Member for the Urban Division of the Central Province, who had previous experience of his service, said of him: " I would not employ him as a electioneering agent. At the same time I would not like to have him opposed to me either. He is a pretty influential man in that area."

The story told by this witness was as follows: His services were engaged by Mr. George de Silva for the purpose of the contest, and he was Mr. de Silva's enthusiastic supporter. He accompanied him to various meetings, at which both of them spoke, and he issued pamphlets and leaflets, composed by himself and signed in his name, invoking the electors to support Mr. de Silva as a helper of the poor, a champion of temperance, and one who inquires into the tribulations of the poor. At a certain stage in the contest, so he alleges, Mr. de Silva became dispirited. What he describes as a conference was held, at which he and a few other persons were present. At this conference he urged Mr. de Silva not to give up, but said that they

must work night and day. Mr. de Silva then conceived the idea of forwarding the cause by holding a large social party at witness' wallowed, which was considered a central spot. The witness had recently returned to the home of his fathers, and Mr. de Silva's idea was that the party should be a house-warming party. This, how-ever, was thought inappropriate, and it was finally decided that the party should be what is known as a " rice-feeding ceremony " in honour of witness' little daughter. The preparations for this party would involve expense, as it. was to be held on a considerable scale, but Mr. de Silva had no funds available. He accordingly directed the witness to apply for funds to one of Mr. de Silva's supporters and relations, a Mr. M. M. Fernando. Witness did so, but failed to raise the necessary money from Mr. Fernando. The party was from the beginning Mr. de Silva's party. The rice-feeding of the child was a mere blind. She was too old for such a ceremony, and the arrangements were made on a scale which no such ceremony would justify. Glasses, crockery, &c, were ordered by Mr. de Silva's direction from Colombo. Chairs were secured by his direction from the Planters' Hall. At the proper moment, alcoholic drinks and cigarettes were ordered by Mr. de Silva at Millers', and provisions were similarly ordered from the Central Medical Stores. Mr. de Silva directed that these orders should be given in the name of the-witness, and should be only guaranteed by Mr. de Silva, as it would not be desirable in view of the election that the order should be given in his name. Invitations were lavishly issued to the number of three or four thousand, and the register of voters was used as the basis for the invitations. From first to last the party was Mr. de Silva's party, and; to use a favourite expression of the witness, was a mere ruse for the purpose of forwarding Mr. de Silva's cause by means of lavish treating. Subsequently, however**,** Mr. de Silva became nervous, and came to him at Mailapitiya school, where a volley ball match was proceeding, a few days after the election**,** and requested him to write what he described as a " touching " or appealing letter**,** antedating it, so that it might appear to be written before the election, with a view to disguising Mr. de Silva's responsibility for the party. And this the witness accordingly did.

The whole, or practically the whole, of this story is an impudent fabrication inspired by the basest and most treacherous motives. The witness explains that he went over to the other side after the election, because Mr. de Silva, having promised him Rs. 2,000 for his services, (a

statement which is highly improbable), declined to honour his promise, or to pay his out-of-pocket expenses, or to make various payments which witness had promised to others on his behalf, but put him off with thanks for his services to the country. There is no question that he did demand Rs. 2,000 from Mr. de Silva. It would have been illegal for Mr. de Silva to have acceded to this demand, or to have ratified employment of the various persons, whom the witness may have purported to employ. The witness' own notion of what is meant by election expenses is indicated by his remark that he understood that the law authorized the treating of every voter in the constituency up to the amount of ninety-five cents per head.

The letter, which he alleged that he forged at the instigation of Mr. de Silva, R 12, is an important feature of the case. With regard to this letter, he stated at first that he could swear at any sacred place that Mr. de Silva asked him to antedate the letter. Next he said that he could not be sure whether he had dated it at the top or the bottom. Finally, he said that he could not be sure whether he had dated it at all. He stated first of all that Mr. de Silva gave him no detailed instructions as to what he was to put into the letter. Then, when he was reminded of the contents of the letter, he said that Mr. de Silva did give him special instructions. Asked whether Mr. de Silva looked at the letter to see whether, in so important a matter, these instructions had been carried out, he replied in the negative. Mr. de Silva, he said, had no time to look at the letter. " He knows that whatever I do would be done well." Whatever grounds for confidence there may be that any malpractice, to which this witness set his hand, would be thoroughly accomplished, he has in this case done himself an injustice. The forgery which he imputes to himself (and as to which he admits that he was " to a certain extent " at fault) was not in fact committed. R 12 is a genuine letter. It is not in fact dated at all, but its date may be inferred from its contents. While it successfully exonerates Mr. de Silva from the baser imputations cast upon him by the witness, it is in fact an embarrassing letter. It was most frankly and properly produced by Mr. de Silva, and is an important element in the case.

The facts which form the basis of this fraudulent fabrication are as follows: The witness Abeygoonesekere belongs to a respectable family, but was himself impecunious, and, according to his own description, a spendthrift. Various judgments had been recorded against him, and some of these were

enforced by warrants of arrest, which were held impending over his head. He was an assiduous writer of begging letters, and at various times applied for advances, both to Mr. de Silva, Mr. M. M. Fernando., and to Mr. Wijeyekoon. As he had just returned to the home of his fathers, he conceived the idea of raising funds by means of a rice-feeding ceremony on a large scale. On the occasion of such ceremonies invitations are issued to friends of the family and residents in the neighborhood of its home in honour of the first time a child-generally a male child-is fed with rice. The persons invited attend the " At Home," and it is customary for them to make an offering of money to the happy parents. They do this in the expectation that when they themselves have occasion to give a similar or any other family party, contributions will be made to themselves. It occurred to the witness that if the invitations were issued on a large scale, a considerable sum might thus be raised, and he mentioned this idea to Mr. Wijeyekoon in March, long before any possible conference of the kind referred to by the witness, although the date of that supposed conference is indicated in the vaguest possible manner. At that time it was intended that the celebrations should take place somewhere in June. At a later date he begged Mr. Wijeyekoon to furnish him with a loan for the purpose of the expenses, and forwarded him some jewellery as security. Mr. Wijeyekoon indignantly returned the jewellery, observing that he was not a pawnbroker. It was at that time thought that the elections would be held in July, and it is quite possible that Abeygoonesekere, who was then working for Mr. de Silva, for some reason not very clear, fixed the date of the party with a view to the elections. At the end of May it became known that the elections would be postponed, and by the end of August it was realized that they would be held in the course of September. The *Gazette* of August 29 fixed the date of the nominations for September 12, the elections being a fortnight later. From this time the witness Abeygoonesekere renewed his efforts to obtain funds for the ceremony, this time assailing Mr. M. M. Fernando in a series of letters dated August 26, August 28, September 2, and September 7. All these efforts failed, but on September 8 he succeeded in raising Rs. 750 by a mortgage of his share in some family properties. There can be no question that, he raised this sum for the purpose of the rice-feeding ceremony. He says that for some reason the money went to his brother, but this statement is without probability or confirmation. The arrangements for this loan were, no doubt, made a few days before September 8. Being now in a position to make preparations, on September

5 he went to Colombo, where he ordered the cards for the party, indulging in the unusual expense of a block photograph of the child, and at the same time ordered from the Crystal Palace stores a variety of glass, crockery, lamps, and other articles, which he would require for the party, directing these to be sent by value-payable post. On the arrival of the invitation cards a few days later, he proceeded to fill them up and sent them out. No less than 4,000 cards were ordered altogether, partly at Colombo and partly at Kandy. The invitations were addressed to various people on various days, extending from September 20 to September 26. It certainly seems unlikely that, having such an enterprise in hand, he would not have spoken about it to Mr. de Silva, but I am nevertheless satisfied from his subsequent letter that he had not up to this point done so. The Rs. 750, which he had raised by mortgage, would not be enough to finance the party on the scale on which he intended giving it. Mr. de Silva, who visited the party later, calculated that it must have cost him from Rs. 1,500 to Rs. 2,000. It was necessary, therefore, for him to raise further funds, and for this purpose he approached Mr. de Silva on September 15, within twelve days of the election. He represented to Mr. de Silva that he was in great difficulty; that he had issued, or was issuing, invitations to a great number of people that he had no funds to supply the necessary liquid and solid refreshments to people of the social status of his intended guests; and that he was in danger of a great social humiliation. Moved by this request, Mr. de Silva took him to Millers', where he guaranteed for him a supply of liquor to the extent of Rs. 250, and to the Central Medical Stores, where he gave him a similar guarantee for other refreshments to the extent of Rs. 100.

The first and most important question which I have to decide in this case is with what intention Mr. de Silva gave these guarantees. It has to be borne in mind that these sums were demanded from Mr. de Silva by a supporter very important in his own locality within twelve days of the election. The demand was made at a time when Mr. de Silva, for the purpose of the election, had to meet a great many demands upon his purse, and at a time when he was, to some extent, temporarily embarrassed by the unexpected calling in of a mortgage at short notice. Knowing the character of the witness, as he must have known it, having been himself the victim on previous occasions of similar importunities, it can hardly have been without some irritation that he received the present demand, accompanied by the explanation that the man had made arrangements for an elaborate

party, for which he could not provide the expense, and that he was now looking to Mr. de Silva to get him out of his difficulty.

It certainly does not appear to be the case that on this occasion he appealed to Mr. de Silva on the basis that this was a common enterprise, which was to the interest of them both. This is apparent from his subsequent letter, R 12, in which he in effect apologizes for having troubled Mr. de Silva with this matter, and protests that he will pay all the amounts before the election, and thanks him effusively for his kindness. That he should not have ventured to request Mr. de Silva to help him with his party on the ground of its electoral expedience is very much to the credit of Mr. de Silva. Had Abeygoonesekere thought that such an inducement would have moved Mr. de Silva, he would certainly have employed it. On the other hand, it must be borne in mind that the witness Abeygoonesekere was a person whom at this particular juncture it would be most inexpedient to alienate or offend. Mr. de Silva, looking back on his own motives at the time, assures the Court that he guaranteed these provisions solely out of a good-natured sympathy with Mr. Abeygoonesekere's social difficulty, and that the question of his electoral support was not in any way present to his mind. I find a difficulty in believing that Mr. de Silva here gives a correct recollection of his own state of mind. I find it difficult to believe that one of the substantial motives which operated upon his mind was not the necessity of securing Abeygoonesekere continued support. I find it difficult to believe that out of a pure good nature he would have done a thing so repugnant to his instincts as a temperance advocate as to guarantee a liquor bill of Rs. 250 for a social party of a supporter. He might have reconciled himself to such a course with reluctance, but he is hardly likely to have done it out of spontaneous good nature.

But this is not the end of the story. Three days later Abeygoonesekere presented him with yet another demand. Rs. 125 was needed to pay for the articles ordered from the Crystal Palace. These articles sent by value-payable post had been already waiting for some days at the Kandy railway station. The witness must have received the intimation, even if he could be believed that he had not. He must at least have known that the articles were due, and would require to be released for the party at the time when he was pressing Mr. de Silva to help him about the liquor and the provisions. A more honest man would have put the whole of his troubles

before Mr. de Silva, but this witness thought it more prudent to make his exactions by installments. On this occasion, too, he went a little further, and accompanied his request with an observation, which, in the light of his character, can have only one meaning. The letter, which begins with a request that, it should be read " patiently and *privately,*" proceeds to say that Mr. Godamune and Mr. Weerasooriya had come to see him and worried his life. " I told them plainly that I would rather prefer death than to change my word of honour. I said on no account I cannot change my course ". . . . "I shall do my best for you. They all heard that I am going to have my ' At Home,' and they say that I can help them by talking them (voters) when they come to see me. I said that I am not going to do anything about election in the way to spoil my friend's case, that is, yours. One thing I can tell you, that Mr. Weerasooriya said that I am honest in my dealings because I did not want to do work for two. One thing, I am so far very successful in my arrangements. I have to commence day after to-morrow. Hope you will be present. I can make over Rs. 5,000." He then explains his position with regard to the Crystal Palace goods, and earnestly begs Mr. de Silva to supply the Rs. 125 necessary to release them, promising to repay the amount when Mr. de Silva comes to Padiyapelella about the 23rd**.** He thanked him warmly for his assistance with the liquor and provisions, assuring him that he would never forget his kindness, and that he would always treat him as a brother. '" If you fail this, all arrangements will be knocked on the head.- Yours affectionately, Eddie."

Whatever may have been Mr. de Silva's feelings when he received the first demand, it is difficult to believe that he was conscious of any feelings of good nature or sympathy when he received the second. However hurriedly he may have perused the letter in the rush of the election, its implications can hardly have failed, in some measure, at any rate, to be present to his mind, and he could hardly have viewed them with anything but resentment, or, possibly, in view of his knowledge of the writer, with a certain amusement. Mr. de Silva on the receipt of this letter, wrote out a cheque for the money, cashed it, and sent the amount to release the goods. He gave the bearer the following reply: " Dear Eddie, I have done the needful. I am sorry I am unable to attend your function, as I have to go to Talawakele to address a meeting on the 21st. I wish you all success. Do all what you can for me.-Yours sincerely, George E. de Silva." The question again arises: Was this a pure act of good nature, or was one of the

substantial motives which operated in the mind of Mr. George de Silva the desire to induce Abeygoonesekere at this critical time to lend him his continued support ?

I venture to think that it would not have occurred at the time to any person, whether lawyer or layman, that there was anything wrong in what Mr. de Silva did. I doubt whether the idea that there was anything wrong, or even illegal about it, occurred to the mind of Mr. de Silva himself. It will probably be news to most people that the giving of a pecuniary facility to an active supporter on the eve of an election comes within the definition of bribery, even though the motive for it may be the desire to make sure of his continued support. That Mr. de Silva had in fact no idea that his action was wrong or illegal is shown by the open way in which he went to Millers and the Central Medical Stores and guaranteed these accounts, and also by the open manner in which he wrote the cheque to release the Crystal Palace goods.

Finding as I do that a substantial motive operating in Mr. de Silva's mind was a desire to induce Abeygoonesekere to give him his continued support, I have to ask myself whether this constitutes an offence in law which will make Mr. de Silva's election void.

The words of the Order in Council, which are material ,to consider, are to be found in Article XLVI. (1), and are as follows: " The following persons shall be deemed guilty of the offence of bribery

(c) every person who, directly or indirectly makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid (*i.e.,* a gift, loan, offer, promise of any money or valuable consideration) to or for any person *in order to induce such person to procure or endeavourer to procure the return of any person as a Member of the Legislative Council, or the vote of any voter at any election under this Order.*"

This enactment has a peculiar history, and in view of that history I invited counsel on both sides specially to assist me in determining, whether, in its present form, it applies to inducements made to obtain the ordinary electoral support of a person supposed to be influential-In its original form it appeared in the repealed Act of 49 Geo. III., c. 118, and was there directed against the traffic in votes, which, in those days, took place with

regard to " rotten boroughs." It was directed, in fact, against a special improper transaction. The-procurement of a return was there thought of, not as its procurement by means of ordinary electoral persuasion, but by means of the illegitimate influence which was at the disposal of the " owner " of such a borough. See *Rogers on Elections, vol. 2, on p. 443*. This-enactment was embodied in its present fuller form in that consolidation of the law of bribery, which experience had gradually worked out, and which was enacted by section 2 of the Corrupt Practices Prevention Act, 1854. That section is preserved and embodied in Part III. of the 3rd schedule to the Corrupt and Illegal Practices-Prevention Act, 1883, and it is in identical, or practically identical, terms with Articles XLVI. of our own Order in Council. None of the cases cited in *Rogers* dealt with payments given to secure ordinary electoral support. All of them dealt with some particular and special arrangement, except one, in which a gift of 2s. to the wife of a voter was held to be bribery.

It is clear, however, that whatever may have been the original history of the enactment, it is now quite general in its application. There are several references to the " procurement " of a return in the Act of 1883 and in our own legislation. See, for example, section 4 of the rules made under Article XXXVIII., and in all these cases the term " procure " is used as practically synonymous with "promote," The matter is placed beyond doubt by an authoritative judgment of a Judge of great eminence, Mr. Justice Willes, in the *Coventry case [*[1] *(1869) 1 O'M. & H. 97.]*.

It is there said: " Therefore anything, great or small, which is, given to procure a vote, would be a bribe, and if given to another to purchase his influence at the election, it unquestionably also would be a bribe and would avoid the election." And again: " Its proper application to the case in hand, as it appears to me, is this, that the payment to be made under the third section must be a payment for the purchase of influence; a payment to some person who has influence in a place in order to purchase that influence; it must be a payment or gift, or loan of something valuable, to him in consideration of his lending his influence or his countenance in the election."

Mr. Elliott, in his extremely able and persuasive speech, submitted to me various points of law, partly substantial and partly technical, which I will

proceed to consider. He cited to me certain authorities, in particular the *Windsor case [*[1] *(1814) 2 O'm and H. 89.],* where a candidate, who had made a gift of coals, beef, and tea, on being asked whether, when he made those gifts, he had in view the election for the borough, admitted that to a certain extent he had. There, Baron Bramwell said: " There is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he had a motive, which, if it stood alone, would be an illegitimate one." He also cited the *Stroud case [*[2] *(1874) Ibid. 108.],* where the same learned Judge said that the law did not intend to prevent an act being done to a person, kind and good in itself, merely because it had a tendency to make that person favourable to the person doing it. And the *East Dorset case [*[3] *(1910) 6 O'm and H. 30.],* where Pickford J. said: " However, if people act from perfectly innocent motives, in my opinion and so far as I know, unless the, I will not say sole but the main and real motive, of the charge and of what was done, was to corrupt the electors, I do not think the fact that it was in Lady Winborne's mind that it might be useful to her son would make the thing corrupt." I feel the force of these citations, but, in my opinion, the test is whether the desire to secure the continued influence of the supporter was a substantial element in the mind of the candidate, and I feel constrained in the present case to find that it was.

Mr. Elliott also urged the following points: That a guarantee is not within the actual words of the enactment; that in any case this guarantee was not: legally enforceable, not being in writing; that in the particulars the respondent was not charged with having made this favour in order to induce Abeygoonesekere to endeavour to procure the return, but in order that he might actually procure the election; further, that he was not charged with giving a promise or a guarantee or a loan, but with an actual gift of valuable consideration. He also urged that the word " inducement " implied " leading into " a transaction, and could only refer to something operating on the mind originally so as to secure support. He further urged that the bribe must move from the briber, and that the payment would not be a bribe if it was exacted by. a request. I am unable to uphold any of these points. The guarantee is a promise to pay certain-money for another person, and is within the actual words of the enactment. I do not think that it matters that that payment is to be made on a contingency. Quite apart from that the pecuniary advantage, which a person receives by way of credit when a guarantee is made in his favour, may, I think, be considered

valuable consideration within the meaning of the enactment. It does not matter if this guarantee is not legally enforcible. A promise to pay money for a vote would not be legally enforcible, being *ex turpi causa,* but it would nevertheless be a bribe. The verbal inexactitudes in the particulars do not matter. As I have said, the word " procure " is used as practically synonymous with "promote," and the omission of the word " induce " does not in any way obscure the nature of the offence, which was referred to in the particulars. It is quite true that the money and goods obtained by Abeygoonesekere in the particulars are referred to as a gift, but that was the original case of the petitioner. That case is not fully proved. The transaction turns out to be, in one case a guarantee, and in the other case a loan. But this is only a diminution of the offence in degree, and a finding of an offence in a lesser degree is justified by the particulars. I do not think the word " induce " can be confined to cases in which the object is to secure the initial support of the person bribed. It extends to a case where the object is to ensure the continued support. Finally, it would be impossible to hold that a payment is not a bribe, if it is the result of an exaction.

It should be borne in mind that a finding that Mr. de Silva is, in the circumstances, guilty of bribery does not necessarily imply any moral turpitude. A person who does an act with a particular intention is by definition guilty of bribery, even though it was not a moral offence for him to have formed that intention. It is true that bribery is described as a " corrupt " practice, but " corrupt " is used here in a special and technical legal sense. As it is said in *Rogers on Elections, vol. II., on p. 411,* " the word ' corrupt ' means any violation of the Act of Parliament." A voter who gives his vote or support, not as his free choice, but by virtue of some advantageous inducement brought to bear upon him, in the eye of the law gives that vote or support " corruptly," and a person who applies that inducement, in the eye of the law acts corruptly. But it should be borne in mind, in considering the moral implications of a finding of bribery, that one of the leading cases of bribery (*Cooper v. Slade [*[1] *(1857) 6 H. L. C. 746.]*) was a case in which a candidate for the borough of Cambridge allowed the issue of a circular promising to pay the railway expenses of out voters who came in to vote for him, being misled into the belief that this was permissible by law through an *obiter dictum* of an eminent Judge cited in a law book to which he referred.

It must be understood, therefore, that the finding of bribery does not imply any reflection on Mr. de Silva's moral character.

I proceed to discuss the other charges, and the most important of these is an allegation of corrupt treating said to have taken place at

Mr. Abeygoonesekere's party at Karandagolla. The question for determination is whether the refreshment at that party can be said to have been corruptly administered, with a view to influencing the votes of the electors. There can, I think, be little doubt that Mr. Abeygoonesekere in arranging his party had an eye to the election. On September 15 (or more probably September 14 or 16, as on the 15th Mr. Abeygoonesekere was in Kandy), Mr. Godamune**,** a supporter of Mr. Rambukwelle, passing Mr. Abeygoonesekere's house at midnight, turned in to see him, Mid found him engaged in making out invitations for the party with the help of the register of voters. He smilingly suggested that this party was an electioneering manoeuvre, and received an evasive reply. Mr. Elliott ingeniously suggested that Mr. Abeygoonesekere was simply using the register as a convenient form of directory. There might be some plausibility in this suggestion, but for the curious coincidence that the party was fixed for the week of the election. According to local superstition there seems at any rate good *prima facie* grounds for thinking that the first day of the party would not be what is regarded as an auspicious day. It must be borne in mind that Mr. Abeygoonesekere was an old electioneering hand, and was at this time a zealous partisan for Mr. de Silva. He apparently expected that he was to be liberally rewarded for his efforts, and would anticipate a particularly liberal reward if his candidate was successful. I discern, however, yet a further motive for this selection of election week for the party, and that is, that the party would be an expensive one, and Mr. Abeygoonesekere calculated on being able to exact a substantial contribution to the initial expenses from Mr. de Silva by making application at a judicious moment. At any rate he did obtain a substantial advance for the purpose of his party, and the favour he received was certainly not likely to make him less enthusiastic. His services were indeed finally recognized by a very handsome acknowledgment in a letter from Mr. de Silva. I can have no doubt that the party was in fact used as a centre for election propaganda. In particular, the evidence of the witnesses, D. S. Perera, K. P. Jayan Hamy, and Charles Gunawardena, the latter a

local schoolmaster, impresses me very much. Mr. Perera says: We were treated first with drinks. Whisky, Schnapps, gin, brandy, and mineral waters were served. I had a glass of whisky. Almost all the voters in that neighbourhood were there. After we were treated, Mr. Abeygoonesekere made a speech. With regard to the food, we actually sat at table and had breakfast with courses. About forty people sat for breakfast. Mr. Abeygoonsekere's speech was on the election. He said that he was working for Mr. George de Silva, that the election would be coming off on the 27th, and he wanted all the people who were there to vote for Mr. de Silva. This weaning ceremony was held on a much bigger scale than is usually done. The scale, of course, depends upon the capability of the man holding the ceremony. The impression created on my mind by the breakfast given, by the drinks, and by the speech made by Mr. Abeygoonesekere was that he was going to kill two birds with one stone, namely, to make money and to get the votes for Mr. George de Silva." Jayan Hamy says: " The impression created on my mind by the speech of Mr. Abeygoonesekere was that this ceremony had nothing to do with the feeding of a child. What I understood from his speech was that he wanted us to send Mr. de Silva to the Legislative Council. I therefore concluded that the object of the party was with regard to the return of a member to the Council." Similar evidence was given by the schoolmaster, Gunawardena. This is what he was saying to the people from morning. After speaking he would take the voters to the breakfast table, and wind it up by a reference to Mr. de Silva. There were two parties taking breakfast at two different tables. Speeches were made, by Mr. Abeygoonesekere at both those tables. He also walked from group to group, and said: " You should pay heed to what I say, and we should all endeavour to return Mr. de Silva." I can have no doubt in my mind that the party was used as an opportunity for propaganda, and that the propaganda was reinforced by the sentiment of hospitality. It was argued on behalf of the respondent, How can it be said that this treating was corrupt, inasmuch as it was an essential obligation of attendance at the party that there should be a money contribution from each guest ? As I understand the custom, this monetary contribution would be made in expectation of a return upon some other occasion. The contribution and the expectation would thus in a manner cancel out. The guests no doubt would in any case have been served with refreshments. The liberal scale of that refreshment and the wide range of the invitations may have been partly due to the ostentatious ness of the host. But the host was a person of great local position and

importance. He belonged to the most influential family in the district. He was serving refreshment on a liberal scale, and the guests, particularly those of a lower social position, would feel nattered by the invitation, and under a sense of obligation to the giver of the party. When he used his position as host, and the refreshment which he was distributing to them, in such a manner as to influence their minds for the purpose of election, I think he was guilty of treating within the meaning of the law. The wide range of his invitations was, I think, primarily due partly to ostentation and partly to avarice. He expected to make a great local impression and also to derive a hand-some return. But I think there was a secondary and substantial motive, in that he hoped to secure a useful field for propaganda. I am unable to see any evidence that Mr. de Silva was privy to this design, but he is, of course, responsible for the acts of one, who was admittedly his agent, in the sense which this word bears in election law. I find, therefore, that the offence of corrupt treating by an agent of the respondent was committed at this party at Karandagolla, and this of itself is sufficient to void the election.

There are also allegations of treating emanating from Mr. Abeygoonesekere both at this place and at Padiyapelella. William, a servant of Mr. Abeygoonesekere, tells a romantic tale of Mr. Timothy de Silva arriving with a car full of liquor, jam, bacon, and mutton, and of a midnight feast being given to voters, who had been brought in from surrounding villages, on a more liberal scale than even that of the rice-feeding party. As Mr. Abeygoonesekere himself says nothing about this midnight feasting at his own house, the evidence may be disregarded. It was also alleged by a toddy renter, L. D. M. Perera, that he was commissioned by Mr. Timothy de Silva to look after a body of village voters, and take them to the poll. He was given Rs. 10 by Mr. Timothy de Silva to refresh them with toddy while waiting. He did this, and returned the change to him in the evening. He took the voters to the Padiyapelella Polling Station, and, in accordance with instructions, told them that rice and curry would be provided for them at the boutique of Thomas Gunasekera, and light refreshment at the boutique of Jusey Perera. His evidence was given, not without some impressiveness, nor was he seriously affected by cross-examination. But in view of its unsupported character and the influences at work at the centre from which he comes, it cannot be acted upon, and must be discredited. There is a slight

confirmation of it on one point. Samel Appuhamy, one of the simplest and best of the village witnesses, says that he was taken in to vote in a lorry by the witness Herat, and after voting he went to Jusey Perera's for tea. He offered to pay, but was told there was no charge, and he gathered in some indefinite way that the tea was supplied to him free as a treat on behalf of Mr. de Silva. I have no doubt that his evidence is true, and that he was so supplied with free refreshment. But apart from the tainted evidence of Mr. Abeygoonesekere, and the evidence of the toddy renter referred to, there is nothing to indicate that the refreshment so supplied was supplied by any person who may be regarded as an agent of Mr. de Silva. Samel Appuhamy's evidence, indeed, impliedly contradicts that of the toddy renter, because it is quite clear that when he was brought to the poll he received no directions that refreshment could be obtained from Thomas Gunasekera's and Jusey Perera's. A witness, whose evidence must undoubtedly be accepted, Mr. T. C. de Silva, Government Agricultural Instructor, has come forward to say that he took tea at Jusey Perera's shop, that it is a refreshment house of repute, and that business was done in the ordinary way, and that there was no treating. He states (and I well believe him) that he was out to expose the truth, and had no other motive for giving evidence. Inasmuch, however, as he took his meal in a sort of first class compartment, and did not know how the village customers were dealt with, his evidence is less conclusive than it might otherwise be. In any case, I find this group of charges not proved.

I now pass to another group of charges, namely, the allegation of treating at Galagedara, Ginigathena, and Gampola. On this group of cases I think that certain general observations are necessary. These cases turn upon the principle of agency as understood in election law. Agency in election law has always had a special significance. A candidate is responsible for the acts of any person whom he appoints, whether for pay or otherwise, to carry out his electoral campaign, or whom he or his authorized agents entrust with any responsibility in connection with that campaign. He is responsible even though this agent acts contrary to his express instructions. The relation in fact, as it has been often said, is more like that which exists between master and servant than that which ordinarily exists between principal and agent. What constitutes a man an agent must be a question of fact to be determined according to the circumstances of each particular case. Under the highly developed system of electioneering in vogue in

England, it is comparatively easy to ascertain whether a man is an agent. It is usual for every candidate to have a committee, and to publish the names of that committee. His agent has an office at a recognized committee room, which the members of the committee freely attend. He is permitted to employ sub-agents for the districts of his constituency, and is not restricted, as in Ceylon, to a polling agent for each district. He often has committee rooms and sub-committees in these districts. At each place lists of canvassers are drawn up, and canvassers are entrusted with canvass books. If the agent or sub-agent does not himself undertake the transport arrangements, it is generally easy to ascertain the persons to whom they are entrusted. But in Ceylon electioneering is at a comparatively primitive stage. The only person known to be an agent at any particular district may be the person who is appointed as polling agent for the purpose of the poll. Mr. de Silva had no committee and no committee room. He was his own agent, except in Nuwara Eliya District, where his brother, Mr. Timothy de Silva, acted for him. His principal supporters at the various polling districts were persons with whom he was personally acquainted and with whom he was in correspondence. It is impossible, therefore, in such a case for the ordinary public to know who is or is not an agent of the candidate. Certain local arrangements, however, are necessary, both before the polling day and on the polling day itself. Before the polling day it is necessary to organize meetings, and on the polling day arrangements have to be made for the transport of voters, and generally for some centre at which ignorant voters may be instructed as to the method of voting, and may be reminded of their registered numbers. These local arrangements must, in most cases, be left to the local supporters. But the candidate is here in some considerable danger, particularly in a district where the villagers are scattered in groups or hamlets. It is not at present realized by the general population of villagers that to provide a modest feast for the supporters of the cause which a man favours is an electoral enormity. As the day of the poll approaches enthusiasm is aroused, and a prominent villager may feel moved, more particularly if he is supporting a candidate who, like Mr. de Silva, appeals to popular sympathies, to provide a modest feast for the candidate's presumed supporters, and may even indulge the hope that in so doing he may decide doubtful voters in favour of his own choice. He has no idea that by so doing he is committing a criminal offence, and imperiling the chances of the candidate whom he is anxious to support. The candidate is certainly not responsible for every feast of this nature,

but, on the other hand, if those responsible for the transport and voting arrangements on polling day adopt as their centre for the day a place at which such a feast has, however innocently, been provided, they run a danger of involving the candidate in responsibility for the treating which thus takes place. These observations are illustrated by the three cases under consideration.

Ginigathena was not a polling station. The Ginigathena voters polled at Nawalapitiya. There is only one witness who says that a treat was prepared for the voters by one M. G. Fernando, and that, before starting for the polling place, they were invited to partake of it. This evidence is denied by M. G. Fernando, and the fact of the treating cannot be said to be sufficiently proved. But even if it were taken as. proved, Mr. de Silva would not be responsible, because there is nothing to show that M. G. Fernando was his agent. The fact that earlier in the year Mr. de Silva attended a weaving exhibition at M. G. Fernando's house and bought a roll of cloth for some Rs. 50 does not show that M. G. Fernando was in any way his agent, nor was there any sufficient evidence of M. G. Fernando's premises being adopted as an electoral centre. The charge of treating at Ginigathena, therefore, fails.

But the position is very different at Galagedara. Here there is a very strong body of evidence that one C. de Silva, known as the mudalali of the samagam kadde, provided free refreshment in an empty room in a building adjoining his own boutique, and that these refreshments were freely partaken of by voters who came to poll. The building in question is part of a small group of buildings at Galagedara, which is a scattered constituency, and is situated at a point on the Hataraliyadde road, from which a convenient short cut leads to the polling station. It is proved to my satisfaction that a car bearing Mr. de Silva's placards made this place its centre for the transport of voters, and that these voters were invited into the room where refreshments were provided and were offered food and drink. It is also said that there were persons present who were instructing the voters in the manner of voting. It is further alleged, on a connected charge, that one Tennekoon, a tailor, whose evidence impressed me very favorably, on the instructions of this same mudalali, prepared meals of rice and curry, and treated therewith voters on behalf of Mr. de Silva. An attempt was made to connect Mr. de Silva personally with this treating. Two witnesses

allege that he came to the spot in a motor car, and actually entered the building himself, offered refreshment to the voters, tapped them on. the back, and urged them to partake of the refreshments and give their votes for him. "He was in the room, " says one witness, " I could see him pointing with his hand to the biscuits and other things on the table, and saying ' give your vote to me, and if I am elected I will help you all.' " This evidence is pure nonsense, and an obvious invention. It is impossible to believe that Mr. de Silva did anything so misguided. It is evidence of a type with which local circumstances made us familiar some years ago. Such evidence, to my mind, proceeds not from witnesses being tutored. Witnesses will not be tutored to say things so improbable. It is the work of a partisan imagination, but it necessarily discredits the evidence with which it is associated. Another witness, who gave his evidence in a manner which impressed me, says that Mr. de Silva did come to the spot, and that people gathered round him on the road, but that he did not go into the room where the treating took place. This evidence Mr. de Silva meets by proving that he came to the; post office at Galagedara in a motor car, being driven by a friend, that he walked to the polling station, remained there about twenty minutes, and walked back, and that, consequently he never went near the scene of the treating at all. Mr. de Silva's evidence is confirmed by: the evidence of his. friend, Mr. Hami Wittachchi, who drove him, and by that of the police sergeant who. was on duty at the spot, and must be accepted. But even if it were the case that on this, or any other period of the day, Mr. de Silva did stop outside the boutique, and send a car for voters and then pass on, this would not make him responsible for the treating, because in the circumstances sworn to he would have no means of realizing that treating was going on. Defective as the evidence is in these respects, there are nevertheless certain witnesses on whose evidence I feel confident in acting. In particular, there is the evidence of Mr. Weerakoon, a schoolmaster of the local vernacular school. His. evidence is unshaken, and there is no reason to disbelieve it. He states incidentally that he saw Mr. de Silva in the course of the morning being driven rapidly down the Hataraliyadde road in the company of the Muhammadan schoolmaster, and that he also saw him at Galagedara at 5 o'clock in the evening. He is right about the second occasion. He may be mistaken about the first, but this-mistake does not, in my opinion, detract from his evidence. There is further the evidence of two Tamil witnesses, who were brought to the spot by a prominent supporter of Mr. de Silva,

Mr. Ameratunga, otherwise known as Dharmadasa,. who was in charge of what, according to Mr. de Silva's information, was the only car at his disposal at that spot. This evidence is significantly corroborated by the evidence of Tennekoon as. to the meals supplied in the boutique opposite, and is curiously confirmed by a witness for the respondent, who says that free meals were in fact provided at Tennekoon's boutique, but would have the Court believe that they were provided, not for Mr. de Silva's supporters, but for the sup-porters of Mr. Weerasooriya, at the instance of Mr. Weerakoon, the schoolmaster. Needless to say, I do not believe this evidence, but, in a reflex way, it confirms the evidence for the petitioner. Mr. de Silva states that his only prominent supporters at Galagedara were a Muhammadan *ex* headman, who in fact disclaims the honour imputed to him, the Mr. Ameratunga above referred to, and a kangany on his own neighbouring estate, Appuhamy, whom he described as a most intelligent man. It is said by Tennekoon that this Appuhamy escorted, or at any rate accompanied, the voters who came to his shop for meals, and it is a very curious and significant fact that neither Ameratunga nor Appuhamy are called on behalf of the respondent. I may perhaps say a word with regard to the mudalali, C. de Silva, who is said to have provided these entertainments. It was not possible for his evidence to be fully gone into, but during the time he was in the box he produced a letter from Mr. Rambukwelle, and in case it might be thought that by his exclusion from the box, the case for the respondent was in fact prejudiced, I should like to say that this letter from Mr. Rambukwelle early in July would not in any case have affected my mind. It was in effect simply a very flattering invitation for his support. Such an invitation coming from Mr. Rambukwelle would undoubtedly be treated with respect at the time, but the sympathies, of the person who received it might nevertheless be all the time with Mr. de Silva. And these sympathies might well not be fully -disclosed until the polling day came. In all the circumstances of this case, I feel bound to hold that treating did take place at Galagedara, and that it was ratified and adopted by Mr. de Silva's local agents, and that he is therefore responsible for it.

The charge with regard to the treating at Tennekoon's boutique was not proceeded with owing to a defect in the particulars, but I have accepted the evidence of Tennekoon as throwing a collateral light on the other treating.

With regard to the treating at Gampola, here the evidence given by the two witnesses called was very specific, and, on the face of it, very plausible. They say that they were taken by a man, Abitta, who was in charge of a lorry working for Mr. de Silva, to the house of Mr. Charles de Silva, a prominent resident of Gampola, that they were welcomed by Mr. de Silva and one E. M. Perera, that a large and sumptuous repast was spread on tables and offered to the Voters, and that the whole house had the appearance of a wedding; house. There was further evidence that this house was used for what I may call the polling centre of Mr. de Silva, voters being instructed by clerks as to their registered number and as to the method of voting. This case is met by the calling of witnesses to show that the real polling centre at Gampola was not at Mr. Charles de Silva's house, but somewhere else, namely, at Mr. Gregory de Silva's office, and by calling witnesses of some position, who say that they visited Mr. Charles de Silva's house in the course of the day, and they saw no signs of a feast. E. M. Perera was also called. He impressed me as a honest and patriotic witness, and strenuously denied what was alleged. But neither Abitta nor Mr. Charles de Silva were called. It must be admitted that this was a singular method of defence, and what its meaning may be I do not know.. Had the evidence as to this house being made a polling centre not been contradicted, I might well have felt justified in acting on the-evidence called by the petitioner. But in the circumstances, and in view of the explicit evidence of E. M. Perera, I am content to find that the charge fails because the agency of Mr. Charles de Silva is not proved. The only evidence that he was in any way the agent of Mr. de Silva is that of Abeygoonesekere, and, as has been already pointed out, the evidence of this witness can only be acted upon in so far as it is expressly confirmed.

With regard to the treating generally, it was opened by Mr. R. L. Pereira that it was brought to Mr. Rambukwelle's notice that there was an organized and general system of treating on behalf of Mr. George de Silva, and that he had felt bound to launch the petition on that ground. There certainly were other charges of treating in other localities, which were not investigated, but my impression from the cases I have investigated is that there was no. such organized system of treating, and that any treating which took place was due to local indiscretions.

I may perhaps mention another charge which was investigated- a charge of undue influence. A Muhammadan headman, who was a-client of Mr. de Silva, came to his office at Kandy late one night in order to consult him about a pending case, and found himself in the middle of a meeting of Mr. de Silva's supporters. The fact that he was a headman aroused the suspicion that he was a spy. He was reproached and threatened, and finally induced to sign a paper that he would not work for Mr. Rambukwelle, and it was said that he was. pressed to swear to the truth of this upon salt-a rite which, as he-truly says, is not recognized in his religion. He was apparently expected to say that Mr. de Silva himself in some undefined way-coerced him into this proceeding, and that what he actually swore was to support Mr. de Silva. The Government Agent was cited to prove that a complaint was made to this effect. There was some suspicion that he was evading arrest, and a bench warrant was issued to procure his attendance. In Court he swore that it was not Mr. de Silva, but Mr. de Silva's supporters who exercised some indefinite pressure upon him, and he vacillated as to whether his promise was to support Mr. de Silva, or only not to support Mr. Rambukwelle. The charge consequently failed, and it would have served no useful purpose for the Government Agent to corroborate evidence which was not in fact given. But the charge in any case does not seem to me to disclose any matter of substance. I now come to a very important aspect of the case, namely, the allegations of irregularities committed by the Presiding Officer at Padiyapelella. It was alleged, in the first place, that the principle of secrecy was not maintained, that several voters registered their votes openly in the presence of the polling agents, that Mr. Timothy de Silva, who was the respondent's polling agent, interfered with voters and prevailed on them to place their cross opposite his brother's name, in some cases marking the ballot papers himself, that he received the ballot papers from the hands of the voters and put them into the ballot box himself, and that in one case he actually abstracted a voting paper. With regard to all these points no substantial case was made out. It was indeed the fact as sworn to lay Mr. Morritz, a local planter, that while he was at the polling booth there was considerable confusion and congestion and that the arrangements did not work satisfactorily. Mr. Lushington, the Presiding Officer, has, however, explained that this congestion and confusion only took place for a short time in the course of the morning, and that the arrangements were modified and proper order restored. It does appear to be the case that in

some instances the voters did not put their voting papers into the box, but handed them for this purpose both to Mr. Timothy de Silva and to Mr. Galagoda, the agent for Mr. Rambukwelle. No evidence was given of the alleged interference of Mr. Timothy de Silva with the actual voting. With regard to the alleged abstraction of a ballot paper, which is put forward, not as a specific ground for voiding the election, but as an illustration of the general confusion which was said to prevail, this also is not made out. A certain colour is lent to the allegation by the fact that it appears on an examination of the ballot papers that two ballot papers are missing. The attempt to identify one of these missing ballot papers with the ballot paper belonging to a voter, Punchi Banda, which was proved by the Arachchi who saw the Incident to have been handed to Mr. Timothy de Silva, when, so the Arachchi alleged, " it looked as if Mr. de Silva put it in his pocket, " completely broke down. This ballot paper was duly found in the box, and it appeared that the vote was not as the voter alleged for Mr. Rambukwelle, but for Mr. de Silva himself. There are other ways of accounting for the two missing ballot papers other than that suggested. In particular it appeared that in this very ballot box a ballot paper was discovered which ought to have been put into the box of another electorate. It is physically possible that a. ballot paper was abstracted, but if this was done, it was probably in a spirit of mischief rather than fraud, and could not have affected the result. It would be extremely difficult, in my opinion, for a polling agent to see how any voter had voted, and it would not be easy to abstract a ballot paper, which is not a small scrap but of some considerable size. In view of the source from which the allegation comes, namely, the witness Abeygoonesekere, I view the allegation with pronounced suspicion, and in any case find it not proved.

The other allegation is of a more serious nature. It appears that voting went on for a very considerable time without the Presiding Officer stamping the ballot papers on the back with the official stamp, as required by rule 21 of the rules for the election of members made under Article XXXVI. On the mistake being discovered, the Presiding Officer consulted the various polling agents present, representing the candidates for all the electorates, and in breach of' the final words of rule 20, which requires him to keep the ballot box locked and sealed, in pursuance of a common-agreement among the polling agents, opened the box, took out the voting papers, stamped them on the back, taking care to secure that the manner in which the voter

voted should not be seen, and put them back in the ballot box and again sealed it. This is unfortunately a very fundamental irregularity. It is required by rule 27 that any ballot paper which has not on its back an official mark shall be. void and shall not be counted. All the ballot papers thus stamped by. the Presiding Officer were consequently void papers.

Mr. de Silva's majority was a very narrow one, being 25 or 26 only. The total number of ballot papers was 500. Under the circumstances, these void ballot papers being mingled with the others, it is impossible to say which candidate secured a majority of the lawful votes.

Article XL. declares that " no election shall be invalid by reason of a non-compliance with the rules contained in Schedule II. to this Order, if it appears that the election was conducted in accordance with the principles laid down in such rules, or that such non-compliance did not affect the result of the election. " This provision reproduces with a verbal modification section 13 of the Ballot Act, 1872. This section has been considered in the case of *Woodward v. Sarsons [*[1] *(1875) 10 C. P. 733.]*. It was there undoubtedly held that it was inserted *ex abundanti cautela,* and that its object was to give effect to the Common law principle that an election was only void if it was held in such a way as in fact not to represent the free choice of the voters, and in particular according to the principles of voting by ballot as. prescribed by the Statute. See page 751. It was there accepted by the Court that " the non-observance of the rules or form which is to render the election invalid must be so great as to amount to a con-ducting of the election in a manner contrary to the principle of an election by ballot, and must be so great as to satisfy the tribunal that it did affect, or might have affected, the majority of the votes, or, in other words, the result of the election. " But in this case it is clear that the irregularity may well have affected the result of the election. The article on "Elections " in *Lord Halsbury's Laws of England in paragraph 624* contains the following observations based upon the decision of Kennedy J. in the *Islington Division case,*[1] which is unfortunately not here accessible: " If, on the other hand, the transgressions of the law by the officials being admitted, the Court sees that the effect of the transgressions was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether those transgressions may not have affected the result, and it is uncertain whether the candidate who has been

returned has really been elected by the majority of persons voting in accordance with the laws in force relating to elections, the Court is then bound to declare the election void. '

Mr. Obeyesekere, who appeared as *amicus curia* and to watch the case for the presiding officer, and to whom I am greatly indebted for his valuable assistance, cited the case above mentioned, and also another case *In re Thornbury Division of Gloucestershire Election Petition*.[2] In that case the Presiding Officer noticed before a voting paper was put into the box that it had not been duly stamped, and there upon took it from the voter and supplied him with a new paper duly stamped. In that case the vote on the substituted ballot paper was held to be a good vote. That case, however, seems to me very different from the present one. The vote in that case was given upon a paper duly stamped. Mr. Obeyesekere further contended that the present petitioner was estopped from challenging the result of the election on the ground that he, by his voting agent, had acquiesced in the arrangements that was come to. He cited the following cases, *Pizani v. The Attorney-General of Gibraltar,*[3] *Chunder Daas v. Arathoon,*[4] and *Efatoonnissa v. Newaz,*[5] as authorities for the proposition that a party to a case who takes up a particular attitude in that case may be afterwards estopped from asserting his lawful rights if those rights are inconsistent with the attitude he has previously assumed.

If this were a case in which the parties were alone concerned, if it were simply a question whether Mr. Rambukwelle or Mr. de Silva should be member for the division, I think this principle might well be applied. Undoubtedly, but for the acquiescence of Mr. Timothy de Silva, Mr. Rambukwelle's agent would not have consented to the stamping of the ballot papers. But, as Mr. Pereira justly argued, the public interests have also to be regarded. The voter has rights as well as the candidate. The voters are entitled to have the result of the election declared according to the law, and not according to an agreement between the candidates. No authority has been cited in which the principle of estoppel has been applied as between candidates at an election, and I do not feel justified in giving effect to it here. For these reasons I feel bound to declare the election void on the ground of the irregularities committed by the presiding officer in addition to the grounds already specified.

The result is that of the matters inquired into, the petitioner succeeds upon the charges 1 (*f*), 1 (*g*) 3 (c) as charged in the particulars, and on paragraph 4 (*d*) of the original petition, except that the treating referred to in 1 (*f*) and 1 (*g*) did not take place with the knowledge or consent of Mr. George de Silva. The respondent succeeds on paragraphs 1 (a), 1 (*b*), *1* (*d*), 1 (e), 1 (*h*), 2 (a), and 7 of the particulars, and on paragraph 4 (*a*), (c), and (e) of the original petition.

With regard to costs, the petitioner having succeeded in unseating. the respondent must have his general costs, but must pay to the respondent the costs of those charges which were investigated but upon which he failed. The petitioner must also pay to the respondent any costs which can be shown to have been actually incurred through the petitioner having claimed the seat and through the respondent having consequently lodged recriminatory objections. I am unable to see that either of the parties was put to any additional costs by the error of the Presiding Officer in which the polling agents acquiesced, and I make no special order with regard to the Presiding Officer. This order as to costs is subject to my further or other directions that may be given on any subsequent application, and with liberty to either party to apply for any such further or other directions.

I should like to take this opportunity of saying with regard to an *ex* advocate of this Court, whose name was mentioned in the course of the proceedings, that there appeared to me to be nothing in the case. to justify the references that were made to him. I see no reason to believe that because of his previous fault he should be suspected of any indirect practice in the preparation of the case for the petitioner. On the contrary, I think that in view of what must be his natural desire to redeem his reputation, he would be likely to be specially punctilious in a matter like this in which he was acting in collaboration with members of the legal profession. I am glad to learn that after expiating his fault in the manner prescribed by law, he has been entrusted with professional employment, in which he will have an opportunity of re-establishing his character.

I think it well to draw attention to the principle laid down in the *Wigam Borough case [* [1] *(1881) 4 O' M & H 1.]* and the *Montgomery Boroughs case [*[2] *(1892) Day 150.],* cited in the article on " Elections" in *Lord Halsbury's Laws of England on page 449,* that it is not proper that persons

who have been, or are likely to be, subpoenaed by one side should be got by the other side to make statements or to sign prepared statements. The breach of this principle, which took place, was no doubt due to ignorance of the principle that has been thus laid down. In spite of all temptations to the contrary, and in spite of apprehensions that the witness may have been suborned to give false evidence, it is always best that this rule should be duly observed.

In view of the length of this judgment, it may be convenient that I should briefly recapitulate its conclusions: -

(1) I find that in consequence of a demand from E. W. Abeygoonesekere, Mr. George de Silva guaranteed the payment of the account of this witness at Millers, Ltd., and a further account of the same witness at the Central Medical Stores, and that in response to a further demand of the same person he advanced him the sum of Rs. 125 for the purpose of discharging an obligation of the said E. W. Abeygoonesekere, that a substantial motive operating upon his mind, when he so acted, was a desire to induce the said E. W. Abeygoonesekere to continue to give him his support for the purpose of procuring his return as a Member of the Legislative Council, and that he thereby, on each occasion in law, committed the offence of bribery, as defined by Article XLVI. of the Order in Council.

I also find that in so acting Mr. de Silva was not conscious that what he was doing was either wrong or contrary to law, but that his action voids his election.

(2) I further find that the witness E. W. Abeygoonesekere, at the party given by him at his house at Karandagolla, used his position as host, and the refreshments which he supplied in that capacity for the purpose of corruptly influencing the voters to give their vote at the election, and he thereby committed the offence of treating, and that as he was an acknowledged agent of Mr. George de Silva, as that term is used in election law, the election is also void on that ground. Mr. de Silva's knowledge or acquiescence was not proved.

(3) I further find that at Galagedara treating took place at the instance of C. de Silva, and that this treating was adopted and ratified by Ameratunge and Appuhamy Conductor, who were the agents of Mr. George de Silva for the

purpose of the electoral arrangements on polling day, and that consequently Mr. George de Silva is responsible for the treating which took place, although it took place without his knowledge or acquiescence. This also voids the election.

(4) I further find with regard to the further treating alleged to have taken place at Karandagolla, Hanguranketa, and Padiyapelella, that neither the treating nor the agency has been sufficiently proved, and that the charges therefore fail.

(5) I also find with regard to the treating at Ginigathena that it is not sufficiently proved, and that in any event there is no evidence to establish agency on the part of the person giving it so as to affect Mr. George de Silva, and that this charge consequently fails.

(6) With regard to the alleged treating at Gampola I find that agency is not established, and that the charge consequently fails.

(7) I find generally that so far as the question has been inquired into by me, there is no ground for imputing to Mr. George de Silva any general organized system of treating and that such treating as took place was due to local indiscretion.

(8) With regard to the allegations against the Presiding Officer, that the proceedings were conducted with such confusion, that the principle of secrecy was not observed, and that polling agents were allowed to take the voting papers from the hands of the voters and put them into the ballot box, I find that for a short time in the course of the morning, there was some temporary confusion and congestion, but that the matter was quickly rectified, and that the irregularity was not substantial.

I find in particular that it was not established that there was any handling of voting papers in such a way as to interfere with the principle of secrecy, and that the allegations made against Mr. Timothy de Silva of improper interference with voters and the abstraction of voting papers are not established.

(9) With regard to the further irregularities complained of against the Presiding Officer, that at a certain stage in the voting he opened the ballot

box and stamped a number of voting papers which had been handed to the voters and used without being duly stamped, it is proved and admitted that this took place in good faith and with the acquiescence of all the polling agents present purporting to act on behalf of the candidates. The irregularity, however, was such that it is left in obscurity which candidate in fact had a majority of the lawful votes. As the question is not a mere question between the rival candidates, but as the interests of the general body of voters are involved, I do not think that this question can be decided on the principle of estoppel. I therefore rule that the election is void on this ground in addition to the grounds above specified.

Election set aside.

Aarnolis Appuhamy Et Al. v. Wilmot Perera - NLR - 361 of 49 [1948] LKSC 21; (1948) 49 NLR 361 (3 May 1948)

1948 *Present :* **Nagalingam J.**

TARNOLIS APPUHAMY *et al.,* **Petitioners**, and **WILMOT PERERA,**
Respondent.

Election Petitions Nos. 7 and 9 or 1947,
Matugama.

Election petition-General intimidation-Undue influence-Treating-Payments to religious or charitable institutions-Bribery-Ceylon (Parliamentary Elections) Order in Council, 1946, sections 55, 56, 57 (a).

To set aside an election on the ground of general intimidation it is necessary to show that the intimidation was of such a character, so general and extensive in its operation, that it cannot be said that the polling was a fair representation of the opinion of the constituency.

Before an election can be declared void on the ground of undue influence there must be proof that the person or persons guilty of undue influence were agents of the successful candidate ; there must also be proof that particular voters were in fact influenced by the acts of undue influence.

The supply of refreshments by a candidate to persons who are actually engaged in the work of the election, and whose ballots are well known to be secure in his favour, does not amount to treating "within the meaning of section 55 of the Ceylon (Parliamentary Elections) Order in Council, 1946.

Payments to religious or charitable institutions do not amount to bribery within the meaning of section 57 (a) of the Order in Council.

The inducement to vote, which is contemplated in section 57 (a) of

the Order in Council, must be proved to have been operative in the mind of the elector at the date of the election.

Where a candidate made a declaration that he would hand over the allowance that he would receive as a Member of Parliament to the Vice-Chancellor of the University of Ceylon to enable poor students from his electoral area to prosecute their studies at the University-

Held, that there was no offer or promise of valuable consideration within the meaning of section 57 (a) of the Order in Council.

THESE were two election petitions challenging the return of the respondent as Member of Parliament for the Electoral District of Matugama.

The grounds set out by the petitioners as tending to vitiate the election were (1) General intimidation, (2) Undue influence, (3) Treating, (4) Bribery.

R. L. Pereira, K.C., with *W. Sansoni, E. B. Wikramanayake, A. M. Charavanamuttu, U. A. Jayasundere, H. W. Jayewardene, S.R. Wijayatilake,* and *R. S. Wanasundera,* for the petitioners.

E. F. N. Gratiaen, K.C., with *C. S. Barr Kumarakulasinghe, A. I. Rajasingham,* and *Vernon Wijetunge*, for the respondent.

Cur. adv. vult.

May 3, 1948. **Nagaligam J.-**

These are two Election Petitions challenging the return of the respondent as Member of Parliament for the Electoral District of Matugama. Three candidates contested the seat, namely, the respondent, Mr. C. W. W. Kannangara, the Minister of Education in the former State Council, and Mr. Robert Appuhamy. The last named does not appear to have made a serious bid for the suffrage of the people. He does not appear to have had election meetings or established polling offices or even appointed polling agents and in truth the election was fought for all practical purposes between the other two candidates, and I propose to discuss the evidence in the case as if these two candidates alone had been in the field.

Four grounds have been set out by the petitioners as tending to vitiate the election of the respondent, namely,-

1. General intimidation,

2. Undue influence,

3. Treating,

4. Bribery.

I shall deal with each of these grounds seriatim.

(1) General Intimidation.

No less than forty-five instances were furnished by the petitioners under this ground. They adduced proof of only thirteen of them and, even in regard to these latter, the proof tendered was in certain instances at variance with the particulars given. Not only have the acts relied upon by the petitioners as constituting the basis for the charge of general intimidation not been proved, but even if full weight be attached to the testimony given in Court by the petitioners' witnesses to the extent of holding the charges established, it would be clear that the entirety of the proof thus assumed to have been given in favour of the petitioners cannot in law amount to proof of the charge of general intimidation.

Speaking generally, the testimony of the petitioners' witnesses, with a few exceptions, may be said to range itself between gross exaggeration on the one side and deliberate perjury on the other. I do not, therefore, consider it necessary or essential to discuss the evidence in regard to each of these specific charges in detail and I shall content myself with recording my findings very briefly in regard to them. Though in the petition it was alleged that there was general intimidation before, during and after the election in different parts of the electoral district, no attempt was made to offer evidence of any intimidation subsequent to the date of the election, and the evidence tendered in regard to intimidation before and during election was to show at best that there were unrelated and unconnected acts of threat or violence to electors.

According to document P 16, at a place called Pannala, it would appear that two school boys, who were not themselves voters but who had been on a mission of distributing election literature in support of the defeated candidate, had had the leaflets in their possession snatched from them by a drunken man who abused both of them and the candidate for whom they were working. It is also alleged that the two youngsters were threatened with assault. One of the schoolboys gave evidence and to corroborate him another schoolboy who had witnessed the incident was also called. In Court they went much beyond the statements they had made to the Police shortly after the incident, and I place no reliance on the exaggerated evidence they gave in Court, which was obviously an attempt on their part to carry escapades they are used to in school into the Courthouse as well.

A similar incident is said to have taken place at Henpita on September 2, when three schoolboys were out distributing notices for a meeting to be held in support of the defeated candidate ; these boys were bolder than the last two, and they in a spirit of bravado insisted on tendering their notices to two drunken men, who to their knowledge were staunch supporters of the successful candidate ; as was to be expected, the reaction of the inebriates was to snatch the notices the boys yet had with them and to destroy them. The boys also alleged that the two men chased

after them armed with a knife and a club. A complaint was made to the Police which was followed by a plaint, and later the prosecution was compounded on the undertaking given by the accused persons that they would not interfere with the complainants.

These two instances show that drunken men and schoolboys engaged in distributing election pamphlets seem to have a certain amount of affinity for each other, and that drunken men avoid grown-up men similarly engaged as the boys and vice versa is proved by, inter alia, the instance where Sirisena Wijesinghe, who went about distributing handbills in support of the defeated candidate, did not come across any drunken men nor did drunken men run across him, although the Star emblem was prominently displayed about his person as he went about the country. I think the truth is that schoolboys on their rounds in their unbridled enthusiasm sought to poke fun at drunken men when they came across them for otherwise they would not be schoolboys, and drunken men then retaliated, for otherwise they would themselves not have been drunken men. But what is surprising is that these instances should have been seriously put forward at this inquiry in support particularly of the charge of general intimidation.

A drunken man also figures at the incident at Yatowita where, according to P 11, on September 2, 1947, a man the worse for liquor, appears to have torn away the placard of the defeated candidate which was pasted on the walls of the house of one of his supporters and abused the supporter in obscene language. The supporter, however, gave evidence in Court and for the first time introduced details of how threats had been uttered against him if he voted for the defeated candidate and of how he himself, as a result of the incident, explained to a fellow voter who came on the scene shortly thereafter that it did not appear to him that they were free to exercise their vote in any way they pleased-language which makes one suspect that the witness had some acquaintance with the well known treatise of " Rogers on Elections ", if not in the original, at least in translation of a certain passage in it. In this instance, too, I reject all the additional material that was embroidered round the incident of the tearing away of the placard and the use of abuse towards him. Far from any threats having been held out, the statement to the Police discloses that when the witness came out of his house the miscreant took to his heels. This incident only furnishes an example of a cowardly intruder of a building being intimidated by the appearance of the householder and does not support the charge.

The next is an incident that is said to have occurred at Udagama on September 4, when three men who went in a car are alleged to have threatened harm to a voter of Mr. Kannangara should he vote for Mr. Kannangara, but the evidence also shows that the voter replied that in spite of what they said he would do exactly what he liked and does not appear in the least to have been intimidated.

Iddagoda is the scene of the next incident where, on September 6, two brothers-in-law, each supporting one of the two rival candidates, came to blows over the alleged propriety, or rather impropriety, of putting up the placard of the defeated candidate on a building in which one of them was trading and the other had rights

of ownership. Not a word was said as to how either of them should vote or not and yet evidence was led of this incident!

Yala became somewhat of a robust peg upon which was hung a mass of evidence in regard to an incident that is said to have taken place there on September 7. At best, accepting at its face value the evidence led on behalf of the petitioners, nothing more is established than that a number of men, some of them undesirable characters, went up to Yala junction in a car and a bus, some of them exposing their persons and all of them shouting out that if any body came out they would be taught a good lesson and that if they did not vote for the respondent their cattle would be stolen and their houses would be set on fire-here again the language of Rogers is much to the forefront. It is alleged that this demonstration was enacted for the special benefit of one Aron Mudalaly, who was a leading supporter of Mr. Kannangara, but Aron Mudalaly himself was not called. The words alleged to have been uttered could not have been taken seriously by anyone-they were words uttered by vain men and could not and would not have been treated as meaning anything more than idle words of threat. In fact, though persons who say they heard these threats were called, not one of them did say that these words had any effect on their mind or that their conduct in regard to the election was altered in the slightest degree in consequence. The facts, however, are otherwise. The evidence of Sub-Inspector Kuruwita shows that the incident has been grossly exaggerated. According to the Sub-Inspector, the day in question was one of the ordinary days of a fair that is normally held in that locality not far from the junction and the usual concomitant large crowd made its presence felt on the fair grounds and in the vicinity, and when the car and bus full of men shouting slogans came up and halted, people swarmed round the vehicles. The Sub-Inspector's evidence further establishes that the men in the car and bus did not make any indecent exposure of their persons but that they were attired in the normal way in which villagers are clad, that they raised shouts of" Victory to the Elephant " and that there was nothing in their behavior which would have given cause for alarm to or hurt the feelings of persons of ordinary nerve.

The location of the next incident is Walagedara. On September s, certain Wedisinghes are alleged to have made use of threats to the inmates in the house of a voter by uttering words to the effect that they would not be tolerated in the village if they were to give their votes to Mr. Kannangara. The witness who was called in support of this charge says he made a complaint to the Headman but the Headman took him to his (witness's) house and there shut him in and asked him not to get out. This is really strange conduct on the part of the Headman to whom a complaint is made against certain other persons. But what is more, a plaint alleged to have been filed in connection with this incident was produced but it does not show it has anything to do with the elections or that any member of the witness's household was insulted or even that Alice Nona who, according to the plaint, appears to have been the person insulted, had been insulted in connection with election activities.

The remaining incidents under the heading of general intimidation all relate to events that took place on the day of the polling itself.

Kasellenawa polling station is one which has been singled out for special attack by the petitioners. The evidence given by the petitioners' witnesses has been contradicted by Police officers. Mr. A. P. Jayasuriya says that he went to this polling station in the forenoon on election day and that he was greeted with hoots and jeers, that people Wearing Elephant badges thronged round him in a threatening attitude, so much so that he feared for the safety of his person and that in fact a badge that he was wearing was snatched by a person in the crowd. He further says that he complained to the Sub-Inspector of the removal of his badge and also asked the Sub-Inspector to. "give a chance to the voters to give their votes " as' he felt that' voters were finding it difficult to enter the polling station, the implication being that the voters of Mr. Kannangara were being prevented from casting their votes by threats of force or violence and by physical castration. But the testimony of Mr. Mella Aratchi, who accompanied Mr. Jayasuriya, shows that Mr.Jayasuriya's memory is at fault. According to Mr. Mella Aratchi, Mr. Jayasuriya appears to have been the bete, noir of the electors of the Munuwatubage Pattu and the appearance of Mr. Jayasuriya was the sign for cries of " We do not want Jayasuriya ", amidst hooting and jeering. According to Mr. Malalgoda, the Presiding Officer, polling was interrupted for about fifteen minutes; the reliable evidence in the case, however, shows that the interruption was due to Mr. Jayasuriya's car having been halted opposite the entrance to the polling station and the crowd of voters becoming restive in consequence. One word must be mentioned about the alleged loss of the badge. It is admitted by Mr. Jayasuriya and the other witnesses that he had only one badge when he came to Kesellenawa polling station. Sub-Inspector Rajakulasingham denies that any complaint was made to him about the badge being snatched away from the person of Mr. Jayasuriya, but when Mr. Jayasuriya met the Assistant Superintendent of Police, Mr. Kelaart, a few minutes later, Mr. Jayasuriya was noticed by Mr. Kelaart yet wearing a badge. Neither Mr. Jayasuriya nor Mr. Mella Arachchi nor Mr. Simon Kuruppu was able to explain how, after the removal of Mr. Jayasuriya's badge, he was yet seen wearing one. It seems to me that events moved so fast that Mr. Jayasuriya was in such a confused state of mind that he has unwittingly transplanted at Kesellenawa an incident that took place at Madurawela, and his companions unthinkingly have fallen in line with him. The conduct of Sub-Inspector Rajakulasingham has been adversely commented upon and his integrity assailed by Mr. Jayasuriya, but there is no foundation for it. The evidence given by Mr. Jayasuriya is not convincing and is inconsistent with the complaint he made shortly after the incident to the Assistant Superintendent of Police. In that statement he expressly states that but for the assistance rendered to him by Sub-Inspector Rajakulasinghim and some of his friends the crowd might have assaulted him. That Mr. Jayasuriya was in a very excited, state is obvious. Sub-Inspector Rajakulasingham says that Mr. Jayasuriya wanted him to charge the crowd and shoot them. Mr. Mella Arachchi also says that he had to appeal to Mr. Jayasuriya to cool down, as the latter appeared to be very hurt. As stated earlier the Presiding Officer's journal contains a reference to the interruption to the polling during a period of fifteen minutes but to no other, and the journal has been endorsed by the polling agents of Mr. Kannangara to the effect that they were satisfied with the arrangements for polling and that they had no complaints to make. In fact Mr. Mella Aratchi was frank enough to admit that so far as he could see there were no voters of Mr. Kannangara about the place who could have been threatened

or abused, and in these circumstances it is impossible to hold that any voters were threatened or intimidated.

The polling station at Bellapitiya must next be noticed. It was stated that wearers of Star badges were molested, their badges removed, Elephant badges substituted and they were adjured to vote for the respondent. The witnesses who depose to these facts, one of them a Registrar of Marriages and another a polling agent, admit that they made no complaint to anyone in authority at the time the alleged misdeeds were perpetrated, and perpetrated so flagrantly in close proximity to places where Police officers were stationed. What is more, the polling agent in this instance too expressly declared to the Presiding Officer that he had no complaint to make with regard to the polling. A third witness went to the extent of saying that constables detained wearers of star badges while they let those with Elephant badges go into the polling station, but he too, curiously enough, says he made no complaint either to superior officers of the Police who came to the station at frequent intervals or even to the agents of the candidates who were both in the polling station and in the election office close by.

In contrast to the evidence of these witnesses is that of the Presiding Officer, who says that he went out at intervals to see whether there was anything amiss on the road leading to the polling station but he found that everything was orderly ; he, however, says he found the Headman loitering among the crowd and he warned him no less than twice before he could be induced to leave the place. I reject the testimony of the witnesses called by the petitioners as unworthy of credit.

Activities at the Madurawela and Haltota polling stations formed the subject of charges, but the evidence in Court is so far different from the particulars furnished that it is unnecessary to take any further notice of them.

Obstruction caused to a car out on a mission of conveying voters to the polling stations by certain men armed with knives at a place called Welipenna was spoken to by a witness by the name of William Wijesuriya. His evidence in Court was totally in conflict with the statement he had made to the Police shortly after the alleged incident. To the Police he said that as he was going in his car with two boys, a man called Henry Jayasuriya obstructed the passage of the car, holding an open knife in his hand. On behalf of the respondent it has been suggested that the schoolboys and the witnesses were going about in the car, shouting slogans, when the incident is alleged to have occurred. But whatever that may be, the Police themselves to whom complaint was made do not appear to have taken any action in regard to it and it is significant that no voters were being conveyed at that time and that no voters were obstructed, although the witness in Court tried hard to make out that there were two voters in the car at the time-a version entirely opposed to that given by him to the Police.

The last of the polling stations referred to by the petitioner is that at Milleniyawa. It was alleged that a party of youngsters who appeared to be drunk went up, created disturbance and prevented people from voting by threatening them that if they did vote for Mr. Kannangara they would be stabbed. How these boys were to discover

how the votes were cast in order to carry into execution their threats has not been revealed. This view of the matter apart, though there were several members of the Police at the spot apart from Police officers who patrolled the area from time to time and agents of Mr. Kannangara both in the polling station and at the office hard by, not one word of the alleged disorderly behavior of these youngsters was said to anyone of them. The witness who speaks to these facts is a native physician, but though he adds that he was himself specifically threatened, he recorded his vote without any mishap. Nor is there evidence that any other person was prevented in consequence. No reliance can be placed on testimony of this character.

On this state of the evidence, can it be said that a case of general intimidation has been made out? The term " general intimidation " is not defined in the Order in Council. To appreciate, however, what is meant by general intimidation, one must fall back upon the English Law, where the offence has been regarded as a development of the common law. No better definition can be given of the term than that given by Baron Bramwell in the North Durham Case1 where he expressed the notion underlying the term as follows :-

" Where the intimidation is of such a character, so general and extensive in its operation, that it cannot be said that the polling was a fair representation of the opinion of the constituency. "

If one applies the test as formulated in this dictum to what was sought to be proved by the petitioners, leave alone what can be said to have been established by the evidence led by them, it would be found that there is here a total lack of evidence from which it could be gathered or even inferred that the general body of the electorate or even a section of it was subjected to threats of force or violence, so much so that it could be said that the exercise of the franchise by the electors was not free and that the polling did not reflect truly the views of the electorate. No evidence was given of what may be termed coercive intimidation, that is to say, intimidation having for its object the use of force or threat to compel a voter to vote for a particular candidate, but what evidence was led was led to show that the electorate was subjected to preventive intimidation, that is to say, intimidation which had for its object the prevention of the electors from going to the polls lest the rival candidate gets their votes. Having regard to the number polled and to the circumstance that this electoral area annexed to itself the credit of having polled the highest percentage of voters in any electoral area in the Island, it certainly would be extremely difficult to convince anyone that voters in general were deterred by anything savoring of intimidation from going to the polls or recording their votes. I must not, however, be understood as saying that if it is shown that; though a large number may have polled nevertheless a fair number of the electorate were prevented from exercising their right freely, that would not by itself be a sufficient ground for declaring the election void, but of this there is scarcely any proof in this case.

The North Louth case [1] was a much stronger case of general intimidation than the present one. In that case the facts summarized by Rogers 2 were as follows.-

"The opposing candidate was assaulted on the polling day and had to be protected by the Police, but no voter was proved to have been prevented from voting ; that in the Loath polling districts for some days before the election crowds perambulated the roads at night, booing outside the houses of the reputed supporters of the opposing candidate, that on the day before the poll a voter was followed for a quarter of a mile and kicked and did not vote, that a postmaster was threatened on the night before the election and his windows were smashed, that on the polling day the same person was threatened and had to be protected by the Police and was held up for two hours, that another' voter was assaulted with stones and his jaw broken and that another voter was kicked and beaten so badly that he had to stay in the house for a fortnight and that in other polling districts voters were booed and jeered at by crowds. "

The Court refused to avoid the election on the ground of general intimidation, Gibson J. observing :-

" To upset an election for general intimidation it is necessary to show that there was such general intimidation as might have affected the result of the election ".

Local cases are not wanting which illustrate the principles upon which on the ground of general intimidation, Courts have interfered in elections. In both the Nnwara Eliya Case 3 and the recent Gampola Case 4 there was clear evidence that large sections of the electors were prevented from recording their votes by threats of actual violence and force used on them, that prompt complaint was made to persons in authority and that those complaints were verified and found to be true. The present case is one far removed from either of these. Not a single complaint was made to anyone in authority that any voter experienced difficulty in getting to the polling station or in recording his vote. In these circumstances there is only one conclusion possible with regard to this charge, and that is that it has not been made out.

(2) Undue Influence.

While in order to sustain a charge of general intimidation it is necessary neither to prove the agency of the intimidators in relation to the candidate on whose behalf the intimidation was exercised nor to establish that any particular voter or voters were in fact intimidated, it is essential, however, that before an election can be declared void on the ground of the exercise of undue influence proof must be adduced both of the agency of the person or persons guilty of undue influence and of the person or persons intimidated. Section 56 of the Order in Council which defines the offence of Undue Influence makes this abundantly clear. Although the petitioners have made an endeavor to place before Court testimony which, according to them, would demonstrate the commission of the offence of undue influence, they have singularly failed to establish either agency of the alleged intimidators or that in fact any person was intimidated.

. I shall proceed to an examination of the various acts relied upon by the petitioners. Some of the instances of undue influence have ahead been considered under the

charge of general intimidation but I shall. quickly pass them in review, briefly commenting on them from the standpoint of the charge I am now considering.

The alleged incidents at Madurawela and Haltota may be ignored, because the proof tendered, as stated earlier, is so completely at variance with the particulars furnished. The events at Henpita and Welipenna do not concern voters at all but schoolboys. The occurrences at Yato-wita and Udugama have a spiciness more of abuse directed against sympathisers of the opposing candidate rather than of any real threat deliberately made of the infliction of force or violence on them. In regard to the happenings alleged at Iddagoda, there was not even a pretence of intimidation of anybody but a quarrel between two brothers-in-law as regards the putting up of posters.

I shall now take up the other incidents not so far referred to. It is said that at Gfanatuduwa Temple, after the priest in charge had objected to the holding of a meeting at the temple premises in support of the respondent's candidature, the organizers arranged to hold the meeting, and in fact did hold it, in the open a little distance away from the temple premises and that some of the speakers uttered threats not against anyone in particular, but generally against those who worked or voted for Mr. Kannangara. It was, however, alleged that one of the organizers, while engaged in clearing the open ground selected as the fresh venue for the meeting cast a remark that he was cutting a grave to bury the priest of the temple but this, as the witness himsolf admitted, was not and could not have been regarded as a serious threat intended to be carried into effect but merely as one expressing resentment and annoyance which the speaker felt in being refused permission by the priest to hold the meeting at the temple premises and nothing more.

At Weboda it is alleged that a woman by the name of Siriya made use of threats generally against all and sundry, and at Palligoda a mason was abused by one Eddin for voting for Mr. Kannangara. No attempt was made to prove the agency of either Siriya or Eddin.

Proof was tendered that at a meeting held at Udugama in support of the candidature of the respondent leaflets were distributed in which statements were made to the effect that Mr. Kannangara was " under the malefic influence of planets during the period between August 16 and September 14 ". A copy of the leaflet has been produced and it purports to be signed by one styling himself "Astrologer Munivamsa ", which is obviously a pseudonymous name and, what is more, the leaflet does not bear the name of the printer or publisher as required by law. But here again, apart from the question of agency, it would be obvious that this statement cannot in the remotest degree tend to have the effect of intimidating voters. The leaflet undoubtedly has reference to the so-called unsatisfactory position of the planets under whose influence Mr. Kannangara was alleged to be between the dates mentioned, but it is difficult to see how such a statement could create or tend to create fear in the minds of the voters ; it is, however, said that a publication such as that may and would have tended to wean Mr. Kannangara's voters away from him because the electors may have thought that they would be casting their bread on water in voting for a candidate who was bound to meet with

defeat; but then that would constitute at best a charge not of undue influence but one under section 58 of the Order in Council under the heading of making a false statement of fact in relation to the personal character of a candidate, assuming, of course, that the allegation could be treated as a personal reflection on the character of the candidate.

The last item is one that relates to the distribution of copies of pamphlet P 35 among Indian labourers on the estates, in particular at Pantiya. That the leaflet was published and distributed by or on his behalf is admitted by the respondent. It has been argued on behalf of the petitioners that the publication of photographs of Pandit Jawaharlal Nehru and of the respondent on either side of a facsimile of the Indian Congress flag would have tended to create in the minds of the estate population for whose benefit the leaflet was distributed the fear that if they did not support the respondent either temporal or spiritual harm or injury would befall them. I am not disposed to accede to this contention for I do not think that such would be the normal effect produced on the mind of any person, be he a labourers or not, even by the bare pictorial representation, let alone the printed words, but if the text too is taken into account, it would be well nigh impossible to hold that such a result as contended for by the petitioners could have been even remotely possible. To my mind the impression that any voter looking at the pictorial representation would receive is that the respondent either was a friend or had support of Pandit Jawaharlal Nehru but certainly not that the voter would suffer punishment even spiritually-for temporal punishment is altogether out of the question-by not voting for the respondent; on the other hand, it may be true to say that the voter, if guided entirely by the pictorial matter alone may feel that he would be doing an act pleasing in the eyes of Pandit Jawaharlal Nehru should he vote for the respondent and so be induced to vote in that way. But even so, the act does not fall within the category of fraudulent devices or contrivances which are penalized by the Enactment. The wrong view formed by the voter is attributable to his carelessness in not properly informing himself of the verbal contents which are an integral part of the document, and the person issuing it cannot be held responsible for the error committed by the voter. For otherwise, the consequence would be that a document quite proper in point of form and unassailable in law at the time of issue would subsequently be said to attract to it penalties under the law dependent upon solely the misconception of third parties as to its exact purport-an illogical position altogether. Besides, there is a total lack of evidence that any voter suffered change of faith or felt himself impelled to change his faith as a result of the perusal of the document in question.

It is manifest that in regard to all these instances there is no proof either that any of the persons alleged to have been responsible for the acts of undue influence relied upon by the petitioners was an agent of the respondent even in the wider sense of the term as understood in election law, or that any voter or voters were influenced by these acts of undue influence. This charge, too, therefore, fails.

(3) Treating.

This charge is so closely allied to that of bribery, and as every act of treating save one is said to have been accompanied by acts of bribery, it would be more appropriate, in view of the conclusions reached by me, to make a few broad observations on the items under this charge and to relegate the discussion of the evidence to the latter head. One cannot help noticing that in more than one instance where more than one witness has been called to testify to any particular incident, the witnesses contradict themselves so badly, not merely on unimportant details of a trivial character but on material facts of ample proportions, that it is difficult to believe any of the witnesses.

On August 28 and September 3, voters are alleged to have been treated at Hakgala Estate, the residence of the respondent. The evidence led is of a conflicting nature, not only as regards the persons treated and their number but even as to the attendant circumstances.

The floods of August, 1947, are said to have provided an opportunity to the respondent to treat voters in the afflicted areas. The agents of the respondent are reported to have taken provisions and distributed them to the needy, but the two eye-witnesses called in support are not agreed as to the method of transport employed to convey provisions, the place or places where they were taken to or from where or how they were distributed.

The scene is laid at Bopitiya in the house of one William Appuhamy, where the witness Sadiris Appuhamy, who admittedly was a polling agent of the respondent, states that on September 10, food and drink including arrack was given to about twenty-five persons who were Workers of the respondent. His evidence is supported by that of the Headman of the area, Don Dias Karawita, who says that as he went along the road at about 7 p.m. he saw people being given drinks out of a bottle which had a label of arrack. The agency of William Appuhamy is denied by the respondent; but assuming agency to be established, do the facts prove the charge ? Section 55 penalises the giving of food and drink to a person with a corrupt, motive to influence him to vote or refrain from voting. But where persons who are admittedly workers of a candidate and whose ballots are well known to be secure in favour of that candidate are provided with meat and drink not for influencing their votes, for there is no need for any influence at that stage, but as part of the ordinary amenities to which any worker is entitled, such conduct and action falls outside the sphere contemplated by the section. In the Westminster Case [1] refreshments were supplied at no less than sixty public houses to the men who were actually engaged in the work of the election for the candidate. It was held there too that it did not amount to treating. Again, the Bradford Case [2] was also a similar case where known supporters of the sitting member, his committee men in fact, who were actually engaged in the work of the election, were provided with meat and drink ; it was held that the act did not amount to treating.

Bopitiya is also the scene of alleged treating on the election day. It is alleged that at the boutique of one John Sinno, tea and bread was served freely to all and sundry-

and one of the witnesses went to the extent of saying that even those who wore Star badges were freely served without any questions being asked and without any attempt being made to influence them to change over in support? of the Elephant emblem. The evidence also discloses that there were two boutiques "in this area and that all the voters collected at one or other of the two boutiques from where they were conveyed to the polling station. Counsel for the respondent suggested that probably, the treating was done by the opposing candidate's supporters; but it seems to me that having regard to the evidence on the point as a whole, a society admittedly in existence in the village the avowed object of which was to ameliorate the conditions of the people took upon itself to make a day of the election and to offer refreshments to all those who had gathered at the boutique, but there is no proof that any agent of the respondent or anyone on is behalf or with his knowledge spread this feast before the electors.

(4) Bribery,

Under this head too several instances were furnished by the petitioners, but here, as in the previous instances, often the proof was far removed from that which the petitioners took upon themselves to establish. Under this charge, more than any other, the evidence tendered by the petitioners is more often than not entirely untrustworthy and is of such an obviously tainted character that hardly in the ordinary class of litigation that comes up before the Courts either on the criminal or civil side would Counsel have deemed it fit to place such evidence as has been led at this inquiry. Again, a common feature of the evidence in respect of this charge too is that wherever more than one witness was called to depose to an instance of an alleged bribe, the witnesses so hopelessly contradicted one another that one could not but come to the conclusion that not one of them was speaking the truth ; and when their evidence had to be weighed against that of the respondent and of his witnesses, who undoubtedly were not only candid and truthful but created the impression of being forthright, straightforward and honest, it is needless to say that the only view one could take of the evidence led by the petitioners is that no reliance could be placed on it.

I shall now turn to the evidence which may appropriately be discussed under three main headings :-

(a) Payment of money to individuals ;

(b) Payment of money to institutions, religious or charitable ;

(c) Offer other than money.

(a) On the date of polling it is alleged that one T. M. Fernando paid money to estate labourers for their votes. The payment is said to have been made on the road not far from the polling station and within visible distance of where police officers were stationed ; the manner in which payments are said to have been made varied with individual witnesses, one saying that payments were made openly, another furtively and a third covertly. Witnesses who testified to these facts wanted the Court to

believe that they were so innocent and ignorant of the sin of bribery that they did not realize that an offence was being committed, at least not certainly till they were made wise by a member of the bar who happened to observe the act himself. Evidence of the statement alleged to have been made by the member of the bar was permitted to be given by the witnesses on Counsel's undertaking that the member of the bar referred to would be called to testify and in fact the hearing was specially adjourned for that purpose. Though the member of the bar alluded to did attend Court on the next date, Counsel then appearing for the petitioners did not think it necessary to call him. In the result the evidence of the witnesses on this point did not receive that weighty corroboration expected to have been given to it by a witness of standing and of undoubted integrity, and their evidence bereft of that support is worthless. It is also significant that no attempt was made by anyone to draw the attention of any police officer to these flagrant misdeeds. Besides, as Counsel for the petitioners himself had to admit, there is no proof of the agency of T. M. Fernando.

Electors living in the two villages of Henpita and Kolehekada are said to have been reimbursed their loss of income for the day of polling by the respondent. Payments are alleged to have been made to several on September 10, the day preceding the date of the election. Suderis, admittedly respondent's polling agent, says that sums varying from Rs. 2 to Rs. 8 were distributed at several houses according to the number of votes available at each house but he is definite that it was on September 3, 1947, and not on the 10th. The charge therefore largely fails. In regard to three voters, however, the allegation is that it was on September 3 that payments were made, but two of them Sunders does not identify and consequently only one may be said to be reached by his evidence. It is noteworthy that this witness volunteered the information that he himself was paid the sum of Rs. 25, but that information he does not appear to have divulged to anyone. The respondent denies that he did take part in any such activity and I have not the slightest hesitation in accepting his denial in preference to the uncorroborated assertion of the witness Suderis, who, if his evidence be true, is at best an accomplice.

Next I come to a very serious charge of bribery. Premadasa Wije-gurusinghe deposes that Cecil Dias and Gunawardena, agents of the respondent, promised him and his brother a sum of Rs. 1,000 if they would secure votes for the respondent. Wijesinghe further says that in pursuance of the promise he was paid by the respondent two sums of Rs. 50 and of Rs. 100 on August 10 and 28, respectively, and that he also recieved another sum of Rs. 50 on the same account from Cecil Dias on September 3, out of a sum of Rs. 200 paid to him on that date, the balance Rs. 150 representing car hire incurred by him to take voters to the estate of the respondent. In the particulars furnished the persons to whom the offer of the bribe was made are set out as Premadasa Wije-gurusinghe and his father P. A. P. Wijegurusinghe, who is an Arachchi; the evidence, however, is that it was the brother and not the father, and on behalf of the respondent it has been urged that the variation is not as innocent as it may seem but that it is part of a deliberate plan, having regard to the circumstance that wherever persons of some standing or responsibility have been referred to in the particulars, they certainly have not made their appearance in Court, but invariably some person of no consequence has been

saddled with the task of getting into the witness box. The brother himself has not given evidence but it is obvious that the conduct of the brother, as disclosed by certain letters written by him to the respondent even after the election, clearly proves the falsity of this offer of bribe to the brother at least. Had such a promise been made to the brother, the brother instead of appealing for monies by way of loan would certainly have referred to the fact that money was due to him on the promise that had been made to him, but not a single sentiment of that nature pervades the letters. What is more, Premadasa Wijegurusinghe says that relying upon the promise made to him he engaged the services of the witness Sirisena, agreeing to pay him a sum of Rs. 50, but Sirisena flatly contradicts this witness of the existence of such an agreement having been entered into.

On September 3, it is further alleged that Premadasa Wijegurusinghe took a number of voters from Horawela to the estate of the respondent at Hegala and that the electors were treated with food and drink as set out under the charge of treating and that some were also paid money at the rate of Rs. 5 to each by the respondent. But Premadasa Wijegurusinghe and another witness by the name of Francis are both agreed that as the party went up the respondent left the estate on some mission of his, while another witness, Sirisena, says that it was the respondent who paid the moneys. It was not suggested by either Wijegurusinghe or Francis that the respondent did return before they left. It is impossible, therefore, to reconcile the evidence of these witnesses or to place any reliance upon the statement that the respondent paid a sum of Rs. 5 to any of the voters at his bungalow on September 3. There are other circumstances also which throw doubt on the truth of this story. Francis says that when their party of about one hundred people went up, there were already on the respondent's estate fifty or sixty others who had come from other areas. Neither of the other two witnesses however, refer to the presence of any but members of their own party. Wijegurusinghe further says that when Cecil Dias paid him Rs. 200 it was in a room, unseen by anybody, while Sirisena says that money was paid in his presence as well. Both Cecil Dias and the respondent deny the acts imputed to them, and their evidence, as I have said earlier, outweighs the statements of these witnesses.

A pure act of charity, if true, was referred to as having taken place at Welkandala, also on September 3. The respondent, it appears, saw a boy lying ill in the temple premises with an abscess and he handed over a sum of Rs. 10 to one Ekmon with directions to procure food and obtain medical attention for this boy. The respondent denies it ; but it is to be noted that the payment, if made, is not to an elector or to any other person on behalf of an elector for the purpose of inducing an elector either to vote or refrain from voting in consequence.

At Matugama Resthouse on July 14 the petitioners allege that the respondent paid a sum of Rs. 200 to one Appusinno and one Arlis Siano to bail out certain accused persons charged in the Magistrate's Court of Matugama. Two witnesses testified to this incident and not only did they not impress me as speaking the truth but attention need only be drawn to the fact that one witness says that the respondent was dressed in European costume while the other says he was in national costume. There are other facts, too, a consideration of which can hardly be said to

inspire confidence in the story related by these witnesses. The respondent denies the incident.

(b) It is common ground that on July 3, 1947, the respondent handed a cheque for Rs. 200 towards the Pannila Temple Fund, the occasion being the opening of a fancy bazaar in aid of the temple funds by him. The witnesses called by the petitioner, however, say that the opportunity was seized both by the respondent and by certain of his supporters to refer to his candidature and to ask those present to give their support to him. The respondent, as indicated, admits the issue of the cheque but he denies that there was any speech or reference touching his candidature. I accept the evidence of the respondent on this point as against that of the witnesses called by the petitioners. But the effect of giving this cheque has to be considered. It is not disputed that the respondent did stop payment of this cheque. He says that a few days after he had issued this cheque he was put wise by a friend of his who indicated to him the possibility of his contributions being misinterpreted and taken advantage of by his opponents. He says he did not consult legal opinion but immediately decided to stop payment of the cheques and wrote to the Bank stopping payment on July 9. By so stopping payment there can be little doubt that he put himself in a very much worse position than he would have been had he not issued the cheque at all. Even if there had been in the remotest degree any attempt to influence electors to vote for him as a result of the issue of the cheque, on the dishonors of it becoming known among the electorate, as it undoubtedly did and as is shown by the evidence to have been widely published in the area both by display of the cheque itself in the window of a business establishment and by reference to it in newspapers, the influence, whatever it was, was thereby completely nullified, and it cannot therefore be said that the inducement, if any, was operative in the minds of the electors at the date of the election. See the Windsor Case[1].

Another instance of an admitted payment is that of a sum of Rs. 150 to Ananda Vidya Wardene Samitiya on June 22, 1947. This body is in the fullest sense of the term a philanthropic society, the members being entitled not in the slightest degree to any direct benefit themselves. The object of the Association was to collect funds for the construction of the school building. No amenities of any kind were provided for the members. There was no question of proposing and seconding a person for membership of the Society. Provided an individual paid the minimum subscription of fifty cents a month he became a member of the society and so entitled to take an interest in collecting further funds for the construction of the building. The members of the Society from time to time invited leading members of the area to preside at meetings and, of course, the opportunity was never lost of inducing those invited to contribute as liberally as they could towards the building fund ; the persons invited themselves knew full well of the idea behind the invitation. There is one point of the contest between the respondent and the petitioners in regard to this incident. The petitioners assert that it was after the respondent had announced his candidature and it was at a time when it was known as a fact in the area that he was coining forward as a candidate that he insidiously procured the secretary of the Society to take steps to extend the invitation to him to preside at a meeting with the object of furthering his candidature. The respondent, on the other hand, denies that at the

time he accepted the invitation he had any intention whatsoever of contesting a seat. There is ample testimony in this case, not only of various surrounding circumstances but also specific evidence of some of the witnesses called by the petitioners whose evidence on the point is preferable to that of the witnesses who directly testify on this question that the first time that any body heard of the respondent putting himself forward as a candidate was when he announced his candidature in the Press on June 21. The respondent says that it was about two or three days prior to that that some of his friends came and coaxed him to come forward as another candidate who had been in the field had by then dropped out. It is not without interest to note that at the committee meeting of the Society the person who seconded the resolution that the respondent should be invited to preside at the meeting was no other than the Vice-President of the Society, an ardent worker of the defeated candidate and a witness for the petitioner. The committee also deputed three of its members among whom, again, were supporters of Mr. Kannangara, to interview the respondent to induce him to accept the invitation. The President, S. H. A. Fernando, and the Vice-President Sadris Fernando, who are respectively the Village Headman and Vel-Vidane, are both guilty of perjury when they spoke to various incidents in connection with the conduct of committee and general meetings of the Society. On the other hand, the Secretary, B. A. Perera, was an uninterested, honest and impartial witness, whose every word was fully supported and corroborated by the minutes of proceedings which he produced and which were confirmed by no other than S. H. A. Fernando himself. The respondent says that as he had already accepted the invitation he did attend the meeting on June 22, and became a member of the Society by paying by way of subscription a sum of Rs.150. Had the respondent been the only individual who paid such a large sum of money to gain membership, the door would have been open for an inference adverse in some degree at least being drawn against the respondent. But it is established, and established through the mouths of the witnesses themselves who testified against the respondent, that there were others in that area belonging to communities other than theirs who could not have hoped to have derived any benefit directly or indirectly for themselves or for any members of their own community who had contributed largely and at least one who contributed even more than the respondent. The respondent's testimony, which is supported by that of the Secretary, B. A. Perera, is borne out completely by the recorded account of the nature and purpose of the payment made by the respondent, which shows that there was no connection between the payment and the respondent's candidature.

A payment of Rs. 150 is also admitted by the respondent in connection with the Mihindu Perahera at Matugama on June 2, 1947. According to Pieris Munasinghe, about May 13, the respondent intimated to him that he intended coming forward for the Matugama seat and desired that he should introduce the respondent to the electorate among which he, the respondent, was not sufficiently well known. A teacher by the name of Sathan says that the respondent, when he took part in the function on June 2, 1947, publicly announced his candidature on that date. Both these witnesses are witnesses of falsehood. Sathan, who claims to be a schoolmaster teaching the eighth standard in a Sinhalese school, expressly stated that the respondent unveiled a picture of the Arahat Mahinda. On more than one

occasion he referred to the object unveiled as a painting or picture. Under cross-examination, when he was confronted with the assertion that it was not a picture that the respondent had unveiled but a statue, he took umbrage under the pleas that the statue was painted and therefore he described it as a painting. It is important to note in this connection that the petitioners in their particulars too did refer to the unveiling of a picture and not of a statue. One of two conclusions is possible with regard to this witness's testimony, and that is that either he was never there and that he was merely deposing to what information he had received at the hands of others or that if he had been there he was prepared to accommodate himself to the extent of taking upon himself to adhere to the incorrect description given by the petitioners in their particulars. The respondent's evidence is that two persons by the name of Colonne and Jayasundere informed him that a small sum had been left over from the " anti-beef-eating campaign " staged by them earlier and wanted him to assist them in getting a statue made of Mahinda to enable them to conduct a procession with the image on the next Poson day. He says he agreed to do so and bore the cost of the statue amounting to Rs. 150. He further states that at the date of the procession nothing was further from his mind than a parliamentary seat, because at that date he says there was already one Mr. Wilmot Jayanetti who was considered a strong rival to the sitting member. I accept the evidence of the respondent that at the date he made this payment he had not formed any intention of contesting the seat.

On September 7, at Welkandala the respondent is said to have made a gift of Rs. 300 to the Mahajana Abiwurdhina Sadaka Samitiya for building a Chaitya. Admittedly the office-bearers included a treasurer and a secretary apart from the president, who has given evidence in the case, and admittedly there were books of account in which the contributions received were entered. But, curiously enough, no books have been produced, and the position taken up by the President is that after the parliamentary elections the Society has ceased to meet and he now has no knowledge of the books. The evidence also indicates that the respondent went to Welkandala by previous appointment and the money is alleged to have been handed in the presence of a large gathering of people who had been previously informed both of respondent's intended visit and of its purpose. It is established that the respondent had stopped payment of the cheque he had issued to the Pannila temple as early as July 9, as he deemed it improper. But it is said that although he may have made no payments by cheque after he had stopped payment of the cheque referred to, he nevertheless continued to make payments in cash. It has, however, not been suggested that he was making payments secretly, but quite openly and after previous announcement and publication of his intended visit. Nothing would have been simpler than to have secured the presence of responsible persons to testify to the fact of payment. The respondent, on the other hand, affirms that having been warned that his contributions may be misinterpreted he refrained thereafter from any such activity and literally followed the well known dictum of Bowen J. that charity at election times ought to be kept by politicians in the background.

On July 18, the respondent is alleged to have made a payment of Rs. 150 to Levandura temple on the occasion, again, of a Fancy Bazaar held for the purpose

of raising funds for the temple. In this instance, too, although accounts are said to have been kept of the collections made for the temple, it is admitted that no entry of the payment of moneys by the respondent appears in the books and that no such money has been handed to the Treasurer of the funds who would be no other than the resident priest. It is also said that no steps have been taken to compel the party who had received the money to account for the moneys received up to date. The date of this incident, it will be noticed, is subsequent to the date when the respondent stopped payment of his cheque already referred to, and here too, it is not without significance that admittedly the respondent attended the Fancy Bazaar after his visit had been published by means of posters and handbills. The priest himself does not say that he saw the respondent place or hand over any money but the most that the priest goes to the length of saying is that he heard it so said. The respondent denies that he made any such payments as alleged.

It is not unimportant to determine, even on the facts as found, whether payments to religious or charitable institutions can be said to amount to bribery within the meaning of the provision in the Order in Council. The part of the section material for purposes of the present discussion is sub-section (a) of section 57, which provides, leaving out the words which are inapplicable, that every person who gives money to an elector or to any person on behalf of an elector or to any other person in order to induce an elector to vote or refrain from voting should be deemed guilty of the offence of bribery.

Now, I cannot quite see how payment to the funds of a temple can be said to be a gift of money to an elector or to any other person to induce an elector to vote or refrain from voting. The essence of bribery consists in the acquisition of some personal gain or remuneration by the person bribed. In the case of a payment to temple funds no person gains any pecuniary benefit or advantage directly for himself or for any other person. One can, however, understand a payment made towards a private chapel owned by one or more individuals as amounting to a bribe, but in the case of a public place of worship I do not think it possible to hold that a payment towards its funds can be said to amount to an act of bribery within the meaning of the Order in Council. It is, however, true to say that such a payment may have the effect of gaining for the candidate popularity with the electors and may tend to enlist their sympathies in his favour. Though such payment may be the means of providing facilities to the people of the area to obtain religious or spiritual solace, comfort or benefit, nevertheless it is clear that such a payment falls far short of a giving of money or other valuable consideration as contemplated by the Order in Council.

In the United Kingdom, where the election laws have received the closest scrutiny, the view has never been entertained that such payments amount to bribery; our provision in regard to bribery is taken over verbatim from the English provision. There is a useful passage in the judgment of Channel J. in the Nottingham Case[1], which is well worth quoting:-

" It really is indeed clear that gifts to hospitals, churches, chapels, libraries and clubs of all sorts have never been considered bribery. The Legislature has not yet

forbidden them although certainly one motive in such cases is, I suppose, always the popularity resulting in the constituency from the gifts or possibly the fear of the unpopularity resulting in refusing, which is, of course, quite the same thing."

The same idea underlies the pronouncement of Justice Lush in the Plymouth case [2] when he said,

" Granted that the motive is fair, bestowing gifts on the poor is no more an offence against any law than the erection of a library, than the endowment of a church. "

An Indian judgment opposed to these views quoted in the work of Pandit Nanak Chand and others dealing with the Law and Practice of Elections and Election Petitions in India has been cited on behalf of the petitioners. The case is referred to at page 328 as the Agra City Case, reported in 3 Hammond's Indian Election Petitions, which series of reports is not available to us here. The note of the case is as follows :-

" In the case of gifts to temples, where the criterion is the intention of the donor, out of a total collection of 7 53 the respondent subscribed 150, his nephew 100 and another person through whom the respondent gave the subscription 200, and where the respondent being an Arya Samajist never believed in temples and afterwards denied the payment it was held that he had a guilty conscience and in such cases, the criterion being the intention of the respondent was to influence the voters, the gift was therefore a gratification. "

It may be that the case was decided quite correctly on its particular facts, especially when one bears in mind that the language of the Indian Enactment in regard to the offence of bribery is somewhat different from our own and that of the United Kingdom. The respondent in the present case is not shown to have had a corrupt motive in making the payments he did both to temples and societies; on the other hand, it has been proved beyond controversy that he had for a considerable period of years prior to the making of these payments made donations and contributions to charities with the expectation of no temporal reward but actuated by a sincere spirit of benevolence and an honest desire to further the spiritual and social welfare of his fellow beings. The Indian case is, therefore, distinguishable from the present both as regards the facts and the enactment the construction of which was involved, while the English cases are apposite and more in point. In my view, in Ceylon, benefactions to temples, schools and similar institutions are beyond the pale of the penal provisions of the Order in Council.

(c) There remains for consideration the charge that the respondent made a promise to hand over the allowance that he may receive as a Member of Parliament to the Vice-Chancellor of the University of Ceylon to enable poor students from the Matugama electoral area to prosecute their studies at the University. The respondent admits that he did publish and distribute document P 33 in which express reference was made to this offer on his part. He is also alleged by the petitioner to have given utterance to the identical sentiment at various meetings at which he addressed audiences. This the respondent denies. It is, however,

immaterial to decide whether repetition of the published offer was made orally at the meetings or not, for it is established that the respondent did make such an offer. The question is, Does this offer of the respondent amount to the promise of a valuable consideration? I do not think so. Valuable consideration is defined by Stroud as money or money's worth, a definition more appropriate to the present context than that given by the Exchequer Chamber in Currie v. Misa [1] as " some right, interest, profit or benefit", though, it is needless to say, there is in reality no conflict between the two definitions ; the former brings out more clearly the idea underlying the term in Election Law, while the latter that under the law of Contract.

Now, did the respondent offer money or money's worth to any elector? Clearly not. But it is said that he offered the money to the Vice-Chan-cellar ; assuming this to be correct, it is manifest that the offer was to the institution and not to the Vice-Chancellor personally. But, was an offer made in fact to the Vice-Chancellor ? The Vice-Chancellor may not even have heard of this offer, and even if he had, could he claim payment from the respondent? Again, clearly not.

What the respondent did was in reality not to make an offer or promise to anyone but to make a pious declaration of the intention he had formed with regard to the allowance he may receive if elected. No one can surely contend seriously that such a declaration could amount to bribery. If one analyses the declaration of the respondent further, it would be found that his objective in making it was to give added point and significance to his statement that in coming forward to seek the suffrages of the people he was not doing so with a view to secure employment in order to acquire a living for himself but purely to work for their welfare. But undoubtedly the effect of the declaration or at least that intended would have been the gaining of popularity among and the winning of the favour of the people ; but even so, that is not bribery. The view I take is that, firstly, there was no offer or promise, and secondly, that assuming there was an offer or promise, it was to a scholastic institution and would be governed by the same considerations as those applicable to a temple, and therefore equally unobjectionable.

In the result, none of the charges has been established, and I hold that the respondent has been duly elected and that his return is proper. The petitions, therefore, fail and are dismissed.

The question of costs I reserve for the present and I shall make an order in regard to it after I have heard Counsel.

Petitions dismissed.