

Present : Bertram C.J.

In the Matter of the Election of GEORGE E. DE SILVA for the
Rural Division of the Central Province.

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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—Personation—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.

¹ (1877) L. R. 6 Ch. D. 29.

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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.

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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

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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."

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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' walauwe, 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, however, 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

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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 neighbourhood 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

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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's 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 instalments. 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 Padiya-pelella 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."

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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.

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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 endeavour 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

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

¹ (1869) 1 O.M. & H. 97.

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."

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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 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 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 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

¹ (1874) 2 O'm and H. 89.

² (1874) *Ibid.* 108.

³ (1910) 6 O'm and H. 30.

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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 enforceable. A promise to pay money for a vote would not be legally enforceable, 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) 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

¹ (1857) 6 H. L. C. 746.

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, and 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 manœuvre, 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 *primâ 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. Abeygoonesekere'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

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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 ostentatiousness 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 flattered 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 handsome 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

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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 imperilling 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

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connected charge, that one Tennekoon, a tailor, whose evidence impressed me very favourably, 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 supporters 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

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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 by 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

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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 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

¹ (1875) 10 C. P. 733

render the election invalid must be so great as to amount to a conducting 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 curiæ* 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 thereupon 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

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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 and the *Montgomery Boroughs case*, ² cited in the article on "Elections" in *Lord Halsbury's Laws of England on*

¹ (1881) 4 O'M & H 1

² (1892) Day 150

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.

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- (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.