

1930

*Present : Dalton J.***FERNANDO v. COOREY.**

In the Matter of an Election Petition under Article 37 of the Ceylon (Legislative Council) Order-in-Council.

Election petition—Treating—A single act—Corrupt intention—Bribery—Payment to Carvassers—Ceylon (Legislative Council) Order-in-Council, 1923, article 37.

A single instance of treating, if done with a corrupt intention, is sufficient to invalidate an election, although it may be more difficult to infer a corrupt intention from one isolated act than from several acts of the same kind.

A sum of money given to a person in order to secure his support for procuring votes at an election amounts to bribery within the meaning of article 46 of the Ceylon (Legislative Council) Order-in-Council, 1923.

THIS was an election petition presented to the Supreme Court under article 37 of the Ceylon (Legislative Council) Order-in-Council, 1923, against the return of the respondent as Member for the Colombo Town (South) constituency of the Legislative Council at a by-election held on June 28, 1930. The petition alleged that the respondent had been guilty of treating, bribery, personation, and undue influence, and prayed that the election be declared void. At the opening of the inquiry the charges of personation and undue influence were given up.

The facts are fully dealt with in the judgment.

Hayley, K.C. (with him *E. G. P. Jayatilleke* and *Goonetilleke*, instructed by Proctor *S. R. Amarasekere*), for petitioner.

R. L. Pereira, K.C. (with him *H. H. Bartholomeusz* and *J. R. V. Ferdinands*, instructed by Proctor *C. V. E. Wickremesinghe*), for respondent.

November 25, 1930. DALTON J.—

The petition in this case was presented by B. R. Fernando, a duly registered voter of the Colombo Town (South) electorate, against the return of Dr. E. A. Coorey, respondent to this petition, as Member

for the Colombo Town (South) constituency as the result of a by-election held on June 28, 1930. The petition alleges that the respondent has been guilty of treating, bribery, personation, and undue influence, and asks that the election be declared void and that Colonel T. G. Jayewardene, the remaining candidate, be declared duly elected. This latter part of the prayer of the petition was subsequently deleted by order of the Court, on the application of the petitioner.

The charges were subsequently set out in detail in the particulars, but at the opening of the inquiry Mr. Hayley for petitioner stated he was not proceeding with the last two charges of personation and undue influence.

The charges of corrupt treating alleged in the particulars are the following :—

(1) (a) corrupt treating at the house of the respondent at Belvoir, Wellawatta, between the dates of June 23 and 27, 1930, amongst the voters corruptly treated to food and drink being George Hay Wetherton, Shelton Neville de Hoedt, and R. Frederick Perera.

(1) (b) General corrupt treating at 22, Dickman's road, alleged to belong to respondent's mother-in-law, on or about June 28, 1930, amongst the voters corruptly treated being R. Hendrick Perera and V. James Soysa. The treating is alleged to have been done by W. Benjamin de Soysa acting under the authority of respondent with reference to the election.

With regard to the charge of bribery, particulars are given of thirty-one alleged cases, but more details were given and more witnesses called in evidence of some of the charges than of others, and for the purpose of this decision it is sufficient to set out the chief charges dealt with at length, which, taking the numbering as set out in the particulars, are as follows:—

(2) (a) That on or about June 10, 1930, and on or about June 21, 1930, Mr. A. H. T. de Soysa who was acting

under the authority of the respondent with reference to the election, paid two sums of Rs. 25 to T. S. Daniel of 32, Dean's road, Colombo, registered voter No. K. 169, in the presence of M. S. Perera, L. J. Perera, Subadasa, and some others.

- (2) (b) That on or about June 10, 1930, and on or about June 21, 1930, Mr. A. H. T. de Soysa acting as set out above paid two sums of Rs. 25 to M. S. Perera of 70, Dean's road, Colombo, registered voter No. K. 698, in the presence of T. S. Daniel, L. J. Perera, Subadasa, and others.
- (2) (l) That on or about June 10, 1930, Mr. A. H. T. de Soysa acting as set out above paid two sums of Rs. 10 and Rs. 107.50 to C. Rajaratnam of 463, Temple road, Maradana, in the presence of M. M. Karunaratne and some others.
- (2) (m) That on or about June 18 or 19, and on or about June 27, Mr. A. H. T. de Soysa acting as aforesaid paid two sums of Rs. 87.50 to M. M. Karunaratne of 2nd Division, Maradana, in the presence of C. Rajaratnam and some others.
- (2) (b1) That on or about June, 1930, Mr. A. H. T. de Soysa acting as aforesaid agreed to give or offered, or promised to pay, or paid a sum of Rs. 10 to Supramaniam Chetty of 180, 2nd Division, Maradana, registered voter No. K. 947.
- (2) (d1) That on or about June, 1930, Mr. H. M. Samaraweera of East View, Avondale road, Maradana, registered voter No. K. 839, who was acting under the authority of the respondent with reference to the election, agreed to give, or offered, or promised to pay a sum of Rs. 150 to L. David Silva of Skinner's road, Colombo, and out of the said sum the said A. H. T. de Soysa paid a sum of Rs. 75 to the said L. David Silva.

I will proceed to consider now the evidence in respect of each of these charges in detail.

With regard to the alleged corrupt treating at the house of the respondent, the evidence led for the petitioner, altogether apart from the denials of treating by the respondent and his witnesses, is very unsatisfactory. The two witnesses upon whom petitioner relies are G. H. Wetherton and S. H. de Hoedt. Neither of them can be said to be of very good character, and both have made contradictory statements at different times. They both purport to give evidence to the effect that the alleged treating was on an extensive scale and to a large number of people during the period covered in the charge. According to Wetherton, de Hoedt dragged him into giving evidence in the case. There is no doubt from de Hoedt's evidence that he was induced to give evidence against the respondent by one George Ebell, who complained of being insulted by the respondent after the elections. This man George Ebell is stated to be a clerk in the same firm as de Hoedt and from whom de Hoedt takes his instructions. De Hoedt admits he received a sum of money, Rs. 50, from Ebell at the time he made his first affidavit at Ebell's instance alleging treating by the respondent, but he wishes me to believe the Rs. 50 was a loan and had nothing to do with his making the affidavit.

Having made this affidavit at Ebell's instance, alleging treating by the respondent between June 23 and 27, de Hoedt sets out to obtain corroboration of his story, again at the instance, he admits, of Ebell. Five days later he finds Wetherton who having been taken to an hotel and there fortified with liquor, agrees to make an affidavit supporting de Hoedt. Ebell, who happened to be there also at the time, thereupon produced a typewritten statement already prepared and takes Wetherton before a Justice of the Peace, before whom the affidavit is completed.

The unsatisfactory story does not end there, for later both witnesses go back upon the affidavits they had given to Ebell. These later statements are produced (R1 and R2). Both say

independently they made these statements under compulsion, but Wetherton, who appears to be a strong, able-bodied man, gave what seems to me to be an obviously false account of the circumstances under which RI was, he says, forced from him. De Hoedt, who, from his appearance might more easily give in to threats, admits that part of his second statement is true and part untrue, but neither of these two witnesses had at any time complained to anyone until they were in the witness box that they had been treated as they now describe when these later statements were obtained.

It is quite impossible to come to any conclusion as to which statement is true and which is false without help from some other source than the two witnesses themselves, and that help is not forthcoming in petitioner's case. There are witnesses called for the respondent in respect of this charge whose evidence throws further doubt on the allegations of treating, and I have no difficulty in arriving at the conclusion that petitioner has failed to make out this charge.

With regard to the second charge, that of general corrupt treating at 22, Dickman's road, by W. Benjamin Soysa, the evidence is of a different type to that upon which the first charge is based. Amongst the voters alleged to have been treated there are V. James Soysa and R. Hendrick Perera. The latter says he was called for between 6 and 7 A.M. on the morning of polling day by Benjamin Soysa in a car to go to the polling booth. On the way he says he was taken to 22, Dickman's road, proved to be the property of respondent's mother-in-law, and dropped there. After he was dropped there he states he did not see Benjamin Soysa again that day. The witness got out of the car and found a large number of people, whom he did not know, on the premises coming and going. Someone was dispensing tea and he says he was given a cup of tea and two string hoppers. After he finished he was taken by another car to the polling booth, where he recorded

his vote. I have no doubt that the witness is speaking the truth. He is corroborated on one important point by V. James Soysa, who was not cross-examined at all, whilst his evidence is also confirmed by a statement (exhibit P4) he made before this petition was launched in an assault case that arose out of the election. An attempt was made to discredit this witness by suggesting that he had been dismissed by his employers for theft, but fortunately the old man had in his pocket, and produced, an excellent character given him on his discharge. He also stated he was given a gratuity of Rs. 250. Counsel has admitted that the questions were put on instructions that were not correct, but exactly the same thing happened in the case of another witness, as will appear later. Both counsel and proctor must realize their responsibility in the matter. Mr. Bartholomeusz' evidence is, in my opinion, in no way inconsistent with the evidence of R. Hendrick Perera. The former did not come out of his house until 8 A.M., whereas the latter is speaking of what happened considerably earlier.

Accepting however R. Hendrick Perera's evidence, corroborated as it is, it is quite clear that, on his own story, he was not treated to food and drink by W. Benjamin Soysa as set out in the charge. All that W. Benjamin Soysa did was to drop him and others at the house and then apparently go on. Further, I am not satisfied on the one single case disclosed by the evidence; I should, on the facts, be justified in inferring therefrom a corrupt intention. The intention must be for the purpose of corruptly influencing the person who is treated or any other person to give or refrain from giving his vote, as laid down in section XLIV. of the order in council. It has been urged for respondent that R. Hendrick Perera had expressed his intention of voting for Dr. Coorey before he was treated, but that is not conclusive of the matter, for there may still in such a case be an intention to fortify the voter in his determination to

vote for the person treating him, or to confirm his vote and those of others whom one may have reason to think are going to support one. In both those latter cases the treating has been held to be corrupt treating.

One single instance of treating, whether it be a cup of tea and string hoppers, a glass of beer, or even bread and water, if given with a corrupt intention, is sufficient to invalidate the election. They may appear small and insignificant matters as a general rule, but one has to take into consideration the time at which and the circumstances in which they were given (*Wigan case*¹). But it is necessarily much more difficult to infer that corrupt intention from one isolated act than from several acts of the same kind. As pointed out in the *Bowdley case*² when seeking to decide this question, the scale, amount, and extent of the treating are important. Blackburn J. states there: "In all cases where there is any evidence to show that meat or drink has been given it is a question of fact for the Judge whether the intention is made out by the evidence, which in every individual case must stand upon its own grounds; and although each individual case may be a mere feather's weight by itself, and so small that one would not act upon it, yet if there is a large number of such cases, a large number of slight cases will together make a strong case, and consequently it must always be a very important inquiry what was the scale, the amount, and the extent to which it was done. In considering what is corrupt treating and what is not, we must look broadly to the common sense of the thing." Of course this authority would have no application where the intention of influencing votes is clearly expressed in some other definite form in the case of a single instance of treating. Upon the facts that have been proved before me, however, I am unable to infer that that corrupt intention was present or that R. Hendrick Perera was corruptly treated by the respondent or by any other person on his behalf. The act may be open to

¹ 4 O'M. & H. 13.

² 2 O'M. & H. 19.

some suspicion, but it does not in my opinion go beyond that. Upon this second charge of treating also the petitioner must fail.

I now come to the charges of bribery which form the major part of the case of the petitioner, and upon which evidence has been led at considerable length. The first charge relates to the witness T. S. Daniel, a registered voter in the constituency, but the evidence led on this charge is also closely connected with the further charge with regard to M. S. Perera, the individual payments being but parts of a connected story. T. S. Daniel is also the person who states he found the important documents P5, P6, P7, P8, and P9, which the petitioner alleges are, with the exception of part of P8, in the handwriting of Mr. A. H. T. de Soysa, the agent of the respondent at the Dean's road election office. Those documents, which are alleged to be records of payments made by de Soysa to various people, including those mentioned in the charges, with one exception, of course play a very important part in the case, but I propose to consider the other evidence before I deal with them.

T. S. Daniel, who appeared to be quite a respectable type of man, is a tailor, and a registered voter in the constituency. He stated he had decided to vote for Colonel Jayewardene when he was approached by one Abdul Hamid, a friend of his, to vote for the respondent. He says he was reluctant to do so, but Abdul Hamid took him to the Dean's road office on June 7 or 8, where he was spoken to by a person whom he now knows as A. H. T. de Soysa. As a result of what passed he said de Soysa promised to pay him Rs. 50 if he voted for Dr. Coorey and get his friends to vote for him also. Subsequently, on June 10, he says he was paid Rs. 25 quite openly in the presence of others including Abdul Hamid, who received Rs. 50 for himself and Rs. 25 for another person named who was not present, and M. S. Perera who also received Rs. 25. The balance, he says, was to be paid a week before the election. He

states no receipt was taken from him, but that de Soysa made a note of the payments and he purports to identify the document P5, which he picked out when in the witness box from the others, as the paper on which de Soysa made a note of the payments made that day. His story is that Abdul Hamid was the supervisor or chief worker of the Dean's road section of the Maradana area of the constituency, and that the six persons paid Rs. 25 that day were to work under Abdul Hamid and obtain votes for respondent. He states he thereafter obtained votes for Dr. Coorey by persuasion and also by means of treating voters with cigarettes and aerated waters, that he reported progress from time to time to de Soysa, who had given him a list of voters to canvass, and that he was paid the balance Rs. 25 by de Soysa on June 21, on which day the others were also paid.

An examination of the evidence of M. S. Perera, the person alleged to have been bribed in the second charge set out above, and also a registered voter in the constituency, shows that it corroborates the evidence of Daniel detailed above in all material particulars. It is urged for the respondent there were important discrepancies between those two witnesses particularly with reference to the first three names that appear on P5, that is, Mark Appu, Daniel Singho, and Seneviratne. Daniel says that there were other people in the office on June 10, that he saw these three there, and that he saw them being paid, but how much he could not state. Perera makes it clear that when he got to the office the others including Daniel were already there talking to de Soysa, and that he met the three, Mark Appu, Daniel Singho, and Seneviratne, coming down the steps as he was going up. I see no discrepancy here between the two witnesses. A second point upon which they are said to have differed is as to the presence of Rajaratnam and Karunaratne at the office on June 10. Perera mentions them by name, but he makes it clear they were not near the table

where de Soysa was seated. Daniel expressly says others than those whom he mentions were at the office. It was apparently a large place divided into two parts by a hanging screen. On this point again I cannot see any discrepancy between the two. It is obvious however that, if they are speaking the truth, no attempt was made to conceal the fact that the payments were being made, but perhaps that is not surprising, having regard to the apparent or assumed ignorance of some of those concerned that there was anything wrong in what was being done. If any comparison between those two witnesses be required, Daniel created a little better impression upon me than Perera, although it did seem to me that in cross-examination neither of them were shaken to any material extent. Even so, however, that is not necessarily compatible with a false story in the mouth of one who has learnt his story well, but in the case of men of this class it is not as a general rule difficult to show up an utterly false tale as it is alleged these witnesses have told.

Having given an account of the payments made to him and the work he had done in obtaining voters for Dr. Coorey, Daniel goes on to describe how the papers P5 to P9 came into his possession. He had in the course of his work easy access to the Dean's road office. It is conceded by the respondent that he was one of the workers in that area under Abdul Hamid, the chief worker. He states he went to the office about 10 P.M. on the evening of June 27, the evening preceding polling day. The office was open, he states, a lamp was on the table, but no one was there. He saw some papers on the floor by the table, picked them up, and put them in his pocket intending to give them to de Soysa the following day. He says he can read and write Tamil and a little English and he saw what the papers were and thought de Soysa would require them. On polling day he says he had no opportunity of seeing de Soysa,

and after putting them in a drawer in his house, forgot all about them until one day in August.

There are parts of this story which are difficult to believe, but on the other hand I am not prepared to say it is not true. De Soysa and other witnesses for the respondent swear the office was open until 1 A.M., and he says at 10 P.M. there were 50 to 60 people there. He admits however that the office door was never locked at any time, whilst the respondent, who was his own election agent, states that his office—presumably the central office in the constituency—was closed between 9 and 10 P.M. on the eve of polling day, and everybody cleared out as the next day was to be a very busy day. Is it then likely that a small sub-office in Dean's road would be open as de Soysa describes? I regret, as will appear when I come to consider de Soysa's evidence later, I am unable to rely upon de Soysa as a truthful witness. Would he however leave such important papers, if they are genuine, lying about? It seems improbable. May not the explanation be that they were stolen from the drawer of the table between the night of Saturday, June 28, and Monday, June 30, on which latter date de Soysa says he found the drawers had been broken open and papers stolen. He admits he made no report of this occurrence except to the respondent, because he says only useless papers were taken. On the other hand, if the theft did take place, it is difficult to understand thieves breaking into a place and stealing as de Soysa states a few typed lists of voters and useless memoranda of workers and roads. On the other hand, if the place was broken into and records of payments such as Daniel and the other witnesses describe were stolen, both de Soysa and the respondent might well hesitate to make any report of it. On this part of his evidence Daniel did not inspire me, while he was actually giving evidence, with very much confidence, but in great part due to the fact that it seemed rather improbable that the office would be empty at

such a time on the eve of polling day. It was in fact put to him that the office was open till 1 A.M. in the morning. In the light of subsequent evidence about the central office however, as I have pointed out, that particular difficulty to a very considerable extent disappears.

Daniel's further evidence as to discussion of the election with some of his friends and the recollection of the papers in his drawer also sounded to me somewhat artificial. It is difficult to think, if he knew as he says he did the papers were genuine, that he did not know their value to respondent, or at any rate to de Soysa. On the other hand the attempts made thereafter to intimidate him, which I have not the least reason to doubt, the fact of his removal from Colombo with other witnesses in the interests of the petitioner, and the continued attempts thereafter to get at him, all point to the importance attributed to his evidence if it was to be given in support of the petition. Whilst I am not prepared to say that he obtained the papers in quite such a simple way as he has described (although he may have done so) I have no reason to doubt he did obtain them from the office in Dean's road or that he handed them over to the petitioner as he states. It is admitted that he and other witnesses were maintained at the expense of Colonel Jayewardene after their removal from Colombo but under the circumstances that fact to my mind does not decrease the value of their evidence. There is no evidence to support the suggestion that any of them have been paid a large sum or any sum of money for giving evidence for the petitioner.

M. S. Perera, also a registered voter in the constituency, corroborates Daniel as to the payments of Rs. 25 made to them on two occasions. As opposed to Daniel he only gives the approximate dates of payment, but as I have stated I see no discrepancy of any real materiality between the two witnesses. He too, he says, had decided to vote for Colonel Jayewardene, that Abdul Hamid approached him

and introduced him to Dr. Coorey who spoke to him, and two days after he was taken to de Soysa. The payments he describes to himself and others followed ; he states he obtained votes for Dr. Coorey, and voted for him, himself. This witness's evidence as to the part played by Abdul Hamid in approaching him is, it may be noted, confirmed by Abdul Hamid himself. The latter says M. S. Perera and he had been friends for twenty years and that Perera was quite willing to help him. If that is so, and I have no reason to doubt it, the question arises why those two men, Daniel and Perera, should now change sides again and support the petitioner in his case against the respondent. In answering that question it must be remembered that as a general rule in cases of this kind when questions of accepting gratification or bribes arise, one is not dealing with the better educated and more intelligent portion of the population. To take some return in the form of payment or other gratification in return for a vote would not appear to them to be in any way morally corrupt or illegal, whilst to take a payment in return for inducing others to vote many would think the proper thing to do. The two witnesses, Muttiah Chetty and David Silva, to whom I refer later, are excellent examples of the first class of persons from two different view points. Further, as has been pointed out in previous English election cases, there are cases which amount under the statute to corrupt practices which are not in themselves morally corrupt. One has to look at these matters when one is testing the value of the witnesses evidence so far as one can, from the view point of the witnesses themselves, and I have no doubt that these two men, and others also, saw no wrong in giving their votes for a money payment to Dr. Coorey after deciding to vote for Colonel Jayewardene, and further saw nothing particularly heinous or treacherous in saying they had done so. One always of course has to look carefully to ascertain whether they have any motive or any valuable reason for

this second change, but as I have stated before I can find no support for the suggestion—and it is nothing more—that they have been paid for giving this evidence.

The next two witnesses whose evidence must be considered are C. Rajaratnam and M. M. Karunaratne. Their evidence relates to charges 2 (l) and (2) (m). As will appear from the circumstances detailed below, their evidence naturally comes up for consideration together. They both appear to be men of a slightly better stamp than Daniel or M. S. Perera, and there is no doubt that more reliance was placed upon Karunaratne by the respondent than upon the others, for he was one of the supervisors or chief workers of the respondent in the Maradana area. He suffered from a slight impediment in his speech and seemed to me to be a more quiet and less pushful person than Rajaratnam ; when it was a question of the two doing anything together I have no doubt that Rajaratnam would not keep in the background.

Karunaratne was selected as a supervisor, so Brampy Appuhamy states, on the recommendation of two supporters of Dr. Coorey called Talaratne and K. G. de Silva. The two selectors were not called as witnesses, and it is stated that Talaratne soon dropped out of the work owing to illness. Karunaratne was unknown, so it appears, to both Brampy Appuhamy and de Soysa before this election. This becomes an important matter in considering their evidence respecting the payments for car hire alleged to have been made to him by them. There was undoubtedly a tendency in their evidence to throw discredit now upon Karunaratne and his reliability, which is, so it seems to me, inconsistent with the trust they say they placed in him during the election campaign in connection with the alleged payments for hiring cars. This tendency may however possibly be due to the subsequent part he has played in the case against the respondent.

Rajaratnam states he was sent for in June by de Soysa as the latter said he had heard Rajaratnam had worked in previous Municipal elections, and was asked to get voters who were going to support Colonel Jayewardene over to their side. He had been well known to Karunaratne for some years and the latter having been engaged as a supervisor there is every probability in the truth of Rajaratnam's story that he was sent for to come to Karunaratne's tailoring establishment where he met Brampy Appuhamy, de Soysa, and K. G. de Silva. Rajaratnam adds that one Dharmasiriwardene was also present on that occasion. I refer to this in dealing later with Dharmasiriwardene's evidence. Rajaratnam says further that the conversation took place somewhere between June 5 and 7, and he told them his terms for helping, he and Karunaratne to receive Rs. 50 each and assistants, who were also to be paid. It must be noted here that neither Rajaratnam nor Karunaratne were voters in the constituency, but they were engaged, in the words of Rajaratnam, to get voters of Colonel Jayewardene in the locality to vote for Dr. Coorey. Respondent admits that in that part of the constituency most of the voters were in favour of his opponent, as distinguished from Wellawatta and Colpetty, which was doubtless the reason why he took an office there and placed his brother-in-law in charge of it. On that occasion both Rajaratnam and Karunaratne are agreed that no arrangement was come to, as there was some haggling over the terms. De Soysa said he must see Dr. Coorey. By arrangement, however, they saw de Soysa next day, which would be some day from June 6 to 8, according to their story, and he asked them to come to the Dean's road office that afternoon to make the arrangements, as de Soysa stated Dr. Coorey had agreed about the Rs. 50. The witnesses state that on that occasion, de Soysa, Rajaratnam, and Karunaratne being present in the office, Rajaratnam gave de Soysa a list of the men he proposed as his workers. Karunaratne

rather pertinently states, "Rajaratnam did the talking". The names said to have been given were Rajaratnam and Karunaratne, Junaid, Albert Krishnaratne, O. S. Perera, Mathes Perera *alias* Marthelis Perera, and W. W. Dep, it being arranged that the first two were to receive Rs. 50 each and the others Rs. 25 each. There is no evidence to show that any of these persons were voters, but there is no doubt, according to the evidence, if it is true, that they were to obtain votes for Dr. Coorey. The sums agreed upon were not paid them, but Rajaratnam says he asked for an advance and was paid Rs. 10 for refreshments. They then went away and appear to have done some work, returning together to de Soysa a day or two later as requested.

Rajaratnam states the area in which he was to work was Third Division, Maradana, Tichbourne road, Kynsey road, and Campbell place. When he got to the office with Karunaratne on the morning of June 9, he says the clerk gave de Soysa a list of the names of workers that Rajaratnam had previously mentioned, and he saw de Soysa make some entries and calculations on it. This having been done both witnesses say nothing was paid to them that day but they were told to return on the next day, which they did.

The events of June 10 as deposed to by them necessarily require to be scrutinized very closely, for they form the basis of two of the charges of bribery. There is, further, according to these witnesses, documentary evidence in support of their story in the paper P8 which they say is a record made on this occasion by de Soysa himself of the payments by him to them that day and received by them. Rajaratnam explains this as follows:—He and Karunaratne were to receive Rs. 50 each and the five workers Rs. 25 each, totalling Rs. 225. Rs. 10 had been advanced, leaving Rs. 215 to be paid. Of this, half was paid on June 10, a receipt being signed for this sum by both Rajaratnam and Karunaratne. They say they each took their Rs. 25 and paid Rs. 12.50 each to

their co-workers, and they both purport to identify the paper P8 signed by them in de Soysa's presence at the time. Rajaratnam says he signed after some further calculations were made by de Soysa that day, to which he (de Soysa) put his initials. They then proceeded to interview voters and, in the words of Karunaratne, to turn them to Dr. Coorey. Rajaratnam says he subsequently asked de Soysa for further help which he obtained. Although he saw no payments made to these additional workers, he states he saw the further entries made by de Soysa on the paper P8. Karunaratne does not speak of these latter entries, as Rajaratnam seems to have gone to de Soysa alone.

The balance of this agreed sum of Rs. 225, increased by the subsequent addition of other workers, Rajaratnam and Karunaratne state was paid by de Soysa on June 21 and June 25, in two sums of Rs. 85. This forms the subject of the charge 2 (*m*) set out above. These amounts they state were received by Karunaratne who divided them amongst the workers as agreed on. He had some difficulty in explaining how the amounts were arrived at, although he was positive the two sums were Rs. 85 each, in all Rs. 170. It will be noted that the dates and amounts set out in charge 2 (*m*) do not tally with his evidence. The evidence is that the original agreement was for Rs. 225, as set out above. Three additional workers at Rs. 25 each bring the total to Rs. 300. This sum, less Rs. 10 and Rs. 107.50, stated to have been previously paid, leaves a balance of Rs. 182.50. The sum of Rs. 12.50 alleged to have been paid to James Perera as shown in P8 has, it is suggested, to be deducted from the balance, leaving Rs. 170. It is not explained how two sums of Rs. 87.50 come to be mentioned in the charge except to suggest that petitioner's proctor made his own calculation from the exhibits. One can quite understand the witnesses being somewhat hazy some months after the event as to the exact amounts and dates, and no special stress

was laid upon this variation, nor do I think it is a matter of any importance as throwing doubt on the witnesses' story, if one is satisfied with their evidence with regard to the first payment of Rs. 107.50.

Karunaratne seemed a very decent type of man and impressed me favourably. He showed no animus against the respondent or de Soysa ; if anything, it was just the opposite. I have not the least doubt he is expressing his genuine views when he stated he saw no wrong whatsoever in taking the money, regarding it merely as the hire of his labour, or, as he states at another time, payment of his wages for which he gave an adequate return in work done. He stated to the petitioner that he had no objection at all to giving evidence as to what had taken place, whereas Rajaratnam was much more cautious when he was approached to give evidence. From my estimate of the character of the two men, that is exactly what one might have expected. Rajaratnam was unwilling to commit himself about giving evidence when asked to do so until he had a chance of seeing the document with his signature thereon (P8) that petitioner had mentioned to him. Having seen it he had to admit it was his, and doubtless saw no way out of the difficulty of explaining the receipt for Rs. 107.50 signed by him and Karunaratne except by speaking the truth. Karunaratne was, as I have stated, one of the respondent's chief workers in the area, and the importance of the evidence of these two men was fully appreciated by the other side. That fact is amply shown by the attempts made to intimidate them after they had made statements to the proctor of the petitioner, which, in the view of the latter, necessitated their removal from Colombo with other witnesses until they could be brought before the Court. Lastly, when considering de Soysa's evidence, I have not the least doubt that Karunaratne's and Rajaratnam's evidence is to be preferred to de Soysa's on the question of money alleged to have been paid to Karunaratne for car hire.

This is a convenient point to consider the evidence led for the respondent in respect of payments that the defence says were made to Karunaratne, namely, two payments of Rs. 107·50 and Rs. 82·50 respectively for the purpose of hiring cars in connection with his work. It is urged that these are the payments that Karunaratne and Rajaratnam are now seeking to turn into payments made to them for the purpose of obtaining voters for respondent. The principal witness for the defence on this point is Mr. A. H. T. de Soysa, who is a brother-in-law of the respondent and who was in charge of the Dean's road office during the election campaign in June. He states he had nothing to do with the outside work in the area as that had been placed by respondent in charge of Brampy Appuhamy.

Amongst the chief workers employed in this area under Brampy Appuhamy he states was Karunaratne. The number of voters in the whole constituency was over 7,000, of whom, roughly, one-seventh were in the Maradana area. In the section of the Maradana area of which Karunaratne was placed in charge were 190 voters. That number is of some little importance in view of the defence put forward respecting alleged payments to Karunaratne. De Soysa says that Brampy Appuhamy reported to him at the beginning of June that Karunaratne had practically canvassed his area and wanted cars to go in search of people who had left the locality. As a result of this he says a discussion took place on June 2 between him and Brampy, and they agreed on a sum of Rs. 260 being paid to Karunaratne. This sum was arrived at on a rough estimate of Rs. 10 a day for 26 days. Polling day, June 28, was not fixed until later, but I do not doubt the evidence that it was known earlier. It was agreed however that only half should be paid at first to Karunaratne that is Rs. 130. From this Brampy is stated to have deducted Rs. 12·50 previously paid to one Mathes Perera and Rs. 10 alleged to have been paid to Karunaratne on June 1. This leaves

Rs. 107·50 which de Soysa says was paid to Karunaratne on June 2. He obtained a receipt for it but says it was stolen when the drawers of his table were broken open soon after the election. All this Karunaratne denies.

According to this story a sum of Rs. 107·50 was handed to Karunaratne on June 2 to be spent on cars to go to outside districts to look for voters who had moved from the area. According to de Soysa, Rajaratnam had nothing to do with it at all. Karunaratne is said to have asked for this money before June 2, and it is agreed by witnesses for the defence that it was desirable to ascertain and look up outstation voters at as early a date as is possible. If we examine the election returns however (P10), in connection with car hire, we find only four items of expenditure incurred between June 2 and June 26, practically all the expenditure being incurred on June 26 and 27. Karunaratne then, according to this story, had most of this money in his hands, doing practically none of this important work until June 26. On June 27, according to de Soysa, Brampy reported to him that Karunaratne had exhausted the Rs. 107·50 and wanted a further sum to have a final round up. He was then paid Rs. 82·50 for further cars for which he is stated to have given a receipt. That receipt de Soysa states was also stolen with the first receipt.

De Soysa further states that Karunaratne was instructed to submit sub-receipts for car hire as it was incurred from time to time. He produces fifteen receipts (marked R 3-15) which he says Karunaratne gave him and he put them into his attache case in order to give them to Dr. Coorey. Brampy says de Soysa put them in one of the drawers of his table, but as matters turned out I have no doubt de Soysa felt he had to explain why they were not stolen, if anything was stolen with the receipts he mentions for Rs. 107·50 and Rs. 82·50 and so he states he put them in his attache case which he always took home with him. His reason for

making this difference between the receipts was quite unconvincing to me. These sub-receipts and others (R 51-14) to which I refer later, were such important documents that special care had to be taken of them, but it was remarkable that no one, neither de Soysa, Brampy, nor respondent himself, at any time seems to have examined them or checked them, whilst as the case progressed it was most marked how all these witnesses seemed to be quite incapable of giving any information about them, and to wish to get on to some other topic. Not one person who is alleged to have given one of these 29 sub-receipts was called.

In considering this evidence of de Soysa it is of interest to consider this part of the case for the respondent as put to Karunaratne and to Rajaratnam in questions and suggestions made when they were in the witness box several days earlier. It was suggested by respondent's counsel to Rajaratnam that it was he who had represented to Brampy Appuhamy that he wanted money for cars to visit out-station voters. He denied it. According to de Soysa and Brampy it was Karunaratne and not Rajaratnam. De Soysa says definitely Rajaratnam did not ask for any money for car hire. It was further suggested to Rajaratnam that when he and Karunaratne went to the office Rs. 107·50 was handed to Brampy Appuhamy by de Soysa for car hire and handed by Brampy Appuhamy to Karunaratne, but Rajaratnam persisted he knew nothing about car hire. When however Karunaratne was being cross-examined by counsel for the respondent it was never suggested to him that he had received a lump sum of Rs. 107·50 for car hire. What was suggested was that he had received from time to time small sums varying from Rs. 8 to Rs. 17·50 to pay car hire which he denied. It was suggested that he had subsequently received a further lump sum of Rs. 82·50, but he denies that he ever received it or signed any receipt for it. Having regard to the importance to the defence of establishing, if it were possible,

this part of the case as put forward by the respondent, it lends support to the argument put forward on behalf of the petitioner that the alleged payments for the purpose of hiring cars whether to Karunaratne or to Abdul Hamid, to whom I refer later, are a fabrication in an attempt to explain away the payments made by de Soysa to Rajaratnam, Karunaratne, and the other workers mentioned, which if made come within the definition of bribery as set out in the Order-in-Council.

These alleged payments for car hire to Karunaratne, to Abdul Hamid (another chief worker for respondent), and to a worker in the Slave Island area, total, according to the election returns, a sum of just over Rs. 500. Karunaratne is stated to have received on this account Rs. 107·50, Rs. 10, and Rs. 82·50, in all Rs. 200. Abdul Hamid is stated to have received Rs. 200 in one sum, of which he spent Rs. 188. Karunaratne had 190 voters in his area, Abdul Hamid had 204, in all 394 out of over 7,000 on the voters' list. I am asked to believe that in no other parts of the constituency were cars required to be hired to go to look for voters who had moved from their registered addresses, but that there only private cars were used when required. As is well known, and as was admitted by respondent, the campaign gets more intensive as polling day draws near. That is doubtless the explanation of the numerous items for car hire in the election accounts on June 26 and 27. When respondent asked me to believe that cars were only hired by Karunaratne, Abdul Hamid, and by himself for his own personal use, he was most unconvincing in his evidence. He wished me to believe that only in Maradana did the workers have to hire cars to trace voters who had moved, and that even there this right was restricted to Karunaratne and Abdul Hamid to trace the comparatively small number of voters in their sections. His explanation was that only a very few voters had moved out of the constituency stretching from Wellawatta to Slave Island, whereas in Maradana

numerous people had shifted from the district. I deal further with this point in considering the evidence of Abdul Hamid and Brampy Appuhamy.

To return to the evidence of de Soysa, his explanation of the payments to Karunaratne quite failed to satisfy me that he was a truthful witness. The story of the car hire seemed to me to be a most artificial one and full of improbabilities. The witness appeared to me to be in a most uncomfortable position and that he felt it I have no doubt. I fully appreciate the fact that a nervous witness may be a quite truthful witness, but he seemed to me at times almost to exhibit signs of fear, not nervousness, and then to recover himself and pull himself together. No doubt his lengthy ordeal in the witness box must have been trying, but I found it difficult at important points in his evidence to get him to look at me when answering questions that I myself put to him. A witness may of course be excused if his attention wanders in the course of a long examination, but hardly when his attention is called to points in his evidence which require explanation. He is a man of education and property and as brother-in-law of the respondent would occupy a position of importance at the Dean's road office. He did not satisfy me that his position there was so unimportant as he made out or that he had nothing to do with the outside work. On an earlier matter too I have no doubt he was not speaking the truth. Evidence was given by the witness Francis Gomes, who is the editor of a paper, that in July, 1927, de Soysa had written to him asking him not to publish an article in his paper. The letter is produced dated July 14, 1927, (P12). De Soysa admits he wrote it saying the article was about a friend of his. The letter asks Gomes to see him on "Monday" which would be July 18, Gomes says he saw de Soysa on more than one occasion about the matter and de Soysa handed him a cheque for Rs. 50 dated July 18, 1927, to induce him to destroy the article, which had no doubt

been printed and was about to be published. Gomes says he kept the cheque, which he did not cash, and he published the article. The cheque and letter are now produced as samples of de Soysa's writing, as he admits, and they have been used for the purpose of comparison with the papers P5-P9 of which the witness Daniel speaks and which are alleged in great part to be written by him. When de Soysa, however, was examined he stated the cheque had nothing whatsoever to do with the matter referred to in his letter, but that Gomes, who was in want, approached him for a loan to purchase paper and that he gave him Rs. 50, not as a loan but as an act of charity. Why Gomes should select him as a person from whom to obtain a loan, and why he should act in this way to Gomes he does not state. He admits the cheque has never been cashed, which hardly supports his story that Gomes was in want. The cheque further happens to be dated July 18, a Monday, the actual day of the week mentioned in the letter when de Soysa said he would see Gomes. De Soysa now states he actually saw Gomes on the Sunday about the loan, when he gave him the cheque, dating it July 18, because the Sunday was a holy day or holiday. Lastly, he admits he stopped the payment of the cheque on July 28, ten days later, the reason no doubt being that Gomes was showing the cheque to people. This strongly confirms Gomes's story and is quite inconsistent with de Soysa's version of the reason why he gave the cheque. As between these two witnesses I have no difficulty on the facts in coming to the conclusion that Gomes's version is the correct one and that de Soysa is not speaking the truth. In coming to this conclusion I have of course not lost sight of Gomes's past record in regard to convictions for criminal libel as disclosed in the evidence.

On another important matter it is quite impossible for me to believe that de Soysa is speaking the truth. The name of one U. D. P. Abeysekere was mentioned on several occasions during the case, for the

first time by petitioner. The latter says it was from Abeysekere that he first obtained information which would support the charges of bribery against respondent. Abeysekere, however, declined later to support the petition and there is evidence to show that he is now associated with the respondent's witnesses. According to de Soysa, Brampy Appuhamy brought Abeysekere to the Dean's road office on or about June 23, as being a person who had experience in electioneering work. He had previously been approached by Brampy to work for respondent, but he declined stating he had difficulty in doing so since some of his friends were working for Colonel Jayewardene. His letter to de Soysa saying he must disappoint him is the letter P18 of June 24. De Soysa replied the same day saying he regretted to hear his decision and asking him to call and see him at 5 P.M. that same day (P17). Whatever else happened at that meeting, it resulted in Abeysekere's difficulty being overcome and thereafter he worked for Dr. Coorey, practically re-organizing the work in the Dean's road office, so the evidence shows, and working for respondent up to the election. De Soysa says he was paid nothing at all and has not the least idea what induced him to change his decision given in letter P18. It is to be noted however that the name Abeysekere appears more than once on the document P9 against the dates 25th and 26th of some months not mentioned in the document, with sums of money opposite the name. That de Soysa is ignorant of the reason for Abeysekere's sudden change of front on June 24 I am unable to believe. One has of course to ask oneself whether the entries on P9 do not supply the answer. Abeysekere has not been called by either side.

This is a convenient point to consider the further evidence that has been led on behalf of the respondent, which it is urged supports de Soysa's story that the only payments he made to Karunaratne were for the purpose of paying car hire. The two witnesses called for this purpose, and

to support de Soysa's evidence generally as to the work done at the Dean's road office, are Brampy Appuhamy and Abdul Hamid.

The former, Brampy Appuhamy, is according to the evidence, a man of some means and not the kind of person who would necessarily be likely to require a money payment in return for services rendered during election time. There is nothing to support the suggestion that he was a professional election agent, although he did admit he had interested himself in and assisted candidates at previous Municipal and Legislative Council elections. He therefore had some previous experience which would be of considerable use to the respondent on this occasion. He had never helped respondent before, but on one occasion had opposed him in a Municipal election, working for the successful candidate who had then defeated the respondent. That might well be an additional reason for enlisting his aid on this occasion. Whatever his reason however was for helping Dr. Coorey now, I was not convinced that the reason the witness put forward was the real one. He made it plain that he supported candidates, out of public spirit and because he liked to see suitable men elected, not for any personal liking for the individual. He had to admit, however, although he had stated in examination-in-chief that Dr. Coorey sought his help in June, that that help was sought earlier, in the middle of May, and he promised it without waiting to see what other candidates were coming forward to contest the seat.

With regard to the work to be done, although the witness lived in Dematagoda, outside the Colombo South constituency and some distance from the Maradana area of the constituency, he stated he was engaged as the chief organizer of the campaign on behalf of respondent in that area. With Taleratne, whom the respondent had previously approached, and K. G. de Silva, recommended by Brampy Appuhamy himself, he undertook this work, whilst de Soysa was in charge of the

office work. He states the three of them arranged for the different people to be in charge of the different sections of the area. The chief men were called supervisors, he says, a word that de Soysa states was not used. Later Brampy denied too that he ever used that word. Neither Tale-ratne nor de Silva have been called as witnesses, and the strongest impression I received from Brampy Appuhamy's evidence was that he had not played such an important part in the work as he and de Soysa sought to make out. He was frequently very slow in answering questions as if thinking carefully what he was going to say. This of course might be due to the habits of a careful business man, but it did not, having regard to other circumstances I have mentioned, impress me very favourably. He admitted he was a very busy man with his own business to attend to, but his statement that he spent nearly all his time for a whole month as chief man for the respondent in this area was inconsistent with other statements he made to the effect that he attended to his own business and visited the Dean's road office each day on the way to and from the Pettah. He was, it must also be noted, unable to give the names of some of the chief workers engaged for the area and the sections in which they worked. The list he said was kept by de Soysa at the office and he had no copy for himself, which is surprising if he was responsible for the general supervision, and not de Soysa. With regard to the workers under the supervisors, he affected complete ignorance. "They (the supervisors) were not to bring the names of the men they had selected to work with them. They were never asked to. They mentioned the names, but we took no particular note They did not give the names of the others, but they said they had engaged others. Their names were not given to us All three of us were equally ignorant of what they (the supervisors) were doing." Of the witnesses who gave evidence he had never heard the names T. S. Daniel,

M. S. Perera, or C. Rajaratnam before he heard they were giving evidence in this case, the two former it is admitted being workers under Abdul Hamid.

On this point Abdul Hamid directly contradicts Brampy Appuhamy. He states Daniel, Perera, and the other workers were going in and out of the office. "We were all friends in the office. Brampy baas and K. G. de Silva were in charge of us. They gave directions as to what we were to do. Whenever they met us they gave instructions. I used to go every evening and sometimes during the day. M. S. Perera, Daniel, and the others did the same. When I employed men they only asked me whom I employed and I gave them the names All the names of the workers were kept in the office."

As one might expect from his position, de Soysa shows in his evidence that he had much more definite knowledge of the supervisors, or chief workers as he prefers to call them, and the sections of the Maradana area in which he worked than Brampy Appuhamy. But he too affects to be ignorant of the names of the workers under the supervisors. He states: "I was not told who were to assist the chief workers. I am quite sure. The other workers did not report at my office; only the chief workers used to come to my office." Later he states: "They told me they had found other friends to help them. I did not make an attempt to find out who they were. I did not care to find out. As far as I knew they might be employing the biggest scoundrels in the district." When Abdul Hamid's evidence was put to him he denied that he had any list of sub-workers in the office, or that he had ever heard their names. Brampy Appuhamy may well be speaking the truth when he says he was ignorant of the names of the sub-workers. That fits in with the conclusion I have come to with regard to his position in the work. That de Soysa was equally ignorant I do not believe. The reason for his saying so is obvious, for if he did not know the

names of the workers he could not have written their names and the payments made to them on the disputed documents. On this point it seems to me that the evidence of Abdul Hamid and the witnesses for the petitioner is far more likely to be true, and I am satisfied that that is the case.

To return to Brampy Appuhamy, a large part of his evidence is taken up, as one might well expect having regard to the importance of this particular matter, with the alleged payments for car hire to Karunaratne and Abdul Hamid.

With the alleged payments to Karunaratne I have already dealt. Brampy's evidence only goes to confirm my conclusion that the story of these alleged payments for car hire is fabricated. With regard to the receipts he stated he received from Karunaratne for car hire, his evidence was most unsatisfactory. Brampy says Karunaratne handed him the receipts and he handed them on to de Soysa. Whether or not he ever looked at them before passing them on he cannot say, although he made a point of the fact that Dr. Coorey had impressed upon him the importance of not spending more than Rs. 500 for car hire in this section. He never even asked where the cars were obtained and then finally when the alleged receipts (R 31-45) were put into his hands and examined by him, he stated that they were not the receipts at all, those that Karunaratne had produced to him being smaller than the receipts R 31-45. He is positive that Karunaratne received Rs. 107.50 on June 2 and Abdul Hamid received Rs. 200 on June 8, and was naturally very surprised when he heard they had kept practically all this money in their pockets until June 26 or 27. He agreed that outstation voters had to be searched for as early as possible, and he was of course unable to explain why those two men put off almost all the work until June 26, although they received money for car hire on June 2 and 8 respectively. In putting forward this defence it was necessary of course to

show that those payments were included in respondent's return of election expenses. Under all the circumstances I can only conclude that the date June 2 and June 8 were fixed upon as the dates of those alleged payments in order to arrive at a sum which would more or less support the contention that most of the entries for car hire in the returns represented these payments to Karunaratne and Abdul Hamid. Unfortunately, however, the returns, made up soon after the election, show the expenditure to have been incurred on June 26 and 27, which, there is no reason to doubt, is correct. As I have stated earlier, this defence has every sign of artificiality and fabrication, and I am satisfied that is the case. There are several further points on which Brampy's evidence is open to considerable criticism, but I think enough has been said about him.

With regard to Abdul Hamid it is not necessary to say much. He was a valuable and most plausible witness with plenty of self-assurance, and no doubt would be an excellent canvasser. His vehement protest with hands and eyes raised up when it was suggested to him that he had been paid for the work he did was obviously a piece of play-acting. After all, as Karunaratne had pointed out, he (Karunaratne) regarded the payment made to him as a payment for work done, and a man of Abdul Hamid's class would no doubt look at it in exactly the same way. There are many people of all classes who are not aware that payments to canvassors and others to induce votes are prohibited, and this of course only puts greater responsibility on candidates and their agents.

His story of the payment of Rs. 200 to him on June 8 when he had reported that he had finished canvassing the resident voters and that he wanted cars to canvass those who were living outside Colombo, was most unconvincing. He purported to reproduce actual sentences used on that occasion, beginning with the statement—"To-day is the 8th. We will place

at your disposal Rs. 200 at the rate of Rs. 10 a day and you can spend that money in the event of not getting private cars". He says he received the money on the 8th, keeping it in his house, and spent most of it on June 26 and 27. Why he should have been entrusted with this large sum in this way neither respondent, de Soysa, or Brampy Appuhamy are able to explain.

The witness further states that he was instructed to obtain sub-receipts from the car drivers whenever he or his subordinate workers hired a car. In examination-in-chief he identified a bundle of fourteen receipts (R 51-64) as receipts he had obtained and handed to K. G. de Silva. Only one of these bears a date prior to June 26. He looked through them and definitely identified them. In cross-examination, however, he seemed to have some doubt about it and after some questions said he would only identify one definitely. Finally, he suddenly affected to have something wrong with his eyes and said he would not commit himself to anything in the receipts. On this question the witness showed he was altogether a most untrustworthy person upon whose evidence I could place no reliance at all.

The last witness to whom I must refer in connection with the two charges of bribery with which I am now dealing is H. A. Dharmasiriwardene. He is a monotype keyboard operator in the Government Printing Department and has been in Government service some 19 years. It will be remembered that C. Rajaratnam stated in his evidence that when he was sent for to come to Karunaratne's tailoring establishment to interview Brampy Appuhamy, de Soysa, and K. G. de Silva, one Dharmasiriwardene was also present. There appears to be not the slightest reason why Rajaratnam should bring Dharmasiriwardene on the scene if it was not true. Dharmasiriwardene is therefore called to disprove Rajaratnam's story that he was there. There is in addition a charge of bribery relating to the payment of Rs. 75 to

Dharmasiriwardene by de Soysa amongst the thirty-one alleged cases set out in the particulars.

Dharmasiriwardene is not a registered voter in the Colombo South constituency and he states he took no part whatsoever in the by-election, nor did he interest himself on behalf of Dr. Coorey in any way. He agreed that there is a regulation prohibiting Government servants taking any part in elections. Between June 5 and June 7 he was ill and he went to interview no one, as he was not able to move about freely. He stated he was in bed and used to come to the verandah and sit on an armchair. I asked him if he never went even into his garden, and he said, if he did that, he was quite sure he never went beyond the garden until June 9, when he returned to work. Whilst giving that evidence the witness happened casually to take a small diary out of his pocket apparently to verify the dates. As he was putting it back into his pocket Mr. Hayley for petitioner asked if he might see it as the witness had refreshed his memory from it. As counsel was looking through it the witness turned to me and said he was sorry he had made a mistake. He had left his house on June 7 and gone to the Colombo Police Court in a car. I am very far from certain that he would have made that admission to me unless he had so foolishly (from one point of view) produced his diary from his pocket. That same diary put him into further difficulty later on in his evidence.

The witness seemed to me to be a man of very respectable class and to be a rather guileless person, his chief concern as a witness being to make it clear that he had not taken any part in the election campaign in contravention of regulations. He on several occasions contradicted himself on most important points and altogether shaped very badly in the witness box. There is evidence that he is a person who had on occasions been called on to settle disputes in his neighbourhood and also that he had done some relief

work during the floods, for which of course credit is due to him, and he also lays stress on his sense of justice, which I do not doubt he possessed according to his lights.

The witness lives in Dematagoda and close to Brampy Appuhamy, with whom he was on friendly terms. He is also a cousin of U. D. P. Abeysekere. To get to the Police Court on June 7 he states he went down Dematagoda road into Maradana, which would bring him very near Karunaratne's tailoring shop. He says he heard in June that Brampy was taking an active part in the election and he adds—"I may have seen Brampy Baas during the month of June." If he did he says they talked about other things. When asked if he ever had any meeting with Brampy he jibbed at the word "meeting," but after some delay admitted that he made a special appointment to meet Brampy on June 27, the eve of the election, which appointment he gave me clearly to understand was kept. He was not sure, however, whether he met him before or after dark. When it was suggested to him that this meeting was in connection with the election he replied that it was about a temple matter at which two other people named by him were present. He admitted that three appointments with Brampy were noted in his diary—April 30, June 25, and June 27. Later he was doubtful whether he had met Brampy on June 27 at all, and before he left the witness box he was definite that he had not met him. Although the temple dispute was not settled until September he admits he has no appointment in his diary to meet Brampy after June 27. Whether he gave his evidence in English or in Sinhalese, to which he was allowed to change, he was equally unsatisfactory. He lastly denied that he had ever received Rs. 75 from de Soysa, and that if there was any entry to that effect in any paper in de Soysa's writing, he never had the money. The culminating point of his evidence was to the effect that

was aware of what evidence he was going to give before he went into the witness box. Of that he was quite sure. The explanation of his evidence is undoubtedly contained in his statement—"I would get into trouble if I admitted I took part in elections." I fear his sense of justice and of regard for the truth has been allowed to take a second place in view of the urgent necessity of showing he had observed the regulations to which he referred. I must admit I felt sorry for him, and one cannot but deplore the predicament in which his lack of moral courage has landed him. Perhaps it was thought his artlessness might disarm the Court.

The evidence of the respondent himself in no way removes the very great difficulties to which I have called attention in believing the evidence of the witnesses called on his behalf on the question of the alleged payments of large sums for car hire to Karunaratne and Abdul Hamid. He purports to indentify the bundles of sub-receipts (R 3 and R 5) which he says de Soysa handed to him. No one seems to have checked or examined them, however, and he says, for all he knows, some of them may be fraudulent and the money kept by the workers. One, it has been proved, according to the number on it, is for a lorry. He states he gave de Soysa Rs. 500 in a lump sum to be used for travelling expenses of the workers and other incidental expenses. That was in itself quite irregular. He obtained no receipts for this money, nor does he seem, according to his evidence, to have taken any steps whatsoever to see how it was spent. He was his own election agent and it is impossible for me on the evidence to come to any other conclusion than that he was fully aware of what was going on in the Maradana area and that de Soysa in making the payments deposed to by Daniel, Perera, Rajaratnam, Karunaratne, and Muttiah, was acting with his full knowledge and approval. I have no reason to doubt his evidence that he paid de Soysa Rs. 500 as he states, but I am

quite unable to believe the evidence that it was spent as de Soysa and Brampy Appuhamy state.

I will now proceed to deal with the exhibits P5 to P9. They are somewhat rough notes on thin writing paper containing names of certain streets and roads in and about Maradana, with names of supervisors and workers, made in connection with some election matter, the number of voters being referred to. Opposite most of the names on P5, P7, and P8 are figures representing presumably payments. These three are written in ink; P6 and P9 are in pencil, the former being on only a portion of a sheet, neatly but closely written. P6 is an account, a summary, showing payments of Rs. 1,182, and includes most of the items set out on P5 P7, and P8. The document P9 is in pencil and is obviously hurriedly written and appears to be a note of expenses incurred or payments made on the 25th and 26th of some month not mentioned. The entries are the names of persons, cars, printing leaflets, and treat account, and ends with a note "to enter," apparently a reminder to the person making the memorandum that it has to be entered somewhere else.

The document P5 is the one that the witness Daniel states he saw in the hands of de Soysa on June 10. It contains the names of various workers including that of Abdul Hamid as supervisor in the Dean's road area, with Daniel, M. S. Perera, and others as workers under him. The document P8 is the one of which Rajaratnam and Karunaratne speak. The top part of this sheet is obviously written by some hand other than the one that wrote any of the other papers. There are various calculations upon it, made, according to Rajaratnam, by de Soysa, and below is the receipt of Rajaratnam and Karunaratne for Rs. 107.50 as they state. By the side are the initials "Pd. 10/6. A. de S." There are further entries below which Rajaratnam says he saw de Soysa make when he went to him for additional workers. So far then as the documents

P5 and P8 are concerned there is definite evidence that de Soysa wrote part of them. The evidence of Daniel on this point was not so strong and satisfactory as that of Rajaratnam and Karunaratne, because he did not actually handle the paper he saw on June 10, nor is he very familiar with English. The evidence of the two latter witnesses on this point was however, as I have stated, most convincing, and no ground has been shown in my opinion why I should not accept it. I would add further that I have come to that conclusion without any reference to or assistance from the evidence of any handwriting expert.

Two witnesses were called to give evidence as handwriting experts, L. Muttukrishna for the petitioner and Father M. A. Julien for the respondent. The exhibits P11 (cheque) and P12 (letter), both admittedly written by A. H. T. de Soysa, were used by them for the purpose of their examination. Why Father Julien did not require more material from the respondent in the form of further specimens of de Soysa's writing for the purpose of his examination it is difficult to understand, for it was his to command. The reasonable explanation is his lack of experience in this kind of work. Mr. Muttukrishna was of opinion that the four documents, P5, P6, P7, and P9, were all in the writing of the same writer throughout, and that the writer of them was also the writer of P11 and P12. He further expressed the opinion that that portion of P8 below the signatures, and also the calculations and initials "A de S," were written by the same person. Father Julien was of opinion that P5 to P9 were not written by the person who wrote P11 and P12.

I do not propose to analyse the very lengthy evidence of these two witnesses here. I have, however, I need hardly say, given it careful attention. I have also borne in mind the argument that the documents are false, the invention of some fertile brain—whose, one cannot say. The only motive for such an act

lay in the hazy suggestion—for it was nothing more—that respondent was the victim of a caste and communal intrigue. The very documents to my mind rebut any such argument.

The credentials, if I may so put it, of both witnesses to appear as expert witnesses were attacked by the other side, but with considerably less reason, so it seemed to me, in the case of the witness called by petitioner. Mr. Muttukrishna stated he had given evidence in court as an expert in handwriting in some 75 to 100 cases. He is in addition an accountant and auditor. On some occasions apparently his opinion has been adopted by the Court and on others he has been a witness for the losing side. Once or twice in the course of his evidence there seemed to me to be some slight tendency to exaggerate the points which would go to support his opinion and to minimise points against him, and at times he was inclined to be somewhat didactic, but on the whole in my opinion he gave his evidence very fairly, and it strongly confirmed and strengthened the opinion I had formed at any rate as regards the documents P5 and P8. His reasoning by which he came to his conclusion seemed to me from a practical point of view much more satisfactory than that of Father Julien.

The evidence of Father Julien on the other hand seemed to me repeatedly to show his lack of experience as an expert in handwriting where the comparison of disputed documents and the detection of forgery is concerned. He had subjected the documents to a minute analysis as his evidence showed, and I have not the least doubt of course that he was giving expression to his definite and *bona fide* opinion as a result of his painstaking work.

It seemed to me, however, that by the same kind of analysis and method of reasoning he could have shown that it was highly probable that I myself had not written parts of the lengthy notes I have taken in the course of this inquiry. That

was clearly due to his lack of practical experience in this work. As his evidence shows he would more properly be called a graphologist, and not an expert in handwriting as the term is used in the Courts. The literature of graphology he stated was quite different to that on questioned documents, but later he had to admit he had not read anything upon the latter subject. The question of identifying a writer would not often arise, he admits, in the art of estimating character from handwriting. It is obvious further that he would derive no experience and knowledge to assist him here from his calling as a priest. He has given evidence as an expert in one case, and one only, in 1922 when he happened to be called on the same side as Mr. Muttukrishna. In that case he admits he described himself as a psychological graphologist and said he was not an expert in handwriting. Since then he says he has had five or six consultations on graphology and on handwriting for the purpose of identifying documents. From this evidence and from what I observed in the witness box, I have no doubt that the description Father Julien applied to himself in 1922 is a proper description of himself to-day. Of these two witnesses the opinion of Mr. Muttukrishna with regard to the impugned documents seemed to me to be much more sound and convincing than that of Father Julien.

The petitioner's evidence was criticised as being suspect, owing to the fact that he was in financial difficulties at the time the petition was filed. It was accepted however that he was relieved from those difficulties by a payment by his wife who had her own property. He was a member of Col. Jayewardene's election committee and states he took a very active part in supporting him. Petitioner admitted that when the petition was first launched he was in possession of information received from U. D. P. Abeysekere who showed him certain documents pinned together which I understand he had no opportunity of inspecting but which Abeysekere stated would support the charges of bribery.

Abeysekere however later refused to keep his promise to hand over the papers to petitioner and it is then suggested that petitioner conveniently found that Daniel also had some similarly useful documents in his possession. A further attempt was made to assail the character of the petitioner as was done in the case of the witness R. Hendrick Perera previously referred to. Counsel for respondent suggested that petitioner had been dismissed from the employment of Messrs. Harrison & Crossfield because he was concerned in the disappearance of some rubber. There was not the least ground for that suggestion, petitioner producing an excellent character from that firm when he left them. He produced another character from Miller & Co., Ltd., when he left them in 1927 to undertake the management of the Windsor Restaurant, which he was carrying on when the petition was launched. Such attempts to attack the character of witnesses cannot but recoil upon the party making them. I have no reason to doubt petitioner's story as to how he obtained the documents from Daniel, although, as I have stated before, Daniel may not have obtained them in such a simple way as he described. Mr. Pereira in the course of his address suggested as one possibility that Abeysekere's was the master mind responsible for the forging of the documents and Daniel the catspaw put forward to produce them. I am fully satisfied they are genuine documents. It is not however impossible that they are the very documents that Abeysekere promised to give to the petitioner and disposed of by him so as eventually to reach the petitioner. From the part the evidence shows Abeysekere to have played, first helping one side and then the other, with ample opportunity of getting possession of documents in the Dean's road office, such conduct on his part is not inconceivable. It serves no useful purpose, however, entering into those speculations having regard to the facts I find.

Upon all this evidence with respect to the charges of bribery 2 (a), 2 (b), 2 (I),

and 2 (m), I am satisfied that the charges have been fully established. I am satisfied that the witness de Soysa wrote the document P5 and the disputed portion of P8, and I have no doubt that the other impugned documents are in his handwriting. The evidence of de Soysa, Brampy Appuhamy, and Abdul Hamid, alleging payments of Rs. 107.50, Rs. 82.50, and Rs. 200 for car hire I am satisfied is false. The fact that only two of the persons to whom payments were made were registered voters does not make the payments to the other two any less bribery but merely an illegal practice. It is true that under the Order-in-Council some difficulty might arise as to the consequent order to be made by this Court, if only an illegal practice and not a corrupt practice was found on a petition presented under the Order-in-Council, but that difficulty does not arise here. "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." These are the words of Willes J. in the *Coventry Case*¹ cited with approval when applying the Order-in-Council by Bertam C.J. in *Rambukwelle v. Silva*². All the payments made in these four charges clearly come within the definition of bribery as set out in article XLVI. of the Order-in-Council.

I proceed now to examine the evidence in respect of charge 2 (b1), the alleged bribery of Supramaniam Chetty. Rajaratnam above referred to and one Mutiah Chetty are the two who speak to this, and it is suggested that the evidence is corroborated by an entry in the document P6 where a sum of Rs. 10 is placed opposite the name of Supramaniam Chetty. The person mentioned in the charge, namely, Supramaniam Chetty, of 180, 2nd division, Maradana, according to the petitioner's case, is now in India and has not been called. For the respondent, however, a

¹ 1 O'M. & H. 97.

² (1924) 26 N. L. R. at p. 240.

man has been called who says he was the only Supramaniam Chetty of 180, Maradana, that he received no payment from anyone and that he voted in fact for Colonel Jayewardene.

Rajaratnam states that Supramaniam Chetty was on his list of voters but he found he had moved to Slave Island. He found him there in an eating-house with Muttiah Chetty, a cousin of Supramaniam and also a voter. After more than one visit and some bargaining, Rajaratnam states he took them to the Dean's road office to see de Zoysa, the reason given being that they had stated that they were traders and had no time to spend on voting unless they were paid. A conversation took place in the office between them and de Zoysa in Rajaratnam's presence, and according to the latter Rs. 10 was handed to Supramaniam by de Soysa for the two of them. There was no cross-examination of Rajaratnam in respect of this evidence. I have carefully read the shorthand notes and my notes to verify this and can find none.

Muttiah Chetty, a boutique and eating-house keeper, now of Malay street, Slave Island, corroborates Rajaratnam, but gives his story in more detail. He states that both he and his cousin Supramaniam Chetty are registered voters in the Colombo Town (South) constituency, that four or five years ago they both lived at Maradana, and that Supramaniam Chetty was living at 180, Maradana. He moved first and then Supramaniam came and lived in Slave Island with him. In June, Supramaniam was living with him, but he is now in India. He states Rajaratnam came to see him twice about voting, on the second occasion Supramaniam being present. Muttiah continues—"I told him I was a trader and could not go about and waste my time. He said leave your work aside and vote for my sake. I said I was not so attached to him as all that". They then went on to talk about the number of votes Muttiah and Supramaniam could command between them and their relations; Muttiah said he had four voters and that

he and Supramaniam were prepared to go and vote at Rs. 5 a vote. In reply to me he stated, and I have not the least reason to doubt him on this point, that he put the proposition to Rajaratnam as genuine sound commercial transaction. I have no doubt that it never struck him that the matter was capable of being looked at from any other point of view. It is impossible to blame voters for taking up such an attitude, since their education as to the proper use of the vote has been almost non-existent, and they have had no opportunity until very recently of looking at the matter with any idea of public spirit. It will doubtless take many years to instil 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 upon candidates for election and their agents, who presumably know the strict requirements of the law and the effect of the law if any payment or gratification is given. They must exercise full control of and careful check and scrutiny of every payment made and do nothing that might in any way make the path of a person who wished either to give or to receive any such payment or gratification easy. Having regard to the wide extension of the franchise under the new Constitution this responsibility of candidates and their agents will be all the greater.

With regard to Muttiah's evidence it is to be noted that no charge of bribery has been made in respect of him. That of course must be subject for remark, but I think it is explained by the fact that the name of Supramaniam Chetty alone appears in any of the documents P5-P9. Muttiah admitted that he had made no statement to petitioner's proctor until a few days before he went into the witness box, which was long after the particulars were filed, but of course his name was on the list of witnesses some time before that. De Soysa denies that he made any payment to either Muttiah or Supramaniam at all. Another Supramaniam was in fact produced on behalf of the respondent

who is alleged to be the voter of that name who lived at 180, Maradana. It did not require much acumen to come to the conclusion that this latter Supramaniam was not the person he represented himself to be. He was rather a simple-minded old man who got hopelessly mixed up in his evidence, and one cannot blame him so much as the person who was responsible for putting him forward and procuring him to commit perjury. He obviously knew very little about 180, Maradana. One of his statements, which no doubt it was hoped would give weight to his story, was that he had in fact voted for Colonel Jayewardene at the election, but this was spoilt when it became fairly evident from his answers that he had never been in a polling booth in his life. I have no difficulty in believing Muttiah when he said his witness was not his cousin Supramaniam Chetty. A fabrication of this kind can only result in strengthening belief in the evidence of a witness when it is by such means sought to discredit. The evidence of Muttiah and Rajaratnam is further corroborated by the entry of the name of Supramaniam, with Rs. 10 against it, in the document P6, which I have no doubt is in the handwriting of de Soysa.

I have one more charge to deal with, charge 2 (*d* 1), the alleged bribery of L. David Silva

On this charge of bribery, although part of David Silva's evidence is open to very considerable suspicion, I have come to the conclusion that his statement that he was promised Rs. 150 and received Rs. 75 as he states is correct and that the charge has been made out. Even if the respondent was not aware that the payment was made at the time it was made, it is, of course, a payment which invalidates the election.

To recapitulate, my conclusions are shortly as follows :—

- (1) The charge of corrupt treating at "Belvoir", the house of the respondent, is not proved.

- (2) The charge of general corrupt treating at No. 22, Dickman's road, is not proved.

- (3) The charges of bribing T. S. Daniel, M. S. Perera, C. Rajaratnam, M. M. Karunaratne, Supramaniam Chetty, and David Silva, as set out in the charges, have been proved.

- (4) The agency of A. H. T. de Soysa is admitted, but in any case I find that the respondent was fully aware of and approved of the payments to all the persons mentioned in paragraph (3), with the exception of David Silva.

- (5) In addition to the cases of bribery found to have been proved I find there is evidence of further and more extensive bribery than those mentioned in paragraph (3).

In view of the findings in paragraph (3) above, the election of the respondent is void, and I shall so certify in due course as provided by the Order-in-Council.

With regard to the electoral offences disclosed I see no reason to make any further order or recommendation than I have done. The proceedings, I understand, have been fully published in the local English and vernacular press and may make the provisions of the law in regard to elections more widely known to the public. The lesser offenders may have some little excuse in ignorance. That plea, however, is not open to the respondent or his brother-in-law, de Soysa. In their case, however, without in any way seeking to mitigate their offences, under the circumstances I see no reason to make any further recommendation in respect of these electoral offences found to have been proved. The respondent himself loses his seat with the disqualification attached thereto. Election petitions have necessarily not been common here, and people must learn by experience. With the offences of perjury and subornation of perjury I do not deal on this inquiry. If it should be thought that any further action is required in respect of such charges against the principal offenders,

the proper authorities will doubtless consider the matter. The impugned documents and other exhibits not public property will be retained in the custody of the Registrar of the Supreme Court.

With regard to costs, the petitioner being successful will be entitled to his general costs, but must pay to respondent the cost of the charges of treating upon which he failed. The respondent will also be entitled to the costs of the proceedings on August 7 when the objection to the security tendered by petitioner was heard
