

1948

Present: Windham J.

ILANGARATNE et al., Petitioners, and **G. E. DE SILVA,**
Respondent.

**IN THE MATTER OF THE ELECTION FOR THE KANDY ELECTORAL
DISTRICT.**

Elections Petitions Nos. 4 and 5 of 1947.

Election petition—Ceylon (Parliamentary Elections) Order in Council, 1946—Sections 58 (1) (d), 77 (a) and (c)—Proof of false statement of fact relating to candidate's personal character—Proof of circumstances preventing majority of electors from polling—Treating—Undue influence—Evidence—Proof of contents of written statement—Evidence Ordinance (Cap. 11), ss. 35, 114 (f).

One of the charges set out in an election petition was that the respondent had made false statements of fact in relation to the personal character and conduct of the petitioner to the effect that the petitioner had as a clerk in the Government service accepted or obtained illegal gratifications and had consequently been dismissed from Government service. The latter part of the charge, relating to dismissal from Government service, was not proved.

Held, that the sting of the false accusation against the petitioner was that he had taken bribes, and this alone was sufficient to constitute an offence under section 58 (1) (d) of the Ceylon (Parliamentary Elections) Order in Council, 1946. The unproved remainder was mere surplage.

Held, further, that a police officer's official report of a speech at an election meeting is admissible under section 35 of the Evidence Ordinance and is not any the less admissible from the fact that his original rough note made during the actual course of the speech, and a rough draft of the report made immediately afterwards, have since been lost or destroyed. It is the report itself which is admissible, and nothing in the law requires the production of the rough note or draft of such a report.

Where it was alleged, under section 77 (a) of the Ceylon (Parliamentary Elections) Order in Council, 1946, that owing to circumstances arising from floods and the housing of the refugees in camps "the majority of electors were or may have been prevented from electing the candidate whom they preferred"—

Held, that evidence should have been led as to what number of the refugees were voters and whether, if they were voters, they abstained from polling, or polled for the respondent, by reason of circumstances directly arising from the floods.

Held, further, that succouring the refugees with the only motive of alleviating their distress was not "treating" within the meaning of section 77 (a).

A charge of undue influence has to be proved beyond reasonable doubt. In such charges a strong suspicion is not enough.

If in the course of giving evidence a statement whether verbal or reduced into writing which contains relevant facts previously made by a witness is specifically put to him as having been made by him, and he admits that he made it and that what he stated therein is true, the relevant facts in the statement may be treated as if they had been deposed to in the ordinary way in the witness box.

No adverse inference should be drawn under section 114 (f) of the Evidence Ordinance against a party who omits to call witnesses who might seem best calculated to support his case but who will decline to give evidence in his favour for fear of inculpating themselves.

THESSE were two election Petitions Presented against the return of the respondent as member for the Kandy Electoral District, at an election held on August 23, 1947.

Petition No. 4 alleged (a) that the respondent had by himself, his agents and other persons on his behalf made and published, for the purpose of affecting the return of the petitioner, false statements of fact in relation to the personal character and conduct of the petitioner to the effect that the petitioner had as a clerk in the Government service accepted or obtained illegal gratifications and had consequently been dismissed from Government service ; (b) that the respondent's son, who was an agent of the respondent and acted with knowledge and consent of the respondent, made payments of expenses incurred on account of the election although he was not the respondent's election agent ; (c) that by reason of circumstances attending on or following floods in the District, the majority of the electors were or might have been prevented from electing the candidate whom they preferred.

Petition No. 5 alleged that the respondent was guilty of the offences of treating, undue influence and bribery.

E. F. N. Gratiaen, K.C., with *S. Nadesan* and *G. T. Samerawickrama*, for the petitioner in Petition No. 4.

E. F. N. Gratiaen, K.C., with *B. H. Aluwihare* and *S. E. J. Fernando*, for the petitioner in Petition No. 5.

R. L. Pereira, K.C., with *U. A. Jayasundera, J. A. L. Cooray* and *S. J. Kadirgamar*, for the respondent in Petitions Nos. 4 and 5.

C. S. Barr Kumarakulasingham, with *A. I. Rajasingham* and *Vernon Wijetunge*, for Fred. de Silva.

Cur. adv. vult.

February 24, 1948. WINDHAM J.—

The two petitions in this case, which are being dealt with as one in accordance with rule 6 of the Parliamentary Election Petition Rules, 1946, are presented against the return of the Honourable Mr. George Edmund de Silva as member for the Kandy Electoral District, at an election held on August 23, 1947. The result of the election, as published in the *Ceylon Government Gazette* of September 2, 1947, was as follows :—

Mr. George E. de Silva	..	..	7,942 votes
Mr. T. B. Ilangaratne	..	..	7,737 votes
Mr. A. Godamune	..	..	2,350 votes
Mr. D. B. Wadugodapitiya	..	..	172 votes

The petitioner in petition No. 4 is the unsuccessful candidate Mr. T. B. Ilangaratne over whom the respondent polled a majority of 205 votes. The petitioner in petition No. 5 is Mr. John Weerasekera, a person who voted at the election, and a supporter of Mr. Ilangaratne.

The charges set out in petition No. 4 are four in number, and are framed as follows :—

“ 3. Your petitioner states that before and during the said election the respondent by himself, his agents and other persons on his behalf made and published for the purpose of affecting the return of the

petitioner, false statements of fact in relation to the personal character and conduct of your petitioner to the effect that the petitioner had as a clerk in the Government Service accepted or obtained illegal gratifications and had consequently been dismissed from service.

4. Your petitioner further states that the respondent's son, Fred de Silva, Mayor of Kandy, who was an agent of the respondent, and acted with knowledge and consent of the respondent made payments of expenses incurred on account of and in respect of the said election although he was not respondent's Election Agent in contravention of Article 62 of the Ceylon (Parliamentary Elections) Order in Council, 1946.

5. Your petitioner further states that by reason of circumstances attending on or following recent floods in the District including the disorganisation of the life of large sections of the voters, the segregation of refugees who were voters, disturbance of communication and transport and the scarcity of petrol, the majority of the electors were or may have been prevented from electing the candidate whom they preferred at the said election.

6. Your petitioner further states that the respondent was at the time of the election a person disqualified for nomination and/or election as a member in that he was a Public Officer, within the meaning of Article 13 (3) (b) of the Ceylon (Constitution) Order in Council, 1946, which objection regarding disqualification was taken by the petitioner on the date of nomination and disallowed by the Returning Officer ”.

Three further charges are set out in petition No. 5 as follows :—

“3. Your petitioner states that George Edmund de Silva, the respondent above named, was guilty of the offence of treating in that he himself, his agents and other persons, acting on his behalf, with his knowledge or consent, did before and during the said election provide drink, refreshment and provisions to voters and other persons for the purpose of corruptly influencing the said voters to cast their votes at the said election in favour of the respondent.

4. Your petitioner further states that the respondent was guilty of the offence of undue influence in that he himself, his agents, and other persons acting on his behalf with his knowledge and consent did, before and during the said election, threaten to inflict temporal damage, harm and loss upon persons in order to induce or compel the said persons to refrain from voting at the said election.

5. Your petitioner further states that the respondent was guilty of the offence of bribery in that he himself, his agents, and other persons acting on his behalf with his knowledge or consent, before and during the said election, directly or indirectly gave or agreed to give money or valuable consideration and procured or endeavoured to procure office, place or employment to electors in order to influence the said electors to cast their votes in favour of the respondent ”.

I will deal with the charges in the above order. First, however, I will state very briefly the circumstances attending the election which are not in dispute. The respondent was the sitting member for the Kandy

Electoral District, and was at the same time the Minister for Health. He had had a long and distinguished political career, and he was, and in the 1947 election stood again as, the candidate for the United National Party. The petitioner Mr. Ilangaratne, aged 34, had until 1947 had an inconspicuous career in the Government service, and was then serving as a clerk in the Lands Department in the Kachcheri in Kandy. In 1945 he had been elected President of the Kandy branch of the Clerical Service Union, and in March, 1947, he became President of the whole Union. He presided at a Public Servants' rally on the Galle Face Green on May 28, 1947, and as a result of this he was interdicted, together with others. A general strike of public servants ensued, as a protest. Mr. Ilangaratne tendered his resignation from Government service, but it was at first refused pending disciplinary proceedings against him for his having taken part in the meeting of May 28 contrary to Public Service Regulations. He pressed to be dismissed from Government Service, having now decided to contest the Kandy seat in the pending election, and eventually on July 23 he was dismissed, the sole ground for his dismissal being his unauthorised participation in the meeting of May 28. He handed in his nomination paper as a candidate for the Kandy seat three days later, on July 26, that being nomination day.

The election campaign was a short one, lasting a bare four weeks, polling day being August 23. Towards the end of it, namely from the evening of August 14 until four or five days later, unprecedented floods, due to excessive rainfall, occurred in much of the low lying areas in the electorate, destroying many houses and necessitating the removal of the homeless inhabitants into improvised refugee camps within the electoral area. Whether the circumstances attending their billeting in these camps prevented the election from being a free one is the subject matter of the fifth ground of petition No. 4. In all events the floods had subsided by election day, August 23, although most of the refugees, still homeless, remained in the camps; they were, however, given all facilities to go to the polls.

I will now turn to consider the first ground for avoiding the election namely paragraph 3 of petition No. 4. Evidence has been called to prove the making and publication of three false statements of fact in relation to the personal character and conduct of the petitioner Mr. Ilangaratne under this head.

The first of these is the making of such a false statement by the respondent himself in a speech at Mapanawatura, in Kandy, on July 27, 1947, at an election meeting which about 150 persons attended. The petitioner's main witness to this was a police officer, Sergeant A. M. Ratnayake, who upon orders from his superior, the Superintendent of Police of the Central Province, Mr. J. G. de Saram, attended the meeting and submitted a written report of it on the same night. This report has been produced by Sergeant Ratnayake in evidence as exhibit P 1. According to it, the respondent during the course of his speech said that "one person who had served in the Kachcheri for 17 years had come to the field, and further said that the Kachcheri is a place where one has to give bribes to get anything done and that the candidate, who had, collected some money which he had taken as bribes from the poor people,

had come forward to contest a seat in the Parliament". If this allegation was in fact made, it was a clear imputation that the petitioner Ilangaratne had taken bribes. He alone of the three candidates opposing the respondent, had worked in the Kachcheri, and he had admittedly worked there for a number of years. His recent notoriety made the electorate well aware of this. It is true that in fact he had not served in the Kachcheri for as long as 17 years, but had been in Government Service from 1934 to 1939 and thereafter in the Kandy Kachcheri; but I attach no importance to this slight inaccuracy. Secondly the statement was a false one. There was no attempt on behalf of the respondent to prove that Mr. Ilangaratne had ever taken a bribe; and all the evidence with regard to his moral character, on both sides, negatived such a possibility. Mr. Ilangaratne himself denied it in evidence, and I accept his denial.

A legal point was raised on behalf of the respondent that the report P 1 ought not to have been admitted in evidence at all, because Sergeant Ratnayake himself did not in specific words repeat from the box the passage in it which is relied on, or say that he in fact heard those words said by the respondent at the Mapanawatura meeting, although he did say that P 1 "was a true report of what happened when I was there". This objection was not raised at the time, but in his closing address Mr. Jayasundera for the respondent drew attention to a passage in the Indian case of *Jagan Nath Luthra v. Emperor*, reported in *All Indian Report (1932) Lahore, page 7*, to the effect that where a police witness has made a written note of something which has been said to him, it is not enough for him to point to the note and say "that is what was said", unless he goes on to say that he had forgotten what was said. But in the present case the record was, as it was not in the Lahore case, an official one, and was thus admissible under section 35 of the Evidence Ordinance. Moreover the exact point is covered in the following passage from the judgment of Fisher C.J. (in a bench of three) in *King v. Silva*¹. "As to (1), primarily, the only evidence of witnesses called at a trial which the jury are entitled to take into consideration is the evidence then given by them in the witness box. This general rule is, of course, subject to some qualifications. For instance, if in the course of giving evidence at the trial a statement whether verbal or reduced into writing which contains relevant facts previously made by a witness is specifically put to him as having been made by him, and he admits that he made it and that what he stated therein is true, the relevant facts in the statement may be treated as if they had been deposed to in the ordinary way. This is not really an exception to the general rule, because in effect the witness repeats what he had previously said". Lastly, I do not consider that Sergeant Ratnayake's report, P 1, is any the less admissible from the fact that his original rough note made during the actual course of the respondent's speech, and (apparently) a rough draft of the report made immediately afterwards, have since been lost or destroyed. Nothing in the law requires the production of the rough note or draft of such a report. It is the report itself which is admissible under section 35 of the Evidence Ordinance. It would, of course, have been possible for Ratnayake, after attending the meeting, to have wrongfully inserted in

¹ (1928) 30 N. L. R. 193 at p. 194.

P1 an allegation that the respondent in his speech had accused Mr. Ilangaratne of taking bribes ; but it was not even suggested to him that he did so.

And that brings us to the question of credibility. On the respondent's side the respondent himself, and his son Mr. Fred de Silva, then Mayor of Kandy, denied that the respondent had made the allegation of bribery. So also did the respondent's witnesses Kahapola, Romanis Perera, and Rajapakse. But mere numbers count for nothing, and of all these witnesses on both sides, the only one whose evidence in my view was not likely to be biased or partisan was the only one who made a written resume of the respondent's speech on the spot, when it must have been fresh in his memory, namely Sergeant Ratnayake himself. Sergeant Ratnayake's evidence must be considered, therefore as the most reliable, unless it can be shown that he too was biased. This in my view the respondent has failed to show. I accept the evidence of Sergeant Ratnayake, and of his report P 1, for the following reasons:—

First, he impressed me as a truth-telling witness. Secondly his report alone was official and contemporaneous ; and although not specially trained in precis writing, he had been doing this kind of work for some three or four years. Thirdly, the witnesses to the point called for the respondent admitted or betrayed themselves as being his supporters, and accordingly their evidence was not so readily acceptable ; briefly, I find myself unable to accept it. Fourthly, Sergeant Ratnayake's superior, Superintendent de Saram, whose evidence I accept in its entirety, stated in evidence that Ratnayake was a very efficient and trustworthy officer and that he had no reason to believe he was favouring Mr. Ilangaratne at any time.

Fifthly, I am unconvinced by the evidence of Mr. Fred de Silva that he had seen Sergeant Ratnayake talking to a man on the eve of the election, and had suspected him of canvassing that man. Mr. Fred de Silva was a victim of conflicting loyalties,—loyalty to the truth, and loyalty to his father ; and regrettably though understandably I must conclude that the latter prevailed, and that he has attempted to show that the evidence of Ratnayake, which if true would be damning to the respondent's case, was the fabricated evidence of a partisan. Mr. Fred de Silva states that he complained to Superintendent de Saram, before the election, that he had seen Sergeant Ratnayake apparently canvassing ; but Mr. de Saram denies this, and I must accept his denial. It is significant that the incident was not put to Ratnayake in the box in cross-examination, as it ought to have been. He was asked generally if he had done any canvassing and he denied it. But from the fact that this particular incident—which even if true could well have had an innocent explanation—was not put to him, I can only conclude that it was an invented afterthought, designed to discredit Ratnayake. Moreover Mr. Fred de Silva states that he spoke to the man to whom Sergeant Ratnayake had been talking, and that what that man told him confirmed his suspicions. He says that the man's name was Martin. And yet that man has not been called to give evidence. No reason has been given for his not having been called to testify that Ratnayake was indeed canvassing him and not merely talking to him. And Mr. Fred de Silva's own evidence on the incident,

even if true, shows nothing against Ratnayake. For similar reasons I reject the evidence of the respondent's witness A. E. de Soysa, that he had seen Ratnayake on more than one occasion visiting Mr. Ilangaratne's house. This was put neither to Ratnayake nor to Mr. Ilangaratne. I consider that the allegations against the police generally, in this case, and against Sergeant Ratnayake in particular, were unwarrantable and unproved.

The sixth reason which leads me to accepting the evidence of Sergeant Ratnayake and of his report P1 is a consideration of the question whether the respondent was a person who would be likely to make such an allegation of bribery against Mr. Ilangaratne in the heat of an election speech,—that is, even if (though I conclude otherwise) it was not made deliberately of set purpose. And from an observation of him in the witness box, after making all allowances for the strain to which this petition must have been subjecting him, and for his ill-health, I think such an allegation was in character. An irascible temperament such as would cause a person to make in the heat of the moment unfounded accusations against those who are thwarting him is by no means incompatible with the aggressive qualities which no doubt have enabled the respondent to render his acknowledged valuable services to his country. And such a temperament he showed himself to possess even while giving evidence. Time and again he threw out general accusations of iniquity against all and sundry which he was unable to support, and some of which he appeared shortly afterwards to have forgotten having made. His protestations in the box that he would never have accused Mr. Ilangaratne of bribery because he had no grounds for supposing that he took bribes, were for this reason unconvincing. I consider that, on his own testimony and demeanour alone, it is far from unlikely that he made such an accusation against Mr. Ilangaratne at a time when the latter, whose opposition he had at first treated with amused contempt, was beginning to show that, though an "upstart", he was an opponent to be seriously reckoned with, and without delay.

Lastly, the evidence goes to show that this accusation of bribery did not merely slip out in an unguarded moment, for it was made against Mr. Ilangaratne not only orally by the respondent in his speech at Mapanawatura, but also in pamphlets distributed by the respondent's agents, or with his knowledge, as I shall proceed to show in dealing with the remaining two cases of publication of the same allegation.

On all these grounds I am convinced beyond reasonable doubt, and I find as a fact, that the respondent did at the Mapanawatura meeting on August 27, 1947, during the election campaign, make the above false statement of fact in relation to the personal character and conduct of the candidate Ilangaratne. That it was made for the purpose of affecting the latter's return admits of no reasonable doubt, having regard to the circumstances in which it was made.

Only one point remains to be considered, namely that paragraph 3 of petition No. 4 alleges the false statement to have been not merely that Mr. Ilangaratne had accepted or obtained illegal gratifications, but that he had "consequently been dismissed from (Government) Service". This latter part of the charge was not proved, for it did not form part of

Sergeant Ratnayake's report. Nevertheless I do not consider that the charge as a whole must therefore be held to be not proved. The sting of the false accusation against Mr. Ilangaratne was that he had taken bribes, and this alone was sufficient to constitute an offence under section 58 (1) (d) of the Ceylon (Parliamentary Elections) Order in Council, 1946. The unproved remainder was mere surplusage. These observations will apply equally in the case of the remaining two instances of the publication of the same false accusation, which now fall to be considered.

On these grounds I hold that the respondent has committed a corrupt practice as defined in section 58 (1) (d) of the Order in Council, with the result that, in virtue of the provisions of section 82 (3) he will be subject to the incapacities set out in section 58 (2). And in accordance with section 77 (c), the election of the respondent as member of the Kandy electoral district in 1947 is declared void.

The second form of publication of a similar charge of bribery against Mr. Ilangaratne by the agents of the respondent, or with his knowledge, in proof of which the petitioner has adduced evidence, is the distribution of an election pamphlet, which was produced in evidence as exhibit P 2. The relevant passage in this document (the original of which was printed in Sinhalese) after making an express reference to Mr. Ilangaratne, continues—"What service has this gentleman rendered to his country or the people? We know he was a clerk in the Kandy Kachcheri; the service rendered by him is the expectation of a "pugga" (bribe) of even Rs. 2 (two rupees) when we the suffering went to obtain a Rice Ration Book" This is clearly a false statement. As I have observed already, it is not even contended for the respondent that it is true; moreover Mr. Ilangaratne, though he was employed in the Kachcheri, worked in the Lands Department, and never in a department where he had anything to do with the issue of rice ration books. The respondent in evidence himself admits that if this pamphlet P 2 was circulated, it must have done Mr. Ilangaratne a lot of harm. Indeed, in view of the respondent's narrow majority over him, it may well have tipped the scale against his victory.

What, then, is the evidence regarding the publication of this document P 2, to prove that it was published by the respondent, or with his knowledge or consent, or by any agent of his? To begin with, there was the police witness, Police Sergeant Fernando. No attempt was made to show that he was a partial witness, and I accept his evidence. He states that he saw copies of this document (produced by him as exhibit P/8A, but identical with P 2) being distributed on nomination day, July 26, immediately after nomination. He did not know who distributed them, nor even whether the distributors were supporters of the respondent, though he presumed from the tenor of the document that they were. His evidence, however, establishes that the document was in existence on that day. It is corroborated by the evidence of Mr. Ilangaratne himself. I may say at this stage that Mr. Ilangaratne, though naturally a far from disinterested witness, impressed me favourably and that, subject to a tendency to feel slighted where no slight was intended (understandable in view of the overbearing and contemptuous attitude of his formidable opponent), I consider that he was telling the truth

throughout. He stated that on nomination day he saw P 2 being distributed at the Kachcheri by one David Pinto, whose name appears on it as the author, and that a copy of it came into his hands on the following morning. I accept this evidence.

The next witness on the point was the Police Sergeant Ratnayake, whose evidence with regard to the respondent's speech at the Mapanawatura meeting on July 27, we have already considered. He states that he saw P 2 being distributed at that meeting, and in fact he inserted a statement to that effect in his report P 1, attaching to it a copy of P 2. He stated in evidence that the names of the two persons whom he saw distributing it were Romanis Perera and Kahapola. Their names were only elicited from him in re-examination, Counsel for the respondent having declined to elicit them in cross-examination upon being told that the witness knew who they were. The respondent subsequently called those two persons, who denied having distributed them. I prefer, however, to accept the evidence of Sergeant Ratnayake on the point. Romanis Perera admitted having spoken at this meeting at the respondent's request. Kahapola admitted that he (Kahapola) was the respondent's agent stating that he had taken the respondent round to various areas in the electoral district during the campaign, and that "he generally asked me to supervise various areas and see to the working of the election" and that the respondent had asked him to do canvassing for him while he (the respondent) was in Colombo, and that he had in fact worked for him. This, I consider, establishes that Kahapola was a general agent of the respondent.

The above evidence, which I accept, makes very probable the evidence of the next witness, one W. Ratnayake (who appears to have no connection with the Police Sergeant with the same name). He was admittedly an active supporter of Mr. Ilangaratne; at the same time I accept his evidence, not merely because he impressed me as speaking the truth, but also because it is rendered probable by the evidence of the distribution of P 2 to which I have already referred and by further evidence to which I will presently refer. The evidence of W. Ratnayake is to the effect that he attended a meeting of Mr. Ilangaratne at the Esplanade, Kandy, on August 1, and that at the meeting the pamphlet P 2 was distributed by two supporters of the respondent, namely Daniel Pinto (whose name, as I have already mentioned, appears at the foot of it as the author) and one Devendra. He also states (and I accept his statement) that he saw Pinto distributing P 2 at the respondent's meeting on August 20, and at other meetings too. Mr. Ilangaratne himself corroborates that he saw Devendra distribute P 2 at his meeting on August 1.

Finally, we have the police report P 10, of Police Constable M. K. Rajah, the accuracy of which is not challenged, to the effect that Mr. Ilangaratne, in one of his own election speeches delivered on the very next day, August 2, emphatically denied the allegations of bribery which had been made against him, saying—"I hear that I am alleged to have taken bribes at the rate of Rs. 1.50 for changing one rice ration book, but I tell you this is a great lie. I have never worked in the Food Control Department during my service in the Government. Then how was it

possible for me to take bribes for changing rice ration books? ” Can it seriously be doubted (notwithstanding that P 2 mentions bribes of “ even Rs. 2 ”, and not Rs. 1.50) that this denial had reference to the recently circulated P 2. Mr. Ilangaratne states in evidence that it did refer to P 2, and I entirely believe him.

All the above evidence, which I accept in preference to the evidence of the respondent's witnesses that P 2 was not distributed as alleged for the petitioners, and in preference to the respondent's improbable assertion that he never allowed pamphlets to be distributed at his meetings, proves to my mind beyond any reasonable doubt that the pamphlet P 2 was published, that is to say distributed to the public, by agents of the respondent and with his knowledge, for the purpose of affecting the return of Mr. Ilangaratne.

Much stress has been laid by Mr. R. L. Pereira for the respondent on the fact that Council for the petitioner failed to call what would have been the very best evidence directly to saddle the respondent with responsibility for the publication of P 2, namely, Daniel Pitno, the alleged author and distributor, Devendra, another alleged distributor, and William Silva, who was the proprietor and manager of the Tilaka Press, Kandy, where P 2 purported to have been printed. The names of these persons were on the list of witnesses both of the respondent and of the petitioner. No doubt, under section 114 (f) of the Evidence Ordinance, the Court is entitled to presume that their evidence would have been unfavourable to the person who withheld it, and no doubt it was the petitioner who in the first instance withheld it. But the Court is not required to presume that it would have accepted the evidence so withheld. And a Court trying an election petition cannot be blind to the fact that the reason why a petitioner omits to call witnesses who might seem best calculated to support his case is frequently, as I am convinced that it was in the present case, because such witnesses have indicated that they will decline to give evidence in his favour,—evidence whereby they might inculpate themselves in the commission of a corrupt practice. It would be quite unreasonable for a respondent cynically to argue that the petitioner ought to call such witnesses. The petitioner in the present case did attempt this course on one occasion, when he called the witness K. D. Karunaratne, known as James, *alias* “ Times ”, who failed to give the evidence for which he had been called, and instead gave evidence which was palpably false and bore every indication of having been suborned. In the present case, for the reasons which I have given, I hold that the petitioner, upon the evidence which he did produce, has shown beyond reasonable doubt that P 2 was published by the respondent's agents and with his consent. I do not say that the burden ever legally shifted upon the respondent to call those witnesses Daniel Pinto, Devendra and William Silva, to refute the body of circumstantial evidence against him; but I do say that the fact that the respondent did not see fit to call any of them is a further circumstance which goes to reinforce the case which the petitioner has established against him. It is to be noted that Daniel Pinto and the Tilaka Press had admittedly written and printed, respectively, other election literature for the respondent.

I accordingly hold that by the publication of the false statement P 2, the respondent again committed a corrupt practice as defined in section 58 (1) (d) of the Ceylon (Parliamentary Elections) Order in Council, 1946, with the same legal results as I have indicated in the case of his oral false statement with which I have already dealt.

The third charge of publication of a similar allegation of bribery against Mr. Ilangaratne by the respondent concerns a pamphlet which has been produced by the petitioner's witnesses as exhibit P 7. This pamphlet, which is in Sinhalese, bears a portrait of the respondent, Mr. George E. de Silva, upon the front page. The passage in it which is said to constitute a false statement of fact in relation to the personal character and conduct of Mr. Ilangaratne reads as follows :—“ The people have already understood the object of funny attempts of helpless people who have never rendered any service to society but whose only claim to greatness is their criticism of public workers—in trying to discredit such great patriot as Mr. George E. de Silva. What a great folly it is on the part of low individuals who when in Government service cultivated the disgraceful practice of taking bribes ranging from a salted Kumbalawa (herring) to a Tea Estate, to expect the confidence and votes of the public ? What good can the public expect of such low base people who had made it their profession to take illegal gratification from a drop of ink to a bag of money and who taking advantage of an accidental opportunity hope to enter Parliament and as heroes expect to have the life of a prince ? ”

Now although the above passage makes no mention of Mr. Ilangaratne by name, there is no doubt whatsoever in my mind, if only from the fact that Mr. Ilangaratne was the only opponent of the respondent who had been in Government Service, that it was intended to be a deliberate reference to him, and that anybody of the electorate who read it, knowing (as they must have known from the recent notoriety of Mr. Ilangaratne in connection with the strike of Government Servants) that he had been in Government employ, would take it as being an allegation that he was in the habit of taking bribes while so employed. Its affinity with the identical accusations against him with which we have already dealt will at once be noted.

This pamphlet P 7 is headed “ Vijaya ”, and immediately beneath appear the words “ 1947—August—Special Supplement—No. 3 ”. The article in which the offending passage occurs, which constitutes the entire pamphlet with the exception of the front page (save for certain verses) and which commences with a eulogy of the respondent, purports to be written by “ an elderly patriot ”. Now in the respondent's election returns (exhibit P 22) there appears a receipt (exhibit P 24) signed with the name B. Amarasiri, worded as follows :—“ Received from the Hon'ble Mr. George E. de Silva the sum of Rupees two hundred and fifty (Rs. 250) being the full amount due to me for the five thousand copies of the pamphlet called Vijaya supplied to him ”.

The petitioner contends that this receipt P 24 refers to the copies of the “ Vijaya ”, P 7, containing the libellous statements against him, and also that P 7 was in fact distributed by the respondent's supporters at more than one meeting, namely, at two held on behalf of the respondent and one in support of the petitioner, and that a speaker recited from it at a

meeting attended by the respondent. The respondent denies the distribution of P 7 at any of these meetings, and the recital therefrom, and with regard to the receipt P 24, he alleges that this was given not in respect of the printing of P 7, but for the printing of a different and entirely innocuous number of "Vijaya" which was produced as exhibit R 32. This document, like P 7, bore on its front page a photograph of the respondent, but in addition it bore a photograph of the Prime Minister, Mr. D. S. Senanayake.

Now with regard to the distribution of P 7 at meetings, five witnesses (including Mr. Ilangaratne himself) testified, and after considering their evidence and also the denials of the respondent and his witnesses, I have no hesitation in accepting that called for the petitioner. There was also the evidence of Police Sergeant Rajah, entirely impartial and reliable, that a copy of P 7 came into his hands before election day, and this disposes of any suggestion that it was a post-election fabrication. With regard to its distribution at meetings, Mr. Ilangaratne, corroborated by the witness W. A. M. Charles Perera, states that he saw it being distributed at one of his own meetings, organised by the communists, at the Phoenix Tea Gardens, on August 19. The witness K. Michael Perera, who impressed me very favourably, states that he saw it being distributed at one of the respondent's meetings, at which the respondent spoke, at Asgiriya, on August 10. He was sure it was a "Vijaya" but was a little doubtful whether it bore one, or two, photographs on the front page; since, however, Counsel for the respondent did not suggest to him that it might have been R 32, I have no hesitation in concluding that it was the "Vijaya" P 7. Lastly the witnesses Ranasinghe and W. Ratnayake and K. Michael Perera stated that they had seen P 7 being distributed, and also being recited from by a speaker named Nissanka who stated that he was reciting from the "Vijaya", at the respondent's meeting at the Phoenix Tea Gardens on August 20. The above evidence, as I have said, I accept; and I reject the evidence called for the respondent to contradict it. Not one of these witnesses, it is true, stated by whom he saw P 7 being distributed, with the exception of Ranasinghe, who said the distributor was that very unsatisfactory witness to whom I have already referred in another connection, namely James *alias* "Times". Their evidence as to the distribution alone, therefore, is insufficient to show beyond a reasonable doubt that P 7 was distributed by any agent of the respondent, and, since there was no positive evidence that the reciting from it at the respondent's meeting of August 20 took place after the respondent's arrival at that meeting, it is likewise insufficient to show that P 7 was distributed with his knowledge or consent.

Nevertheless, if the innocuous electioneering pamphlet "Vijaya", R 32, had not been produced for the respondent, the above evidence of the distribution of P 7, and the reciting from it at the respondent's meeting, when coupled with the receipt P 24 given by the respondent on August 17 for "five thousand copies of the pamphlet Vijaya supplied to him", and the attendant circumstances (including the similar libellous statements already considered) would have left no reasonable doubt that the "Vijaya" to which the receipt referred was P 7, and would thus have brought its publication home to the respondent. Now R 32

was first produced only after the petitioner's case had closed. To not one of the petitioner's witnesses who spoke to P 7 was it suggested in cross-examination that what they had seen was not P 7 but R 32. This would appear to lend colour to the suggestion urged on behalf of the petitioner that R 32 was an *afterthought*,—a fabrication to which the otherwise damning receipt P 24 might be innocently linked. Admittedly it is not the respondent's case that it was R 32 which was distributed at the meetings and not P 7. The respondent's case is that, whatever may be the position as regards the distribution of P 7, (though he denies its distribution and the recital from it) the petitioners have failed to prove beyond a reasonable doubt that it emanated from him or his agents. As to R 32, his case is that this was the document to which the receipt P 24 referred, and that while a large number of copies of it were distributed, he does not seek to establish that they were distributed at election meetings. It was not therefore incumbent upon the respondent to suggest to the petitioner's witnesses that it was R 32 which they had seen being distributed rather than P 7, and thereby to disclose his defence. And as regards the receipt P 24, its wording is as applicable to R 32 as it is to P 7.

There are, at the same time a number of features in the evidence concerning R 32 which lead me to the suspicion that it is a fabrication. First of all, the respondent's own story of how he came in August to order the article in R 32 to be written and published by a Buddhist priest B. Amarasiri (whose name it will be recalled, appears as the giver of the receipt P 24), with the mediation of one Ratnayake (not either of the petitioner's witnesses of that name), seemed to me to be a little too neat and plausible a reconciliation of R 32 with P 24 to be convincing though taken alone it was not a palpably false or improbable story.

Secondly, of the number of witnesses (including Mr. Fred de Silva, the respondent's son) who, having each been obviously called for some other purpose, testified that they happened by chance to have seen copies of R 32 either being distributed (not at meetings) or lying in various offices, not one carried conviction. When it came to this aspect of their evidence, each one of them gave every indication, by his demeanour in the box, of telling a coached story, in short, of lying. Some of them furthermore made the incredible allegation that they had never discussed R 32 with, or been shown R 32 by, anybody at all since the time they saw it, in August, 1947, until they got into the witness box. I am unable to believe any of these witnesses on the point. Nor can I believe the respondent himself on the point. His testimony on the question of his election literature was of very little value because although he was his own election agent, he confessed that he kept no complete file of it, and that it was his clerks who got it printed.

Thirdly, it is true that the name of the Rev. B. Amarasiri, which appears as the donor of the receipt P 24, appears in R 32 as the author of the article therein, whereas it does not appear in P 7. That, of course, is equally consistent with R 32 being genuinely the pamphlet to which the receipt P 24 referred and with its being fabricated so as to make it seem so. When the petitioner's witness Lokubalasuriya, however, whose direct testimony I accept, stated, that he had visited the Rev. B. Amarasiri, and that the latter had shown him the "Vijaya" P 7

and that he (Lokubalasureiya) has seen on the same file as contained P 7, other numbers of the "Vijaya", produced as exhibits P 36 to P 39. Counsel for the respondent never showed him R 32 or suggested that it was R 32 which he had seen on Amarasiri's file and not P 7. This would have been his proper course had he wished to rebut the strong circumstantial case made out by the petitioner—I refer to the distribution of the "Vijaya" P 7 at meetings, the recital from it, and the giving by Amarasiri to the respondent of the receipt P 24 for 5,000 copies of the "pamphlet Vijaya supplied to him". One is left with a strong suspicion either that R 32 was not yet in existence, or at least that reliance upon it was a defence decided upon and prepared at the last moment, after it had become clear that the original defence (which would seem to have been that P 7 did not refer in sufficiently express terms to Mr. Ilangaratne) was not likely to carry much weight.

Lastly, the respondent did not himself call Amarasiri, nor any official of the "Weerawardena" press which purported to have published R 32. The petitioner could not have called the latter, of course, since R 32 was only sprung upon him after the close of his case. With regard to Amarasiri, who was called by neither side, my earlier observations on the subject of the non-calling of the witnesses, Daniel Pinto and William Silva, apply equally here. If Amarasiri did write or print the libellous P 7 the petitioner could hardly expect him to come into Court and admit it. He was entitled to rely on the strong circumstantial evidence which he was able to adduce. The same consideration applies to the non-calling by the petitioner of Herbert Samarasena of the Vijayasekera Press, whose name appears at the foot of P 7 as its printer and publisher.

In short the respondent's evidence with regard to R 32 having proved entirely unconvincing we are left with the case of the petitioner, based on the very strong circumstantial evidence which I have already reviewed. Upon this evidence I am convinced beyond any reasonable doubt, and I hold that the pamphlet P 7 was published by the respondent, for the purpose of affecting the return of Mr. Ilangaratne (the circumstances leave no room for doubt as to the purpose of its publication), that it contained a false statement of fact in relation to Mr. Ilangaratne's personal character and conduct, and that accordingly the respondent has committed a third corrupt practice as defined in section 58 (1) (d) of the Ceylon (Parliamentary Elections) Order in Council, 1946, with the same legal results as I have indicated in the case of the two corrupt practices with which I have already dealt.

I turn now to paragraph 4 of petition No. 4. Of the charges set out in the particulars under this paragraph, the only one in respect of which evidence was tendered (save for one which is bound up with a charge of bribery in petition No. 5, with which I will deal later) was that the sum of Rs.144 was paid to one K. W. David, of a Socony Petrol Station in Kandy for petrol supplied on the order of Mr. Fred E. de Silva (the respondent's son and the then Mayor of Kandy) for furthering the respondent's candidature, between August 17 and 23, 1947. The main evidence called for the petitioner on the point was that of the clerk of the petrol station concerned, and it amounted to this that Mr. Fred de Silva had paid out of his own pocket an amount of Rs. 100 for

petrol supplied to certain private cars upon chits issued by him. Owing to the floods, the ordinary petrol rationing system, against coupons, was suspended, and petrol was issued only to municipal vehicles, or, upon chits issued by the Mayor, to cars requiring it for the purpose of relief work among the victims of the flood. The suggestion made on behalf of the petitioner is that the petrol so paid for was supplied to these cars for the purpose of their doing electioneering work for the respondent, and not flood relief work. It is argued that if they had been engaged in flood relief work, there would have been no need for Mr. Fred de Silva to pay for their petrol out of his own pocket, but that he could have charged it to the Mayor's Relief Fund, which existed for the purpose of financing flood relief. But no cogent evidence was adduced to show for what purpose these cars were issued with the petrol or what work they proceeded to do on it; and upon considering all the circumstances, I am quite prepared to accept the explanation which Mr. Fred de Silva gave in the box, namely that although he paid personally for this petrol, which he could have charged up to the Mayor's Relief Fund, nevertheless the cars to which it was supplied required it for the purpose of flood relief work only. The petitioner has certainly failed to prove this charge positively; at most he has done no more than to raise a suspicion. The charge accordingly fails.

The next charge in petition No. 4 arises, as I have stated earlier, out of the circumstances attending the unprecedented floods which began on the evening of August 14, and lasted for some four or five days, that is to say until four or five days of the election. It is uncontested that these floods occurred, and that they destroyed many houses in a large number of low lying places in the electoral area, affecting upwards of 3,000 persons and rendering about 1,000 of them temporarily homeless. Some of these persons sought refuge with relations in unflooded areas, but the majority of them were housed in temporary refugee camps. They were not (as was alleged in the particulars) forcibly removed by the police, but most of them can have had no alternative but to be housed in these camps. Nor were they, as further alleged in the particulars, segregated in the camps. Both the respondent himself, in his capacity as Minister of Health, and still more his son Fred de Silva (well known to the electorate as his agent and supporter) in his capacity as Mayor of Kandy, naturally played a prominent part in arranging for the accommodation of the refugees and for their welfare. It is contended for the petitioner Ilangaratne that by reason of the circumstances attending the flood, the refugees were not in the mood for voting; and secondly, that they would naturally place to the personal credit of the respondent his official activities in seeing to their welfare, and those of his son, which would give him an unfair electoral advantage over his opponent, who having no official entree to their camps, might appear to their simple minds to be less zealous for their welfare. It is further contended that the petitioner and his agents were, as the respondent and his were not, obstructed from having access to the refugees in the camps and from canvassing and contacting them. All these circumstances, it is argued, had the result that, in the words of paragraph (a) of section 77 of the Ceylon (Parliamentary Elections) Order in Council, 1946, "the majority

of electors were or may have been prevented from electing the candidate whom they preferred". On this ground the election is sought to be declared void.

Let us now consider these points one by one. First, it is said that the homeless refugees were not in the mood for voting. There were witnesses whose sincerity I have no reason to doubt, who stated that the refugees whom they had visited did seem to be in no mood to vote. And even without such evidence it may be well imagined that the first preoccupation of most of them was the loss of their homes and possessions and even of members of their families, rather than politics. But when we turn to ascertain from the evidence whether the inmates of these camps, and also those other homeless persons who found refuge with friends, did in fact refrain from going to the polls, we are faced with a complete lack of evidence to show that they refrained, or if so why they refrained, and such evidence as is available is more consistent with the presumption that they did not. To begin with, while it appears that the numbers admitted to the camps ran into some hundreds, there has been no evidence to show what number of these persons, and of the other refugees, or of other persons affected by the floods, were voters, although it would seem from questions put on behalf of the respondent in cross-examination that he admits that 44 of the refugees were voters. Still less has it been shown how many of such of them as were voters abstained from polling, or that if any did so abstain it was by reason of circumstances arising from the floods. The total number of voters on the electoral register was 32,119. Of these, 57·7 per cent. voted, which was a higher poll percentage than the average for the whole of Ceylon, namely 56·2 per cent. Nor was there any evidence to show that the polling percentage was lower in those districts in the electorate which were the worst affected by the floods. Finally, as I have said, the floods had subsided some four days before polling day, and there was no restriction whatever upon refugees in the camps and elsewhere from going to the polls.

Accordingly I cannot hold on the evidence that the majority of electorate were or may have been prevented from electing the candidate they preferred by reason of the circumstances having prevented them from voting for any candidate at all. The next point to consider, however, is whether the official activities of the respondent and his son, as Minister of Health and Mayor of Kandy, respectively, in seeing to the housing and comfort of the refugees, gave them an unfair advantage in the eyes of the electors over the petitioner Ilangaratne and the other candidates, so that electors voted or may have voted for the respondent who would otherwise have voted for another candidate. Now it is not alleged for the petitioner under this charge that the respondent did anything corrupt. And upon a consideration of all the evidence, including that of the respondent himself and his son, the Mayor of Kandy, I am fully satisfied that the first thought of both of them was the welfare of the homeless refugees, and that neither of them, nor any of their supporters, attempted to turn their official positions and activities in that connection to electoral advantage. The evidence of the respondent and of his son upon this whole aspect of the case, as opposed to their evidence on such matters as the pamphlet P7, was candid and sincere. I am satisfied

that neither of them, nor any of their supporters, attempted to do any canvassing among the refugees in the camps during the floods, feeling rightly that this was not the proper time for it. There is more evidence to establish that the petitioner Ilangaratne and his supporters had themselves at least attempted to canvass among these refugees at this time, in particular, at Kingswood College camp on the evening of August 15, and I accept this evidence. There were then about 200 refugees in that camp. By August 18, the numbers had so increased that it became necessary to remove them to the Military Barracks, Kandy, and the number of refugees at those barracks between August 18 and August 23 (polling day) reached a maximum of 750. A smaller number of refugees were also accommodated at camps at Katugastota until after polling day.

It is alleged on behalf of the petitioner Ilangaratne that there was discrimination against him and his supporters in the refugee camps, as compared with the respondent. Now it is not disputed that the respondent and his son always had free access to the camps by virtue of their official capacities. But I am satisfied on the evidence that the petitioner and his supporters had equal access. I was not convinced by Mr. Ilangaratne's rather lame story of his being on one occasion bullied or laughed out of his attempt to canvass at the Katugastota camp on August 17. I also reject the evidence of U.B. Ekenayake and R. M. Abeyratne that they were forbidden to distribute ballot papers on behalf of Mr. Ilangaratne at the Military Camp on August 21. There was, it is true, uncontradicted evidence that at the Kingswood Camp, from the evening of August 15, until the removal of its inmates to the Military Barracks on the 18th, candidates were told not to canvass there. This was a very proper administrative instruction, since in the confusion reigning in that camp during the first three days of the flood, to have allowed persons to canvass there would have created still more trouble and chaos, as it had already begun to do on August 15. But the respondent equally with Mr. Ilangaratne was told not to canvass, though in the former's case he had not attempted to do so. Similarly, and for similar good reasons, from August 18 to 21, Mr. Fred de Silva himself, as Mayor of Kandy, gave verbal instructions to Mr. Jayasuriya (who was in charge there) that no canvassing should be allowed in the Military Barracks Camp, while refugees were still being transported to it. But in both cases there was no evidence to show that there was any discrimination as between Mr. Ilangaratne and the respondent, and their respective followers, nor was any obstruction placed in the way of Mr. Ilangaratne and his followers to prevent their entering the camps in order to give help or material comforts to the refugees, had they desired to do so. On August 21, even the ban against canvassing was lifted, on the verbal instructions of the Mayor. I attach no importance to the evidence that Mr. Jayasuriya sent to the Mayor, on August 21, but before receiving the latter's verbal instructions, a note (exhibit P 27) asking him whether the ban on canvassing should be lifted. The Mayor only received this note after election day (August 23), having been too busy electioneering to go to his office from 21st to 24th, and it was by then naturally futile to reply to the note.

On all the evidence I find no discrimination against Mr. Ilangaratne or the other candidates opposed to the respondent. Another matter in respect of which it is alleged that there was such discrimination, or that the respondent enjoyed an unfair advantage, was in the issue of petrol for cars for relief work, upon chits signed by the Mayor, during the period commencing with the floods, when the ordinary petrol rationing system was suspended in Kandy. Here again the petitioner has failed to show that there was any such discrimination, or unfair advantage, and I am satisfied that petrol was issued to all such cars, irrespective of the politics of their occupants or the electoral signs which they bore, the only criterion being their desire to bring relief to the flood victims.

Finally, it is alleged that the respondent himself brought mats and bread and other food and provisions to the flood victims in the camps, and that this was done with the corrupt object of influencing the inmates to vote for him. Insofar as this charge alleges corruption, it constitutes one of the later charges, in petition No. 5, namely treating; but it will be more convenient to deal with it now. I am not satisfied with the evidence of the petitioner that the respondent brought food in his car to the Kingswood Camp. The respondent himself denies it; but what weighs even more is the evidence of a quite impartial witness, Miss Elias, who was working at the camp and states that she never saw him bringing any food, although he visited the camp four or five times. It may well be that he brought mats; the evidence of Mr. Ilangaratne on that point had the ring of truth. But I am not satisfied that the respondent brought them with any corrupt intention. As I have said, I am satisfied that his only motive in succouring the refugees was to alleviate their distress. Many other public spirited citizens were doing the same thing, with the same motive. The charge of treating must therefore fail. With regard to the bringing of provisions generally to the refugees, the evidence goes to show that they were provided largely by the Government and the Kandy Municipal Council, but also by all members of the public who desired to do so, irrespective of political allegiance. Indeed it is to be noted that the person who supplied a larger number of free meals (namely three) to the refugees at the Military Barracks than any other individual, was the proprietor of the Castle Bakery and Brownrigg's Hotel, Kandy, Mr. John Weerasekera, the petitioner in petition No. 5, a strong supporter of his fellow petitioner Mr. Ilangaratne.

Can it be said, upon all this evidence, that the circumstances attending the floods and the housing of the refugees in camps were such that the majority of electors were or may have been prevented from electing the candidates whom they preferred? Did the respondent, even though he may not have aimed at it, achieve through his official activities as Minister of Health, such a popularity among those of the refugees, and perhaps of the constituency generally, who were voters, as caused the majority of the electors to vote for him, although he was not the "candidate whom they preferred"? I do not think that the petitioner has proved his case upon this charge. In the first place, as I have said, there was no evidence that any more than 44 of the refugees had votes.

Secondly there is no evidence that the respondent or his supporters ever told or suggested to the refugees that it was he who was bringing them the relief to their distress, still less that they should therefore vote for him. According to the evidence of Miss Elias they appear to have realized that it was the Government and the Municipality who were officially supplying them with their food. I do not think that the fact of the respondent's having been a Minister in the Government and his son the Mayor of that Municipality can be assumed to have influenced the votes of persons in the respondent's favour who would otherwise have voted for any of the other candidates. Gratitude is not a quality so widely distributed among human beings that one can safely make such an assumption, in the absence of a shred of evidence that any one voter expressed or showed himself to have been won over to the respondent's side by reason of what he or his supporters had done for them during the floods.

Lastly, I do not consider that the forbidding of canvassing by any party, for the period August 16 to 21, in the refugee camps, can reasonably be held to be a circumstance whereby the majority of electors may have been prevented from electing the candidate whom they preferred, particularly in view of the petitioner's own contention that they were not in the mood to think much about politics during that period. The ban was impartially applied, and was lifted two days before the polling. The election campaign had been going on for nearly three weeks before the floods began, and it must be presumed that the electors who became refugees had had sufficient opportunity during that time of acquainting themselves with the merits and politics of the competing candidates.

For all these reasons I hold that the charge set out in paragraph 5 of petition No. 4, and the prayer that the election be declared void on the grounds there set out, must be dismissed.

The final ground in petition No. 4 for declaring the election void, set out in paragraph 6 of that petition, has been abandoned by reason of the amendment of the definition of "public officer" in section 3 (1) of the Ceylon (Constitution) Order in Council, 1946, effected by the Ceylon (Constitution) (Amendment No. 2) Order in Council, 1947, whereby the respondent became excluded from the definition of "public officer" for the purpose of Article 13 (3) (b) of the principal Order in Council.

I turn now to the three charges in petition No. 5. In support of the first of these, namely treating, the only evidence called was that relating to the bringing of food and comforts by the respondent to the refugee camps, and with this I have already dealt and found the charge to be not proved. The charge of treating accordingly fails.

The next charge in petition No. 5, set out in paragraph 4, is that of undue influence. Evidence has been called to prove that on three unrelated occasions, during his election campaign the respondent, in a fit of irascibility, upon learning or suspecting that certain former supporters of his had gone over to the side of Mr. Ilangaratne, threatened these persons (or in one case, the son of the person concerned) that he would see that they were removed from their present jobs. The charge

in respect of one of these three incidents has admittedly not been established because there was no evidence that the person concerned (by name Dissanayake) was a voter.

Of the remaining two incidents, the first was testified to by the witness Piyasena, an estate dispenser, who stated that the respondent, after endeavouring without avail to persuade him to keep his promise to work for him, threatened that he would see that he (Piyasena) was out of the estate very soon. The witness Pethaiya corroborated the incident except as regards the vital offending words, stating that he did not stay to hear them. The respondent himself, while admitting the incident, denied having made the threat, and in this he was corroborated by the witness Sunderamany. Piyasena impressed me as a witness more favourably than did Sunderamany; and this, coupled with the impression which the respondent made in Court as having the irascible temperament which might easily lead him to make such a threat in a moment of petulance, although he might not mean to carry it out,—these considerations make it highly probable that the threat was made. Nevertheless, viewing the conflicting evidence as a whole, I am not satisfied beyond a reasonable doubt as to where the truth lay. In these circumstances I cannot hold the charge to be proved.

The same considerations apply in the case of the next incident, where the evidence consisted of the sole testimony of the witness Augustine Peiris against the denial of the respondent. The circumstances were somewhat similar. According to Pieris, who assisted his father who was a Postmaster in the Sub-Post Office at Ampitiya, the respondent came into the Post Office and said to him (Augustine Pieris) "I have authentic proof that your father is working against me. I have been responsible for giving you this Post Office. I shall see that it is shifted from here". Again, the words ring true to character. But in view of the paucity of evidence,—one man's word against another's, I cannot say that the charge has been proved beyond reasonable doubt. And in such charges a strong suspicion is not enough. The charges of undue influence accordingly all fail.

Finally, we reach the last charge in petition No. 5, which is that of bribery. Of the numerous instances of acts of bribery by agents of the respondent, evidence has been adduced to establish one only. This evidence, consisting primarily of the direct testimony of the witnesses K. M. Perera and K. B. Senaratne, is to the following effect. On about August 8th, an election committee to support the petitioner Ilangaratne was formed at Asgiriya. It consisted of 35 members. On August 10th some ten or twelve of the committee met at the house of one Abeysekera, its president, where they unanimously decided to work and vote for Mr. Ilangaratne. On the next day, Abeysekera sent a message to one of the members the witness K. B. Senaratne, asking him to tell members to assemble at his (Abeysekera's) bungalow that day, August 11th. At about 6.30 P.M. three of the members convened at Senaratne's house, namely the witness K. Michael Perera, Daniel Fernando and Andy Singho, and the four of them proceeded from there to Abeysekera's house at about 7.30 P.M. There in the verandah they found, with Abeysekera, one James Appuhamy, who was a storn

supporter of the respondent. James Appuhamy, after advising them to cease supporting Mr. Ilangaratne and to work for the respondent called them inside the house and into the kitchen, and there, taking out of his pocket Rs. 100 in notes, said "Here is Rs. 100. You had better see that something is done with the people here". Abeysekera protested that the amount was too small, whereupon James Appuhamy handed him Rs. 250 which he accepted. Immediately after the money was handed to Abeysekera, Mr. Fred de Silva, the respondent's son, came in. Thus far, the evidence of K. M. Perera and K. B. Senaratne has differed in no material particular. Thereupon, according to the witness K. M. Perera, Mr. Fred de Silva said—"You must help my father. James Appuhamy will see to your trouble and you must work wholeheartedly for us". According to the witness K. B. Senaratne, he said—"What I have got to tell you gentlemen is that you should all help my father. I have nothing more to add to what I say now. Anything more will be said by James Appuhamy". Then, according to both witnesses, Mr. Fred de Silva and James Appuhamy left. Abeysekera thereupon went into a room at the back of his house, came out again after about two minutes, and proceeded to pay the committee members who were present their shares of the Rs. 250 bribe. He offered Rs. 25 to K. M. Perera, who refused it. K. B. Senaratne, however, accepted (with, according to his own testimony, a show of reluctance) the Rs. 25 offered to him. According to both witnesses, the remaining two committee members present, Daniel Fernando and Andy Singho, took Rs. 15 and Rs. 10 respectively. As a result of the bribe, this particular committee broke up and Abeysekera went over to the respondent's side. There was never any suggestion that the respondent personally knew anything about the whole incident.

The evidence of the above two witnesses was corroborated by that of L. B. Herath and S. B. Ekenayake, two other members of the committee, who had not been present at the Abeysekera's house on the evening when the bribe was paid over. They state that on the following day, August 12th, they went independently to Abeysekera's house—Herath after hearing about the bribe from Senaratne who advised him to claim his share, and Ekanayake going direct, on committee business, being unaware of the bribe—and that Abeysekera thereupon paid Herath Rs. 5, and offered Rs. 10 to Ekanayake who indignantly refused it.

Such is the evidence of the act of bribery. The whole incident was denied in evidence by both James Appuhamy and Mr. Fred de Silva. Both of them were of opinion that the story was a fabrication of their enemies on the petitioner's side, and James Appuhamy gave a reason why he considered K. M. Perera to be prejudiced against him, a reason which was repudiated by K. M. Perera in cross-examination. Abeysekera himself was not called to deny the story.

In deciding whether the story of the petitioner's witnesses is to be accepted as true, beyond a reasonable doubt, I have considered carefully certain factors which have been stressed by counsel for the respondent as showing that it should not be accepted. First there is the fact that, when the particulars were first submitted, August 12th and not August 11th, was given as the date of the paying of the bribe

by James Appuhamy. The particulars were allowed to be amended during the course of the proceedings, for reasons recorded. It appears unclear whether the date given by all or any of the witnesses, originally, to the petitioner or his proctors, was 12th or 11th. Nevertheless, I do not consider this discrepancy is one which must cause me to reject the whole story as false. It may well be that the confusion arose because it was on the 12th that Abeysekera paid or offered to the witnesses Herath and Ekanayake their share of the bribe, and that this was mistakenly put down as the date of the payment of the Rs. 250 to Abeysekera by James Appuhamy. At the same time I have taken this discrepancy into account in weighing the evidence.

Secondly, it has been contended that it would be most unlikely for a bribe to be paid so openly, in such circumstances as would invite testimony upon it in the event of an election petition. I have taken this factor also into account, though I do not think it carries very much weight.

But the matter remains mainly one of credibility. In my view the evidence of the four witnesses for the petitioner, two of whom were not accomplices, having not accepted the bribes offered to them, was convincing. K. M. Perera in particular impressed me favourably. James Appuhamy, on the contrary, did not impress me, and he was at too much pains during his cross-examination to show that he was not interested in politics in general or in the welfare of the respondent's candidature in particular, though he eventually admitted that he worked for the respondent at the latter's request. In brief, I accept the story of the petitioner's witnesses, in so far as it concerns James Appuhamy as true, with the result that James Appuhamy, being an agent of the respondent, is found to have committed a corrupt practice, namely bribery. That James Appuhamy was the agent of the respondent is sufficiently established by his own statement that he worked for the respondent during the election campaign at the latter's request, and by the respondent's admission that he was his loyal supporter. The election must accordingly, on this ground also, be declared void in accordance with section 77 (c) of the Ceylon (Parliamentary Elections) Order in Council, 1946.

With regard to the implication of Mr. Fred de Silva in the act of bribery, however, notwithstanding some equivocal evidence with regard to a certain "cash" cheque for Rs. 250 drawn by him a few days before, I do not consider that the evidence is sufficiently strong to establish beyond reasonable doubt his knowledge that James Appuhamy was going, not merely to persuade the committee to come over to the respondent's side, but to bribe them to do so. He is alleged to have come on the scene only after the Rs. 250 was paid over, and there is a discrepancy as to the words then spoken by him. Indeed, Mr. Fred de Silva's denial of having ever gone to Abeysekera's house at all on the evening of August 11 carried more conviction than did that of James Appuhamy. Without deeming it necessary to make a finding on that point, I do hold that no case has been made out against him to enable me to hold that he was a party to this act of bribery.

That concludes the case on both petitions, the result of which, as I have said, is that the election of the respondent, the Honourable Mr. George E. de Silva, as member for the Kandy Electoral District, Ceylon, upon August 23, 1947, is declared void, and the respondent will become subject to the incapacities set out in section 58 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946.

After hearing counsel on the question of costs, and upon taking into consideration those charges upon which the petitioners have respectively failed to succeed, I fix the costs payable by the respondent to each petitioner as follows: Rs. 7,500 to the petitioner in petition No. 4, and Rs. 3,000 to the petitioner in petition No. 5.

Election declared void.
