1959 *Present :* **Basnayake, C.J., Pulle, J., and Sinnetamby, J.**

N. W. DE COSTA, Appellant, *and* THE TIMES OF CEYLON, LTD., and another, Respondents

S. C. 325—D. C. Colombo, 38633/M

Defamation—Publication in newspaper—Innuendo—Justification—Fair comment— Animus injuriandi—*Burden of proof.*

In this action for defamation based on the publication in a newspaper, on five different dates, of matter which was alleged to involve certain innuendos concerning the conduct of the plaintiff before he was appointed as Principal of an Assisted School and soon after he retired from that post—

Held, by PULLE, J., and SINNETAMBY, J., (i) that, under the Roman-Dutch Law, where the words are either *per se* defamatory or shown to have the defamatory meaning attributed to them in the innuendo, *animus injuriandi* is presumed and it is for the defendant in such a case to exonerate himself by establishing circumstances which rebut the presumption.

(ii) that justification is a defence which negatives *animus injuriandi*. In order to establish this plea, it is necessary to prove, in addition to the truth of the facts contained in the defamatory statement, that its publication was in the public interest. The head of a school is a public figure and his conduct can be the subject of public criticism.

(iii) that fair comment also negatives the existence of *animus injuriandi*. To succeed in this defence it is necessary for the defendant in the first instance to establish the truth of the facts on which the comment is based and then to show that the comment based upon those facts is fair and bona fide ; it must also be shown that the comment was on a matter of public interest. Where the facts truly stated warrant an inference of evil motive, even though in fact no evil motive exists, the defence of fair comment is available. Fair comment does not mean that it is comment which is impartial, well-balanced, or commends itself to the Court. The only requirement is that it must be honest.

(iv) that it is not necessary to justify every word of a libel. The fact that there are some exaggerations or inaccuracies is not material if it does not add to the sting of the alleged libel.

(v) that when a passage is capable of two meanings, that meaning which favours the defendant should be adopted. The presumption is in favour of the innocent use of words.

Per BASNAYAKE, C.J., in dissenting judgment—" A person is not entitled under the guise of truth and pretence of acting in the public interest to rake up another's past. In such a case a heavy burden lies on the defendant to show how the resurrection of the past serves the public interest."

APPEAL from a judgment of the District Court, Colombo.

This appeal was referred to a Bench of three Judges owing to a difference of opinion between the two Judges before whom it had been previously listed for hearing.

2——J. N. R 14070—1,995 (11/60).

The facts appear from the joint judgment of Pulle, J., and Sinnetamby, J.

The Plaintiff-Appellant in person.

H. W. Jayewardene, Q.C., with *N. D. M. Samarakoon, V. J. Martyn* and *N. R. M. Daluwatte*, for Defendants-Respondents.

Cur. adv. vult.

October 23, 1959. BASNAYAKE, C.J.—

[His Lordship delivered the following dissenting judgment allowing the appeal on the grounds that the publisher not only failed to prove the truth of the defamatory statements but also failed to establish that they were made in the public interest or for the public good :—]

The plaintiff-appellant (hereinafter referred to as the plaintiff), a teacher by profession, was from 1934 to 1955 an assistant teacher at the Senior Secondary School known as the Ananda Sastralaya at Kotte at which he himself had received his education. From April 1955 till his retirement in May 1956 he was Principal of that school. The 1st defendant-respondent is a limited liability Company registered in Ceylon and was at all relevant times the proprietor of a Sinhalese Newspaper known as the " Lankadipa ". The 2nd defendant-respondent was at all material times the Editor of that newspaper. It will be convenient hereinafter to refer to the 1st and 2nd defendants-respondents collectively as the defendants.

The plaintiff complains that on 5th and 23rd December 1955, and on 3rd January 1956 and on 8th and 11th May 1956, the defendants published in the " Lankadipa " certain defamatory matter of and concerning him. The following extracts from the publications referred to are specially pleaded in the plaint :

" 4. (i) In a paragraph headed " කසු කුසු " (Kasu Kusu) written in Sinhalese and published in the issue of the Lankadipa dated 5th December 1955, the words following, that is to say—

"කෝට්ටේ එක්තරා බෞද්ධ පාසැලක ශිෂ්‍යයන්ට විද්‍යාල උපකරණ ගාස්තු නොගෙවන හැටියට ඉල්ලමින් ප්‍රබල ව්‍යාපාරයක් ගෙන ගිය උප ගුරුවරයෙක් ඔහු ප්‍රධානාචාර්‍ය වරයාවූ පසු දැන් එම මුදල් ගෙවන ලෙස බල කරන්නේ මන්දැයි කෝට්ටේ පළාත් වාසීහු ප්‍රශ්න කරති ".

The literal English translation of the said words is as follows :—

The people of Kotte question as to why an assistant teacher who carried on a powerful campaign requesting the children of a certain Buddhist School in Kotte not to pay the facilities fees is enforcing the payment (of facilities fees) on becoming the Principal.

(ii) In a letter in Sinhalese headed "ආනන්ද ශාස්ත්‍රාලය" (Ananda Sastralaya) purporting to be written and signed by one "සී. මහින්ද පාල බොතේජු" (C. Mahindapala Boteju) and published in the issue of the Lankadipa dated 23rd December 1955, the words following, that is to say :

"පාසැල් ගාස්තු නොගෙවීමට අනුබල දී ශිෂ්‍යයින් නොමග යැවුවේ වර්තමාන ප්‍රධාන තුමා මේ පාසැලේම උප ගුරුවරයාව සිටියදී ය".

"එද පාසැලේ පැවති කීර්තියට අද කළු පැල්ලම් ඉසී තිබෙනු මෙහි මංසන්ධි වල කෙරෙන කථා වලින් පෙනේ. ආචාර්‍ය මණ්ඩලය ප්‍රධාන තුමාට විරුද්ධ ය. ශිෂ්‍යයින් අතුරින් තුනෙන් පංගුවක් හැර ඉතිරි හැම දෙන එතුමාට විරුද්ධය".

The literal English translation of the said words is as follows :—

(*a*) . . . It was when the present Principal was an assistant teacher in the same school that the children were encouraged not to pay and led astray.

(*b*) . . . The fact that black stains are sprinkled on the glory that was of the school can be seen from the talks that go on at the (road) junctions here. The staff is opposed to the Principal ; excepting one third all the rest of the students are opposed to him.

(iii) In a letter in Sinhalese purporting to be written by one "කිත්සිරි අමරතුංග" (Kitsiri Ameratunga) and published in the issue of the Lankadipa dated 3rd January 1956 the words following, that is to say :

"ශිෂ්‍යයන් විප්ලව වාදී ලෙස ක්‍රියා කරවීමට පෙළඹවූයේත් ඔවුන් විද්‍යාලයට අකීකරු කරවූයේත් වර්තමාන විද්‍යාලයාධිපතිවරයා බව විද්‍යාලයේ ආදී ශිෂ්‍යයකු වශයෙන් මම දනිමි".

"බී. වික්‍රමසිංහ මහතා විද්‍යාලයාධිපතිව සිටියදී, වර්තමාන විද්‍යාලයාධිපති වරයා, එවකට උප විද්‍යාලයාධිපතිව සිටි, දැනට පානදුරේ ශ්‍රී සුමංගල විද්‍යාල යාධිපති කේ. ඇල්. වී. අලගියවන්න මහතාට විරුද්ධව ශිෂ්‍යයන් පෙළඹ වූ බව එකල ආනන්ද ශාස්ත්‍රාලයේ සිටි කවුරුත් දනිති ".

"විද්‍යාලයේ පාලන කටයුතු වලට බාධා කිරීම සඳහා, එකල උප ගුරුවරයකුව සිටි වර්තමාන විද්‍යාලයාධිපති වරයා, පහසුකම් ගාස්තු නොගෙවන ලෙස ශිෂ්‍යයන් පමණක් නොව ඔවුන්ගේ දෙමව්පියන් ද පෙළඹ වූයේ ය. එකල ශිෂ්‍යයන් ලවා විද්‍යාලයිය ගොඩනැගිලිවල අලගියවන්න විරෝධී පාඨ ලියවූයේ කවුරු ද යන්න රහසක් නොවේ".

The literal English translation of the said words is as follows :—

As a past student I know that it was the present Principal who made the students disobedient and act as rebels.

Everyone who was at the Sastralaya during the time of the Principalship of Mr. B. Wickremasinghe knows that it was the present Principal who set the children against the then Vice-Principal Mr. Alagiyawanna who is now the Principal of Sri Sumangala Vidyalaya, Panadura.

To obstruct the work of the school the present Principal, who was then an assistant teacher, induced not only the students but also their parents not to pay facilities fees. It is not a secret as to who got the students to write the Anti-Alagiyawanna slogans on the school buildings.

" 7. (i) In a paragraph written in Sinhalese headed " සිංහල බැහැ කියා අස්වේ " (Resigns as he is unable to do Sinhalese) in the issue of the Lankadipa dated 8th May 1956, the words following, that is to say :

"කෝට්ටේ ආනන්ද ශාස්ත්‍රාලයාධිපති ඇන්. ඩබ්ලිව්. ද කොස්තා මහතා විද්‍යාලයාධිපති පදවියෙන් විශ්‍රාම ගෙන ඇත. ඉන්දු ආර්ය භාෂා පිළිබඳ උපාධියක් ලබා ඇති ඒ මහතා සිංහලෙන් ඉගැන්වීමට නොහැකි කම නිසා විශ්‍රාම ගැනීමේ නීතිය යටතේ සම්පූර්ණ විශ්‍රාම වැටුප් සහිතව විශ්‍රාම ගෙන තිබේ. උද්භිද විද්‍යාව නමැති සිංහල පොත කොස්තා මහතා විසින් ලියන ලද්දකි. ඒ මහතා ළඟදීම ඉංග්‍රීසි ඉගැන්වීම සඳහා අමෙරිකාව බලා යනු ඇත".

The literal English translation of the said words is as follows :—

Mr. N. W. de Costa, Principal, Ananda Sastralaya, Kotte, has retired from the post of Principal. He who has a degree in Indo-Aryan has retired on full pension under the regulation for retirement due to his inability to teach in Sinhalese. The Sinhalese book titled 'UDBHIDA VIDYAWA' is a book written by him. In a very short time he will be leaving for America to teach English.

(ii) In a letter in Sinhalese headed " කෝට්ටේ ආනන්ද ශාස්ත්‍රාලයාධිපති " (The Principal, Ananda Sastralaya, Kotte) purporting to be written and signed by one " කේ. ජයසේකර " (K. Jayasekera) and published in the issue of the Lankadipa dated 11th May 1956, the words following, that is to say :

"කෝට්ටේ ආනන්ද ශාස්ත්‍රාලයාධිපති එන්. ඩබ්ලිව්. ද කොස්තා මහතා සිංහලෙන් ඉගැන්වීමට නොහැකිය යන කරුණ උඩ විශ්‍රාම ගත් බව "ලංකාදීප" යේ පළ විය. ඔහු ලන්ඩන් විශ්ව විද්‍යාලයේ ඉන්දු ආර්ය භාෂා පිළිබඳ බාහිර උපාධියක් තිබේ. "උද්භිද විද්‍යාව" නමැති අධ්‍යාපන ග්‍රන්ථ ප්‍රකාශක මණ්ඩල යෙන් අනුමත කරන ලද, නවීන විද්‍යා පොත ඔහු විසින් සිංහලෙන් ලියා තිබේ. නමුත් ඔහු සම්පූර්ණ වැටුප් සහිත විශ්‍රාම ලබා ගත්තේ කෙසේද යන්න කෝට්ටේ සහ හොරණ පළාත් වාසීන්ට පුදුමයක් වේ. ඔහු පසුගිය වාරයේම පාසැලට නොපැමිණි නමුදු එක්තරා දේශපාලන පක්ෂයක මන්ත්‍රිධුරාපේක්ෂකයන් දෙදෙනෙකුට කෝට්ටේ සහ හොරණ මන්ත්‍රී කොට්ඨාශවල ඉතා උනන්දුවෙන් වැඩ කළේය. එපමණක් නොව තමාගේ නමින් පත්‍රිකා ප්‍රසිද්ධ කර විසුරුවා හැරියේය. මීට කලින් විශ්‍රාම ගැනීමට ඔහු කළ පරිශ්‍රමය සාර්ථක නොවූ නමුදු මැතිවරණ සමයේදී ඔහු කෙසේ විශ්‍රාම ලබා ගත්තේ ද යන්න නව ආණ්ඩුවේ අධ්‍යාපන සහ මුදල් ඇමති තුමන් දෙපළට වටහා ගැනීම උගහට නොවේ".

The literal English translation of the said words is as follows :—

It was published in the Lankadipa that Mr. N. W. de Costa, Principal, Ananda Sastralaya, Kotte, retired on the ground of inability to teach in Sinhalese. He has an external degree in Indo-Aryan of the University of London. The book titled 'UDBHIDA VIDYAWA' which is accepted by the Educational Publications Board is written by him. But it is a wonder to the people of Kotte and Horana as to how he retired with full pay. Though he did not go to school for the whole of last term he worked hard at Kotte and at Horana for a certain political party. Further, he issued leaflets under his name.

It is not difficult for the Education Minister and the Finance Minister of the New Government to know how he could retire during the time of the election though his previous attempts to retire were unsuccessful."

The defendants pleaded justification, qualified privilege, fair comment, and absence of *animus injuriandi*.

The plaintiff appeared in person and argued his appeal. He explained that he had exhausted nis resources at the trial and had not the means wherewith to retain counsel for the appeal. He presented his case with moderation and with care and did justice to his case. He urged that some of the findings of fact against him should be reversed.

It is well settled that questions relating to defamation fall to be determined in this country according to the principles of Roman-Dutch law. When approaching questions of Roman-Dutch law, especially in a branch of law like defamation it is well to bear in mind the words of Lord Tomlin in the case of *Pearl Assurance Company Ltd. v. Government of the Union of South Africa* [1]—

"In the first place, the questions to be resolved are questions of Roman Dutch law. That law is a virile living system of law, ever seeking, as every such system must, to adapt itself consistently with its inherent basic principles to deal effectively with the increasing complexities of modern organized society. That those principles are capable of such adaptation cannot be doubted, and, while it would be idle to assert that the development of the Roman Dutch law in the territories now constituting the Union has not been affected appreciably by the English law, yet in their Lordships' judgment, approach should be made to any question governed by Roman Dutch law without any fetter imposed by recollections of other systems, and through the principles of Roman Dutch law alone.

"The fact that the solution of a particular problem reached by the Roman Dutch law bears a similarity to the solution provided by another system does not necessarily indicate any imposition of the rules of one system upon the other, but may be cogent evidence of a resemblance between the relevant basic principles of the two systems."

The existence of well-annotated standard treatises on the law of defamation in England and America is a great inducement for lawyers and judges almost instinctively to resort to them for the solution of problems which should be solved according to the principles of Roman-Dutch law. At the same time I do not wish to be understood as saying that under no circumstances should we examine the decisions of courts of other jurisdictions when called upon to solve an intricate question of law in our system. But the tendency to resort to English and American treatises and decisions without first endeavouring to solve the problems

[1] *(1934) A. C. 570.*

that arise according to Roman-Dutch law should be resisted. Melius De Villiers's Treatise on the Law of Injuries and Manfred Nathan's Treatise on the Law of Defamation in South Africa afford considerable assistance in ascertaining the Roman-Dutch law as developed in South Africa.

Of the Roman-Dutch Law writers Voet alone discusses the law in detail. For this reason Voet has been cited and followed by the Privy Council and the courts both here and in South Africa. I shall therefore not refer except in passing to Van der Keessel, Van der Linden, Groenewegen, or Van Leeuwen. As for Grotius, I think, his definition of defamation is important and should be reproduced. (Grotius, Bk. III Ch. XXXVI Section II, Herbert's translation, p. 447). It reads as follows :—

> " In this respect all parties are liable who either verbally or in writing, in presence or absence, secretly or openly, publish anything whereby a man's honour is injured even were the same true ; except when the same is notified to the authorities for the punishment of the offence. "

The expression " honour " in this context is used in the sense of the good opinion others have of us.

The kind of defamation that arises for consideration in the instant case, viz., publication by a newspaper to all and sundry, is the type of defamation known to Roman-Dutch law as *Famosis libellis* and falls into the classification of *Injuria litteris.* (Voet 47. 10.10—7 Gane 226)—

> " A wrong is done by writing when a person has assailed the reputation of someone by handing a screed to the Emperor or to another ; or with a view to the contemning and mockery and loss of reputation of someone has made up, published, noised abroad, made known to others or printed an information, narrative, comedy, screed or jingle ; or has with evil intent brought about the happening of any of those things. "

Now when dealing with this type of defamation it is well to bear in mind that in this country a newspaper enjoys no greater right than the individual citizen. The following words of Lord Shaw in the case of *Arnold—The King Emperor of India* [1], though expressed in a criminal case in relation to Burma, can with equal force be used in relation to Ceylon—

> " The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but apart from statute-law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful ; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position. "

[1] *(1914) 30 T. L. R., p. 462 (Privy Council).*

The learned District Judge appears to have overlooked this aspect of the law when he held that the 1st and 2nd defendants as proprietor and editor of the " Lankadipa " respectively had a common interest with the public and owed a duty to the public—

(i) to publish information on matters of general importance and public interest,

(ii) to allow the use of the columns of the " Lankadipa " for the *bona fide* discussion by members of the public of matters of general importance in the public interest.

The learned District Judge is wrong in thinking that the press has privileges which the ordinary citizen has not. Defamation by the written word is more serious than defamation by the spoken word ; because a person who writes matter which is defamatory has time to think and therefore his act is deliberate.

On account of the wide publicity that defamatory matter published in a newspaper receives and of the serious consequences of such wide publicity to the person defamed, a defamation committed by a newspaper is a more serious infringement of a person's rights than a mere publication in writing to a third person. Defamation by a newspaper falls within the class of savage wrongs (*atrox injuria*) referred to by Voet in 47.10.13 (7 Gane 231). He says that a wrong is more savage when wreaked in the theatre or in a public meeting place.

In our law defamation is a species of *injuria*. *Injuria* is defined by Voet (Bk 47.10, s. 1–7 Gane 204) as a wrong-doing committed in contempt of a free human being and by which his person or dignity or reputation is injured with evil intent. There are four ways of inflicting *injuria*, viz., by act, by words, in writing and by agreement with another (Voet 47.10, s.7). Each of these divisions of *injuria* is discussed in detail by Voet in the title to which I have already referred. For the purpose of this judgment I shall confine myself to *injuria litteris*. This *injuria litteris* is committed when a person has assailed the reputation of another by publishing to a third person matter intended to bring him into contempt, ridicule or hatred *animo injuriandi*.

As the use of the word defamation in relation to *injuria*, by words, in writing or by pictorial representation is now established it might be as well to define it. Defamation is the publication of any matter with the intention (*animo injuriandi*) of injuring another in his fair name and reputation, or of bringing him into hatred, contempt or ridicule or of lowering him in the esteem of others. *Animus injuriandi* is the intention to produce the consequences of one's act or the frame of mind of a person who knows that the commission of a certain act will reflect injuriously on another, yet does not refrain from the commission of the act. Such a person cannot rightly assert an absence of intention (Voet 47.10.20).

In our country *animus injuriandi* is an essential element of defamation (*Perera v. Peiris*)[1]. This is in keeping with the principle *Nemo facit*

[1] *(1948) 50 N. L. R. 145 (P. C.)*

injuriam nisi qui scit se injuriam facere. Affectus, non eventus, distinguit maleficia. The South African decisions also show that in that country too the courts regard *animus injuriandi* as essential. (See the cases referred to in the judgment of Gregorowski J. in *Jooste v. Claassens* [1] and *Laloe Janoe v. Bronkhorst*)[2]. The law presumes that a man intends to produce the natural consequences of his own act. *Animus injuriandi* being a state of mind has in the generality of cases to be inferred from the words and the occasion on which and the context and the circumstances in which they are used. Voet says (Bk 47.10.20—Gane, p. 242) that if the language uttered was such as in itself and in its proper meaning to inflict an insult, the intention to do a wrong is regarded as having been present, and the burden of proof that a plan to wreak a wrong was lacking lies upon him who uttered such statements. The existence of *animus injuriandi* is presumed if the natural effect of the words, when used in their ordinary sense, brings about any of the above results (*G. A. Fichardt Ltd. v. The Friend Newspapers Ltd.*)[3] and it is for the person who publishes the words to establish circumstances which rebut the presumption (*Botha v. Brink*) [4].

In dealing with the Roman-Dutch law of defamation it is advisable as suggested by De Villiers (48 S. A. L. J. 467) to avoid such expressions as "malice", "express malice", "legal malice", "implied malice", and "actual malice". The expression "malice" in English law has given rise to a great deal of misunderstanding and some of the English jurists, notably Pollock, have adopted the formula of absence of "good faith", which is the expression used in section 479 of our Penal Code. In Roman-Dutch law for defamation to be actionable it is not necessary that it should have entailed special damage or actual pecuniary loss to the person defamed (*Fradd v. Jacquelin*),[5]. It is sufficient that his feelings have been injured and that the writer intends to do so. (*Boyd Moss v. Ferguson*) [6].

In our law truth by itself is not a defence to an action for defamation. On this point Grotius (Bk. III Ch. XXXVI Section II Herbert's translation, p. 447) ; Groenewegen (Digest, Lit. XLVII Tit. X) ; Van Leeuwen (Commentaries on Roman Dutch Law, Ch. XXXVII, Kotze's translation, 2nd Edn. Vol. II, p. 295 ; Censura Forensis, Bk. V Ch. XXV) ; and Van der Linden, p. 250 Juta's translation, all take the same view. Van der Keessel's opinion which is different (Van der Keessel Select Theses DCCCII & DCCCIII ; Lorensz's translation, pp. 293 & 294) ; appears from the context to have been expressed in relation to the criminal law of defamation.

In defamation by spoken words if the defendant can prove that what he spoke is true and that they were for the public benefit or in the public interest he would not be condemned (Voet 47.10, s. 9) but Voet thinks

[1] *(1916) T. P. D. 723 at 737 et seq.*
[2] *(1918) T. P. D. 165.*
[3] *(1916) A. D. 1 at p. 11.*
[4] *8 Buch. 118 at 123.*
[5] *3 Natal Law Reports 144 at 146.*
[6] *(1876) Ramanathan Reports (1872–1876) p. 165.*

that even truth expressed for the public benefit or in the public interest is no excuse in defamation published to the public in writing (Voet 47.10, s. 10). But Voet's view that even where truth is stated for the public good in a written defamation it is no defence has not been followed by the courts both here and in South Africa. We have adopted the rule that unless the defendant proves that the defamatory words are both true and for the public good he cannot succeed. The plea that defamatory words are true and for the public good is known as the plea of justification. The law on this point is well settled both here and in South Africa. Our decisions are *Bastian Pulle v. David Hugens*, Morgan's Digest (1833–42) p. 117 at 123 and 2 Thomas Institute, p. 464. Those of South Africa are *Botha v. Brink* [1]; *Duming v. Queen* [2]; *Patterson v. Engelenburg and Wallach's Ltd.* [3]; *Lyon v. Steyn* [4].

A plea of justification is not divisible. The defendant must prove both elements truth and for the public good or in the public interest. If he proves truth alone and fails to prove the other element he fails altogether (*Queen v. Shaw and Fennell* [5]; *Leibenguth v. Van Straaten*) [6]. Even in the matter of proving truth partial proof is insufficient. The truth of all the offending words must be proved (Gane, Voet 47.10, s. 9, Vol. 7, p. 225). Proof of rumour is not proof of truth of defamation (1938 N. P. D. 277 at 302) (Van Leeuwen Censura Forensis 1.5.25) *Jooste v. Claassens* (1916) T. P. D. 723 (Gane, Vol. 7, p.225).

Though truth by itself is not a defence to an action for defamation it would in certain circumstance be relevant in the assessment of damages (*Daniel v. Denoon* [7]; *Leibanguth v. Van Straaten*) [8]. In this respect our civil and criminal law are the same. The first exception to the offence of defamation (s. 479 Penal Code) reads—

> " It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact. "

So much for the plea of justification. It is now necessary to examine the defence of fair comment. This plea like the plea of justification is not the peculiar privilege of the press. A newspaper has no greater right to comment upon a public servant or officer or a person occupying a public situation than has the ordinary citizen.

An essential for this defence is that the facts on which the comments are based should be true and in the pubic interest or for the public good. The comments based on facts truly and fully stated must not come within the ambit of *injuria verbis*. If they do, the comments do not receive protection. Comment is not fair if the facts on which it is based are not

[1] *8 Buch 123.*
[2] *(1905) T. H. 39.*
[3] *(1917) T. P. D. 350 at 356.*
[4] *(1931) T. P. D. 247 at 251.*
[5] *3 E. D. C. 323 at 327.*
[6] *1910 T. P. D. 1203 at 1207–1208.*
[7] *18 Natal L. R. 125.*
[8] *(1910) T. P. D. 1203.*

accurate (*Patterson v. Engelenburg and Wallach's Ltd.*) [1]. Besides comments outside the stated facts cannot be regarded as negativing *animus injuriandi* as the reader cannot judge for himself on facts which are not stated whether the comment does not constitute an *injuria*. Where the expression of opinion depends upon nothing but the publisher's own authority then the matter so expressed stands in the same position as an allegation of fact (*Roos v. Stent & Pretoria Printing Works Ltd.*) [2].

Before I conclude this summary of the relevant law I should state that a person is not entitled under the guise of truth and pretence of acting in the public interest to rake up another's past. In such a case a heavy burden lies on the defendant to show how the resurrection of the past serves the public interest. (*Stanley v. Robinson* [3] and *Lyon v. Steyn* [4].—Voet 47.10.9).

As the learned Judge has held that the plea of qualified privilege does not lie in the instant case and there has been no appeal from that decision it is not necessary to consider that defence.

Keeping in mind the above principles of law I shall now turn to the defamatory publications themselves and examine them one by one. The first is the publication of 5th December 1955. It reads—

"කෝට්ටේ එක්තරා බෞද්ධ පාසැලක ශිෂ්‍යයන්ට විද්‍යාල උපකරණ ගාස්තු නොගෙවන හැටියට ඉල්ලමින් ප්‍රබල ව්‍යාපාරයක් ගෙන ගිය උප ගුරුවරයෙක් ඔහු ප්‍රධානාචාර්‍ය වරයාවූ පසු දැන් එම මුදල් ගෙවන ලෙස බල කරන්නේ මන්දැයි කෝට්ටේ පළාත් වාසීහු ප්‍රශ්න කරති".

The English version in the plaint reads—

"The people of Kotte question as to why an assistant teacher who carried on a powerful campaign requesting the children of a certain Buddhist school in Kotte not to pay the facilites fees is enforcing the payment (of facilities fees) on becoming the Principal."

Now there is no evidence whatsoever that "the people of Kotte" raised the question referred to in the publication. The only evidence that any matter was the talk of Kotte is in the deposition of the defendant's witness Heendeniya. He was asked in examination-in-chief—"The question of those admission cards, was it the talk of Kotte?", and he answered "Yes". Such a vague question and an affirmative answer to it do not establish the truth of the fact stated. It does not prove that in December 1955 the people of Kotte were agitated over the past conduct of the plaintiff at all. The rumour itself is not proved. But even if it had been, as stated earlier, rumour is not proof of fact. The contents of the rumour must be proved which the defendants have failed to do. There is also no evidence that the plaintiff "carried on a powerful campaign" requesting the children of the Ananda Sastralaya, which is the School referred to, not to pay facilities fees. The testimony of the witnesses Kirthisiri Ameratunga, K. Jayasekera, Wimalaweera Perera, and Dharmakirti whose evidence on this point the learned Judge has

[1] *1917 T. P. D. at 362–363.*
[2] *(1909) T. P. D. 988.*
[3] *(1913) T. P. D. 202 at 107.*
[4] *(1931) T. P. D. 247 at 251.*

accepted only shows that the plaintiff requested only those persons and some others unnamed not to pay facilities fees. But their evidence does not establish that a " powerful campaign " was carried on by the plaintiff. The witness Heendeniya's evidence, which is hearsay, even if it is treated as relevant evidence, does not prove that the plaintiff was engaged in a campaign against the payment of facilities fees. In answer to the following question : " With regard to facilities fees you say you stopped paying because you were informed by your daughter that children had been asked not to pay facilities fees ? " he said " Yes ", and added that most of the children were not paying. Again in answer to the question— " It was in the middle of 1953 that you were told not to pay fees ? " he said " I cannot remember. My children came and told me not to pay, that others were not paying, that is all, and then I stopped paying the facilities fees. " On the other hand Dharmakirti's evidence shows that if there was a campaign against the payment of facilities fees it was he and not the plaintiff who carried it on. He says " In 1953 I did not pay facilities fees. Mr. Costa asked me not to pay. I know he spoke to other students also in my presence and asked us not to pay the fees. "

" Q : Did he give any reason for you not to pay the fees ?

" A : He told us that a part of the fees went to Mr. Alagiyawanna as an allowance and that we should not pay. I paid heed to his request and stopped paying the facilties fees. Not only did I not pay, but I went to the other students and asked them also not to pay. Plaintiff asked me to go and convince others also not to pay. "

But strangely enough he says more than once that when the Senior School Certificate candidates were not given cards they went across to him and threatened to beat him up saying that he was responsible for their not getting the cards because he had asked them not to pay the facilities fees. Then, he says, " I asked them not to assault me. Then they suggested that I should help them and I joined them and went to the Lankadipa office first and from there to the Education Department. " In examining the truth of the allegation that the plaintiff carried on a powerful campaign against facilities fees it is relevant to look at the register of collections which has been produced in evidence by the witness Ratnaike, the Registrar of the School. He says that in 1952 the School budgeted for Rs. 25,000 and collected Rs. 24,000 in facilities fees. In 1953 the year of the alleged " powerful campaign " they budgeted for Rs. 19,000 and collected a little over Rs 19,000. The witness Kirthisiri Ameratunga who said that he did not pay the facilities fees in 1953 because the plaintiff asked him not to do so has in fact paid Rs. 50 in September and Rs. 50 in November 1953, while in the same year K. Jayasekera has paid Rs. 120 in October, November and December, Wimalaweera Perera Rs. 120, and Heendeniya's daughter Rs. 60. These figures show that these witnesses were not speaking the truth when they said that they and others did not pay facilities fees after July 1953 because of the campaign carried on by the plaintiff. In Ameratunga's case it would appear that in 1952, when it is not alleged that the plaintiff carried on a

campaign, he had paid no facilities fees at all. The facts that the witnesses themselves paid their facilities fees and that the estimate of facilities fees for 1953 was exceeded, negative the statement that a powerful campaign was being carried on against the payment of facilities fees. The evidence of Weerasinghe the head master of the lower school shows that there was resentment on the part of the staff and the pupils because a special monthly allowance of Rs. 150 was paid to Alagiyawanna out of those fees.

Now it is common ground that the refusal by the plaintiff to give cards was in November and December 1955. If his action was contrary to regulations or unwarranted or intended to harass the students, complaint to a competent authority such as the Director of Education or the Permanent Secretary to the Ministry of Education in order to obtain redress is a course which is justifiable; but why publish in the newspaper an article raking up the past, even if it were true, that the plaintiff carried on a powerful campaign against facilities fees two years before the publication and say that he is now enforcing the payment of those very fees. I am unable to escape the conclusion that the writer intended to injure the plaintiff by doing so.

The publisher has not only failed to prove the truth of his defamatory statements; but he nas failed to establish that they were made in the public interest or for the public good. How is the public interest served by raking up the past? The plaintiff's action in enforcing the payment of the facilities fee by those who could afford to pay it was not open to objection and he was entitled to do so. I am unable to escape the conclusion that the writer's intention was to injure the plaintiff. To my mind this publication is defamatory and the learned Judge is wrong in holding that it is not.

The next publication is on 23rd December 1955. It reads—

"පාසැල් ගාස්තු නොගෙවීමට අනුබල දී ශිෂ්‍යයින් නොමග යැවුවේ වර්තමාන ප්‍රධාන තුමා මේ පාසැලේම උප ගුරුවරයාව සිටියදී ය ".

"එද පාසැලේ පැවති කීර්තියට අද කළු පැල්ලම් ඉසි තිබෙනු මෙහි මංසන්ධිවල කෙරෙන කථා වලින් පෙනේ. ආචාර්‍ය මණ්ඩලය ප්‍රධාන තුමාට විරුද්ධය. ශිෂ්‍යයන් අතුරින් තුනෙන් පංගුවක් හැර ඉතිරි හැම දෙන එතුමාට විරුද්ධය ".

The English version in the plaint reads as follows;—

(*a*) " It was when the present Principal was an assistant teacher in the same school that the children were encouraged not to pay and led astray.

(*b*) " The fact that black stains are sprinkled on the glory that was of the school can be seen from the talks that go on at the (road) junctions here. The staff is opposed to the Principal; excepting one-third all the rest of the students are opposed to him."

The first of the above statements is clearly a reference to the alleged campaign against facilities fees in 1953. I have already dealt with it. As stated above even if it be true that he encouraged students not to pay

facilities fees in that year how is the public good served by publishing it to the world in December 1955 ?

The author of this publication, the witness Mahindapala Boteju, was a pupil of the school till 1950 in which year he left the school. His statements are admittedly based on hearsay. This is what he says about them in his evidence.

" Q. Except one statement in which you say the principal threatened somebody the rest of the whole of that letter is what various people told you ?

A. Yes.

Q. And you have accepted the correctness of what others have told you ?

A. Yes."

It is clear that the writer did not know his facts and wrote to the Press what he had heard from others and that the defendants published his communication without verifying its accuracy. The defendants have not proved the truth of those facts. The writer himself is unable to help because they are not facts within his own knowledge.

I am unable to hold that the evidence supports the finding of the learned Judge that this publication is true. Besides there is no proof that it is either in the public interest or for the public good that the past actions of the plaintiff in this respect should be raked up.

Now in regard to (*b*) there is no evidence " that black stains are sprinkled on the glory that was of the school." The writer's explanation of this statement is " The black stains referred to was that during my time there were no such troubles in the school. At the time I was attending school things were not like that but today everyone has something to say against the school." If it is a matter of comment the matter on which the comment is based is not placed before the reader in order that he may judge whether it is fair and is without *animus injuriandi*. The talks that go on at the road junctions turn out when examined to be talks near witness Boteju's boutique. There is also no evidence to show that the staff, which must be taken to mean the entire staff, was opposed to the plaintiff as Principal nor is there evidence that two-thirds of the students were opposed to him. As stated above the plea of justification cannot succeed without proof that the statements are true and in the public interest. (7 Gane 225). That has not been done in this case.

I now come to the third publication. It was on 3rd January 1956. It reads—

"ශිෂ්‍යයන් විප්ලව වාදී ලෙස ක්‍රියා කරවීමට පෙළඹවූයේත් ඔවුන් විද්‍යාලයට අකීකරු කරවූයේත් වර්තමාන විද්‍යාලයාධිපතිවරයා බව විද්‍යාලයේ ආදී ශිෂ්‍යයකු වශයෙන් මම දනිමි ".

"බී. වික්‍රමසිංහ මහතා විද්‍යාලයාධිපතිව සිටියදී, වර්තමාන විද්‍යාලයාධිපති වරයා, එවකට උප විද්‍යාලයාධිපතිව සිටි, දැනට පානදුරේ ශ්‍රී සුමංගල විද්‍යාල යාධිපති කේ. ඇල්. වී. අලගියවන්න මහතාට විරුද්ධව ශිෂ්‍යයන් පෙළඹවූ බව එකල ආනන්ද ශාස්ත්‍රාලයේ සිටි කවුරුත් දනිති ".

"විද්‍යාලයේ පාලන කටයුතු වලට බාධා කිරීම සඳහා, එකල උප ගුරුවර යකුව සිටි වර්තමාන විද්‍යාලයාධිපතිවරයා, පහසුකම් ගාස්තු නොගෙවන ලෙස ශිෂ්‍යයන් පමණක් නොව ඔවුන්ගේ දෙමව්පියන් ද පෙළඹ වූයේ ය. එකල ශිෂ්‍යයන් ලවා විද්‍යාලයීය ගොඩනැගිලිවල අලගියවන්න විරෝධී පාඨ ලියවූයේ කවුරු ද යන්න රහසක් නොවේ ".

The English version in the plaint reads—

" As a past student I know that it was the present Principal who made the students disobedient and act as rebels.

" Everyone who was at the Sastralaya during the time of the Principalship of Mr. B. Wickremasinghe knows that it was the present Principal who set the children against the then Vice-Principal Mr Alagiyawanna who is now the Principal of Sri Sumangala Vidyalaya, Panadura. To obstruct the work of the school, the present Principal, who was then an assistant teacher, induced not only the students but also their parents not to pay facilities fees. It is not a secret as to who got the students to write the anti-Alagiyawanna slogans on the school buildings."

The author of this publication is the witness Kirthisri Ameratunga. In January 1956 he is referring to alleged happenings in 1953. Now is there evidence that the plaintiff made the students disobedient and act as rebels ? There is no evidence whatsoever of this. Ameratunga's explanation of his statement is : " He told us not to pay the facilities fees. He told us that a part of it is being given to Mr Alagiyawanna as an allowance and that the fees are not properly used to maintain the school." As stated above the writer has paid his facilities fees for 1953, the year in which he says the plaintiff asked him not to pay. In 1953 the year in which he says the plaintiff made the students disobedient and act as rebels the collection of facilities fees exceeded the budgeted amount. The evidence of Weerasinghe the head master of the lower school shows that the opposition to Alagiyawanna was not one engineered by the plaintiff but one that arose out of the payment of a special monthly allowance to him out of the facilities fees. The statement relating to the slogans is also raking up the past in order to expose the plaintiff to ridicule. Alagiyawanna himself did not know that slogans were written on the walls against him. But there is evidence that they were. Except the witnesses Ameratunga and Dharmakirti no one says that the plaintiff instigated their writing. The learned District Judge has accepted their evidence. However it is defamation to refer to events of the past even if true for in the instant case there appears to be no other object in doing so except to harm the plaintiff.

The fourth publication is that of 8th May 1956. It reads —

"කෝට්ටේ ආනන්ද ශාස්ත්‍රාලයාධිපති ඇන්. ඩබ්ලිව්. ද කොස්තා මහතා විද්‍යාලයාධිපති පදවියෙන් විශ්‍රාම ගෙන ඇත. ඉන්දු ආර්‍ය භාෂා පිළිබඳ උපාධියක් ලබා ඇති ඒ මහතා සිංහලෙන් ඉගැන්වීමට නොහැකි කම නිසා විශ්‍රාම ගැනීමේ නීතිය යටතේ සම්පූර්ණ විශ්‍රාම වැටුප් සහිතව විශ්‍රාම ගෙන නිබේ. උද්භිද විද්‍යාව නමැති සිංහල පොත කොස්තා මහතා විසින් ලියන ලද්දෙකි. ඒ මහතා ළඟදීම ඉංග්‍රීසි ඉගැන්වීම සඳහා ඇමෙරිකාව බලා යනු ඇත".

The English version in the plaint reads—

Mr. N. W. de Costa, Principal, Ananda Sastralaya, Kotte, has retired from the post of Principal. He who has a degree in Indo-Aryan has retired on full pension under the regulation for retirement due to his inability to teach in Sinhalese. The Sinhalese book entitled 'Udbhida Vidyawa' is a book written by him. In a very short time he will be leaving for America to teach English."

It is correct that the plaintiff had at that date retired from his post of Principal. That he retired on full pension is untrue. It is not correct that he retired owing to his inability to teach at all in Sinhalese. The suggestion that a person who has a degree in Indo-Aryan is by reason of that fact alone competent to teach through the medium of Sinhalese is not proved, nor is it proved that the plaintiff obtained his degree with Sinhalese as a subject. The writer confessed that he thought that an Honours degree in Indo-Aryan necessarily implied a knowledge of Sinhalese and that he did not check up his facts; but that he assumed that because the plaintiff had an Honours degree in Indo-Aryan he was competent to teach in Sinhalese.

The plaintiff was allowed to retire under the rule which permitted those who were not able to teach Standards VI, VII and VIII in Sinhalese in certain approved subjects to retire. It is also not correct that the book "Udbhida Vidyawa" was written by the plaintiff. The author of the book on the face of it does not claim that he wrote it in Sinhalese by himself. In the Preface the plaintiff thanks those who helped him to write the book in Sinhalese—K. C. Weerasinghe and Sunil Wijayawickrema. The witness Weerasinghe who assisted the plaintiff to write it says :—

"He gave me the facts and I wrote them down in Sinhalese. . . . The facts are his, the sentences are mine. . . . . Sometimes the sentences were drafted in consultation with him. . . . . The words he gave me but not the sentences."

The last sentence that the plaintiff will be leaving for America to teach English is sarcastic and appears to be designed to hold up the plaintiff to ridicule.

The last defamatory statement pleaded by the plaintiff is in the "Lankadipa" of 11th May 1956 and is as follows :—

"කෝට්ටේ ආනන්ද ශාස්ත්‍රාලයාධිපති එන්. ඩබ්ලිව්. ද කොස්තා මහතා සිංහලෙන් ඉගැන්වීමට නොහැකිය යන කරුණ උඩ විශ්‍රාම ගත් බව "ලංකාදීප" යේ පළ විය. ඔහු ලන්ඩන් විශ්වවිද්‍යාලයේ ඉන්දු ආර්‍ය භාෂා පිළිබඳ බාහිර උපාධියක් තිබේ. "උද්භිද විද්‍යාව" නමැති අධ්‍යාපන ග්‍රන්ථ ප්‍රකාශක මණ්ඩල යෙන් අනුමත කරන ලද, නවීන විද්‍යා පොත ඔහු විසින් සිංහලෙන් ලියා තිබේ. නමුත් ඔහු සම්පූර්ණ වැටුප් සහිත විශ්‍රාම ලබා ගත්තේ කෙසේද යන්න කෝට්ටේ සහ හොරණ පළාත් වාසීන්ට පුදුමයක් වේ. ඔහු පසුගිය වාරයේම පාසැලට නොපැමිණි නමුදු එක්තරා දේශපාලන පක්ෂයක මන්ත්‍රිධුරාපේක්ෂකයන් දෙදෙනෙකුට කෝට්ටේ සහ හොරණ මන්ත්‍රී කොට්ඨාශවල ඉතා උනන්දුවෙන් වැඩ කළේය. එපමණක් නොව තමාගේ නමින් පත්‍රිකා ප්‍රසිද්ධ කර විසුරුවා හැරියේය. මීට කලින් විශ්‍රාම ගැනීමට ඔහු කළ පරිශ්‍රමය සාර්ථක නොවූ නමුදු මැතිවරණ සමයේ දී ඔහු කෙසේ විශ්‍රාම ලබා ගත්තේ ද යන්න නව ආණ්ඩුවේ අධ්‍යාපන සහ මූදල් ඇමති කුමන් දෙපළට වටහා ගැනීම උගහට නොවේ".

The English rendering reads—

"It was published in the Lankadipa that Mr N. W. de Costa, Principal, Ananda Sastralaya, Kotte, retired on the ground of inability to teach in Sinhalese. He has an external degree in Indo-Aryan of the University of London. The book titled 'UDBHIDA VIDYAWA' which is accepted by the Educational Publications Board is written by him. But it is a wonder to the people of Kotte and Horana as to how he retired with full pay. Though he did not go to school for the whole of last term he worked hard at Kotte and at Horana for a certain political party. Further, he issued leaflets under his name. It is not difficult for the Education Minister and the Finance Minister of the New Government to know how he could retire during the time of the election though his previous attempts to retire were unsuccessful."

I have already dealt with the suggestion that the plaintiff was able to teach through the medium of Sinhalese just because he had a degree in Indo-Aryan. It has not been shown by the defendants that a degree in Indo-Aryan in the University of London involves the passing of an examination in Sinhalese or that the plaintiff offered Sinhalese as a subject for his degree. In fact it is not proved that it necessarily follows that a person who has a degree in Indo-Aryan is competent to teach Standards VI, VII and VIII through the medium of Sinhalese. The evidence does not prove that—

(*a*) the book entitled "Udbhida Vidyawa" was written by the plaintiff in Sinhalese,

(*b*) it was accepted by the Educational Publications Board,

(*c*) he retired with full pay,

(*d*) he worked *hard* at Kotte and Horana for a certain political party.

I have already pointed out that (*a*) and (*b*) are untrue. So is (*c*). He retired on a pension payable to him according to the School Teachers'

Pension Rules and definitely not on "full pay." The evidence in support of the truth of (*d*) is that of the witness Jayasekere. He says—

> "I have seen Mr. de Costa driving a wagon belonging to the U. N. P. at Nugegoda near the office of the U. N. P. There he had issued pamphlets supporting Mr. Anandatissa de Alwis.
>
> "I have seen the plaintiff's car at Panadura coming along the Horana Road near the Junction when I was passing that place in a car. That car bore a poster bearing the picture of Mr M. D. Jayawardene."

This material does not justify the statement that the plaintiff worked hard for a political party at Kotte and Horana. But a statement that a person worked for a political party is not by itself defamatory. The defamation lies in the suggestion contained in the last sentence. That by working for the political party to which the then Minister of Finance belonged he was able to retire though his previous attempts to retire were unsuccessful. The U. N. P. candidate for Horana who was the Minister of Finance at the relevant date has given evidence. His evidence has been accepted by the learned trial Judge. He says that the plaintiff did not work for him and that he did not even see him in his electorate. He also says that if the plaintiff was anxious to obtain his favour by working for him the plaintiff would have made himself prominent or even made it a point to be seen by him in his electorate. The witness Jayawardene's evidence that in deciding to allow the plaintiff to retire he was uninfluenced by any considerations other than the merits of the case has been accepted, and I think rightly, by the learned trial Judge. There is no proof that the plaintiff resorted to any corrupt means as suggested by the writer in order to obtain permission to retire. The publication is clearly defamatory.

Now as to the question of damages—the plaintiff has not shown how he arrives at the figures of Rs. 50,000/- and Rs. 60,000/- making Rs. 110,000/- in all claimed by him. In the absence of such proof I can only award the plaintiff a sum I consider reasonable for the harm done to him. I think he is entitled to the actual expenses incurred by him in these legal proceedings which he had to institute in order to vindicate his reputation and name. I also award him a sum of Rs. 5,000/- for the injury done to him.

SINNETAMBY, J.—

This is the judgment of my brother Pulle and of myself.

The plaintiff Mr. N. W. de Costa was a teacher in the school called Ananda Sastralaya at Kotte from 1934 up to April, 1955. He was appointed Principal in April, 1955, and retired in May, 1956, on the ground that he was unable to teach in Sinhalese. The first defendant company is the proprietor of a Sinhalese newspaper called the "Lankadipa" and the second defendant is its editor.

The plaintiff instituted the present action for defamation on two causes of action. The first cause of action relates to the publication of—

(1) a news item in the issue of the " Lankadipa " dated 5th December, 1955, under the heading " Kasu Kusu ", and

(2) two letters in the issues of the " Lankadipa " on 23rd December, 1955, and 3rd January, 1956, respectively.

The news item in question (P1 of 5th December, 1955) is as follows :—

" The people of Kotte question as to why the assistant teacher who carried on a powerful campaign requesting the children of a certain Buddhist school in Kotte not to pay facilities fees is enforcing the payment (of facilities fees) on becoming the Principal."

The letter published on 23rd December, 1955, is from one Mahindapala Boteju (P2) but the complaint is only in respect of the following passages contained therein :—

(*a*) " It was when the present Principal was an assistant teacher in the same school that the children were encouraged not to pay and led astray."

(*b*) " The fact that black stains are sprinkled on the glory that was of the school can be seen from the talks that go on at the (road) junctions here. The staff is opposed to the Principal ; excepting one third, all the rest of the students are opposed to him."

The letter of 3rd January, 1956, (P3) is written by one Kirtisiri Amera-tunga and the passage complained of in the letter is as follows :—

" As a past student I know that it was the present Principal who made the students disobedient and act as rebels. Everyone who was at the Sastralaya during the time of the Principalship of Mr. S. Wickremasinghe knows that it was the present Principal who set the children against the then Vice-Principal, Mr. Alagiyawanna, who is now the Principal of Sri Sumangala Vidyalaya, Panadura."

" To obstruct the work of the school the present Principal who was then an assistant teacher induced not only the students but also their parents not to pay facilities fees. It is not a secret as to who got the students to write the anti-Alagiyawanna slogans on the school buildings."

The plaintiff pleaded that these statements involved the following innuendos :—

(1) that the plaintiff when an assistant teacher misused his position as teacher by inciting the students and their parents not to pay facilities fees and that in so doing he was actuated by unworthy and dishonest motives ;

(2) that the plaintiff secured his appointment as Principal by these unfair and unworthy methods ;

(3) that the plaintiff was directly responsible for the students of the said school becoming disobedient and rebellious ;

(4) that the plaintiff by these actions had forfeited the confidence of the people of Kotte, his own staff and pupils, and was, therefore, not a fit and proper person to be either a teacher or a Principal ; and

(5) that the plaintiff by his actions has brought dishonour on the name of the school.

On this cause of action the plaintiff claimed a sum of Rs 50,000/ .

The second cause of action refers to certain publications appearing in the same newspaper after the plaintiff had retired from the post of Principal.

The first of these publications appeared in the " Lankadipa " of 8th May, 1956, as a news item. It is as follows :—

" Mr. N. W. de Costa, Principal, Ananda Sastralaya, Kotte, has retired from the post of Principal. He who has a degree in Indo-Aryan has retired on full pension under the regulations for retirement due to his inability to teach in Sinhalese. The Sinhalese book titled " Udbhida Vidyawa " is a book written by him. In a short time he will be leaving for America to teach English. "

The second publication is a letter written by one K. Jayasekera and published in the issue of the " Lankadipa " of 11th May, 1956. The passages complained of are as follows :—

" It was published in the Lankadipa that Mr. N. W. de Costa, Principal, Ananda Sastralaya, Kotte, retired on the ground of inability to teach in Sinhalese. He has an external degree in Indo-Aryan of the University of London. The book titled " Udbhida Vidyawa " which is accepted by the Education Publications Board is written by him. But it is a wonder to the people of Kotte and Horana as to how he retired with full pay. Though he did not go to school for the whole of last term, he worked hard at Kotte and at Horana for a certain political party. Further, he issued leaflets under his name. It is not difficult for the Education Minister and tne Finance Minister of the new Government to know how he could retire during the time of the election though his previous attempts to retire were unsuccessful ".

The innuendo pleaded in respect of these publications is as follows :—

" The plaintiff although well qualified in Sinhalese had by falsely pretending he could not teach in Sinhalese and by employing other corrupt means obtained the permission of the Government to retire from the teaching service. "

On the second cause of action the plaintiff claimed a sum of Rs. 60,000/-.

The defendants in their answer admitted the publications but stated that the facts referred to in the publications were substantially true and that the comments were fair and that their publication was in the public interest. The parties went to trial on the issues of justification

and fair comment. At the conclusion of the case the learned Judge held with the defendants in regard to their pleas and dismissed the plaintiff's action with costs. Against this finding the plaintiff has appealed.

In regard to factual matters in controversy between the parties the learned trial Judge has come to very strong findings against the plaintiff and we do not see how we can in any way disturb them by holding that they were either unreasonable or not supported by the evidence. The plaintiff, however, contended that some of the findings were wrong and that in law the Judge had misdirected himself. No satisfactory grounds, in our opinion, exist for reversing the findings of the Judge on the facts.

In his judgment the trial Judge found that the passages complained of carried the innuendos attributed to them. This is a matter of inference from established facts and in regard to that we as a Court of Appeal are in as good a position as the Trial Court to come to a conclusion. The plaintiff in support of his case first called only one witness, Dr. Adikaram, presumably to prove the innuendos in the publications. His counsel then closed his case leaving it to the defendant, as he well might, the burden of establishing the pleas set out in the answer. The plaintiff himself, it may be noted, was not called into the witness box until after the defendant's case had been closed and evidence in rebuttal permitted to be led, and even then only after all his other witnesses bar one had given evidence. This is a circumstance which reduces the value to be placed on his evidence to a considerable extent having regard to the fact that he heard what his witnesses said thus enabling him to adjust his own evidence to bring it into line with what he had heard.

The learned Judge held that all the innuendos pleaded by the plaintiff had been established. We find ourselves in agreement with him except in regard to the second innuendo pleaded under the first cause of action and the innuendo which is the basis of the second cause of action.

In regard to the first cause of action, there is nothing in the passages which suggests to the average reader that the plaintiff secured his appointment as Principal by inducing students not to pay facilities fees. In the second cause of action, while the passages themselves convey to the minds of the reader the suggestion that the plaintiff retired by falsely pretending that he could not teach in Sinhalese though well qualified in that language, it does not necessarily suggest that corrupt means were employed in obtaining permission to retire. Indeed, these passages were put by the plaintiff to Dr. Adikaram, the plaintiff's chief witness, who was then the Manager of the School and fully conversant with the relevant facts and circumstances—much more than the average reader—and Dr. Adikaram was asked what impression they created on him. Referring to the publications relating to the facilities fees, Dr. Adikaram stated that to him these passages conveyed the impression " that when he (plaintiff) was an assistant teacher he was against the Principal and asked the boys not to pay facilities fees and that now he is doing the very same thing he asked them not to do ". Dr. Adikaram is not quite

correct when he says "against the Principal"; presumably he meant "Vice-Principal"—The letter P3 refers to animosity to the Vice-Principal. We agree with Dr. Adikaram. There is nothing in P1, P2 or P3 to suggest that plaintiff secured his appointment by "these unfair and unworthy methods".

In regard to the innuendos pleaded in respect of the second cause of action, Dr. Adikaram stated that the impression created on him by these publications was that Mr. Costa though good in his Sinhalese yet wanted to retire on the ground that he could not teach in Sinhalese and that by working for some political candidate he obtained permission to retire. These publicatons do not suggest corruption as such unless it be limited to the fact that plaintiff was able to retire by working for a "certain political party".

In order to constitute defamation under the Roman Dutch Law it must be established that there existed in the mind of the defendant what Roman-Dutch jurists call the *animus injuriandi;* but where the words are either *per se* defamatory or shown to have the defamatory meaning attributed to them in the innuendo, the *animus injuriandi* is presumed and it is for the defendant in such a case to exonerate himself by establishing circumstances which rebut the presumption.

Nathan in his work "The Law of Defamation in South Africa" states at page 87 :—

> "A classic passage on the subject is contained in Voet's Commentaries. 'With regard to the person alleged to have committed an *injuria* (here defamation), the fact that he had entertained no *animus injuriandi* is a good ground for his not being held liable in *actio injuriarum*. The fact that such intention was absent is to be gathered from the circumstance of each particular case; for an intention of this kind has its seat in the mind, and in case of doubt its existence should not be presumed; moreover, it cannot reveal itself or be proved otherwise than by taking into account the nature of the occurrence. . . . On this ground, if certain words which have been uttered are ambiguous and susceptible of a twofold meaning, then, in case of doubt, they should be interpreted in the more favourable sense; since one should not presume a delict to exist as long as it is possible to suppose the contrary. But if a person uses expressions of such a nature that in themselves and in their proper significance they convey a defamatory meaning (insult) the intention to injure (*animus injuriandi*) is considered to have been present, and the burden of proving that no such intention existed lies upon the person who has used such expressions."

In the case of *Associated Newspapers of Ceylon, Ltd. v. C. H. Gunasekera*[1] acting Chief Justice Nagalingam after referring to certain extracts from De Villiers' commentary on Voet, Book 47 Title 10 section 1 page 27, and to Maasdorp stated :—

> "The authorities, therefore, establish that where a man publishes words concerning another, not necessarily with an express intent to

[1] *(1952) 53 N. L. R. 481.*

cause hurt or injury to him but without knowledge of the truth of the statements, and reckless whether they be true or false, if the consequence of the publication be in fact to injure the person defamed in his person, dignity or reputation, "*animus injuriandi*" is made out."

It will thus be seen that the mere absence of an express intention to injure is *per se* no defence and is not sufficient to displace the presumption of malice. *Tothill v. Foster*[1] and *Associated Newspapers of Ceylon, Ltd., v. C. H. Gunasekera* (*supra*). The same view is expressed by Nathan in the work already cited, at page 97.

It is, however, recognised that certain defences well known to the English Common Law will, if established, have the effect of negativing the existence of *animus injuriandi*, for instance, pleas of justification, privilege and fair comment.

The Privy Council in *Perera v. Peiris*[2] laid down the law applicable to Ceylon in the following terms:—

"In Roman-Dutch Law *animus injuriandi* is an essential element in proceedings for defamation. When words used are defamatory of the complainant the burden of negativing *animus injuriandi* rests upon the defendant. The course of development of the Roman-Dutch Law in Ceylon has particularly been to recognise as defences those matters which under the inapt name of privilege and the apt name of fair comment have in the course of the history of the common law come to be recognised as affording defences to proceedings for defamation. But it must be emphasized that those defences, or more accurately the principles which underlie them, find their technical setting in Roman-Dutch law as matters relevant to negativing *animus injuriandi*. In that setting they are perhaps capable of a wider scope than that accorded by the common law. Decisions under the common law are indeed of the greatest value in exemplifying the principles but do not necessarily mark out rules under the Roman-Dutch law."

Perera v. Peiris (*supra*) was an action brought by Dr. M. G. Perera against the proprietors and publishers of "The Ceylon Daily News" claiming damages on the ground that the defendants had published in their paper extracts from a report containing statements defamatory of the plaintiff issued by a Bribery Commissioner who had been empowered by statute to investigate bribery among members of the State Council. The Commissioner had in due course made his report to the Governor who had caused the report to be published in a Sessional Paper.

In the course of argument it was contended that the publication was merely a fair report of judicial proceedings or of proceedings in the nature of judicial proceedings. Lord Uthwatt who delivered the opinion of the Privy Council stated:—

". . . . much time might be spent in an inquiry whether the proceedings before the Commissioner fell within one or the other of these categories. Their Lordships do not propose to enter upon

[1] *1925 T. P. D. 863.* [2] *(1948) 50 N. L. R. 145 at p. 158.*

that inquiry. They prefer to relate their conclusions to the wide general principle which underlies the defence of privilege in all its aspects rather than to debate the question whether the case falls within some specific category."

"The wide general principle was stated by their Lordships in *Mackintosh v. Dun*[1] to be the 'common convenience and welfare of society' or 'the general interest of society' . . . ."

"In the case of reports of judicial and parliamentary proceedings the basis of privilege is not the circumstance that the proceedings reported are judicial or parliamentary—viewed as isolated facts—but that it is in the public interest that all such proceedings should be fairly reported."

Dealing with reports of proceedings of other bodies their Lordships continued :—

"If it appears that it is in the public interest that a particular report should be published privilege will attach. If malice in the publication is not present and public interest is served by the publication the publication must be taken for the purpose of Roman-Dutch Law as being in truth directed to serve that interest. *Animus injuriandi* is negatived."

Their Lordships, assuming that the statements of the appellant's conduct as a witness which formed the basis of the plaintiff's claim did not accord with the facts, nevertheless, proceeded to hold that it was in the public interest to publish the report, and that, therefore, there was no *animus injuriandi*. In the circumstances they advised His Majesty that the appellant's appeal should be dismissed. Referring to this case, acting Chief Justice Nagalingam in *Associated Newspapers of Ceylon, Ltd., v. C. H. Gunasekera* (*supra*) observed :—

"It is true that the judgment is very much in advance of the views held previously but, nevertheless, though not necessarily one of the express forms of qualified privileges as understood prior thereto had to be made out".

The effect of the Privy Council decision, therefore, is that under the Roman Dutch Law as it exists in Ceylon today it is necessary for a plaintiff to establish *animus injuriandi* on the part of the defendant and in cases where it is shown or presumed to exist it is open to the defendant to negative it by showing that one of the clearly established defences to an action for defamation under the English Common Law is available to the defendant or that the occasion was a privileged occasion by reason of the fact that the publication was for 'common convenience and welfare of the society".

Justification as such was recognised even by the earlier Roman-Dutch jurists as a defence which negatived *animus injuriandi*, provided also that the publication was in the public interest. This was first laid down

[1] *1908 A. C. 390.*

in South Africa in the case of *Botha v. Brink* [1]. In his appendix to Chapter 14 of his book on the Law of Defamation Nathan collects the authorities in support of the principle. He refers to passages from all the leading Roman-Dutch jurists. It is not necessary to repeat them here though many of them were cited in the course of the argument. The defence of fair and bona fide comment was unknown to the early Roman-Dutch jurists and is something which developed with the passage of time. It has, however, been fully debated in South Africa and in Ceylon and is now accepted as a defence on the ground that it negatives the existence of *animus injuriandi*—*Van Cuylenberg v. Chapper* [2]. To succeed in a defence of fair and bona fide comment it is necessary for the defendant in the first instance to establish the truth of the facts on which the comment is based and then to show that the comment based upon those facts is fair and bona fide ; it must also be shown that the comment was on a matter of public interest. These are the principles governing the defence of fair comment which have been fully developed under the English Law and have been adopted by the Courts in Ceylon and South Africa.

We propose now to analyse the libellous publications and to separate the statements of fact from statements which are merely comment. It may here be mentioned that the plaintiff who argued his own appeal submitted that from his point of view it was of the utmost importance that findings of fact by the trial Judge which involved the rejection of his evidence should be reversed.

In regard to the first cause of action, the facts which the defendant must establish are :—

1. that the plaintiff carried on a powerful campaign requesting students and their parents not to pay facilities fees ;
2. that at that time he was an assistant teacher ;
3. that on becoming Principal, he enforced the payment of facilities fees ;
4. that the plaintiff set up the children against the Vice-Principal Mr. Alagiyawanna ; and
5. that the plaintiff got students to write anti-Alagiyawanna slogans on the school buildings.

The other statements contained in P1, P2 and P3, it seems to us, are comments which are unobjectable.

In regard to the second cause of action, the facts which the defendant must establish are :—

1. that Mr. Costa retired from the post of Principal due to his alleged inability to teach in Sinhalese ;
2. that he had a degree in Indo-Aryan ;
3. that he wrote the Sinhalese book entitled " Udbhida Vidyawa ";

[1] *1878 Buchanan's Repts. 118.* [2] *(1909) 12 N. L. R. 225.*

4. that the plaintiff did not go to school for the whole of the previous term, namely, January, February and March, 1956 ;

5. that instead he worked hard at Kotte and Horana for a certain political party ;

6. that he issued leaflets in connection with his political work under his name ;

7. that he retired under the regulations with full pension during the time of the election, and

8. that previous attempts at retirement failed.

The other statements appear to be mere comment and also unobjectable.

At the stage of framing issues, learned Counsel for the defendant did not seek to separate the facts from comment and to have issues framed on that basis ; instead he framed issues on many matters which really were matters of evidence, and then framed composite issues 31, 32 and 33 to cover all his defences. This procedure is unsatisfactory but no objection was taken to it at that time by learned Counsel for the plaintiff and the trial Judge proceeded to deal with the issues on the basis that the questions for determination were whether the statements of fact contained in the several publications were true and if so, whether the comments thereon were fair.

In regard to the facts relevant to the first cause of action which we have earlier set out the learned trial Judge has found in favour of the defendants. There is no dispute in regard to items 2 and 3 which are admitted by the plaintiff. In regard to (1), (4) and (5) plaintiff denied that he carried on any campaign to prevent students from paying facilities fees and that he was in any way responsible for the anti-Alagiyawanna slogans which undoubtedly did appear on the school buildings.

The Alagiyawanna incident arose as a result of the appointment of Mr. K. L. V. Alagiyawanna on 30th June, 1953, as Vice-Principal of the Ananda Sastralaya by letter D4 with effect from 1st July, 1953, a post which the then Manager of the B. T. S. Schools, Mr. P. de S. Kularatne, created for the first time. Mr. Alagiyawanna was requested to act for the Principal, Mr. Wickremasinghe, who was ill and on 1st July, 1953, Mr. P. de S. Kularatne went with Mr. Alagiyawanna to instal him in his new office. The plaintiff, who was vehemently opposed to the appointment and had earlier seen Mr. Alagiyawanna and tried to dissuade him from accepting this post, adopted an attitude which no Manager of a school would tolerate from an acting Principal—plaintiff was then acting—and virtually turned Mr. Kularatne and Mr. Alagiyawanna out of his office. The learned trial Judge has accepted the evidence of Mr. Kularatne and Mr. Alagiyawanna on the details of this incident and has recorded his impressions and opinion of Mr. Alagiyawanna as a " sincere

and honest man". The plaintiff's explanation of this incident which the learned Judge did not accept was that he merely closed the doors of his office after Messrs. Kularatne and Alagiyawanna came in with the object of preventing those outside from seeing what was happening and touched Mr. Kularatne's arm to show him by which door he should go as Mr. Kularatne was making his way to the door at the back of the office. Mr. Kularatne and Mr. Alagiyawanna have both stated that plaintiff in the course of that interview pulled out a ruler from his drawer and acted in a way which created in their minds the impression that even violence might be used. The plaintiff does not remember this. The sequel to this was that the plaintiff had to apologize to Mr. Kularatne and to sign a written apology which the B. T. S. directed him to circulate to the staff. He says he did not do so, but the Principal Mr. Wickremasinghe circulated it. Nevertheless, plaintiff did not think these steps taken by the B. T. S. as amounting to punishment though he admits that punishment of a much more severe nature would have been imposed had Mr. Kularatne not been willing to accept the apology.

Now much of the difficulty that arose in consequence of Mr. Alagiyawanna's appointment can be traced to the fact that he was a nominee of Mr. Kularatne while plaintiff received the support of Dr. Adikaram who succeeded Mr. Kularatne as Manager of Buddhist Schools in 1954 and who was at all times opposed not only to the principles and policies of Mr. Kularatne but also to the man himself. Dr. Adikaram admits that he had tried to persuade Mr. Alagiyawanna not to take the post but without success. Shortly after Mr. Alagiyawanna took up duties—an event which occurred only after the permanent Principal resumed duties—there appeared on the walls of the school anti-Alagiyawanna slogans. The evidence shows that for about two days these slogans were painted but subsequently they were written with chalk and charcoal. On this point there is the positive evidence of Kirtisiri Ameratunge and Dharmakirti, both senior students of the school, according to whom the plaintiff gave Dharmakirti the tins of paint with which to paint the slogans in pursuance of which Dharmakirti himself painted some. The learned Judge has accepted their evidence as well as the evidence of two other students, namely, Wimalaweera Perera and K. Jayasekera, in preference to that of the plaintiff. One has only to peruse the recorded evidence of the plaintiff and observe the way in which he answered questions to appreciate the reason for the Judge's preference. In regard to the question of facilities fees and the part played by plaintiff in persuading students not to pay, the evidence of the four students mentioned has been accepted by the learned District Judge. It will thus be seen that the defendants have satisfactorily established the truth of the allegations contained in the news item P1, and the letters P2 and P3. In regard to P1, it was contended that no evidence was led to show that the "people of Kotte" were interested in the question of facilities fees and that even if a "campaign" was being carried on it was not a "powerful" campaign. In regard to the first of these arguments there is the

positive evidence of Don Edwin Heendeniya, a parent of a girl attending the school and a resident of Kotte whose daughter Sita had been refused an " admission card " by plaintiff to sit for her S. S. C. examination because she had failed to pay facilities fees, to the effect that the question of these admission cards was the " talk of Kotte ". With regard to the word " powerful " that itself is a relative term and even if there was an element of exaggeration in it one cannot say that the use of the word in any way added to the " sting " of the libel. As Wessels J. A. observed in *Johnson v. Rand Daily Mails Limited*,[1]

> " The fact that there is some exaggeration in the language used does not deprive a plea of justification of its effect. The test is whether the exaggeration leaves a wrong impression on the reader's mind to the detriment of the plaintiff ".

In the same case Stratford A. J. observed :—

> " It is difficult to measure degree when expressed by epithets ".

With reference to the letter P2, we agree with the learned Judge that the sentence " the fact that black stains are sprinkled on the glory that was of the school can be seen from the talks that go on at the road junctions here " is merely a comment and must not be taken too literally. Comment is often to be recognised and distinguished from allegations of fact by the use of a metaphor. Referring to the words " the staff is opposed to the Principal ; except one third all the rest of the students are opposed to him " contained in the letter P2 the learned Judge held that the facts are true though the mathematical proportion is incorrect. Be that as it may, it seems to us that even if the facts in the passage quoted are incorrect the words are not defamatory and in any event it is not necessary to justify every word of the libel. In *Edwards v. Bell*[2] the defendants alleged in their Newspaper that a serious misunderstanding had taken place amongst the independent dissenters of Great Marlow and their pastor in consequence of some personal invectives uttered from the pulpit against a young lady and that " the matter was to be taken up seriously ". It was held that proof of the fact that personal invectives were thrown out from the pulpit was sufficient to establish justification : Park, J. observed " the statement that the matter was to be taken up seriously, though part of the publication complained of, can scarcely be termed libellous ".

The facts referred to in Kirtisiri Ameratunge's letter P3 have been justified in full and as the learned Judge observed the last sentence is more in the nature of a comment based on a reasonable inference from the surrounding circumstances and has actually been also established by positive evidence.

[1] *1928 A. D. 190 at 206. Referred to in Nathan, Page 202.*
[2] *(1824) 1 Bing. 403 ; 130 E. R. 162.*

We shall now deal with the second cause of action. In regard to the facts which we have enumerated and which the defendants had to prove to succeed on the plea of justification, 1, 2, 4 and 8 were practically admitted by the plaintiff in the course of his evidence. In regard to the honours degree in Indo-Aryan it was suggested on behalf of the plaintiff that the average reader would assume that he offered Sinhalese also as a subject in order to obtain that qualification. In spite of what the writer of the letter, Jayasekera, had to say, we do not think so ; but we do agree that the average reader would assume that the possession of such a degree would considerably assist the holder in teaching Sinhalese. Even Dr. Adikaram, whose sympathies were undoubtedly with the plaintiff, did not say in his examination by plaintiff's counsel that the possession of a degree in Indo-Aryan connotes that the holder had obtained it by offering Sinhalese also as a subject. Referring to the letter P4 the examination of Dr. Adikaram proceeded as follows :—

Q. Does it refer to his degree in Indo-Aryan language ?

A. Yes.

Q. What is the suggestion there ?

A. That one who has a degree in Indo-Aryan should be able to teach Sinhalese but he is deceiving someone.

Dr. Adikaram admits that Sanskrit and Pali which plaintiff offered for his Indo-Aryan degree are the root languages of Sinhalese. That being so, knowledge of these languages would be a great asset to a teacher in Sinhalese. In any event the publications complained of do not state that the plaintiff offered Sinhalese as a subject for his Indo-Aryan degree and the truth of the statement that plaintiff possesses an Indo-Aryan degree is admitted by him. Plaintiff himself was not prepared to say that obtaining the degree would in no way be helpful in teaching Sinhalese. Despite a leading question his examination in chief proceeded as follows :—

Q. The Indo-Aryan degree does not help you to teach Sinhalese to anybody at all ?

A. I do not know whether it has.

Counsel was not satisfied with his client's answer and the question was repeated :

Q. Does an honours degree in Indo-Aryan help you in any way to teach pupils in Sinhalese ?

A. I do not think.

Even then the answer was not a categorical " no ".

In support of the contention that plaintiff is able to teach in Sinhalese reference is made in these articles to a text book in Botany entitled "Udbhida Vidyawa" written in Sinhalese. Plaintiff while admitting that he was the author of the book denies that he wrote it in Sinhalese. Indeed in his examination in chief all he said was that the preface which he read in Sinhalese was by him and that the two persons to whom he gave thanks helped him to write it. He added that he was competent to write a book on Botany but not in Sinhalese. Weerasinghe who helped him to write the book stated that the rough manuscript was taken down by him at plaintiff's dictation almost verbatim and then touched up. According to Weerasinghe the rough notes were substantially in plaintiff's words but he denies this. P17 is the second copy that was made. Weerasinghe passed only his Senior in Sinhalese while the plaintiff qualified in Sinhalese in the Matriculation which according to both Dr. Adikaram and Mr. Kularatne is of a higher standard. If one were to accept the representations plaintiff made to the Director of Education in regard to this book it would appear from the document P9 that he told the Director that he prepared the book in English and it was translated into Sinhalese by Weerasinghe and Wijewickrema. Plaintiff denies that he made any such representation and that he was probably misunderstood. It is difficult to reconcile these different versions with each other and one can only conclude that the book was in fact written in Sinhalese by plaintiff with the help of the two gentlemen mentioned in the preface. In any event any person who sees the book and reads its preface would be justified in drawing the inference that it was written by plaintiff. The learned Judge though he does not expressly hold that the book was written in Sinhalese by plaintiff finds that the statement in letter P5 to that effect is substantially true and that the only erroneous statement is the reference to the fact that it was approved by the Education Publications Board. Jayasekera who wrote P5 states that the advertisements by Gunasena & Co. offering the book for sale stated that it was approved by the Publications Board. Plaintiff denies it but Dr. Adikaram in his evidence states that the book (D32) is used as a text book in several schools and that only books approved by the Publications Board can be so used. It seems to us, therefore, that this statement too is not erroneous ; but even if it were, it does not affect the plea of justification as it is an innocuous statement which does not affect the main question as to who wrote the book in the language in which it was presented to the public.

In support of the statement that plaintiff could teach in Sinhalese there were produced an election pamphlet P14 admittedly written by him and D40 a book entitled "Pada Lamaya" which is a translation in Sinhalese verse of a Pali text and was published by plaintiff according to Samarakoon, a co-teacher. Plaintiff denied this, although he admitted that the author's address as given in the book is the same as his. There is, furthermore, the oral evidence of Samarakoon that plaintiff used to compose Sinhalese verses which he recited over the Radio, and trained

three girls to sing on the occasion of his sister's wedding verses in Sinhalese which he composed. It is also significant that throughout his efforts to retire on the ground that he could not teach in Sinhalese the plaintiff concealed the fact that he passed the London Matriculation in Sinhalese which was calculated to create the wrong impression that he passed in Sinhalese only in the S. S. C., and that too at the second attempt, vide D17 ; actually, though he failed the entire examination in his first attempt, he passed in Sinhalese.

With regard to items 5 and 6 the learned trial Judge has accepted the evidence of Jayasekera that just prior to the elections Costa was seen at Nugegoda driving a vehicle " belonging " to the U. N. P. and at Panadura, on the Horana Road driving a car carrying the poster of Mr. M. D. H. Jayawardene, the U. N. P. Candidate. At about this time was distributed the pamphlet P14 the authorship of which is admitted by defendant and D24 which the learned Judge erroneously thought had not been proved. D24 is an election pamphlet addressed to the people of Kotte to vote for the " Elephant ", which was the U. N. P. symbol, and not for the " Key " which was the symbol of the L. S. S. P. The impression formed in the Judge's mind in regard to this document D24 was probably due to the fact that when D24 was put to Dr. Adikaram in cross-examination Mr. Wickremanayake who appeared for the plaintiff objected, unless it was proved and Mr. Thiagalingam who appeared for the defendants said he would prove it by calling the plaintiff. Mr. Wickremanayake then denied the authorship of D24 and stated that he had in his possession another pamphlet which was the correct one. What the learned Judge apparently lost sight of was that when plaintiff was in the box, D24 was put to him and he admitted authorship. It was the last question put to him when he was under cross-examination on the 1st April, 1957. At one stage in the course of the argument before us it was suggested that this admission may have been a mistake in recording, but one has to accept the accuracy of the record especially as it is customary for mistakes in the recorded evidence to be corrected on a subsequent date, as has happened in this case itself in respect of other matters. This item of evidence was never sought to be corrected and, so far as the Appeal Court is concerned, it must be taken that the plaintiff admitted the authorship of D24 in his evidence.

In regard to items 7 & 8 the learned Judge has dealt with the question of plaintiff's retirement in detail and it is unnecessary to go over the same ground. The established facts are that the plaintiff, who had gone to America to study School administration on a Smith Mundt Scholarship, was opposed to the Swabasha policy of the Government and sought unsuccessfully twice to retire under the rules framed to give teachers who were unable to teach in Sinhalese an opportunity to retire with pension. Under the regulations a teacher has in the first instance to apply to the Director of Education for permission to retire and, if the Director refuses, he is given the right of appeal to the Minister of Finance.

This right has to be exercised within one month of the Director's refusal. The plaintiff had on both occasions also appealed to the Minister unsuccessfully. Then occurred the unexpected dissolution of Parliament followed by new elections. The plaintiff was seen working for the U. N. P. at Kotte and supporting the Finance Minister of the U. N. P. Government, Mr. M. D. H. Jayawardene, at Horana. The U. N. P. was defeated at the polls and Mr. Jayawardene lost his seat but till the new Government was formed he continued under the provisions of the Constitution to exercise Ministerial functions. It was during this period, although the time within which under the regulations appeals should be forwarded had elapsed, that the plaintiff successfully appealed to the outgoing Finance Minister and secured permission to retire. It was in these circumstances as found by the learned Judge that P4 and P5 came to be published.

It was contended that there were misstatements of facts in both P4 and P5 which would render the pleas of justification and fair comment untenable. It was pointed out that P4 refers to retirement on "full pension" and P5 to retirement on "full pay" neither of which is correct. We do not think it can be seriously urged that any reader would infer therefrom that the plaintiff was allowed to retire with the full pay which he drew at the time, as opposed to pension which he was entitled to draw on retirement, nor can it be urged that the plaintiff was permitted to retire on the basis that he had by service earned the right to draw the maximum pension a public officer could draw under the pension regulations. As the Judge himself observes, what any reader would infer is that under the regulations the plaintiff was permitted to retire drawing the maximum amount of pension his period of service would have entitled him to draw and not the maximum he might have qualified for had he served the full period of 35 years.

In any event these inaccuracies do not add to the sting of the alleged libel. The statement in P4 that plaintiff would shortly be going to America to teach English though incorrect is not altogether unwarranted—there is evidence that at the time plaintiff was endeavouring to go to America with the assistance of the American Embassy and he himself says that his visit to America on the Smith Mundt Scholarship was with a view to eventually working in the Education Department in the United States. These misstatements are harmless by themselves and do not directly or by innuendo bring discredit on the plaintiff. In this connection it must be borne in mind that when a passage is capable of two meanings and is ambiguous that meaning which favours the defendant should be adopted. The presumption is in favour of the innocent use of words, so that words which are not in themselves defamatory will be regarded as uttered in a non-defamatory sense. De Villiers Voet p. 189—quoted by Nathan at p.87—see also Voet, Vol. 7 Title IV Section 20 (Gane's translation p. 241).

In the letter P5 Jayasekera makes the following statement :—

> " It is not difficult for the Education Minister and Finance Minister of the new Government to inquire how he could retire during the time of the elections though his previous endeavours to retire were unsuccessful ".

This passage it was contended carried with it the imputation that plaintiff by corrupt means obtained permission to retire. As stated before, it certainly suggests that by improper means he was able to retire but the allegation, obviously, is mainly directed against the retiring Finance Minister. This passage in P5 is undoubtedly a comment, and what are the facts on which it is based ? First there are the facts which are intended to show that plaintiff was sufficiently learned in Sinhalese to teach in that language, secondly, that all his previous applications to retire on the ground of inability to teach in Sinhalese were refused, thirdly, that he worked during the elections for the U. N. P. and issued leaflets in support of that party and, fourthly, that during the time of elections he was allowed to retire by the outgoing Minister for whom he had worked and who had previously refused all his appeals. These must be considered also in the light of the facts then well known to every newspaper reader, namely, that many U. N. P. candidates were defeated at the polls and a new Government was being formed with a new Finance Minister. In these circumstances is it not a reasonable inference for any fair minded person to suspect that something improper had taken place which resulted in the same Minister allowing an application which previously he had refused more than once ? The learned Judge has held that the outgoing Minister was not guilty of any mala fides and that he was guided in this instance solely by the recommendation of his advisers whose action the Minister admits was wrong. The fact that the Minister had been erroneously advised was, however, not known to the writer or the general public. The law as it stands today is that where the facts truly stated warrant an inference of evil motive, even though in fact no evil motive exists, the defence of fair comment is available. In our opinion, the facts of this case as stated in P5 are true and the inference, therefore, having regard to the context in which the letter was written, perfectly reasonable and fair.

In *Merivale v. Carson*[1] Lord Esher, Master of the Rolls, so far back as 1887 laid down the law in the following terms :—

> " It is possible, however, to conceive of cases in which the known facts may be so strong that any reasonable man would infer therefrom the existence of improper motives, and yet in which those facts may be explained by others neither known nor accessible to the critic. In such cases it is desirable that the sanctuary of fair comment should be available. . . . So that I think the defence of fair comment will cover imputations as to motive if such imputations are reasonable inferences from the facts truly stated ."

[1] *(1887) 20 Q. B. D. 275.*

A similar view was taken by the South African Courts in the case of *Upington v. Saul Solomon & Co.*[1] In this case the Attorney-General of the Cape of Good Hope sued the proprietors of a newspaper called the "Cape Argus" for publishing defamatory statements which imputed to the Attorney-General improper motives in the conduct of certain prosecutions, condemned him as unfit to hold his office and charged him with taking an active hand in bringing about the failure of Justice. These statements in the newspaper were made in connection with the manner in which certain prosecutions were conducted and which included certain preliminary steps taken by the Attorney-General and were to some extent based on observations of the trial Judge. De Villiers C. J. who delivered the main judgment said :—

> "It is not necessary for the Court to hold that the plaintiff was unfit to hold his office before they can hold that the comments were fair and bona fide . . . . I could hardly imagine a fitter man intellectually for the office of Attorney-General than the plaintiff in this case but the question is not the actual fact of his fitness for office but whether the defendants might not reasonably, from what they had seen of the whole case come to the conclusion that he was not fit for the office. . . . . No doubt the article of 7th October is severe but taking the whole of the article, taking every statement in that article, if I asked myself, as a juror, whether I believed that that article exceeded fair and bona fide comment . . . . I should be bound to answer the question in the negative".

Fair comment does not mean that it is comment which is impartial, well balanced, or commends itself to the Court, *Crawford v. Albu*[2]. The only requirement is that it must be honest. The Courts should not adopt a narrow view in deciding whether comment is fair. In *Lyon & Lyon v. Daily Telegraph*[3] Scott L. J. expressed the view of the Court of Appeal in the following terms :—

> "It is one of the fundamental rights of free speech and writing which is so dear to the British Nation and it is of vital importance to the rule of law upon which we depend for our personal freedom that the Courts should preserve the right of fair comment undiminished and unimpaired . . . . Some people seem to think . . . . that what the defendant wrote or said was within his right of fair comment means that the Court accepts and endorses his opinion. The Court may as private individuals agree or disagree with the opinions expressed ; indeed it may disagree very much and yet hold that there is nothing in the language used which exceeds the limits of public criticism so as to become personal defamation."

[1] *1879 Buchanan's Reports p. 240.*

[2] *1917 A. D. 102 at 114.*

[3] *(1943) 2 A. E. R. 317.*

Having regard to the above principles it cannot be said on the facts found that the comment was neither fair nor bona fide.

In order to succeed in establishing the plea of justification it is necessary under the Roman-Dutch Law to prove in addition to the truth of the facts contained in the defamatory statement, that its publication was in the public interest. The defence of fair comment, likewise, is not available unless it is made in the public interest. There now remains only to consider whether in this case the publications complained of were made in the public interest. The plaintiff who appeared in person rightly conceded, indeed claimed, that he as Principal of a school was a public figure and that the matters referred to in the defamatory articles related to questions of public interest. Nevertheless, as he was not represented by a lawyer it is necessary to refer to this aspect of the case briefly.

Apart from the news item P1 the other letters P2 and P3 relating to the question of facilities fees were written after the plaintiff himself had invited public discussion in a letter to the Press P26 of 9th December, 1955. When a person invites criticism on any subject it becomes a matter of public interest (Gatley 3rd d. p. 401). Apart from that, facilities fees are recovered under the provisions of the Education Amendment Act, No. 5 of 1951, read with Section 41A (2) of Ordinance No. 26 of 1947 which permits the recovery of such fees in Assisted Schools. The term "Assisted Schools" is defined in Section 50 of Ordinance No. 31 of 1939 to mean "a school to which aid is contributed from state funds". Ananda Sastralaya was an Assisted School recovering facilities fees and supported by State funds. The manner in which the fees were recovered is thus a matter of public interest. It had given rise to questions in Parliament and involved the question of whether students should be allowed to sit for public examinations. When we come to consider the right of a teacher paid from public funds to retire under rules framed by the Government that too undoubtedly is a matter which concerns the public. The head of a school is a public figure and his conduct can be the subject of public criticism. *Sturrock v. Birt* [1] referred to by Nathan is a case in which defamatory words were used of plaintiff in her capacity as head of a school. A plea of justification was sufficient to exonerate the defendant.

In our opinion, the pleas of justification and fair comment are entitled to succeed. We would accordingly affirm the judgment of the learned District Judge and dismiss the appeal with costs.

Appeal dismissed.

[1] *(1891) 8 S. C. 119.*