

1941

Present : de Kretser J.

Dr. R. SARAVANAMUTTU, Petitioner.

v.

M. JOSEPH DE SILVA, Respondent.

IN THE MATTER OF THE BY-ELECTION FOR THE COLOMBO NORTH
ELECTORATE.

Election Petition No. 1 of 1941.

Election petition—Charge of general intimidation—Judge not bound to scrutinize whether it affected result of election—Corrupt treating—Object of influencing the vote—Specific charges in petition—Brief statement of facts—List of witnesses to be filed with notice to other side—The Ceylon (State Council Elections) Orders in Council, 1931 and 1935, Articles 52, 53, and 74.

Where there has been general intimidation at an election, it is no part of the duty of the Judge to enter into a scrutiny to see whether upon the evidence without such intimidation the result would have been different.

Corrupt treating, in order to avoid an election, must be done with the object and intention of influencing the vote.

Where specific charges are made, the petition should contain a brief statement of facts, indicating the character of the offences charged against the respondent.

The respondent should apply for particulars, if he desires any, at the earliest moment.

List of witnesses should be filed with notice to the opposite side within a reasonable time and should sufficiently indicate who the witnesses are.

No further lists should be allowed, after the hearing begins, without an express order of the Judge.

THIS was an election petition to have the election of the respondent, who was elected member of the State Council for Colombo North, declared void on the following grounds :—

- (a) treating within the meaning of Article 52 of the Ceylon (State Council Elections) Order in Council.
- (b) Undue influence within the meaning of Article 53.
- (c) General intimidation and impersonation under Article 74.

J. E. M. Obeysekere (with *M. M. I. Kariapper* and *C. S. Barr Kumarakulasinghe*), for the petitioner.

U. A. Jayasundere (with him *V. F. Gunaratne*, *A. C. Alles*, *S. R. Wijayatilake*, *A. C. Ameer*, *P. Malalgoda*, and *G. P. A. Silva*), for the respondent.

December 22, 1941. DE KRETZER J.—

On April 26, 1941, the respondent was elected Member of the State Council for Colombo North. This is a petition by the unsuccessful candidate Dr. Saravanamuttu, who alleges (a) *Treating*—within the meaning of Article 52 of the Order in Council, (b) *Undue Influence*—within the meaning of Article 53, and (c) *General Intimidation and Impersonation* on a large scale under Article 74.

At the hearing six charges of treating and twenty-one of undue influence were formulated, of which only eight were seriously pressed. Most time and attention were devoted to the general charge. Ninety-five witnesses were called on both sides. It is unnecessary to deal with the evidence of each individually.

When the Colombo North seat fell vacant the respondent was chosen for want of any other Labour candidate. He was chosen at a meeting of the Labour Party held on March 2, 1941, when he took an "oath of allegiance" to the Party. Since that date Mr. Goonesinha states that he strained every nerve and used the full resources of the Labour Party on behalf of the respondent. Respondent himself was incapacitated from taking any but a little part in the campaign which followed. Rather pathetically he stated that greatness had been thrust upon him. This may be true, but I doubt whether he quite understood what he was saying when he accepted the suggestion. At any rate the evidence is that he sought office. It is quite clear that he was a mere pawn and that the real person opposed to the petitioner was Mr. Goonesinha, the leader of the Labour Union and its allied organizations.

The evidence shows that the petitioner's family has been long resident in the electorate and commands considerable influence and respect. The petitioner himself is a medical man.

At the first election held under the present constitution the petitioner was returned for Colombo North but was unseated on an election petition, the charge against him personally being one of bribery, the "bribery" consisting of his having given a comparatively small donation to a school, the management and staff of which possessed some influence. In the by-election that followed his wife was returned as the Member for Colombo North and having been unseated on a technical objection she was again returned. She was re-elected in 1936 and continued to hold the seat until her death in January, 1941. There is evidence that the petitioner, besides being a medical man and a politician, was also associated with social service work in the electorate.

The petitioner belonged to the Independent Labour Party and he claimed that it had existed before the Labour Union which, according to Mr. Goonesinha, came into existence in the year 1922. The Independent Labour Party appears to be moribund and the petitioner joined the Ceylon National Congress in October last. Ordinarily elections for the State Council should have been held early this year but they have been deferred in consequence of the war.

It was alleged that many Tamils did not support the petitioner because they disapproved of his joining the Congress party. The petitioner hotly denied this and challenged respondent to produce a single Tamil who had voted against him. The challenge was not accepted. The evidence before me clearly indicates that the racial cry was raised on behalf of the respondent at a very early stage and that the effect of it was to knit the Tamils together.

There had been grave disorder at a meeting held at Lukmanjee Square on April 6 on behalf of the petitioner, at which prominent Sinhalese—including two Ministers—had made speeches. When it was put to Mr. D. S. Senanayake that the public resented a claim which had been

made at that meeting that the Congress was responsible for securing adult franchise he denied this and explained that the Congress Party could have made no such claim since it had never advocated such a franchise. I doubt very seriously whether the people of that neighbourhood would have been much disturbed by any such claim had it been made. It was suggested to another witness that the presence of a Buddhist priest on the platform had been resented and he replied that a few persons took exception to it and left the meeting and that was all. It must be noted that one or more Buddhist priests spoke at meetings held on behalf of the respondent. Quite clearly the disorder on this occasion was due to other causes.

I desire now to deal generally with the evidence given by the many Police officers who were called.

The position which the respondent took up was that the general intimidation alleged could not have existed in view of the excellence of the arrangements made by the Police. As I pointed out at the time, the evidence of the Police officers is not inconsistent with the evidence led for the petitioner: they rather run on parallel lines. The Police arrangements were excellent and the credit for this must be given mainly to Mr. Superintendent Baker. But the Police are quite frequently outwitted, there being no limit to the scope of human ingenuity. Organization on the one hand may be met by organization on the other. Besides, the Police are rather handicapped not only in respect of the powers which they possess but also by the lack of public support, of which Mr. Baker rather complained. The people who understand the Police best are perhaps that section of the community which comes most often into contact with them. It is from that section that you get people who have no hesitation in going to the Police. They attach undue importance to what they call "entries" made at a Police station, and often in the course of a criminal trial one notices a race between the complainant party and the accused party to be the first to lodge a complaint. I believe what the petitioner said to be true, viz., that the average law-abiding person avoids going to the Police station. The attitude of subordinate officers of Police may be partly responsible for this, especially having regard to men of an older type, for no one can deny that considerable improvement has been made in the standard of efficiency and behaviour of the Police. Too often, however, the reluctance is due to the timidity of people to approach those in authority, particularly uniformed authority.

The Assistant Superintendent of Police for Colombo North is related to the respondent and consequently held an embarrassing position. There is no reason to believe that he did not do his duty faithfully. It is suggested, however, and there is force in the suggestion, that subordinate members of the force may have imagined that they would be doing him a service by espousing the cause of the respondent in a greater or less degree, and that respondent's agents fostered the idea that misconduct not involving a breach of the peace would not receive attention. Quite early the petitioner saw this officer, informed him of the growing disorder, and asked him to deal firmly with the situation. It was suggested to the petitioner that he had attempted to intimidate that

officer and he warmly denied the charge. I inquired whether he was being called as a witness and was informed he was not. Had there been any truth in the charge I fail to see why he was not called, nor do I understand wherein lies the intimidation in bringing facts to the notice of an officer and asking him to do his duty. The remark might have suggested suspicion of the officer's impartiality and he might have resented the insinuation but there is no evidence whatever to this effect.

It was also suggested that the petitioner had asked the Assistant Superintendent to induce the respondent to withdraw his candidature. The only excuse Counsel could make for this suggestion was that the respondent had instructed him to that effect, at that very moment and Counsel had put the question straightaway. I could have understood it if the suggestion had been that in consequence of his peculiar position the officer had asked the petitioner to relieve him by withdrawing from the contest. The natural reaction of that officer would be to be extra vigilant and the natural reaction of the respondent and of Mr. Goonesinha would be to warn their followers to do nothing which would expose that officer to greater suspicion than already existed. Couple these facts with the precautions taken by Mr. Baker and with the desire of the Police to prevent only disturbances or breaches of the peace and such acts as would amount to criminal offences and one understands the evidence led for the petitioner to the effect that the persons responsible for the intimidation were careful to avoid such Police observation and such conflict as would expose them and betray their cause.

The almost invariable question put to the petitioner's witnesses in cross-examination was whether they had made any complaint to the Police, and quite often the explanation given was that they had complained to the petitioner or to one of his brothers. Counsel for respondent received rather a rude shock when the petitioner came into the box and stated what vigorous action he had taken; so surprised was he that he suggested to petitioner that he was, at that early stage, laying the foundation for an election petition. Considering how consistently members of petitioner's family had been successful at previous elections, it is difficult to believe that right at the very outset the petitioner feared—and in fact anticipated—that he would be defeated.

On April 7, the petitioner interviewed the Inspector-General of Police and on the 8th Mr. Baker issued detailed instructions. He says that those instructions were prepared quite independently of the information obtained at the interview and prior to the meeting at Lukmanjee Square, that they were sent out as the result of information which had already reached him from Police sources. It is clear therefore that the petitioner was not inventing a state of affairs with his eye on a possible defeat.

Before I pass on to another aspect of the case, I might refer to the *East Kerry Case*¹, in which also the case of intimidation was met by the evidence of the Police officers who said that they did not observe much violence and that in their opinion the election, so far as they saw, was conducted on normal lines. The district inspector who was in charge had even thanked the respondent for his efforts to preserve the peace.

¹ *O'M & H. VI. 85.*

The Court remarked that "Notwithstanding this tribute, the fact stands out prominently and uncontradicted that the voters were intimidated from going to the poll."

The position of certain other persons has to be considered, and they are chiefly Messrs. Goonesinha and Razik, for I do not think Messrs. Reyal and Dharmasena deserve serious consideration. According to the evidence they are both men of no means, who owe their position as members of the Municipal Council of Colombo to the fact that they were Labour candidates. The evidence also indicates that both of them are addicted to liquor, and Mr. Reyal gave me the impression of being somewhat in liquor at the time he was giving evidence. They both met cross-examination as to their peccadilloes with good humour, Reyal verging at one stage on buffoonery.

Mr. Razik, after a futile attempt at concealment, frankly admitted that the active part he took in supporting the respondent was due to a spirit of revenge. He supported the petition against Mrs. Saravanamuttu in 1932. In the by-election that followed she was again returned. At that election out of a total of 43,776 registered voters only 8,535 polled, respondent's Counsel who submitted these figures explaining that there had been no real contest on that occasion. This indicates that Reyal had no chance of being elected and that the election petition which was presented had merely a nuisance value.

In the Municipal elections held towards the end of last year Mr. Razik who had previously represented the New Bazaar *East* ward abandoned that ward and sought election for New Bazaar *West* against Mr. Proctor Saravanamuttu, who had defeated him before New Bazaar was divided into two and who, after the division, had represented New Bazaar *West*. In an area which was predominantly Muslim, Razik was defeated. He says he welcomed his defeat because it demonstrated to his community how helpless they were as a minority community! Yet immediately afterwards he attributed his defeat to the fact that there had been impersonation on a large scale. But he had to admit that a person of another community could not easily pass as a Ceylon Moor and then explained that large numbers of Moorish voters had been brought across from the Pettah Ward. I believe all Municipal elections are held on one day, but even if it were not so it does seem strange that so many of Razik's supporters were so late in going to the poll that others were able to take their places. His evidence is useful, however, as indicating his experience of the tactics employed at elections.

His evidence was important in another respect. He said that he had taken strong exception to the petitioner erecting a tent within a few feet of the polling station at Prince of Wales Avenue. Asked to give the reason for his objection, he said the voters of the opposite side would have to pass that tent and would then have remarks hurled at them which might turn them from their original purpose. According to him these remarks would be nothing more serious than "Vote for the White" or "Vote for the Red". When reminded that it was scarcely likely that the petitioner's supporters would invite voters to vote for the Red he corrected himself. But he was sure that such a simple remark would affect a voter and that the time which a voter would have while waiting

to gain entrance to the polling station and thereafter to approach the booth would not affect the influence of the remark. When asked whether voters could be influenced with the Police spread all over the place he replied that the Police could not prevent that kind of thing. He also observed that elections were ruled by thugs, and he hoped for the dawn of a better day. Mr. Razik has had much experience of elections; he is a strong supporter of the respondent and was called by him; without meaning to do so, perhaps, he has demolished much of the case set up for the respondent.

The susceptibility of the voter in India is referred to in the case of *Babu Chhail Behari Lal Kapoor v. Thakur Moti Singh*. In Ceylon the average voter at the present time is exceedingly susceptible to remarks thrown at him and quite easily intimidated. Apathy characterises the voters in many countries but apathy alone cannot account for the many persons who did not vote. It must be remembered that people have not yet grown accustomed to elections, that many welcome the novelty of enfranchisement, that an outing and all the excitement of election day would relieve the drabness of their lives, and that there are enthusiastic persons to urge them to register their votes. Mr. Razik's objection as stated by him cannot be the full truth. No voter could possibly object to being adjured to vote White or Red, but he might be influenced if that advise were coupled with other remarks of a less innocent nature. Of course, if it was part of a design to obstruct the White voters or to subject them to barracking, then their proximity to the entrance might enable them to slip in more easily and Razik's objection would have some meaning.

Mr. Goonesinha started what he called the Volunteers of the Labour Union who have earned the popular name of "Red Shirts". They wear a uniform consisting of red shirt, white shorts, and white cap with red stripes. He says that he alone can call them out. They possess a captain in one Wickremesinghe and two sergeants, one of them a labourer named Agris. There are some 50 or 60 suits of uniform kept in a cupboard at the office of the Labour Union under the control of the treasurer. On a previous occasion, very recently, Mr. Goonesinha had admitted that most of his volunteers were ex-convicts, but he modified that statement at the present trial by reducing their number and explaining that they were all the better for discipline. He¹ said that this body was formed on the occasion of Mahatma Gandhi's visit, that their duties consisted in making arrangements at places of meetings and in throwing out any persons disturbing such meetings, in flanking processions on May Day, and in keeping order in the street at elections. The Police will perhaps note that Mr. Goonesinha did not think them capable of preserving order on such occasions.

Considering what their duties were, one can see no evidence of any training in discipline, though they undoubtedly obeyed Mr. Goonesinha, who says that he always advised them to pursue peaceful methods and to avoid violence. He quite rightly stressed the importance of organization and the value of discipline.

¹ *Jagat Marain's Indian Election Petitions, II., 17.*

Lawrence, one of the secretaries of the Trade Union Congress, accepted the description of himself as Goonesinha's henchman while objecting to being called his lieutenant. He was quite right in both respects. He also shied at the word "organization" although he had just been elaborately describing the arrangements for polling; when reminded of this he accepted the term. Goonesinha coming on later attributed their success to excellent organization and undoubtedly his claim is well founded.

The Red Shirts were certainly employed for election purposes. In the year 1936 they were taken down to Weligama to help in the elections there, Goonesinha himself making no less than 18 speeches in one day. He did this while himself engaged in the contest for his own seat in Colombo and the respondent was contesting another seat in Colombo. Goonesinha's evidence indicates that he believed in paying personal attention to detail; for example, he was not content to leave the arrangements for a meeting at Ananda College on National Day to Wickremesinghe, who had been associated with him for so many years; but went there to see for himself how things were going on. He however asks the Court to believe him when he says that in this election he took no more part than going round and asking some prominent people to support the respondent, addressing some meetings, and going about on election day and the day before in order to see that everything was working smoothly. He admits that he knew he had to meet a stout opponent in the petitioner, that the respondent was ill and could not go about, that he strained every nerve and made his best endeavour, but he says that that best endeavour was nothing more than he described.

Goonesinha also states that after the Municipal elections held last December there was much talk about the behaviour of his Red Shirts on that occasion, and, though in his opinion there was no cause for complaint, he and a few others decided towards the end of January or early in February that the Red Shirts should not be called out as a body in future elections. In this way he endeavoured to preserve the good name of Labour from even suspicion. There was nothing, however, to prevent individual members of the corps from doing as they pleased and making use of the training they had received for many years: there was nothing to prevent anybody from wearing a garment similar to any part of their uniform, so it was just possible, he said, that there were some people seen about who might have been mistaken for Red Shirts. He was certain the uniforms had not been issued because he had not ordered their issue.

One has to remember in this connection that Mr. Goonesinha declared that sometimes his orders and his wishes are not complied with. For example, he is the proprietor of a Sinhalese newspaper called the *Viraya*, printed and published in the premises of the Labour Union, where he has his office. He says that he does not read this paper except on rare occasions, although it is regularly sent to him, and consequently he expresses surprise and even disgust at some of the contents of the copies that were produced in Court. He had been reprimanding the

editor on several occasions and was waiting till this trial was over to deal with him again. I had to remind him that this trial had nothing to do with his relations with the editor.

Mr. Goonesinha is supported by Messrs. Razik, Reyal, and Dharmasena and by Mrs. Jayawardene when he says that the racial cry was not raised at the meetings held in connection with his election. The *Viraya* published reports of the meetings which clearly indicate that such a cry was raised. Its readers were exhorted to support the national cause and to enlist as crusaders in such a cause. The *Viraya* is sent, as a matter of course, to every member of the Labour Union, and is said to have a circulation of about two or three thousand. There is ample evidence that the racial cry was raised at quite an early stage. The Hon. Mr. D. S. Senanayake knew of its existence even before the meeting of April 6. I do not believe the witnesses who say it was not raised at the meetings. According to the *Viraya* the Muslims were also commended, so that the susceptibilities of Messrs. Razik and Reyal were protected. Had the racial cry not been raised at these meetings, then the position would be that, carefully abstaining from raising such a cry at places where it might have attracted unwelcome attention, it was nevertheless raised through the medium of a newspaper which Mr. Goonesinha controls and which he states exists for the purpose of propaganda. In the hands of an ill-educated and excitable people, such as the labourers and other poorer classes in the electorate, articles such as were found in the *Viraya* would have been a strong incitement and have led to conduct which was not beyond reproach. The big posters produced in Court were used to emphasize the racial call. They depict the historic contest between Dutugemunu and Elara and the latter is shown falling off his elephant mortally wounded. In another poster a Sinhalese and a Tamil warrior are mounted on horses and the Sinhalese has decapitated the Tamil. These posters were seized later by the Police. In the former a drawing of the respondent is inset; in the latter the legend includes the word *Viraya*.

There is abundant evidence of the presence of persons in red shirts and of women in red jackets and I accept the evidence that they seriously interfered with the White voters. Goonesinha disclaimed all connection with the red jackets. The Order in Council in 1931 gave the franchise to women. The Red Shirts were already in existence and admittedly they were used for election purposes, not *en masse* but scattered about in groups. When women were enfranchised a similar body of females would seem to be a natural corollary.

Now, we get some very useful evidence from Mr. Davidson, the Registrar-General and Returning Officer for this election. He was the presiding officer at the polling station at Lukmanjee square in the 1931 and 1932 elections. He stated that in view of his experience on that occasion he considered Lukmanjee square quite unsatisfactory as a polling station and that if he had been appointed in time he would have selected another place, if possible, for this election. I entirely agree with him in this respect. He had heard of a body of men called the Red Shirts, and it was in answer to a question whether he had seen the men called "Red Shirts" that he said—"I believe I have seen women in red uniform but I do not remember seeing the men. My impression is that

some of them took part in the previous election, that was in 1931. I am really vague about it." This means that Mr. Davidson had seen a body of women in red uniform; he was only doubtful as to whether they had taken part in previous elections but believed they did. The women in red uniform appear to have come into existence as soon as women were enfranchised. It is difficult to believe that Mr. Goonesinha with his keen sense of organization and his knowledge of the usefulness of his Red Shirts would have had as little to do as he pretends with a similar body of women in red uniform. I accept the evidence of very respectable persons that the *modus operandi* was that these selected persons should pose as voters and in that guise allow those supporting respondent to pass but to obstruct, annoy and intimidate those supporting the petitioner. They were very careful to avoid Police attention. The Police were comparatively few in number and especially at Prince of Wales avenue and Grandpass they were controlling large numbers of voters, quite apart from large crowds of supporters and a certain number of people who were merely attracted there by curiosity.

Lawrence stated that the Police would move on the crowd, who would then proceed to one spot and when the Police came there they would return to the place they had just left. The evidence led for the petitioner is that the Police on an appeal being made to them did often move the crowd at the entrance to a polling station but they would always come back again.

Inspector Jayatilleke spoke of a "stationary crowd" at the Vine street polling station. There is evidence of similar stationary crowds at other polling stations.

It will be convenient at this stage to deal with the conditions on polling day. Mr. Baker had had information which led him to fear that there would be serious disturbances and even rioting. In P 47, written two days after the election, the petitioner refers to his having kept an undertaking to hold his men down and makes vehement complaint against the Police. Vehemence is a weakness of the petitioner and must often antagonize those with whom he has to deal. No question was put, nor is there any evidence as to the date when any such undertaking was given, nor as to any undertaking by the opposite party. Perhaps there was such an undertaking. Mr. Baker had issued elaborate instructions for the occasion and conferred with the Returning Officer as to the arrangements at the polling stations and booths. The general design was to secure the queueing up of voters and to regulate admission into the polling booths. In many cases Mr. Baker's intentions seem to have miscarried. The notable exception was the polling station at St. Benedict's College, where Mr. Baker says he saw the best queueing he has yet seen in Ceylon. The photograph R 3 shows what happened at the women's section. Inspector Michael was in charge here. There was no complaint regarding the polling of the men voters and there is the evidence of Mr. Gonsal, a timid old gentleman who lived just opposite the entrance, that everything was quiet there; he himself had voted in the quiet hours of the afternoon. There is only the slightest complaint regarding the women's section. The witness who spoke to this had had experience of what was happening at another station and says that as he drove off after dropping some

women voters he saw them being interfered with as they climbed the steps on one side leading up to the entrance. It is possible that his inference was wrong.

Vine street and Green street are good illustrations of what was *not* done, and in each case the Inspector-in-Charge said that he had acted on the orders of the Presiding Officer. During the trial witnesses and even Counsel frequently confused the polling station with the polling booth, and I am afraid some of the presiding officers made the same mistake. Instructed to see that only a limited number were admitted to the polling booth they gave orders that only a limited number should be admitted to the polling station.

At Vine street the polling booth was in a school situated well down a spacious garden. The number of voters was not large and a queue formed inside the polling station would have protected the voters from unwelcome attentions and prevented unnecessary delay. Inspector Jayatilleke says that the polling here was practically over by ten o'clock but that the stationary crowd remained throughout the day. The arrangement here was for the Police to admit five persons at a time into the grounds. These would find their way to the polling booth, at the entrance to which stood a constable who had nothing more to do than to see them pass in and then signal so that five more would be admitted. Working people anxious to get to their work were needlessly held up on the road while the staff at the polling booth had quite a comfortable time, the Inspector himself spending most of his time inside the polling booth apparently.

There is the evidence of Mr. Proctor Wijesinghe that an orator on the steps leading to a temple right opposite the entrance had harangued the crowd, but the Inspector heard no speeches and only songs sung by a man that afternoon which he thought were comic songs and which amused the crowd. The sample of a "baila" given in Court showed that what would be funny to a neutral might be very annoying to the victim. The witness, Candappa, who seems to spend most of his time on an easy chair and who dallied at the entrance talking to others when he went up to vote in the afternoon, had not heard even the singing, though he lived quite close to the polling station and could overlook the steps leading up to the temple. Jayaweera, called by the respondent, had apparently been badgered by both sides, who had sent cars to fetch him early in the morning. He says he slipped out in the afternoon in his own rickshaw, carrying both red and white tickets in his pocket,—that on the way he inquired from voters who were returning how things were and was told that speeches and singing were going on. The speech-making therefore was not an invention of Mr. Wijesinghe's, due to his warm partisanship, as Counsel suggested Marshal Perera, a stalwart on petitioner's side, says that he went to Vine street at 10.30 or 11 A.M. and while he would not say that everything went smoothly there, he had no cause for complaint. He looked quite equal to any toughs on the opposite side.

At Lukmanjee Square there was queueing too but not as much as there might have been. With a space extending for about 50 yards there were only admitted at most about 100 men and 100 women respectively; according to Inspector Khan only 25 or 30.

Mr. Evarts, the Assistant Superintendent of Police, did not see Khan there when he was at Lukmanjee square between 11 and 11.30 A.M.; he must have been otherwise engaged. Mr. Evarts saw constables regulating the queues. He estimates the number he saw at each entrance then to be roughly 40. This was a time when at all the polling stations except the Cathedral Girls' School there was a lull in the polling. He attempted to give an explanation as to why these others had not been admitted—if they were really voters—by saying that if people were spread along throughout the length of the enclosure there would have been the possibility of their straying where they should not have gone and collecting the ballot-papers which others were willing to sell. According to him, the more indifferent voters secure their ballot papers, which they secrete, pretend to vote, and then sell them. But as separate exits were provided close to the polling booths one would have thought it was easier for them to dispose of their ballot papers outside than within the enclosure under the very eye of the police. Presumably the number of persons selling their ballot papers would be small, but even if they formed a considerable portion of those inside it is a sorry confession that a sub-inspector with two constables could not control more than 100 men, with constables in addition at the polling booth and at the exit and an inspector to help most of the time. Unfortunately this evidence came after that of Inspector Khan, who was not therefore questioned on the point. I do not think the explanation is correct.

Mr. Baker's scheme for the Police was to have the inspectors of the respective divisions in general charge of their divisions, an inspector from an outside area being in actual charge of each polling station. The police from outside were on duty from morning till 11 o'clock and again from 2 P.M. till closing time. The local police relieved them in the interval and took charge after the election. Mr. Baker had carefully instructed his men that—

“The by-election for the vacant Colombo North Seat to be held on April 26, 1941, will cause a great deal of trouble, both before and after the event.” “There is considerable information that owing to strong feeling in this by-election there is a possibility of disturbances, preceding the day of election, on the day of election, and subsequent to the day of election.” (R 16).

He gave detailed instructions regarding processions, which were to be stopped, explaining the instructions issued by the Returning Officer and telling them that the responsibilities of the Police for maintaining order outside the polling stations were clearly laid down therein. He emphasised the importance of effectively controlling the entry of voters to the polling stations and of taking precautions to enforce queueing up. They were to disperse two or more persons taking part in a discussion with obvious bad feeling and see that everything possible was done to keep order and prevent a breach of the peace. Finally, they were exhorted to carry out their duties with fairness and good humour. There were other elaborate instructions.

I have already indicated how entry to the polling booths was regulated and not so much entry to the polling stations, inspectors going out to the

road only occasionally. The exhortation to act with fairness and good humour would of course be interpreted by different officers in different ways. Inspector Khan's interpretation of it was rather unfortunate.

No evidence has been led regarding two polling stations in the Pettah area where Inspector VanderStraaten was in charge. As to the Mutwal area no evidence was led regarding the De ha Salle School polling station. I have already dealt with the Vine street station, and there remains the polling station at St. John's School, Mattacooly. This station was rightly condemned by both Mr. Davidson and Mr. Baker as being the worst possible place for the purpose. The school is situated behind a church and between them is a narrow passage. The arrangement was that the women voters should go down a wide passage leading from the road to the church, proceed to the right passing the porch of the church, under which were seated the clerks assisting the Presiding Officer. Voters would then go round the church; male voters before doing so coming down a lane running parallel to the passage referred to and entering the premises. To separate them from the female voters the passage was divided by means of a rope. Voters passing out of the premises through separate exits into the lane would meet the incoming male voters before they reached the road. The passage to the booth was tortuous and well adapted to crooked practices. The inspector appointed to be in charge failed to turn up and Inspector Eliatamby, who was in general charge of Mutwal area, had to ask Sub-Inspector Bastiansz of the Crime Police to take charge of the polling station. Inside every polling booth were stationed an inspector and constables of the Crime Police to deal with offences committed there, such as impersonations.

Now, between the lane and the passage is the house and garden occupied by Peter Ferdinandus, Secretary of the Mattacooly Labour Union and agent for the respondent in that area. On the previous day a tent or awning was erected in that garden where, it is alleged, voters were treated the day before the election. Red voters were conducted to this tent along the passage, into which a gate opened a good way down the passage. It is stated that the women voters entered the passage once more and went towards the church close by, while the men entered the passage and went up to the road, going along which they reached the lane intended for them. The result was that White women voters were mingled with the Red voters for the greater part of the passage and had also to pass the congregation of Reds in the premises of Ferdinandus; coming out after voting they were again thrown among the Reds as they came up the lane.

A woman called Pavistina is said to have played a prominent part here for the Reds. She is ordinarily to be found at Saunder's place in the Pettah, and Inspector VanderStraaten says she is not of good character. Mr. Goonesinha says she misbehaved at a May Day Celebration and was turned out by him. It is in evidence that this woman was among those assembled in the Gallery of the State Council when the respondent took his seat there. It has not been explained why she should have left the Pettah for the Mattacooly polling station on election day and there is evidence how she behaved on that day. I have no reason to disbelieve the evidence that voters were interfered with that day.

In the Kotahena area there were three polling stations; namely, St. Benedict's College (already dealt with), Green street, and Cathedral Girls' School. Regarding what happened at Green street we have the evidence of a clergyman, the Reverend Mr. Hitchcock, who gave his evidence with restraint and whose evidence I accept. Inspector Jansze's evidence is not in conflict with it and in fact he said he would not contradict the reverend gentleman. It was urged, however, that this witness was a strong partisan and that one bit of his evidence was demonstrably false. Mr. Hitchcock had stated that about midday a drunken man created a disturbance in front of the "office" (as it has been called) of the petitioner, which was opposite the polling station. He reported the matter to the sergeant who sent the man away. In cross-examination he said he had seen the Assistant Superintendent and the Inspector once and had spoken to the Inspector on one occasion and that was in connection with the incident of the drunken man when the Inspector ordered the Sergeant to send the man away. Inspector Jansze stated that he knew nothing about the drunken man incident but that Mr. Hitchcock had made a complaint to him about 10 o'clock that when a car carrying White flags passed the Red office those in the car were jeered at and stones thrown at it. He thereupon posted a constable at the spot. The reverend gentleman's recollection that he had spoken to the Inspector only once appears to be correct, and I cannot help thinking that under the stress of cross-examination he made a mistake when he accepted the suggestion that it was in connection with the incident of the drunken man. He had already stated in his examination-in-chief that it was to the Sergeant he had then complained and the cross-examination was directed to ascertain how often he came in contact with the Inspector. He may have confused matters. Police officers, including Inspector Jansze, confessed to their recollection being dimmed by the lapse of time. I am not prepared to disbelieve the reverend gentleman merely because of this discrepancy.

Mr. Hitchcock was asked whether Proctor Saravanamuttu had not suggested to him that he should say that he had seen the Assistant Superintendent's car going about flying a Red flag. He denied this, adding that the Proctor had asked him whether he had seen the officer's wife going about in his car flying a Red flag and he had told the Proctor that he had seen no such thing; and as he lived just opposite the house of the Assistant Superintendent, with whom he was on visiting terms, he mentioned it to him. Had the witness's account not been correct it would have been the easiest thing to have called that officer. As a matter of fact Proctor Saravanamuttu when giving evidence many days later stated that, having been informed that the officer's wife had been going about in the manner alleged, he sought to verify the information by questioning the clergyman: he was not cross-examined on this point.

Now, the information regarding this question could only have emanated from the officer himself or from some member of his household and it was the simplest thing to have got the facts correctly before suggesting to a clergyman that the Proctor had thought him capable of giving false

evidence. This is the second instance in which incorrect suggestions involving the Assistant Superintendent were made without proper instructions.

The evidence of the reverend gentleman stands uncontradicted on the main points. Starting out early in the morning of election day, flying a White flag, his car was held up at the foot of Barber street by a gang wearing red handkerchiefs round their heads, and it was only after he was recognised by one of the men as the manager of the school which his children attended that he was allowed to proceed. This happened between three and four in the morning, and indicates how early the desire to obstruct manifested itself.

About 10 A.M. he had reported stone-throwing at cars. About 11 A.M., as he was walking past the respondent's office during a lull in the polling to fetch some voters from an adjacent street, somebody called out "Shoot the padiri"; he complained of this to a constable, who did nothing as the "padiri" had not identified the man: he was more humiliated than annoyed, he said, as he had been doing social service in that district for so many years. Then at midday came the episode of the drunken man who came in front of the office of the Whites and abused them. On the following Monday, when he was going out, a man called him "para demala" in front of the polling station. That expression was heard quite frequently on polling day, says Mr. Hitchcock, who spoke of Red Shirts and Red Jackets who went up and down prominently, of shouting and hooliganism between the respondent's office and the polling station and of noise throughout the day. He had seen red-jacketed women seated by the roadside near the polling station and was frequently informed of obstruction by those conducting voters; he had referred them to the police who then cleared the entrance but the crowd soon came back. He explained that when the White Voters moved up the others moved up too, as if they were also voters, and so obstructed them. The red women became very unruly.

At a very early stage in the proceedings it was suggested to Mrs. Natesa Iyer that what she witnessed and experienced were the normal incidents of an election day. She had had considerable experience of elections in Ceylon as well as in India and she said that she had seen nothing like this before. It was not quite clear when Counsel was addressing whether she had been alluding to the polling station at Green street or the one at Wolfendhal not far away. Seeing that she spoke of voters at Gintupitiya street she was probably alluding to the latter. The suggestion that these incidents were normal was repeated. Police witnesses thought that what they saw was the normal excitement prevalent on such occasions. The law envisages a state of things in which voters are not interfered with even by enthusiasts and, while it does not call for the ideal of perfect calm and orderliness, it cannot exercise the virtue of good humour to such an extent as to condone what Mrs. Natesa Iyer and the Rev. Hitchcock described.

The evidence regarding the polling station at the Cathedral Girls' School is very strong and supports the petitioner's contentions. Here the arrangements had been altered at the last moment and both men and women voters had to approach the polling booth by a narrow flight of

steps, barrels placed at the top and bottom of which and connected by a string were designed to separate the two sections of voters. Mr. Evarts noticed no dividing line, and when he went up the steps men and women were going up together.

Inspector Scharenguival stated that he spent a large part of his time on the pavement near these steps and admitted that owing to the crush he was unable to see what was going on a few feet away. Mr. Evarts who visited the place about 10.30 A.M. says that when he went there he observed two constables having a very hard time controlling the crowd and regulating entry, while others placed along the road were doing nothing. He ordered that two of the latter should reinforce the men at the entrance. Inspector Scharenguival's memory was admittedly not very good and he certainly made a mistake when he said that four men were at the entrance from the start. The exits opened on to a short wide road leading from the main road and this short road was thronged with people, who could not have been voters waiting to go in. The School is very close to the dockyards and this was the one station where polling was heaviest at midday, when probably the workers had the interval for their midday meal.

Mr. Davidson's experience had been that midday saw the biggest rush to the polls and, keyed up by the Police to expect rioting, he found comparative calm at the Grandpass station. The evidence is that most of the labourers in the harbour area live in Gintupitiya street, Kochchikade, Jampettah street (which runs past Green street), Kotahena, and the Mutwal area. Possibly conditions have changed since Mr. Davidson's previous experience. Conditions at the Cathedral Girls' School were such that Mrs. Bakelman, a hefty but highly strung woman, who was working for the Whites, left the place in disgust about ten o'clock and reported to Mrs. Chellappa, who was in charge of that area; she advised her not to get excited and persuaded her to go back with a companion but the two did not remain long.

In the Kotahena area there were polling stations at Lukmanjee Square and at the Maternity Home in Prince of Wales avenue. Lukmanjee Square is entered from Grandpass road through very big gates. The road itself is not very wide and has tram lines laid along it. Through the gateway one goes down a wide passage, flanked on either side by tenements, and then reaches open ground, part of which is enclosed with corrugated iron sheets. This enclosure was the polling station, the polling booths being inside some buildings at the farther end. Just opposite the big gates were the Red headquarters. Cars were permitted to come up to the big gates where the two constables were on duty. Voters would then pass down the wide passage where there were large numbers of persons with a single constable to regulate them. On some surprise being expressed at this, Inspector Khan said there were two constables,—that there were constables at each entrance and exit; he said there were in all six constables round the enclosure, two others presumably being between the entrance and the exit which were along another wide passage running at right angles to the first. Besides the usual Crime Police inside the polling booth, Sub-Inspector Barnes with two constables kept order within the enclosure and Inspector Khan spent the greater part of

his time inside the enclosure. Khan began by saying "S. I. Barnes was all throughout with me; he was keeping himself within the enclosure". On surprise being expressed again at this he corrected himself and said—"I was all over. I was walking up and down. S. I. Barnes kept himself inside the enclosure. There were 14 men round the enclosure,—I am not sure of the actual number." (Mr. Baker's orders in R 16 were that there should be an inspector or sub-inspector, three sergeants, and fourteen constables—with one bicycle orderly.)

Inspector Jonklaas of the Grandpass Police was away on sick leave and Inspector Khan, who relieved him, was in general charge of that area. At Prince of Wales avenue, however, Inspector Schokman, who was senior to Khan, was in charge, and Khan devoted nearly all his time to Lukmanjee Square. Having at his disposal seventeen men and posting two at the big gate and one on either side of the road to regulate the traffic, he had thirteen men left; of these one was at the entrance to the polling booth and four at the entrances and exits of the polling station. With two constables inside the enclosure to assist Barnes, he had six men left, and of these one or two were along the passage from the gate to the enclosure, so that only four were left for disposal round the enclosure. He could not have had fourteen men. He corrected himself and said he must have had nine men round the enclosure. That would be correct if he had only one man along the passage as he originally stated. He did not claim to have a clear recollection of what he had done or even of the number of men at his disposal. He said there was no noise except for the one occasion when there was a "big noise" created by a man whom he afterwards found to be "one Senanayake" and whom he had "chased away".

There is abundant evidence that there was much noise. Mr. Evarts said there was so much shouting that he could not distinguish exactly what was being said and consequently could not say whether the remarks alleged to have been made were made or not.

Mr. Davidson had had previous experience of this polling station and went there at about noon. He left his office at 11.50 A.M., went all round the polling stations, and reached his bungalow at 1.20 P.M. He had driven down the passage to the enclosure but had not stayed there long.

A European official would be easily singled out. Mr. Davidson's attention had been drawn to the position of the Red headquarters and he thought it was most unfortunately situated, for it would permit of interference with the voters. He said that when he went he did not notice any obstruction of voters, heard no abuse nor insult nor intimidation nor any disparaging references to the Tamil community; everything appeared to be perfectly all right and better than at previous elections. He had been led by the Police to expect a great deal of trouble and disturbance. As his visit here was about midday, when there was a lull in the polling, his evidence must be read bearing that fact in mind. Even so, he had to wait a minute or two before he could drive his car in. In cross-examination he said he knew very little Sinhalese or Tamil and was not listening to what was being said, adding with an amused smile that he was rather deaf. In answer to the question whether there really were no disparaging remarks made he said—"I cannot say anything. I can only say I did not hear that."

Mr. Baker said he had been to Lukmanjee Square three times, first about 8 A.M., then about 11 o'clock, and again about 3 P.M. He did not notice anything objectionable. He was actually concerned to see that there was no breach of the peace and said that words like "para demala", "You must not vote for the para demala", and so on would only come within the purview of the Police if there was a likelihood of a breach of the peace, and that no instructions had been given to the Police to be on the lookout for cases of abuse and insult, &c. As long as there was no breach of the peace or of the law there was no need for Police interference. By breach of the law he meant the commission of an offence defined in the Penal Code.

This area had been in charge of Mr. J. R. Jayewardene, Advocate and Municipal Member for that ward, from which Mr. Razik had retired. Mr. Jayewardene falling ill, Mr. Dudley Senanayake, Advocate and Member of the State Council, took charge on polling day, but was unacquainted with the neighbourhood. He reached the place about 9 o'clock, when there was a big crowd in respondent's headquarters, on the verandah and steps. "The place was packed with people", he said, and most of the people in that house were in red shirts while others had red caps on; they kept on shouting and making abusive remarks whenever a car bringing White voters came along, and Mr. Senanayake then noticed that voters were refusing to get down from the cars. There was a crowd converging at the gate and down the square, with people on either side up to the polling booth. He saw red-jacketed women at the big gate who used to move about and get hold of the White voters and cast remarks at them, remarks of such a nature as would frighten them. Sometimes they would get hold of the women carrying White cards and take them along to the polling booth after giving them Red cards. These red-jacketed women were nearly all on the big side, he said; he did not think they were real voters because they remained on the spot. He had received complaints of interference and had also made complaints to Police officers but each time the officer cleared the crowd at the gate they would immediately come back. On one occasion, when he was moving about the passage between the gate and the polling station, a voter complained to him that he was being harassed and he went up to the gate to complain to the inspector and find out what the cause of it was, when someone from the respondent's office shouted at him—"Senanayake hora" (literally translated "Senanayake is a rogue"): in Sinhalese the remark conveys more than its translation does. He challenged the man who made that remark to come out and there was silence, but the moment his back was turned they jeered at him and hooted. He had seen Mr. Baker only once and had complained to him that people at the Red office and others at the gate were harassing White voters and by their behaviour driving them away; Mr. Baker had then gone towards the gate saying he would do what he could. Mr. Dudley Senanayake was there from 9 A.M. till 2 P.M., when he was away about an hour at lunch, and again till 4 P.M., when he left for Prince of Wales avenue because the Police seemed unable to control the crowd and he found himself helpless. Mr. Baker recalled the complaint made to him

and thought it was about 11 A.M. but had made no note of it. Mr. Senanayake was not cross-examined about this incident.

Inspector Khan, called for the respondent, stated that he had spent the greater part of his time "by the enclosure" (meaning within the enclosure) but there was no crowd at the main gate and he allowed nobody to stand near the gate; between 9 and 11.30 he would take 25 or 30 men voters at a time inside the enclosure, line them up, and send them to the polling booth; by 11.30 or 12 noon the rush was over; no complaint was made to him at any time, save when the petitioner came and told him about 1 P.M. that people were casting remarks at him but could not point out anyone nor could he (Khan) find anybody making offensive remarks.

About 1.30 P.M. he was ordered by Mr. Baker to leave the place as there was no work for him and things were quiet, and he was told to go to the Police station and inquire into any reports received there; from there he went to Prince of Wales avenue about 2 P.M., stayed there till, 3.10 P.M. and returned to Lukmanjee Square and remained inside the enclosure till 4 P.M., when he went back to Prince of Wales avenue and was there till 5.30 P.M. He had seen people in the respondent's office throughout the day but had not seen a single man there in a red shirt! He added that there may have been Red Shirts inside the office but not on the verandah nor on Grandpass road nor near the gate nor anywhere else. Inspector Khan had been stationed at Jaffna, from where he was sent to Mahara, and was then put in charge of the House of Detention in Mutwal, adjoining which is the Home for Vagrants. He tried to dissociate himself from the latter place, where a brother of Mr. Goonesinha is a clerk and is known to Khan. His ignorance of Mr. Senanayake's identity may be pardoned. This is what he says regarding that incident; he did not know the person he "chased away" but people told him he was "one Senanayake",—that person was walking between the enclosure and the gate "making a big noise",—he could not remember what the man was saying; he asked him to go away because he was walking up and down making remarks at some people; this was before Mr. Baker came. Mr. Senanayake, on being "chased away," had gone to the petitioner's office. This was along the passage and had been selected that morning because Mr. Davidson had upheld an objection by Mr. Razik to a tent erected near the entrance to the enclosure.

Mr. Dharmasena, M.M.C., says he was in charge of respondent's interests at Lukmanjee square and was expected to see that their voters went from their "office" to the polling booth. He was walking up and down the passage from the gate to the enclosure. He says that between 1 and 1.30 there was a voter with a White card near Mr. Senanayake going towards the polling booth; then some people standing near the Red office shouted "hora vote" (meaning bogus vote), whereupon the White voter ran away and Mr. Senanayake challenged the man to come out but no one came out; then a man asked Mr. Senanayake why he should challenge them and the two exchanged words and the crowd began to jeer and hoot at Mr. Senanayake, whereupon Khan came on the scene and the jeering stopped. He says he felt humiliated at the Inspector's

treatment of Mr. Senanayake. According to him this incident had taken place on Grandpass road and Mr. Senanayake then meekly went up the road, accompanied by him for a few feet; he was quite certain Mr. Senanayake had not gone into the square. Mr. Dharmasena says that quite a long time before this trial began he had given all the details of the incident to Mr. Goonesinha, who naturally took a great part in working up the case for the respondent. The evidence indicates he did. Not a question was put to Mr. Senanayake in cross-examination.

According to Dharmasena there was shouting and jeering and an exchange of words between Mr. Senanayake and another man but Khan had heard no other noise than that made by Mr. Senanayake.

I have no hesitation in accepting the evidence of Mr. Senanayake and holding that the White voters were seriously interfered with on polling day.

I have indicated sufficiently my reasons for holding that the conditions at this polling station too were bad. Prince of Wales avenue and Lukmanjee square were the centres for 5,874 voters out of 29,900 odd on the register,—that is to say, about one-fifth of the electorate.

Before I pass to conditions before polling day, I should say that much, if not all, of the trouble would have been avoided if there had not existed coloured cards indicating which side the voters were supporting. The electorate in Ceylon consisting largely, as it does, of ignorant and illiterate persons who might be unable to distinguish between the respective ballot boxes, separate colours are assigned to the rival candidates, who then get cards printed, each in his own allotted colour, having thereon the names of the voters with their numbers as appearing on the register. These cards are then distributed in the houses of the voters by the rival candidates and as a result voters often have a number of cards at their disposal. Intelligent and independent persons would not use them, perhaps; cautious or timid persons like Jayaweera would carry both cards in their pockets. It is claimed that the use of these cards saves time and trouble when the voters present themselves before the clerks of the Presiding Officer preparatory to entering the cubicles for voting. The practice seems to be that before they enter the polling station the voters are taken to the respective headquarters of the candidates, ostensibly for the purpose of seeing that their names and numbers have been correctly entered. In this way each candidate is able to have a fair idea of the support he is receiving. But the cards serve another purpose, for those who desire to impersonate are furnished with an easy means of knowing and bearing in mind the names of those whom they are to impersonate, and especially during a busy time they might easily obtain ballot papers from the Presiding Officer's staff. In some cases impersonators were detected because they could not give the names correctly.

The polling agents of the respective candidates are required to preserve secrecy but are usually deeply interested in the results. It seems to me that the practice of using these cards is a gross violation of the secrecy of the ballot which the law provides for, and that ignorant voters, instead of being protected, are led to disclosing their choice, not merely by coming in the cars of the respective candidates but right up to the time

when they are given their ballot papers. Many of the arrangements made appear to be for the protection of the Presiding Officer and his staff and for the assistance of the candidates and their agents rather than for guarding the interests of the voter, who is the chief factor at an election. In my opinion rules should be framed prohibiting the distribution of coloured cards and regulating entry to the polling station. If the presiding staff must be assisted, then only cards of a neutral tint should be allowed; and if candidates must have what they call "offices", care should be taken that these places are at a respectable distance from the polling stations and that the voters are not compelled to go there and disclose their choice. A space in front of the entrances should be kept clear of the public and voters should not be allowed to linger unnecessarily about the entrances. At most places the respective officers were too close to each other and where the electorate was large the opposing groups might easily be led into becoming hostile camps.

Coming to the conditions before polling day, there is ample evidence that the electorate was intimidated and the intimidation was so widespread as to have the appearance of being organized. Here again the more respectable persons were left alone and the more courageous were not cowed by what they saw or heard. Pressed to give instances of persons who had not voted owing to intimidation, some of the earlier witnesses for petitioner ventured to give some names. There was some substance in the contention that very few of those intimidated had been called, and the explanation put forward on behalf of the petitioner was that that type of person would fear even now to come into the open.

A witness who gave evidence for the petitioner at an early stage of the proceedings, one Arunasalam, was pilloried in a paper called "The People", also conducted by Mr. Goonesinha. The very next day an explanation was published that the offending remarks had found their way into print in spite of the editor having scored them out. The matter was brought to my notice but I thought it sufficient at that stage to do more than warn the respondent that such conduct tended to lend support to the contention that intimidation of various sorts was a weapon which his party had freely used and that I would accept the explanation, unsatisfactory though it was, in the hope that there would be no repetition of such comments.

Respondent did call a few of those named to say that they had voted but this only threw into greater prominence the evidence given for the petitioner. They were mostly retired old gentlemen who obviously did not appreciate the position in which they found themselves. Witnesses for the petitioner had mentioned the Emmanuels among those who had not voted. Respondent called one Mr. Emmanuel, a retired Government servant who lived in a nook away from the main roads, who stated that he and his wife had driven down in the evening in their own car to the Cathedral Girls' School where they had recorded their votes. Mr. Emmanuel admitted there were other Emmanuels in the Kotahena area.

Then a Mr. Gonsal was called, who had voted in the evening at St. Benedict's College. He professed to know very little about his wife and other inmates of the house but stated that some ladies did call to see

his wife on the morning of polling day. It is hardly likely they would have gone there only that day without previously canvassing these votes. Mr. Beling, of Hill street, rather baffled Counsel. Properly understood his evidence was not adverse to petitioner.

Respondent opened his case by calling Mr. Goonewardene, a retired surveyor of the Municipality, to contradict the evidence given by Mr. Proctor Corea as to the conditions in his neighbourhood and to explain why he had not voted. This witness stated that although he and his wife and children had voted previously he had taken no interest in this election as he was unwell during the whole of April with boils on his legs which prevented him from wearing his clothes and going out. He denied that Proctor Corea had spoken to him either before the election or after and said that the Proctor had spoken to him only on October 23 and asked him why he and his children had not voted; that is to say, that Proctor Corea had been spoken to only just before he (Mr. Corea) gave evidence in Court, and it was suggested that he had done this in order to provide himself with some excuse for giving false evidence. I prefer to accept the evidence of Mr. Corea. Goonewardene had not even seen the Police patrols or the Police officers on that road although his house adjoins the street and he was constantly on the verandah. He regarded election time as being abnormal. He seemed to have a great grievance against Mr. Corea because he had failed to be elected to some office in a society connected with the church. He believed that in those elections there should be no canvassing at all and thought Mr. Corea had influenced those elections. They were held in June this year, after the by-election now in question. He said he would have voted had he been well, thus contradicting his earlier statement that he regarded elections as a nuisance. He admitted that as late as Easter Sunday he had been attending service twice a day and was surprised to learn that Easter Day was April 13.

I need not discuss the evidence as to general intimidation in detail. It will be sufficient to set out chronologically some of the incidents which occurred prior to the election.

Some statistics with respect to previous elections were furnished by respondent and certain percentages worked out from which I was asked to infer that no appreciable number of voters had kept away from the polls. I cannot accept this argument. It is impossible to assess the value of the figures without being in possession of all the facts relevant to each election. In 1931, 43,961 voters were on the register; in 1936, 32,718; and at this by-election 29,984. There is no evidence as to why the electorate diminished. Petitioner's supporters were said to be very largely persons permanently resident in the area. Was it the labouring classes who had moved or was it the reverse?

Mr. Davidson had found the biggest rush in Grandpass at midday. That was not the state of things on this occasion. Was it due to a change of habits or had the population shifted?

In 1931, 20,220 had polled; in 1932, 21,097; in 1936, 19,931; and at this election 16,526. Notwithstanding the reduction of the number on the register, the number of those actually polling had remained fairly constant from 1931 to 1936, and on each occasion the petitioner or his

wife had been elected, that alone indicating that the number polling for them must have been ten thousand or more. On this occasion the petitioner obtained 6,734 votes. The number of votes he failed to obtain is roughly the same as the difference between the number who polled in 1936 and the number that polled at this election in 1941. It would be unsafe to argue that these 3,000 voters had been kept away by reason of intimidation for that would be assuming that his voting strength had not altered since 1936. The number on the register had fallen roughly by 3,000. It would be unsafe to deduce that these were the 3,000 whose votes the petitioner had failed to get. There is no evidence that the petitioner had lost popularity; he is still the Municipal member for the area or part of it and has been Mayor twice since 1936. At his interview with the Police on April 7, long before the election, he had stated that since 1936 rowdyism had increased considerably in the electorate. There are so many things to be considered before any deduction can be made from these figures that I can attach no importance to them.

Regarding the Law, Article 74 (a) sufficiently explains itself. Counsel for respondent referred me to the *Thornbury Case*¹ in support of his contention that intimidation at one or two stations was not sufficient. The decision in that case must be confined to the facts of that particular case. In that very case Mr. Justice Field remarked—“Mr. Charles has compared this case with the facts in the *Durham Case*, which is not a safe mode of arguing, because the facts differ so much in different cases, and so much depends upon the view of the people who are called to give evidence”. Later he observed—“It seems to me that the question which I have to decide is whether all the electors of the other divisions of the constituency are to be disfranchised for what was done in the three divisions, and a fresh election held with all its turmoil and excitement. That will have to be done if I am satisfied that there has not been that free exercise of the franchise which everybody is entitled to have, and that the absence of that has been caused by intimidation and riot”. There was evidence in that case that out of 23 polling districts only three were affected by what was described as “very disgraceful outrages” perpetrated on polling day. Out of 11,333 voters on the register, 9,529 had gone to the polls; in the three districts in question the number was only 789 and of these all but 87 voted.

In the *Drogheda Case*² it was urged that the onus was on the petitioner to show that the undue influence led to the majority obtained by the respondent because it was impossible for respondent to prove the negation of this. Mr. Justice Keogh commented on this as follows:—“I must say at once that the argument put forward by the respondent is one from which I wholly and entirely dissent. It is subversive, in my mind, of the whole principle of freedom of election. It is said by the Counsel for the respondents that freedom of election is secured provided the majority are shown to have had the power of recording their votes. I deny that altogether. This was not solely a contest between the respondent and the petitioner. There is another and greater interest than belongs to either of them; there is the public interest. The humblest individual in the whole of the constituency

¹ O.M. & K.I.F. 65

² O.M. & H. I 252.

has as good a right without fear or intimidation to come into the Court-house upon the day of election as the richest man upon the register, and as good a right as the great majority of the constituency. Take it that a candidate has by the most legitimate means obtained the votes of nine-tenths of the constituency in his favour, yet it is of vital importance to the public weal that the remaining tenth should be able to record their votes and to express their opinions. If the majority are not only to send their own representative to Parliament, as of course the majority must do, but if they are to drive by terror and with ignominy and with scorn and with denunciation the minority from the poll, what becomes of freedom to this country ?” (p. 225).

Later he remarked (256)—“ But when you come to the case of intimidation, who is there would venture to gauge its influence? Who can tell what is its effect upon the human mind? It is true that you may prove that a man has been told, standing outside the Court-house, ‘ If you go in and vote for Sir Leopold M’clintock, your brains will be dashed out’. That will show that that man has been intimidated, but will any man say that if there were half a dozen voters standing by whilst that same observation is made, the influence of that threat directed specially against him will not operate upon them? How is the limit to be fixed? How is the influence of intimidation to be traced?” “ It is not possible to give evidence in a Court of justice which would carry out the proposition which has been laid down by the Counsel for the respondent here, and if at all it is to be made a matter of evidence, the onus of proof should be thrown upon them to show that when the law has been violated, when gross outrage and intimidation has been organized, that intimidation and that violence have not produced their natural consequences, namely, terrifying the people from the exercise of their legitimate franchise.” (p. 257).

As to freedom of voting he said:—

“ One of the best establishment rules of freedom of election is that the electors shall come to the poll perfectly free as they are registered, that they shall not themselves accept bribes, that they shall not be coerced, and that they shall not be intimidated ; and if, as regards any single vote it is proved to the satisfaction of the Court that any such voter has been so acted upon it is the imperative duty of the Court to resolve that that is not a good vote.” (p. 257).

He quoted with approval the *Dungarvan Case* in which it was laid down that “ Two great principles were always sought to be maintained; first that the election should be free, and second, that the character of the candidate should be pure in regard to the election.” (p. 258).

In the *North Durham Case*¹ Mr. Baron Bramwell dealt with some interesting points regarding the reception of evidence and distinguished between Intimidation within the statute (which must be intimidation practised upon the individual) and General Intimidation. In the course of his judgment, he said—

“ But where it is of such a general character that the result may have been affected, in my judgment it is no part of the duty of a Judge

¹ *O’M. & II 157.*

to enter into a kind of scrutiny to see whether possibly, or probably even, or as a matter of conclusion upon the evidence, if that intimidation had not existed, the result would have been different. What the Judge has to do in that case is to say that the burden of proof is cast upon the constituency whose conduct is incriminated, and unless it can be shown that the gross amount of intimidation could not possibly have affected the result of the election it ought to be declared void." . . . "Now in questions of this sort one must look not only to the amount of the intimidation but to the absolute majority which has been obtained. . . . Now, I think if it were otherwise, and if one were told that partial intimidation would avoid an election, although it were certain that it had not affected the result of the election, the consequence would be that a few mischievous persons might upset every election. On the other hand, if one were inclined to go into a kind of scrutiny the consequence would be that one might make a very great many mistakes; besides, I am of opinion that where there has been so large an amount of intimidation that it is uncertain whether the result would have been the same without it, it cannot be said that the election was free, or that it represented the real opinion of the constituency, but that it must be held void on account of that uncertainty." (p. 158).

*The South Meath Case*¹ dealt with the abuse of spiritual influence at an election. Counsel sought to extend the principle to the use of a racial cry on the present occasion, for the evidence is that the Sinhalese were not merely invited to vote for the Sinhalese candidate but were branded with bastardy and disgrace if they voted for the petitioner, the Tamil candidate. There is much force in the contention. In the course of his judgment, Mr. Justice Andrews again emphasized that freedom of election was absolutely essential to the validity of an election and expressed the opinion that it did not matter by what means that freedom of election may have been destroyed. He said—"It would be absurd and unnatural to contend that there could be a valid election which was not a free election" (p. 139) . . . "It is a mistake to suppose that where general undue influence exists it must be further shown that the result of the election was, in fact, affected thereby. It is enough to show such general undue influence as may be reasonably believed to have affected the result." (p. 142).

In Ceylon we have only two cases on this point, perhaps because previous elections were not challenged on this ground. In the Municipal Elections held last year Mr. Goonesinha was returned for Colombo South. A writ of *quo warranto* was applied for and the question having arisen, whether this court had the power to allow such a writ with respect to municipal elections, Soertsz J. held that the remedy lay. He remarked (42 N. L. R. 339) "It is also true that the English common law and our common law are two different things, but it is a law common to all civilized societies that elections of this kind should be pure and of free choice, that it should be a reality and not a sham." He quoted the language of Mr. Justice Andrews in the *South Meath Case*. The resulting inquiry was held by Hearne J., who set aside the election, remarking

(43 N.L.R. 36): "The right of a voter to go to the poll without molestation or fear of molestation was violated in a most determined and unscrupulous way. I am satisfied that there was no real electing by the constituency at all in the sense that it had not a free and fair opportunity of electing the candidate which the majority might have preferred."

I declared the respondent's election in this case void on the ground of General Intimidation within the meaning of Article 74 (a).

I have not yet touched on the question of General Impersonation. The evidence under this head is scanty and does not go beyond raising a strong suspicion. There is the evidence of a ferryman that a large number of people were crossing over into the Grandpass area on the night before the election. There is evidence that buses, the use of which had been prohibited, had brought people into the Prince of Wales avenue area,—that people like Pavistina were found in the St. John's School area,—that there were stationary crowds at polling stations; but it may be that these persons were not there for the purpose of impersonating voters but for other purposes.

Mr. N. S. Perera, a prominent worker for the petitioner in the Kotahena area, when he went to vote at the Cathedral Girls' School about 10 A.M., found that he had been impersonated. Even the polling agent had failed to detect the impersonation, probably because there were so many Pereras on the list and he was not acquainted with N. S. Perera's full name. So daring an impersonation lends colour to the suggestion of many more such cases having occurred than were actually detected. I do not think the presiding officer's clerk acted properly when he told Mr. Perera that he could have a green ballot paper but that his vote would not be counted.

I now pass to the specific charges. In my opinion specific charges must be established beyond reasonable doubt by evidence which is clear and reliable.

Six charges of *treating* were made, and of these only one, in my opinion, has been clearly established. Let me first deal with the cases which have been cited.

*The Carrickfergus Case*¹ dealt with the word "corruptly" and Baron Dowse said that he knew of no better definition of the word than that given to it, in the *Launceston Case*, namely, "with the intention of producing an effect upon the election." "Corrupt treating", he added, "must then mean with the object and intention of influencing the vote." In the *Hexham Case*² Mr. Justice Cave said:—

"With reference to treating it is otherwise, a very small amount is sufficient to procure a great deal of popularity, because, looking at the very wide extension of the franchise, there are in every constituency a considerable number of men who do not take politics seriously at all, or attach much importance to one side or the other. They are perfectly ready to vote for the man who is popular, and if by reason of treats and picnics you can produce a general feeling that the candidate is a good fellow, and that he is willing to give a poor man a supper or treat or entertainment of this kind, and if that idea gets

¹ O'M. & H. III 90

² O'M. & H. IV 143

generally spread over the division an enormous amount of popularity is produced by it as against another association which does not resort to that sort of thing." (p. 147).

In the *Bodmang Division Case* Mr. Justice Grantham said :—

"It is necessary when dealing with charges of treating to consider carefully the motive of the person charged, and to determine whether he was really committing a criminal act with a criminal intent. One element I always take into my consideration on such occasions, and that is the character and antecedents of the person against whom the charge is brought."

Mr. Justice Lawrance said :—

"There is a clear distinction between bribery and treating. In cases of bribery there is always something in the nature of a contract. 'If you give me a sovereign I will give you a vote', or some such understanding, but treating is an entirely different matter. In treating it is not necessary that the person treated should belong to the opposite party, whereas it is of no use to give money to a man who is going to vote for you already, the money must be given to the other side in order to draw another vote. But if you give drink to a man with the intention of confirming his vote and of keeping up the party zeal of those believed to be already supporting your candidate, then that is corrupt treating."

In that case an experienced election agent had arranged for a garden party to be given by the parents of the candidate. Mr. Justice Grantham said :—

"No one who has heard the history of the garden party can doubt for a moment that it was corrupt treating. It was held for the purpose of affecting the election and as a means of gaining popularity for the candidate."

Two of the charges affect Mr. Goonesinha. The one placed at Gintupitiya has not been sufficiently proved. The other is alleged to have taken place at the house of Ferdinandus in the afternoon of April 25. He lives at Church street in Mattacooly, opposite the house of Mr. Proctor Gomes, petitioner's polling agent, who had been away on a holiday until that day. Mr. Gomes' evidence impressed me as being reliable. He was not cross-examined as to credit and even respondent's Counsel relied on his evidence with respect to the treating and could only suggest that he had made a mistake with regard to the presence of Mr. Goonesinha. I cannot accept that suggestion.

Mr. Goonesinha, Mrs. Jayewardene, and Lawrence gave evidence to the effect that, after a tour of the election centres in the morning and work in the Labour office, Mr. Goonesinha had lunch and then rested at his bungalow so that neither he nor Mrs. Jayewardene could have been present in Church street as alleged. The evidence is that there was much activity in Goonesinha's bungalow that day, rosettes and posters, &c., being got ready for distribution. Lawrence, who had been out

all the morning, assisted in these preparations and himself went out distributing them along with another. When he left the bungalow at 4 P.M., Goonesinha was still there, he says; I cannot believe that a person of Goonesinha's dynamic energy would spend a couple of hours in a *siesta* on such an important day.

On the other hand I find it hard to believe that Mrs. Jayewardene emptied small coins into his cupped hands after his car had halted on the public road opposite Ferdinandus' house while witnesses in Gomes's garden and at the gate were looking on and that Mr. Goonesinha openly carried this money into Ferdinandus' house. No charge of bribery had been made, and the petitioner's Counsel was not responsible for eliciting this evidence. But the fact that it came out in cross-examination does not make it any better. In my opinion there is a grain of truth in what the witnesses say. It may be that Mrs. Jayewardene did empty something from a capacious bag into Goonesinha's hands and that in doing so some coins fell on the road and were picked up by street urchins, thereby leading the witnesses to draw incorrect inferences. Possibly what was emptied were some rosettes for a dozen workers in that neighbourhood.

It is alleged that after Goonesinha and his party had left, a man went out of the house and was seen returning later with a rickshaw which had its apron up on a bright sunny afternoon; that the rickshaw was taken to the back of the house and some pots and bottles, presumably containing toddy, were taken out of it into the house, that later people began coming in and there was much merriment and eating and drinking going on.

Mr. Gomes had by then been called away owing to the illness of a relative of his and did not return till about 9 P.M., when he was told by the witness Benedict Fernando that treating was going on there, Fernando hinting broadly that there should be a similar distribution of money and similar treating on their side. Gomes refused to believe Fernando when he described what the people had been eating. He believed that Fernando had been told what he pretended he saw or else had drawn on his imagination. It may be that Gomes was concerned with repelling Fernando's suggestion, but this explanation was not put to Gomes and I must take his evidence as it stands. He said that Ferdinandus's house was very poorly lighted by an oil lamp in the verandah, that before he left he had seen a crowd swarming in like bees, and that when he returned the place was still full of people and there was shouting and cheering going on. One very strongly suspects that treating *was* going on there but suspicion is not enough.

Another charge of treating is placed at Prince of Wales avenue on April 24, two days before the election, when the respondent and about twenty persons, it is alleged, went into a tea boutique, of which the witness Soysa was in charge, while Goonesinha remained on the pavement; that one of them produced a parcel containing two bottles, the contents of which diluted with water they all drank, except the respondent, who merely poured out the first drink; that one of the company said "Everyone of you must give your vote to our poor gentleman," referring to the respondent, who had been commended to the electorate on the ground, that he was a poor man. This incident is alleged to have

occurred about 2.30 P.M. Soysa himself was not a voter but there was a voter working in that boutique. The party had not inquired for voters nor was the liquor offered to anyone else in the boutique, which adjoined petitioner's "office". Soysa left the locality in September, and went to Kalutara. He impressed me favourably but Mahawela who was called to support him did not. I think the incident is probably true, but the party that went in seems to have consisted of canvassers who had been going about on a hot afternoon; respondent was suddenly confronted with two bottles of liquor and asked to do the honours of the occasion, and I do not think he realized he was doing anything improper or had any intention of influencing any voter there. It must be remembered that he is an ill-educated man. In the circumstances I am not prepared to convict him of the charge.

The next charge affects Mr. Razik and is said to have taken place at the respondent's "office" at 241, Grandpass road. Razik stated that he was in charge of that area, of which he had been at one time the Municipal member, and that he was respondent's polling agent in Lukmanjee square. He had arranged for the "office" and only the verandah had been allotted to him, the agent of the landlord taking him round and convincing him that the rest of the building was full of copra. The verandah was quite sufficient for their purpose, said Mr. Razik. Neither the landlord nor his agent was called, and if Razik had not wanted more space it is difficult to see why he was taken round the place. It is also hard to believe that copra would be stored such a length of time as to fill a capacious building, not merely the rooms being full but the hall also being filled with copra, thus impeding the removal of copra from the rooms, presumably the older stock. Petitioner's witnesses had deposed to treating inside the house and no suggestion was then made that only the verandah had been available. Besides, there is the evidence of Inspector Khan, who had relieved Inspector Jonklaas on the 24th and acted for him till April 30. Khan was not questioned with regard to this building by the respondent who called him, but in cross-examination he said that he had seen no persons in red on the verandah of this "office" but possibly they were inside the house. There is also the evidence of the ferryman who says that a number of people crossed over that night on their way to this office. The gathering of voters into one place, if not the treating of them, appears to have been commonly practised by respondent's agents. Mr. Razik states that he visited this office on the evening of the 25th in order to see that arrangements were satisfactory and then went about 7.30 P.M. to a house close by to attend a function there, having sent his car ahead. Taking such interest as he did, it is hard to believe that he did not come back to see how things were going on in the office. The charge, however, must be established not by defects in the defence but by positive evidence called by the petitioner. I do not trust the evidence of Stephen and Vincent Perera. Razik gave me the impression of being malicious when he described the witness Devaraj Das as a mendicant, denied he was a Brahmin, and was even certain he was not a voter and had not voted. When Das was being examined there was some difficulty in tracing his name in the list of voters at the moment the question was raised, but Razik stated positively

that he had had the list with him, had scrutinized it, and that the name of Das was not there. He was confronted with the list and shown that Das's name did appear there. As polling agent for respondent, Razik could hardly have failed to notice the name of Devaraj Das, a man whom he had known before, nor have failed to notice such a conspicuous figure give his vote. Das is an ex-soldier, who had served in the last war in a Brahmin unit. On being disbanded he had earned an honourable living as a travelling photographer and later became a priest, succeeding his father. I am not prepared, however, to act on the evidence of Das for he exhibited very strong partisanship. I hold this charge to be not proved.

There remain the two charges which affect A. J. S. Perera. He is alleged to have treated a number of persons in the vicinity of respondent's headquarters in Prince of Wales avenue on the night preceding polling day. The evidence is neither satisfactory nor sufficient to bring home conviction on this charge.

He is also alleged to have treated voters at his residence, No. 71, Stace road, Grandpass, on the night preceding the election, and on this charge I hold that the evidence is both sufficient and reliable. I would particularly emphasize the evidence of the witness Wanaguru. He is an Ayurvedic physician practising in that locality and is also a lecturer at the Ayurvedic College of Medicine, on the Board of Management on which Mr. Razik serves. Wanaguru supported the petitioner's candidature but did not take an active part.

Shortly after the election he met Proctor Saravanamuttu and in the course of conversation said that it was not surprising the petitioner did not succeed since he had not treated voters as the other side had done. He had no suspicion at the time of the value of his observation and seemed embarrassed at being called as a witness. He was reluctant to do more than give a minimum of evidence and was not cross-examined. He admitted the conversation with the Proctor.

It was suggested for the respondent that in a weak moment he had agreed to give false evidence and later regretted his decision. I do not think that is the explanation of his attitude. He stated that he knew that A. J. S. Perera's house was the headquarters for the respondent in that road, he had seen decoration and red flags in front of the house and people going in and out the evening before the election. Having had occasion to pass the house between 4.30 and 5 P.M. he had seen people on the premises and others moving about in the verandah. He said he had seen a *senega* (crowd) in the premises and immediately corrected himself and said he had seen 7 or 8 persons, trying to make out that the word *senega* was appropriate to such a small collection of persons. This is not true. The word *senega* means a crowd, a large number of persons and, if it did not, there was no reason for the witness to correct himself. Coming back about 6 P.M. he says he saw on the road by the house three or four cars halted; there were then some 12 or 15 persons in the garden besides those in the verandah; one or two persons were going in and coming out and the people seated were laughing and talking, having glasses in their hands. He inferred the people were being treated there.

The witness Arunasalam lived opposite A. J. S. Perera's house and was actively canvassing for petitioner; he was on friendly terms with his neighbour, who had once even lent his mother a car for a wedding. Arunasalam spoke of a luncheon party on the Sunday, *i.e.*, April 20, at which Mr. Goonesinha, the respondent, Dharmasena, Jayasinghe (the Secretary of the Labour Union), with Mrs. Goonesinha and Mrs. Jayewardene, had been present and remained for about two hours. On Mr. Goonesinha's arrival he attracted a crowd, as usual, and addressed the gathering of nearly two or three hundred people.

The luncheon party itself was an innocent affair and I see no reason why this witness should have invented it. Goonesinha, Razik, Reyal, Dharmasena, all pretend to have given A. J. S. Perera's house a wide berth although, as the evidence shows, he was an enthusiastic worker for respondent and clearly his agent for Stace road, and Goonesinha and others of the luncheon party were taking a particular interest in that area. Perera attempted to make out that he had taken very little interest in respondent's cause, that having been invited to support his candidature only about April 17 he did nothing more than attend a meeting (at which he was surprised to find himself put down to speak) and ask his clerk and father-in-law to canvass the voters along Stace road, while he himself spoke to a few of his neighbours at the meeting. He said he had never spoken to the respondent at any time. He denied having spoken to Arunasalam but admitted having lent his mother a car to carry a bride to a wedding. He was never in the habit of keeping liquor in his house, and nobody came to his house the evening before polling day. Though a person who did not take any liquor even when he was ill and had not an ounce of liquor in his house, he was nevertheless the renter of the toddy tavern at Kandana and was tapping about 900 coconut trees for toddy. He admitted that the number of trees so tapped had gradually decreased but denied that the number had been reduced by order of the Excise Department or that the reason for this was that he had been supplying toddy illicitly to one Paulis Perera, who ran the Kochchikadde tavern in the electoral area. He displayed a marked reluctance to admit that he knew anybody of the name of Paulis Perera. The documentary evidence proves that he was required to reduce the number of trees tapped for toddy.

Arunasalam and other witnesses deposed to their having seen barrels of toddy brought into Perera's premises in a green motor van, which he owned. To meet this evidence Perera gave a history of his motor cars and vans. He had owned a Baby Austin car, which he had sold 8 years ago, he said, but he had to admit he had converted the car into a van and later sold it in September, 1939, bought it back the following month and sold it again in February, 1940. He denied that he had transferred it to Paulis Perera, just as he had denied earlier that he owned an Austin van, but it was to one Paulis Perera he had sold the van in February. He owned another van, also painted green, which he sold on December 5, 1940, to one Srinivasa Rao, who did business in grain at the Old Town Hall Market in the Pettah; he had then bought a lorry on September 16, 1941.

A. J. S. Perera is a contractor supplying provisions to many institutions, chiefly hospitals. He had in his house a refrigerating room.

He also had a place of business at the Old Town Hall Market. He explains the sale of the van in December, 1940, by saying that at that time he had lost the contract for supplying provisions to the Hendala Leper Asylum, but he had other contracts at the time, one of them to supply a hospital near Gampaha, about 18 miles from Colombo. He said he had transferred the refrigerating room.

Srinivasa Rao was declared insolvent in April, 1941, and the van was seized on the 17th when it was lying opposite the Old Town Hall Market. The seizure report indicates that the goods seized elsewhere had been delivered to Rao himself but that guards had been placed over the van. The seizure was terminated in May and Rao appears to have sold the van in July. One needs to know a great deal more before one can be certain that this van was not available a day or two after the seizure: for example, security may have been given for its safe custody. Rao dealt in grain, which Perera would need for his contracts. Rao went insolvent shortly after his alleged purchase, and when he bought the van had stated that it would be kept at 71, Stace road. It has been explained that this was due to a mistake, A. J. S. Perera's name having first been entered on the form and his address given, and when a correction was made the name only was altered and not the address. The explanation may be correct but there was no explanation as to where Rao would keep his van; quite clearly not at the Old Town Hall Market. Perera said he did not know where Rao lived and there is no evidence by Rao himself. Even if the sale had been a genuine one there was nothing to prevent Perera from obtaining the use of a van.

A. J. S. Perera created a very bad impression on my mind and I do not trust him on any matter of importance. I hold the charge against him has been made out and cannot say that the treating was done without the sanction or connivance of the respondent and his prominent supporters. I have made every possible allowance in their favour with respect to other places, where at any rate there were large gatherings of people and considerable merrymaking on the night preceding the election, but in this instance conviction is irresistible.

Coming to the charges of Undue Influence, I propose to confine my attention to only three of the eight charges pressed because the evidence regarding the others is either inconclusive or insufficient.

On April 19, there was a meeting in support of the respondent at a place called Ingurukadde Junction. Mr. Goonesinha, who says he came back to Colombo on the 19th, presided and spoke at this meeting. According to him and some other witnesses for respondent, he got into his car immediately after the meeting and went home; but according to the evidence for the petitioner, soon after the meeting Goonesinha, with the respondent and others, followed by a large crowd, went along Nagalagam street. The gathering was described as a procession. It was contended that processions could not be held without a Police permit. This, however, was not an organized procession but just a spontaneous gathering of people such as Mr. Baker saw at Prince of Wales avenue on election day; that gathering certainly had no permit.

The 19th was just one week before election day and that week would naturally be one of great activity. It was on the 20th that the luncheon

party took place and many of the charges of intimidation are placed within this week. It is alleged that when going down Nagalagam street Mr. Goonesinha intimidated a man called Hettiarachchige John Singho, who described himself as proprietor of an eating-house called the Tissagiri Hotel. Goonesinha had in 1939 initiated a movement in the nature of a boycott of Indians, who he felt were depriving the people of this country of their means of livelihood, and therefore he encouraged the opening by Sinhalese of places of business. John Singho says the movement had strong support in Nagalagam street and he opened his hotel there, Mr. Goonesinha performing the opening ceremony as he had done in the case of many others. In this by-election John Singho supported the petitioner as he had previously supported Mrs. Saravanamuttu. He says that, on April 14, one Sonny Peris told him that Mr. Goonesinha wanted to see him at the Labour Office. Goonesinha was in Colombo that day. John Singho did not go, nor did he attend the meeting at the junction. But after the meeting the procession halted in front of his hotel and Mr. Goonesinha called him up and asked him if it was not wrong to work for the Tamil man; pointing to respondent he asked him to work for him. John Singho then said he had already promised his support to the petitioner, and when Mr. Goonesinha pressed him he replied that he was not a man of two words. Mr. Goonesinha then got very angry and threatened him, saying he would not allow him to run that hotel much longer. Thereupon the crowd jeered and laughed and hooted at him, says John Singho, and on the succeeding days people would gather in front of his hotel and warn customers not to go there because the place was being run by Tamils. He says they used abusive language and threats of violence, so much so that neither he nor his wife thereafter made any effort to support the petitioner's candidature nor did they even venture out on polling day. On being reproached by petitioner some time later he told him the whole story. John Singho's hotel lost custom for a time but he says that he thought it best not to complain to the Police as he hoped the trouble would die out, as in fact it did. He denied having gone to Mr. Goonesinha about five months after the opening of his hotel and asked him for help, which was refused; he said he had never spoken to Mr. Goonesinha since that day when he opened his hotel, which had done well from the very start.

John Singho was supported by his nephew and I accept their evidence. I do not believe the explanation offered that the man was offended because Mr. Goonesinha had refused to give him a loan.

On the same day, April 19, the same procession passed the house of the witness Gabriel Perera, to whom I have already alluded. They halted near his house and indulged in abuse.

The next charge relates to polling day. Gabriel Perera and his wife were held up at Ingurukadde Junction by a threatening crowd and were compelled to turn back. In that crowd they recognized one Julian Fernando. Julian Fernando is a stalwart man whom Gabriel's wife described as the local giant. He is a contractor living in Nagalagam street, who states that though he voted he did not put in any work for the respondent as he was a diabetic subject, suffering from eruptions on his legs. He had therefore asked his son, a youth of 18, and his workmen

to canvass votes for respondent; he employed about 20 men. Julian Fernando admitted, however, that he was able to move about a little and that on polling day he had not only voted but remained there for half an hour after voting; he was carrying on his business as usual, had gone about in May seeking relief for flood victims and he had been to see the Mayor who ordered him out—but not for becoming abusive. He had written to the "Viraya" about the incident (P 39). Julian maintained that the statements in the paper produced (P 39) were correct up to a point. He said that in former years Goonesinha had entrusted him with the relief work, allowing him to decide to whom relief should be given. He had expected the same treatment in 1941 but the Charity Commissioner had not done his duty and issued only 18 relief cards after going round.

Julian Fernando had been charged once with abuse but was discharged; with obstructing the Vidane Arachchi of Kotahena but the case was settled; with aiding and abetting forgery and he had pleaded guilty before the Supreme Court but that happened 25 years ago; fairly recently he was charged with assaulting Inspector Rutland and although he had done nothing he accepted the Magistrate's advice and pleaded guilty as the case had been going on so long; he had not then locked up the inspector, said he, but that was done by one Peris.

I accept the evidence of Gabriel Perera and his wife and hold that Julian Fernando was an agent for the respondent and was guilty of using undue influence towards Gabriel Perera.

The third charge relates to Simon Rodrigo, the ferryman who plied a boat between Maligawatta and Chapel place. The evidence shows that one Simon Perera once plied a boat at the same place for a Muslim, that another Muslim had started a rival service and Simon Perera and his patron had to give way in 1925 or 1926, after carrying on the service for 9 or 10 years. The business of the successful Muslim then passed to Simon Rodrigo, who has carried on the ferry service for the last 12 years without a rival and has acquired some influence in the neighbourhood.

Simon Perera became an Oxygen-welder and had lived for the past 5 years in Peliyagoda, working for the last 15 or 16 years under a Chetty. Simon Rodrigo lived in School Garden where there were about 200 voters, mostly Tamils and a few Malayalees; he canvassed for the petitioner, having many opportunities for meeting voters who used his boat. He was on fairly firm ground since he had a permit from the Government to use the landing-place at one end and had an arrangement with the lessee of the premises belonging to the church, which was the landing-place at the other end.

Simon Rodrigo stated that about four days before polling day, about 6.30 P.M., he saw Mr. Goonesinha and a large crowd in School Garden. Another witness, William Sinno, says that hearing that Mr. Goonesinha had come there he followed him and saw him climb on a chair and make a speech; that thereafter Mr. Goonesinha went lower down the garden and made another speech and it was then that Simon Rodrigo turned up. Goonesinha denies that he made any speech in any garden or in this place at all, or that he knew either Simon Rodrigo or William Sinno, about whom he made no inquiries since he was convinced that their

evidence was false. Goonesinha, however, says he sent for Simon Perera, a native of Maligawatta, within the area which Mr. Goonesinha serves as a member of the Municipality, and Simon Perera was called as a witness.

Goonesinha admitted that in 1936 he had had a loud-speaker attached to his car for electioneering purposes, that he would drive his car into a garden and make a speech from it, the loud-speaker being intended to carry his words to such in the tenements of each garden as did not come out and hear him. It is strange that Mr. Goonesinha should not have made any speech in any garden during this election.

According to Simon Rodrigo, one Bempy Singho, a tailor who supported respondent, was present and seeing him there took him up to Mr. Goonesinha who tried to persuade him to work for the respondent. When he refused to break his promise to petitioner, Mr. Goonesinha threatened him with the loss of his licence, reminding him of the fact that he held his licence from the Municipality. Rodrigo complained that very night to Mr. Proctor Saravanamuttu, who told him not to be alarmed, but nevertheless he was apprehensive. It is urged that the witness must have known that the petitioner as Mayor would have more influence than Goonesinha who had just ceased to be Mayor. Perhaps it was that feeling that reassured him, but still he might well have feared that it was within Mr. Goonesinha's power to make trouble for him. Rodrigo had heard that there was an application for a boat licence by another man but had not taken serious notice of it.

Simon Perera says that about the end of March he applied for a boat licence, giving as his reason that Oxygen-welding was affecting his eyesight. As the result of an accident on October 4, his eyesight had been affected. It took the witness some time to grasp the fact that he was expected to say that Oxygen-welding had been affecting his eyesight for many years and he had therefore contemplated giving up that work and taking to his boat again. He said he had an application drafted for him in pencil by a petition-drawer working near the Town Hall, that he presented it and received the reply R 4, dated May 28, which refers to a letter dated March 31 and asks him to fill in and return the enclosed form. R 4 is addressed to him at Big Maligawatta, Colombo, though he lives at Peliyagoda in a building owned by his employer. It is from this document that one is asked to infer that his application was dated March 31. The application itself has not been produced nor the date of its receipt by the Municipality proved. Because that application presumably was dated March 31, the Court is asked to hold that it destroys the charge. Simon Perera would not have made his application without some backing. He says that he had the support of a Mudalali, who had actually gone with him to have his application drafted. The Mudalali was not called. No reply was received till after May 28 and Simon Perera had taken no action in the matter nor consulted anyone about it. This election petition was filed on May 19.

Simon Perera is still employed under the chetty, still lives on premises belonging to the chetty, and has not abandoned Oxygen-welding.

Nominations had been received before March 31, and the campaign had commenced even earlier, and it is a fact worth noticing that it was

at this stage that Simon Perera would be coming in had reached Simon Rodrigo before April 23. Simon Perera said that an engineer of the Municipality had been round to inspect his boat on three occasions; on two occasions he was unable to show the engineer the boat because it had been cut adrift and damaged by Simon Rodrigo and had therefore been taken away and put away in somebody's garden, but no question on this point was put to Simon Rodrigo.

According to Simon Perera the engineer on his third visit had told him that certain alterations were needed but three days later his deposit of Rs. 3 was returned to him. This seemed to me so curious that I put him a few questions in answer to which he confessed that he owned no boat at the time he applied for a licence but had purchased a boat three months afterwards. Assuming that he was referring to an application of March 31, he had not procured his boat till the end of June.

The documentary evidence and the evidence of Simon Perera do not shut out the possibility of Simon Rodrigo's evidence being true. On the contrary they suggest that Simon Perera's application could not have been seriously intended but was made with a view to providing a means whereby Simon Rodrigo could be influenced.

Simon Rodrigo impressed me as a truthful witness. He is supported by William Sinno, a collector of rehts from the tenements situated in a garden in Grandpass road. He had been present in Lukmanjee Square, taking an active part on behalf of the petitioner and had received a blow on the head from a stone thrown after the meeting. He admits he was convicted about 2 years ago but says it was under these circumstances: He was canvassing for a Tamil man who owned a petrol pump; owing to the movement to establish Sinhalese boutiques, in which he also took a part, he was dismissed by his Tamil employer and he then used his influence to divert custom from that petrol station to another; that led to an incident which resulted in his conviction, when he was fined Rs. 10 and bound over for six months.

I accept the evidence on this charge and hold that Mr. Goonesinha was guilty of using undue influence towards Simon Rodrigo.

To sum up—

- (1) The election is declared void under Article 74 (a);
- (2) The respondent also loses his seat by reason of—
 - (a) Treating by his agent A. J. S. Perera;
 - (b) The use of undue influence by his agents, Goonesinha and Julian Fernando.

The question of costs remains to be decided. Respondent is not capable of paying any and it seems futile to make any order. The petitioner has succeeded on the ground of general intimidation, which took most of the time, and also on a few of the specific charges. On the other hand he has failed in many of the specific charges. If costs are to be taxed I should allow him one third of the costs taxable in the highest class of the District Court, but I think it will be in every way better to fix the costs which respondent must pay at Rs. 3,000. These will be the costs unless Counsel has any reason to urge against such an order.

Notice in terms of Article 79 (2) will issue at once on Goonesinha, A. J. S. Perera, and Julian Fernando, to show cause on January 17, 1942, why they should not be reported in terms of my finding. They have given evidence already. If they desire to call evidence or to have a longer date they must inform the Registrar before January 10, and he is authorised to fix some other date after reference to me. I fix the dates having in mind the statutory holidays which intervene.

I wish to add some remarks relating to procedure. This petition was presented on May 19, but the hearing did not begin till October 6. Such delay should be avoided.

On a petition being presented the Registrar should obtain the direction of the Chief Justice and if he decide to nominate a Judge that should be done at once. On security being furnished and perfected the Registrar should have an early date of hearing fixed, if the Election Judge has not already fixed it.

The petitioner is allowed twenty-one days in which to present his petition and in that time he ought to gather the information necessary to state his case with particularity.

The petition in this case merely alleged treating in terms of Article 52, undue influence in terms of Article 53, and general intimidation and impersonation in terms of Article 74 (a). In my opinion such a petition is not what the law contemplates and where specific charges are being made they should be shortly stated. In the *Lancaster Division Case* Mr. Baron Pollock drew attention to the right of the respondent to be placed in possession of the charges within the definite period fixed by the Act and remarked that it would be extremely harsh if time and advantage were given to the petitioner by reason of the general form in which the petition is drawn. Mr. Justice Bruce said he would wish to see in a petition separate paragraphs setting out the character of the offences charged against the respondent. Rule 5 of the Ceylon Order in Council requires not only that the grounds relied on should be stated but also a brief statement of the facts relied upon. These facts seem to correspond with the "short particulars" of English practice.

The provision which authorises an order for particulars is not meant to justify vague general charges of specific offences but to prevent surprise and unnecessary expense and to cause a fair and effectual trial. Respondent should apply for particulars if he desire any, at the earliest moment. Lists of witnesses should be filed, with notice to the opposite side, within a reasonable time and should sufficiently indicate who the witnesses are. No further lists should be allowed after the hearing begins without an express order by the Judge. In this case the respondent applied for particulars and also for a precis of what each witness would say. The latter part of his application was disallowed but after the hearing began he seems to have filed supplementary lists of witnesses and this was discovered by me only at a late stage. He had by then examined a number of Inspectors of Police and moved to cite a number of sergeants. Having been refused a precis of the proposed evidence he went one better and not only had the full evidence for petitioner but

also the cross-examination of his own witnesses before summoning some of his witnesses. Such procedure contravenes an elementary rule that additional evidence should not be allowed after the pinch of a case has been felt and it tends to prolong a hearing unduly. I do not wish to be understood to be attaching any blame to Counsel, who conducted their cases with ability, moderation and commendable expedition. In a previous election petition inquiry I find that the examination of about 40 witnesses took six weeks. It is to Counsels' credit that the examination of 95 witnesses on this occasion took only a few days longer. Had particulars been called for earlier it is possible that a number of charges would not have been made or pursued and a number of witnesses might not have been called.

Election declared void.