1942 *Present :* **Howard C.J.**

GNANAMUTTU *v.* CHAIRMAN, URBAN COUNCIL (BANDARAWELA), FIRST RESPONDENT, AND URBAN COUNCIL, BANDARAWELA, SECOND RESPONDENT.

IN THE MATTER OF AN APPLICATION FOR AN INTERIM INJUNCTION AGAINST THE SECOND RESPONDENT AND IN THE MATTER OF CONTEMPT OF COURT IN CONNECTION THEREWITH.

Injunction—Issue of order for interim injunction—Order restraining interference with petitioner's water supply—Attempt by second respondent to forestall the order of the Supreme Court—Contempt of Court—Courts Ordinance, ss. 20 and 47—Civil Procedure Code, s. 663.

On November 10, 1941, the petitioner gave notice to the second respondent, the Urban Council of Bandarawela, of an action which he intended to institute in the District Court of Badulla to obtain a perpetual injunction restraining the Council from interfering with the water supply to petitioner's premises at Bandarawela.

On November 11, the petitioner applied to the Supreme Court for an interim injunction against the Council, restraining the Council from interfering with or disconnecting the petitioner's water supply, pending the action. The order for an interim injunction was accordingly issued.

On December 22, 1941, the petitioner made an application to Court by way of motion, asking the Court to take cognizance of the contempt of court committed by the first respondent in disobeying the order of the Court and to direct the respondents to restore the water supply of the petitioner.

Held, that the Supreme Court had power, under section 20 of the Courts Ordinance, to issue a mandatory injunction and to order the respondents to restore the water supply to the condition in which it stood on November 10, 1941.

Held, further, that the 1st respondent, in taking steps to make it appear that the petitioner's water supply had been discontinued before notice of the interim injunction reached him, had attempted to forestall the order of the Supreme Court and was guilty of contempt of court.

THIS was an application for an interim injunction against the Urban Council, Bandarawela, and for an order committing the Chairman of the Urban Council for contempt of court in connection therewith.

H. V. Perera, K.C. (with him *E. F. N. Gratiaen*), for the second respondent.—This application is said to be under sections 20 and 47 of the Courts Ordinance, but it is really only under section 47. The allegation is that the injunction, issued under section 20, was defied by first repondent. A private party cannot obtain relief under section 47. A

matter of contempt of court is a matter which concerns the Court. A mandatory order, as prayed for in the application, cannot be made. The applicant may have his remedy by way of *mandamus* or by action in the District Court. To ask for a mandatory order on the second respondent, in an application for the committal of the first respondent for contempt of court, is an abuse of the process of Court.

R. L. Pereira, K.C. (with him *E. F. N. Gratiaen*), for the first respondent.—As regards the contempt of court alleged to have been committed by the first respondent the sole question is whether work contrary to the order of Court was done subsequent to the receipt of the telegram. An injunction operates from the date of the order—*Kerr on Injunctions, 1914 ed., p. 686.* Notice of the order of Court reached respondent when the new connection had been completed. On the question of the time at which the telegram was delivered, it is submitted that the received telegram delivery sheet (P 12A) is not a public document within the meaning of section 74 of the Evidence Ordinance. It does not prove the correctness of the entry made by the telegraph clerk. That can only be done by calling as a witness the person who made the entry—*viz.*, the telegraph clerk. See, on this point, the remarks of Nihill J. in *Gunasekere v. Gunasekere* [1]. It is submitted that there is no evidence that first respondent attempted to anticipate the order of court by hurrying on the work.

G. G. Ponnambalam (*N. Nadarajah, K.C.*, with him *N. Kumarasingham* and *A. Rajasingham*), for petitioner.—The received telegram delivery sheet is a public document under section 74 (*a*) (iii.), as it is the record of an act by a public officer. The best available evidence as to the time of delivery of the telegram is the entry. In any case the evidence is clear that first respondent forestalled the order of Court by hurrying on the work. In regard to the contention of the second respondent that the Court has no power to issue a mandatory order in proceedings for contempt of court, it is submitted that the Court has inherent power under section 839 of the Civil Procedure Code to order restoration. *Mandamus* does not lie in a proceeding such as this. *Mandamus* lies for compelling a person to do an act which he is under a duty to do, not for undoing what has already been done—*Short on Mandamus, pp. 222, 227.* What the applicant prays for is a mandatory injunction on the Urban Council. If a respondent has information that an injunction is likely to issue and he forestalls the order of court he should, irrespective of the merits, be compelled to effect restoration. Even if the original injunction was improperly issued forestalling would be treated as contempt—*Woodroffe's Law Relating to Injunctions, 2nd ed., p. 506; Daniel v. Ferguson* [2]; *Allport v. Securities Corporation* [3]; *Van Joel v. Hornsey* [4]; *Silva v. Appuhamy* [5].

If the respondent received notice that an injunction was being applied for, that should be sufficient to restrain him from acting so as to anticipate the order of Court, *United Telephone Co. v. Dale* [6]. An order of

[1] *(1939) 41 N. L. R. 351 at p. 357.*
[2] *(1891) 2 Ch. 27.*
[3] *(1895) 64 L. J. Ch. 491.*
[4] *(1895) 65 L. J. Ch. 102.*
[5] *(1899) 4 N. L. R. 178.*
[6] *(1884) 25 Ch. 778.*

injunction must be implicitly observed and due diligence must be exercised to obey it to the letter—*Spokes v. Banbury Board of Health* [1], *Harding v. Tingey* [2], *Re Bryant* [3].

Cur. adv. vult.

May 27, 1942. HOWARD C.J.—

This is an application made under sections 20 and 47 of the Courts Ordinance (Chapter 6) and under section 663 of the Civil Procedure Code (Chapter 86) by motion asking the Court to—

" (*a*) take cognisance of the contempt committed by the first respondent in disobeying the order of Court and thereafter in making incorrect and untrue statements to this Honourable Court and deal with the first respondent as provided by law ;

(*b*) direct the respondents to restore the water supply of the petitioner to the condition it was in on the 10th day of November, 1941 ;

(*c*) make an order as to costs, and for such other and further relief as to this Court shall seem meet."

The first respondent is the Chairman of the Urban Council, Bandarawela, while the second respondent is the Urban Council. The application arises out of an order made on an *ex parte* motion by the petitioner on November 11, 1941, by a Court constituted by Wijeyewardene and Nihill JJ. This motion asked for an interim injunction against the second respondent which was granted by the Court in the following terms :—

"Let an interim injunction issue on the respondent, restraining him from the acts complained of in A (1), (2) and (3) till he shows cause to the contrary. The notice is returnable on the 21st instant."

The acts mentioned in A (1), (2) and (3) are as follows :—

" (1) from interfering or meddling with the water supply to the petitioner's premises Nos. 8 and 10, Poonagala road, Bandarawela ;

(2) from disconnecting the water supply to the said premises ;

(3) from altering or otherwise interfering with the present connection till the matter is finally determined in the District Court of Badulla."

The application does not suggest that the second respondent, the Urban Council, has been guilty of a contempt of court. In these circumstances Mr. H. V. Perera, who appeared on its behalf, has not only contended that a mandatory order as prayed for in paragraph (2) of the application cannot be made, but has also maintained that to join the prayer for such an order with one for the committal of the first respondent for contempt was an abuse of the process of the Court. In this connection he contends that sections 20 and 47 of the Courts Ordinance under which the application is made give the Court no power to make such an order. After careful consideration, I have come to the conclusion that there is no substance in Mr. Perera's contentions. In

[1] (*1865*) *L. R. 1 Eq. 42.*
[2] (*1864*) *10 L. T. Rep. (N.S.) 323.*
[3] (*1876*) *4 Ch. D. 98.*

this connection it is necessary to review the actions of the second respondent from the time when the petitioner commenced legal proceedings in vindication of his rights. On November 10, 1941, the petitioner gave notice to the second respondent of an action which he intended to institute in the District Court of Badulla against the second respondent to obtain a perpetual injunction restraining the second defendant from putting into execution their contemplated acts. This notice was given under section 231 of the Urban Councils Ordinance (No. 61 of 1939), which required the petitioner to give one month's notice of such action. On November 11, 1941, as previously mentioned in this judgment, the petitioner applied *ex parte* for an interim injunction restraining the second respondent. The Court granted this application and the second respondent was restrained from the acts complained of until he showed cause to the contrary. It will be observed that this notice was returnable On November 21. There is on record in the proceedings that notice issued for November 21, 1941, and a record on the latter date that notice had been served. There was, however, no appearance on the 21st. On December 1, 1941, the matter came up before Hearne J., when Counsel appeared for the petitioner and the second respondent. The order of the Court was that the case should stand out and be relisted in due course. On December 22, 1941, the application now under consideration, praying for (*a*) cognisance by the Court of the contempt committed by the first respondent and (*b*) a direction to both respondents to restore the water supply of the petitioner to the condition it was in on November 10, 1941, was filed. On February 2, 1942, on an *ex parte* application by the petitioner, summons was ordered to be issued under section 793 of the Civil Procedure Code on the first respondent. Notice of the application was also ordered to be given to the second respondent. On March 2, 1942, the matter came before Soertsz J., when the petitioner, the first respondent and the second respondent were separately represented. Mr. Gratiaen, who appeared for both respondents, stated that the first respondent pleaded not guilty to the charge of contempt. He also filed a list of witnesses which the respondents desired to be summoned. The case was then listed for hearing on March 23, 1942. On March 23, 1942, at the inception of the proceedings, it was stated by Mr. Ponnambalam, who appeared on behalf of the petitioner, that the second respondent had not issued a proxy to its Proctor and hence Mr. H. V. Perera, K.C., who appeared on its behalf, was not properly instructed. Mr. H. V. Perera, K.C., undertook to see that a proxy in proper form was issued. On March 25, 1942, Messrs. Potger & Keyt, Proctors, filed proxy on behalf of the Urban Council, the second respondent. On May 4, 1942, Mr. H. V. Perera, K.C., stated in Court that, owing to some difficulty over the payment of their fees, neither he nor Mr. Gratiaen would be appearing for the second respondent. After the lunch interval on May 7, 1942, the Court was informed by Mr. Gratiaen that both he and Mr. H. V. Perera, K.C., had received telegrams intimating that the second respondent had again retained them and that he wished that their appearance should be formally entered.

The interim injunction granted by this Court on November 11, 1941, was issued in pursuance of the powers vested in it by section 20 of the

Courts Ordinance. An order for an injunction must be implicitly observed and every diligence must be exercised to object it to the letter. In *Harding v. Tingey* [1], Kindersley V.-C. stated as follows :—

> " With respect to the motions to commit the deft. and the auctioneer for breach of the injunction, they were matters *strictissimi juris*, and it was of the greatest importance that either an order for an injunction or an interim order should be implicitly observed and every diligence exercised to observe it, and where the party served with notice of such order did an act which, unless prevented, would result in that which would create a violation of the order, he was bound to exercise the greatest diligence to prevent such result."

In this connection, I would also refer to the following passage from the judgment of Sr. W. Page Wood, V.-C., in *Spokes v. Banbury Board of Health* [2] :—

> " I do not suppose they had any (I certainly hope they had not any) intention of committing a wilful breach of the order of the Court ; although I was not a little surprised to hear an eminent Counsel tell me, not precisely that he would advise his clients to commit a wilful breach, but that he would not advise them to do what was necessary to comply with the order of the Court. I confess I was surprised to hear that, and I think it due, to the dignity of the Court, to say that that is not the view which the Court can take of any of its orders ; but that the simple and only view is, that an order must be obeyed, and that those who wish to get rid of that order must do so by the proper course, an appeal. So long as it exists, the order must be obeyed, and obeyed to the letter ; and any one who does not obey it to the letter is guilty of committing a wilful breach of it, unless there be some misapprehension, which all mankind are subject to, and which may mislead him upon the plain reading of the order."

With regard to the respect that must be paid to orders of the Court, so long as they are in existence, the following passage from the judgment of the Lord Chancellor in *Russel v. East Anglian Railways Co.* [3] is also in point :—

> " My opinion of the result is, that it is an established rule of this Court, that it is not open to any party to question the orders of this Court, or any process issued under the authority of the Court, by disobedience. I know of no act which this Court will do which may not be questioned in a proper form and on a proper application ; but I think it is not competent for any one to interfere with the possession of a receiver, to disobey an injunction, or to disobey any other order of the Court, on the ground that such orders were improvidently made. They must take a proper course to question them ; but while they exist, they must obey them. I consider the rule to be of such importance to the interests and to the peace and safety of the public and to the due administration of the justice of this Court, that it is a rule I hold inflexible on all occasions. I know not how the officers of this Court are to act with that confidence in the protection of the

[1] *10 L. T. Rep. N. S. at p. 325.*
[2] *L. R. I. Eq. at p. 48.*
[3] *20 L. J. Ch. at p. 261.*

Court, which they are entitled to, if they are uncertain, if he be a receiver whether he is justified in taking possession of the property which he is ordered to take, or to act in the execution of any other order that is to be executed by an officer of this Court. I do not know how the Court can expect their officers to do their duty if they do it under the peril of resistance, and of that resistance being justified on grounds tending to the impeachment of the order. I think it is essential to the dignity of this Court, to its proper administration of justice on behalf of the public and the suitors, that its authority should be obeyed; and if it be supposed that it has been exercised in a manner inconsistent with law or inconsistent with the interests of parties, that they should come in a proper mode to question that, and that disobedience is by no means the mode proper for that purpose."

The local case of *Silva v. Appuhamy* [1] also follows the English authorities and establishes the principle that an injunction granted by a competent Court must be obeyed by the party whom it affects until it is discharged. The interim injunction was issued by this Court on November 11, 1941, and it was the duty of the second respondent to observe it implicitly and exercise every diligence to obey it to the letter so long as it was in existence. It is still in existence. Nor has the second respondent taken any step to have it set aside or discharged. Until Counsel addressed the Court on May 8, 1942, the second respondent had adopted a nebulous attitude towards these proceedings and it was a matter of doubt as to whether paragraph (*b*) of the application by the petitioner would be opposed. In these circumstances, I have to consider whether a mandatory injunction should be granted in the terms of this paragraph. In *Daniel v. Ferguson* [2], the defendant, in an action to restrain him from building so as to darken the plaintiff's lights, upon receiving notice of motion for injunction, put on a number of extra men, and by working night and day ran up his wall to a height of nearly 40 feet before receiving notice that an *ex parte* interim injunction had been granted. On the motion coming on, Stirling J. restrained the defendant from further building, and from permitting the wall which he had erected to remain. The Court of Appeal held that this order was right as the defendant had endeavoured to anticipate the action of the Court by hurrying on his building and that what he had erected ought, therefore, to be at once pulled down, without regard to the ultimate result of the action. In the course of his judgment, Kay L.J. stated as follows:—

"After the defendant had received notice on Saturday that an injunction was going to be applied for, he set a large number of men to work, worked all night and through nearly the whole of Sunday, and by Monday evening, at which time he received notice of an interim injunction, he had run up his wall to a height of thirty-nine feet. Whether he turns out at the trial to be right or wrong, a building which he has erected under such circumstances ought to be at once pulled down, on the ground that the erection of it was an attempt to anticipate the order of the Court. To vary the order under appeal would hold out an encouragement to other people to hurry on their buildings in the

[1] *4 N. L. R. 178.* [2] *L. R. 2 Ch. 27.*

hope that when they were once up the Court might decline to order them to be pulled down. I think that this wall ought to be pulled down now without regard to what the result of the trial may be."

Daniel v. Ferguson [1] was followed by the Court of Appeal in *Van Joel v. Hornsey* [2], where Lindley L.J. stated as follows :—

"The case is within the principle upon which this Court acted in *Daniel v. Ferguson*, and upon which I will always act. The Court will not allow itself to be imposed upon by a proceeding of that kind. If builders will take the chance of running up a building in that way, they must take the risk of pulling it down."

The two cases I have cited indicate the circumstances in which a mandatory injunction will be granted. The facts in the present case are very similar. The Chairman of the Urban Council, that is to say the first respondent, was notified on the morning of November 11, 1941, by the Commissioner of Local Government, Mr. Kannangara, that the petitioner, who had already given notice that he would bring proceedings in the District Court, was that day asking the Court to grant an injunction. In spite of receiving this information the first respondent proceeded with the work of disconnecting the petitioner's water supply. To use the phraseology employed by Lindley L.J., in *Van Joel v. Hornsey* (*supra*), the conclusion is irresistible that the work was hurried on as fast as the first respondent could hurry it in order that he might say "I have disconnected it". The first respondent, in giving orders for the disconnection of the petitioner's water supply, was acting in exercise of the powers vested in him as Chairman of the Council. Section 34 (2) of the Urban Councils Ordinance (No. 61 of 1939) is worded as follows :—

"34 (1) . . . . .

(2) The Chairman of an Urban Council shall be the executive officer of the Council, and all executive acts and responsibilities which are by this or any other Ordinance directed or empowered to be done or discharged by the Council may, unless the contrary intention appears from the context, be done or discharged by the Chairman :

Provided that the Chairman in the exercise of his powers under this section (except as regards matters expressly committed to him) shall act in conformity with such resolutions as may from time to time be passed by the Council."

Whether in what he did the first respondent acted in conformity with the resolution passed with regard to this matter by the second respondent is immaterial. The second respondent cannot evade its obligation to conform with the interim injunction by dissociating itself from the action of the first respondent. The interim injunction granted by the Court was and is still in existence and the duty of the second respondent was to comply implicitly with its terms. The second respondent cannot take advantage of the wrongful act of the first respondent in anticipating the injunction. The order of the Court with regard to this part of the application is that the second respondent restore the water supply of the petitioner to the condition it was in on November 10, 1941.

[1] *65 L. J. Ch. 102.*

I will now proceed to consider whether the first respondent has been guilty of contempt of court. An order for committal is *strictissimi juris* and cannot be sustained unless it can be shown upon the clearest evidence that there has been an actual breach of the injunction, *Harding v. Tingey* (*supra*). In other words, the case against the first respondent must be established beyond all reasonable doubt. The first point for consideration is the time at which the first respondent received notice of the order of the Court granting an interim injunction. The telegram giving notice was handed in at the Colombo Courts Post Office at 4.40 P.M. It was received at the Bandarawela Post Office at 5.05 P.M. The Chief Clerk to the Postmaster, Central Telegraphic Office, Colombo, who was deputed by the Postmaster-General to attend on his behalf, produced the received telegram delivery sheet of the Bandarawela Post Office for November 11, 1941. The time of the receipt of the telegram is entered in this document. The time at which the telegram is sent out for delivery is also entered and the time at which the peon after delivering the telegram reports back to the Post Office. This time is stated in this document (P 12A) to be 5.20 P.M. This witness also produced the telegram acknowledgment card (P. 24). The telegram in question, No. 27, is acknowledged by a person whose initials are "D. L. P.", that is to say those of the first respondent. A certified copy of the relevant portions of P 12A and P 24 was produced by the Chief Clerk. This exhibit was P 12. A peon from the Bandarawela Post Office also testified to the fact that he delivered telegram No. 27 to the first respondent, who was on the road opposite the Ford Garage talking to Dr. Rajah. He obtained the first respondent's initials on P 24. Mr. Ponnambalam contends that the evidence of the Record Keeper of the Supreme Court, the Chief Clerk of the Post Office, Colombo, and the Bandarawela Post Office peon, with the documents that they produce, establish the fact that the first respondent received notice of the injunction before 5.20 P.M. on November 11, 1941. P 12A was, in my opinion, a public document within the meaning of section 74 (*a*) (iii.) of the Evidence Ordinance. Such document by virtue of section 77 could be proved by a certified copy by an officer duly authorised to deliver such a copy. This copy, P 12, is certified by the Superintendent of Telecommunication Traffic. The question as to whether this certified copy is admissible in evidence does not arise inasmuch as the original P 12A was also produced by the Chief Clerk who gave evidence. These documents are, in my opinion, evidence that the first respondent received notice before 5.20 P.M. that the injunction had been granted. That evidence of course can be rebutted, and the first respondent has endeavoured to do so by his own testimony, that of Dr. Rajah and of the Secretary to the Council. The first respondent states that he received the telegram at 6.30 P.M., just after lamp lighting time. In cross-examination, Mr. Perera says he fixed the time because it was dark and he thought it was about 6.30 P.M. He never referred to a watch nor when he got the telegram did he worry about the time. The next occasion he looked at a watch was after dinner, about 9.30 P.M. He did not think he looked at the clock for the whole of that day before he received the telegram. His estimate of the time is at the most a very rough estimate. Dr. Rajah states that he was with Mr. Perera when

the telegram was handed to the latter about 6.15 P.M. In cross-examination, Dr. Rajah says he is willing to admit that the telegram may have been delivered at 5.15 P.M. Also if there is definite official proof that the delivery had taken place and the man had returned to the Post Office at 5.30 P.M., he would not condradict it because the time he gave was only the approximate time. He also stated that the question of time did not strike him as important at the time. He had no reason to look at his watch. Also, that Bandarawela is a very deceptive place in regard to time and it is quite easy for a person to miss the time even by as much as an hour. Mr. Wickremasinghe, the Secretary of the Urban Council, stated in evidence that he received the telegram from Mr. Perera roughly about 6.30 P.M., when it was fairly dark. The evidence of the first respondent, supported to the extent it is by that of Dr. Rajah and Mr. Wickremasinghe, is vague and unsatisfactory with regard to the time when he received the telegram. and I am unable to say that it rebuts the inference to be drawn from P 12A and P 24. Moreover, the inference to be deduced from these documents is consistent with the evidence of Mr. Gopalapillai, who says that he received from the petitioner a telegram, P 26, notifying him of the injunction at 5.15 P.M. In these circumstances, I am of opinion that Mr. Perera received the telegram about 5.20 P.M.

The next question I have to consider is what progress had been made by 5.20 P.M. in the work of disconnecting the petitioner's water supply. In order to prove that the petitioner's original pipe was not disconnected at the time when the telegram was received, the petitioner has called a number of witnesses. Mr. Francis, a building contractor of Colombo, who at the time was building a number of houses on the Poonagala road, says, on November 11, 1941, about 6.30 P.M., he passed the petitioner's bungalow and noticed some men working about 40 to 50 feet below the bungalow close to the Pansala road. He saw the pipe line running from the water main, which goes past the Station Master's house to the petitioner's bungalow. He saw a number of workmen by the pipe line. They were opening up trenches but he cannot say whether they were on the line connecting to the main. In cross-examination, this witness, who maintained that it was not dark at 6.30 P.M., says that he saw some people working on the Pansala road. He also stated, in answer to questions put by me, that the workmen were cutting branches close to the Station Master's quarters and that he saw the pipe line at that time easily. In connection with the evidence of this witness, Mr. Gopalapillai states that Mr. Francis called at his place about 8 P.M., when the latter told him that about 6.30 P.M. workmen were working along the Poonagala road and he in return told Francis about the telegram P 26.

His Lordship, after discussing the evidence proceeds as follows :—

As I have indicated, I must be satisfied beyond all reasonable doubt that the first respondent had disobeyed the order of the Court. In this connection, I must take into consideration the evidence of the first respondent himself and those witnesses who were tendered on his behalf. Taken as a whole, I am sorry to say that this evidence made a very painful

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impression on my mind. One of the first witnesses called, Mr. Dharmasiriwardena, the Executive Engineer of Badulla, admitted that he had endeavoured to dissuade Mr. Francis from giving evidence because it would annoy the first respondent at a time when both he and Francis wanted to get a water service. Francis had at this time sworn an affidavit which was before the Court. It is sufficient for me to say that this attempt on the part of the Executive Engineer to persuade a witness to refrain from giving evidence was most improper and reprehensible and unworthy of the office he held. I will deal with each of the other witnesses in turn. The first respondent has stated that he first became aware that there was something wrong with the petitioner's connection early in September, 1941, when he noticed that plenty of water was trickling down to the main road from the petitioner's premises. He then thought that one of the mains had burst. In consequence of this, he wrote a letter, dated September 25, 1941 (P 3), informing the petitioner that it had been reported by certain ratepayers that his water service connection was from the main which is reducing pressure direct to the reservoir. He also said he understood there were seven taps in use at the bungalow, which was in excess. The petitioner was given one month's notice to alter the connection and reconnect to the town's distributing main. The petitioner was informed that failure to comply would result in his water supply being cut off. In cross-examination, the first respondent admitted that there were no written complaints by ratepayers. On September 26, the Council gave covering sanction to the first respondent's letter of the 25th. In a letter dated October 9 (P 4), the petitioner protested against the action proposed by the Council. On October 21, by (P 5), the petitioner was informed that the decision of the Council made on the 26th could not be altered, owing to the acute shortage of water in the town. On October 23, the petitioner received another letter (P 6) from the first respondent, in which the latter stated he would be inspecting the water connection with the Executive Engineer, Diyatalawa, and would table his decision at a meeting of the Council to be held on the 28th instant. A reply would be sent to the petitioner after a decision had been arrived at at the meeting. On the 24th, the petitioner was informed by P 7 that the first respondent had inspected the connection with the Executive Engineer and found that the connection of his bungalow "Highlands" was above the controlling point of the 4 in. main. The petitioner, in this letter, was asked to discontinue the present connection before the 31st. In connection with this letter it transpired that the Executive Engineer was not with the first respondent, when he inspected the connection. It was only as a result of this inspection that the first respondent first discovered that the petitioner was not tapping the main from Mayabedde to the reservoir. The Council was still under the impression that the main was being tapped. In spite of this, the first respondent purported to act in the name of the Council and require the new connection to be made by October 31. In P 8, the petitioner protested and informed the first respondent that he was appealing to the District Judge. He also suggested that the matter should be left for decision to the new and reformed Council shortly to come into office. On October 28,

the Council at its meeting resolved that the petitioner be requested to take his connection from below the control valve on the Pansala road and that the laying of the pipes be completed by November 10, 1941. By P 9, of October 29, the petitioner was informed of this decision. By P 10, of November 10, the petitioner informed the Council that he would assert his rights by action in the District Court of Badulla. By P 11, of November 10, the 1st respondent informed the petitioner that as he had failed to comply with the notice the Council had decided to carry out the repairs on the following day. In this connection, it is obvious that the Council had made no such decision. In order to form an opinion as to his *bona fides*, it is desirable to review the attitude of the first respondent up to the time when he gave orders for the disconnection of the petitioner's water supply. Up to October 24, he was under the impression that the latter was tapping the main running up to the reservoir. The Council was also under that impression. Yet he proceeds to implement the decision of the Council in spite of the fact that the latter acted under a misapprehension of the facts and in spite of his undertaking to place the matter before the Council for decision on the 28th. On November 10, after receiving notice that the petitioner intends to seek redress in the Courts, he issues instructions for the disconnection of the petitioner's water supply. In P 11, he states that the Council had decided to carry out repairs on the following day. In point of fact, as admitted by the first respondent, the Council had made no such decision. It had only authorised a notice on the petitioner. The first respondent attempts to justify the alteration in the petitioner's water supply on the following grounds, (*a*) that the petitioner improperly obtained his connection, (*b*) that the petitioner was receiving preferential treatment, (*c*) that ratepayers had complained with regard to (*b*), (*d*) that the petitioner's connection was prejudicing the water supply of other ratepayers, (*e*) that the petitioner's water supply could not be controlled, and (*f*) that the petitioner's connection contravened the regulations. After a careful review of the evidence, I have come to the conclusion that none of these grounds existed. In connection with (*b*), it was proved that ratepayers took their water from the other arm of the 4 in. main. If air-locks resulted from the closing of the main, which fed the petitioner's pipe, this matter could have been easily rectified. Moreover, the petitioner's water supply could be controlled from a stop-cock chamber.

I now pass on to the actions of the first respondent on November 11. According to his evidence, he made a minute in the file on the 10th, ordering the work to be done. At 8.55 A.M. on the 11th, he was informed by Mr. Kannangara, the Commissioner of Local Government, that the petitioner was applying that day for an injunction from the Courts. The first respondent says that he did not take any interest in or inspect the work. Under cross-examination, he says that, about 10.30 or 11 A.M., he saw Sirisena and told him to beat the tom-tom, close the water and carry on with the work. He denies that he gave the tom-tom beater any instructions, or heard the latter cry out anything about the petitioner's water connection. He says that Mari announced that the water connection would be cut off for one or two days. The first respondent's denial that, apart from his instructions about the tom-tom, he took

no interest in the work, is not borne out by his witness, Sirisena, the turn-key. The latter, in his evidence, says that he took his orders from the Chairman. In the morning at the office, about 10.30, he was told to finish the work before evening. Sirisena also stated as follows :—"The Chairman told me that the work must be finished that day somehow or other. by about 4.30 P.M." The first respondent says this statement of Sirisena's is absolutely false. The evidence of the first respondent that he did not visit the work during the day is borne out by Mr. Abeysekera, the Superintendent of Works. It is now necessary to consider how the first respondent acted on receipt of the telegram from the Registrar of the Supreme Court. In giving evidence, he stated first of all that Mr. Kannangara did not tell him about the injunction. On being informed of the latter's evidence, he says that, if Mr. Kannangara said so, he would accept it. He asserted, however, that he did not know what an injunction was and thought that the Supreme Court could not stop his work and could only intervene to put the pipes back. On receipt of the telegram he despatched it to the Secretary, with the order.

> "Attend to the attached Supreme Court telegram at once and get the work stopped."

Later, the Secretary visited him in his house and brought a report, which stated as follows :—

> "Chairman, submitted. Immediately on receipt of your letter and attached telegram, I interviewed the Superintendent of Works, who reported that the alteration to the existing pipeline and the new connection from the distributing main had already been completed and that only the covering up of the exposed piping remained to be done."

He then made a minute that a telegram should be sent to the Supreme Court as follows :—

> "Regret unable to comply with order as work was completed before the receipt of wire."

It is interesting to observe that the first respondent did not visit the work himself to see what stage had been reached and whether compliance could be made with the order of the Court. Although the exposed piping had not been covered up, he did not even give an order to the effect that it should be left exposed. He even permitted work to continue on the 12th and 13th on the stop-cock chamber. In spite of this, the first respondent had the effrontery to suggest that he had respect for the orders of the Supreme Court. Even in the letter of November 12 to the Registrar (P 22), the phrase is : "we are refraining from taking any further action in compliance with your request". When that letter was written, work on the petitioner's connection was still going on, as the stop-cock chamber and cover were being constructed.

The affidavit dated December 1, 1941 (P 30), sworn by the first respondent, is a document which merits careful examination. This affidavit was made three weeks after the order for the interim injunction. The deponent during this time must have been aware of the implications arising from the order and the seriousness of not complying with the

directions of the Court. In these circumstances, one would have thought that he would have taken care that the affidavit did not contain anything which was not strictly in accordance with the facts. In spite of this, I can only regard this document as bristling with inaccurate statements and as an attempt to throw dust in the eyes of the Court. In paragraph 3, the first respondent states that he has been guided by the Council's technical officers and have carried out the decisions of the Council, which were arrived at after due deliberation. This was untrue, as the Council had not decided to cut the petitioner's water connection. The Council had merely passed a resolution requesting him to alter it. Paragraph 4, which states that the Council's technical officers had discovered that the scarcity of water complained of was to some extent due to the petitioner's water connection being to the main, was false. The Council's technical officers had made no such discovery. The Council did not inform the petitioner that the necessary alterations would be carried out on November 11. This was an act of the first respondent only. With regard to paragraph 5, the telegram was received not about 6.30 P.M. but about 5.20 P.M. In paragraph 6, the first respondent stated, as a result of the alterations effected, there has been a marked improvement in the supply of water to the ratepayers. The first respondent was unable to offer any evidence in support of this statement. Paragraph 7 was also an irresponsible statement not justified on the facts. I can only regard P 30 as an irresponsible document, containing a number of false statements, which was put forward to induce the Court to believe that the first respondent throughout acted as the mouth-piece of the Council, that the petitioner was improperly obtaining water through unauthorised pipes, that the action he had taken was in the interests of and had actually benefited the town.

I have dealt at considerable length with the evidence of the first respondent. In the main, I am unable to accept that evidence. I believe that, on November 10, when he heard of the threatened injunction from Mr. Kannangara, he determined to anticipate the injunction and put himself in the position to say that the work was done. He, therefore, acted without consulting the other members of Council. About 10.30 A.M. in his office he told Sirisena that the work must be completed by 4.30 P.M. I have no doubt that Mr. Abeyesekera was also given instructions to speed up the work, and I believe Kanakasunderam when he says that Abeyesekera told him at 3.30 P.M. that the work was to be finished that day. Hence lanterns were requisitioned and kerosene oil. The witnesses agree that it was unusual to work after hours and in the dark unless it was a matter of urgency, such as a leak. The first respondent has admitted that the work could not be described as urgent. The only inference to be drawn from the speed with which the workmen were abjured to complete the work is that the first respondent was determined to be in a position to say in reply to the injunction that the work was done. In pursuance of this object, I believe that he tore up Kanakasunderam's first report and dictated another, phrased to fit in with his excuse that the work was completed when the telegram arrived. In spite of the haste with which the work was done, I have come to the conclusion, on the evidence, that the petitioner's original connection had not been cut when the first

respondent received the telegram. I have given full and ample grounds why I am unable to accept his evidence on the material points in this case. It is with deep regret that I have been forced to come to such a conclusion with regard to a man holding such an important public position

In rejecting the first respondent's testimony with regard to the condition of the work when the telegram was received, I have not lost sight of the fact that that testimony receives a certain amount of corroboration from Sirisena, Abeyesekera, the Secretary of the Council, Dr. Rajah, and Rajapakse, the ex-Arachchi of Queen's House. I have already referred to the evidence of the Secretary and Dr. Rajah. With regard to the evidence of Rajapakse, there seems to be no reason why this witness should be able to specify with such particularity what he saw or the time at which he saw it. In answer to a question put by me, he said that when he passed the place he noticed that some workmen were meddling with the pipes and some with the earth and that he did not know what they were doing with the pipes. On his evidence, I am unable to come to the conclusion that when he passed the petitioner's pipe had been cut.

I find Abeyesekera's evidence very difficult to reconcile with that of Sirisena. The latter's job is apparently to cut and connect the pipes. If the old connection had been cut and the new one fixed by 4.30 P.M., there would be no necessity for Sirisena to have remained on the job. Yet, apparently, he did, as he states in his evidence that he stayed till about 7.30 P.M. He gives this evidence in spite of the fact that Kanakasunderam, the Overseer, was in charge of the labourers who were fitting in the trench. I am unable to accept the evidence of Sirisena with regard to the state of the work when the telegram was received.

Abeyesekera, the Superintendent of Works, has also given detailed evidence with regard to the progress of the work during the day. He made a most unimpressive witness. There were numerous contradictions with regard to the time that he spent in the supervision of this work. It is difficult to reconcile his evidence on this point with the time he generally allocates to the supervision of a particular job and especially with the time he gave to the supervision of the work performed a few days later on the first respondent's connection. Abeyesekera states that the whole thing was fitted up and the pipes tested about 4.30 P.M. He started filling up the trenches about 5.30 P.M. and this was concluded by about 7.30 P.M. It is incredible that the filling up of the trenches should have taken such a long time. He also states that the Secretary to the Council arrived with the telegram about this time, when the closing up of the trenches was completed. In this connection, I may observe that the Secretary stated that Abeysekera told him the connections had been completed and only the trenches remained to be covered up.

I regret that I am unable to accept the testimony of Abeyesekera and Sirisena when they say that the work on the pipes was completed by 4.30 P.M. On this point, I prefer the evidence of the plaintiff's witnesses. Although I have come to the conclusion that the petitioner's original water connection was not cut when the first respondent received the telegram, I am of opinion that even if this fact was not established the first respondent would still be guilty of contempt of court. The

injunction was wide in its terms and the Council was restrained from altering or otherwise interfering with the water supply to the petitioner's bungalow till the matter was finally determined in the District Court of Badulla. All the witnesses for the first respondent admitted that work was done after the receipt of the telegram. Trenches were filled and a stop-cock chamber constructed. Work took place not only during the night of the 11th but also on November 12 and 13. How can it be said that in such circumstances compliance was made with the orders of the Court ? The injunction has most certainly been violated in letter and spirit and hence a contempt has been committed, *vide Attorney-General v. The Great Northern Railway Company* [1].

The only question that now remains is the measure of punishment that must be meted out to the first respondent. As he is no longer Chairman of the Council, it is not possible to commit him to prison until he has purged his contempt, retribution which is contemplated by section 800 (*a*) of the Civil Procedure Code. His actions have, in my opinion, been actuated by a desire to punish a rival candidate and not in the interests of the public. He has attempted to adopt the role of a dictator and has acted, generally speaking, in advance of his Council's authority. There is no doubt that his conduct had been contumacious and he has acted in an irresponsible manner and shown complete indifference to the orders of the Court. He did not even seek the Court's instructions after receiving the telegram. Nor has he tendered an apology. Moreover, after the offence was committed, he has sworn a false affidavit in an attempt to mislead the Court. In these circumstances, I have come to the conclusion that an order imposing on him the obligation to pay the petitioner's costs is not sufficient punishment. He must, in addition to paying the costs of the petitioner, pay a fine of five hundred rupees. As was said by the Lord Chancellor in *Russell v. East Anglian Railway Co.* (*supra*), it is essential to the dignity of this Court, to its proper administration of justice on behalf of the public and suitors, that its authority should be obeyed.

Application allowed.
Rule made absolute.

[1] *64 E. R. 741*