1948 *Present :* **Nagalingam J.**

TARNOLIS APPUHAMY *et al.*, Petitioners, and WILMOT PERERA, Respondent.

ELECTION PETITIONS NOS. 7 AND 9 OF 1947, MATUGAMA.

Election petition—General intimidation—Undue influence—Treating—Payments to religious or charitable institutions—Bribery—Ceylon (Parliamentary Elections) Order in Council, 1946, sections 55, 56, 57 (a).

To set aside an election on the ground of general intimidation it is necessary to show that the intimidation was of such a character, so general and extensive in its operation, that it cannot be said that the polling was a fair representation of the opinion of the constituency.

Before an election can be declared void on the ground of undue influence there must be proof that the person or persons guilty of undue influence were agents of the successful candidate ; there must also be proof that particular voters were in fact influenced by the acts of undue influence.

The supply of refreshments by a candidate to persons who are actually engaged in the work of the election, and whose ballots are well known to be secure in his favour, does not amount to treating within the meaning of section 55 of the Ceylon (Parliamentary Elections) Order in Council, 1946.

Payments to religious or charitable institutions do not amount to bribery within the meaning of section 57 (*a*) of the Order in Council.

The inducement to vote, which is contemplated in section 57 (*a*) of the Order in Council, must be proved to have been operative in the mind of the elector at the date of the election.

Where a candidate made a declaration that he would hand over the allowance that he would receive as a Member of Parliament to the Vice-Chancellor of the University of Ceylon to enable poor students from his electoral area to prosecute their studies at the University—

Held, that there was no offer or promise of valuable consideration within the meaning of section 57 (*a*) of the Order in Council.

THESE were two election petitions challenging the return of the respondent as Member of Parliament for the Electoral District of Matugama.

The grounds set out by the petitioners as tending to vitiate the election were (1) General intimidation, (2) Undue influence, (3) Treating, (4) Bribery.

R. L. Pereira, K.C., with *W. Sansoni, E. B. Wikramanayake, A. M. Charavanamuttu, U. A. Jayasundere, H. W. Jayewardene, S.R. Wijayatilake*, and *R. S. Wanasundera*, for the petitioners.

E. F. N. Gratiaen, K.C., with *C. S. Barr Kumarakulasinghe, A. I. Rajasingham*, and *Vernon Wijetunge*, for the respondent.

Cur. adv. vult.

May 3, 1948. NAGALINGAM J.—

These are two Election Petitions challenging the return of the respondent as Member of Parliament for the Electoral District of Matugama. Three candidates contested the seat, namely, the respondent, Mr. C. W. W. Kannangara, the Minister of Education in the former State Council, and Mr. Robert Appuhamy. The last named does not appear to have made a serious bid for the suffrage of the people. He does not appear to have had election meetings or established polling offices or even appointed polling agents and in truth the election was fought for all practical purposes between the other two candidates, and I propose to discuss the evidence in the case as if these two candidates alone had been in the field.

Four grounds have been set out by the petitioners as tending to vitiate the election of the respondent, namely,—

(1) General intimidation,
(2) Undue influence,
(3) Treating,
(4) Bribery.

I shall deal with each of these grounds *seriatim*.

(1) *General Intimidation.*

No less than forty-five instances were furnished by the petitioners under this ground. They adduced proof of only thirteen of them and, even in regard to these latter, the proof tendered was in certain instances at variance with the particulars given. Not only have the acts relied upon by the petitioners as constituting the basis for the charge of general intimidation not been proved, but even if full weight be attached to the testimony given in Court by the petitioners' witnesses to the extent of holding the charges established, it would be clear that the entirety of the proof thus assumed to have been given in favour of the petitioners cannot in law amount to proof of the charge of general intimidation.

Speaking generally, the testimony of the petitioners' witnesses, with a few exceptions, may be said to range itself between gross exaggeration on the one side and deliberate perjury on the other. I do not, therefore, consider it necessary or essential to discuss the evidence in regard to each of these specific charges in detail and I shall content myself with recording my findings very briefly in regard to them. Though in the petition it was alleged that there was general intimidation before, during and after the election in different parts of the electoral district, no attempt was made to offer evidence of any intimidation subsequent to the date of the election, and the evidence tendered in regard to intimidation before and during election was to show at best that there were unrelated and unconnected acts of threat or violence to electors.

According to document P 16, at a place called Pannala, it would appear that two school boys, who were not themselves voters but who had been on a mission of distributing election literature in support of the defeated candidate, had had the leaflets in their possession snatched from them by a drunken man who abused both of them and the candidate for whom they were working. It is also alleged that the two youngsters

were threatened with assault. One of the schoolboys gave evidence and to corroborate him another schoolboy who had witnessed the incident was also called. In Court they went much beyond the statements they had made to the Police shortly after the incident, and I place no reliance on the exaggerated evidence they gave in Court, which was obviously an attempt on their part to carry escapades they are used to in school into the Courthouse as well.

A similar incident is said to have taken place at Henpita on September 2, when three schoolboys were out distributing notices for a meeting to be held in support of the defeated candidate ; these boys were bolder than the last two, and they in a spirit of bravado insisted on tendering their notices to two drunken men, who to their knowledge were staunch supporters of the successful candidate ; as was to be expected, the reaction of the inebriates was to snatch the notices the boys yet had with them and to destroy them. The boys also alleged that the two men chased after them armed with a knife and a club. A complaint was made to the Police which was followed by a plaint, and later the prosecution was compounded on the undertaking given by the accused persons that they would not interfere with the complainants.

These two instances show that drunken men and schoolboys engaged in distributing election pamphlets seem to have a certain amount of affinity for each other, and that drunken men avoid grown-up men similarly engaged as the boys and *vice versa* is proved by, *inter alia*, the instance where Sirisena Wijesinghe, who went about distributing handbills in support of the defeated candidate, did not come across any drunken men nor did drunken men run across him, although the Star emblem was prominently displayed about his person as he went about the country. I think the truth is that schoolboys on their rounds in their unbridled enthusiasm sought to poke fun at drunken men when they came across them for otherwise they would not be schoolboys, and drunken men then retaliated, for otherwise they would themselves not heve been drunken men. But what is surprising is that these instances should have been seriously put forward at this inquiry in support particularly of the charge of general intimidation.

A drunken man also figures at the incident at Yatowita where, according to P 11, on September 2, 1947, a man ,the worse for liquor, appears to have torn away the placard of the defeated candidate which was pasted on the walls of the house of one of his supporters and abused the supporter in obscene language. The supporter, however, gave evidence in Court and for the first time introduced details of how threats had been uttered against him if he voted for the defeated candidate and of how he himself, as a result of the incident, explained to a fellow voter who came on the scene shortly thereafter that it did not appear to him that they were free to exercise their vote in any way they pleased—language which makes one suspect that the witness had some acquaintance with the well known treatise of " Rogers on Elections ", if not in the original, at least in translation of a certain passage in it. In this instance, too, I reject all the additional material that was embroidered round the incident of the tearing away of the placard and the use of abuse towards him. Far from any threats having been held out, the statement to the Police discloses that when the witness came out of his house the miscreant took

to his heels. This incident only furnishes an example of a cowardly intruder of a building being intimidated by the appearance of the house-holder and does not support the charge.

The next is an incident that is said to have occurred at Udagama on September 4, when three men who went in a car are alleged to have threatened harm to a voter of Mr. Kannangara should he vote for Mr. Kannangara, but the evidence also shows that the voter replied that in spite of what they said he would do exactly what he liked and does not appear in the least to have been intimidated.

Iddagoda is the scene of the next incident where, on September 6, two brothers-in-law, each supporting one of the two rival candidates, came to blows over the alleged propriety, or rather impropriety, of putting up the placard of the defeated candidate on a building in which one of them was trading and the other had rights of ownership. Not a word was said as to how either of them should vote or not and yet evidence was led of this incident !

Yala became somewhat of a robust peg upon which was hung a mass of evidence in regard to an incident that is said to have taken place there on September 7. At best, accepting at its face value the evidence led on behalf of the petitioners, nothing more is established than that a number of men, some of them undesirable characters, went up to Yala junction in a car and a bus, some of them exposing their persons and all of them shouting out that if any body came out they would be taught a good lesson and that if they did not vote for the respondent their cattle would be stolen and their houses would be set on fire—here again the language of Rogers is much to the forefront. It is alleged that this demonstration was enacted for the special benefit of one Aron Mudalaly, who was a leading supporter of Mr. Kannangara, but Aron Mudalaly himself was not called. The words alleged to have been uttered could not have been taken seriously by anyone—they were words uttered by vain men and could not and would not have been treated as meaning anything more than idle words of threat. In fact, though persons who say they heard these threats were called, not one of them did say that these words had any effect on their mind or that their conduct in regard to the election was altered in the slightest degree in consequence. The facts, however, are otherwise. The evidence of Sub-Inspector Kuruwita shows that the incident has been grossly exaggerated. According to the Sub-Inspector, the day in question was one of the ordinary days of a fair that is normally held in that locality not far from the junction and the usual concomitant large crowd made its presence felt on the fair grounds and in the vicinity, and when the car and bus full of men shouting slogans came up and halted, people swarmed round the vehicles. The Sub-Inspector's evidence further establishes that the men in the car and bus did not make any indecent exposure of their persons but that they were attired in the normal way in which villagers are clad, that they raised shouts of " Victory to the Elephant " and that there was nothing in their behaviour which would have given cause for alarm to or hurt the feelings of persons of ordinary nerve.

The location of the next incident is Walagedara. On September 8, certain Wedisinghes are alleged to have made use of threats to the inmates in the house of a voter by uttering words to the effect that they

would not be tolerated in the village if they were to give their votes to Mr. Kannangara. The witness who was called in support of this charge says he made a complaint to the Headman but the Headman took him to his (witness's) house and there shut him in and asked him not to get out. This is really strange conduct on the part of the Headman to whom a complaint is made against certain other persons. But what is more, a plaint alleged to have been filed in connection with this incident was produced but it does not show it has anything to do with the elections or that any member of the witness's household was insulted or even that Alice Nona who, according to the plaint, appears to have been the person insulted, had been insulted in connection with election activities.

The remaining incidents under the heading of general intimidation all relate to events that took place on the day of the polling itself.

Kasellenawa polling station is one which has been singled out for special attack by the petitioners. The evidence given by the petitioners' witnesses has been contradicted by Police officers. Mr. A. P. Jayasuriya says that he went to this polling station in the forenoon on election day and that he was greeted with hoots and jeers, that people wearing Elephant badges thronged round him in a threatening attitude, so much so that he feared for the safety of his person and that in fact a badge that he was wearing was snatched by a person in the crowd. He further says that he complained to the Sub-Inspector of the removal of his badge and also asked the Sub-Inspector to "give a chance to the voters to give their votes" as he felt that voters were finding it difficult to enter the polling station, the implication being that the voters of Mr. Kannangara were being prevented from casting their votes by threats of force or voilence and by physical obstruction. But the testimony of Mr. Mella Aratchi, who accompanied Mr. Jayasuriya, shows that Mr. Jayasuriya's memory is at fault. According to Mr. Mella Aratchi, Mr. Jayasuriya appears to have been the *bete noir* of the electors of the Munuwatubage Pattu and the appearance of Mr. Jayasuriya was the sign for cries of "We do not want Jayasuriya", amidst hooting and jeering. According to Mr. Malalgoda, the Presiding Officer, polling was interrupted for about fifteen minutes; the reliable evidence in the case, however, shows that the interruption was due to Mr. Jayasuriya's car having been halted opposite the entrance to the polling station and the crowd of voters becoming restive in consequence. One word must be mentioned about the alleged loss of the badge. It is admitted by Mr. Jayasuriya and the other witnesses that he had only one badge when he came to Kesellenawa polling station. Sub-Inspector Rajakulasingham denies that any complaint was made to him about the badge being snatched away from the person of Mr. Jayasuriya, but when Mr. Jayasuriya met the Assistant Superintendent of Police, Mr. Kelaart, a few minutes later, Mr. Jayasuriya was noticed by Mr. Kelaart yet wearing a badge. Neither Mr. Jayasuriya nor Mr. Mella Aratchi nor Mr. Simon Kuruppu was able to explain how, after the removal of Mr. Jayasuriya's badge, he was yet seen wearing one. It seems to me that events moved so fast that Mr. Jayasuriya was in such a confused state of mind that he has unwittingly transplanted at Kesellenawa an incident that took place at Madurawela, and his companions unthinkingly have

fallen in line with him. The conduct of Sub-Inspector Rajakulasingham has been adversely commented upon and his integrity assailed by Mr. Jayasuriya, but there is no foundation for it. The evidence given by Mr. Jayasuriya is not convincing and is inconsistent with the complaint he made shortly after the incident to the Assistant Superintendent of Police. In that statement he expressly states that but for the assistance rendered to him by Sub-Inspector Rajakulasingham and some of his friends the crowd might have assaulted him. That Mr. Jayasuriya was in a very excited state is obvious. Sub-Inspector Rajakulasingham says that Mr. Jayasuriya wanted him to charge the crowd and shoot them. Mr. Mella Aratchi also says that he had to appeal to Mr. Jayasuriya to cool down, as the latter appeared to be very hurt. As stated earlier the Presiding Officer's journal contains a reference to the interruption to the polling during a period of fifteen minutes but to no other, and the journal has been endorsed by the polling agents of Mr. Kannangara to the effect that they were satisfied with the arrangements for polling and that they had no complaints to make. In fact Mr. Mella Aratchi was frank enough to admit that so far as he could see there were no voters of Mr. Kannangara about the place who could have been threatened or abused, and in these circumstances it is impossible to hold that any voters were threatened or intimidated.

The polling station at Bellapitiya must next be noticed. It was stated that wearers of Star badges were molested, their badges removed, Elephant badges substituted and they were adjured to vote for the respondent. The witnesses who depose to these facts, one of them a Registrar of Marriages and another a polling agent, admit that they made no complaint to anyone in authority at the time the alleged misdeeds were perpetrated, and perpetrated so flagrantly in close proximity to places where Police officers were stationed. What is more, the polling agent in this instance too expressly declared to the Presiding Officer that he had no complaint to make with regard to the polling. A third witness went to the extent of saying that constables detained wearers of star badges while they let those with Elephant badges go into the polling station, but he too, curioulsy enough, says he made no complaint either to superior officers of the Police who came to the station at frequent intervals or even to the agents of the candidates who were both in the polling station and in the election office close by.

In contrast to the evidence of these witnesses is that of the Presiding Officer, who says that he went out at intervals to see whether there was anything amiss on the road leading to the polling station but he found that everything was orderly ; he, however, says he found the Headman loitering among the crowd and he warned him no less than twice before he could be induced to leave the place. I reject the testimony of the witnesses called by the petitioners as unworthy of credit.

Activities at the Madurawela and Haltota polling stations formed the subject of charges, but the evidence in Court is so far different from the particulars furnished that it is unnecessary to take any further notice of them.

Obstruction caused to a car out on a mission of conveying voters to the polling stations by certain men armed with knives at a place called

Welipenna was spoken to by a witness by the name of William Wijesuriya. His evidence in Court was totally in conflict with the statement he had made to the Police shortly after the alleged incident. To the Police he said that as he was going in his car with two boys, a man called Henry Jayasuriya obstructed the passage of the car, holding an open knife in his hand. On behalf of the respondent it has been suggested that the schoolboys and the witnesses were going about in the car, shouting slogans, when the incident is alleged to have occured. But whatever that may be, the Police themselves to whom complaint was made do not appear to have taken any action in regard to it and it is significant that no voters were being conveyed at that time and that no voters were obstructed, although the witness in Court tried hard to make out that there were two voters in the car at the time—a version entirely opposed to that given by him to the Police.

The last of the polling stations referred to by the petitioner is that at Milleniyawa. It was alleged that a party of youngsters who appeared to be drunk went up, created disturbance and prevented people from voting by threatening them that if they did vote for Mr. Kannangara they would be stabbed. How these boys were to discover how the votes were cast in order to carry into execution their threats has not been revealed. This view of the matter apart, though there were several members of the Police at the spot apart from Police officers who patrolled the area from time to time and agents of Mr. Kannangara both in the polling station and at the office hard by, not one word of the alleged disorderly behaviour of these youngsters was said to anyone of them. The witness who speaks to these facts is a native physician, but though he adds that he was himself specifically threatened, he recorded his vote without any mishap. Nor is there evidence that any other person was prevented in consequence. No reliance can be placed on testimony of this character.

On this state of the evidence, can it be said that a case of general intimidation has been made out? The term "general intimidation" is not defined in the Order in Council. To appreciate, however, what is meant by general intimidation, one must fall back upon the English Law, where the offence has been regarded as a development of the common law. No better definition can be given of the term than that given by Baron Bramwell in the *North Durham Case*[1] where he expressed the notion underlying the term as follows :—

> "Where the intimidation is of such a character, so general and extensive in its operation, that it cannot be said that the polling was a fair representation of the opinion of the constituency."

If one applies the test as formulated in this dictum to what was sought to be proved by the petitioners, leave alone what can be said to have been established by the evidence led by them, it would be found that there is here a total lack of evidence from which it could be gathered or even inferred that the general body of the electorate or even a section of it was subjected to threats of force or violence, so much so that it could be said that the exercise of the franchise by the electors was not free and

[1] *(1847) 2 O'M & H 152.*

that the polling did not reflect truly the views of the electorate. No evidence was given of what may be termed coercive intimidation, that is to say, intimidation having for its object the use of force or threat to compel a voter to vote for a particular candidate, but what evidence was led was led to show that the electorate was subjected to preventive intimidation, that is to say, intimidation which had for its object the prevention of the electors from going to the polls lest the rival candidate gets their votes. Having regard to the number polled and to the circumstance that this electoral area annexed to itself the credit of having polled the highest percentage of voters in any electoral area in the Island, it certainly would be extremely difficult to convince anyone that voters in general were deterred by anything savouring of intimidation from going to the polls or recording their votes. I must not, however, be understood as saying that if it is shown that, though a large number may have polled nevertheless a fair number of the electorate were prevented from exercising their right freely, that would not by itself be a sufficient ground for declaring the election void, but of this there is scarcely any proof in this case.

The *North Louth case* [1] was a much stronger case of general intimidation than the present one. In that case the facts summarised by Rogers [2] were as follows :—

> "The opposing candidate was assaulted on the polling day and had to be protected by the Police, but no voter was proved to have been prevented from voting ; that in the Louth polling districts for some days before the election crowds perambulated the roads at night, booing outside the houses of the reputed supporters of the opposing candidate, that on the day before the poll a voter was followed for a quarter of a mile and kicked and did not vote, that a postmaster was threatened on the night before the election and his windows were smashed, that on the polling day the same person was threatened and had to be protected by the Police and was held up for two hours, that another voter was assaulted with stones and his jaw broken and that another voter was kicked and beaten so badly that he had to stay in the house for a fortnight and that in other polling districts voters were booed and jeered at by crowds."

The Court refused to avoid the election on the ground of general intimidation, Gibson J. observing :—

> "To upset an election for general intimidation it is necessary to show that there was such general intimidation as might have affected the result of the election".

Local cases are not wanting which illustrate the principles upon which on the ground of general intimidation, Courts have interfered in elections. In both the *Nuwara Eliya Case* [3] and the recent *Gampola Case* [4] there was clear evidence that large sections of the electors were prevented from recording their votes by threats of actual violence and force used on them, that prompt complaint was made to persons in authority and that those complaints were verified and found to be true. The present case

[1] *(1911) 6 O'M & H 124.*
[2] *Elections, 20th ed. Vol. II., page 345.*
[3] *(1944) 45 N. L. R. 145.*
[4] *(1948) 49 N. L. R. 207.*

is one far removed from either of these. Not a single complaint was made to anyone in authority that any voter experienced difficulty in getting to the polling station or in recording his vote. In these circumstances there is only one conclusion possible with regard to this charge, and that is that it has not been made out.

(2) *Undue Influence.*

While in order to sustain a charge of general intimidation it is necessary neither to prove the agency of the intimidators in relation to the candidate on whose behalf the intimidation was exercised nor to establish that any particular voter or voters were in fact intimidated, it is essential, however, that before an election can be declared void on the ground of the exercise of undue influence proof must be adduced both of the agency of the person or persons guilty of undue influence and of the person or persons intimidated. Section 56 of the Order in Council which defines the offence of Undue Influence makes this abundantly clear. Although the petitioners have made an endeavour to place before Court testimony which, according to them, would demonstrate the commission of the offence of undue influence, they have singularly failed to establish either agency of the alleged intimidators or that in fact any person was intimidated.

I shall proceed to an examination of the various acts relied upon by the petitioners. Some of the instances of undue influence have already been considered under the charge of general intimidation but I shall quickly pass them in review, briefly commenting on them from the standpoint of the charge I am now considering.

The alleged incidents at Madurawela and Haltota may be ignored, because the proof tendered, as stated earlier, is so completely at variance with the particulars furnished. The events at Henpita and Welipenna do not concern voters at all but schoolboys. The occurrences at Yatowita and Udugama have a spiciness more of abuse directed against sympathisers of the opposing candidate rather than of any real threat deliberately made of the infliction of force or violence on them. In regard to the happenings alleged at Iddagoda, there was not even a pretence of intimidation of anybody but a quarrel between two brothers-in-law as regards the putting up of posters.

I shall now take up the other incidents not so far referred to. It is said that at Ganatuduwa Temple, after the priest in charge had objected to the holding of a meeting at the temple premises in support of the respondent's candidature, the organisers arranged to hold the meeting, and in fact did hold it, in the open a little distance away from the temple premises and that some of the speakers uttered threats not against anyone in particular, but generally against those who worked or voted for Mr. Kannangara. It was, however, alleged that one of the organisers, while engaged in clearing the open ground selected as the fresh venue for the meeting cast a remark that he was cutting a grave to bury the priest of the temple but this, as the witness himself admitted, was not and could not have been regarded as a serious threat intended to be carried into effect but merely as one expressing resentment and annoyance which the speaker felt in being refused permission by the priest to hold the meeting at the temple premises and nothing more.

At Weboda it is alleged that a woman by the name of Siriya made use of threats generally against all and sundry, and at Palligoda a mason was abused by one Eddin for voting for Mr. Kannangara. No attempt was made to prove the agency of either Siriya or Eddin.

Proof was tendered that at a meeting held at Udugama in support of the candidature of the respondent leaflets were distributed in which statements were made to the effect that Mr. Kannangara was " under the malefic influence of planets during the period between August 16 and September 14 ". A copy of the leaflet has been produced and it purports to be signed by one styling himself "Astrologer Munivamsa ", which is obviously a pseudonymous name and, what is more, the leaflet does not bear the name of the printer or publisher as required by law. But here again, apart from the question of agency, it would be obvious that this statement cannot in the remotest degree tend to have the effect of intimidating voters. The leaflet undoubtedly has reference to the so-called unsatisfactory position of the planets under whose influence Mr. Kannangara was alleged to be between the dates mentioned, but it is difficult to see how such a statement could create or tend to create fear in the minds of the voters ; it is, however, said that a publication such as that may and would have tended to wean Mr. Kannangara's voters away from him because the electors may have thought that they would be casting their bread on water in voting for a candidate who was bound to meet with defeat ; but then that would constitute at best a charge not of undue influence but one under section 58 of the Order in Council under the heading of making a false statement of fact in relation to the personal character of a candidate, assuming, of course, that the allegation could be treated as a personal reflection on the character of the candidate.

The last item is one that relates to the distribution of copies of pamphlet P 35 among Indian labourers on the estates, in particular at Pantiya. That the leaflet was published and distributed by or on his behalf is admitted by the respondent. It has been argued on behalf of the petitioners that the publication of photographs of Pandit Jawaharlal Nehru and of the respondent on either side of a facsimile of the Indian Congress flag would have tended to create in the minds of the estate population for whose benefit the leaflet was distributed the fear that if they did not support the respondent either temporal or spiritual harm or injury would befall them. I am not disposed to accede to this contention for I do not think that such would be the normal effect produced on the mind of any person, be he a labourer or not, even by the bare pictorial representation, let alone the printed words, but if the text too is taken into account, it would be well nigh impossible to hold that such a result as contended for by the petitioners could have been even remotely possible. To my mind the impression that any voter looking at the pictorial representation would receive is that the respondent either was a friend or had support of Pandit Jawaharlal Nehru but certainly not that the voter would suffer punishment even spiritually—for temporal punishment is altogether out of the question–by not voting for the respondent ; on the other hand, it may be true to say that the voter, if guided entirely by the pictorial matter alone may feel that he would be doing an act pleasing in the eyes of Pandit Jawaharlal Nehru should he vote for the respondent and so be induced to vote in that way. But

even so, the act does not fall within the category of fraudulent devices or contrivances which are penalised by the Enactment. The wrong view formed by the voter is attributable to his carelessness in not properly informing himself of the verbal contents which are an integral part of the document, and the person issuing it cannot be held responsible for the error committed by the voter. For otherwise, the consequence would be that a document quite proper in point of form and unassailable in law at the time of issue would subsequently be said to attract to it penalties under the law dependent upon solely the misconception of third parties as to its exact purport—an illogical position altogether. Besides, there is a total lack of evidence that any voter suffered change of faith or felt himself impelled to change his faith as a result of the perusal of the document in question.

It is manifest that in regard to all these instances there is no proof either that any of the persons alleged to have been responsible for the acts of undue influence relied upon by the petitioners was an agent of the respondent even in the wider sense of the term as understood in election law, or that any voter or voters were influenced by these acts of undue influence. This charge, too, therefore, fails.

(3) *Treating.*

This charge is so closely allied to that of bribery, and as every act of treating save one is said to have been accompained by acts of bribery, it would be more appropriate, in view of the conclusions reached by me, to make a few broad observations on the items under this charge and to relegate the discussion of the evidence to the latter head. One cannot help noticing that in more than one instance where more than one witness has been called to testify to any particular incident, the witnesses contradict themselves so badly, not merely on unimportant details of a trivial character but on material facts of ample proportions, that it is difficult to believe any of the witnesses.

On August 28 and September 3, voters are alleged to have been treated at Hakgala Estate, the residence of the respondent. The evidence led is of a conflicting nature, not only as regards the persons treated and their number but even as to the attendant circumstances.

The floods of August, 1947, are said to have provided an opportunity to the respondent to treat voters in the afflicted areas. The agents of the respondent are reported to have taken provisions and distributed them to the needy, but the two eye-witnesses called in support are not agreed as to the method of transport employed to convey provisions, the place or places where they were taken to or from where or how they were distributed.

The scene is laid at Bopitiya in the house of one William Appuhamy, where the witness Sadiris Appuhamy, who admittedly was a polling agent of the respondent, states that on September 10, food and drink including arrack was given to about twenty-five persons who were workers of the respondent. His evidence is supported by that of the Headman of the area, Don Dias Karawita, who says that as he went along the road at about 7 P.M. he saw people being given drinks out of a bottle which had a label of arrack. The agency of William Appuhamy

is denied by the respondent; but assuming agency to be established, do the facts prove the charge ? Section 55 penalises the giving of food and drink to a person with a corrupt motive to influence him to vote or refrain from voting. But where persons who are admittedly workers of a candidate and whose ballots are well known to be secure in favour of that candidate are provided with meat and drink not for influencing their votes, for there is no need for any influence at that stage, but as part of the ordinary amenities to which any worker is entitled, such conduct and action falls outside the sphere contemplated by the section. In the *Westminster Case* [1] refreshments were supplied at no less than sixty public houses to the men who were actually engaged in the work of the election for the candidate. It was held there too that it did not amount to treating. Again, the *Bradford Case* [2] was also a similar case where known supporters of the sitting member, his committee men in fact, who were actually engaged in the work of the election, were provided with meat and drink; it was held that the act did not amount to treating.

Bopitiya is also the scene of alleged treating on the election day. It is alleged that at the boutique of one John Sinno, tea and bread was served freely to all and sundry—and one of the witnesses went to the extent of saying that even those who wore Star badges were freely served without any questions being asked and without any attempt being made to influence them to change over in support of the Elephant emblem. The evidence also discloses that there were two boutiques in this area and that all the voters collected at one or other of the two boutiques from where they were conveyed to the polling station. Counsel for the respondent suggested that probably the treating was done by the opposing candidate's supporters; but it seems to me that having regard to the evidence on the point as a whole, a society admittedly in existence in the village the avowed object of which was to ameliorate the conditions of the people took upon itself to make a day of the election and to offer refreshments to all those who had gathered at the boutique, but there is no proof that any agent of the respondent or anyone on is behalf or with his knowledge spread this feast before the electors.

(4) *Bribery.*

Under this head too several instances were furnished by the petitioners, but here, as in the previous instances, often the proof was far removed from that which the petitioners took upon themselves to establish. Under this charge, more than any other, the evidence tendered by the petitioners is more often than not entirely untrustworthy and is of such an obviously tainted character that hardly in the ordinary class of litigation that comes up before the Courts either on the criminal or civil side would Counsel have deemed it fit to place such evidence as has been led at this inquiry. Again, a common feature of the evidence in respect of this charge too is that wherever more than one witness was called to depose to an instance of an alleged bribe, the witnesses so hopelessly contradicted one another that one could not but come to the conclusion that not one of them was speaking the truth; and when their evidence had to be weighed against

[1] *(1869) 1 O'M & H 91.* [2] *(1869) 1 O'M & H 39.*

that of the respondent and of his witnesses, who undoubtedly were not only candid and truthful but created the impression of being forthright, straightforward and honest, it is needless to say that the only view one could take of the evidence led by the petitioners is that no reliance could be placed on it.

I shall now turn to the evidence which may appropriately be discussed under three main headings :—

(*a*) Payment of money to individuals ;
(*b*) Payment of money to institutions, religious or charitable ;
(*c*) Offer other than money.

(*a*) On the date of polling it is alleged that one T. M. Fernando paid money to estate labourers for their votes. The payment is said to have been made on the road not far from the polling station and within visible distance of where police officers were stationed ; the manner in which payments are said to have been made varied with individual witnesses, one saying that payments were made openly, another furtively and a third covertly. Witnesses who testified to these facts wanted the Court to believe that they were so innocent and ignorant of the sin of bribery that they did not realise that an offence was being committed, at least not certainly till they were made wise by a member of the bar who happened to observe the act himself. Evidence of the statement alleged to have been made by the member of the bar was permitted to be given by the witnesses on Counsel's undertaking that the member of the bar referred to would be called to testify and in fact the hearing was specially adjourned for that purpose. Though the member of the bar alluded to did attend Court on the next date, Counsel then appearing for the petitioners did not think it necessary to call him. In the result the evidence of the witnesses on this point did not receive that weighty corroboration expected to have been given to it by a witness of standing and of undoubted integrity, and their evidence bereft of that support is worthless. It is also significant that no attempt was made by anyone to draw the attention of any police officer to these flagrant misdeeds. Besides, as Counsel for the petitioners himself had to admit, there is no proof of the agency of T. M. Fernando.

Electors living in the two villages of Henpita and Kolehekada are said to have been reimbursed their loss of income for the day of polling by the respondent. Payments are alleged to have been made to several on September 10, the day preceding the date of the election. Suderis, admittedly respondent's polling agent, says that sums varying from Rs. 2 to Rs. 8 were distributed at several houses according to the number of votes available at each house but he is definite that it was on September 3, 1947, and not on the 10th. The charge therefore largely fails. In regard to three voters, however, the allegation is that it was on September 3 that payments were made, but two of them Suderis does not identify and consequently only one may be said to be reached by his evidence. It is noteworthy that this witness volunteered the information that he himself was paid the sum of Rs. 25, but that information he does not appear to have divulged to anyone. The respondent denies that he did take part in any such activity and I have not the slightest

hesitation in accepting his denial in preference to the uncorroborated assertion of the witness Suderis, who, if his evidence be true, is at best an accomplice.

Next I come to a very serious charge of bribery. Premadasa Wijegurusinghe deposes that Cecil Dias and Gunawardena, agents of the respondent, promised him and his brother a sum of Rs. 1,000 if they would secure votes for the respondent. Wijesinghe further says that in pursuance of the promise he was paid by the respondent two sums of Rs. 50 and of Rs. 100 on August 10 and 28, respectively, and that he also recieved another sum of Rs. 50 on the same account from Cecil Dias on September 3, out of a sum of Rs. 200 paid to him on that date, the balance Rs. 150 representing car hire incurred by him to take voters to the estate of the respondent. In the particulars furnished the persons to whom the offer of the bribe was made are set out as Premadasa Wijegurusinghe and his father P. A. P. Wijegurusinghe, who is an aratchi; the evidence, however, is that it was the brother and not the father, and on behalf of the respondent it has been urged that the variation is not as innocent as it may seem but that it is part of a deliberate plan, having regard to the circumstance that wherever persons of some standing or responsibility have been referred to in the particulars, they certainly have not made their appearance in Court, but invariably some person of no consequence has been saddled with the task of getting into the witness box. The brother himself has not given evidence but it is obvious that the conduct of the brother, as disclosed by certain letters written by him to the respondent even after the election, clearly proves the falsity of this offer of bribe to the brother at least. Had such a promise been made to the brother, the brother instead of appealing for monies by way of loan would certainly have referred to the fact that money was due to him on the promise that had been made to him, but not a single sentiment of that nature pervades the letters. What is more, Premadasa Wijegurusinghe says that relying upon the promise made to him he engaged the services of the witness Sirisena, agreeing to pay him a sum of Rs. 50, but Sirisena flatly contradicts this witness of the existance of such an agreement having been entered into.

On September 3, it is further alleged that Premadasa Wijegurusinghe took a number of voters from Horawela to the estate of the respondent at Hegala and that the electors were treated with food and drink as set out under the charge of treating and that some were also paid money at the rate of Rs. 5 to each *by the respondent*. But Premadasa Wijegurusinghe and another witness by the name of Francis are both agreed that as the party went up *the respondent* left the estate on some mission of his, while another witness, Sirisena, says that it was the respondent who paid the moneys. It was not suggested by either Wijegurusinghe or Francis that the respondent did return before they left. It is impossible, therefore, to reconcile the evidence of these witnesses or to place any reliance upon the statement that *the respondent* paid a sum of Rs. 5 to any of the voters at his bungalow on September 3. There are other circumstances also which throw doubt on the truth of this story. Francis says that when their party of about one hundred people went up, there were already on the respondent's estate fifty or sixty others

who had come from other areas. Neither of the other two witnesses however, refer to the presence of any but members of their own party. Wijegurusinghe further says that when Cecil Dias paid him Rs. 200 it was in a room, unseen by anybody, while Sirisena says that money was paid in his presence as well. Both Cecil Dias and the respondent deny the acts imputed to them, and their evidence, as I have said earlier, outweighs the statements of these witnesses.

A pure act of charity, if true, was referred to as having taken place at Welkandala, also on September 3. The respondent, it appears, saw a boy lying ill in the temple premises with an abscess and he handed over a sum of Rs. 10 to one Ekmon with directions to procure food and obtain medical attention for the boy. The respondent denies it; but it is to be noted that the payment, if made, is not to an elector or to any other person on behalf of an elector for the purpose of inducing an elector either to vote or refrain from voting in consequence.

At Matugama Resthouse on July 14 the petitioners allege that the respondent paid a sum of Rs. 200 to one Appusinno and one Arlis Sinno to bail out certain accused persons charged in the Magistrate's Court of Matugama. Two witnesses testified to this incident and not only did they not impress me as speaking the truth but attention need only be drawn to the fact that one witness says that the respondent was dressed in European costume while the other says he was in national costume. There are other facts, too, a consideration of which can hardly be said to inspire confidence in the story related by these witnesses. The respondent denies the incident.

(*b*) It is common ground that on July 3, 1947, the respondent handed a cheque for Rs. 200 towards the Pannila Temple Fund, the occasion being the opening of a fancy bazaar in aid of the temple funds by him. The witnesses called by the petitioner, however, say that the opportunity was seized both by the respondent and by certain of his supporters to refer to his candidature and to ask those present to give their support to him. The respondent, as indicated, admits the issue of the cheque but he denies that there was any speech or reference touching his candidature. I accept the evidence of the respondent on this point as against that of the witnesses called by the petitioners. But the effect of giving this cheque has to be considered. It is not disputed that the respondent did stop payment of this cheque. He says that a few days after he had issued this cheque he was put wise by a friend of his who indicated to him the possibility of his contributions being misinterpreted and taken advantage of by his opponents. He says he did not consult legal opinion but immediately decided to stop payment of the cheques and wrote to the Bank stopping payment on July 9. By so stopping payment there can be little doubt that he put himself in a very much worse position than he would have been had he not issued the cheque at all. Even if there had been in the remotest degree any attempt to influence electors to vote for him as a result of the issue of the cheque, on the dishonour of it becoming known among the electorate, as it undoubtedly did and as is shown by the evidence to have been widely published in the area both by display of the cheque itself in the window of a business establishment and by reference to it in newspapers, the

influence, whatever it was, was thereby completely nullified, and it cannot therefore be said that the inducement, if any, was operative in the minds of the electors at the date of the election. See the *Windsor Case*[1].

Another instance of an admitted payment is that of a sum of Rs. 150 to Ananda Vidya Wardene Samitiya on June 22, 1947. This body is in the fullest sense of the term a philanthropic society, the members being entitled not in the slightest degree to any direct benefit themselves. The object of the Association was to collect funds for the construction of the school building. No amenities of any kind were provided for the members. There was no question of proposing and seconding a person for membership of the Society. Provided an individual paid the minimum subscription of fifty cents a month he became a member of the society and so entitled to take an interest in collecting further funds for the construction of the building. The members of the Society from time to time invited leading members of the area to preside at meetings and, of course, the opportunity was never lost of inducing those invited to contribute as liberally as they could towards the building fund ; the persons invited themselves knew full well of the idea behind the invitation. There is one point of the contest between the respondent and the petitioners in regard to this incident. The petitioners assert that it was after the respondent had announced his candidature and it was at a time when it was known as a fact in the area that he was coming forward as a candidate that he insidiously procured the secretary of the Society to take steps to extend the invitation to him to preside at a meeting with the object of furthering his candidature. The respondent, on the other hand, denies that at the time he accepted the invitation he had any intention whatsoever of contesting a seat. There is ample testimony in this case, not only of various surrounding circumstances but also specific evidence of some of the witnesses called by the petitioners whose evidence on the point is preferable to that of the witnesses who directly testify on this question that the first time that anybody heard of the respondent putting himself forward as a candidate was when he announced his candidature in the Press on June 21. The respondent says that it was about two or three days prior to that that some of his friends came and coaxed him to come forward as another candidate who had been in the field had by then dropped out. It is not without interest to note that at the committee meeting of the Society the person who seconded the resolution that the respondent should be invited to preside at the meeting was no other than the Vice-President of the Society, an ardent worker of the defeated candidate and a witness for the petitioner. The committee also deputed three of its members among whom, again, were supporters of Mr. Kannangara, to interview the respondent to induce him to accept the invitation. The President, S. H. A. Fernando, and the Vice-President Sadris Fernando, who are respectively the Village Headman and Vel-Vidane, are both guilty of perjury when they spoke to various incidents in connection with the conduct of committee and general meetings of the Society. On the other hand, the Secretary, B. A. Perera, was an uninterested, honest and impartial witness, whose every word was fully

[1] *(1874) 2 O'M & H 88.*

supported and corroborated by the minutes of proceedings which he produced and which were confirmed by no other than S. H. A. Fernando himself. The respondent says that as he had already accepted the invitation he did attend the meeting on June 22, and became a member of the Society by paying by way of subscription a sum of Rs.150. Had the respondent been the only individual who paid such a large sum of money to gain membership, the door would have been open for an inference adverse in some degree at least being drawn against the respondent. But it is established, and established through the mouths of the witnesses themselves who testified against the respondent, that there were others in that area belonging to communities other than theirs who could not have hoped to have derived any benefit directly or indirectly for themselves or for any members of their own community who had contributed largely and at least one who contributed even more than the respondent. The respondent's testimony, which is supported by that of the Secretary, B. A. Perera, is borne out completely by the recorded account of the nature and purpose of the payment made by the respondent, which shows that there was no connection between the payment and the respondent's candidature.

A payment of Rs. 150 is also admitted by the respondent in connection with the Mihindu Perahera at Matugama on June 2, 1947. According to Pieris Munasinghe, about May 13, the respondent intimated to him that he intended coming forward for the Matugama seat and desired that he should introduce the respondent to the electorate among which he, the respondent, was not sufficiently well known. A teacher by the name of Sathan says that the respondent, when he took part in the function on June 2, 1947, publicly announced his candidature on that date. Both these witnesses are witnesses of falsehood. Sathan, who claims to be a schoolmaster teaching the eighth standard in a Sinhalese school, expressly stated that the repondent unveiled a picture of the Arahat Mahinda. On more than one occassion he referred to the object unveiled as a painting or picture. Under cross-examination, when he was confronted with the assertion that it was not a picture that the respondent had unveiled but a statue, he took umbrage under the pleas that the statue was painted and therefore he described it as a painting. It is important to note in this connection that the petitioners in their particulars too did refer to the unveiling of a picture and not of a statue. One of two conclusions is possible with regard to this witness's testimony, and that is that either he was never there and that he was merely deposing to what information he had received at the hands of others or that if he had been there he was prepared to accommodate himself to the extent of taking upon himself to adhere to the incorrect description given by the petitioners in their particulars. The respondent's evidence is that two persons by the name of Colonne and Jayasundere informed him that a small sum had been left over from the " anti-beef-eating campaign " staged by them earlier and wanted him to assist them in getting a statue made of Mahinda to enable them to conduct a procession with the image on the next Poson day. He says he agreed to do so and bore the cost of the statue amounting to Rs. 150. He further states that at the date of the procession nothing was further from his mind than a parliamentary seat, because at that

date he says there was already one Mr. Wilmot Jayanetti who was considered a strong rival to the sitting member. I accept the evidence of the respondent that at the date he made this payment he had not formed any intention of contesting the seat.

On September 7, at Welkandala the respondent is said to have made a gift of Rs. 300 to the Mahajana Abiwurdhina Sadaka Samitiya for building a Chaitya. Admittedly the office-bearers included a treasurer and a secretary apart from the president, who has given evidence in the case, and admittedly there were books of account in which the contributions received were entered. But, curiously enough, no books have been produced, and the position taken up by the President is that after the parliamentary elections the Society has ceased to meet and he now has no knowledge of the books. The evidence also indicates that the respondent went to Welkandala by previous appointment and the money is alleged to have been handed in the presence of a large gathering of people who had been previously informed both of respondent's intended visit and of its purpose. It is established that the respondent had stopped payment of the cheque he had issued to the Pannila temple as early as July 9, as he deemed it improper. But it is said that although he may have made no payments by cheque after he had stopped payment of the cheque referred to, he nevertheless continued to make payments in cash. It has, however, not been suggested that he was making payments secretly, but quite openly and after previous announcement and publication of his intended visit. Nothing would have been simpler than to have secured the presence of responsible persons to testify to the fact of payment. The respondent, on the other hand, affirms that having been warned that his contributions may be misinterpreted he refrained thereafter from any such activity and literally followed the well known dictum of Bowen J. that charity at election times ought to be kept by politicians in the background.

On July 18, the respondent is alleged to have made a payment of Rs. 150 to Levandura temple on the occasion, again, of a Fancy Bazaar held for the purpose of raising funds for the temple. In this instance, too, although accounts are said to have been kept of the collections made for the temple, it is admitted that no entry of the payment of moneys by the respondent appears in the books and that no such money has been handed to the Treasurer of the funds who would be no other than the resident priest. It is also said that no steps have been taken to compel the party who had received the money to account for the moneys received up to date. The date of this incident, it will be noticed, is subsequent to the date when the respondent stopped payment of his cheque already referred to, and here too, it is not without significance that admittedly the respondent attended the Fancy Bazaar after his visit had been published by means of posters and handbills. The priest himself does not say that he saw the respondent place or hand over any money but the most that the priest goes to the length of saying is that he heard it so said. The respondent denies that he made any such payments as alleged.

It is not unimportant to determine, even on the facts as found, whether payments to religious or charitable institutions can be said to amount

to bribery within the meaning of the provision in the Order in Council. The part of the section material for purposes of the present discussion is sub-section (*a*) of section 57, which provides, leaving out the words which are inapplicable, that every person who gives money to an elector or to any person on behalf of an elector or to any other person in order to induce an elector to vote or refrain from voting should be deemed guilty of the offence of bribery.

Now, I cannot quite see how payment to the funds of a temple can be said to be a gift of money to an elector or to any other person to induce an elector to vote or refrain from voting. The essence of bribery consists in the acquisition of some personal gain or remuneration by the person bribed. In the case of a payment to temple funds no person gains any pecuniary benefit or advantage directly for himself or for any other person. One can, however, understand a payment made towards a private chapel owned by one or more individuals as amounting to a bribe, but in the case of a public place of worship I do not think it possible to hold that a payment towards its funds can be said to amount to an act of bribery within the meaning of the Order in Council. It is, however, true to say that such a payment may have the effect of gaining for the candidate popularity with the electors and may tend to enlist their sympathies in his favour. Though such payment may be the means of providing facilities to the people of the area to obtain religious or spiritual solace, comfort or benefit, nevertheless it is clear that such a payment falls far short of a giving of money or other valuable consideration as contemplated by the Order in Council.

In the United Kingdom, where the election laws have received the closest scrutiny, the view has never been entertained that such payments amount to bribery; our provision in regard to bribery is taken over verbatim from the English provision. There is a useful passage in the judgment of Channel J. in the *Nottingham Case* [1], which is well worth quoting:—

> "It really is indeed clear that gifts to hospitals, churches, chapels, libraries and clubs of all sorts have never been considered bribery. The Legislature has not yet forbidden them although certainly one motive in such cases is, I suppose, always the popularity resulting in the constituency from the gifts or possibly the fear of the unpopularity resulting in refusing, which is, of course, quite the same thing."

The same idea underlies the pronouncement of Justice Lush in the *Plymouth case* [2] when he said,

> "Granted that the motive is fair, bestowing gifts on the poor is no more an offence against any law than the erection of a library, than the endowment of a church."

An Indian judgment opposed to these views quoted in the work of Pandit Nanak Chand and others dealing with the Law and Practice of Elections and Election Petitions in India has been cited on behalf of the petitioners. The case is referred to at page 328 as the *Agra City Case*,

[1] *(1911) 6 O'M & H 292.* [2] *(1880) 3 O'M & H 107 at 110.*

reported in *3 Hammond's Indian Election Petitions*, which series of reports is not available to us here. The note of the case is as follows :—

> " In the case of gifts to temples, where the criterion is the intention of the donor, out of a total collection of 753 the respondent subscribed 150, his nephew 100 and another person through whom the respondent gave the subscription 200, and where the respondent being an Arya Samajist never believed in temples and afterwards denied the payment it was held that he had a guilty conscience and in such cases, the criterion being the intention of the respondent was to influence the voters, the gift was therefore a gratification. "

It may be that the case was decided quite correctly on its particular facts, especially when one bears in mind that the language of the Indian Enactment in regard to the offence of bribery is somewhat different from our own and that of the United Kingdom. The respondent in the present case is not shown to have had a corrupt motive in making the payments he did both to temples and societies; on the other hand, it has been proved beyond controversy that he had for a considerable period of years prior to the making of these payments made donations and contributions to charities with the expectation of no temporal reward but actuated by a sincere spirit of benevolence and an honest desire to further the spiritual and social welfare of his fellow beings. The Indian case is, therefore, distinguishable from the present both as regards the facts and the enactment the construction of which was involved, while the English cases are apposite and more in point. In my view, in Ceylon, benefactions to temples, schools and similar institutions are beyond the pale of the penal provisions of the Order in Council.

(*c*) There remains for consideration the charge that the respondent made a promise to hand over the allowance that he may receive as a Member of Parliament to the Vice-Chancellor of the University of Ceylon to enable poor students from the Matugama electoral area to prosecute their studies at the University. The respondent admits that he did publish and distribute document P 33 in which express reference was made to this offer on his part. He is also alleged by the petitioner to have given utterance to the identical sentiment at various meetings at which he addressed audiences. This the respondent denies. It is, however, immaterial to decide whether repetition of the published offer was made orally at the meetings or not, for it is established that the respondent did make such an offer. The question is, Does this offer of the respondent amount to the promise of a valuable consideration? I do not think so. Valuable consideration is defined by Stroud as money or money's worth, a definition more appropriate to the present context than that given by the Exchequer Chamber in *Currie v. Misa* [1] as " some right, interest, profit or benefit ", though, it is needless to say, there is in reality no conflict between the two definitions ; the former brings out more clearly the idea underlying the term in Election Law, while the latter that under the law of Contract.

Now, did the respondent offer money or money's worth to any elector? Clearly not. But it is said that he offered the money to the Vice-Chancellor ; assuming this to be correct, it is manifest that the offer was to the

[1] *(1875) L. R. 10 Exch. at 162.*

institution and not to the Vice-Chancellor personally. But, was an offer made in fact to the Vice-Chancellor? The Vice-Chancellor may not even have heard of this offer, and even if he had, could he claim payment from the respondent? Again, clearly not.

What the respondent did was in reality not to make an *offer* or *promise* to anyone but to make a pious declaration of the intention he had formed with regard to the allowance he may receive if elected. No one can surely contend seriously that such a declaration could amount to bribery. If one analyses the declaration of the respondent further, it would be found that his objective in making it was to give added point and significance to his statement that in coming forward to seek the suffrages of the people he was not doing so with a view to secure employment in order to acquire a living for himself but purely to work for their welfare. But undoubtedly the effect of the declaration or at least that intended would have been the gaining of popularity among and the winning of the favour of the people; but even so, that is not bribery. The view I take is that, firstly, there was no offer or promise, and secondly, that assuming there was an offer or promise, it was to a scholastic institution and would be governed by the same considerations as those applicable to a temple, and therefore equally unobjectionable.

In the result, none of the charges has been established, and I hold that the respondent has been duly elected and that his return is proper. The petitions, therefore, fail and are dismissed.

The question of costs I reserve for the present and I shall make an order in regard to it after I have heard Counsel.

Petitions dismissed.