1948 *Present :* **Basnayake J.**

ALUWIHARE, Petitioner, *and* NANAYAKKARA, Respondent

IN THE MATTER OF AN ELECTION PETITION PRESENTED BY BERNARD HERBERT ALUWIHARE OF No. 8, MELBOURNE AVENUE, BAMBALAPITIYA, TO HAVE THE ELECTION OF VITANAGE TURGIN NANAYAKKARA TO REPRESENT THE ELECTORAL DISTRICT OF MATALE (No. 20) DECLARED VOID. PETITION No. 14 OF 1947.

*Election petition—Burden of proof—Standard of criminal case required—Two motives existing—Legitimate one to be preferred—Treating—Providing refreshment—Purpose of influencing votes—Name and address of printer—Printing Presses Ordinance—*Mens rea*—Elections Order in Council—Section 58 (1) (c).*

Held (i) The standard of proof required of a petitioner at an election inquiry must be higher than required in a civil case and not lower than that required in the case of a criminal charge. Where, therefore, two motives exist, one being pure and the other corrupt, that which is in favour of innocence should be preferred.

(ii) On a charge of treating, the providing of drink or refreshment does not come within the ambit of the law unless the giver gives corruptly to any person for the purpose of corruptly influencing him to vote or refrain from voting.

(iii) Section 58 (1) (c) of the Elections Order in Council should be read in conjunction with the Printing Presses Ordinance. The name required by the section is therefore the true name in full and the address means the number of the premises where the press is, the name or number of the street and the name of the place where the street is situate.

(iv) It is not necessary that *mens rea* should be proved in a charge under section 58 (1) (c). *Perera v. Jayewardene (1948) 49 N. L. R. 241* dissented from.

(v) To establish a charge of distributing a handbill there must be evidence that the person against whom the offence is alleged divided or dealt out copies of it amongst a number of persons.

THIS was an election petition presented against the return of the respondent as member for the electoral district of Matale.

S. Nadesan, with *A. H. C. de Silva*, *T. B. Dissanayake*, *George Samarawickreme* and *M. A. M. Hussein*, for the petitioner.

C. S. B. Kumarakulasinghe, with *N. M. de Silva*, *A. B. Perera* and *T. W. Rajaratnam*, for the respondent.

Cur. adv. vult.

November 29, 1948. BASNAYAKE J.—

On October 11, 1947, the petitioner, Bernard Herbert Aluwihare, presented a petition to the Supreme Court under section 79 of the Ceylon (Parliamentary Elections) Order in Council, 1946 (hereinafter referred to as the Elections Order), wherein he asks that the election of the respondent, Vitanage Turgin Nanayakkara, at a poll held on September 20,

1947, to represent the electoral district of Matale in Parliament be set aside on the following grounds set out in paragraphs 4, 5, 6, 7 and 8 of the petition :—

(i) " that the respondent, himself, his agents and others on his behalf with his knowledge or consent before and during the said election committed the corrupt practice of bribery.

(ii) " that the respondent was guilty of the offence of treating in that he himself, his agents and others on his behalf with his knowledge or consent directly or indirectly gave or provided or caused to be given or provided meat, drink, refreshment and provisions to voters and other persons for the purpose of corruptly influencing voters to vote for the respondent at the said election.

(iii) " that the corrupt practice of abetting the commission of the offence of personation was committed by the respondent or with his knowledge or consent or by agents of the respondent.

(iv) " that the respondent or his agents or others on his behalf with his knowledge or consent made or published before and during the said election for the purpose of affecting the return of B. H. Aluwihare the petitioner, a candidate at the said election, false statements of fact in relation to the personal character or conduct of the said B. H. Aluwihare.

(v) " that the respondent or his agents or others on his behalf with his knowledge or consent distributed handbills, placards or posters referring to the said election which did not bear upon its face the names and addresses of its printer and publisher and thereby committed a corrupt practice under Article 58 (1) (*d*) [*sic*] of the Ceylon (Parliamentary Elections) Order in Council."

By his petition dated November 11, 1947, the petitioner moved under section 83 (2) of the Elections Order for leave to amend his petition by the addition of the following two further grounds :—

" 5A. Your petitioner further states that the respondent who was his own election agent is guilty of an illegal practice in that he has made a false return and declaration respecting election expenses whereby his return as a member has been and is null and void.

" 5B. Your petitioner further states that an illegal practice was committed by the respondent, his agents or other persons on his behalf with his knowledge or consent in that not being the election agent of the respondent they made payment of expenditure incurred on account of and in respect of the conduct or management of the said election of the respondent in contravention of Article 62 of the Ceylon (Parliamentary Elections) Order in Council, 1946."

This application was allowed by my brother Nagalingam on November 12, 1947.

On October 31, 1947, the respondent, under rule 5 of the Parliamentary Election Petition Rules, 1946, made application for the following particulars :—

" 1. The names of all persons alleged in paragraph (4) of the petition who were bribed and by whom and through whom they were

bribed with the address and electoral number, if on the register, the occupation of each person bribing or bribed, the time or times where, when and the place or places where each act of bribery is alleged to have been committed, and the nature, amount and value of the bribe.

"2. The names of all persons alleged in paragraph (5) to have been treated or influenced or sought to have been influenced and by whom or through whom with the address and number, if any, on the electoral register of each and if not on the register the occupation and address of each of the same respectively, the times or time when and the place or places where each act of treating is alleged to have been committed, the nature, amount and value thereof.

"3. The respects in which the Respondent by himself or his Agents contravened the regulations regarding the corrupt practice of personation alleged in paragraph (6) of the Petition giving the names and addresses of all persons who committed personation and how and in what way the Respondent by himself or his Agents abetted the commission of the offence of personation, the name, address and number on the register of each voter personated and the names, addresses, occupations and electoral number of any of the Agents abetting the said offence of personation, and the place or places where each act of personation is alleged to have taken place and the nature and character thereof and the polling station or polling stations at which the alleged offence was committed.

"4. (*a*) The dates and times when and places where the false statements of fact alleged in paragraph (7) of the petition were made; the names, addresses and occupations of the Agents of the Respondent and electoral number if any of the Agents, and of the other persons on Respondent's behalf who made and published the false statements of fact alleged in paragraph (7) of the petition.

(*b*) The manner or mode in which the false statements of fact alleged in paragraph (7) were made and published, stating whether they were oral or in writing, and if in writing the name of the writer or printer; the number of publications with the names of persons making each separate publication and if in writing the contents thereof.

(*c*) In what manner and to what extent was the return of the petitioner affected or sought to be affected by the publication of the false statements alleged in paragraph (7) of the Petition.

"5. (*a*) The dates and times when and the places where every handbill, placard or poster alleged in paragraph (8) of the Petition were distributed; the names, addresses and occupations of the Agents and electoral number if any of the Agents of the Respondent and of the other persons on Respondent's behalf who distributed the handbills, placards or posters alleged in paragraph (8) of the petition.

(*b*) The manner or mode in which the handbills, placards or posters alleged in paragraph (8) of the petition were distributed; the number of such handbills, placards or posters and the contents of each and everyone of such handbills, placards or posters alleged in paragraph (8) of the Petition.

(*c*) The respects in which the Respondent by himself or his Agents or others on his behalf contravened Articles 58 (1) (*d*) alleged in paragraph (8) of the Petition.

" 6. In regard to all charges set out in the petition particulars of all documents relied on by the Petitioner."

On November 20, 1947, the application for particulars came up for consideration by my brother Nagalingam and the parties came to an agreement the record of which reads :

" It is agreed between parties that the following particulars should be furnished :

(1) Particulars called for paragraph (1).
(2) Paragraph (2) except the amount and value of the treating.
(3) Paragraph (3).
(4) Paragraph (4*a*) except " Times ".
(5) Paragraph (4*b*) except the particulars required in the last sentence of the paragraph.
(6) Paragraph (5*a*) except the dates and times.

Particulars called for in paragraphs (4*c*), (5*b*), (5*c*) and 6 will not be furnished."

The Court ordered that the particulars which the petitioner agreed to furnish should be supplied " 10 days before the date of trial exclusive of the date of filing of the particulars and the date of trial and of all Sundays."

A further application for the following particulars in regard to charges 5A and 5B of the amended petition was made on September 14, 1948.

" 1. In what respect or respects the return of election expenses filed by the Respondent is false.

" 2. The respect or respects in which the Respondent by himself or his agents or other persons on his behalf with his knowledge or consent contravened article 62 of the Ceylon (Parliamentary Elections) Order in Council, giving the names and addresses of all persons who contravened the aforesaid article 62 and the names and addresses of the persons to whom payment was made on account of and in respect of the conduct or management of the said election and the dates, times and places of the alleged act of payment."

This application came up for consideration before me on September 17, 1948, and the petitioner was ordered to furnish all the particulars then in his possession. He agreed to do so and took time till September 20, 1948, the date fixed for the trial of the petition, on which date certain particulars were furnished.

Before I proceed to deal with the specific grounds on which it is sought to have the election set aside, I shall consider the question of the onus of proof and the standard of proof in regard to charges made in an election petition. Section 77 of the Elections Order states that the election of a candidate as a Member shall be declared to be void on an election petition on any of the grounds specified therein which may be *proved to the satisfaction of the election judge*. It is clear therefore that the section imposes the onus of proof on the petitioner, who must establish each of

the grounds on which he relies. Where a petitioner succeeds in proving any of the grounds specified in section 77 of the Elections Order the respondent's election is declared void, and in a case where a corrupt or illegal practice is proved to have been committed by the respondent's agents with his knowledge and consent and certified by the election judge the respondent is subject to the same incapacity that results in a conviction of an offence falling under the category of corrupt or illegal practice. A successful election petition carries with it severe penalties not only to the respondent himself but also to other persons who have been proved at the trial to have been guilty of any corrupt or illegal practice. The standard of proof required of a petitioner must therefore be higher than that required in a civil case, where a party must prove his case by a preponderance of evidence, and not lower than that required in the case of a criminal charge, viz., proof beyond reasonable doubt. In a wide range of cases which are strictly not criminal the standard of proof is the same as for a criminal case. In the case of *State of New York v. Phillips* [1], the Privy Council held that, in an action for damages for conspiracy to defraud, proof beyond reasonable doubt was required. In the case of *Churchman v. Churchman* [2], Lord Merriman expressed the opinion : " The same strict proof is required in the case of a matrimonial offence as is required in connection with criminal offences properly so called." The trend of judicial opinion is that where allegations of offences statutory or otherwise which carry with them severe penalties are made in proceedings which are strictly not criminal, the standard of proof of those allegations is the same as in a criminal case. This is a principle which in my view should be applied to proceedings on an election petition. A petitioner should therefore prove the charges he makes beyond reasonable doubt. A similar view appears to have been taken in the ca e of *K. V. Krishnaswami Nayakar v. A. Ramaswami Mudaliyar and C. Muthiah Mudaliyar* [3] and the *Londonderry Case* [4].

Bribery.—I now come to the charges. The first is the charge of bribery. Although particulars of thirteen acts of bribery had been furnished the petitioner's counsel in his opening address indicated that he would confine himself to only three of them. But evidence was offered only in regard to one of the alleged offences of bribery. The particulars furnished in regard to that act are as follows :—

> " A contribution of Rupees Three Hundred and Thirty three and cents seventy to the fares and expenses of the travel to see the Buddhist relics in Colombo being part of a sum paid by Mr. Nanayakkara on account of the Railway fares in respect of the said journey—a nett contribution of cents 40 to the expenses of each person."

The allegation is that the act of bribery was committed by the respondent on March 28, 1947, at the Office of the General Manager, Ceylon Government Railway, and on April 4, 1947, at about 6 a.m. at Matale Railway Station by giving railway tickets.

The evidence on this charge is that the respondent interviewed the Railway Accountant, one Babapulle, and made arrangements for a

[1] *(1939) 3 D. L. R. 433.*
[2] *(1945) 2 All E. R. 190.*
[3] *Hammond's Election Cases, 307 at 310.*
[4] *1 O'M. and H. 274 at 279.*

special train to convey Buddhist pilgrims from Matale to Colombo and back to enable them to worship the Sanchi relics. On March 28, 1947, the respondent paid at the Railway Accountant's Office at Colombo, a sum of Rs. 3,917·50, the value of 625 tickets, being the minimum required for a special train. A special train with accommodation for about 1,000 third-class passengers was accordingly arranged by the Railway. It was stipulated that any passengers over and above the minimum of 625 will have to be paid for at the rate of Rs.4·90 per passenger. In consequence of the large number of pilgrims wishing to take advantage of the special train, a further sum of Rs. 2,741·55 was paid in at the booking office at the Matale Station for tickets over and above the minimum number. The train was fitted with equipment for broadcasting, the microphone being in the Guard's van. Pirith, bana, and talks on moral subjects, were through this medium conveyed to the passengers. The respondent himself travelled in the train and made himself generally useful both during the journey and after the train reached Colombo. The train was extremely overcrowded when it left Matale and till it reached Kandy the pilgrims were greatly inconvenienced. At Kandy the respondent persuaded the railway officials there to add two railway carriages.

The pilgrims were not exclusively from the respondent's electorate, nor were they confined to those who supported the respondent. Prior to entraining the majority of the pilgrims assembled at Vijaya College, of which institution the respondent was Principal.

In connexion with the pilgrimage a hand bill (R2) giving useful information to those wanting to take advantage of the opportunity of going by the special train was published on March 29, 1947, under the names of N. G. Fonseka, M. B. W. Ellepola, and G. Arlis de Silva. It gives the date and time of departure of the pilgrim train, viz., 7 p.m. from Matale on April 4, 1947. It also states the hours during which the relic chamber would be open for the benefit of the pilgrims from Matale, viz., from 4 a.m. to 8 a.m. on April 5, 1947. It also provides information as to the fare each pilgrim has to pay, viz., Rs. 5·75 each. The pilgrims were asked to bring young coconuts, oranges, &c., to be served as refreshments at Colombo to pilgrims from elsewhere, and they were also advised to bring refreshments for their own use. At the same time they were informed that the Maha Bodhi Society would also supply food and tea at reasonable rates. The notice also stated that there would be special reservation in the train for bhikkhus. The pilgrims were required to make their reservations by 4 p.m. on April 3, 1947. Accommodation was not guaranteed to those who failed to book in time. All payments had to be made to one V. P. H. Appuhamy and a receipt obtained therefor.

Apart from K. Navaratnam, the official from the General Manager's Office, who spoke to the fact that it was the respondent who made the arrangements for the special train and made the initial minimum payment, a fact which is admitted by the respondent himself, the following witnesses were called in support of the charge :—

Ukku Banda Senanayake,
Yapa Mudiyanselage Abeykoon,
Selliah Pakiasothy, and
Wilson Hendeniya.

Ukku Banda Senanayake, who supported the petitioner at the election, said that he was one of the pilgrims in the pilgrim train. He paid Rs. 5·75 as his fare, and made use of the opportunity of seeing the relics. He stated that he was obliged to no one for it as he paid for the journey. The witness Abeykoon also travelled by the same train paying the prescribed fare. He was also a supporter of the petitioner. Hendeniya, the other witness, was also a pilgrim. He too was a supporter of the petitioner, and like the others paid his fare. It was also sought to establish by the evidence of these witnesses that the respondent made use of the occasion for election propaganda on his behalf. Senanayake gave no evidence on the point beyond saying that he heard songs through the sound amplifiers. But Abeykoon said that he heard someone repeatedly say "Mr. Nanayakkara had taken lot of trouble in making this arrangement and when the occasion arises to be grateful to him." According to this witness "It was a case of repetition of the good work done by Mr. Nanayakkara." Apart from that he says he heard music. Hendeniya says he heard the following statement made by the respondent: "Such services were not rendered for Matale poor people. Except Mr. Nanayakkara, teacher at Vijaya College, no one has done such a thing. Today or later on if I ask for a favour from you with regard to political matters, you must render that help to me." In cross-examination he said that apart from this statement which was repeated a number of times, he heard baila songs at which he was annoyed, but he was powerless to do anything about it. Pirith, he said, was chanted only for a short time.

Selliah Pakiasothy, the radio technician, supplied and fitted, and was responsible for the working of, the sound equipment in the train for a fee of Rs. 200. He says that the respondent speaking through the microphone first referred to the difficulty of accommodating the people in the different compartments, and promised to give them extra compartments at the Kandy Railway Station. He also says that one Ellepola, a teacher at Vijaya College, also spoke through the microphone, and repeatedly said: "Mr. Nanayakkara was trying his level best to make this arrangement for the public of Matale to see the Sanchi Relics conveniently and there was no other who did such a thing in Matale, and that if at any time Mr. Nanayakkara required their services they should help him in return." This witness, who was in the best position to know what was going on at the microphone, says that pirith was broadcast through records, that bana was preached, and that there was a talk against beef-eating. This witness and his father were both supporters of the petitioner. In fact Pakiasothy was one of his polling agents.

The petitioner also relied on a copy of a statement of account of the expenses, collections and disbursements in connexion with the pilgrimage which was attached to document P3. This statement bears the names of M. B. W. Ellepola, N. G. Fonseka, and G. A. Arlis de Silva. It shows that 1,100 tickets at Rs. 5·75 each were sold by V. P. H. Appuhamy and that 57 full tickets and 37 half tickets were sold at the station, and that a sum of Rs. 333·70 had been overspent. It also indicates that the respondent had advanced Rs. 4,000 and had been repaid Rs. 3,696·30, leaving a balance of Rs. 333·70 still due to the respondent. It appears

from the document R4 produced by the respondent that the figure of Rs. 333·70 in P3 should really be Rs. 303·70, a fact which was not seriously contested by the petitioner.

The respondent admits the part he played in arranging the pilgrim train but denies that he made any contribution towards the fare of any pilgrim whatsoever. He says that Rs. 250 of the balance shown as due to him was met by subscription among the members of the committee set up to organize the pilgrimage and the remainder was written off by him as irrecoverable. It should be noted that although the actual train fare was Rs. 4·90 the pilgrims were charged Rs. 5.75, the extra amount being for incidental expenses. The pilgrims therefore had to pay for all the benefits they enjoyed.

It was contended on behalf of the petitioner that these facts coupled with the fact that the respondent had on September 5, 1946, announced in the *Ceylon Daily News* his candidature for the Matale electoral district, amount to the corrupt practice of bribery within the scope of that expression as used in section 57 of the Elections Order.

The charge is that the respondent contributed 40 cents towards the fare of each pilgrim. It is not clear how this figure is arrived at. If the amount shown in the published statement as the balance due to the respondent in connexion with the pilgrimage is divided by the number of pilgrims a much lower figure is the result. Apart from that there is no accurate record of those who actually travelled in that train. The rush was so great that some who paid their fares could not get accommodation while others who had not, forced themselves in.

There can be no doubt that when the respondent went to the trouble of arranging the special train for pilgrims, he was not unmindful of the fact that it would make him popular among the Buddhist inhabitants of the district. It appears from the respondent's evidence that for some time past he had been taking a leading part in such Buddhist religious activities as would win him public favour and popularity. In 1941 he arranged for the sacred crystal to be taken to Matale. In 1943 he took a prominent part in arranging for a sessions of the Buddhist Congress to be held at Matale. In 1946 he organized an almsgiving for 1,700 bhikkus and the next big undertaking was the pilgrim train.

The respondent's previous activities show that the part played by him in arranging the pilgrim train was not anything unusual in his case. He had for several years, in his capacity as Principal of the leading Buddhist School in Matale, played a leading role in the Buddhist activities of the place. Even if he did so with an eye to popularity it cannot be said that these activites including the arrangement of the pilgrim train bring him within the ambit of section 57 of the Elections Order. I think Baron Bramwell's remarks in the *Windsor case*[1] truly express the position of persons such as the respondent.

> "But there is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done on account

[1] *2 O'M. and H. 88 at 90.*

of the existence of this motive, which by itself would have been an illegitimate motive. If the Respondent had not been an intending candidate for the borough, and yet had done as he has done in respect of these gifts, there would have been nothing illegal in what he did, and the fact that he did intend to represent Windsor and thought good would be done to him and that he would gain popularity by this does not make that corrupt which otherwise would not be corrupt at all."

In the *Boston case* [1] Justice Grove expressed very much the same sentiments in slightly different language. He says :

"We know, for instance, that persons looking forward to be candidates for Parliament are generally pretty liberal to the charities in the district, and such liberality, so far as I am aware, has never been held to vitiate the election ; I suppose upon the grounds that such persons do not select voters, as contradistinguished from non-voters, as the object of their charity, that the object itself is good, and that although the donors may, in so bestowing their charity, look to their personal interests and personal ambition, still a man is not to be injured in an object of personal ambition merely because he does good, which perhaps without that stimulus he might not have been induced to do."

I am not unmindful of the fact that Baron Pollock says in the *Salisbury case* [2] that he is not prepared to go so far as Lord Bramwell in the *Windsor case* (*supra*). Baron Pollock says :

"I should rather prefer, myself, to say we must take the whole of the evidence into consideration, and consider whether the governing principle in the mind of the man who gave away such gifts was, that he was doing something with a view to corrupt the voters, or whether he was doing something which was a mere act of kindness and charity."

Earlier in my judgment I expressed the opinion that in the trial of an election petition the standard of proof required is the same as in a criminal case. In this view of the matter, if two motives exist, one being pure and the other corrupt, that which is in favour of innocence should be preferred. It is a principle of criminal law that any reasonable doubt is resolved in favour of the accused person ; so, in the trial of an election petition, any similar doubt should be resolved not in favour of the petitioner but in favour of the respondent.

Although a variety of acts are enumerated in section 57 of the Elections Order as falling within the ambit of the offence of bribery, the evidence offered by the petitioner does not bring the respondent within any one of the paragraphs (*a*) to (*i*) of that section. The judicial opinions I have quoted, especially the concluding remarks of Lord Bramwell, are I think applicable to the instant case. *I hold therefore that the charge of bribery is not proved.*

Treating.—The next charge I have to consider is the charge of treating. The particulars furnished by the petitioner specify four instances of treating. Learned counsel for the petitioner indicated in his opening address that he would confine himself to two of them, viz., the treating at Juanis Baas's house at Selagama and the treating at the Ambalama

[1] *2 O'M. and H. 161 at 163.* [2] *4 O'M. & H. 21 at 28.*

at Ambanpola. In the course of the proceedings he sought to amend the particulars in regard to the charge of treating at the Ambalama at Ambanpola by the substitution of "Udasgiriya" for "Ambanpola". I refused leave to amend as in my view the proposal amounted to the substitution of a new charge. Evidence was therefore offered only on the charge of treating at Juanis Baas's house at Selagama.

The particulars relating to the charge are, in the language of the statement of particulars :

> "Treating with refreshments, arrack, aerated waters and bread on September 18, 1947, by V. T. Nanayakkara and J. E. Gunasena at the house of Juanis Baas *alias* Juanis Appu, at Selagama."

The following witnesses were called in support of the charge :

Galapitagedera Kira *alias* G. K. Karunaratne,
Dematagahagedera Horatala, and
Arumadurayalagedera Bandiya.

Their evidence is to the effect that there was a meeting at the house of one Juanis Baas at a village called Selagama. The gathering included labourers of Selagama Estate and some of the villagers of Selagama. Arrack was served to those who took liquor, and aerated water to others. Some of them say that bread and sardines were also served. The witnesses themselves enjoyed the hospitality of Juanis Baas. The allegation is that food and drinks were served by Cornelis and Abraham, the two sons of Juanis Baas, and two others. The respondent was present and addressed the gathering. There is no evidence whatsoever that either J. E. Gunasena or the respondent was in any way responsible for the treating. The respondent and Cornelis deny that any refreshments whatsoever were served. Juanis Baas is a man of 82 and it is not alleged that he was the respondent's agent or that he took any part in the election. His house appears to have been selected as the venue for the meeting as it was situated at a spot which was convenient for both the villagers of Selagama and the labourers of Selagama Estate.

Cornelis disclaims any responsibility for the meeting. He thinks it was his brother Abraham who brought it about. Among the 150 to 200 persons who attended the meeting there were present besides the witnesses and the respondent, J. E. Gunasena who presided, Juanis Baas, Sirisena the conductor of Selagama Estate, Ariyaratne the clerk of the estate, and one Adikanakapulle. Now, the petitioner has failed to place the evidence of persons like Sirisena, Ariyaratne and Adikanakapulle whose evidence would undoubtedly have helped the petitioner if the story of Karunaratne, Horatala and Bandiya were true. As the evidence stands we have on one side the evidence of Karunaratne and the two witnesses and on the other the evidence of Cornelis and the respondent. In weighing the evidence of the petitioner's witnesses one cannot overlook the fact that they are closely related. In this state of the evidence there is no ground on which I can prefer the evidence given on behalf of the petitioner to that given by the respondent and Cornelis. I hold therefore that it has not been established to my satisfaction that food and drink were served on the occasion in question at the house of Juanis Baas.

Even if refreshments were served by Juanis Baas at his own house, that fact by itself does not constitute the offence of treating under section

55 of the Elections Order. In a charge of treating it is not sufficient to show that eating and drinking took place under the eyes of the candidate but in the words of Justice Willes "it must be shown that the *eating* and drinking was supplied at the expense or upon the credit of the candidate, either by his authority or by the authority of one or more of his agents in order to influence voters" [1]. Or in the words of Justice Vaughan Williams in the *Rochester case* [2] :—

> "If people are called together for the purpose of exciting their political enthusiasm, and if the so-called treating is a mere incident of such a gathering, it is not an offence within the Act. It does not make it corrupt treating that a roof or warmth is provided for the meeting, nor is it necessarily corrupt treating if the persons attending the meeting are provided with some sort of refreshment. But if they are gathered together merely to gratify their appetites and so to influence their votes, then it is treating within the Act."

The English cases I have cited show that the providing of drink or refreshment does not come within the ambit of the law unless the giver gives corruptly to any person for the purpose of corruptly influencing a person to vote or refrain from voting at an election.

The language and content of section 55 of the Elections Order are in the main the same as the provisions of the corresponding English Act in force at the time Justice Willes and Justice Vaughan Williams decided the cases I have cited. Like the English section, our section, which is in certain respects wider than section 1 of the Corrupt and Illegal Practices Prevention Act, 1883, 46 and 47 Vict. c 51, penalises not only the person who corruptly gives or provides refreshment but also every elector who corruptly accepts drink or refreshment. For that reason the evidence of witnesses who say they were corruptly treated should be received with the caution with which the evidence of those who confess they were participating in an offence is generally regarded.

Both on the law and on the facts I hold that the charge of treating has not been proved.

Personation.—In regard to the charge of personation, although learned counsel for petitioner indicated in his opening address that he would lead evidence in respect of two instances of personation, he did not do so. *The charge of personation must therefore be dismissed.*

Publication of false statements.—I shall now consider the charge of publication of false statements for the purpose of affecting the return of the petitioner. In this instance too, although particulars of four acts were given, learned counsel for the petitioner offered evidence in regard to only one of them. In the words of the statement filed by the petitioner the particulars relating to the act in respect of which evidence was led are as follows :

> "The Katudeniya pamphlet by an anonymous writer published by K. D. James Appuhamy between 4th and 8th February, 1947, and distributed in Matale Town, Matale Medasiya and Udasiya Pattus, particularly in the villages of Bandarapola, Katudeniya, Warapitiya and Ukkuwala."

[1] *Lichfield case (1869), 1 O'M. and H. 22 at 26.*
[2] *4 O'M. and H. 156 at 157.*

The Katudeniya pamphlet is a document in Sinhalese. The false statements complained of according to the translation in the statement of particulars are as follows :

> " (*a*) What was the relief given to Matale South out of the Rs. 250,000 entrusted to Mr. Aluwihare for relief in this district ?
>
> (*b*) For how many of the educated youths of poor families in this area has he obtained employment ? Are there not four D. R. O's from the Aluwihare family ? (Meaning thereby that the petitioner neglected the unemployed youth of the constituency of Matale South but obtained employment for members of his own family.)"

The witnesses called in support of the charge are H. M. Samarakone Banda, a student, Maangoda Dhammananda Thero, and M. B. Kulatunge, The evidence of the first named is that the pamphlet was distributed by one K. D. James Appuhamy (hereinafter referred to as James Appuhamy, who was a supporter of the respondent. He says that about three or four days before February 9, 1947, when he was returning from school, James Appuhamy, who was passing in a car, slowed down his car and dropped a copy of the pamphlet (P4) on the road near Wariyapola Estate. He picked it up and later gave it to Dhammananda Thero. James Appuhamy denies that he ever distributed pamphlets either from a car or otherwise. I think I should also mention here that there is no evidence as to the position of Wariyapola Estate in relation to the places mentioned in the statement of particulars as being the places of publication of the Katudeniya pamphlet.

M. B. Kulatunge states that one day in February, 1947, on his way to Ukuwela he saw James Appuhamy hand to each of two persons named Ratnayake and Kalu Banda a copy of the pamphlet (P4), and that on inquiring from Ratnayake what it was, he handed him a copy and asked him to read it. He read it, returned it to Ratnayake, and went his way. Neither Ratnayake nor Kalu Banda was called to support this witness.

The above, in brief, is the evidence on which the petitioner seeks to prove that James Appuhamy published the Katudeniya pamphlet before the election for the purpose of affecting his return. If Kulatunge and Samarakone Banda are speaking the truth, the acts of James Appuhamy amount to publishing. For every person who gives or lends a copy of an offensive publication publishes it [1]. But section 58 (1) (*d*) of the Elections Order only penalises the publication of " any false statement of fact in relation to the personal character or conduct " of a candidate. Before a person can be found guilty of an offence under that section there must be evidence that the statements of fact published are false in relation to the personal character or conduct of a candidate. There is no such evidence before me. The petitioner has not given evidence and stated that the statements he complains of in the Katudeniya pamphlet (P4) are false, nor has he called any other evidence to establish the falsity of the statements therein.

Now in regard to the act of publication itself I find it difficult to prefer the evidence of Samarakone Banda to that of James Appuhamy.

[1] *R. v. Mary Carlile, (1819) 3 B. and Ald. 167 at 169 ; 106 E. R. 624.*

Samarakone Banda's account of the dropping of a solitary pamphlet from the car seems strange. If the object was to disseminate the information in the pamphlet one is surprised at James Appuhamy's parsimony in dropping just one leaflet in the hope that the lone wayfarer Samarakone Banda might pick it up. Samarakone Banda did not impress me as a reliable witness, whereas James Appuhamy did. In the absence of other evidence to support Samarakone Banda I prefer to believe James Appuhamy.

Now in regard to the other incident narrated by Kulatunge, there too it is a case of word against word. Although learned counsel announced in his opening address that he meant to lead the evidence of Ratnayake and Kalu Banda, the persons to whom pamphlets were given, he did not do so. In the absence of any satisfactory explanation of the failure to call them the presumption is that had they been called their evidence would have been unfavourable to the petitioner. That presumption affects Kulatunge's evidence adversely and renders it unacceptable as against James Appuhamy's denial. There is a further circumstance in favour of the respondent, and that is the absence of any evidence that James Appuhamy was an agent of the respondent.

I therefore hold that the charge of publishing false statements of fact in relation to the personal character and conduct of the petitioner for the purpose of affecting his return is not proved.

Distribution of handbills without name and address of printer and publisher thereon.—The last charge I have to consider is the one in which it is alleged that " the respondent or his agent or others on his behalf with his knowledge or consent distributed handbills, placards or posters referring to the election which did not bear upon its face the names and addresses of its printer and publisher " and thereby committed a corrupt practice under section 58 (1) (*c*) of the Elections Order. I have assumed that the petitioner's reference in his petition to section 58 (1) (*d*) under this charge is an error for section 58 (1) (*c*). Here too, although particulars of three acts of distribution relating to three different pamphlets were originally given the evidence was confined to two of them. They are :

(*a*) Katudeniya pamphlet (P4) distributed by K. D. James Appuhamy.

(*b*) A pamphlet (P3) entitled " An answer to ' To the Electors of Matale District ' " distributed by M. B. W. Ellepola.

Before I discuss the evidence I think it will be helpful if I examine the law relating to the charge. Section 58 (1) (*c*) reads :

" Every person who—

> prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher ; "

First, in regard to the words " bear upon its face the names and addresses of its printer and publisher ". What is the name of the printer ? Is it the full name (forenames and surname) of the individual or legal person who owns the press, or will his business name suffice ? An examination of our legislation in my view affords some guidance in the solution of these questions. The Printing Presses Ordinance (section 4 (1)) requires that " every book or paper printed within this Island shall have printed legibly on it the true name in full of the printer and (if the book or paper be published) of the publisher and the place of publication ". That Ordinance also penalises (section 4 (2)) a person who prints or publishes any book or paper otherwise than in conformity with section 4 (1). It goes further, and even penalises a person who distributes or assists in distributing any book or paper whereon the particulars required by section 4 (1) have not been duly printed. The Ordinance extends (section 7) the scope of the word " book " to include any volume, part or division of a volume, or any collection of printed sheets of paper or similar material bound together, and of the word " paper " to include any printed sheet of paper or similar material or any unbound collection of printed sheets of paper or similar material. Now the expressions " book " and " paper " in the Ordinance are in my view wide enough to embrace the kinds of documents enumerated in section 58 (1) (*c*). The implied requirement of that section that the documents enumerated therein should bear the names and addresses of the printer and publisher is therefore not new to our law. What section 58 (1) (*c*) of the Elections Order does is to declare that the printing, publication, distribution, &c., of documents which do not contain these particulars is a corrupt practice. That section should be construed consistently and in conformity with the Printing Presses Ordinance. Section 58 (1) (*c*) cannot be regarded as authorising what the Printing Presses Ordinance prohibits. The particulars required under the Elections Order cannot therefore be less than those required under the Ordinance. Although section 58 (1) (*c*) uses the word " name " alone and not the words " true name in full " as in the Printing Presses Ordinance, the word " name " should be construed as meaning the " true name in full " in order to reconcile the two enactments. The word " name " when used by itself has been construed in some of the English statutes [1] as capable of including business or trade or partnership names. The name of the printer for the purposes of section 58 (1) (*c*) should therefore be the printer's true name in full and similarly the name of the publisher should be his true name in full. The expression " true name " means the name of baptism or registration and the surname " unless they have been over-ridden by the use of other names assumed and generally accredited " [2]. In the case of a press owned by an individual or individuals it is therefore not sufficient to give the business name of the owner. Similarly, in the case of a publisher

[1] *Graves v. Ashford, (1867) L. R. 2 C. P. 410 at 421.*
Smith and Jago v. Brown, (1831) 1 Cr. and J. 542 ; 148 E. R. 1538.
Newton v. Cowie, (1827) 4 Bing. 234 ; 130 E. R. 759.
Rock v. Lazarus, (1872) L. R. 15 Eq. 104.
Edwards v. Pharmaceutical Society, (1910) 2 K. B. 766.
Cameron v. Tyler, (1899) 2 Q. B. 94.

[2] *Sullivan v. Sullivan (otherwise Oldacre), (1818) 2 Hag. Con. 238 at 254; 161 E. R. 728.*

who has a business name, his individual name must be given. Where there is more than one person who owns a press the names of all the owners must be given and likewise in the case of a business owned by more than one publisher. If the printer is a legal person, his corporate name should be given.

So much for the name. How should the address be given ? Again we may turn to the Printing Presses Ordinance which requires any person who possesses a press for the publication of books or papers to furnish a true and precise description of the place where the press is situate. Now the address which the printer should put on any paper printed by him is that same description of the place where the press is situate. The address required is not in my view the place where the printer resides. To satisfy the requirements of the section he must give the number of the premises where the press is, the name or number of the street and the name of the place where the street is situate. Similarly the publisher should give a true and precise description of the place from where he conducts his business of publisher. In a case where the publisher resides at a place different from his place of business he need not give the address of his residence. Where the printer and publisher are one and the same person, it should be so stated and the name and address given if both printing and publication are carried on at the same address. Otherwise the address at which publication is made should be separately stated.

The next question I wish to address my mind to is whether the mere fact of printing, publishing, distributing, &c., of a handbill which does not contain the required particulars is an offence whatever may have been the mental state of the person who committed the act. My brother Windham held in the case of *Perera v. Jayewardena* [1] that *mens rea* was necessary to constitute an offence under section 58 (1) (*c*). With respect, I find myself unable to agree with my brother's view. In the case of *Muthusamy v. David* [2] I have discussed the place of *mens rea* in the criminal jurisprudence of this country. I have in that case followed the decision of *Weerakoon v. Ranhamy* [3], a decision of four judges, wherein it has been held that " for the doctrine of *mens rea* as it exists in our law, we must look exclusively to sections 69 and 72 of our own Penal Code." The principles of English criminal law which to a certain extent had, before the enactment of the Penal Code, been imported into the jurisprudence of Ceylon were abolished by that Code [4].

My brother has cited a number of English cases on personation in support of his view that *mens rea* must be proved in a charge under section 58 (1) (*c*). The offence of personation under section 54 of the Elections Order, like all other offences under our law, is committed if the act of the person committing it comes within the ambit of the section which makes it an offence, unless the offender can bring himself within one of the general exceptions of the Penal Code. A person charged under

[1] *(1948) 49 N. L. R. 241.*
[2] *(1948) 50 N. L. R. 423.*
[3] *(1921) 23 N. L. R. 33 at 42.*
[4] *Kachcheri Mudaliyar v. Mohomadu, (1920) 21 N. L. R. 369.*

section 58 (1) (*c*) can equally avail himself of the same exceptions. The gravity of the punishment is no reason for imposing a requirement which the Legislature has not thought fit to impose. Recent legislation, especially in Britain, contains numerous examples of statutory offences not requiring *mens rea* but carrying grave penalties. The cases show that the severity of the punishments has not influenced the Courts to construe such statutes as requiring *mens rea* where the language of the statute itself does not specify a particular intention or knowledge. The following quotation from the case of *R. v. Isaac Sorsky* [1] illustrates the present tendency not to regard *mens rea* as implicit in statutes creating offences even in England where *mens rea* is a part of the common law :

> " Passing next to counts 3 and 4, upon which all three appellants were convicted, counsel for Sorsky was bold enough to contend that the person supplying in these circumstances could not be convicted of an offence against the Order unless there was proof of a *mens rea* on his part and that a charge of conspiracy to supply contrary to the Order therefore involved knowledge by the accused that the amount of the quota of the supplier had been or would be exceeded.
>
> " The all sufficient answer to that argument is to be found in the wording of the Orders in question which makes it abundantly plain that the supply of controlled goods contrary to the Order is an offence irrespective of any knowledge or state of mind of the supplier. If authority is required in support of that proposition it will be found in the judgment of this court in *R. v. Clayton* (1943, unreported). That case is also an authority for the proposition that conspiracy to contravene the terms of these Orders does not require proof of that knowledge on the part of the accused indicated by the expression *mens rea*. To the same effect is *R. v. Jacobs and Others* (1944) K. B. 417 ; (1944) 1 All E. R. 485, in which it was contended for the appellants (who had been convicted of conspiring to contravene the provisions of the Price of Goods Act, 1939, by selling price controlled goods at a price in excess of the permitted price) that the conviction was wrong in that there was no evidence that the vendors were aware that the permitted price had been exceeded. That argument was rejected by this court, it being pointed out in the judgment that a criminal conspiracy consists in the agreement to do an unlawful act without reference to the knowledge on the part of the accused of its illegality."

In the instant case learned counsel for both the petitioner and the respondent agree that for an offence under section 58 (1) (*c*) no *mens rea* is necessary.

The documents P3 and P4 clearly do not satisfy the requirements of section 58 (1) (*c*). The question I have to consider is whether these documents were " distributed " by the persons named in the particulars.

[1] *(1944) 2 All E. R. 333 at 336.*

The word "distribute" means to divide or deal out amongst a number. The context does not indicate that the word "distribute" is used in any sense other than its ordinary meaning. To establish a charge of distributing a handbill there must therefore be evidence that the person against whom the offence is alleged divided or dealt out copies of it amongst a number of persons.

The only witness who speaks to the distribution of P3 is one Dingiri Banda. He says that on one occasion the respondent and one Ellepola came to canvass his vote and that on that occasion when he indicated his inclination to support the petitioner Ellepola handed him a copy of P3 and said "You can read this and see. Do not count any differences you have now. Give your vote for Mr. Nanayakkara." The respondent denies that he ever went either with Ellepola or alone to canvass the witness's vote. Even if this witness is speaking the truth, as I said before, the handing of a handbill or pamphlet on a solitary occasion does not amount to distributing the pamphlet. Apart from that this witness's cross-examination revealed that he was not the type of person on whose evidence reliance can be placed. He was once a Buddhist priest, then a police constable. On his own admission he appears to be a litigious person who has been a party to a number of cases both in the Courts and in the Village Tribunal. He has been disbelieved by the District Court of Kandy and fined in the Village Tribunal. I am therefore unable to accept his evidence. The respondent says there was no such incident, and I prefer to believe him. I hold that the charge of distribution of P3 is not proved.

The evidence of distribution in regard to P4, the Katudeniya pamphlet, falls into two groups, viz., (*a*) the dropping by James Appuhamy of a pamphlet from a motor car on the road near Wariyapola Estate somewhere in February, 1947, in the presence of Samarakone Banda, and (*b*) the handing by James Appuhamy of two pamphlets to Ratnayake and Kalu Banda in the presence of one Kulatunge. I have in discussing the charge under section 58 (1) (*d*) explained why I am not prepared to act on the evidence of the witnesses who testify to the acts referred to above. Apart from the unreliability of the witnesses, the acts alleged are in my opinion insufficient to establish the charge of distribution of pamphlets.

I hold that the charge of distribution of the Katudeniya pamphlet is not proved.

This brings me to the end of the charges all of which I hold have not been proved. I determine that the respondent whose election is complained of was duly elected.

The petition is dismissed. The petitioner will pay to the respondent the actual expenses incurred by him in this trial as taxed by the Registrar.

Petition dismissed.