

Therefore, in my view, there was not a complete execution of her power or mandate, and the whole appointment, in consequence, fails. Steyn says (at p. 240) "The grantee must exercise his powers within the limits of those conferred upon him. If he exceeds or executes them improperly, the result is the same as if he had not executed them at all". In my opinion the exercise of a power of appointment must be closely examined to ascertain whether the fiduciary has acted within the strict limits of the mandate imposed on him or her. Assuming that Florence exercised her power of appointment correctly and properly, then Granville took under Florence's will P2 as the heir, not of Florence, but of his father the testator. That being so, he comes within the clause which precedes condition 1 of the will and takes "subject expressly to the conditions and restrictions following", i.e., under condition 1 he is prohibited from alienating, and under condition 3 on his death without issue the share will devolve on his surviving brothers and sisters including Vincent. I hold, however, that Florence did not validly exercise her power of appointment. Therefore, on her death without issue Vincent would inherit under P1 subject to the fideicommissum.

I therefore affirm the order appealed against with costs.

SWAN J.—I agree.

*Appeal dismissed.*

1949

*Present: Nagalingam J.*

DON PHILIP *et al.*, Petitioners, and T. B. ILLANGARATNE,  
Respondent

ELECTION PETITION NO. 1 OF 1948

*Election petition—Corrupt practice—Publication of false statements regarding candidate—Burden of proof—Assistance of political party—Agency—Responsibility of candidate—Parliamentary Elections Order in Council, 1946—Section 58 (1) (c) and (d).*

Where the allegation is that the respondent or his agents are guilty of making false statements of fact in relation to the personal character and conduct of a rival candidate, the falsity of the statement is *prima facie* established when there is a denial on oath. It is for the party who asserts that a statement alleged to be false is true in fact to establish beyond reasonable doubt the truth of that statement.

Where a political party of which the candidate is not a member places the services of its office and its workers at his disposal and addresses meetings on his behalf such party and its active members are constituted agents of the candidate and he is responsible for any corrupt practice committed by them.

A document does not fall within the class of publications referred to in section 58 (1) (c) of the Order in Council unless it either expressly or by implication refers to the election. If it does not, however mischievous it may be in its effect on the election itself, it is outside the scope of the section.

THIS was an election petition presented against the return of the respondent, at a bye-election, as member for the Electoral District of Kandy.

*G. E. Chitty, with T. K. Curtis, G. T. Samarawickrema, M. I. Mohamed and J. F. Soza, for the petitioners.*

*S. Nadesan, with N. Nadarasa, S. Sharvananda and M. L. S. Jayasekera, for the respondent.*

February 10, 1949. NAGALINGAM J.—

The petitioners, who are duly registered voters of the Electoral District of Kandy, seek in these proceedings to have the election of the respondent at the by-election declared void. In their petition all the major grounds upon which an election can be avoided were set out but at the tri evidence was led only in regard to two of them and the other grounds were abandoned. The two grounds which the petitioners sought to substantiate are those falling under section 58 (1) (c) and (d) of the Ceylon (Parliamentary Elections) Order in Council, 1946.

I shall deal first of all with the charges under section 58 (1) (d). The allegation of the petitioners is that during the election the respondent by himself or by his agents or by other persons with his knowledge consent made or published either orally or in writing for the purpose affecting the return of the rival candidate, Mr. Fred de Silva, false statements of fact in relation to the personal character and conduct of the latter. Evidence in respect of several statements was tendered but I do not propose to discuss all the evidence thus led and shall confine the discussion to such of the statements as appear to have been established.

(a) Firstly, the respondent is said to have stated at a meeting held at Bogodawatte in Mulgampola, Kandy, on May 5, 1948, in support of his candidature, words to the following effect:—

"I was requested to support Vernon Gunasekera, Proctor, a defeated candidate, Kadugannawa Seat, but I refused because he is disgraceful principles . . . he has become an instrument of Mr. Fred Silva and works for him for hire."

The testimony of Police Sergeant R. L. V. Fernando shows that the words or words to the like effect were uttered by the respondent on that occasion (P 35). The Sergeant was one of the men attached to a special branch of the Criminal Investigation Department stationed at Kandy whose duties primarily consisted in "covering" political meetings and taking notes of speeches. According to the Sergeant and other police officers whose duties were similar, they made short notes of the points in the speeches which were considered salient by them, and after the conclusion of the meeting, with the aid of the notes they reproduced from memory as far as possible the gist of the speeches. It was suggested on behalf of the respondent that the speeches as constructed by the police officers may not be accurate and that in some instances the content of what was said may have been placed on record by them. These men have all had about three to four years' experience in doing work of this character, and having seen them in the witness box and the effect of cross-examination on them whenever it was attempted to discredit them, I am satisfied that the suggestion is without any merit. The observations of mine apply to the evidence of police officers who are in the same category as Police Sergeant Fernando. I would hold that the reports of the speeches made by them to their superior officers constitute an accurate account of the speeches made by the various speakers.

Evidence was also given that the respondent made use of a similar sentiment at a meeting held on May 9, 1948, at the Town Hall, with a view to show that the alleged statement was not an isolated utterance but

it was part of a scheme to repeat the statement wherever possible in order to gain currency for it. Sergeant Fernando says that he also "covered" the meeting of May 9, 1948, at which the respondent stated that Fred Silva gets people to write leaflets and pays them money, in other words, that he was in the habit of hiring people to support his candidature. The respondent, when questioned about his speech on May 9, 1948, was not prepared to go further than that it was very unlikely that he could have made that statement, but in regard to the allegation that he had referred to the services of Mr. Vernon Gunasekera having been hired by Fred de Silva, he sought in a way to justify that statement. He proved that he had made payment of a sum of Rs. 40 to Vernon Gunasekera in order to induce the latter to speak at a meeting of the General Clerical Service Union and that he had therefore in fact hired Vernon Gunasekera's services to make a speech. But I do not think that from the fact that the respondent did pay a fee to Vernon Gunasekera for a speech which was non-political in character—and it makes very little difference even if the meeting had been political in its outlook—it followed that Fred de Silva had also hired the services of Vernon Gunasekera to support his candidature. Fred de Silva, on the other hand, categorically denied that he made any payment whatsoever to Vernon Gunasekera or to anybody else for making a speech or for writing out any propaganda literature on his behalf. I have not lost sight of the fact that Fred de Silva had his Tamil manifesto prepared by one Ganesham to whom he made a payment of Rs. 40. But this Tamil manifesto is a reproduction of the English version and can only be regarded as a translation. Besides, neither the respondent nor any of his witnesses say that they were aware of this payment or that they alluded to this payment in the course of their speeches. Had it been said that Fred de Silva had hired a person to do the Tamil translation of his manifesto, there would have been no sting in it and such a statement would only have had the effect of adversely recoiling on the speaker himself. This payment thus has no bearing on the question. I find it therefore proved that the respondent did make the statement attributed to him and that it is a false statement of fact.

(b) Secondly, Mr. H. A. C. Wickremeratna is also alleged to have made use of similar language. It is alleged that at a meeting held on May 16, 1948, at the Esplanade, Kandy, in support of the respondent's candidature Wickremeratna, who presided at the meeting, before introducing Mrs. Florence Senanayake, one of the speakers, said words to the following effect :—

"Like that Vernon Gunasekera Thakkadiya there are no persons brought on hire to address you."

This is vouched for by the same Police Sergeant Fernando (P 22). The innuendo is stated to be that, while Fred de Silva had hired the services of Vernon Gunasekera to make speeches on his behalf, the speakers at the respondent's meeting were not hirelings but were persons who felt genuinely for the cause they were espousing. Wickremeratna does not expressly deny having made this statement and, what is more, there is documentary evidence which shows that Wickremeratna was not

averse, to put it at the lowest, to have such statements made of Fred de Silva, for in document P 1 occurs this passage :

"Mr. Fred E. de Silva . . . . has hired the doubtful talents of a disgruntled pamphleteer to produce his election manifesto." It is not denied that the reference to "the disgruntled pamphleteer" is to no other than Vernon Ganasekera. Wickremeratna admits that he corrected the proofs in regard to P1 and that he himself added certain passages to it in the course of his correcting the proofs. Wickremeratna, however, states, that it was one Mr. Roland Jayasekera, who was a member of the Lanka Sama Samaj Party, who was the author of the document, but that he had been asked to hand it to the printers and that after handing it over to the printers he corrected the proofs and made additions to it. He does not say that he had the authority of Roland Jayasekera or of anybody else to make that addition set out in the manuscript P8. Notwithstanding the evidence of Mr. Lionel Cooray, who supports Wickremeratna, and of Wickremeratna, I am far from satisfied that if Wickremeratna is himself not the sole author of the document he is at least not a joint author of it. I therefore find that Wickremeratna did make the statement alleged to have been made by him orally and is also responsible for the document P1 which contains a similar statement, and I hold that these statements are also false in view of what I have said in regard to the first statement considered by me.

(c) Thirdly, at a meeting held at the Military Barracks on April 26, 1948, it is alleged that the respondent told the audience that Fred de Silva had even tried to put him out of his house by approaching his landlord. Sergeant Fernando's report of the proceedings of the meeting held on this occasion (P36) amply proves the allegation. The respondent sought to justify his statement by reference to the fact that his landlord had verbally asked him to leave the house, though his landlord himself was not called, and that on one occasion when Fred de Silva went to his house with a request that the election petition presented by the respondent against Mr. George E. de Silva should be withdrawn, he (the respondent) adverted to this subject and told Fred de Silva that he (Fred de Silva) had even attempted to have him turned out of his house but that Fred de Silva, far from denying the imputation, only asked him to forgive and forget. Fred de Silva, however, on the contrary, denies that there was any such conversation as deposed to by the respondent and in fact he asserts that he made not the slightest attempt to induce the respondent's landlord to terminate the respondent's tenancy. I cannot believe that Fred de Silva, who is a Proctor of experience, would, if he desired to have the tenancy of the respondent put an end to, have adopted the course of getting the landlord merely to request orally that the respondent should vacate the premises. An oral notice, as every legal practitioner knows, is totally ineffective for such a purpose. The respondent has not called his landlord, Amit, but it has been said that the landlord is on the side of Fred de Silva and that it would have been disastrous to have called him. On behalf of the petitioners, on the other hand, it has been urged that the respondent, who is a layman and who may have been ignorant of the sufficiency of an oral notice to terminate a tenancy, thought it best to weave into his speech a false episode of an

attempt made by Fred de Silva to have him turned out of his house, as by so doing he would reach the hearts of his audience, which consisted in the main of refugees who had been rendered homeless by the floods, most effectively, in order to secure their votes in his favour. Under the English law, reasonable ground for belief and actual belief in the truth of a false statement is an adequate excuse. (See Corrupt and Illegal Practices Prevention Act, 1935.)<sup>1</sup> But under our law such a belief provides no such extenuating circumstance. My finding, therefore, is that the respondent did make this statement too and that the statement is false.

(d) Fourthly, Wickremeratna is alleged to have given utterance to the following words or words of a similar character at a meeting held on May 17, 1948, at the Market Grounds, Kandy, in support of the respondent's candidature:—

"In 1944 when I addressed a meeting of Hospital workers for good cause, Mr. George Silva and his Pandankarayo contacted H. E. Governor Caldecotte and sent me to jail. Three police officers and Mr. Fred Silva gave false evidence in this."

Police Constable Raja's report of the proceedings (F38) supports the petitioner's case. Wickremeratna, on the other hand, denies the correctness of the constable's report and states that he referred to the fact that Fred de Silva had given false evidence in the course of an election petition inquiry. The whole of the context, however, shows that any reference to Fred de Silva having given false evidence at an election petition inquiry would have been entirely pointless and meaningless. The constable's report shows that Wickremeratna said earlier in the course of the same meeting that his blood began to run fast when he began to speak at bye-election meetings and that he does not know what he says at that time; it is therefore not unlikely that he has no accurate recollection of what he did say. I accept the evidence of the police constable in preference to that of Wickremeratna and hold that Wickremeratna did make the statement he is alleged to have made. Fred de Silva denies that he ever gave evidence either true or false against Wickremeratna in connection with any proceedings taken against the latter under the Defence Regulations or otherwise. This statement, there can be little doubt, was also false in fact.

(e) Fifthly, one Mr. Wilson Ratnayake is said to have told the audience at a meeting held on April 4, 1948, at Mawilmada, Kandy, in support of the respondent's candidature, the following words or words to the like effect:—

"Mr. Fred Silva says that he stands for old age pensions and he preaches Socialism. I like to tell you one word about him. During the last strike of the Town Bus employees Mr. George E. de Silva and Mr. Fred Silva approached the Bus Mudalalies through the back door and asked them not to grant any of their demands."

Wilson Ratnayake has not given evidence, but that the statement was made by him is established by Police Sergeant Fernando, whose report (F32) embodies these words. Fred de Silva says that, when there was a strike of the workers of the City Bus Company in Kandy,

he, as the then Mayor, spoke to the owners of the Bus Company and asked them to try and settle matters, but that he did not ask them not to yield to the demands of the workers.

In this connection, I would wish to notice an argument of a general character of Counsel for the respondent that it is not sufficient for Fred de Silva to make a denial of the actions attributed to him but that he should call other evidence, in this instance of the bus owners as well, before it can be said that he has discharged the onus that lay on him. In other words, the contention is that the simple denial of a party affected is not in law sufficient, and cases which lay down the proposition that in a Petition Inquiry charges should be proved beyond reasonable doubt as in a criminal case were cited. These cases are clearly distinguishable for, where the Court has to be satisfied, for instance, whether bribery or treating has taken place, there must be sufficient evidence of a satisfactory character upon which the Courts should be able to hold beyond reasonable doubt that those allegations have been made out, but where, as in this instance, the allegation is that the respondent or his agents are guilty of making false statements of fact, the falsity of the statement is *prima facie* established when there is a denial on oath. In the *North Louth Case*<sup>1</sup> a bare denial was regarded as sufficient in similar circumstances. Indeed, the contrary of what Counsel contended for would seem to embody the true legal principle upon which a Court should proceed; it is for the party who asserts that a statement alleged to be false is true in fact to establish beyond reasonable doubt the truth of that statement. In this instance, too, I see no difficulty in holding that it is proved that Wilson Ratnayake did make the statement as deposed to by Sergeant Fernando and that the statement is false.

(f) Lastly, in the document P63, the authorship of which has not been established, it is alleged that a Member of Parliament, Mr. Ramanujam, received from Fred de Silva at the contest for the 1947 Kandy Mayoralty a sum of Rs. 1,500 and that he received another sum of Rs. 1,000 from Fred de Silva in connection with the present Kandy Parliamentary bye-election. Although, no doubt, the attack is primarily levelled against Ramanujam, it has been contended that the effect on those who read the pamphlet P63 would be to make them believe that Fred de Silva had bribed Ramanujam and was guilty of the offence of bribery. There is not a tittle of evidence suggesting that any such bribery did take place. Fred de Silva has denied it on oath and I hold that these statements in P63 are false.

That each of these statements purports to be a statement of fact and that every one of them affects Fred de Silva in regard to his personal character or conduct there can be little doubt; nor can there be any doubt but that if these statements be true they would have exposed Fred de Silva, his candidature and his cause to the contempt and ridicule of all right thinking men and would have tended to wear away voters from him. In this view of the matter, it is beyond question that these statements were made or published for the purpose of affecting the return of Fred de Silva.

The next question is whether Wickremaratna and Wilson Ratnayake can be regarded as agents of the respondent in making and publishing

<sup>1</sup> *G.O.M. and H. 103 at 169.*

the statements proved to have been made and published by them. First of all, in regard to Wickremeratna it is in evidence that he acted as an agent of the respondent in the fullest sense of the term at the General Election. That by itself is not a circumstance of any great importance, for one can well conceive of an agent at one election throwing in his lot with the rival candidate at a subsequent election. One has therefore principally to look at the conduct and acts of the candidate and of the alleged agent in regard to the particular election at which it is asserted that the agent did act as agent of the candidate, to ascertain whether the assertion has been established. According to the respondent, after the unseating of the candidate who was returned at the general election, on an election petition presented by him and another, the question seems to have arisen between him and Wickremeratna as to whether he should stand for election. The respondent says he suggested that Wickremeratna himself should come forward but Wickremeratna would not hear of it and told him that he should take the responsibility of deciding whether he should come forward to contest the seat and that if he decided to do so he (Wickremeratna) would support him. He says that he then told Wickremeratna there was no alternative but to go to the polls himself. If the respondent's evidence stood by itself, then there is proof that Wickremeratna pledged his support unqualifiedly to him at the bye-election; but Wickremeratna seeks to modify this evidence and suggests that what he told the respondent was that he would support him to a point, which he defined as consisting in his voting for him and *helping him wherever possible*. Wickremeratna further says that he told Warakaula, the clerk in charge of the respondent's office, that he should not be worried by him as he (Wickremeratna) would only work up to a very limited point. Now, if what Wickremeratna says be correct, it certainly passes strange that on a vital point such as this the respondent himself should have had no recollection of any limitation placed by Wickremeratna on the assistance he proffered. Of course, the respondent himself says that Wickremeratna did not work for him to the same extent as at the General Election. Wickremeratna and the respondent both assign a reason for this change in the former's conduct. It is said that Wickremeratna did not feel himself sufficiently compensated for all the time, trouble and energy he had taken on behalf of the respondent at the General Election and in connection with the election petition inquiry. This may be true but it was no more than a flimsy, though be it a dark, cloud that had floated between them as they discussed the question of costs; but there seems little reason to believe that the cloud did not get completely blown away when the respondent took the decision to enter the lists. The range and nature of the acts shown to have been admittedly performed and done by Wickremeratna leaves me with no other impression but that whatever may have been his intention at first, the old war horse in him took the bit between its teeth directly it scented the smell of the election battle field and heard the distant sound of the election drum. It is shown that from the commencement of preliminaries in regard to the candidature of the respondent to the close of the polls, Wickremeratna, to change the metaphor, has had his finger in the Illangaratne election pie; his first act was to attest the nomination papers of the respondent in his capacity as Proctor

without being paid a fee for his services—services certainly not of an arduous nature and may properly be deemed to be of a trifling character—but the act itself has some bearing on the question of strained relationship over costs. Next we find that Wickremeratna accompanies the respondent to the office of the Government Agent when the respondent goes to hand over his nomination papers; it is in evidence that a candidate is allowed to take with him to the office only one person apart from his proposers and seconders, and it is strange that that one person happens to be the estranged Wickremeratna, and this when the respondent had the whole field of the Kandy electorate to make his selection from. It is proved that Wickremeratna presided at the very first meeting launching out the election campaign of the respondent and that he also presided at what was planned to be the last meeting before the polling day at which a number of Members of Parliament were present. Wickremeratna also spoke at other meetings organised in support of the candidature of the respondent, and he was present at these meetings at the invitation of the respondent, as the latter himself says. Wickremeratna was also billed to speak at meetings and this was all done with the knowledge and consent of the respondent. Wickremeratna not only looked after the printing of the respondent's manifesto in English but also attended to the procuring of translation of it both in Sinhalese and Tamil and had them also entrusted to printers for printing. In fact, neither the respondent nor his clerk, Warakaula, knew what arrangements were made in regard to the printing of these manifestos by Wickremeratna. The question of printing rates, the number of copies to be printed, the correction of proof, were all left to and must be deemed to have been undertaken by Wickremeratna for no other conclusion can be come to on the evidence in regard to these matters. The Malini Printers, who printed the English and Sinhalese manifestos, appear to have sent their bill to Wickremeratna for payment. There is evidence which shows that Wickremeratna also went out canvassing on behalf of the respondent. I accept the evidence of the witness Rajapakse that Wickremeratna went about distributing the respondent's manifestos and that Wickremeratna did hand to the witness a copy, notwithstanding the denial of Wickremeratna on the point. I am, however, not prepared to accept the evidence of either Martin Silva or Ranasingha in regard to their statement as to canvassing done by Wickremeratna, as I was not impressed by their evidence. I also accept the evidence of Rajapakse that Mrs. Wickremeratna was also one of those in charge of the respondent's table at the entrance to the Ampitiya polling booth watching the interests of the respondent and that Wickremeratna himself was at that booth receiving voters on behalf of the respondent between eleven and twelve on the polling day. I also accept the evidence that when polling was closed Wickremeratna was present in the precincts of the Ampitiya polling booth and called out cheers for the Umbrella, the symbol of the respondent. Fred de Silva swears that after the declaration of the polls at the Kuchcheri, the respondent publicly thanked Wickremeratna and two others in particular for all the support they had given him and also went on to thank the Leftist parties which had supported him. The respondent, however, says that he thanked Wickremeratna and the



other two for the support they had given him in regard to the previous election petition but admits that he thereafter proceeded to thank the various Leftist parties. I have little doubt that Fred de Silva's evidence is true on the point and that it is entitled to credence in preference to that of the respondent. It is difficult to believe that the respondent would have thanked Wickremeratna and the other two for the support they had given him at the election petition and gone on to thank the Leftist parties who had nothing to do with the election petition but who had everything to do with the winning of the bye-election. Lastly, here is the significant fact that after the results were announced, the first person's house to which the respondent did go was that of Wickremeratna. Explanation has been given by the respondent as to how he came to go to Wickremeratna's house, but the fact remains that it was to his house that he did go.

Apart from these various acts to which I have alluded, the answer given by the respondent to the questions put to him as to why he did not ask for the support of Wickremeratna is self-sufficient on the question of agency. The respondent says that there was no need to ask for Wickremeratna's support because, he says, he presumed he was a supporter of his. In fact it would have been more correct had he said that he had the clearest evidence of his support right throughout the campaign. Wickremeratna, though he denied that he ever went by himself to the respondent's office and stated that it was only on a few occasions that he accompanied one or more of the Leftist members who had gone from Colombo to the respondent's office, his statements were contradicted by Warakaula, the clerk in charge of the respondent's office, who said that Wickremeratna used to go there on his own, smile and chat with the other supporters who came to the office.

The question as to who made payment for printing the pamphlets P1 and P13 also throws a great deal of light on the relationship in which Wickremeratna stood to the respondent. Wickremeratna was a member of the Lanka Sama Samaj Party, and probably the most prominent member in Kandy. I have already indicated my view that P1 was composed by Wickremeratna. P13 has been issued by the Lanka Sama Samaj Party under its name. The order sheet P6 in respect of the pamphlet P1 is entered in the name of the respondent as the person on whose account it was being printed. When payment was made in respect of P1 and P13, a receipt was originally written out in favour of the respondent for a sum of Rs. 281.75 (P7a) which represented the cost of printing the two pamphlets P1 and P13 as well as certain other printing done for the respondent. The circumstances under which this receipt came to be written out are deposed to both by Arumugam, the assistant manager of the Press, and by Warakaula, the respondent's clerk; both of them state that Warakaula and one Richard Perera, an employee of the Lanka Sama Samaj Party, each taking a separate bill went to the printing office and each handed his bill along with the amount shown on his bill but that for some inexplicable reason one receipt was brought for the aggregate amount of the two bills in the name of the respondent and that on Warakaula noticing the discrepancy he refused to take it; that thereafter, typed receipts, not receipts from the ordinary receipt book P7 but on loose memorandum forms were made out and handed to

each of them in respect of the payment each had separately made. No explanation was forthcoming even at the inquiry as to how the cashier could have made such a mistake in aggregating two sums paid in respect of two bills presumably in the name of two different parties and issuing one receipt in favour of one of them. Nor has any satisfactory account been given as to why, if the error was detected then and there, the incorrect receipt was not cancelled and two fresh receipts written out from the ordinary receipt book of the firm. The assistant manager attempted a doubtful explanation which was proved to be false. He said that as the receipt had already been written out no other receipt from the receipt book could have been issued according to official routine, but a perusal of the receipt book showed, and the witness then had to admit, that there were occasions when incorrect receipts were cancelled and the original of those receipts left either in the receipt book itself or put on a file for audit purposes. In fact by the issue of receipts on loose sheets of paper without even retaining copies of them the door would be left wide open to perpetrate fraud. I do not believe either the assistant manager Arumugam or the clerk Warakaula in regard to their stories. The conclusion I reach is that the receipt P7a was originally correctly written out for the sum of Rs. 281-75 in favour of the respondent—this is in keeping at least with the order sheet P6 in respect of the pamphlet P1—but was at a subsequent date, that is to say, at a date when receipts bearing the next consecutive numbers had been utilised and could not have been substituted for it, altered by the addition of the name of Lionel Cooray and by filling the blank space above the signature of the cashier with the particulars of two separate sums in respect of the respondent and Lionel Cooray; the alteration itself is clumsy—*vide* the vertical line drawn after the name of Ilangaratne—and apparently did not meet with the approval of those concerned, and hence a receipt was typed on a loose memorandum form, which is the document R1a. I hold on the evidence before me, in spite of the denial of the respondent, that it was he who made payment for printing documents P1 and P13. Now this payment proves that the respondent was quite prepared to adopt any of the acts both of Wickremeratna in his personal capacity and of the Lanka Sama Samaj Party, for I am satisfied that the respondent himself personally had no hand in drafting or causing to be printed either of the pamphlets P1 and P13. I am at the moment considering the question of the relationship of Wickremeratna to the respondent, and having regard to all these circumstances, I find it difficult to escape the conclusion that the respondent left the business of his election in the hands of Wickremeratna to the fullest extent that Wickremeratna was prepared to undertake, adopting and ratifying his acts without question, and that Wickremeratna went as far as he could to promote the candidature of the respondent. In these circumstances Wickremeratna can only be properly described as a general agent of the respondent for the purpose of the election, and I hold him to be such. In this connection *vide* the judgment of Grove J. in the *Wakefield* case<sup>1</sup>.

In regard to Wilson Ratnayake there is no proof of a direct connection between him and the respondent but there is ample proof that Wilson Ratnayake himself was a member of the Lanka Sama Samaj Party and

<sup>1</sup> 2 O' M. and H. 100 at 102

that the Lanka Sama Samaj Party was in close contact with the respondent's agent Warakaula and with Wickremeratna, who, as I said was his general agent and also a member of the Lanka Sama Samaj Party and that the Lanka Sama Samaj Party placed, as the witness Lionel Cooray said, although he attempted after the luncheon interval to retract the evidence, the services of its office and its workers at the respondent's disposal, and that in fact right through the campaign its workers worked for the respondent. Not only did the members of the Lanka Sama Samaj Party address meetings of the respondent on his behalf and at his invitation but they had lists, as Lionel Cooray says, of a certain section of the voters with which its workers went about from house to house making a check up and also assisted the respondent on the polling day at the polling booths.

The legal position of a political association and of its active members towards the candidate is set out lucidly in the judgment of Mr. Justice Lopes in the *Bewdley* case<sup>1</sup>. Said the learned Judge:—

“There may . . . be a political association in a borough advocating the views of a candidate of which that candidate is not a member, to the funds of which he does not subscribe, and with which he personally is not ostensibly connected, but at the same time in intimate relationship with his agents, utilised by them for the purpose of carrying out his election, interchanging communication and information with his agents, respecting the canvassing of voters and the conduct of the election and largely contributing to the result. To say that the candidate is not responsible for any corrupt acts done by an active member of such an association would be repealing the Corrupt Practices Act and sanctioning a most effective system of corruption.”

Applying the principle of law thus enunciated to the facts as found by me, it must follow that the Lanka Sama Samaj Party and its active members were constituted agents of the respondent. I hold that the respondent is responsible for the illegal acts of Wilson Ratnayake, who was not merely a member of the Lanka Sama Samaj Party but an active worker of it; and furthermore Wilson Ratnayake had addressed election meetings of the respondent at the latter's invitation or with his knowledge and consent and, as was rightly said by Counsel for the petitioner, addressing an audience of voters is one of the most effective large scale methods of canvassing on behalf of the candidate, and canvassing with the knowledge and consent of a candidate has been regarded as strong evidence of agency.

With respect to the pamphlet P63, there is, as remarked earlier, no proof of its authorship, although on the face of it it bears the name of one Marimuttu, the Secretary of the Kandy Branch of the Ceylon Indian Congress, who disowns it; nor is there proof as to the printer or publisher of it. The petitioner's case is that one Fernandez who is the President of the Peradeniya Branch of Ceylon Indian Congress distributed it among a section of the voters. Three of these voters, who are all Municipal labourers, namely, Sinniah, Segan and Pitchamuttu, all testify that on May 17, 1948, some time about noon or 12.30 in the afternoon copies

<sup>1</sup> 3 O' M. and H. 145 at 146.

of this leaflet were distributed by Fernandez, who also handed to each of them a copy. The respondent has sought to challenge the evidence of these witnesses. Too much emphasis cannot be laid on the time spoken to by these witnesses who are men in a humble station in life and who only count the periods of the day by events rather than by hours of the clock. Their evidence, however, is that it was after they had returned for their noon-day meal that the leaflet was distributed. The respondent says that he went in the company of Fernandez to canvass votes among estate labourers on certain estates on the day in question and that he returned to Kandy at about 2.30 or 3, leaving Fernandez and certain others on the estate. Mr. Rajapriore, a witness called by him, however, says that the respondent left by car at about 12 or 12.30. Fernandez himself says he returned to Kandy at 2.30 or 3 but it is in evidence that he remained the whole of that afternoon in Kandy. I am not prepared to say that the testimony of the three Municipal labourers is false on the point. I hold that Fernandez did distribute P63 among the labourers. In regard to the agency of Fernandez, it is to be observed he was one of the active workers of the Ceylon Indian Congress, which body was working with full knowledge and consent of the respondent for furthering his candidature and, what is more, the respondent himself went with Fernandez canvassing voters. Fernandez, therefore, is a person from the consequences of whose actions the respondent cannot seek to escape liability.

That Wilson Ratnayake, C. B. Warakaula, John Weerasekera, Charles Perera, Rajapriore and certain others had also distributed one or other of the pamphlets P1 and P63 formed the subject of other charges; but except in regard to Warakaula, one or other of the essential elements necessary to bring home the charge to the respondent was found to be wanting; for example, in the case of Charles Perera, who appears to be a newspaper boy, while there is proof that he did distribute the pamphlets, proof that he did so as agent of or with the knowledge of the respondent is totally lacking; to take another instance, in regard to Rajapriore I do not accept the evidence of Deen that Rajapriore did hand to him a copy of the document P63. I do not propose to refer to all the others specifically. In so far as the charge against Warakaula is concerned, I accept the evidence of Martin Silva on the point that Warakaula did distribute and hand to him a copy of P1. Now Warakaula himself is amply proved by the testimony in the case to have been an agent of the respondent, and the respondent is therefore responsible for the acts of Warakaula.

Certain false statements alleged to have been published in a paper called the *City News* were also given in evidence by the petitioners, but as neither agency nor knowledge or consent of the respondent has been proved, I do not propose to examine the evidence but content myself with recording my finding that those charges are not established.

I now turn to the charges formulated under section 58 (1) (c). The charges were persisted in in respect of the two documents P1 headed "An Advocate for an Imposter" and P63 entitled "The Dishonesty of D. Ramanujam, M. P. for the Division of Alutnuwara", but were not pressed in regard to the others. Section 58 (1) (c) makes it a corrupt

practice for a person *inter alia* to print, publish, distribute, or cause to be printed, published or distributed any handbill which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher. The document P63 does not expressly refer to an election, much less to the bye-election in question. Its primary object, as a perusal of it would reveal, is to discredit Mr. Ramanujam, a Member of Parliament, who, it would appear from the evidence, was contesting an office in the Ceylon Indian Congress, the rival candidate for the office being Rajapriar. The circumstance that this leaflet printed and issued for one purpose was also availed of to discredit one of the candidates at the bye-election whom Mr. Ramanujam himself supported is by itself insufficient to bring the document within the category of documents that have reference to the election. It seems to me that before a document could be said to be one which falls within the class of publications referred to in section 58 (1) (c) it must be shown that it either expressly or at any rate by implication refers to the election, and any document, however mischievous it may be in its effect on the election itself, if it has no reference to the election, though made use of for false propaganda against the candidate at the election, is outside the scope of this section, and a person who prints, publishes or distributes cannot be held to be guilty of a corrupt practice. I therefore hold that the charge in respect of document P63 fails.

As regards the document P1, however, although it bears the name and address of the printer, namely, Kingsley Press, Kandy, which I consider to constitute a sufficient compliance with the law, it does not bear the name and address of the publisher. The manuscript of P1 bears the name of one A. Nissanka as the author thereof, but it is clearly proved that Nissanka did not and could not have drafted the document. As stated earlier, there is evidence that Roland Jayasekera is the author of the document, but in my opinion, as indicated already, the author, at least in part, is Wickremeratna. Now, the question arises, why was not even the name of Nissanka not printed? Was it accidental or deliberate? It is not possible to take the view, especially when the evidence shows that the name of Nissanka was used in order to conceal the identity of the writer, that the omission itself was other than deliberate. If deliberate, as it must necessarily be, then the existence of a corrupt mind behind the publication becomes apparent. In this view of the finding, the omission to print the name and address of the publishers falls both within the mischief the Legislaturo intended to prevent and the letter of the law. The printing of the name of the author of a document, even if A. Nissanka's name did appear on the face of the document, would in itself not have been a sufficient compliance with the requirement of the law that the name of the publisher should also be stated, for one person may be the author of a document, a second may be the printer and a third the publisher. The law apparently does not concern itself with the author of a document. What it does concern itself with is in regard to the printer and the publisher. But for the discovery by the Police of the manuscript of P1, it may well nigh have been impossible to ascertain who was responsible for having it printed or published. The evidence now is that both Wickremeratna and Lionel

Cooray caused it to be printed and, according to Lionel Cooray, members of the Lanka Sama Samaj Party were responsible for distributing it. I have already held that Wickremeratna was a general agent of the respondent. Lionel Cooray, as Secretary of the Lanka Sama Samaj Party, and as one who worked on behalf of the respondent who, as indicated earlier, fully adopted the actions of the members of the Lanka Sama Samaj Party, also takes on the role of an agent of the respondent. The printers to whom, as I have already held, payment was made by the respondent for printing the leaflet P1, also are constituted his agents, and the respondent, in this view of the matter, must be regarded as one of the persons who caused the document P1 to be printed.

In the result I find that the respondent is guilty of corrupt practices in that (a) he personally and by his agents made and published during the election false statements of fact in relation to the personal character and conduct of Fred de Silva for the purpose of affecting the latter's return and that (b) he caused to be printed and caused his agents to print, publish and distribute the document P1 which does not bear upon its face the name or address of its publisher.

For the foregoing reasons, I declare the election of the respondent void. The respondent also thereby becomes subject to the incapacities set out in section 58 (2) of the Order in Council.

There is *prima facie* proof that the following persons are guilty of corrupt practices:—

(a) Under section 58 (1) (d)—

- (1) H. A. C. Wickremeratna,
- (2) Wilson Ratnayako,
- (3) Lionel Cooray,
- (4) S. S. Fernandez, and
- (5) C. B. Warakaula;

(b) Under section 58 (1) (c)—

- (1) The Manager, Kingsley Press, Kandy,
- (2) H. A. C. Wickremeratna,
- (3) Lionel Cooray,
- (4) Roland Jayasekera, and
- (5) A. Nissanka.

There is also *prima facie* proof that Fred de Silva is guilty of an illegal practice in that he, on his own admission, made payment to a person, namely, Ganeshan to translate his election manifesto into Tamil and also that he did not include the sum of Rs. 40 paid to that person in his return respecting election expenses.

Notices will be issued by the Registrar on all these persons directing them to show cause on a day to be named why a report should not be made against them in terms of section 82 of the Ceylon (Parliamentary Elections) Order in Council, 1946, as amended by the Parliamentary Elections (Amendment) Act, No. 19 of 1948.

The Attorney-General will also be noticed to appear as *amicus curiae* at the inquiry.

As regards costs of this inquiry I shall make order after hearing Counsel.

*Election declared void.*