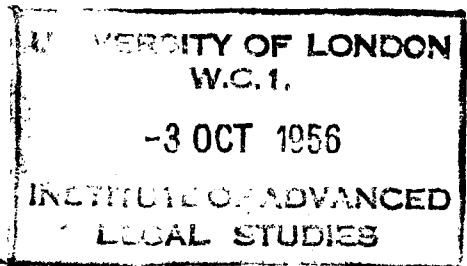


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No. 2 - 1947

11221

Supreme Court of Ceylon
No. 84 of 1945 (Final)

District Court, Colombo
No. 15069.

IN THE PRIVY COUNCIL
ON AN APPEAL FROM THE SUPREME
COURT OF CEYLON

BETWEEN

DR. M. G. PERERA of Colombo - *Plaintiff-Appellant.*

AND

1. ANDREW VINCENT PEIRIS of "Winston," Tewatte Road,
Ragama and
2. THE ASSOCIATED NEWSPAPERS OF CEYLON LIMITED,
Colombo *Defendants-Respondents.*

RECORD OF PROCEEDINGS

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No.

Supreme Court of Ceylon
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IN THE PRIVY COUNCIL
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BETWEEN

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AND

1. ANDREW VINCENT PEIRIS of "Winston," Tewatte Road,
Ragama and
2. THE ASSOCIATED NEWSPAPERS OF CEYLON LIMITED,
Colombo - *Defendants-Respondents.*

RECORD OF PROCEEDINGS

PART I.

P A R T I

No. 1.

No. 1
The Plaintiff of
the Plaintiff,
6th September,
1943

The Plaintiff of the Plaintiff.

IN THE DISTRICT COURT OF COLOMBO.

Dr. M. G. PERERA OF COLOMBO*Plaintiff.*

No. 15069. vs.

- 1. ANDREW VINCENT PIERIS of "Winston" Tewatta Road, Ragama.
- 2. THE ASSOCIATED NEWSPAPERS OF CEYLON, LIMITED,
10 Mc Callum Road, Colombo.....*Defendants.*

On this 6th day of September, 1943.

The plaintiff of the Plaintiff abovenamed states as follows :

1. The plaintiff is a member of the Medical profession practising at Colombo. He is also engaged in the business of distilling arrack.

2. The 2nd defendant is the proprietor of a daily newspaper known as *The Ceylon Daily News* and having a large circulation in Ceylon. The 1st defendant prints and publishes the said daily newspaper for and on behalf of the 2nd defendant at premises known as Lake House situated at Mc Callum Road, Colombo.

20 3. The defendants in the issue of *The Ceylon Daily News* of 25th May 1943 published at Colombo, within the jurisdiction of this Court of and concerning the plaintiff the following, said to be an extract from Appendix C to the report of the Bribery Commission :—

“ Dr. M. G. Perera, who gave evidence was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did ”.

4. The plaintiff states that the words aforesaid impute dishonesty to him and imply that he gave false evidence before the Bribery Commission which evidence was taken in camera and that they are therefore defama-
30 tory, of him.

5. By reason of the publication by the defendants as aforesaid of the words reproduced in paragraph 3 hereof, the plaintiff has suffered in his reputation as a professional man and as a man of business. He estimates the damages suffered by him at Rs. 50,000/-

No. 1.
The Plaintiff,
6th September, 1943
—continued

6. A cause of action has accrued to the plaintiff to sue the defendants jointly and severally to recover the said sum of Rs. 50,000/- which the defendants have failed to pay though thereto often demanded.

Wherefore the plaintiff prays for judgment against the defendants jointly and severally for the said sum of Rs. 50,000/- with legal interest thereon from date hereof till payment in full for costs of suit and for such other and further relief as to this Court shall seem meet.

Sgd. S. M. H. MASHOOR
Proctor for Plaintiff.

Documents relied on by the Plaintiff :

10

The *Ceylon Daily News* dated 25th May, 1943.

Sgd. S. M. H. MASHOOR
Proctor for Plaintiff.

Settled by :

SAM P. C. FERNANDO,
J. E. M. OBEYESEKERA,
M. T. DE S. AMARASEKARA, K.C.
Advocates.

No. 2.

Answer of the Defendants.

20

No. 2.
Answer of
the Defen-
dants, 26th
November,
1943

On this 26th day of November, 1943.

The answer of the Defendants states as follows :—

1. Answering paragraph 1 of the plaint the defendants admit that the plaintiff is a member of the Medical profession and that he is also engaged in the business of distilling arrack.

2. The Defendants admit the averments contained in paragraph 2 of the Plaint.

3. Answering paragraph 3 of the plaint the defendants state that the issue of the *Ceylon Daily News* of the 25th May, 1943 published the statement referred to in the said paragraph which is a true extract from appendix C to the report of the said Bribery Commission and that the said statement concerns the Plaintiff.

4. Answering paragraph 4 of the plaint the defendants state that the said words "Dr. M. G. Perera who gave evidence was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did" do not have the meaning attributed to them in the said paragraph and that they are therefore not defamatory of the Plaintiff.

5. Answering paragraph 5 of the plaint the defendants deny that by the publication of the said words the plaintiff has suffered in his reputation as a professional man or as a man of business. The defendants state that the plaintiff did not suffer damages in a sum of Rs. 50,000/- or in any sum by reason of the said publication.

No. 2.
Answer of
the Defen-
dants. 26th
November,
1943—conti-
nued

6. Except as is hereinafter admitted the Defendants deny all and singular the allegations contained in paragraphs 5 and 6 of the plaint.

7. Further answering the defendants state :

- 10 (a) That the Governor of Ceylon in August 1941 appointed a Commissioner for the purpose of inquiring into and reporting upon the question whether gratifications have been promised, given or paid to members of State Council with a certain object or for a certain purpose or whether such gratifications are or have been solicited, demanded, received or accepted by members of the State Council as a reward and/or recompense for certain services.
- (b) That the said Commissioner held an inquiry into the said matters and sent his report to the Governor of Ceylon about 9th April, 1943.
- 20 (c) That in paragraph 18 of the said report the said Commissioner discussed what was referred to therein the arrack contract gratification incident and the said Commissioner at the end of the said paragraph stated that the matter is more fully discussed and reasons for his view given in appendix C.
- (d) That the statement referred to in paragraph 3 of the plaint forms part of the said appendix C. That the defendants *bona fide* published in the said issue of the *Ceylon Daily News* the finding of the Commissioner a judicial tribunal empowered to enquire into the matters referred to in paragraph 7(a) hereof.
- 30 (e) That the defendants published an accurate report of the said appendix C which is part of the said finding and that the said publication was therefore a privileged publication.

For a further answer the defendants state :

8. That the said report was issued by the Government of Ceylon as a sessional paper and was available for purchase at the Government Record office and the said publication was therefore a privileged publication.

For a further answer the Defendants state :—

- 9 (a) That part of the said extract consists of comment on a matter of public interest.

No. 2.
Answer of
the Defen-
dants, 26th
November,
1943—*conti-
nued*

- (b) so far as the words complained of consist of statements of fact, they are in their natural and ordinary meaning true in substance and in fact, and that in so far as they consist of expressions of opinion they are fair and *bona fide* comments on matters of public interest and the said statements were published *bona fide* for the benefit of the public and without malice.

Wherefore the Defendants pray for the dismissal of the plaintiff's action.

- (2) for costs and 10
(3) for such further and other relief as to this Court may seem meet.

Sgd. H. A. ABEYWARDENE

Proctor for Defendants.

Settled By :

N. M. DE SILVA,
A. R. H. CANEKERATNE,
H. V. PERERA.
Advocates.

No. 3.
Issues framed,
5th June,
1944

No. 3.
Issues Framed.

20

No. 15069.

5th June, 1944.

Advocate M. T. DE S. AMARASEKARA K.C. with advocates J. E. M. OBEYESEKERA, S. FERNANDO and SAMARAWICKREMA for the Plaintiff.

Advocate CANEKERATNE K.C. with advocates GRATIAEN, E. G. WIKRAMANAYAKE and N. M. De SILVA for the defendant.

Mr. Amerasekera points out that in the plaint that has been filed through an omission there is no prayer and he draws attention to the motion in which that error is sought to be rectified. 30

Mr. Canekeratne has no objection.

The motion is allowed of consent.

Mr. Amarasekera opens his case.

Mr. Amarasekera suggests :

- (1) Do the words referred to in para. 3 of the plaint impute dishonesty to the plaintiff?

- (2) Do the said words imply that the plaintiff gave false evidence before the Bribery Commission ?
- (3) If the answers to 1 and/or 2 are in the affirmative are the said words defamatory of the plaintiff ?
- (4) What damages.

No. 3.
Issues framed,
5th June,
1944—continued

Mr. Canekeratne objects to 4 and says as framed it is too wide. He refers to para 5 of the plaint. He submits 4 should be framed as follows :

- 4 (a) What damages has plaintiff suffered as a professional man and as a man of business by reason of the said publication ?

10 At this stage it is agreed that 4 should read :

- (4) What damages if any has plaintiff suffered in his reputation as a professional man and as a man of business ?

He suggests further :

- (5) Are the words complained of a part of the report of the Commissioner ?

- (6) Did defendants *bona fide* publish an accurate report of the Commissioners report ?

- (7) Was the publication a privileged one ?

- 8 (a) Was the report issued as a Sessional paper ?

20 (b) Could any person purchase a copy of the said report ?

- (c) Was the publication a privileged one ?

- 9 (a) Are the words complained of so far as they consist of expressions of opinion fair and *bona fide* comment on a matter of public interest ?

- (b) Was the statement published *bona fide* for the benefit of the public and without malice ?

10. Has a cause of action accrued to the Plaintiff to sue the defendants for damages ?

30 Mr. Amarasekara objects to 5—does not arise on the pleadings. I ask Counsel whether it is the fact that what the Daily News published concerning the plaintiff was not an accurate extract from Mr. L. M. de silva's report appendix C.

Counsel admits that is so.

That being so issue 5 is unnecessary.

Mr. Amarasekara accepts the other issues and frames :

- (11) (a) which of the words complained of consist of statements of fact ?

- (b) Are such words true in substance and in fact ?

No. 3.
Issues framed,
5th June,
1944—continued

- (c) Which of the words complained of consist of expressions of opinion ?
- (d) Are such words true in substance and fact ?
- (12) Was the evidence of the plaintiff before the Bribery Commission taken in camera ?
- (13) If so is the said publication privileged even if the answers to 7 and 8c are in the affirmative.

Mr. Canekeratne has no objection to issues 11 and 12. He accepts 13 also.

I ask Mr. Amarasekara whether the issue of malice is raised at all in 10 this case ?

Mr. Amarasekara says if the Court holds that a qualified privilege arises in this case the plaintiff is not raising an issue to destroy that qualified privilege, but his case is that the qualified privilege does not arise at all.

No. 4
Plaintiff's
evidence
Dr. M. G.
Perera.
Examination

No. 4.
Plaintiff's Evidence

Mr. AMARASEKARA calls :

Dr. M. G. PERERA. Sworn :

I am an M.R.C.S., England and L.R.C.P. London.

I was in the Ceylon Medical College and before proceeding to England 20 I was working for the Intermediate and went away. I went in 1910.

I returned from England in June 1914. It was just before the last war. I was working at the London Hospital while I was there. I did not join Government service here I had private practice. I had a dispensary and surgery at Beruwella. Within a short time I built up an extensive practice and I was very much in demand in the Waduwa and Ambalangoda area. While I was engaged in my professional work I also did planting of rubber. I invested my earnings in planting rubber. I made a considerable sum of money both in my profession and as income from my properties. 30

In 1920 I married a daughter of Mr. W. A. Fernando Notary public of Tambarawella in the Chilaw Negombo area. He was a landed proprietor and my wife got a considerable dowry from her father.

In 1924 I opened a distillery at Tambarawella with the special permission of Government. That was the only distillery outside the Kalutara area to distil arrack for the Government. I was specially requested to do this by the then Excise Commissioner Mr. T. W. Roberts. I invested about

three lacs on the distillery. I got on well in the business, it flourished and prospered. While running this distillery I continued to do my professional work. My brother-in-law Dr. J. D. Fernando looked after the distillery for me. He looked after it up to June 1929. In that year Government came to a decision with regard to all distilleries in the island, they wanted them concentrated in one area namely the Kalutara District. In pursuance of that decision of Government I had to abandon my Tambarawella Distillery and I opened one in Magonna and that cost me another two lacs. That cost me less because I was able to transfer my machinery there. From 10 that year about the end of 1929 the Distillery work was managed by me with a special staff. I have been distilling arrack for the Government from 1924 and the contract is always for five years. Since 1924 my contract up to date with Government has been renewed every five years. The last contract I got from the Government was on 5-1-44 for five years. During the last 20 years I have distilled arrack for the Government worth about 3½ to 4 million rupees.

In 1934 I removed my residence to Colombo. I transferred the practice of my medical work also to Colombo. I have a dispensary at Beruwella. After I came to Colombo I began to practice as a doctor here but 20 I had no dispensary here. I practice at Bambalapitiya and my clients from Beruwella and other places still come to me. I own an office in Colombo for my business transactions as well as a dispensary to give prescriptions.

My wife and I own a lot of land. I own about 800 acres of rubber, all tapping and about 500 acres of coconut. I am worth today about 25 lacs. In ordinary times it may be about 15 lacs.

I knew there was a lot of agitation in the country about State Councillors taking bribes. There were rumours and talk about it. I became aware of the fact that a Commission was appointed by His Excellency the Governor to inquire into these allegations made against the councillors. The 30 Commissioner appointed was Mr. L. M. D. de Silva one of His Majesty's King's Counsel. I knew Mr. de Silva personally. I belong to the same community as he. I was summoned by the Commissioner by his letter of 20-11-42- P2.

To Court.

I do not know how the learned Commissioner had ascertained that I was in a position to give evidence.

I did not know why I had even been summoned. I duly appeared before the Commissioner on the appointed date that is 27-11-42, What did he tell you ?

Mr Canekeratne objects.

40 Mr. Amarasekara refers to section 8.

I ask Mr. Amarasekara whether he is calling Mr. L. M. de Silva. He says he is not. He says he is not asking me to adjudicate on the truth or otherwise of the statement of Mr. L. M. de Silva it is merely to explain the conduct of this witness.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Examination
—continued

Mr. Canekeratne is heard.

The question is not free from doubt. I think the question should not be put.

In consequence of what Mr. L. M. de Silva told me I answered his questions. With P2 the Commissioner forwarded to me copies of Ordinance No. 25 of 1942 and 26 of 1942.

The questions were answered in confidence. The press were not there. The proceedings were in camera. Mr. de Silva the Commissioner himself questioned me. There were two other gentlemen in the room one seated away from the place where I was at the end of a long table and the other 10 near Mr. de Silva. I could not say whether there was a gentlemen taking down the evidence. There was one gentleman who was going about—going out and coming in. I presumed him to be Mr. de Silva's secretary because Mr. de Silva was speaking to him all the time. I do not think the other man was a stenographer, because he was at the end of the table and he could not hear me. I do not know who took down the evidence.

After giving my evidence the following year I left for India that was in 1943. I went on the 10th of May. I went on a holiday. I returned on the 1st of June. When I returned I found many letters awaiting my attention and there was the postcard P3 addressed to my wife. My wife also 20 accompanied me to India. I produce it. It was an anonymous postcard. On the back of it is a cutting from appendix C. When I read this I understood the significance of it. I grasped the allusion.

When you first read it did you know it was a quotation from the Bribery Commissioner's report? No. I made inquiries at my office and my attention was drawn to the publication in the Daily News. I produce that publication P1.

The Times did not publish it.

What was your feeling when you read it? I was very upset.

What do you say is the meaning that you gave to these words, Dr. M. 30 G. Perera who gave evidence was completely lacking in frankness? It looked as if I had lied. In other words that the Commissioner had called me a liar.

To Court.

What was your grievance against the Daily News or the Commissioner? Both I believe.

The Daily News is a paper that is widely read in Ceylon and with a large circulation. It is read by my friends.

I buy the Daily News daily. There is no other morning paper and I must have it in the morning. A large number of my friends also read the 40 paper.

What is the effect of this publication? I have gone down in their estimate of me.

Has any of your friends told you so? Yes several. One of my uncles is Mr. Bernard Jayasuriya. He told me so and others Soysa, Cooray and several others. It has damaged my reputation greatly. I have brought this action to vindicate my good name. I assess my damages at Rs. 50,000.

I am a very wealthy person. I am not going to enrich myself by this. If I get this money I will send it to the war fund. I am a practising Catholic.

10 XXD. By Mr. Gratiaen.

You do not for a moment suggest that the defendants are actuated by any personal illwill against you? I have reason to think that it is so.

Who? The Daily News.

Why? I have written to them several letters and they have never published a single one. Only the Times published them.

Letters about what? Political aspects and about affairs in Beruwella and Kalutara—they never published a single one of the letters. The Times published all my letters which I sent them.

20 You heard your counsel state that there is no charge of malice against the company at all? Yes, because you asked me the question I said the truth.

Do you say there has been actual illwill against you? I have reason to think.

I know Mr. L. M. de Silva for many years.

When you heard that the Governor had issued a Commission to him to investigate these charges of bribery against Councillors you agreed with everybody that he was the right man for the job? No.

Did you write to the Daily News in one of those unpublished letters saying that you did not think he was the right man?

30 I may have written.

What is wrong with Mr. L. M. de Silva? If I am pressed. I do not think he was the right man to be appointed Commissioner.

What were his disqualifications? I have reasons.

Is it because he was a man actuated by personal spite? No. Do you agree he is an extremely able man? Yes eminently able. He actually was a Judge of the Supreme Court? Yes, eminently clever.

Honest? No.

Financially dishonest? No there are other kinds of dishonesty.

Intellectually dishonest? No character.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Examination
—continued

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

Immoral? You cannot define immorality. Some people think immorality is morality and morality is immorality. He is a good Roman Catholic, but he sued his wife who was insane for divorce on the ground of malicious desertion. An action which she could not defend. I have no regard for that man. Do you like the *Daily News* to publish that? No I do not. I said I did not like to say but you pressed me.

You said you are interested in public affairs, did you write to the press saying he was not a suitable man? I did not write to all, I wrote to the *Daily News*.

To *The Times*? No.

10

Why did you continue to write to them if they did not publish? Because that was the paper I was reading. I very rarely read the *Times*.

Before writing the letter you knew it would not be published? No I thought they would publish such a thing.

Did you in your letter to the *Daily News* make such insinuations against this distinguished lawyer similar to what you said in the witness box? No.

What were the objections which you raised in the letter which you wanted the *Daily News* to publish? That he was not so qualified as to find out who was taking money.

Your point is that you thought that he was not a suitable person to judge the veracity of witnesses and so on? No, I thought he would get puzzled owing to the difficult position he was. What he had in his mind would be worrying him always. He was not the most suitable man.

You thought owing to the mental worry he would not be able to find out the truth? There are more qualified Doctors of Law. Did you say anything else against him in that letter? No I said he was not fit.

Have you got any other charge against him, I do not want details of what he did, or of his alleged murky past, I want the headings as to why he is disqualified? Dishonesty, mental worry and there are my personal feelings because I had injured his feelings once.

30

Many years ago? Many years ago.

So that he was not qualified for judging your veracity? That was one of the reasons.

I injured his feelings some years ago, may be six or 7 or 8 years ago.

Any other charges? No. That was enough. He was prejudiced against me and he was not on good terms with me.

When you appeared before him to give evidence did you raise any objection to his hearing your evidence? He invited me there. I did not go willingly. I did not know what to say and I went. If I did not go a warrant would have been issued.

40

I did not write to the Governor who issued the Commission. I did not go so far.

You satisfied yourself by writing a letter to the news paper? That was long before, not after I received the summons. It was when he was appointed.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

You knew that the State Council had passed certain resolutions asking that a commission should issue to investigate charges of bribery? Yes.

And you knew that Mr. L. M. de Silva's name was suggested by the Council itself? I did not know that.

10 And you knew that there was a good deal of talk even before that date that there were certain Councillors whose names were suggested as bribe takers? No, there were rumours. A few of the Councillors were taking money.

That matter was taken up by the State Council and this commission was issued? Yes.

When you gave evidence was it on oath? Yes so far as I can remember.

And you were sworn as a Roman Catholic? Yes.

20 And your evidence I take it must have been taken down by a stenographer? I could not say that. May not have been because it was an ordinary conversation between us. I did not pay much attention even, he was simply talking to me as he was talking at any other time. I answered all his questions.

To Court.

Was the evidence recorded as it is now being done here in Court? No.

A question was put there was a slight pause and a man was taking it down? No they were suggestions. I could not see a man taking down anything.

It was an ordinary conversation.

30 You mean the proceedings were chaotic. I could not say that because I have not had experience of such chaos.

Was there that atmosphere of calm that is necessary for a proper judicial proceeding? Well, there were four people.

There were two people one at the end of the table and one near about Mr. de Silva going out and coming in again and sitting down and I was simply talking to Mr. de Silva.

Am I to understand then that people obstructed you and made it difficult for you to understand Mr. Silva? No I understood him alright.

40 Was Mr. Silva taking down any notes? Yes now and again pencil notes.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

You were given every opportunity of giving frank evidence? I gave frank evidence.

And he gave you every opportunity of doing so? I gave frank evidence because there was no other evidence I could have given.

And you were given every opportunity of giving frank evidence?

He was seated and talking to me and there was no interruption.

There was nothing to prevent a frank exchange of views between yourself and Mr. de Silva? Yes there was an ordinary conversation.

When he started questioning you did you know what you were going to give evidence about? I actually did not know. 10

From what he said you knew what was going to happen? Yes.

And we now know it is about an alleged bribe of Rs. 2,000 received by a councillor who is now dead to be given to three others, you were being questioned about that? Not exactly that way. The question was whether I would agree with him, that is the point.

"Is it not so" he always put the questions in that way. He was suggesting leading questions.

He was putting leading questions as, so and so said such a thing, don't you agree with me and I said yes or no. If he was not satisfied he put it in another way and so on. 20

To most of the questions your categorical denials were taken? Yes I was quite frank because there was no other attitude for me to adopt. I had nothing to hide.

The matter on which you were required to give evidence was in connection with the suggestion that Rs. 2000 had been given by a group of distillers to a certain State Councillor? (Mr. Ameresekere objects to the witness being asked what evidence he gave. Mr. Gratiaen says he is not asking him what evidence he gave.)

You knew that the subject on which your evidence was required was an alleged gratification given by a group of distillers? I understood that 30 he was asking me to confirm his view. The views he had already formed? Yes.

To Court.

There are 8 distillers and the suggestion there was that the distillers had given a santosum? Some of them. You understood that the position was that a number of distillers were anxious to get the renewal of their contracts without tenders being called for from the public? That is a downright lie.

(Mr. Ameresekere objects, he says this is really trying to get out what a witness said.) 40

Mr. Gratiaen points out that there is an issue as to whether this statement is true.

Mr. Ameresekere refers to section 4 of Ordinance 25 of 1942. Submits this is an attempt to use evidence given by the witness in camera against the witness.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

Mr. Gratiaen says if this view is correct then the issue raised by the plaintiff should go by the board.

I think Mr. Ameresekere's objection is sound. Under section 4 the witness cannot be asked anything about any evidence he gave before Mr. de Silva.

You knew before going to India that the report of the Bribery Commission was going to be published in a Sessional paper? Not the slightest idea. Unfortunately I could not get the Ceylon papers in India. I was in Mysore. When I came back I did not buy a copy of the report. When I saw these things I wanted to verify and then I bought it.

To Court.

On the day that the Sessional paper was published I was in Madras.

You also found when you came back that the Daily News was publishing extracts from the Sessional paper in some serial form? No I did not know. It is only when I read the postcard that I went to find the paper and then my secretary in my office showed it to me and it was read out. That is the first intimation that you received that Mr. Silva had referred to you in his report? Yes.

After that you must have had a look at the other papers to see what observations were made in other parts of the report? No.

I bought one of the Sessional papers to find out. Everything that was said was not about yourself? Yes.

Both in the body of the report and the schedule? No not in body of the report, only where it is now in that corner.

You will admit that what defendants have done is to publish the exact words of the appendix C? I did not compare it.

I cannot say still whether there is any difference. I have not compared it. I gave the matter to my lawyers.

And as a result of what your lawyers told you you are satisfied it is an actual and faithful report of what is in appendix C? They did not express it in that way they said it is an accurate report.

The headlines did not refer to you at all? I am one of the distillers and I am in that.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

What is the word that refers to you there? Arrack, arrack, I am in arrack. Much more than other distillers it is I.

The word arrack refers more to you than anybody else? More reflection on me.

You did know that those other distillers had given evidence before Mr. Silva? Yes, the papers said so.

And you summoned everybody to give evidence in this case who gave evidence before Mr. de Silva? Not everybody and few of them.

Tell me who they are? Michael Gunaratne, D. E. Seneviratne, Geral Fernando, Gilbert Seneviratne was a distiller at this time, Michel Guna- 10
ratne came in afterwards. Cooray and Wijeratne.

For what purpose did you summon these people? If I was asked whether I had given any money these people will bear me out that I had no connection in that. All of them know that I was the only person who did not care two hoots about Batuwantudawe or anybody else in the Council.

And you were against having anything to do about payment to any councillor? To anybody. I did not want to do that kind of thing. There was no reason for it.

These witnesses all know that? Yes.

20

That was a matter which Mr. de Silva was investigating? According to the papers and you said so just now.

Had you asked these distillers what evidence they gave? No I asked them to tell the truth.

Did you know anything in fact about the Rs. 2,000 payments? No. Would it be correct to say that the attitude you adopted was that you knew nothing about it? That was not an attitude that was the fact.

You are bringing this action merely to defend your character?

Yes.

Are you a member of any clubs? Yes.

30

You have not been asked to resign from any club as a result of this publication? How am I to know that, in the future a lot of things may come up.

You have not been asked to resign from any club in consequence of what the *Daily News* has done? Not up to date.

What are your clubs? The Sinhalese Sports Club, the Aero Club. I am a member of the Y.M.C.A. These clubs have not taken any action.

My last arrack contract with Government expired on 30-4-44 that is the 1939 1940 contract. The usual habit of the Government was to take

the new contract in before the expiry of the old one and we signed the new contract on 5th January.

Before the existing contract expired in April this year the Government gave you a fresh contract for another five years? Yes.

Are there any clauses in that contract under which a contract can be terminated owing to improper conduct?

There is no such thing.

The Government had a discretion as to whether they should give you another contract or not? I do not believe that.

16 The tender board can accept my tender.

I cannot remember the date when I sent in my tender for the new contract, I think it was about December 1943. The tender board did not reject my tender. I sent in my tender after 25-5-43. My tender was accepted early this year.

And that contract is for how many gallons? As much as I can produce.

In what way has your reputation been affected? My contractors may get disheartened.

20 There is no fear of the banks worrying me because I have money in the banks. The chief thing in the contract trade are the contractors. I have about 90 odd contractors and I do not know how many of those people may now be thinking of getting out of me.

You are not leading evidence to prove that these contractors have got disheartened or are thinking of leaving you? Can I gauge that situation.

You have so far had no trouble with any of them? No.

Any other possibility that you visualise for the future in regard to your reputation as a business man? No if I have my rubber that will be bought by the companies whatever my character, and the same with regard to my cocoanut.

30 There is nothing to worry about that then? No.

As an owner of estates you did not fear that the *Daily News* has in any way prejudiced your position? No.

Any other business head in respect of which you fear something might happen in the future? The most important thing is the contractors.

Are you suggesting that you should be paid Rs. 50,000 because there is the possibility of a contractor getting disheartened? Not only one, I have about 90 and some of them may eventually get disheartened. I have the *Daily News* to pay Rs. 50,000 for the loss of my reputation. Reputation is worth more than 10 lacs.

40 Are you asking money for the reputation you have lost or are going to lose? It is not a monetary value of the reputation, there is no other way of punishing such a person.

No. 4.
Plaintiff's
evidence

Dr. M. G.
Perera.

Cross-exami-
nation—con-
tinued

Has it suffered as a business man up to date? I cannot gauge it up to date.

Nothing has happened to make you feel that it has suffered as a business man? I cannot gauge it.

So that you do not know whether it has suffered or not? That is right.

There is no objection to professional medical men engaging themselves in any trade or business? There is nothing wrong in a doctor becoming a distiller. If he is a M.D. he cannot, but I am not an M.D. nor can a F.R.C.S. and I am not an F.R.C.S.

You are fortunate that you have not the qualifications which would disqualify you in engaging in business? It is fortunate in one way and unfortunate in another way.

Your activities as a business has given you less opportunities of devoting your time to your profession than in the early years? I do not think I can agree with you, I am an active man.

You have always had plenty of time? I always make time, to attend to all my work.

To Court.

The busiest man is the man who has got the greatest leisure? Yes.

In spite of the distillery business your practice flourished? Yes at that time now I have reduced my practice because I came away. I reduced the Kalutara and Beruwella practice 10 years ago and I retired to Colombo to have less of it.

You really dodged the practice because you did not have the time? You can use any language, dodged or to give up.

I mean that because it was taking so much of your time in Kalutara and Beruwella you came here in order that you may not be bothered with so much work? I wanted to restrict my professional work owing to my other activities.

I started practising in Colombo 10 years ago. Kalutara patients and Beruwella patients still come to see me, and a few Colombo patients.

So far as you know you cannot mention any patient who has decided to go to another doctor because the Daily News published this? I am not a man who can read other people's thoughts.

Have you found a dwindling in practice? Yes for the last one year.

I have kept books of my professional work. I am not producing those books. My practice has not dwindled but my work is getting less.

Do you attribute that to the Daily News? Sometimes it comes to me that it would be so but I do not mind that because I want a little rest. I am only concerned about my reputation.

Do you attribute the loss of practice to anything done by the *Daily News*? I cannot say that.

Is it mostly a dispensary practice? No prescription. I gave a prescription and the patients go to Cargills or some such place and buy the medicines. I have no dispensary here. Most of my patients come from Beruwella.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

What is your professional income about a year ago? I could not say that. I give a lot of fee prescription.

What is your income from the profession as a doctor? I could not give an idea.

Was it over Rs. 1,000 a month? It must be less. I cannot give an idea.

You have not got the vaguest idea, do you keep books? That is only with regard to the dispensary.

When I sent my income tax returns I just put a round figure.

It is purely mental. I calculate that it may be so much and give the figure. Most of my prescriptions are given free today. I do not rely on my medical profession.

It is your reputation as a doctor and not your earnings that you are concerned about? Yes.

Are you calling any evidence to show that your reputation as a doctor has in fact suffered one jot since 25-5-43? Nobody will come and give evidence like that. I did not try to get such evidence because it would be a failure.

Can you point to anything to infer that your reputation has suffered? Yes I felt it myself and my friends came and saw me. They say I have gone down in their estimation.

Mr. Bernard Jayasuriya is coming to give evidence, not as a doctor but as a man known to me. Man's honour is more important than money.

Is there anything which you can tell the court to infer that your reputation has suffered as a doctor? I did not go and find out from people whether they did not trust me because of this.

With so many years as a doctor I take it that a certain number of patients have always come to you? Yes.

Can you tell the court of any particular patient who has stopped coming to you now? I cannot.

There are several people who regard me as their family doctor. No such people have given me up.

(Mr. Gratiaen wants me to note that the questions which follow are to be deemed on the issue of damages.)

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

You said in examination in chief that you are now fairly wealthy you came back from England and did well as a doctor you were able to invest moneys in profitable businesses, did you borrow money for business purposes? Yes I had to borrow a number of times my business was so great.

So that really when times were good you were very well off and when the depression set in you had a bad time? Yes.

And creditors used to sue you? Yes some of them.

In regard to quite a number really? Yes.

Were there any people who sued you for money that you did not owe? No, I admitted the liability but I wanted an accounting in many cases when they were wrong. They had charged me exorbitant rates.

You also frequently resorted to technical defences under the Money Lending ordinance? Not I but the lawyers.

You swore affidavits that were put before you? Yes.

They were correct affidavits because I won every case. Every case was settled or won. In one or two cases I thought of taking judgment but even then I sympathised with the man and gave him money. I fought them on principle.

Did you give instructions to your lawyers that as you were being sued by your creditors it would suit you to file answers in order to gain time? No, they would have given time had I asked them. It was not a question of time, there were errors in accounting.

The defences under the Money Lending Ordinance? That was my counsel's advice, I do not know about the law.

When Counsel said that there is a good legal defence did you adopt it? Why should I advice the lawyers.

You accepted that advice? I had to take it when it was given. You did not contest any genuine claims? I contested the wrong ones.

I remember being sued by Don Carolis & Sons for a sum of Rs. 1,369. That was not a genuine case and in the appeal they came to a settlement. I filed an answer in that case saying that I had paid the full amount. I cannot remember saying I had paid and settled the full claim, but if counsel says so I will accept that. I lost that in the lower court but won in appeal. I gave evidence in that case. Frankly? Always.

In appeal they came to a settlement in the course of the discussion. The settlement was that the amount I mentioned was accepted. There was a difficulty about a cheque. I had to pay the value of that cheque.

Messrs F. J. and G. de Saram said that Plaintiff's claim and costs having been paid and settled in full they moved for satisfaction of decree? That is not so.

You deny the appeal was dismissed? I cannot say anything about that. They came to a settlement. Plaintiffs said never mind we have been doing business give a cheque and I said alright and gave a cheque.

Would it be correct to say that the amount of the cheque represented the full claim? That may be how they entered it I did not give more than Rs. 800. They wanted Rs. 800 and I gave it.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

Liptons sued me. I settled that. I do not think they came to the courts. When I got the summons I settled it. I admitted liability and paid it. It was during the depression time. I cannot remember whether I did not file answer.

If an answer was filed it would not have been a true one because you just now said it was a true claim? I cannot say because I gave the matters to the lawyers and some days later they asked me to settle it and I paid.

(Answer read in that case.) You said their accounts were inaccurate and you pleaded that all moneys due had been paid and settled? I cannot say that. This was a long time ago. Mr. de Saram at the Pagoda asked me to get a proctor to file answer and they would settle it. It was not to be a bogus answer. He wanted me to file some answer and to come to terms and I said alright.

Do you admit or deny that you filed an answer in that case pleading that you had paid the amount? They said simply to file answer. Mr. de Saram asked me to get any proctor to file an answer and to get a date and pay it. I gave the papers to a proctor and said do what you can that I would settle it.

Did you not think it was a disgraceful thing for a professional man to file an answer pleading payment? I took the advice of Mr. de Saram. He said do this I will settle the matter and that is what happened.

The answer was filed may be on 15-7. I may have consented to Judgment in October.

By filing that answer you were able to get four or five months? Yes.

Then you paid in instalments and it took two years to complete the payments? During that time two years even were not enough but I paid.

Was any of this litigation reported in the press? No, if the papers reported the fact that a professional man ~~had~~ pleaded payment and then consented to judgment would that injure the reputation of that man? Plaintiff's proctor advised me to take a certain course.

If you were in difficulties why did you not ask Plaintiff's proctor to give you time to pay? They said it is better to have a judgment.

What was the difficulty in consenting to judgment by instalments as soon as summons was served? I did not know the procedure of the law. I asked Mr. de Saram what to do in the matter and he said put in an answer and pay it. I will see to the rest.

You agree that by filing that answer you did get some extra time from the court? No, the court would have given me a lot of time.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

It was not necessary to put in that untrue answer then? I did not, the proctor did.

LUNCHEON INTERVAL

Sgd. R. F. DIAS,
D.J.

XXN. (Contd.)

5th June 1944.

It is correct that there are many many cases in which you were sued? And I paid.

Sued and ultimately paid but having in the meantime filed answers denying liability? I admitted my liability. 10

In nearly every case you filed some sort of an answer? Being advised by my lawyer.

To Court.

Did you make dilatory pleas to gain time? No.

You know sufficient of what goes on in Court to know that there are two ways of gaining time from a Court; one is to come into admit liability and make an application for time or for permission to pay by instalments - that is not the method you adopted in all these cases? Under the advice of my lawyers.

The procedure adopted by you was to file answers contesting the accuracy of the plaintiff's accounts sometimes actually pleading that you had paid the amount due and ultimately when the case came up for trial you settled the case and consented to judgment? In many cases the case was settled then and there. Sometimes the case was settled afterwards. 20

Would it be fair to say that in most of the cases where you filed answer you had no serious intention of contesting liability? I have admitted the liability.

To Court.

Was there a single case in which you filed answer in which the plaintiff's case was dismissed? In the telephone case when I was away. 30

Except for that plaintiff always got judgment? Plaintiff never got judgment. The case was settled. A consent motion was signed by me and money was paid thereafter in accordance with the consent decree.

The money was paid several months after the consent decree was entered? When you file answer the case fixed for trial. In the meantime the case is settled.

When the case came up for trial on the trial day . . . ? The proctor said the case was going off.

Will you admit frankly that owing to your indebtedness at the time you were anxious to have as much time as the ingenuity of your lawyers could get for you? I was always drawing Rs. 30,000 to Rs. 40,000 a month and was paying them.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross exami-
nation—con-
tinued

Yet you were sued for small sums under Rs. 1000/-? I can't remember. Liptons was one case. Mr. de Saram filed action and wanted me to file answer. That was a long time back. Was there any other motive except pleasing Mr. de Saram in filing answer pleading payment? No.

You paid the full sum in one lump sum? No. I paid the amount now and again when he asked for a cheque I gave it.

When he did not ask you did not bother? He did not bother either.

To Court.

Why did you not pay the whole thing at once? I had other arrangements. If I had not made other arrangements I would pay it then and there.)

You admit that in most of the cases plaintiff succeeded in getting judgment? He got a consent decree.

To Court.

Do you know that once an answer is filed the Court must enter a decree? Yes.)

You remember Cargills suing you? Yes, similarly.

You ultimately consented to Judgment being entered against you for payment of the amount of the decree by monthly instalments of Rs. 75/-? May be.

There you did not meet any proctor in the Pagoda because the proctor has been applying for attachment, execution etc.? Nothing happened. The cashier and the credit manager saw me several times.

A professional man who is so sensitive as to his reputation did it not worry you to feel that writs were out against you? Writs were not out against me to my knowledge.

You never heard that Cargills were taking out writs against you? Do you remember when there was an application fixed for enquiry and you filed an affidavit? I can't remember. If ever there was a writ out against you would you forget that? No writ was out against me at any time.

(Mr. Cratiaen marks journal entries in case No. 42659 DI.

Mr. Gratiaen says that DI is to be marked only on the question of damages namely that a person in such a situation would not be entitled to the damages claimed.

I think on that ground it will have to be admitted.)

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

When you came back from India in June 1943 and found an anonymous letter waiting for your wife you went to the Government Record Office and got a copy of the Bribery Commission's Report? I sent my secretary for it.

You know that any one of the public could have bought it for 90 cents? I believe he was told it was out of print. He went round to some of his friends and got a copy. He got it from one of the State Councillors.

Lots of people tried to get copies but could not? I do not know. I got one copy with a promise of returning it. He allowed me to keep it till the case was over.

(The sessional paper is marked D2.)

10

The relevant passages in this report about the arrack contract are paragraph 18 of the body of the report and schedule C? May be. The witnesses who were examined are the various distillers summoned today? Some of them.

You were not present when they gave evidence? No.

Have you had discussions with them as to what evidence they gave? No.

You know they were all summoned like you in connection with this particular allegation that a State Councillor got Rs. 2,000 from the distillers? Yes.

20

You had all met at a Mr. Gooneratne's house? No when? Before this money was supposed to have been given? I took myself and Mr. P. A. Cooray a document to sign. The contract he said was 3 cts. below the former rate.

You know Mr. L. M. de Silva's finding? That is not correct. Two or three people meet in an eating house and discuss certain things. May be at one time I may be one and two or three others. At other times I may not be there but two or three others. There was no anxiety to extend the contract. The 2 or 3 cts. reduction was long afterwards. I can prove that only distillers can tender.

30

After the tenders were settled the Excise Commissioner wanted 2 or 3 cts. lower than the previous price. I took the letter to Mr. Kularatne's house to get his signature and he gave his signature to it.

It is a correct statement of fact that you gave evidence? I had a conversation.

It is unusual to have conversations with the preliminary of kissing the Bible - why did you kiss the bible before the conversation took place? Before every Holy Mass I kiss the Bible.

You went on a summons from Mr. L. M. de Silva? Yes. I thought it was a conversation. When I went he said good morning. He said good morning? Yes.

40

Did not anyone say I solemnly swear that the evidence I shall give is the whole truth nothing but the truth etc.? Not the same wording.

Similar wording? Yes.

The words of the oath are prescribed by law? I do not remember whether Mr. L. M. de Silva read out anything like that. They got me to kiss the bible.

You knew Mr. L. M. de Silva was administering the oath? I did not think that.

10 What do you think he was doing? He asked me to come in and I went in.

For what purpose did you think he was handing the Bible? He wanted to get certain information from me.

Did he want you to kiss the Bible before you give that information? I can't remember whether it was so or not.

Possibly you did not kiss the Bible? I can't remember. There was some ritual attached to the kissing of the Bible? I can't say whether the ritual was read out to me.

Are you seriously suggesting that you did not know that you were going to give evidence? I do not suggest that at all.

20 You were summoned to give evidence? I was to go there on that letter. It is not a summons.

To Court.

How many times have you given evidence in a Court of law? 5 or 6 times.

Did Mr. L. M. de Silva administer an oath to you? I can't remember. Actually I can't remember whether he did so or not. I can't remember the way he did that.)

Did you give evidence before Mr. L. M. de Silva the Commissioner or did you not? Whatever I knew I told him.

30 What is the difference between that and giving evidence? In the council surroundings - when I give evidence I have my counsel and the other side argue.

If you are a witness who is not a party to the case you do not bring counsel? I thought I was not a witness.

Did you ask that the position be clarified? It did not occur to me. I thought it was a formal talk

You thought he was consulting you whether you agreed with his views? Perhaps so. I thought he was trying to get facts from me to confirm his view. That is to confirm what he had heard from other people.

40 Can you see any difference between your stating the facts and giving evidence? That is what I can't understand.

No. 4.
Plaintiff's
evidence
Dr. M G.
Perera.
Cross-exami-
nation--con-
tinued

Have you any doubt in your mind thinking back as whether you did not definitely kiss the bible have the oath administered and you swore solemnly to speak the truth? There is no difficulty to state that if I can remember correctly. I am trying my best to say yes or not but I cannot remember.

You cannot therefore say that it is incorrect where he says that you gave evidence? Since that book says I have to take that statement as correct.

You have to take that as a correct statement of fact? As it is written there. 10

When you read the report did you form the conclusion that this wicked man Mr. L. M. de Silva had disbelieved your evidence? Yes. When you got the postcard you got this sessional paper and you read it did you feel indignant? Absolutely.

Because he had rejected your evidence what was it that enraged you? Because he was condemning my innocence. I was not a party to it and he ran me down as a liar. That is what I thought - for no fault of mine.

You felt that he had wrongly disbelieved your evidence? That is my point of view.

You remember you gave evidence where you were sued by a chetty? 20
Yes.

You were cross-examined by Mr. Wickremenayake? Yes.

You were cross-examined to credit and it was suggested that your evidence was disbelieved by Mr. L. M. de Silva? He asked me the question and I did not want to answer the question. The Court upheld the objection.

The Court overruled the objection and made you answer the question? No. That question was dropped.

Now what I am reading is the question? I do not know.

Your recollection is that the judge upheld the objection and said you 30 need not answer the question? I could not follow it very carefully because I was excited a bit. Mr. Wickremenayake excited me very much.

" My point of view is that the Bribery Commissioner did not disbelieve my evidence " - you swore that? I may have said that. At an excited moment I do know what I said.

You did not know what you were saying? He was asking the question and I do not know . . .

Are you excited now? No.

Did Mr. L. M. de Silva believe you or disbelieve you? He disbelieved what I said that is what I understand. 40

The publication of this extract in the *Daily News* was brought to your notice in ? In June early June.

On the 1st June I saw it. That was the day I came.

Did you there and then decide to take up the matter ? I was very vexed. When I came to the office the next day . . .

The following day you were able to get the sessional paper ? I was enquiring from my secretary. He said he had read this in the papers that is how I came to know it was in the papers.

Before that I did not know it was published in the papers.

10 You were both very angry that the *Daily News* had published it ?

I was angry - I do not know about the Secretary.

I found it out on the 2nd June. I found my reputation had been injured as a public man as a professional man.

You decided to take action ? No. I was going to see what was going to happen what more will come out.

What more could come out ? There was a post card and I was waiting for developments. I was thinking some of my friends will come. They came and met me may be about the middle of June.

Then you decided that it was time you vindicated your character in 20 the Courts ? I went to my lawyers . I went somewhere in June.

You decided to file action thereafter ? Yes.

To Court.

The Government printer had committed a libel ? Yes, some of my lawyers said even the Government printer could be brought in. When did you decide to sue the defendant ? I was waiting till my daughter's wedding was over. That was on August 4th.)

What is wrong with sending a letter of demand ? I may have instructed my proctor to send a letter of demand. After that I was busy about my daughter's wedding. We were consulting several lawyers.

30 You decided that you must sue for Rs. 50,000/-? I wanted to make it a lac. I said I would run a paper against this commercial paper. I said I might start a newspaper if I got a lac and put another two lacs and see that injustice is not done to the world.

So that you might write letters to your editor every day ? That may be the practice with other papers.

Now I have decided to give this to the war charities.

To buy a spitfire ? Yes.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera.
Cross-exami-
nation—con-
tinued

I suggest to you that you were not serious when you made those allegations against Mr. L. M. de Silva - the imputations against Mr. L. M. de Silva — do you wish to alter that ? I would like to add to it.

There was one remarkable suggestion you made in connection with his getting a decree in a Court of law. The decree you are referring to was a decree entered by this very Court ? I do not know anything about it the world speaks about it.

You do not know what the decree is ? That is the rumour everywhere.

You have no personal knowledge whatever with regard to the facts ? I have somewhat personal knowledge. 10

You said a few minutes ago that you knew nothing about it ? I said it was rumour well-known everywhere. I also know something personally.

Do you personally have sufficient knowledge to justify your making a statement of that nature on oath that the decree was improperly obtained? I can't say that. It is not gossip.

No. 4.
Plaintiff's
evidence
Dr. M. G.
Perera, Re-
examination

REXN.

During the depression that is after 1929 most Colombo financiers were in grave difficulties ? Particularly the rubber proprietors.

You yourself were in financial difficulties ? Yes. Because I had to raise a lot of money for Government contracts. 20

The price of rubber had gone down ? Yes, and coconut. Even arrack too.

You had to find the money for your business as well as to run your estates ? Yes.

You had commitments entered into during the good time you could not meet them during the depression ? Yes.

You were sued in these courts in various cases ? Yes.

In every case you paid your just debts ? Yes, with interest.

Sgd. R. F. DIAS

D. J. 30

No. 4.
Plaintiff's
evidence
B. Jayasu-
riya, Exami-
nation

BERNARD JAYASURIYA . . .affd : 45.

I am the member for Avisawella in the present State Council. I was so elected in March 1943. I know Dr. M. G. Perera. He was a good friend of mine for 15 or 20 years. The Bribery Commission issued its report the month after I entered the State Council. As a member of the State Council I was entitled to a copy of the Sessional paper published at the instance of His Excellency the Governor. I got a copy. I read the report. I did not read the appendices. This report was later the subject of discussion in the

State Council. An Ordinance was passed compelling the members against whom findings had been made by the Bribery Commission to keep away or resign. I do read the *Daily News* regularly. I remember seeing an article in the issue of the *Daily News* of 25th May relating to the extension of the arrack contract. That is appendix C to the report. I was attracted by the headline Rs. 2,000 payment to four councillors. I read through the whole of that article. There is a reference to Dr. M. G. Perera. I was surprised to read that. That was the first time I saw it. I did not read it in the Commissioner's report. After reading this I thought Dr. had deli-
 10 berately lied. I knew Dr. Perera to be an honourable man. I would believe him on oath. I would believe him without an oath. I am a member of the Sinhalese Sports Club. So is Dr. Perera. There was discussion about Dr. Perera there. Dr. Perera's conduct in this matter has been the subject of unfavourable comment. On reading this Dr. Perera went down in my estimation. It did not hold him up to contempt redicule and hatred but I lost regard for him. I met Dr. Perera afterwards. I met him in the Fort. I spoke to him about it. I asked him what he had done to deserve this castigation. I told him I read this paragraph and I was surprised. The doctor said he never lied. I remember the doctor being away in India.
 20 My conversation was after he returned - somewhere in June.

No. 4.
Plaintiff's
evidence
B. Jayasu-
riya, Exami-
nation—con-
tinued

XXN.

He is never a practising doctor. I did not know he was a practising doctor. I thought of him as a business man. He is still a very prosperous arrack distiller.

No. 4.
Plaintiff's
evidence
B. Jayasu-
riya, Cross-
examination

You know when the sessional paper came out it was a best seller? Everybody was talking about it.

Everybody was trying to borrow everybody else's copy? Everybody was talking about the findings.

Some councillors against whom the Commissioner had reported adver-
 30 sely they tried to vindicate their character in the Council? Yes.

But the council as a whole decided to accept the findings of the report as the findings of a fair impartial tribunal? Yes.

We are all very proud of Mr. L. M. de Silva? I know him and I have a great regard for him.

Everybody approved of him as a suitable person? He was a suitable person.

As a matter of fact his findings were so whole-heartedly accepted by the Council that when some of the guilty gentlemen did not voluntarily leave the Council legislation had to be introduced to turn them out? Yes.

40 On the basis of his findings of fact? Yes.

The other six resigned voluntarily? Yes.

No. 4.
Plaintiff's
evidence
B. Jayasu-
riya, Cross-
examination
—continued

Legislation was introduced to get rid of one gentleman? Yes. I am not a member of the Sinhalese Sports Club now. I was a member till quite recently. Dr. M. G. Perera is not a very regular member. He used to come there occasionally.

Sgd. R. F. Dias,
D.J.

Mr. Amarasekara puts in P1 to P3 and closes the plaintiff's case.

Sgd. R. F. DIAS,
D.J.

No. 5.
Defendants'
evidence
Richards,
Examination

No. 5.
Defendants' Evidence

10

D.C. 15069/M.

9th. June, 1944.

Appearances as before.

A. C. RICHARDS. Sworn. Govt. printer.

My department is responsible for printing all Government publications such as sessional papers.

To Court.

Sessional papers are normally issued under the authority of the Financial Secretary but in this case it was issued under the authority of His Excellency the Governor.)

20

I produce the letter dated 18-5-43 from the Secretary to His Excellency the Governor D3. In accordance with those instructions I printed the report of the Bribery Commissioner as Sessional paper 12 of 1943. The final proof was returned on the 18th May 1943 and was published on the 19th May 1943 simultaneously with the Gazette Extraordinary. 212 copies were published for circulation and 250 for sale and 10 for the Commissioner. The 250 were sold in the Record Office. We sent them for sale on the 19th and an additional 225 reprints were asked for immediately and they were sent on the 24th. The Government Sessional papers are issued free of charge to the press. Sessional paper 12 of 1943 was sent by me to the *Ceylon Daily News*, *Ceylon Observer* and *Times of Ceylon*, the *Dinamina* and the *Virakeswari*. 722 copies were printed altogether.

XXn. Nil.

Sgd. R. F. DIAS,
D.J.

Orion de Silva. Sworn.

At the time of the publication of the Bribery Commissioner's Report in the *Daily News* I was the associate editor of the *Ceylon Daily News*. I have been employed by the Associated Newspapers for about 20 years. A copy of Sessional Paper 12 of 1943 was sent to the *Daily News* free of charge on 19-5-43 by the Government Printer. The events leading up to the appointment of Mr. L. M. de Silva was a matter of considerable public interest and the report was eagerly awaited by members of the public. When I received Sessional Paper 13 of 1943 we published a large number of
 10 extracts—practically the whole report. It began on the 20th May and we published up to the 28th May. All the portions of public interest were published. We quoted the Commissioner verbatim. I selected the extracts for publication. I was not actuated by personal animosity. The plaintiff is a stranger to me.

No. 5.
Defendants'
evidence
de Silva,
Examination

XXN.

I selected the passage for publication. Certain omissions were made they were very small omissions. Only certain matters relating to trivial incidents were not published.

No. 5.
Defendants'
evidence
de Silva,
Cross-exami-
nation

What do you mean by trivial incidents? If I am shown a copy of
 20 the report I will point out.

For instance from Appendix W to ZZ at page 43 of the report.

Those I did not consider to be of much public interest. I thought they were unimportant and were not of public interest. I can't say whether they were published without looking at the papers but I do not think they were published. We had no room for everything in the report. We had no room for what was not important.

Everything in this report except what appeared at page 43 was published on the ground that they were important? Everything I published which I thought was of public interest.

30 Everything except what appeared at page 43 did you publish in the papers? I published everything. There are other omissions.

On other pages what were the omissions you made? I must go through the newspapers to check.

Will you please go through the newspapers and tell us what are the omissions you made? You published the entirety . . .?

(Mr. Gratiaen at this stage says he will mark the copy of the *Daily News* of 20-5-43 D4.)

That contains the Commissioners Report to the Governor.

(Mr. Gratiaen marks D5 *Daily News* of 21-5-43—that contains
 40 appendix B.

He marks D⁶~~5~~ *Daily News* of 22-5-43—that contains Appendix E.

No. 5.
Defendants'
evidence
de Silva,
Cross-exami-
nation —con-
tinued

We first published the main report and thereafter published the appendices.

D7 Daily News of 24.5.43.

That only contains an Editorial reference to the indebtedness of Councillors.

D8 of 25.5.43—that contains the extension of the arrack contract.

D9 of 28.5.43—that contains no extract but there is an editorial about the unnamed councillors.

Did you published the report verbatim? No.

What are the omissions you made? One instance is we omitted the 10 terms of reference.

What else? The terms of reference were known to the public.

Then I started quoting the report verbatim.

Have you published the report verbatim except the terms of reference? At this distance of time I cannot say.

Is it a matter that you as an associated editor left in the hands of others in the office? I took this over myself.

Then you will be able to tell us more easily whether you published the report to the Governor of the Bribery Commissioner verbatim? I will have to compare it and see. 20

Nor have you any recollection what you did on the 19th May? All that I published was verbatim—not the whole report.

To Court.

How many copies of the Sessional Paper did you have in the office? Three copies because we have three papers. You would give an order to the printer to print certain things in that—what would you do? I would cross out a portion which I did not want printed and then send it with an order to the printer. The rest will be printed.)

Have you got the copy of the Bribery Commissioner's Report which you used in the office on the 19th May? No. 30

It is not now available? That is so.

You are not at the moment able to tell us what omissions you made from the report of the Governor except of course the terms of reference? I can tell you in a minute.

(Witness compares the Sessional Paper with D4).

I left out the paragraphs up to 9. I started from 9. I took in paras 10, 11, 12. I have the entirety of 12. I have the whole of 13, 14 and 15.

I omitted the first two sentences of 16. I have the whole of 17. I have the whole of 18, 19, 20. We had our own headings. We said refusal to accept registered letters. The Commissioner had Mr. Abeygunasekera and registered letters. I had the paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31. That was of intense public interest and we published the entirety. Para 32 was published. I did not publish para 33. I published para 34, 35, 36, 37, 38, 39, 40, 41, 42, 43. There are appendices A to Z and ZZ.

No. 5.
Defendants'
evidence
de Silva,
Cross-exami-
nation—con-
tinued

You only published appendices B, C and E? Yes.

The other appendices you did not think were of any public interest?
10 Yes.

Will you just look at Appendix CC at page 28. Here the Bribery Commissioner has definitely found that a member solicited a bribe and took it? Yes.

That was omitted by you? Yes.

Can you give the reason why? No reason—probably lack of public interest in the matter.

Why do you say there was lack of public interest? Mr. Abeygunasekera has been sufficiently dealt with in the main report.

Shown Appendix D. There too there was a definite finding that the
20 allegation dealt with here was established? You did not publish that?
That too had been dealt with in the main report.

I suppose for the same reason you did not publish F though there is a finding that the charge was established? That too was dealt with adequately in the main report.

In fact you would say if there are omissions you made those omissions because those matters were sufficiently dealt with in the report? Yes.

REXN.

Whatever you omitted did you omit by exercising your judgment as
a journalist what would serve the public having regard to the amount of
30 space available? Entirely on my judgment and having that consideration.

No. 5.
Defendants'
evidence
de Silva, Re-
examination

Where a matter was fully dealt with in the main report you would leave the relevant appendix? Yes.

With regard to Appendix C para 18 of the main report is a very short para of 7 or 8 lines? Yes.

On the other hand the other incident paras 22 and 23 have very fully dealt with the matter? Yes.

In the same way you omitted an appendix dealing with the European members? Yes.

No. 5.
Defendants'
evidence
de Silva, Re-
examination
—continued

A number of paragraphs are devoted to the European members.

Personalities did not enter into the matter at all.

Sgd. R. F. DIAS,
D. J.

Mr. Gratiaen closes his case putting in D₁ to D₉.

Sgd. R. F. DIAS,
D. J.

Mr. Canekeratne addresses Court.

Nathan page 229.

Winfield on Torts 278.

10

Siemen *vs.* Nethereliff 2 Common Pleas Div. 853.

LUNCHEON INTERVAL.

Sgd. R. F. DIAS,
D. J.

Cites 7 H.L. 744.

(1905) 1, K.B. 505, 510.

(1918) 2, K.B. 405, 408, 411.

(1892) 1, Q.B. 431.

3, C.P.D. 319.

6, C.L. Rec. 105.

20

2 C. & K, 580.

27, L.J.Q.B. 282, 289.

(1893) 1, Q.B. 65.

(1925) 2 K.B. 158, 167.

8, T.R. 298.

1, B. & P. 325.

4, L.R.Q.B. 73.

23, Q.B.D. 400, 407, 408, 412, 410.

23, S.C. (Cape) 310, 317.

(1918) 2, K.B. 405, 412.

30

Mr. Canekeratne says that the Government Printer says that the document which he read in court and of which a certified copy was ordered to be filed is being with-held by the Government Printer on the ground that he cannot do so without an order from the Treasurer.

No. 5.
Defendants'
evidence
de Silva, Re-
examination
—continued

ORDER

The privilege should have been pleaded before the document was produced in Court by the head of the department.

The document having been produced without privilege being claimed the privilege is lost.

10 Further argument on Monday.

Sgd. R. F. DIAS,
D. J.

No. 6.

Judgment of the District Court.

D.C. Colombo, 15069/M.

No. 6.
Judgment of
the District
Court, 19th
June, 1944

Judgment.

The 1st defendant is the printer and publisher, and the 2nd defendant company is the owner of the newspaper called the *Ceylon Daily News*. They are sued for defamatory libel for publishing in their issue dated 25-5-43—Pr, D8 the following words which are an extract from Appendix C of the Bribery Commissioner's Report D2.

“ Dr. M. G. Perera (the plaintiff) who gave evidence was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did.”

It is contended that these words are defamatory of the plaintiff who claims a sum of Rs. 50,000·00 as damages. The defence contends that the words are not defamatory, and alternatively plead justification, fair comment on a matter of public interest, publication on a privileged occasion, and that the alleged libel is a fair and accurate report by a newspaper of a judicial proceeding.

It appears that on 15-5-41 the State Council of Ceylon passed a resolution to the effect that a commission should be appointed to enquire into charges of bribery and corruption made against members of the State Council—see Sessional Paper XII—1943 (D2) page 15. On 13-8-41 the Governor of Ceylon in pursuance of this resolution appointed Mr. L. M. de Silva, K.C., to be the Commissioner—see the commission reproduced at page 17 of D2. In doing so the Governor was acting under the provisions of the Commissions of Inquiry Ordinance No. 9 of 1872 (Chapter 276). Thereafter, Ordinance No. 25 of 1942 (as amended by Ordinance No. 26

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Judgment of
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—continued

of 1942) was enacted. The Commission issued to Mr. de Silva was given statutory effect by Section 2(1) of Ordinance No. 25 of 1942. Mr. de Silva held the inquiry. Amongst the witnesses who gave evidence was this plaintiff. His evidence, admittedly, was taken in camera as provided by the Ordinance. By his report dated 3-4-43 the Commissioner reported his findings to the Governor—see pages 1-11 in D2. In para 9 he explained why certain evidence was heard in camera. In para 40 he said that the question whether his report should be published was not a matter for him. He requested that appendices H, HH, HI, and F should not be published. By letter D3 dated 18-5-43 the Acting Secretary to the Governor forwarded 10 the final proofs of the Commissioner's report and certain of the appendices to the Government Printer and requested him to publish the same as a Sessional Paper. On 19-5-43 Sessional Paper XII of 1943 was published—see the inner cover of D2. The outer cover shows that it was printed on the orders of Government at the Ceylon Government Press and that members of the Public could purchase a copy for the sum of ninety cents. 472 copies were printed. Of these 212 were earmarked for certain persons. 10 were sent to the Commissioner and 250 copies were available for sale to the public. These were soon exhausted and a further 225 copies were printed, making a total of 697 copies. Every newspaper in the Island was supplied 20 with copies of the Sessional Paper. No question of copyright was involved, and the press honestly believed that it was at liberty to published what was stated in the sessional paper either the whole or in part.

The defendants on various dates and in various issues of their paper published certain parts of the commissioner's report and some of the appendices. It has been explained that the portions omitted either had already been dealt with in the main report of the Commissioner, or were considered to be lacking in public interest.

In paragraph 18 of the Commissioner's report D2 he dealt with what he called "The Arrack Contract Gratification Incident." The learned 30 Commissioner said that there was evidence before him that in the year 1939 contractors to the Government for the supply of arrack decided to pay four members of the State Council a sum of about Rs. 2,000.00 for the purpose of having their contracts extended without competition from outside. He said that there was evidence, which he believed, that money for this purpose was paid to one member of the State Council, since deceased; but that there was no evidence that it was paid by the deceased member to the others. The Commissioner in Appendix C more fully discussed the matter and gave reasons for his views.

The title to Appendix C is: "Alleged payment of gratification to 40 Messrs. . . . , . . . , . . . and . . . for the purpose of securing their services in the Executive Committee of in the matter of the extension of a Government contract." Appendix C itself falls into four paragraphs named: "Witnesses examined," "Allegation," "Finding" and "Comment." Under the first paragraph the learned Commissioner enumerated

the names of the witnesses who gave evidence before him. One of them is Dr. M. G. Perera, this plaintiff. In paragraph two under the heading "Allegation" the Commissioner stated "These witnesses (*i.e.*, including the Plaintiff) gave evidence with regard to the alleged payment of gratification to four Councillors . . . for the purpose of securing their services in the Executive Committee of . . . Certain contracts held by distillers for the supply of arrack to government were due to expire on April 30, 1939. The allegation was that money was paid to the Councillors mentioned, in order to secure their support to a proposal that the contracts should be extended without calling for tenders . . ." One can therefore infer that the plaintiff was one of the witnesses who was examined on the above mentioned facts, he being one of the distillers.

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The finding of the Commissioner is recorded in paragraph three, namely, that without a doubt a sum of Rs. 2,000·00 was paid by the distillers (of whom the plaintiff is one) to Mr. . . . The learned Commissioner also held that the distillers believed this money would be paid to the other three. "Mr. . . . is now dead, and there is no evidence that he distributed money amongst the others. I do not think that any direct payments were made to them."

20 Then comes paragraph four which itself falls into three compartments. There are first the comments of the Commissioner on the evidence generally. Then comes the reference to the plaintiff, which forms the subject matter of this action. In the last two paragraphs the Commissioner refers to the evidence given by two witnesses Rodrigo and Siebel. The reference to the plaintiff I have already reproduced.

The plaintiff's case is that the defendants in publishing this paragraph have defamed him.

30 That a newspaper which publishes or disseminates libellous or defamatory matter is liable in damages to the person defamed is a proposition of law which is so well established that I do not think it is necessary to discuss the matter in detail. The first question which arises for decision, therefore, is whether the plaintiff has succeeded in proving that the words complained of are defamatory of and concerning himself? In other words are the words in question *per se* defamatory of the plaintiff, or do they bear out the innuendoes suggested by the plaintiff? This is the subject of Issues 1, 2 and 3.

40 To say or publish in print of a man who gave evidence either before a Court of Justice or any other tribunal or person whose duty it is to assess evidence and find facts, that he was completely lacking in frankness, and pretended that he knew very much less than he actually did, is to impute to that person that at a time when he had bound himself by an oath to state the truth, the whole truth and nothing but the truth, he was wanting in candour, that he was reticent secretive and uncommunicative; and that he pretended—that is to say he feigned or falsely claimed or simulated

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that he knew very much less about the matters he was being examined on or deposing to than he actually did. I am of opinion that those words are per se defamatory. In issue 1 the plaintiff says that these words impute dishonesty to him. In issue 2 it is urged that they imply that the plaintiff gave false evidence of the kind known as *suppressio veri*. What is it but an imputation of dishonesty to say that a witness, who is a doctor and a distiller and therefore a man occupying a certain social status, that he was lacking in frankness or wanting in candour when he gave evidence on oath, or that he was reticent, secretive, and uncommunicative and that he pretended or feigned that he knew much less about the facts he was deposing 10 to than he actually did? A person who acts in that way is necessarily a dishonest person. A false witness may give false evidence not only by stating what is untrue to his knowledge but also by suppressing relevant facts which he is aware of. In my view the words complained of impute the innuendoes which the plaintiff seeks to place on them. The evidence of the witness Bernard Jayasuriya, and the questions put to the plaintiff in some other case when he was asked whether the commissioner had not disbelieved him, support this view. It is perfectly clear that the learned Commissioner, although he used very guarded language, intended to find that the plaintiff had not acquitted himself as a truthful witness when he 20 gave evidence before him.

The words complained of are defamatory of the plaintiff; and the publication of them by the defendants being admitted, a *prima facie* presumption arises of implied malice, or as it is called in the Roman Dutch Law "*an animus injurandi*." In 21 New Law Reports at p. 10 it was held "It is, I think, clear in regard to the law of defamation, that the law distinguishes between two sorts of malice. One may be called "implied malice," or as it is expressed in the Roman Dutch Law "*animus injueandi*," and the other "express malice." *Animus injurandi* may be presumed, but express malice must be proved, and the onus of proof of express malice lies upon the person 30 alleging it." Had the case ended here, the plaintiff would be entitled to judgment, subject to the assessment of damages, unless the defendants can negative the presumption of implied malice.

I therefore turn to the defences set up, and they are four in number: (1) Justification—Issue 11; (2) Fair comment on a matter of public interest—Issue 9; (3) Publication on a privileged occasion;—Issue 8; and (4) that the alleged libel is a fair and accurate report by a newspaper of a judicial proceeding—Issues 6 and 7. Issues 12 and 13 raised by the plaintiff follow from Issues 7 and 8(c).

In 12 New Law Reports 225 Wood Renton J. laid it down that in libel 40 actions when the defendant pleads justification and privilege, the latter pleas only arise when the plea of justification fails; and that the two sets of pleas should be kept distinct in the judicial mind. I, therefore, proceed to consider the plea of justification first.

This plea is raised in issue II. In 7 Ceylon Law Weekly 84 it was pointed out that the Roman Dutch Law as regards defamation differs from the English Law in that truth of the defamatory statement is not a defence to liability. In 39 New Law Reports at p. 131, which is an authority binding on me, it was laid down that the Roman Dutch Law required not only that the words are true in substance and in fact, but also that their publications was for the public benefit. It is therefore incumbent on the defence to prove under the plea of justification (a) that the words in question are true in substance and in fact, and (b) that it was for the public benefit that they should be published. Under this plea the defendants have to prove that it is true that the plaintiff when he gave evidence before the learned Commissioner was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did. The defendants urge that the Commissioner is an officer appointed by statute to find the true facts about certain matters, that he heard evidence and recorded his findings, which have been accepted by the Governor as proved by the publication of the Sessional Paper, and that furthermore the State Council of Ceylon has accepted those findings, because it enacted Ordinance No. 14 of 1943, which is a law "for the expulsion of Members of the State Council, on the ground of their acceptance from any person, or the offer by them to other members of the State Council of pecuniary reward or other gratification in connexion with the performance or discharge of their duties or functions as such members."

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This Ordinance was assented to by His Majesty the King and became law on 7-6-43. The defence therefore contends that a presumption of regularity attaches to the findings of the Commissioner, and in the absence of proof to the contrary, this Court will hold that his findings are true and correct.

On the other hand, the plaintiff in giving evidence sought to impugn the finding of the learned Commissioner as regards himself by attacking the competency, impartiality, and honesty of this gentleman. The evidence had been fully recorded and it is unnecessary for me to enter into the details the plaintiff gave and desired to add to. All I need say is that His Excellency the Governor and those advising him apparently do not share the plaintiff's views, for in the Commission issued to Mr. L. M. D. de Silva, which now has statutory force, the Governor stated that "Reposing great trust and confidence in your prudence, ability and fidelity, do by these presents nominate, constitute, and appoint you . . . to be my Commissioner." Had there been the slightest doubt about this gentleman's qualifications, would the State Council which was on trial have given statutory force to the Commission issued by the Governor, or by Ordinance No. 14 of 1943, act on his findings. I deplore this attempt to besmirch the character and good name of a public man who is held in high esteem, especially when he cannot defend himself. I reject out of hand the suggestions made by the plaintiff.

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Counsel for the plaintiff, while he does not adopt the position taken up by his client, submits that the Court cannot decide whether the words complained of are true in substance and in fact, because the evidence on which the Commissioner acted is not before the Court. He submits that the findings of the Commissioner are not a judgment in rem binding on all the world, and that it is capable of collateral attack. It is pointed out that the statutes under which the Commissioner derives his powers do not make his findings (except in regard to perjury—Ordinance 25 of 1942, Section 7(4)) final and conclusive. Counsel for the plaintiff submits that like the procurator of Judea one may ask “ What is the truth ”? without 10 receiving a satisfactory answer.

I am of opinion, however that in the absence of evidence to the contrary, there is a presumption that the findings of the learned Commissioner are true and correct. He saw the witnesses give evidence and watched their demeanour, and in the absence of evidence to the contrary I feel bound to hold that what the learned Commissioner found and what the defendants published of and concerning the plaintiff is true in substance and in fact.

I am however of opinion that the defendants fail in their proof that what was published was for the public benefit. What the public were 20 interested in was not the manner in which this plaintiff gave evidence, but as to whether their representatives in the State Council had accepted bribes.— See 39 New Law Reports at p. 131 for a similar case. I therefore hold that the plea of justification must fail and I answer Issue 11 as follows :

- 11(a) The words “ Dr. M. G. Perera who gave evidence . . . ” is a statement of fact.
- 11(b) Those words are true in substance and in fact, but it was not for the public benefit that that fact should be published.
- 11(c) The words “ Dr. M. G. Perera . . . was completely lacking in frankness and pretended that he knew very much less about 30 the transaction than he actually did ” are expressions of opinion by the learned Commissioner.
- 11(d) Those words are true in substance and in fact, but it was not for the public benefit that they should be published.

In regard to the plea of fair comment on a matter of public interest there are two observations which arise at the outset.

In the first place, the defendants in publishing what they did made no comments—fair or otherwise. They merely published Appendix C, omitting the first two and last two paragraphs, and reproduced 40 the rest without comment. In the second place, for the reasons already given, the manner in which this plaintiff gave evidence before the Bribery Commissioner is not a matter of public interest at all. Counsel for the defence however argued that where a newspaper reported a comment

made by someone else which is privileged, such comment is also privileged when published in a newspaper. The case reported in 7 C.P. 606 does not support this proposition. The following passage from the judgment of Willes J. was relied on: "The principle upon which those cases are founded is a universal one - that the public convenience is to be preferred to private interest, and that communications which the interests of society require to be unfettered, may freely be made by persons acting honestly without actual malice notwithstanding that they involve relevant comments condemnatory of individuals." I do not see how that passage is an authority for the proposition that the reproduction by a newspaper of someone else's comment which by law is privileged, enjoys the same privilege accorded to the author of the comment. I think this plea fails and I answer Issue 9 as follows:

9(a) The defendants made no comments, and the matter is not a matter of public interest.

9(b) Yes.

Turning to Issue 8, can it be said that the defendants published these words on a privileged occasion? I take it that the case for the defence is that what they published is to be considered as having been made on a privileged occasion, because it was published by a newspaper in the discharge of a duty it owes to its reading public.

Counsel for the defence says that the Bribery Commission was appointed because the public mind was uneasy by reason of the allegations made that State Councillors were accepting bribes. This he submits is a matter of public interest affecting every man, woman, and child in this Island. When the Governor accepted the findings of the Commissioner, he acting under "the residuary prerogative powers of the Governor" promulgated the findings in the form of a Sessional Paper. Counsel enquires what are the duties, obligations and functions of a free press in a free country when such a Sessional Paper is forwarded by the government to a newspaper, obviously with the object that the fullest publicity should be given to its contents? Counsel submits that the press owes a duty to the public to keep it informed of such matters as were found by the Bribery Commissioner; and that in publishing what they did, they did so fairly in the discharge of that duty which the press owes to its reading public. It is therefore argued that in the absence of malice the action of the defendants is privileged.

The researches of the Bar have failed to throw light on the authority under which a Sessional Paper is issued in Ceylon. Assuming for purposes of argument that the Governor has certain "residual prerogative powers" (a fact which the plaintiff strenuously denies), how can those powers descend upon a newspaper? No authority has been cited to show that this can happen. The cases reported in 61 L.J.Q.B. 573 and 25 Times Law Reports 677 do not help the defendants. Apparently in England no judicial record as we know it is maintained in cases tried in County Courts or of receiving

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orders made against joint stock companies. The successful party causes an entry to be made in a register which is kept under statutory powers showing that a certain judgment or order has been entered against a particular person or company. The register contains a note to the effect that although the name of a particular person may appear in the register as a judgment debtor, there was no guarantee that the decree had not been satisfied. By law any member of the public is entitled to inspect these registers. Certain trade journals did for their readers what the readers could have done for themselves. They published a list of the judgments and orders entered in the register. In an action for libel it was held that the occasion was a privileged one. It was also laid down that if a document is open to the public, a newspaper which published the names appearing in the register does not commit a libel, because they only did what the general public could do for themselves by looking at the register. I do not see how these cases are applicable to the facts of the case before me. It is nowhere stated in any legislative enactment that the proceedings before the Bribery Commissioner or his report are open to public inspection. The statutes under which he acted show that they are not. The report made by the Commissioner is confidentially made to the Governor, and no member of the public has the right to ask the Governor to allow inspection of the evidence recorded by the Commissioner or his report. Therefore the two cases relied on do not apply to the facts of this case. What happened here is that the Governor acting on the advice of his ministers, in view of the important questions dealt with, decided to publish a Sessional Paper, and the Government sent copies of it when published to the defendant newspaper. The defendants decided to publish certain parts of it, but in doing so, they were not publishing the contents of a document which is open to the public by right.

Counsel for the plaintiff submits, granting that the defendants have a duty to make public the findings of the Bribery Commission regarding the allegation that State Councillors had taken bribes, the plaintiff is not a State Councillor but a third party. It is submitted that the statements relative to the plaintiff enjoy no privilege since they are not relevant or pertinent to the duty the defendants owed the public and do not relate to the subject for which the Bribery Commission was appointed, but deal with a matter in which the general public had no interest. It is urged that the law does not confer on the Governor the power to publish the report, and in any event that the name of the plaintiff who gave evidence in camera, and the nature of the evidence he gave in camera should not have been published at all without the Commissioner's consent in view of the express prohibition in Section 6(1) of Ordinance 25 of 1942. *Gatley on Libel and Slander* at pp. 329-330 has the following comment: "It is obvious that as the privilege is founded upon grounds of public policy and of benefit and advantage to the community, it does not extend the protection to any report, however fair and accurate, which is . . . prohibited by Statute." It is argued that the publication being of something which is expressly

prohibited by law, any privilege which otherwise would have attached to its publication by the defendant is destroyed. I shall deal with this submission under Issues 6 and 7.

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It is further argued that, granting the defendants were under a duty to inform the public regarding the Commissioner's findings about the acceptance of a bribe of Rs. 2,000·00 in connexion with the arrack rents, it was not part of the defendant's duty to inform the public of the manner in which the plaintiff gave evidence before the Commission. (In 1917) Appeal Case pp. 320-321 Lord Loreburn said: "The fact that an occasion is privileged does not necessarily protect all that is said or written on that occasion. Anything that is not relevant and pertinent to the discharge of the duty, or the exercise of the right, or the safeguarding of the interest which creates the privilege will not be protected. To say that foreign matter will not be protected is another way of saying the same thing. The facts of different cases vary infinitely, and I do not think that the principle can be put more definitely than by saying that the Judge has to consider the nature of the duty or right or interest and the rule whether or not the defendant has published something beyond what was germane and reasonably appropriate to the occasion, or has given to it publicity incommensurate to the occasion." Applying those principles to this case it appears to me that everything which the defendants published relating to the State Councillor who received the bribe of Rs. 2,000·00, is privileged, as it was published in pursuance of a duty which the newspaper owed the public. But what the defendants published regarding the plaintiff is foreign or irrelevant to that duty, and is not therefore within the privilege. Lord Atkinson at page 329 said "It was next urged on behalf of the appellant that the Army Council should have confined themselves to stating that the charges made against Major General Scobbell were on investigation found to be unfounded, and that he had been fully exonerated, and, therefore, that all the references contained in the libel to the appellant himself, his conduct, career, or the treatment he received were foreign and irrelevant subjects not pertinent to the discharge of the duty or to the protection of the interest which formed the basis of the privilege claimed, but were separable from the relevant parts of the libel and, to use the words of Lord Esher, were "outside the privileged occasion and had nothing to do with it." In 20 Hailsham page 479 note (g) there appears a reference to the case of Griffiths *vs.* Lewis which also illustrates this rule.

A long argument was addressed to me on the question whether a Sessional Paper is privileged. I do not think I am called upon in this case to answer that question. I therefore answer issue 8 as follows:

8(a) Yes.

8(b) The document D2 says so.

8(c) The words complained of were not published on a privileged occasion.

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Finally, the defendants claim that the words complained of are a fair and accurate report by a newspaper of a judicial proceeding. — Issues 6 and 7. The onus is on the defendants to establish this plea, and two questions arise, namely (a) Is what was published the report or part of a report of a judicial proceedings? and (b) If so, was the report a fair and accurate one?

In 3 Nathan pp. 1606-1609 it is said " There is no direct authority on this subject in the Roman Law which was promulgated at a period when the art of printing was unknown. Nor were the Roman Dutch jurists much engaged in consideration of the subject in practice. The matter must, consequently, in the absence of Roman and Roman Dutch authority be decided by modern authorities. The English Law is fully in accordance with the analogy of the Roman Dutch Law which held the person who was concerned in the production of a libel responsible for it. The English Law is ' Everyone who writes, prints, or publishes a libel, or is in any way responsible for its being written, printed, or published may be sued by the person defamed, and to such an action it is no defence that another wrote it, or that it was printed or published by the desire or procurement of another —whether that other be made a defendant or not. At the same time as the Roman Dutch Law allows greater latitude to the defendant in disproving malice, a printer may show that he printed innocently without malicious intention and without knowledge of the libellous nature of the matter printed . . . The general rule may be laid down that the printer of defamatory matter is *prima facie* liable for it, and the onus is on him to show that the printing was done in circumstances in which he was not responsible . . . The liability of an editor of a newspaper for defamatory matter which appears in his journal is undoubted . . . He will only escape liability by pleading and proving justification or by showing that the article constituted fair and bona fide comment on a matter of public interest, or that it was a fair and accurate report of a judicial or parliamentary proceeding, or proceeding of a public meeting"—see also 4 Maasforp p. 149. In McKerron at pages 187-188 it is said that " A qualified privilege attaches to fair and accurate reports in a newspaper of judicial or parliamentary proceedings. The report need not be a report of all that took place. But if it is condensed, it must be a fair and substantially correct extract of what took place. It is the duty of the press . . . to see that their reports, if abridged, are fair and substantially correct . . . If the press publishes a garbled account . . . if anything be omitted which ought to have been stated, or much more, if anything be introduced which did not take place, then, it is libellous and the law will punish it." 40

If it is held that the report of the Commissioner is not part of a judicial proceeding, this claim to privilege fails. In England by Statute the law has been amended to give a qualified privilege to newspapers in regard to reports of proceedings of a non-judicial character—see 20 Hailsham p. 485, note (h) and the law of Libel Amendment Act 1888, (51 and 52, Vict. c. 64) Section 4 reproduced at Gatley, p. 858.

The words "judicial proceeding" have not been judicially defined although those words appear in Section 190 of the Ceylon Penal Code. I do not think it is possible to formulate a comprehensive definition of what a "judicial proceeding" is. Generally speaking such a proceeding is one held before one exercising judicial functions and whose procedure bears an analogy to the procedure of a Court of law. An analysis of Chapter 276 and Ordinance No. 25 of 1942, show clearly that the Commissioner acting under those statutes exercises judicial powers. Chapter 276 is an Ordinance which empowers the Commissioner to inquire into 10 matters referred to him for inquiry and to hear evidence thereon in order to find facts. "To inquire" means to investigate. The whole scheme of Chapter 276 is intended to enable the Commissioner to investigate judicially for discovering the truth of a matter upon which the Governor wants information. See Section 3. In other words, the duty of the Commissioner is judicially to find facts. the provisions of Sections 2-7 show that he acts like a Judge regarding procedure.

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The witnesses summoned to testify are treated like ordinary witnesses in a Court of law. They are summoned in the usual way, and give evidence on oath or affirmation. They are liable to the penalties for perjury. The 20 persons against whom allegations are made at the inquiry can be represented by counsel who can cross examine witnesses and address the Commissioner. The Bribery Commissioner was empowered to inquire into the report, and he has power to award costs. The report of the Commissioner as reproduced in the Sessional Paper D2 shows that Mr. L. M. D. de Silva exercised his powers judicially as a judge would in writing a judgment— see, for example page 20 section 11, and page 24 sections 23 and 24 of D2.

It is, however, argued for the plaintiff that one essential attribute of a judicial proceeding is lacking, namely that there should be some issue or point of consent between two parties, whether they be party litigants 30 or the Crown and the subject, and that the person deciding those points of contest must decide those issues judicially and pronounce a judgment which, subject to appeal, would be binding on the parties to that proceeding. It is argued that as this does not exist in this investigation, therefore, the Commissioner's proceedings are not a judicial proceeding.

It is true that this Commissioner did not give a verdict or judgment or pronounce a decree. That was unnecessary in view of the nature of the inquiry. The Governor wanted to know the truth of certain facts, and issued a Commission to Mr. de Silva to find those facts and to report those findings to him. Mr. de Silva has done this, and his report, in my 40 opinion, amounts to a judgment or a verdict. When he started his inquiry, there were no defendants or accused parties, but as the investigation proceeded, the evidence indicated that there were certain State Councillors against whom charges of bribery were made. Thereupon an issue arise for determination and they assumed the role of defendants and were entitled to be represented by counsel and to be heard before the Commissioner

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wrote his report *i.e.* made his finding. It has been argued that because there is no judgment or decree Mr. de Silva's investigation and report lack the attributes of a judicial proceeding. There are however judicial proceedings in which no judgment or decree is promulgated. Take the case of an application for letters of *venia aetatis*. The Governor forwards the application to a District Judge who summons the applicant and his witnesses and holds an investigation. His findings are submitted in the form of a confidential report to the Governor, either recommending or not that the applicant, although a minor, is fit to manage his own affairs. The Governor may or may not accept the findings or recommendations of the Judge. Can it be said that the investigation is not a judicial proceeding? No decree or judgment is entered in such a proceeding. Again, when a District Judge and assessors assemble to ascertain why a British ship was wrecked or lost, there are no accused persons when the inquiry starts. In the course of the proceeding the captain, his officers &c. may have charges formulated against them, and they are heard by Counsel. The Court pronounces no judgment or decree, but merely reports its findings to the Board of Trade in England who may or may not accept the findings of the tribunal. Can it be said that this is not a judicial proceeding? I hold, therefore, that there can be a judicial proceeding without the judge pronouncing a judgment or decree which operates as a *res judicata* in regard to the parties involved. 10

It is next urged that Mr. de Silva's report in paragraph 18 and his observations in Appendix C cannot amount to a judicial proceeding, because at the date of the inquiry the State Councillor against whom the finding is recorded was dead, and had, therefore, ceased to be a State Councillor. It is argued that Mr. de Silva in effect contravened one of the essential requirements of a judicial proceeding, namely that the accused person should be before the tribunal. I doubt whether this argument is sound so far as this case is concerned. A judicial proceeding may be a nullity, and yet remain a judicial proceeding so as to entitle a newspaper to claim this particular privilege. Take for example an action where the defendant has been reported served with summons but does not enter an appearance. The trial then proceeds. Supposing the defendant died before the trial was concluded, and that fact was not known to the plaintiff's legal advisers or to the Court. A judgment or decree entered against the dead man in such circumstances are a nullity, but surely the newspaper which published a true and accurate report of the trial or the judgment cannot be deprived of its right to raise this plea of privilege simply because the defendant was dead and therefore the proceedings are a nullity? In the case before us the law gave the Commissioner the power to ascertain facts irrespective of whether persons who took part in the relevant transactions were alive or dead. 30 40

Various authorities have been cited on both sides on this question whether the proceedings before the Commissioner are judicial proceedings. Every one of these cases turned on its peculiar facts, and I do not think

any advantage is to be gained by a close analysis of them. The observations of Lord Atkin in (1935) Appeal Case at p. 81 however merits quotation: "The question, therefore, in every case is whether the tribunal in question has similar attributes to a Court of Justice, or acts in a manner similar to that in which such Courts act. This is of necessity a differentia which is not capable of very precise limitation. It is clear that the functions of some tribunals bring them near the line on one side or other, and the final decision must be content with determining on which side of the line the tribunal stands" I am of opinion that the proceedings of the Bribery Commissioner definitely fall on the side that it is a judicial tribunal. It seems to me that in each case this is a question of fact to be decided upon a consideration of all the circumstances applicable to that particular case. Thus, a local military tribunal constituted under the Military Service Act 1916 and the Regulations made thereunder was held to be a judicial tribunal and that defamatory statements made by a member of the Court in the course of the proceedings were absolutely privileged. (1918) 2 K.B. 405.

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In (1900) 82 Law Times 698, a court appointed by the Sultan of Muscat to enquire into the circumstances relating to the seizure of certain goods, was held not to be a Court because there was not sufficient evidence that such Court was acting judicially. In (1892) 1 Q.B. 431, the question arose whether a meeting of the London County Council for granting music and dancing licenses under Statutory powers was a Court within the meaning of the rule by which defamatory statements made in the course of judicial proceedings were absolutely privileged. It was held that the L.C.C. when so acting was not a Court. Lord Esher, M.R. said: "... Can it be said that a meeting of the County Council when engaged in considering an application for music and dancing is such a tribunal? It is difficult to say who are to be considered as judges acting judicially in such a case. The manner in which the business of such a meeting is conducted does not appear to present any analogy to a judicial inquiry". Applying these observations to the proceedings held before the learned Commissioner, clearly he was a judge, acting judicially and the manner in which the law required him to conduct his proceedings presents a clear analogy to a judicial proceeding before a Judge. In (1862) 7 H. & N. 891, the proceedings of a vestry which considered a report made by a medical officer of health containing defamatory matter were held not to be a judicial tribunal which entitled a newspaper to publish it though without comment. All that need be said is that Mr. L. M. de Silva's proceedings cannot be likened to those of a vestry. In (1886) 11 Appeal Case 187, the Commissioner of Zululand was falsely attacked by the defendant newspaper which charged him with specific acts of misconduct in the execution of his duties, and on the assumption of the truth of these accusations used highly offensive and injurious language. The defendants contended that what they published was a fair and accurate report of information brought to the Governor of Natal and published in the Colony by messengers from Zulu-

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land as to the conduct of the plaintiff in the discharge of the duties of his office, and that it was in the public interest that a fair and accurate comment on the plaintiff's conduct should be made public.

It was held on the facts that the defendants were liable and that the privilege which covers fair and accurate reports of proceedings in parliament and in the Courts of Justice, does not extend to fair and accurate reports of statements made to newspaper editors. I do not think this decision applies to the facts of the present case. The defendants were publishing an extract from the report or finding of a Commissioner whose report and proceedings were judicial proceedings. 10

It is also argued that the disclosure of the name of the plaintiff who gave evidence in camera and the disclosure of the manner in which he gave evidence, being matters which cannot be made public without the authority of the Commissioner under Section 6(1) of Ordinance No. 25 of 1942, and there being no evidence that the Commissioner authorized their disclosure—therefore, the defendants were acting illegally in doing something which is prohibited by statute and therefore the privilege cannot arise. It is also said that when a case is heard in camera it ceases to be a judicial proceeding publicity being an essential of a judicial proceeding.

I am of opinion that where judicial proceedings are *lawfully* heard in 20 camera in Ceylon, they do not cease to be judicial proceedings. Under Section 7 of the Criminal Procedure Code a Magistrate holding a non-summary inquiry can hear the case in camera. Under Section 85 of the Courts Ordinance certain cases can be heard in camera. There also appears to be an inherent jurisdiction in every Court to exclude the public from a trial if this is required for the administration of justice—see (1917) 2 K.B. 254, (1860) 2 F. & F. 234. Supposing some enterprising reporter succeeded in eavesdropping when a case is lawfully heard in camera, and secured an accurate report of what took place, and published it in a newspaper. Both he and the paper may be guilty of a contempt of Court or some other 30 offence, but when sued for libel will this prevent the defendants from raising the defence that what was published is a fair and accurate report of a judicial proceeding? I think not. What was published by the defendant in this case is a fair and accurate report of a judicial proceeding however illegally or irregularly it may have been made public. The report was published by Government, which in effect invited the defendants to publish it—otherwise why were free copies given to the press? It may be (I do not so hold) that those who disclosed the name of the plaintiff and the nature of his evidence without authority from the Commissioner are guilty of an offence; but I do not think that fact deprives these defendants of 40 their right to raise this particular plea.

The next question is whether the report in Appendix C which the defendants published is a fair and accurate report. That is not denied. The reference to the plaintiff is a verbatim reproduction, without comment or alteration, of what appears at page 28 of the Sessional Paper D2.

I am, therefore, of the view that the defendants have discharged the onus on Issues 6 and 7 and that their claim to privilege under this head is entitled to succeed.

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The question then arises whether the plaintiff has proved express malice on the part of the defendants which would destroy the privilege? At page 2 of the record appears the following:—

10 “ I ask Mr. Amarasekara whether the issue of malice is raised at all in this case (*i.e.* express malice to destroy the privilege claimed by the defence) ? Mr. Amarasekara says if the Court holds that a qualified privilege arises in this case, the plaintiff is not raising an issue to destroy that qualified privilege ; but his case is that the qualified privilege does not arise at all.”

Nothing could be more specific than that. The privilege claimed under Issues 6 and 7 arise, and the plaintiff says that he does not raise the plea of express malice to destroy that privilege

It has, however, been suggested that there is evidence of express malice. It is said that the plaintiff is a writer to the *Daily News*, whose letters were frequently not published. The suggestion is that the plaintiff had proved himself a nuisance to this newspaper by sending various letters 20 for publication which the defendants did not think merited publication. Therefore when this reference to the plaintiff appeared in the Appendix C, it was published, while the reference to the witnesses Rodrigo and Siebel immediately following thereafter were suppressed and that this affords evidence of malice. I do not think the facts justify me in upholding this view. Where there are two interpretations possible, one an innocent one and the other an unworthy one, the former must be accepted in the absence of other circumstances.

What appears to have happened was this. The defendants and their agents believed honestly that they had the right to publish the whole of 30 the sessional Paper. The editor read appendix C and put his pencil through the first and last two paragraphs because in his opinion they were of not interest to the reader. He allowed the offending paragraph to remain because in his view it made interesting reading. I find it hard to hold that this passage was deliberately allowed to stand to humiliate the plaintiff who owing to a desire to gain a morning's notoriety, used to write frequently to the paper. I therefore answer Issues 6 and 7 in the affirmative.

Issue 12 reads “ was the evidence of the plaintiff before the Bribery Commission heard in camera ”? The answer to this must be in the affirmative. Issue 13 reads “ If so, is the said publication privileged, even 40 if the answers to Issues 7 and 8(c) are in the affirmative. I have answered Issue 7 in the affirmative and Issue 8(c) in the negative. I have given reasons for holding that although the plaintiff's evidence was taken in camera, this does not destroy the privilege of a newspaper to publish a fair

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and accurate report of the proceedings. The Answers to issue 13 is, therefore, in the affirmative.

In view of these findings Issue 4 does not arise for decision. I think, however, that it is desirable that I should deal with it. The plaintiff is claiming a sum of Rs. 50,000·00 as damages. He is claiming under two heads (a) as a professional man, and (b) as a man of business. There is no evidence that any damage has been done to the plaintiff as a medical man by reason of this publication. There is no evidence save that of the plaintiff himself that at the material dates he was practising as a doctor. His own witness Mr. Bernard Jayasuriya expressed surprise when it was 10 put to him that the plaintiff was in practice as a doctor. The plaintiff's own evidence is unsatisfactory. He finally had to admit that any prescriptions he issues now were free. No books have been produced to show that after the publication of this alleged libel, there has been any falling off in his practice as a medical man. He is still a member of the clubs of which he is a member. Even though Mr. Jayasuriya when he read the *Daily News* believed that the Commissioner had disbelieved the plaintiff, I do not think that fact made any great difference to their friendly relations. As a professional man there is no evidence that the plaintiff has suffered any damage. The plaintiff owns rubber lands, but there is no evidence 20 that the sales of his rubber have suffered by reason of anything the defendants did.

As a business man he is a distiller in a very large way. The only evidence of damage under this head is the mere statement of the plaintiff that his arrack contractors *may* have lost confidence in him. No contractor has been called to state that by reason of this publication by the defendants he has lost confidence in the plaintiff. On the other hand, there is some force in the observation of counsel for the defence that the opinion of the contractors in regard to the plaintiff might have been enhanced by the publication, because a certain kind of person may consider that in attempt- 30 ing to hoodwink the learned Commissioner the plaintiff was displaying smartness. The manner in which the plaintiff conducted himself in the witness box does not enable me to hold that he is deserving of much sympathy. He has been lacking in frankness in certain portions of his testimony and on one point at least he has stated what is untrue, when he stated that no writ was issued against him when the evidence shows the contrary. There is no evidence which would justify me in assessing his damages at Rs. 50,000·00 or anything near it. On the other hand I cannot agree with counsel for the defendant that the measure of the plaintiff's damages is the sum of one cent. If necessary to do so, I would assess his damages at 40 the sum of Rs. 5·00 ; but on my findings he is not entitled to any damages at all.

It seems to be clear from the plaintiff's evidence that his real grievance is against the learned Commissioner himself. In this connexion I refer to the case reported in 6 Ceylon Law Recorder at pp. 104-105, (1925)

2 K.B. 158. Although this was a case of contempt of Court against a newspaper, the observations of the Lord Chief Justice of England appear to be apposite to the facts of this case: "It would not be right to punish a newspaper for reporting a charge (to the Grand Jury which the Divisional Court held was 'a serious misfortune' and open to criticism), where the real sting of the criticism is to be directed against the charge itself."

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the District
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I do not hold that the learned Commissioner's findings are open to any criticism at all; but the plaintiff apparently is under the belief that the findings recorded against him are unjustified. The defendants, however, 10 who honestly published a fair and accurate report of what is a judicial proceeding are not responsible for that.

I dismiss the plaintiff's action with costs.

Sgd. R. F. DIAS,
District Judge,
19-6-44.

Pronounced in open Court in the presence of the proctors for the parties.

Sgd. R. F. DIAS,
District Judge,
19-6-44.

20

No. 7.

Decree of the District Court.

Decree.

No. 7.
Decree of the
District
Court, 19th
June, 1944

It is ordered and decreed that the plaintiff's action be and the same is hereby dismissed with costs.

Sgd. W. SANSONI,
District Judge.

The 19th day of June, 1944.

No. 8.
Petition of
appeal to the
Supreme
Court by
Plaintiff,
27th June,
1944

No. 8.

Petition of Appeal to the Supreme Court by Plaintiff.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

D.C. Colombo No. 15069/M.

DR. M. G. PERERA of Colombo.....*Plaintiff.**vs.*

1. ANDREW VINCENT PEIRIS of "Winston," Tewatte Road,
Ragama and
2. THE ASSOCIATED NEWSPAPERS of Ceylon Ltd., Colombo.
Defendants-Respondents. 10

TO

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER
JUDGES OF THE SUPREME COURT OF THE
ISLAND OF CEYLON

On this 27th day of June, 1944.

The Petition of Appeal of the Plaintiff-Appellant abovenamed states
as follows:

1. The Plaintiff-Appellant sued the Defendants-Respondents to recover the sum of Rs. 50,000·00 being damages sustained by him by reason of the publication in the *Ceylon Daily News* of 25th May, 1943, of the 20 following defamatory words of and concerning the Plaintiff-Appellant :

" M. G. Perera, who gave evidence, was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did."

2. The Defendants-Respondents, while admitting the publication as aforesaid of the said words, denied that the words complained of were defamatory. They also set up the following defences to the action :—

- (a) justification,
- (b) fair comment on a matter of public interest,
- (c) publication on a privileged occasion, and
- (d) fair and accurate report of a judicial proceeding. On all these grounds the Defendants-Respondents denied liability. 30

3. After trial, the learned District Judge by his judgment delivered on 19th June, 1944, held that the words complained of were defamatory of the Plaintiff-Appellant. He further held—

- (a) that the publication of the words was not justified because the publication was not for the public benefit,
- (b) that the said words do not refer to a matter of public interest,
- (c) that the said words were not published on a privileged occasion.

4. But the learned District Judge held that the said words were fair and accurate report of a Judicial proceeding and that their publication was therefore privileged. He accordingly dismissed the action of the Plaintiff-Appellant with costs.

No. 8.
Petition of
appeal to the
Supreme
Court by
Plaintiff.
27th June,
1944—*con-*
nued

5. Being dissatisfied with the said judgment of dismissal, the Plaintiff-Appellant appeals therefrom on the following among other grounds, which will be urged by Counsel at the hearing of this appeal—

- (a) the said judgment is contrary to law and against the weight of evidence,
- 10 (b) the learned District Judge's finding that the report of the Bribery Commissioner is the judgment of a judicial proceeding is erroneous. It is only a report on his investigation,
- (c) the learned District Judge emphasises the statutory powers given to the Commissioner in support of his view that the proceedings before the Bribery Commissioner was a judicial proceeding. It is submitted that the very fact that it was necessary to give the Bribery Commissioner these power by statute indicate that his was not a judicial proceeding,
- 20 (d) it is submitted that there was no duty imposed on the Bribery Commissioner to act judicially. His duty was to investigate and find out facts in connection with the alleged complaints of bribes being taken by some members of the State Council and for that purpose he was acting not as a Judge but as an inquirer or investigator,
- (e) it is submitted that the report of the Bribery Commissioner was intended for the information of the Governor who may or may not have acted on the same. It was in no sense a judgment binding upon parties, who had submitted themselves to his jurisdiction,
- 30 (f) the learned District Judge has misdirected himself in the analogy he draws between the proceedings before the Bribery Commissioner and the inquiry, which takes place upon an application for letters of Venia Actatis. On such an inquiry the District Judge makes a report to the Governor. The District Judge wrongly assumes that such a report is a judgment of the District Judge sitting judicially,
- (g) it is submitted that the learned District Judge is equally wrong in the comparison he makes with an inquiry under the wrecks Ordinance. Here again he assumes, without investigation, that such an inquiry is a judicial proceeding,
- 40 (h) the learned District Judge has misdirected himself as to the inference to be drawn from the fact that the Bribery Commissioner has found against a deceased member of the State Council, who had no opportunity of defending himself against the charge

No. 8.
Petition of
Appeal to the
Supreme
Court by
Plaintiff,
27th June,
1944—*conti-
nued*

- made against him. The proper inference, it is submitted, is that he did so, because he was under no legal duty to act judicially,
- (i) the learned District Judge's assessment of damage is contradictory. In rejecting the suggestion of Counsel for the Defendants-Respondents that the damages should be fixed at half-cent, the learned District Judge has in effect found that the damages should not be nominal. And yet, without assigning any reason he fixes the damages at Rs. 5·00, clearly there has been a loss of reputation, which the learned District Judge has failed to estimate.

Wherefore the Plaintiff-Appellant prays that Your Lordships' Court may be pleased to set aside the said Judgment, to enter judgment for the Plaintiff-Appellant in the sum of Rs. 50,000·00 or such other sum as may be found by Your Lordships' Court to be due to him by way of damages, for costs and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd. S. M. N. MASHOOR,
Proctor for Plaintiff-Appellant.

No. 9.
Judgment of
the Supreme
Court, 12th
February,
1946

No. 9.

Judgment of the Supreme Court.

30

S.C. No. 84/M.

D.C. (F) Colombo No. 15069.

Present :—HOWARD, C.J. and De SILVA, J.

Argued on :—24th and 25th January, 1946.

Counsel :—N. NADARAJAH, K.C., with C. RENGANATHAN and G. T. SAMARAWICKREMA for the Plaintiff-Appellant.

H. V. PERERA, K.C., with N. M. de Silva and C. E. L. WICKREME-SINGHE for the Defendants-Respondents.

Delivered on :—12th February, 1946.

HOWARD, C.J.

The appellant in this appeal is the plaintiff who appeals from a judgment 30 of the District Court, Colombo, dismissing his action claiming Rs. 50,000·00 for defamatory libel with costs. The first defendant is the printer and publisher and the 2nd defendant the owner of the *Ceylon Daily News*. In their issue of the 25th May, 1943, (P1), the defendants published the report of Mr. L. M. de Silva, K.C., the Commissioner appointed by the Governor in pursuance of a resolution by the State Council of Ceylon that a commission should be appointed to enquire into charges or bribery and corruption

made against its members. The appellant's action was founded on the following words which are an extract from appendix C of the Bribery Commissioner's report (D2).

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“ Dr. M. G. Perera (the plaintiff) who gave evidence was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did.”

In his plaint the appellant alleged that these words imputed dishonesty to him and implied that he gave false evidence before the Bribery Commission which evidence was taken in camera and that they are therefore defamatory
10 of him. He further maintained that he has suffered in his reputation as a member of the medical profession practising at Colombo and in his business of distilling arrack and estimates the damages suffered by him at Rs. 50,000·00. In their defence the defendants state they published the statement complained of which is a true extract from Appendix C to the report of the Bribery Commission and that the statement concerns the appellant. The defendants, however, deny that the words have the meaning attributed to them by the appellant. They are, therefore, not defamatory. The defendants also deny that, by the publication of the said words, the
20 appellant has suffered in his reputation as a professional man or as a man of business. Further answering the appellant's claim the defendants state :—

- (a) That they published an accurate report of Appendix C which is part of the finding of the Commissioner which was a judicial tribunal empowered by the Governor in August, 1941, to enquire into the question of whether gratifications have been promised, given or paid to members of the State Council and that the said publication was therefore privileged.
- (b) That the said report was issued by the Government of Ceylon as a Sessional Paper and was available for purchase at the Govern-
30 ment Record Office and the said publication was therefore privileged.
- (c) (1) That part of the said extract consists of comment on a matter of public interest.
- (2) That so far as the words complained of consist of statements of fact, they are in their material and ordinary meaning true in substance and in fact and in so far as they consist of expressions of opinion they are fair and *bona fide* comments on matters of public interest and the said statements were published *bona fide* for the benefit of the public and
40 without malice.

The case went to trial on a number of issues. Those relevant and material to this appeal were answered by the learned District Judge as follows :

- (1) The words complained of were defamatory of the plaintiff.

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- (2) (a) The words " Dr. M. G. Perera who gave evidence . . ." is a statement of fact.
- (b) Those words are true in substance and in fact, but it was not for the public benefit that fact should be published.
- (c) The words " Dr. M. G. Perera . . . was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did " are expressions of opinion by the learned Commissioner.
- (d) Those words are true in substance and in fact, but it was not for the public benefit that they should be published. 10
- (3) (a) The defendants made no comments and the matter is not a member of public interest.
- (b) The statement was published bona fide for the benefit of the public and without malice.
- (4) (a) The report was issued as a Sessional Paper.
- (b) Any person could purchase a copy of the Report.
- (c) The report was not published on a privileged occasion.
- (5) (a) The defendants published what was a fair and accurate report or part of a report of a judicial proceeding.
- (b) The evidence of the plaintiff before the Bribery Commission 20 was taken in camera.
- (c) The publication was a privileged one.

Having regard to his findings in (1) the District Judge held that a plea of justification must fail. On the replies set out in (a) he held that the defence of fair comment on a matter of public interest was not established. On the answers set out in (3) and (4) he held that publication did not take place on a privileged occasion. But the answers to (5) he held that the alleged libel was published on a privileged occasion. He therefore entered judgment for the defendants.

Mr. Nadarajah, on behalf of the plaintiff, has challenged the ruling of 30 the learned Judge on (4) and also his assessment of the damages. Mr. Perera, on behalf of the defendants, whilst maintaining that the District Judge was correct in his assessment of the damages and in holding that the words complained of were a fair and accurate report of a judicial proceeding has also argued that the findings of the District Judge on the questions of justification and publication on a privileged occasion were not in accordance with the law.

I propose first of all to deal with the defence of justification. The learned Judge has found that the words complained of are defamatory, but are true in substance and in fact, but it was not for the public benefit that 60 they should be published. There can be no question that the words in themselves are defamatory. Mr. Nadarajah has not queried the finding of the learned Judge that the words are true in substance and in fact. This finding is based on the Bribery Commissioner's report. The only

question that arises is whether the learned Judge was right in holding that it was not for the public benefit that they should be published. He has rightly held that the law to be applied is Roman Dutch Law of defamation which differs in some aspects from the English law. The law of defamation is discussed in Nathan's Common Law of South Africa (1906 Edition) in Vol. III, p. 1588, *et seq.* Defamation is there classified as an *actio injuriarum* which is the generic name for the remedy which applied to torts in which *injuria* was a constituent element. It is requisite to every *injuria* that the element of malice should be present, or as it is generally called, the *animus injuriandi*. Such malice may be expressly shown to exist or it may be inferred from the language used. If malice is expressly shown to exist, or is inferred from the nature of the language used, it lies upon the defendant to show that the act was not done maliciously, that is, to prove that it was committed in circumstances which rebut the presumption or inference of malice. Thus in an action for libel the falsehood of the statements injurious to the character of the plaintiff which have been published by the defendant is sufficient to prove an *animus injuriandi* as is required to render the defendant liable in damages, unless he shall be able to prove some special circumstance sufficient to negative the presumption of the existence of such *animus injuriandi*, and to prove that in publishing injurious statements, not constituent with truth he was actuated by some motive which is in law held sufficient to excuse the error into which the defendant has fallen. In *BENNETTE vs. MORRIS* (10 S.C. at p. 226) De Villiers C.J., drawing attention to the differences from the English law says that the ground upon which the action for defamation rests is the *injuria*. No action lies for such injury, as such, unless the defendant was actuated by the *animus injuriandi*. Again it was remarked in *BOTHA vs. BRINK* (BUCH. 1878, p. 130). "The rule of the Roman Dutch Law differs, if at all, from that of the English Law in allowing greater latitude in disproving malice. Under both systems the mere use of defamatory words affords presumptive proof of malice, but under the Roman Dutch Law the presumption may be rebutted not only by the fact that the communication was a privileged one in which case express malice must be proved, but by such circumstances as satisfy the Court that the *animus injuriandi* did not exist. If, therefore, defamatory words are proved to have been used, whether they are true or not, the law presumes that they were used with an *animus injuriandi* or with malice and the burden of disproving the malice is thrown on the defendant. The presumption of malice is rebutted where the truth of the words used is pleaded and proved, if it is proved that the publication was for the public benefit. In this connection see *DIPPENAAR vs. HAUMAN* (Buch. 1878 at p. 139). The same principles are formulated in other text books on Roman Dutch Law. Thus in the (1909) edition of Maasdorp's Institutes of Cape Law, Vol. IV, p. 99-100 the following passage occurs:—

"Prima facie evidence of malice being implied from the mere publication of words which are in themselves defamatory, and general

damage being regarded as the natural consequence of such publication, it will be for the defendant, if he wishes to escape liability, to plead circumstances which negative the presumption of malice, or which may, in some few cases, justify their publication, even where there has been actual malice present. With this object in view, he may set up one or other of the following defences :—

- (1) That the words complained of are privileged, or were uttered or published on a privileged occasion.
- (2) That the words were true in substance and in fact, and that it was for the public benefit that they should be published. 10
- (3) That the words were a bona fide comment upon the public acts of a public man.
- (4) That the publication took place under other circumstances which negated the *animus injuriandi*."

In De Villiers' translation of Book 47, Title 10 of Voet's Commentary on the Pandects with annotations the following passage is to be found in Section XX on page 189 :—

" Next, with regard to the person who is alleged to have occasioned an injury, the fact that he had entertained no intention to injure (*animus injuriandi*) is a good ground for his not being held 20 liable in an action of injury. The fact that such intention was absent is to be gathered from the circumstance of each particular case : for an intention of this kind has its seat in the mind, and in case of doubt its existence would not be presumed ; moreover, it cannot reveal itself or be proved in any other manner than by the nature of the occurrence being taken into account, in conformity with the principles already laid down in the Title " *De Dolo Malo*."

Again in McKerron on the Law of Delict second edition, p. 165 it is stated as follows :

" Falsity is not a necessary ingredient of liability for defamation. 30 Although it is customary for the plaintiff to allege in his declaration that the statement complained of was false, such allegation would appear to be mere surplusage, since the onus of proving the truth of the statement rests on the defendant, and furthermore, according to the better view, truth in itself is not a sufficient defence.

It is commonly said that *animus injuriandi* is an essential element of liability for defamation. In the Roman-Dutch Law, as in the Roman Law, it is not open to doubt that *animus injuriandi* was regarded as the gist of an action for defamation. Although it is true that where the words complained of were in themselves and in their ordinary 40 meaning defamatory of the plaintiff, the existence of *animus injuriandi* was presumed, it was always open to the defendant to rebut the presumption by leading evidence to show that in fact he had no intention of injuring the plaintiff."

From the principles elaborated by me it is manifest that the question as to whether a statement defamatory per se is true does not in Roman Dutch law assume the importance that it does in English Law. In Roman Dutch Law the burden is on the defendant whether the statement is true or false to prove that he had no animus injuriandi. Has he negated the animus injuriandi in the present case? It is necessary to consider the circumstances in which the statement was published. The Bribery Commission was appointed by the Governor under a Commission dated the 13th August, 1941, under the Commissions of Inquiry Ordinance (Chp. 276) 10 with the following terms of reference :—

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- (a) “ Whether gratifications by way of gift, loan, fee reward or otherwise, are or have been offered, promised, given or paid to members of the existing State Council, with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction for which they, in their capacity as members of that Council or of any Executive or other Committee thereof, are, have been, may be, or may claim to be, concerned, whether as of right or otherwise ; and
- 20 (b) whether such gratifications are or have been solicited, demanded, received or accepted by members of the existing State Council as a reward or recompense, for any services rendered to any person or cause, or for any action taken for the advantage or disadvantage of any person or cause, or in consideration of any promise or agreement to render any such services or to take any such action, whether as of right or otherwise in their capacity as members of that Council or of any Executive or other Committee thereof.”

The Commission was appointed in pursuance of a resolution to that effect passed by the State Council of Ceylon on the 15th May, 1941. To 30 supplement the provisions of the Commissions of inquiry Ordinance a special ordinance intituled the Special Commission (Auxiliary Provisions) Ordinance No. 25 of 1942 was enacted on the 13th July, 1942. Section 9, gave immunity to the Commissioner in the following terms :—

“ The Commissioner shall not, in respect of any act or thing, done or omitted to be done by him in his capacity as Commissioner, be liable to any action, prosecution or other proceeding in any civil or criminal court.”

For the purposes of this case sections 5 and 6 worded as follows are the only other material provisions :—

- 40 “ 5. The Commissioner may, in his discretion, hear the evidence or any part of the evidence of any witness in camera and may, for such purpose, exclude the public and the press from the inquiry or any part thereof.

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6. (1) Where the evidence of any witness is heard in camera, the name and the evidence or any part of the evidence of that witness shall not be published by any person save with the authority of the Commissioner.

(2) A disclosure, made bona fide for the purposes of the inquiry, of the name or of the evidence or part of the evidence of any witness who gives evidence in camera shall not be deemed to constitute publication of such name or evidence within the meaning of sub-section (1)."

On the 3rd April, 1943, the Commissioner made his report (D2) to the 10 Governor. Appendix C to this report contained the statement on which the plaintiff's action was based. Paragraph 2 of the Report gives the Commissioner's view of the task assigned to him under the terms of reference and is worded as follows :

2. " Certain members of the public, some of whom gave evidence before me, were under the impression that it was part of the task assigned to me under the terms of reference not merely to find whether or not incidents of the character described therein have taken place, but also, in the event of my finding that they have, to suggest what action should be taken and generally to make comment. 20 It is clear that your Excellency has constituted me a pure fact-finding Commission and that I would be travelling outside the limits of the authority conferred on me if I proceeded to do anything more. I have accordingly refrained from dwelling upon the political, legal or moral aspects of the incidents, which in the following paragraphs I have found to have occurred, and refrained also from making suggestions for the prevention of similar incidents in the future."

It is manifest that the Commissioner regarded himself merely as a fact-finding Commission, and that he had no authority to suggest what action should be taken. In paragraph 40 of the Report the Commissioner, 30 whilst stating that the question whether the report is to be published or not is not a matter for him requested that Appendix H, HH, HI and P be not published because in the absence of proof it would not be fair or proper to publish the names of the Councillors involved. On the 18th May, 1943, the Government Printer was requested by D3 from the Acting Secretary to the Governor to print the report as a Sessional Paper : The Government Printer was also requested to publish the Sessional Paper simultaneously with the text of a bill connected with the report to be introduced into the State Council. This bill, which was passed by the State Council and became 40 law on the 7th June, 1943, enabled the State Council by resolution to expel from the Council any member found by the Commissioner to have come within the ambit of the terms of reference of the Commission. The Government Printer followed these instructions and printed 472 copies of the report altogether. 222 copies of which one was sent to the Respondents, were circulated and 250 were sold. Subsequently a further 225

copies were printed and circulated. In giving evidence Mr. Orion de Silva stated :

- (a) that the Sessional Paper was sent to the *Daily News* free of charge by the Government Printer on the 19th May, 1943 ;
- (b) that the events leading up to the appointment of the Commission was a matter of considerable public interest and the report was eagerly awaited by the public.
- (c) that all portions of public interest were published in a series of extracts from the 20th to 28th May ;
- 10 (d) that he selected the extracts for publication ;
- (e) that the Commissioner was quoted verbatim ;
- (f) that the appellant was a stranger to him and he was not actuated by personal animosity.

The appellant gave evidence and was cross-examined at very considerable length. His evidence amounted in large measure to a vitriolic attack on the Commissioner's bona fides and suitability for the onerous duty which had been imposed upon him. The appellant was not able to adduce any evidence of express malice on the part of the respondents. What then are the circumstances in which publication took place? These
20 circumstances are the act that—

- (a) the appellant was a stranger to the first respondent who authorized the publication and that there is no evidence that the defendants in publishing the report were actuated by express malice ;
- (b) the report was sent to him as a Sessional Paper free of charge by the Government Printer ;
- (c) the report concerned a matter of public interest eagerly awaited by readers of the *Daily News* ;
- (d) the extracts selected for publication quoted the Commissioner verbatim.

30 The respondents have, in my opinion, proved conclusively that the circumstances in which publication took place negative the animus injuriandi. On this ground alone they are entitled to succeed.

I am also of opinion that the defence prevails on other grounds. The learned Judge has found that the statement published by the respondents is true in substance and in fact. This conclusion of fact has not been queried by Mr. Nadarajah. Moreover it would appear from page 14 of the Record that the question of the truth of the statement was not contested by Mr. Amarasekara who appeared for the appellant in the lower Court. The learned Judge, however, has found that the respondents fail in their
40 proof that what was published was for the public benefit. The learned Judge also states that what the public was interested in was not the manner in which this plaintiff gave evidence, but as to whether their representatives in the State Council had accepted bribes. I find it a matter of some difficulty to understand this finding of the learned Judge. It is true of

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course that the interest of the public was in the question as to whether their representatives had accepted bribes. But as ancillary and complimentary to that question, the public are interested in knowing what evidence or proof establishes the fact that a representative has accepted a bribe or on what evidence he has been exonerated on such a charge. Or in other words on what evidence the Commissioner has founded his report. In my opinion that evidence is manifestly a matter in which the public is interested and its publication was for the public benefit. It brought home to the public the care with which the Commissioner has investigated each particular charge. I would also refer to the case of *GRAHAM vs. KER* 10 (9 Cape Supreme Court Reports 185). In his judgment De Villiers, C.J. stated that as a general principle he took it to be for the public benefit that the truth as to the character or conduct of individuals should be known. The public was interested in knowing on what testimony the report was made. In this connection I have considered whether it is open to this Court to disturb the finding of the learned Judge on this matter. The latter was sitting as a Judge and Jury. In which capacity did he decide this question? Light is thrown on the question by the judgment of the House of Lords in *ADAM vs. WARD* (1917) A.C. 309). At pp. 331-332, Lord Dunedin states as follows :

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“ The second matter is more serious. In order to dispose of the question of privilege he put to the jury certain questions, of which three were as follows :—Was the publication—that is, the document published—of a public nature? Was the subject-matter of that publication by defendant matter about which it was proper for the public to know? Was the matter contained in the letter proper for the public to know? To all of which the jury returned a negative answer, and upon that the learned Judge said : “ Upon these findings I hold that the publication was not a privileged publication nor a publication on a privileged occasion.” It is clear that so far as the questions go they assume that the foundation of the duty or right which was invoked to support the privilege was that the matter discussed was one of public importance; whereas the true foundation in this case was the duty of the Army Council to make publicly known their vindication of General Scobell’s honour. But apart from that and in view of what I have already stated as to the provinces of Judge and Jury, I entirely agree with the learned Judge of the Court, of Appeal, who held that these questions were for the Judge and not for the Jury. If there is some fact left in controversy which must necessarily be determined one way or the other, to allow the Judge to view the complete situation and thus enable him to decide whether the occasion was privileged or not, it would be right for the Judge to ask the Jury to determine that fact. But to put to them questions such as these and then on the findings to find privilege or the reverse is simply to ask the Jury to decide for him the question which it is his duty, and not theirs, to determine.”

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Again on pp. 333-34, Lord Atkinson states :

“ The learned Judge who tried the case might possibly have ruled, on the question of law, whether or not the occasion on which the alleged libel was published was a privileged occasion but for the answers he had received from the Jury in reply to questions as to certain things the existence of which went to make the occasion of the publication privileged. He did not leave the question of privilege or no privilege to the Jury, but he did leave to the Jury the question as to the presence or absence of the elements which go to create privilege. For instance, the question ‘ Was the subject matter of the publication by the defendant matter about which it was proper for the public to know ? And the question ‘ Was the matter contained in the letter proper for the public to know ? ’ It is to be regretted that the remarks of WILLES J. in *HENWOOD vs. HARRISON* (L.R. 7, C.P. 606, 628) were not brought to Darling, J’s, notice. Willes, J., a most learned, laborious, and accurate Judge, after stating that since the declaratory Act of 1792 (32 Geo., 3, c. 60) the Jury are the proper tribunal in civil as in criminal cases to decide the question of libel or no libel, said : ‘ But it is not competent for the Jury to find that, upon a privileged occasion, relevant remarks made bona fide without malice are libellous.’ He then proceeds : ‘ It would be abolishing the law of privileged discussion, and deserting the duty of the Court to decide upon this as upon any other question of law, if we were to hand over the decision of privilege or no privilege to the Jury. A Jury, according to their individual views of religion or policy, might hold the Church, the Army, the Navy, Parliament itself, to be of no national or general importance, or the liberty of the Press to be of less consequence than the feelings of a thin skinned disputant.”

It is clear from these judgments that the question as to whether what was published was a matter of public interest was not a question of pure fact to be decided by the trial Judge on evidence adduced by witnesses whose credibility was a matter particularly his concern. The right of this Court to interfere with this decision of the learned Judge is I think manifest from the decision of the House of Lords in *Montgomerie & Co., Ltd. vs. Wallace-James* (1904) A.C. 73). Lord Halsbury in his judgment states that even with regard to questions of fact the original tribunal is in no better position to decide than the Judges of the Appellate Court where no question arises as to truthfulness and where the question is as to proper inferences to be drawn from truthful evidence. This case was cited by Wood Renton, J. in *The King vs. Charles* (1 Appeal Court Reports 126). In that case the learned Judge stated that “ question of fact ” is a compendious expression comprising three distinct issues. In the first place, what facts are proved ? In the second place, what are the proper inferences to be drawn from facts which are either proved or admitted ? And in the last place, what witnesses are to be believed ? It is only in the last question that any special sanctity attaches to the decision of a Court of first

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instance. In the present case the matter under consideration cannot come under the third issue. The decision of the learned Judge has therefore no sanctity. I hold that he was wrong and what was published was for the public benefit.

The learned Judge has also held that the publication was not privileged by reason of its issue by the Government of Ceylon as a Sessional Paper. In England reports, papers, votes and proceedings published by or under the authority of either House of Parliament are absolutely privileged by virtue of the Parliamentary Papers Act 1840, S.1. Moreover by the Law of Libel Amendment Act 1888, S.4 the publication at the request of any Government Department of any report issued for the information of the public shall be privileged unless it shall be proved that such publication or report was published maliciously. But these provisions being statutory enactments do not apply to Ceylon. It has, however, been held in South Africa that the publication of a fair report of Parliamentary or judicial proceedings is privileged, even though it may contain imputations against the character of third parties though these may not be parties to the proceedings reported, provided the reports are impartial and accurate *Pickard vs. S. Africa Trade Protection Society and others* (22 S.C. 94). A similar privilege has been extended to the proceedings of Harbour Boards and other public bodies *Smith & Co. vs. S. A. Newspaper Co.*, (23 S.C. 310). In the course of his judgment in this case Villiers, C.J. at page 316 states :

“ The matter was of considerable public interest, and one which the newspapers would fairly be expected to report upon in due course. The question therefore arises whether a fair and impartial report of the proceedings is actionable by reason of its casting an aspersion on the conduct of the plaintiff.”

And at p. 317 as follows :

“ In this Colony the question has never before been raised, and the Court has now to fall back upon the general principles of the Dutch Law for a solution of the question. One of these principles is that an injurious statement or publication is not actionable unless there is animus injuriandi, the existence of which must be gathered from the circumstances. (See Voet 47-10-20). If the circumstances attending the publication of an ordinary report of a judicial proceeding are sufficient to exonerate the publisher, I fail to see why a fair and impartial report of the proceedings at a meeting of a public body like the Harbour Board in regard to a matter of public interest should expose the publisher to an action for libel at the suit of a person whose conduct has been unjustly condemned at such meeting.”

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The principles outlined by Villiers, C.J. in this case with regard to the publication by a newspaper of the proceedings of a Harbour Board apply in my opinion to the publication of the report of the Bribery Commissioner— a matter of considerable public interest on which the newspapers could

fairly be expected to report in due course. In this connection also I would refer to Maasdorp, Vol. IV, pp. 104-108. In my opinion the principle enacted in the cases I have cited and referred to in Maasdorp would apply to the publication by the defendants of the report of the Bribery Commissioner. Express malice has been negatived, hence the publication was privileged.

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Inasmuch as I have held that the publication of the report by the defendants was privileged, it is not necessary to consider whether the learned Judge was right in holding that the proceedings of the Bribery Commissioner were those of a judicial tribunal. If that finding is correct, a fortiori the publication of the report was privileged. In *Allbut vs. General Council of Medical Education and Registration* (23 Q.B.D. 400) it was held that a report of the proceedings of the General Council stands, having regard to the nature of the tribunal, the character of the report, the interests of the public in the proceedings of the Council and the duty of the Council towards the public, on principle in the same position as a judicial report. Lopes, L.J., giving the judgment of the Court stated that it would be stating the rule too broadly to hold that to justify the publication of proceedings such as these the proceedings must be directly judicial or had in a Court of Justice. The difficulties of deciding what is a "Court" is apparent from the judgments of the Court of Appeal in *Royal Aquarium and Summer and Winter Garden Society vs. Parkinson* (1892, 1 Q.B. 431). It is, however, clear from the judgments of Their Lordships in that case that in England the proceedings of the Bribery Commissioner would not be regarded as those of a Court so as to confer upon the publication of its report by a newspaper absolute privilege. I am, therefore, of opinion that the decision of the learned Judge on this aspect of the case was not correct. But, as I have already said, the matter is of small import inasmuch as the publication was subject to a privilege only negatived by proof of express malice.

There remains for consideration the question whether the provisions of sections 5 and 6 of Ordinance No. 25 of 1942, in any way affect the operation of the defence of privilege in favour of the defendants. Mr. Nadarajah maintains :

- (1) Section 6 prohibits the publication of the name and evidence or any part of the evidence of any witness heard in camera ?
- (2) The name of the plaintiff has been published without the consent of the Commissioner .
- (3) The law has been contravened and therefore the defendants cannot claim the benefit of the privilege.

I am of opinion that this argument is without substance. The Commissioner has in his report to the Governor invited the latter to publish the report apart from the Appendices specified. Those Appendices do not include ' C.' Hence by inference the Commissioner must be taken to have authorized the publication of Appendix ' C.' Moreover sub-section (1)

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of section 6 forbids the publication of the name and the evidence or any part of the evidence. In my opinion publication is not prohibited of the name, but of "the name and the evidence or any part of the evidence." The name and the evidence or any part of the evidence has not been published. In giving this interpretation I have not been unmindful of subsection (2) which suggests the meaning for which Mr. Nadarajah contends. In view of the decision at which I have arrived the question as to whether the learned Judge was right in his assessment of damages does not call for consideration. But in view of the truth of the publication and the absence of any animus injuriandi on the part of the respondents I would not be prepared to say that his assessment was wrong.

For the reasons I have given the appeal is dismissed with costs.

Sgd. J. C. HOWARD,
Chief Justice.

De SILVA, J.

I agree.

Sgd. M. W. H. de SILVA,
Puisne Justice.

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Decree of the Supreme Court.

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GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN 20
IRELAND AND THE BRITISH DOMINIONS BEYOND THE
SEAS KING, DEFENDER OF THE FAITH, EMPEROR
OF INDIA.

D.C. (F) 84/1945.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

DR. M. G. PERERA.....*Plaintiff-Appellant.*

against

1. ANDREW VINCENT PEIRIS

2. THE ASSOCIATED NEWSPAPERS of Ceylon, Ltd., Colombo

Defendants-Respondents. 30

Action No. 15069/M.

IN THE DISTRICT COURT OF COLOMBO.

This cause coming on for hearing and determination on the 24th and 25th January and 12th day of February, 1946, and on this day, upon an appeal preferred by the Plaintiff before the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice and the Hon. Mr. M. W. H. de Silva, K.C., Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondents.

The humble Petition of Dr. M. G. Perera, the plaintiff-appellant above-named appearing by his Proctor S. M. H. Mashoor, states as follows :

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It is considered and adjudged that the Decree entered in this action by the District Court of Colombo and dated the 19th day of June, 1944, be and the same is hereby affirmed and this appeal is dismissed.

And it is further ordered and decreed that the Plaintiff-Appellant do pay to the Defendants-Respondents their taxed costs of this appeal.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 12th day of February, in the year of our Lord One thousand 10 Nine hundred and Forty Six and of Our Reign the Tenth.

Sgd. J. B. JAYASEKERA,
Deputy Registrar, S.C.

No. 11.

Application for Conditional Leave to Appeal to Privy Council.

No. 11.
Application
for Condi-
tional leave
to appeal to
Privy Coun-
cil, 6th
March, 1946

IN THE HONOURABLE THE SUPREME COURT OF CEYLON.

S.C. No. 84

D.C. Col. No. 15069

DR. M. G. PERERA of Colombo.....*Plaintiff.*

vs.

20 1. ANDREW VINCENT PERIS of "Winston" Tewatte Road,
Ragama, and

2. THE ASSOCIATED NEWSPAPERS of Ceylon Ltd., Colombo.
Defendants.

DR. M. G. PERERA of Colombo.....*Plaintiff-Appellant.*

vs.

1. ANDREW VINCENT PERIS of "Winston," Tewatte Road,
Ragama, and

2. THE ASSOCIATED NEWSPAPERS of Ceylon Ltd., Colombo.
Defendants-Respondents.

30 TO :

THE HONOURABLE THE CHIEF JUSTICE AND THE JUSTICES
OF THE SUPREME COURT

This 6th day of March, 1946.

No. 11.
Application
for Condi-
tional leave
to appeal to
Privy Coun-
cil, 6th
March, 1946
—continued

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 12th day of February, 1946, the plaintiff-appellant is desirous of appealing therefrom.

2. That the said judgment is a final judgment and the matter in dispute on the appeal amounts to or is of the value of Rupees Five thousand or upwards.

3. The plaintiff-appellant is prepared to give security required by Schedule Rules 3(a) of "The Appeals (Privy Council) Ordinance" by hypothecating immovable property or by cash.

Wherefore the plaintiff-appellant prays : 10

- (a) for a Conditional Leave to appeal against the said judgment and decree of this Court dated the 12th day of February, 1946, to His Majesty the King in Council,
- (b) that the plaintiff-appellant be allowed to give the aforesaid security by hypothecating immovable property in favour of the Registrar of this Honourable Court or by cash after the application for Conditional Leave is allowed,
- (c) for costs of this application, and
- (d) for such other and further relief as to this Court shall seem meet.

Sgd. S. M. H. MASHOOR, 20
Proctor for Plaintiff-Appellant.

No. 12.

No. 12.
Decree of
the Supreme
Court grant-
ing Condi-
tional Leave
to appeal to
Privy Coun-
cil, 11th
March, 1946

Decree of the Supreme Court Granting Conditional Leave to Appeal to Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

DR. M. G. PERERA of Colombo.....*Plaintiff-Appellant.*
against

- 1. ANDREW VINCENT PERIS of "Winston," Tewatte Road, Ragama, and
- 2. THE ASSOCIATED NEWSPAPERS of Ceylon Ltd., Colombo. 30
Defendants-Respondents.

Action No. 15069 (S.C. No. 84 Final).

IN THE DISTRICT COURT OF COLOMBO.

In the matter of an application by the Plaintiff abovenamed dated 6-3-46 for Conditional Leave to appeal to His Majesty the King in Council against the decree of this Court dated 12-2-46.

This matter coming on for hearing and determination on the 11th day of March, 1946, before the Hon. Mr. F. J. Soertsz, K.C., and the Hon. Mr. A. R. H. Canekeratne, K.C., Puisne Justice of this Court, in the presence of Counsel for the Applicant.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the Applicant do within one month from this date :

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000.00 and hypothecate the same by bond or such other security as the Court in terms of Section 7(1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve .

2. Deposit in terms of provisions of Section 8(a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300.00 in respect of fees mentioned in Section 4(b) and (c) of Ordinance No. 31 of 1909 (Chapter 85) .

Provided that the Applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 11th day of March in the year of Our Lord One thousand Nine hundred and forty six and of Our Reign the Tenth.

Sgd. N.NAVARATNAM,
Deputy Registrar, S.C.

No. 13.

Application for Final Leave to Appeal to Privy Council

IN THE HONOURABLE THE SUPREME COURT OF CEYLON.

S.C. No. 84 (F).

30 D.C. Colombo, 15069.

DR. M. G. PERERA of Colombo.....*Plaintiff-Appellant.*

vs.

1. ANDREW VINCENT PERIS of "Winston," Tewatte Road,
Ragama, and

2. THE ASSOCIATED NEWSPAPERS of Ceylon Ltd., Colombo,
Defendants-Respondents.

No. 12.
Decree of
the Supreme
Court grant-
ing Condi-
tional Leave
to appeal to
Privy Coun-
cil, 11th
March, 1946
—continued

No. 13.
Application
for Final
Leave to
appeal to
Privy Coun-
cil, 10th
April, 1946

No. 13.
Application
for Final
Leave to
Privy Council,
10th
April, 1946
—continued

TO.

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER
JUSTICES OF THE SUPREME COURT OF THE
ISLAND OF CEYLON

This 10th day of April, 1946.

The humble petition of Dr. M. G. Perera, the plaintiff-appellant abovenamed appearing by his Proctor S. M. H. Mashoor states as follows .

1. That the plaintiff-Appellant on the 11th day of March, 1946, obtained Conditional Leave to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 12th day of February, 1946. 10

2. The plaintiff-appellant has in compliance with the conditions on which such leave was granted to the plaintiff-appellant deposited with the Registrar of this Court the sum of Rs. 3,000·00 as and on account of the security required by Rule 3(a) of the Schedule to the Privy Council Appeals Ordinance (Cap. 85), and has hypothecated the same by Bond dated 10th day of April, 1946, to the Registrar of this Court · the plaintiff-appellant has also deposited with the said Registrar the sum of Rs. 300·00 in respect of the amounts and fees mentioned in Section 4(2) (b) and (c) of the Privy Council Appeals Ordinance (Cap. 85).

3. Notice of this application has been given to the Respondents 20 abovenamed by sending copies of this application by registered post.

Wherefore the plaintiff-appellant prays :

- (a) that he be granted Final Leave to appeal against the said judgment of this Court dated 12th day of February, 1946, to His Majesty the King in Council ;
- (b) for costs, and
- (c) for such other and further relief as to this Honourable Court shall seem meet.

Sgd. S. M. H. MASHOOR,
Proctor for Plaintiff-Appellant. 30

No. 14.

No. 14.
Decree of
the Supreme
Court, Grant-
ing Final
Leave to
Appeal to
Privy Council,
20th
May, 1946

**Decree of the Supreme Court Granting Final Leave to Appeal
to Privy Council.**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

DR. M. G. PERERA of Colombo.....*Plaintiff-Appellant.*

against

- 1. ANDREW VINCENT PERIS of "Winston," Tewatte Road,
Ragama, and

2. THE ASSOCIATED NEWSPAPERS of Ceylon, Ltd., Colombo.

Defendants-Respondents.

Action No. 15069 (S.C. 84 Final).

IN THE DISTRICT COURT OF COLOMBO.

In the Matter of an application by the Plaintiff abovenamed dated 10th April, 1946, for Final Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 12-2-46.

No. 14.
Decree of
the Supreme
Court, Grant-
ing Final
Leave to
Appeal to
Privy Coun-
cil, 20th
May, 1946
—continued

This cause coming on for hearing and determination on the 20th day of May, 1946, before the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, and the Hon. Mr. M. W. H. de Silva, K.C., Puisne Justice of this Court, in the presence of Counsel for the Petitioner.

The Appellant having complied with the conditions imposed on him by the Order of this Court dated 11th March, 1946, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application to His Majesty the King in Council for Final Leave to Appeal be and the same is hereby allowed.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 20th day of May, in the year of Our Lord One thousand 20 Nine hundred and Forty six and of Our Reign the Tenth.

Sgd. N. NAVARATNAM,
Deputy Registrar, S.C.

PART II
EXHIBITS

Exhibits

D 1.
Journal
Entries in
D.C. Col-
ombo, Case
42659, 1938

D I.

Journal Entries in D.C. Colombo, Case 42659.

IN THE DISTRICT COURT OF COLOMBO.

No. 42659

CARGILLS LIMITED, Colombo.....*Plaintiff.*

vs.

DR. M. G. PERERA of Beruwela.....*Defendant.*

Journal.

10

15-2-32.

The proctors for Plaintiff Defendant and the Defendant move that judgment be entered for the plaintiff as prayed for with costs payable by monthly instalments of Rs. 75.00 on the 10th of each month commencing from the 10th March 1932. If default is made in the payment of any instalment execution to issue for the full balance then due. The plaintiff agrees to waive all interest charged up to the filing of this action.

Decree accordingly.

Intld. O. L. de K.,
D.J.

20

Decree entered.

14-7-36.

Proctor for plaintiff applies for execution of decree by issue of writ against the property of the defendant.

Notice Defendant for 28-8-36.

Intld. G. C. T.,
D.J.

28-8-36.

30 Notice of writ not served on Defendant. He is not to be found in Beruwela said to be in Colombo.

Reissue for 9-10-36.

Intld. G. C. T.,
D.J.

28-9-36.

Reissued to W.P.

Exhibits
 D I.
 Journal
 Entries in
 D.C. Col-
 ombo, Case
 42659, 1938
 —continued

9-10-36.

Notice of Writ not served on Defendant. He is not to be found in Colombo. Time allowed is insufficient.

Reissue on fresh stamps for 20-11-36.

Intld. G. C. T.,
D.J.

29-10-36.

Reissued to W.P.

20-11-36.

Notice of Writ not served on Defendant. He is not to be found in 10 Colombo.

Reissue for 18-1-37.

Intld. G. C. T.,
D.J.

9-12-36.

Reissued to W.P.

18-1-37.

Notice of Writ not served on Defendant. He is not to be found in Colombo.

Reissue for 1-3-37.

Intld. M. W. H. de S.,²⁰
D.J.

26-1-37.

Reissued to W.P.

1-3-37.

Notice of Writ not served on Defendant. He is not to be found in Colombo.

Reissue for 3-5-37.

Intld. M. W. H. de S.,
D.J. 30

19-3-37.

Reissued to W.P.

3-5-37.

Case called. Notice of Writ not served on Defendant. He is said to have gone to England.

Reissue for 18-6-37.

Intld. M. W. H. de S.,
D.J.

18-6-37.

Notice of Writ not reissued on Defendant. No order.

Intld. M. W. H. de S.,

D.J.

Exhibits
 D I.
 Journal
 Entries in
 D.C. Col-
 ombo, Case
 42659, 1938
 —continued

15-1-38.

Mr. M. Austin Fernando for Defendant files proxy. Objections
 plaintiff's bill of costs is taxed.

						Rs.	Cts.
	Incurred Costs	..	..	..	..	220	85
10	Pros : Costs	..	..	..	..	70	97
						<u>291</u>	<u>82</u>

22-1-38.

Proctor for Defendant moves for a notice on the plaintiff to show
 cause why satisfaction of decree should not be entered.

Issue Notice for 7-3-38.

Intld. M. W. H. de S.,

D.J.

26-1-38.

Notice issued to W.P.

20 4-3-38.

Proctor for plaintiff moves to certify payment of Rs. 1,300.00.

Allowed.

Intld. M. W. H. de S.,

D.J.

7-3-38.

Case called.

Notice to enter satisfaction served on plaintiff. Plaintiff's application
 is not in order. File necessary papers for 21-3-38. Copies to be served on
 Plaintiff's Proctor.

30

Intld. M. W. H. de S.,

D.J.

21-3-38.

case called.

Formal papers to be filed.

Filed. S.O. for statement of payment and objections if any 11-4-38.

Intld. M. W. H. de S.,

D.J.

- Exhibits II-4-38.
 D 1. Case called.
 Journal Entries in D.C. Colombo, Case 42659, 1938
 —continued For statement of payment and objections, if any. Statement and affidavit filed.
 Inquiry 6-6-38. Intld. M. W. H. de S.,
 D.J.
- 2I-5-38.
 I. Defendant's list of witnesses filed. Intld. Illegible. 10
- 6-6-38.
 Case called. Settled. Defendant to pay Rs. 400.00 in full settlement of claim and costs payable in three equal instalments commencing 6-7-38.
 Intld. W. S.,
 D.J.
- 10-12-38.
 The Defendant having paid the plaintiff's claim and costs in full, Proctor for plaintiff moves that satisfaction of decree be entered.
 Enter satisfaction of decree. Intld. W. S., 20
 D.J.

P 2.

Letter with annexures from Assistant Secretary Bribery Commission to Plaintiff.

Room No. 120, Secretariat,
 Colombo, 20th November, 1942.

P 2.
 Letter with annexures from Assistant Secretary Bribery Commission to Plaintiff, 20th November, 1942

Dr. M. G. Perera,
 Queen Street,
 Colombo.

Bribery Commission.

30

Dear Sir,

I am directed by the Commissioner appointed by the Governor to inquire into allegations of bribery against members of State Council to request you to be good enough to appear before the Commission on Friday, the 27th November, 1942 at 10 a.m. in Committee Room No. 3, State Council Building, Colombo.

Yours faithfully,

Sgd.

Asst. Secretary, Bribery Commission.

P.S.—Copies of Ordinances Nos. 25 and 26 of 1942 are herewith annexed 40
 for your information.

ORDINANCE ENACTED BY THE GOVERNOR OF
CEYLON, WITH THE ADVICE AND CONSENT
OF THE STATE COUNCIL THEREOF.

No. 25 of 1942.

L.D.—CF 13/41

An Ordinance to Supplement the Provisions of the Commissions of Inquiry Ordinance for the purposes of an inquiry to be held in pursuance of a Special Commission issued by the Governor.

10 *(Assented to by His Majesty the King) See Proclamation dated July 11, 1942, published in the Government Gazette Extraordinary No. 8,966 of July 13, 1942).*

A. CALDECOTT.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows.—

1. This Ordinance may be cited as the Special Commission Short title.
(Auxiliary Provisions) Ordinance, No. 25 of 1942.

2. (1) In this Ordinance, unless the context otherwise Interpretation and construction.
requires—

20 “Commissioner” means the Commissioner appointed in the special Commission issued by the Governor.

“Special Commission” means the Commission issued by the Governor under the Seal of the Island on the thirteenth day of August, 1941, the text of which is reproduced in the Schedule to this Ordinance.

(2) This Ordinance shall be read and construed as one with the Commissions of Inquiry Ordinance :

Cap. 276.

30 Provided that in any case of conflict or of inconsistency between the provisions of this Ordinance and those of the Commissions of Inquiry Ordinance, the provisions of this Ordinance shall prevail.

3. Subject to the provisions of section 10, no person shall, Protection and immunity of witnesses.
in respect of any evidence, written or oral, given by that person to or before the Commissioner at the inquiry, be liable to any action, prosecution or other proceedings in any civil or criminal court.

40 4. Subject to the provisions of section 10 no evidence of Inadmissibility in courts of law of evidence given before the Commissioner.
any statement made or given by any person to or before the Commissioner for the purposes of the Special Commission shall be admissible against that person in any action, prosecution, or other proceedings in any civil or criminal court.

Exhibits

P 2.

Letter with annexures from Assistant Secretary Bribery Commission to Plaintiff, 20th November, 1942
—continued

Exhibits
—
P 2.
Letter with
annexures
from Assist-
ant Secretary
Bribery
Commission
to Plaintiff,
20th Novem-
ber, 1942
—continued

Power of
Commissioner
to hear
evidence
in camera..

Name and
evidence of
person giving
evidence
in camera
not to be
published.

5. The Commissioner may, in his discretion, hear the evidence or any part of the evidence of any witness *in camera* and may, for such purpose, exclude the public and the press from the inquiry or any part thereof.

6. (1) Where the evidence of any witness is heard *in camera*, the name and the evidence or any part of the evidence of that witness shall not be published by any person save with the authority of the Commissioner.

(2) A disclosure, made *bona fide* for the purposes of the inquiry, of the name or of the evidence or part of the evidence of any witness who gives evidence *in camera* shall not be deemed to constitute publication of such name or evidence within the meaning of sub-section (1).

Power of
Commissioner
summarily to
punish persons
who give false
information or
evidence.

7. (1) Where the Commissioner is satisfied that any person has wilfully given false information to him for the purposes of the inquiry or that any person has wilfully given false evidence at the inquiry, the Commissioner may sentence such person summarily to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months.

(2) The powers of the Commissioner under sub-section (1) to punish any person who wilfully gives false information to him for the purposes of the inquiry may be exercised by the Commissioner on his own motion or on application made to him in that behalf by any person affected or aggrieved by the information so given.

(3) For the purpose of the effectual exercise of the powers conferred on the Commission by sub-section (1), the Commissioner shall be deemed to be a court and any sentence imposed or warrant or other process issued by the Commissioner shall be deemed to be a sentence, warrant or process, as the case may be, of the Supreme Court and shall have effect accordingly.

(4) Any order made by the Commissioner in the exercise of the powers vested in him by the preceding provisions of this section shall be final.

Commissioner
to be a public
servant.
Cap. 15.

8. The Commissioner shall, so long as he is acting as Commissioner, be deemed to be a public servant within the meaning of the Penal Code.

Protection and
immunity of
Commissioner.

9. The Commissioner shall not, in respect of any act or thing, done or omitted to be done by him in his capacity as Commissioner, be liable to any action, prosecution or other proceeding in any civil or criminal court.

10. Nothing in this Ordinance shall—

(a) abridge or affect or be deemed or construed to abridge or affect the provisions of section 4 of the Commissions of Inquiry Ordinance or the liability of any person to any prosecution or penalty for any offence under Chapter XI. of the Penal Code; or

(b) prohibit or be deemed or construed to prohibit the publication or disclosure of the name or of the evidence or any part of the evidence of any witness who gives evidence at the inquiry, for the purpose of the prosecution of that witness for any offence under Chapter XI. of the Penal Code.

10

11. Any person who acts in contravention of any of the provisions of this Ordinance shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

12. (1) The Commissioner may, by order, direct that any person who has failed to substantiate any charge preferred by him at the inquiry in respect of any Councillor shall pay to that Councillor such sum as may be specified in the order to defray the costs, if any, incurred by that Councillor in meeting or refuting the charge preferred against him.

(2) An order under sub-section (1) may, on application made to a Magistrate's Court, be enforced against the person named in the order as though the sum directed to be paid by that person were a fine imposed upon him by that Court.

Schedule.

COMMISSION.

30

By His Excellency Sir Andrew Caldecott, Knight
Grand Cross of the Most Distinguished Order of
Saint Michael and Saint George, Commander
of the Most Excellent Order of the British
Empire, Governor and Commander-
-in-Chief in and over the Island
of Ceylon with the Terri-
tories and Dependencies
thereof.

L.S.

40

A. CALDECOTT.

To LUCIAN MACULL DOMINIC DE SILVA, Esquire,
K.C.

Saving of penalties and proceedings for prejury before the Commissioner.

Exhibits
—
P. z.
Letter with annexures from Assistant Secretary Bribery Commission to Plaintiff, 20th November, 1942
—continued

Offences.

Power of the Commissioner to order payment of costs.

Exhibits

P 2.

Letter with
annexures
from Assistant
Secretary
Bribery
Commission
to Plaintiff,
20th November,
1942
—continued

GREETING.

WHEREAS I have deemed it necessary to issue a Commission to inquire into and report upon the matters hereinafter mentioned upon which information is, in my opinion, necessary:

Know Ye that I, Andrew Caldecott, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Most Excellent Order of the British Empire, Governor and Commander-in-Chief in and over the Island of Ceylon with the Territories and Dependencies thereof, reposing great trust and confidence in your prudence, ability and fidelity, do by these presents nominate, constitute and appoint you the said Lucian Macull Dominic de Silva, one of His Majesty's Counsel learned in the law, to be my Commissioner for the purpose of inquiring into and reporting upon the following questions :—

- (a) whether gratifications by way of gift, loan, fee, reward, or otherwise, are or have been offered, promised, given or paid to members of the existing State Council, with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction for which they, in their capacity as members of that Council or of any Executive or other Committee thereof, are, have been, may, be or may claim to be, concerned, whether as of right or otherwise: and
- (b) whether such gratifications are or have been solicited, demanded, received or accepted by members of the existing State Council as a reward or recompense, for any services rendered to any person or cause, or for any action taken for the advantage or disadvantage of any person or cause, or in consideration of any promise or agreement to render any such services or to take any such action, whether as of right or otherwise, in their capacity as members of that Council or of any Executive or other Committee thereof.

And I hereby authorise and empower you to hold all such inquiries and make all such investigations into the aforesaid matters as may appear to you to be necessary ; and i do hereby require you to transmit to me a report thereon under your hand as early as possible.

And I do hereby require and direct all public officers and other persons to whom you may apply for assistance or information for the purposes of this inquiry, to render all such assistance

or furnish all such information as may properly be rendered or furnished in that behalf.

Given at Colombo, under the seal of this Island, the thirteenth day of August, 1941.

By His Excellency's command,
E. R. SUDBURY,
Secretary to the Governor.

Passed in Council the Thirty-first day of October, One thousand Nine hundred and Forty-one.

10 D. C. R. GUNAWARDANA,
Clerk of the Council.

ORDINANCE ENACTED BY THE GOVERNOR OF CEYLON,
WITH THE ADVICE AND CONSENT OF
THE STATE COUNCIL THEREOF

No. 26 of 1942.

L.D.—CF 13/41

20 An ordinance to amend the Ordinance intituled "An Ordinance to Supplement the Provisions of the Commissions of Inquiry Ordinance for the purposes of an inquiry to be held in pursuance of a Special Commission issued by the Governor."

(Assented to by His Majesty the King) See Proclamation dated July 11, 1942, published in Government Gazette Extraordinary No. 8,966 of July 13, 1942.)

A. CALDECOTT.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

30 1. This Ordinance may be cited as the Special Commission (Auxiliary Provisions) (Amendment) Ordinance, No. 26 of 1942. Short title.

2. In the event of the Bill intituled "An Ordinance to Supplement the Provisions of the Commissions of Inquiry Ordinance for the purposes of an inquiry to be held in pursuance of a Special Commission issued by the Governor" taking effect as an Ordinance upon the signification of His Majesty's assent thereto by Proclamation published in the *Government Gazette*, that Ordinance shall, with effect from the date of the publication Amendment of the Special Commission (Auxiliary Provisions) Bill, in the event of that Bill becoming law.

Exhibits

P 2.

Letter with annexures from Assistant Secretary Bribery Commission to Plaintiff, 20th November, 1942
—continued

Exhibits

P 2.

Letter with annexures from Assistant Secretary Bribery Commission to Plaintiff, 20th November, 1942
—continued

Power of Commissioner to order payment of costs and circumstances in which such order may be made.

(Cap. 86).

of such Proclamation, be amended by the substitution, for section 12 of that Ordinance, of the following new section :—

12. (1) Where the Commissioner finds that a charge or allegation made or preferred against a member of the State Council has not been established, the Commissioner in his discretion may, if that member has been represented by counsel at the inquiry into such charge or allegation, award to that member, by order under his hand, such sum as the Commissioner may fix as the costs of such representation.

In fixing such sum, the Commissioner shall be guided so far as may be, by the scales of costs and charges prescribed for proceedings in Class V. in Parts I. and II. of the Second Schedule to the Civil Procedure Code unless, in any particular case, the Commissioner is of opinion that costs should be awarded otherwise than in accordance with such scales. In this sub-section, "counsel" includes a Proctor.

(2) The payment of any sum awarded by the Commissioner by order under sub-section (1) shall be made out of public revenue and is hereby charged upon such revenue and any such payment shall be deemed to be a payment authorised by law for the purposes of the application of the provisions of Article 61 of the Ceylon (State Council) Order in Council, 1931.

Passed in Council the Forth day of June, One thousand Nine hundred and Forty-two.

D. C. R. GUNAWARDANA,
Clerk of the Council.

D 3.

**True copy of letter from Secretary to the Governor
to the Government Printer.**

30

URGENT.

Governor's Office,
Colombo, 18th May, 1943.

The Government Printer.

I return the proof received from you this morning and should be grateful if you would print it as a Sessional Paper not to appear however before the Government Gazette Extraordinary which is to contain the text of a bill to be introduced into the State Council connected with the Bribery Commission

D 3.
True copy of letter from Secretary to the Governor to the Government Printer, 18th May, 1943

Report and which is also to be published tomorrow. The two should be published simultaneously.

Sgd. H. A. C. DOBBS,
Acting Secretary to the Governor.

Certified true copy.

A. C. RICHARDS,
Govt. Printer.

Colombo, 9th June, 1944.

Exhibits

D 3.
True copy of
letter from
Secretary to
the Governor
to the
Government
Printer, 18th
May, 1943
—*continued*

83

D 2.

True Copy of the Report of the Bribery Commission.

Exhibits

D 2.

True copy of
the Report of
the Bribery
Commission,
May, 1943

CEYLON



SESSIONAL PAPER XII.—1943.

REPORT OF THE BRIBERY COMMISSION

MAY, 1943.

Printed on the Orders of Government.

PRINTED AT THE CEYLON GOVERNMENT PRESS, COLOMBO.

10

To be purchased at the GOVERNMENT RECORD OFFICE, COLOMBO; price 90 cents.

1943

REPORT OF THE BRIBERY COMMISSION.

Exhibits
 D 2.
 True copy of
 the Report of
 the Bribery
 Commission,
 May, 1943
 —continued

Committee Room 3,
 State Council Building,
 Colombo, April 3, 1943.

Page 3

YOUR EXCELLENCY,—I HAVE the honour to report upon the questions referred to me by Your Excellency under a Commission dated August 13, 1941, namely

Terms of Reference.—

- (a) whether gratifications by way of gift, loan, fee, reward, or otherwise, are or have been offered, promised, given or paid to 10 members of the existing State Council, with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction for which they, in their capacity as members of that Council or of any Executive or other Committee thereof, are, have been, may be, or may claim to be, concerned, whether as of right or otherwise; and
- (b) whether such gratifications are or have been solicited, demanded, received or accepted by members of the existing State Council as a reward or recompense, for any services rendered to any 20 person or cause, or for any action taken for the advantage or disadvantage of any person or cause, or in consideration of any promise or agreement to render any such services or to take any such action, whether as of right or otherwise in their capacity as members of that council or of any Executive or other Committee thereof.

2. Certain members of the public, some of whom gave evidence before me, were under the impression that it was part of the task assigned to me under the terms of reference not merely to find whether or not incidents of the character described therein have taken place, but also, in the event of my finding that they have, to suggest what action should be taken and 30 generally to make comment. It is clear that Your Excellency has constituted me a pure fact-finding Commission and that I would be travelling outside the limits of the authority conferred on me if I proceeded to do anything more. I have accordingly refrained from dwelling upon the political, legal or moral aspects of the incidents, which in the following paragraphs I have found to have occurred, and refrained also from making suggestions for the prevention of similar incidents in the future.

3. *Legislation.*—On August 26, 1941, soon after the Commission was issued to me, a Bill (Appendix A) was introduced in the State Council for

the purpose of giving witnesses who gave evidence before the Commission absolute immunity against civil or criminal proceedings in Courts of Law. Without such immunity the Commission would have been unable to produce the maximum result possible. It is common experience that evidence of bribery is very difficult to obtain and even more difficult to establish beyond reasonable doubt. If to these factors there was added the reluctance of witnesses to give evidence owing to fear of proceedings against them, the difficulties of the Commission would have been materially increased. The Bill was passed with certain amendments on October 31, 1941. It was reserved for the signification of His Majesty's pleasure on November 26 10 1941. One of the amendments was that persons making allegations against members of the State Council who were unable to prove them should be liable to be cast in the costs incurred by members in defending themselves. The Secretary of State for the Colonies intimated that, if by suitable means the payment of costs was made a liability to be borne by the Crown instead of by witnesses, assent to the Bill would be given. A Bill embodying the Secretary of State's suggestion was introduced on June 4, 1942, and passed on the same day in Council and received His Majesty's Assent on July 11, 1942. On the same day His Majesty's Assent to the earlier Bill was also 20 signified. Copies of the Ordinances as passed into law appear in Appendices A1 and A2.

4. Experience has now proved that without the amendment proposed by the Secretary of State the work of the Commission would have been seriously handicapped. It was important that cases of honest suspicion should have been freely placed before the Commission in order that investigation could be made. In some cases these suspicions led to proof. In other cases they led to disproof. In yet other cases the evidence was inconclusive. In nearly all the cases persons who gave me information of the grounds on which their suspicion was based were unable themselves to 30 proceed beyond the point of suspicion. They had not the machinery by which they could have obtained statements from others. It was for me to take the necessary action. It would have been an intolerable hardship if the persons who expressed honest views in the hope of affording me assistance were cast in costs. I ought to add that there were a few vexatious complaints but, as I did not proceed to the stage of putting a Councillor to the expenses of defending himself until I was satisfied that a "prima facie" case existed, these vexatious complaints involved the Councillors in no expense.

5. *Progress while legislation pending.*—I considered the feasibility of 40 proceeding with the work of the Commission while the passing of the Bill was under consideration by the legislature but I formed the clear opinion that it was impossible to do so beyond a short distance. On September 4, 1941, I made an announcement in the press and by posters that a Commission had been issued and asked members of the public to furnish me with any information that was likely to help me at the same time asking generally for their co-operation because without material from outside it would have

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been impossible for me to proceed any further. Bare mention of allegations appeared in certain newspapers and in certain debates in the State Council but neither afforded me concrete cases for examination. It was not possible for me to proceed beyond the stage of invitation to witnesses without knowing definitely the fate of the Bill which had been introduced because it was necessary to explain to them what exactly their position was. If no Bill had been introduced I would have been able to say that they enjoyed a limited immunity under the ordinary law of the land and I could have proceeded to obtain such evidence as was forthcoming on that basis. Once the Bill was introduced I could not, until it was passed or rejected, tell them whether or not they would enjoy wider immunity. It was highly undesirable to proceed with the hearing of witnesses till their position was clearly ascertained. Consequently I decided with reluctance to await the final decision of the legislature on the matter of the Bill which, as already stated, was passed into law only on July 11, 1942.

6. *Public Advertisement.* — On July 14, 1942, by advertisement in the press (English, Tamil and Sinhalese) I again invited persons in possession of information to place it before me. I explained that under the legislation which had just been passed witnesses would enjoy absolute immunity in respect of evidence given by them before me except in the matter of giving false evidence. I assured them that in respect of the last mentioned offence no person could be found guilty unless it was proved beyond reasonable doubt that he or she had deliberately given evidence which was not true. I added that a person who wished to make a statement which he genuinely thought was true could do so without fear. I pointed out that without the co-operation of the public my work would be ineffective. Copies of these advertisements in the three languages mentioned were sent to Government Agents of all the provinces with a request that they should be posted up at Kachcheries, Court-houses, Police Stations, Village Tribunals, Post Offices, Municipal Councils, Urban Councils, Provincial Road Committees, District Road Committees, Fiscal's Offices, Chief Headmen's offices, Railway Stations, Hospitals, Dispensaries, Circuit Bungalows, Resthouses, Theatres, Public Libraries, Law Libraries, Market-places, Offices of Divisional Inspectors of Schools, Land Registries, Village Committee Halls, boutiques temple premises and any other public places in the province. I have verified from statements received from the Government Agents that these notices were duly posted up. On November 10, 1942, I announced by public advertisement in the press that the hearing of evidence was drawing to a close and again invited persons who had information to place before me to do so without delay. Copies of this advertisement were sent to all Government Agents and were posted up by them at the places already mentioned.

7. *Immunity of Public Servants.*—During the course of the inquiry I became increasingly conscious that Public Servants might have material to place before me and that they might be reluctant to do so through fear of disciplinary action being taken against them. On October 20, 1942, I obtained from Your Excellency authority to inform Public Servants that

no disciplinary action would be taken against them in respect of matters disclosed by them in their evidence before me. This fact was publicly announced in the second of the two advertisements referred to and was also communicated individually to the Public Servants who gave evidence.

8. *Reluctance to give evidence.*—The legislation which was passed and the assurances given by me would no doubt have dispelled a part of the reluctance which persons in possession of relevant information would have had of placing it before me. But, of course, it could not have dispelled it wholly. The number of persons who volunteered to give evidence was
 10 exceedingly small (*vide* paragraph 10). It is a matter of general knowledge that most people are reluctant to admit that they have paid or have been party to the giving of gratifications. They are likely to fall in the public estimation and in the estimation of their friends and associates. It is also to be remembered that for the most part gratifications are given secretly and usually in the presence of only the giver and the taker. Even the few persons, who besides the giver and the taker, can in a small number of instances give material evidence, are generally reluctant to do so from a variety of considerations, logical and emotional. A good illustration of the
 20 latter is the case of a successful professional man who gave evidence before me with expressed reluctance. One of the reasons given by him for this was that he did not wish to act as a “spy for the Bribery Commission”. The gentleman had not acted as a spy but was deposing to certain facts which had come to his knowledge before the Commission issued. This attitude was entirely illogical but reflected the kind of feeling that exists with regard to an investigation into bribery. This aspect of the matter is again referred to in paragraph 42.

9. *Proceedings in camera.*—The legislation referred to in paragraphs 3 and 4 above gave me the discretion of taking evidence in camera. I decided to do so largely in view of the absolute immunity conferred on witnesses.
 30 They were free to say what they liked before me without fear of the ordinary penalties of the law. The principle that every person is to be held innocent until he is proved to be guilty is observed in courts of law but it is not universally followed elsewhere. It is extremely difficult while a charge is under investigation to protect the person charged from the hum of conversation and the sting of conjecture. Fairness demanded that the evidence and the conclusions to which it led should be released together.

10. *Sources of information.* I have examined in all 124 witnesses. Of these, 12 volunteered to give evidence. The others were summoned by me on information derived from various sources. I received valuable
 40 information relating to one incident from a police file. As I was conscious that all the available material would not be voluntarily placed before me, I examined a certain amount of material called for from Government Departments sometimes at random in order to ascertain whether there were any features particular or general which indicated the taking of gratifications by State Councillors. I also examined certain Councillors whose speeches

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on different occasions made me believe that their evidence might be useful. The information derived from one Councillor led to the discovery of two cases, one of receiving a gratification, the other of soliciting one.

11. *Nature of allegations.*—The evidence before me covered to a small extent allegations of gratification in respect of matters which came up before open Council. In the main it covered allegations of gratification in respect of matters which came up for consideration by Executive Committees. The chief items of which complaint was made were—

- (1) appointments to various offices in the Government Service ;
- (2) nominations to Municipal and Urban Councils ;
- (3) decisions on policy, the repercussions of which resulted in advantage or disadvantage to private parties. 10

I will deal with these separately.

12. *Appointments to Public Service.*—With regard to (1), Regulation 13 of the Public Service Regulations requires the Secretary of the Public Services Commission to forward to the Executive Committee in “general control of a department” recommendations from the Head of that Department with regard to the filling up of any vacancy which has occurred. The Executive Committee then makes its own recommendation to the Public Services Commission which, through its Chairman, advises Your Excellency, 20
The existing Council began to function on March 17, 1936. From that date up to now the number of instances in which the recommendations of the Head of a Department have not been adopted by an Executive Committee is only 20 (twenty). The number of instances in which the view of the Executive Committee has prevailed over that of the Head of a Department is 13 (thirteen). The total number of appointments made after recommendation by Executive Committees is 694 (six hundred and ninety-four). These figures were obtained by me from the Chief Secretary. It is clear, therefore, that the actual effect, if any, of gratifications on appointments could not have been appreciable. I doubt whether the claims of a really 30
inefficient candidate has ever been advanced by reason of the payment of a gratification. The number of such instances, if any, must have been very small indeed. The relevant material in concise form is before the Committee. It is difficult for members receiving gratifications to be so brazen with their fellow-members as to ignore completely the legitimate claims of candidates. But these facts are not widely known. They are beyond the horizon of the general public. No deep thinking is required to realize how the mind of a candidate can run riot on the possibilities of illicit influence in the field of an Executive Committee’s activities. This leads to the giving of gratifications although their effect is in reality small. And 40
what perhaps is even worse, it leads to the belief that gratifications are a powerful factor in the actual selection of candidates and thus tends to undermine faith in the efficient working of the Governmental machine.

13. *Nominations to Municipal and Urban Councils.*—With regard to (2), it has up to now been the function of the Executive Committee of Local

Administration to make recommendations for the nomination of members to Municipal and Urban Councils. I have not found material on which it could be held that any particular member of the Committee has received or solicited a gratification, but the evidence creates a strong suspicion that gratifications have passed to an extent which, again, I cannot fix. The number of instances of recommendations have been 183 (one hundred and eighty-three) and of these, 181 (one hundred and eighty-one) have been accepted by Your Excellency. There was here a very fertile field for the activities of those who either directly or through others adopt improper methods for achieving political ambition. I was invited to hold in particular cases that gratifications had passed merely by reviewing particular recommendations. But this I refused to do because the tests and standards adopted might for good reason have been other than those that might have appeared sound to me. The latitude necessary to be given to a different but honest view-point did not permit me to enter upon the relative merits of candidates. It was said, for instance, in one case that the name of a man of small education was suggested for nomination by reason of his having paid a gratification in preference to one better educated. But it obviously is not possible for me to say that the former was not really the better person on grounds other than those upon which I was invited to come to a decision

14. *Executive decisions.*—In addition to the decisions arrived at by Executive Committees in the matters of appointments and nominations there are, of course, a number of decisions on questions of policy, the adoption or rejection of which is of advantage or disadvantage financially and otherwise to members of the general public. For instance, I have found (*vide* paragraph 18) that a gratification passed on the occasion of the consideration by the Executive Committee of Home Affairs of the question whether certain Government contracts should be extended without competition or not. On this occasion the Head of the Department had recommended the extension and it would, I think, have been allowed even if no gratification had been paid. No executive decision upon the face of which the taint of gratification was visible was placed before me or came under my observation. I am conscious that members receiving gratifications would endeavour to prevent its effect from being seen but, nevertheless, it is my impression that in most cases the effect of gratifications on final results has not been appreciable.

15. *Committee system.*—It will appear from what I have said that the Committee system as it now functions lends itself readily to the giving and the taking of gratifications. The giver of a gratification being unaware of the proceedings in Committee will never know to what extent it has carried weight. But, nevertheless, the possibility that it might carry weight must always loom large in the mind of the potential giver. A member receiving a gratification can without much fear of discovery ignore a promise to advance the desires of the giver. In short, under the Committee system responsibility is fugacious even where a gratification misses its intended mark.

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16. *Number coming under Terms of Reference.*—In the appendices annexed I have dealt with incidents and witnesses at some length. For the sake of clarity I have not embodied too much detail in the body of this Report. The total number of Councillors in respect of whom suggestions were made was 19 (nineteen). In some cases they were based on very slender material. I have found that eight members, whom I have been able to identify, have received gratifications within the meaning of that term in the Commission issued to me. Among these are three nominated European members. They openly received a reward from certain bodies for the work they did in Council, and this openness and its implications draw a sharp line of distinction between them and the others. They are dealt with in paragraphs 26 to 34 below. I have also reached the conclusion that there are in all probability about four other members, whom I have not been able to indentify, who have received gratifications. 10

17. *The "Attanayake" gratification incident.*—Turning to individual cases, I have found that four members of the Committee for Home Affairs, Messrs. E. W. Abeygunasekera, C. Batuwantudawe, H. A. Gunasekera, and E. R. Tambimuttu, received gratifications for the purpose of supporting a candidate for the post of a Chief Headmanship. It is with regret that I include the name of Mr. Batuwantudawe as he is now dead. But duty leaves me no choice. The amounts received by Messrs. Butuwantudawe and Gunasekera was Rs. 250 each ; by Mr. Abeygunasekera Rs. 500. While I am definite that a sum of money was received by Mr. Tambimuttu, I am unable to be sure whether it was Rs. 250 or Rs. 750. I think it was the latter amount. These payments were suggested and arranged by Mr. Abeygunasekera. The story in short is that Mr. Abeygunasekera met the candidate and his father by appointment at the house of a friend. Mr. Abeygunasekera, after assuring the parties concerned that it was very simple for him to get the candidate appointed as the papers would come before the Home Committee, sent a telegram to the three other members requesting them to meet him on a matter of "paramount importance". This appears to have been a code word used by Mr. Abeygunasekera in referring to matters connected with gratifications. The candidate and his father raised Rs. 2,000 on a bond. On the same day they came to Colombo with two others, met Mr. Abeygunasekera and were introduced to one of the members (Mr. Gunasekera) in the State Council building one morning. After a short discussion they paid him a sum of Rs. 250. Mr. Abeygunasekera later escorted the party to the houses of the other two members where the sums mentioned were paid. It does not appear to me from the evidence or the relevant papers that after they received the money they pressed the claims of the candidate. The reason no doubt was that he had no qualifications for the post comparable with those of the other candidates. The father was infuriated by what he rightly thought was a trick to obtain money and sent four letters of demand through a proctor. Mr. Tambimuttu thereupon returned the money in full. Messrs. Batuwantudawe and Gunasekera between them returned Rs. 325. This is clear but as to how 30 40

this sum is to be apportioned between them is not clear. I think Mr. Gunasekera returned the whole of the Rs. 250 and Mr. Batuwantudawe Rs. 75. Mr. Abeygunasekera returned no part of the money which he received. Mr. Tambimuttu went so far as to visit the house of the candidate to return the money. While he denies the return of the money, he admits the visit to the house. He says that, on receiving the letter of demand, he suspected black-mail. But he admits that he did not send a reply. Instead, he paid the visit which I have mentioned, and it is utterly incredible that he should have done so except, as stated by the candidate and his

10 mother, who was a witness, for the purpose of returning the money and hushing up the matter. My reasons for my finding on this particular incident are set out in detail in Appendix B. But I have to mention here that in my opinion this was not a solitary occasion in which the four members concerned received gratifications. I think that they acted in concert in a number of matters using the same or a similar technique. I accept the evidence that Mr. Abeygunasekera had stated that he had acted similarly in a number of other incidents. There is a great deal of evidence from independent sources which points to this. The general features of this incident itself also indicate that this was not an isolated incident.

20 18. *Arrack Contract gratification incident.*—There was evidence before me that in 1939 contractors to the Government for the supply of arrack decided to pay to the same four members a sum of about Rs. 2,000 for the purpose of having their contracts extended without competition from outside. There is evidence, which I believe, that money for this purpose was paid to one of the members, now dead, Mr. C. Batuwantudawe, but there is no evidence that it was paid by him to the others. I did not for this reason call upon the members now alive to answer the allegation as it cannot be held against them that, with regard to this particular incident, they actually received the money. This matter is more fully discussed

30 and reasons for my view given in Appendix C.

19. *Mr. Abeygunasekera's request for long postponement. Frustration.*—After the evidence on the incident referred to in paragraph 17 had been led and after the witnesses who supported the allegation had been cross-examined in great detail by Council, Mr. Abeygunasekera made a request to me in writing on February 9, 1943, to postpone all the inquiries against him for three months on the plea that he had to visit Madras for treatment. He supported the application with a medical certificate to the effect that he was suffering from asthma. I was anxious at every stage of this inquiry to give every member the fullest opportunity of meeting allegations but in

40 my view a report was overdue and long postponements would have tended to frustrate the object of the Commission. It was issued to me on August 13, 1941. I, therefore, decided that I could not grant a long postponement and wired to Mr. Abeygunasekera requesting him to continue to appear through counsel and to endeavour to appear personally for a short while on February 15, 1943, which was a date fixed for the inquiry. My object was to record Mr. Abeygunasekera's evidence with as little inconvenience to

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him as possible and to continue the inquiry in the presence of his counsel. The telegram sent to the address furnished by Mr. Abeygunasekera to the Clerk of the State Council as his proper address was returned to me undelivered. The contents of the telegram were also confirmed by me by registered letter on February 11, 1943. Mr. Abeygunasekera did not appear nor did counsel who had so far been appearing for him. I decided that I would have to make my report upon the available material and proceeded with the inquiry. I also sent Mr. Abeygunasekera a registered letter informing him of the course which I was taking.

20. *Mr. Abeygunasekera and registered letters.*—A feature of correspondence with Mr. Abeygunasekera is that registered letters sent to him are not accepted and are returned "unclaimed". The two letters referred to in the preceding paragraph met with this fate. I examined the postal authorities on this matter to get details of the procedure at Mr. Abeygunasekera's end and am satisfied that he habitually refuses registered letters. A proctor witness had the same experience as myself. Mr. Abeygunasekera told him that he had deliberately refused a registered letter. Earlier in the inquiry I found it impossible to reach him by registered letter and, as at the time he was not attending meetings of the State Council, it was found necessary that Mr. E. T. Dyson, Government Agent, Central Province, should himself personally deliver a letter to him in order that there should be no doubt that it had reached him. It is, of course, possible that Mr. Abeygunasekera had left Ceylon at the time I sent the two last letters but this does not alter my conclusion.

21. *Further incidents involving Mr. Abeygunasekera.*—Before the medical certificate was sent I had indicated to Mr. Abeygunasekera that there were further incidents into which I proposed to inquire and had informed him of the dates of inquiry of two of them. In respect of these incidents also Mr. Abeygunasekera did not place before me his evidence on oath or affirmation.

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22. *The Omnibus Reorganization gratification incident.* The first of these incidents (Appendix CC) attracts attention by reason of the fact that it took place after the Commission to me had issued and by reason also that Mr. Abeygunasekera made very little, if any, effort at secrecy in obtaining a gratification. This is a feature which is characteristic of Mr. Abeygunasekera's activities. Mr. S. W. Nelson, the present Director of Transport some time after his arrival in the Island in March, 1942, recommended the reorganization of the omnibus services and propounded a scheme. The omnibus interests were strongly opposed to it. Associations of omnibus owners as well as individual owners worked hard for its rejection. An Association by the name of the Lanka Omnibus Owners' Association was formed for the express purpose of agitating against it. On July 9, 1942, the Minister for Local Administration moved a resolution in the State Council to the effect that the omnibus services should be reorganized on the lines recommended by Mr. Nelson. One Mr. J. G. Collin Fernando, an

omnibus owner, went with one Mr. B. H. William, another omnibus owner, known to Mr. Abeygunasekera, to interview him and pressed the claims of the omnibus interests to have the motion rejected. Mr. Abeygunasekera thereupon informed him that however good a cause may be they could not expect support for it without the payment of a gratification. He then handed to them a piece of paper with the names of about seven Councillors written on it, a sum of money varying from Rs. 150 to Rs. 200 being noted against each name. The exact number of Councillors and the exact amounts I have not been able to discover because the list is not now
 10 available. Mr. Abeygunasekera's name also appeared on the list but no amount was marked against his name. It was the stage of negotiation. Mr. Abeygunasekera said that, if the amounts indicated could be found, he could hand them to the members mentioned and obtain their votes. All this happened on the State Council premises on a day on which the debate on the motion was taking place. There were a number of omnibus owners who had come to witness the debate. Messrs. Fernando and William took the list and showed it immediately to other owners and discussed the question of making the payments demanded. The list was seen and the discussion participated in by a number of people. The owners decided that
 20 Mr. Abeygunasekera could not be relied upon, that he himself might misappropriate the money if it was handed to him, and that the wiser thing to do was to interview different members, obtain their votes if possible without the payment of a gratification but pay something if votes could not be obtained otherwise. This decision was carried out and no money was paid to Mr. Abeygunasekera. The view of the omnibus owners appears me to reflect correctly the estimate of Mr. Abeygunasekera which members of the general public had formed as it emerged from the evidence of a number of witnesses before me. It must be mentioned here that Dr. A. P. de Zoysa, a member of the State Council, with whom the omnibus owners were in
 30 contact, had advised them strongly against the payments or attempts at payments of gratifications. This advice was tacitly if not expressly agreed to. In consequence, no doubt, largely of this fact, such gratifications as were paid by omnibus owners appear to have been given with studied effort at concealment and I have been able to discover and obtain satisfactory evidence only in the one case referred to in paragraph 25.

23. *The H. R. P. Fernando gratification incident.* The other incident (paragraph 21) of the inquiry into which I gave Mr. Abeygunasekera notice related to the payment to him by one Mr. H. R. P. Fernando, a dismissed Exciser Officer, of a sum of money to secure his services in the matter of
 40 obtaining a reinstatement. Mr. Fernando was introduced to Mr. Abeygunasekera by a friend. Mr. Abeygunasekera asked for Rs. 250. Mr. Fernando was wary and, after some haggling, agreed to pay a sum of Rs. 300, Rs. 75 immediately and the balance Rs. 225 after the matter was satisfactorily concluded. On January 27, 1939, Mr. Fernando paid this sum of Rs. 75 and thereupon Mr. Abeygunasekera provided him with a ticket in the gallery of the State Council to witness the giving of notice of the motion

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which appears in Volume I. of Hansard, page 260, to the effect " that this Council is of opinion that all papers relating to the dismissal of Inspector H. R. P. Fernando from the Excise Department be tabled." Mr. Fernando saw the motion being handed over to the Clerk to the Council and notice being given by Mr. Abeygunasekera. The matter was referred to the Chief Secretary under Standing Order 57, who reported on November 27, 1939. Mr. Abeygunasekera did not press the motion. He eventually withdrew it on March 24, 1942. At the time of receiving payment of Rs. 75 Mr. Abeygunasekera represented to Mr. Fernando that he had considerable influence with the Excise Commissioner which he would use. He pressed for more 10 money from time to time but Mr. Fernando resisted payment until the promised reinstatement was an accomplished fact. After several interviews and disappointments Mr. Fernando dropped the matter. The details of this incident appear in Appendix D.

24. *Mr. Abeygunasekera and gratifications.*—It appears to me from the incidents related and from other evidence that Mr. Abeygunasekera solicited and accepted gratifications with little effort at concealment, that this was widely known to the general public and that disappointments suffered in a number of matters had led potential givers of gratification to doubt the value of his promises. He appears also to have been the prime 20 mover in arranging gratifications for others.

25. *The Victoria Hotel gratification incident.* The incident of giving a gratification by omnibus owners on the occasion of the Nelson motion referred to in paragraph 22 was the payment of a sum of Rs. 25 to a member, Mr. D. D. Gunasekera. His name figured in the list mentioned in the same paragraph. Emboldened by this fact two omnibus owners went to see him by appointment at the Victoria Hotel, Colombo, and, while pressing the merits of their cause, were confirmed in the belief that a gratification would be welcome to him. They thereupon paid him a sum of Rs. 25, which was accepted. The smallness of the sum aroused caution, but I am 30 convinced upon the evidence that it was given and received. The full details of this incident are discussed in Appendix E. But I have to state here that, in my opinion, this was not an isolated occasion on which Mr. Gunasekera has taken a gratification. The general features of the incident and the amount taken convince me that Mr. Gunasekera has habitually taken gratifications.

26. *The European Members.*—The four European members, Messrs. H. E. Newnham, H. F. Parfitt, E. C. Villiers, and F. H. Griffith, were selected for submission for nomination by the Chamber of Commerce, the Ceylon Estates Proprietary Association, the Planters' Association, and the 40 European Association respectively. Their names were submitted for nomination by the four Associations jointly. After nomination they were regarded by the Associations (and in this term for convenience I include the Chamber of Commerce) as their " representatives ". The allegation has been made against them that certain payments which they received from

the Associations bring them within the terms of reference. I have considered their cases in some detail in Appendix F. I have found that the first three members come within the terms of reference and that the fourth, Mr. Griffith, does not. The essential difference between him and the other three is that the latter are paid remuneration for the work which they do in the State Council whereas Mr. Griffith is paid only in respect of work done outside the Council. Even in respect of this he is only paid an allowance to meet out-of-pocket expenses incurred in travelling.

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27. *Mr. Newnham.*—Mr. Newnham receives a salary of Rs. 2,000 a month and an allowance of Rs. 200 (for a Secretary) from the Chamber of Commerce. To use his own words, this remuneration is paid “in consideration partly of the work which I had as a State Councillor and partly in consideration of the work which I had outside the Council”. He has to make a study of the matters that come up before the council, to hear the views of the Chamber or its relevant Committees and then to express them in the original or a modified form in the Council and its Committees. According to him, he is free to take a view different from that of the Chamber but he has never, in fact, done so. On occasions he has, on matters on which the Chamber expressed no opinion, taken up a position which affected the financial interests of some of its members adversely. His activities in the State Council have been largely to place before it and its Committees the views of the Chamber of Commerce. This “conduct” has been the direct result of the remuneration received. It has been paid to him to achieve this object. There can be no doubt about this and I think that this fact alone suffices to bring him within the terms of reference.

28. *Messrs. Parfitt and Villiers.* The cases of Messrs. Parfitt and Villiers are very similar to that of Mr. Newnham in essential features. Up to about six months ago Mr. Parfitt received a sum of Rs. 2,000 a month from the Ceylon Estates Proprietary Association for work done as its Secretary and as its “representative” in Council. From about that time he has limited himself to political work only and received Rs. 1,000 a month. He has ceased to be Secretary and is now the Deputy Chairman. Mr. Villiers receives a sum of Rs. 2,000 from the Planters’ Association. To use his own language: “I put my views before my Association and get theirs. Thus, I am in a position to put the views of my Association before the members of the House”.

29. There can be no doubt that a great part of the activities of Messrs. Parfitt and Villiers consisted of voicing the views of their Associations in Council and its Committees. It may be that some of these views on occasion received modification by reason of the exigencies of a sudden development or for some other cause, though in the majority of cases the views of the Associations themselves were put before the Council and its Committees. They received reward for this “conduct”. It was paid for the purpose of securing it.

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30. *Reward of three members not merely for loss of time.* It has been suggested that the payments made to the three members must be regarded as compensation for loss of time and energy and not as reward for services rendered. I do not think this view is sustainable. All payment for service rendered includes payment for the employment of the time and energy of the person rendering the service for the benefit of the person to whom the service is rendered. This is a universal rule true even of manual labour. To isolate time and energy from the service would lead to a fallacy. In the case before me time and energy clearly cannot be isolated. It cannot be said that payment was made on that account only. The Association 10 wanted certain views expressed in Council and its Committees and a payment was made to get them expressed and, in most cases, pressed.

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31. *“ Judgment ” as well as “ conduct ” of the three European Members influenced.* In paragraphs 27 to 30 I have considered “conduct” as distinguished from “judgment”. The question arises whether the remuneration paid to the three members mentioned has not only “influenced their conduct” but also “influenced their judgment” (*vide* these expressions in terms of reference in paragraph 1). They said that they were not mere paid mandatories. They said they were under no obligation to vote according to the views of the Associations which they “represented.” 20 As against this, a Member of the State Council (Mr. Siripala Samarakkody) in the course of this evidence said that in private discussion some European members had stated, with regard to certain measures, that they agreed with his point of view but that they were unable to support it because of the opposite view taken by their Associations. I have found it unnecessary on evidence to reconstruct private discussions, and to decide whether whatever was there said represented accurately the relations between the members and the Associations. For reasons which follow immediately, I think that, in any event, even if the votes of the members were not “tied,” the remuneration which they received must be held to have influenced their 30 judgment.

32. *Absence of a rigid understanding immaterial.* The absence of a rigid understanding or agreement that the views of the Associations must, in all matters, be followed and supported by the members does not mean that their judgment was not influenced by the remuneration paid to them. It may even be that in some matters they did not follow those views. The difference between “dictation” and “influence” has to be clearly borne in mind. It would be extremely difficult to hold that the reward they received did not, in some measure, influence their judgment in the voting and in the degree of support or opposition given to various measures. It 40 is immaterial to a consideration of this point that in the generality of cases there might have been no difference of opinion between the Associations and their representatives. The question is a question of judgment and, when attention is focussed on this point, it appears impossible to hold that a judge, who has received reward from a party interested, has not been

influenced by reward received. It is impossible to hold with the giver or the taker that they did not think that the reward would influence judgment.

33. *Illustration.* Recently legislation was passed by the State Council to enable reorganisation of the omnibus services. One of the sitting members at the time of its passage might have been a lawyer-director of an omnibus company. His views, like the views of many omnibus owners, might have been opposed to the legislation. If, in these circumstances, the omnibus owning interests in Ceylon collectively paid him a fee of 500 guineas to induce him to listen to their views and to express them in the State Council and generally to take pains and trouble over the matter, there can be no doubt that the payment would have come within the terms of reference. It is immaterial that the views of the member might largely have been the same as those of the persons paying. It is immaterial even that the payment might have been made merely to be sure that a strong effort would be made. It would be impossible to say that the money was not paid for the purpose of influencing the conduct and judgment of the member. I do not think that upon this point the case for the three members can be put higher than the case of the hypothetical member referred to. In fact, it is not so high because, even before their entry into Council, there was an arrangement by which they had to keep in contract with the Associations and voice their views. The payments which they received had something of the quality of a general retainer. To say that the payments had no influence on them is too abstract a proposition to be related to reality.

34. *Differences between three European Members and others.* There are differences between the cases of the three European members whom I find come within the terms of reference and the cases of the others. There was nothing furtive about the payments they received. The fact that they received remuneration was widely known in the Island. It was stated to me in evidence by them that the receipt of remuneration has never been challenged so far by anyone. This means that there has been up to now, at any rate, a tacit acquiescence by the community as a whole in the payment. The Rural European Member under the Constitution of 1923 received remuneration from the Planters' Association sometime after that Constitution become operative. The principle of payment had thus been adopted even before the State Council came into existence. The absence of challenge is thus all the more notable. It is not within the scope of my functions to approve or disapprove the payments received by these three members (*vide* paragraph 2). I must be content with pointing out that there are differences and leave it to others to use my findings for whatever purpose they may choose. It may not perhaps be out of place for their assistance here to state that the legal implications of the payment of a Member of Parliament by a person or body of persons for the purpose of securing their votes or of influencing them was fully discussed in the House of Lords by Lord Shaw in the Osborne Case reported at page 787 in Volume 101 of the Law Times Reports. The propositions there laid down may, of

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D 2. course, need adaptation before they are applied to members of the State Council of Ceylon.

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35. *Election of Ministers.* There is a current belief that in the matter of the election of Ministers and acting Ministers by members of Executive Committees gratifications have been paid by candidates to their fellow-members of the same Committee. Such gratifications would have been paid in circumstances which would admit of the observance of secrecy and would, consequently, be more than usually difficult to discover. The incidents would have taken place among people thrown together frequently in the course of their work and consequently with ample opportunities of contact and approach. No direct evidence has been placed before me of such gratifications and such evidence as has been given was based on rumour and amounted to nothing more than hearsay (*vide* Appendix G). While I am unable to discover any specific instance of the payment of a gratification for the purpose mentioned and unable even to say with difiniteness that such gratifications have been paid, I, nevertheless, think it likely that the nine (excluding the European members) members, to whom I have made reference in paragraph 16, would have accepted gratifications for this purpose if they had been approached. The general influence of their presence and behaviour would have made itself felt in this matter also both in the Committees of which they are members and in the minds of the general public. The notions entertained about them have led, I think, to beliefs out of proportion to the facts. It is possible that on one or more occasions candidates, not necessarily the successful ones, have paid gratifications to the members mentioned. 10 20

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36. *Cases of suspicion only.* There has been evidence relating to incidents upon which I cannot, in justice to the members concerned, hold that they have accepted gratifications but upon which there is room for strong suspicion. I will by way to illustration give three instances.

37. *An Urban Council nomination incident.* In one case a person (Mr. X) asked a professional man (Mr. P) to intervene on his behalf to secure nomination to an Urban Council. Mr. X told Mr. P that a gratification could be paid to a certain member to secure his support in the Local Administration Committee but Mr. P advised strongly against such a course. Some time later Mr. P on meeting Mr. X inquired whether the gratification has been paid and then Mr. X admitted that it had. Mr. X confronted with Mr. P's evidence admitted to me that a gratification had been paid but stated that it had been paid on his behalf by the leader (Mr. L) of a certain section of the Urban Council and that the latter had told him of the payment. Mr. X said he did not take any direct part in arranging or paying the gratification. Mr. L denied that he paid a gratification to a Councillor or that he had anything to do with such a thing. Now the evidence against the Councillor consists only of the evidence of Mr. X. It is purely hearsay. It is impossible upon this evidence to hold against the Councillor concerned that a gratification was received. But the following impressions were clearly formed by me. There was no need 30 40

from Mr. X to tell Mr. P an untruth. Mr. X knew that he would not rise in Mr. P's estimation and there could have been no direct or indirect motive for Mr. X to tell an untruth to Mr. P. The occasion of the communication was such that nothing but the overriding claims of truth could have induced Mr. X to say what he did to Mr. P. As between Mr. X and Mr. L, what is the truth? It is impossible for me to be sure. Either Mr. X handed the gratification himself and not wishing to say so in giving evidence before me brought Mr. L into it falsely or Mr. L is giving false evidence in denying that he paid a gratification. There is also the possibility that Mr. L told
 10 Mr. X that he had paid a gratification without having done so. This last-named possibility seems most unlikely to me upon the details of the case (Appendix H). As against the member there is, however, only hearsay evidence and this, on well-founded principles, is insufficient for purposes of proof. Suspicion only is established.

38. *A Municipal Council nomination incident.* In another case (Appendix HH) I received information that a certain gentleman (Mr. X) in affluent circumstances had paid a gratification to secure for his brother the support of a member of the State Council in the Committee of Local Administration in the matter of a nomination to a Municipal Council.
 20 Incidentally I may mention that the candidate was unsuccessful. I summoned Mr. X, who at first stated that he had heard that a gratification had been paid but denied any further knowledge of it. He made to me the highly improbable statement that, though he was very interested in his brother and was working actively for him, he did not, when he heard that it had been paid, inquire how much had been paid or to whom it had been paid or by whom it had been paid. In fact, he professed to have forgotten the name of the person who had told him about it. After indulging in a number of fanciful stories, all of which were palpably untrue, this witness said he would like to "cancel" all that he had previously stated
 30 and tell me the truth. He then went on to say that he and another person, out of the Island at the time of the inquiry, had paid a certain member of the Committee of Local Administration Rs. 1,000 to be divided between himself and another member of the Committee. The rendezvous for the payment was Walkers Petrol Station. There was no other evidence available upon the incident. The Councillor denied the payment. The evidence of Mr. X was open to serious criticism in that it lacked frankness and in that it changed from one story to another. It was impossible on his uncorroborated evidence to hold that the money had been paid to the member mentioned. Yet I have received the following clear impressions.
 40 Mr. X was a most reluctant witness. I do not think that in his earlier evidence he ran the grave risk of being punished for giving false evidence for any object other than that of shielding himself and the member concerned from the truth. I do not think that he mentioned the particular Councillor to shield another. His very reluctance prompts the belief that his final statement is true. Here then again grave suspicion arises but proof is lacking.

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39. *Another Urban Council nomination incident.* In another instance (Appendix HI) the Principal of a College, who was also a candidate for nomination to an Urban Council, stated to me that together with a proctor friend he visited the house of the member of the Committee of Local Administration referred to in the last paragraph in order to press his case. When this was being done, the Councillor abruptly interrupted the candidate and his friend and told them that another candidate was spending lavishly. Both the candidate and his friend have stated on oath that from the tone and gesture of the Councillor they inferred without hesitation that a suggestion of a gratification was being made. Both of them came to this conclusion without consultation and immediately, so much so that they did not proceed any further but took their leave of the Councillor and moved away. From the demeanour of these witnesses and from what they said I felt that they were speaking the truth and that, in all probability, the inference which they had drawn was a correct one. The Councillor, on being confronted with the statements of the two witnesses, stated that he did not remember them and that in any case he repudiated the suggestion which they had made. The stage at which conversation ceased leaves the evidence insufficient to arrive at a finding against the Councillor that a gratification had been suggested but gives rise in my mind to strong suspicion. 10

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40. *Names in cases of suspicion should not be published.* In certain cases details of which appear in the appendices I have found that although there is no proof of the solicitation or receipt of gratifications there is room for strong suspicion. I have done so in order that I may place on record as fully and as accurately as I can the impressions created on my mind. These cases form part of the material upon which the views expressed in paragraph 42 are based. The question whether the report is to be published or not is not a matter for me. But with regard to these cases I desire to point out that the principle that every man must be presumed to be innocent until the contrary is proved has to prevail. Consequently I did not call upon any of the Councillors concerned for a defence although I asked for and received statements in two cases. The principle just mentioned, though given effective recognition by Courts of law, is frequently ignored elsewhere. In everyday affairs suspicion carries a taint which abstract legal principle is powerless to prevent. The fact that I have found suspicion established but proof lacking places on me a special responsibility with regard to these cases. I am of opinion that it would not be fair or proper to publish the names of the Councillors involved. I therefore request that Appendices H, HH, HI, and P be not published. The substance of the first three has been stated without disclosure of names in paragraphs 37, 38, and 39. The substance of Appendix P does not need special mention. The appendices could be seen by those who have to work out the details of the action, if any, consequent on decisions taken on this report. 20

41. *Seizure of salaries of members.*—Another factor which enters into the general consideration of the questions before me is the number of seizures of the salaries of Councillors which have taken place since the

present Council came into existence. The number of Councillors whose salaries have been seized is 18. The number of seizures has up-to-date reached the colossal figure of 2,912—a figure almost beyond the limits of comprehension. The range of the decrees in which the seizures were made was Rs. 11.61 to Rs. 56,200. Mr. Abeygunasekera's salary has been seized 732 times. This is the highest number of seizures of the salary of any single member. Mr. D. D. Gunasekera's salary has been seized 617 times. Seven members have had their salaries seized over a hundred times. It is, of course, not every person who is embarrassed by debt that will solicit, or agree to accept, a gratification. But there can be no doubt that financial embarrassment is frequently the precursor of the solicitation or acceptance of gratifications. It is a matter of common knowledge derived from experience in the courts that many a person held in high esteem has, in circumstances of financial embarrassment, descended to criminal misappropriation. Precise details of the number and nature of unsatisfied decrees against members of the Council are not known to the public but there is already sufficient knowledge on the subject as to give rise to public anxiety and misgiving.

42. *Unidentified receivers of gratifications.*—I feel that the terms of reference of the Commission impose upon me the duty not only of finding that certain specified members have accepted or solicited gratifications but also of ascertaining as far as I can to what extent the practice prevails among other members of Council whom I cannot identify. It is, of course, not likely that all cases of gratification that have taken place have come under inquiry. The estimate which I have formed from the evidence as a whole of the 124 witnesses who appeared before me and from material I have gathered elsewhere is that there are, in all probability, four members who have received gratifications, although I have not been able to identify them. This is an inference drawn from broad features. It is an impression for what it is worth. It necessarily is not as reliable as my earlier findings with regard to eight members. I am conscious that it has an unsatisfactory aspect in that it does not particularise persons and consequently does not release the innocent from suspicion. But it is the best that I can do when faced with the only kind of evidence obtainable in an investigation into bribery. I have considered carefully whether an impression such as this should be stated or whether silence is the wiser course. I felt it my duty to those for whose assistance I have been ordered to provide this Report that I should state it.

43. *Popular belief exaggerated.* I have found that, in all probability, nine Councillors (in addition to the three European members) come within the terms of reference. The actual number may be eight or ten, but not more. There is a widespread belief that it is much greater. One witness went so far as to suggest that the practice extended through the whole length and breadth of the Council's activities. Mr. Francis de Zoysa, now unfortunately dead, on May 15, 1941, suggested guardedly in Council that current belief left untouched only "20 or 30" members (*vide* Hansard of

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that date). On a consideration of the evidence given by the witnesses, on a reading of the debates in Council and of articles in the press, I have no doubt that for the larger part these beliefs are honestly held. But strength of belief, apart from other considerations, is not a test of truth. Executive decisions are taken after weighing up a number of factors, some in favour of a decision, some against it. In the eyes of interested persons the factors in their favour loom larger than those against them. Many disappointed persons honestly think that a decision against them in a perverted decision and surmise that a gratification has prompted it. There are still other persons less honest who, though they do not believe that a decision is perverted, attack it on all available grounds, including the ground of gratification, merely because it happens to be a decision against them. These factors tend to make popular belief out of proportion to the truth. Leavened by a certain amount of truth it swells to an inordinate size.

44. In conclusion, I have to express my indebtedness to counsel who appeared before me. Without a Crown law officer to handle witnesses it would have been difficult for me to function judicially at the final inquiries at which Councillors were represented or present. I am particularly indebted to Mr. M. F. S. Pulle, Crown Counsel, who assisted me with ability and restraint. His moderation in the handling of witnesses greatly aided my efforts to arrive at calm decisions. I have also to express my indebtedness to Mr. G. S. Peiris, the Assistant Secretary, who, in the absence of the Secretary, Mr. R. B. Naish, called away early on war work, did the secretarial work creditably.

I beg to remain,
Your most obedient servant,
L. M. D. DE SILVA,
Commissioner.

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- A, A1, A2, Bills. 30
- B. Allegation that on or about October 11, 1937, gratifications were paid to Messrs. E. W. Abeygunasekera, C. Batuwantudawe, E. R. Tambimuttu, and H. A. Gunasekera, members of the Executive Committee of Home Affairs, to secure their support in Committee for the candidature of one Mr. Loku Bandara Attanayake for the post of Ratemahatmaya of Matale East.
- C. Allegation of payment of gratifications to Messrs. C. Batuwantudawe, E. W. Abeygunasekera, E. R. Tambimuttu, and H. A. Gunasekera for the purpose of securing their services in the Executive Committee of Home Affairs in the matter of the extension of a Government contract. 40
- CC. Allegation that Mr. E. W. Abeygunasekera solicited gratifications for himself and State Councillors by handing to one Mr. William, an omnibus owner, a list of members who according to him, could have

been bought at a price to vote against the motion relating to the reorganization of the Omnibus Services moved in the State Council by the Honourable the Minister for Local Administration on July 9, 1942.

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- D. Allegation that a sum of Rs. 75 was paid by one Mr. H. R. P. Fernando, a dismissed Excise Officer, and accepted by Mr. E. W. Abeygunasekera, who in consideration of this and of a further sum of Rs. 225 to be paid to him later undertook to press for the reinstatement of Mr. Fernando.
- 10 E. Allegation, solicitation, and acceptance of a gratification on July 28, 1942, by Mr. D. D. Gunasekera for the purpose of opposing a motion introduced in the State Council on July 9, 1942, by the Minister of Local Administration in connection with the reorganization of Omnibus Services.
- F. Allegation that gratifications by way of reward have been received by Messrs. H. E. Newnhan, H. F. Parfitt, E. C. Villers, and F. H. Griffith in connection with the work done by them in the State Council and the Committees thereof for the Chamber of Commerce, the Ceylon Estates Proprietary Association, the Planters' Association, and the European Association respectively.
- 20 G. Statement of Mr. L. M. Gunaratne.
Statement of Mr. Simon Abeyratne.
- GG. Allegation that Mr. D. P. Jayasuriya asked for a loan of Rs. 1,000 as a gratification for advancing the candidature of one Mr. Roland de Silva for a post in the Government Electrical Department.
- H. }
HH. } Note. Appendices H, HH and HI are omitted, *vide* paragraph 40
HI. } of the report on page 11.
- 30 J. Allegation that Mr. George E. de Silva solicited a gratification from one Mr. S. C. de Zylva in connection with a motion regarding salary of teachers.
- K. Allegation that Mr. George E. de Silva received a sum of Rs. 105 to present a petition to the State Council on behalf of one Jamaldeen Adahan.
- L. (1) Allegation that Mr. C. W. W. Kannangara received a gratification of Rs. 250 from one Mr. H. A. S. Piyasena, Assistant Teacher at Kandagoda School, to be appointed Head Teacher of that school.
(2) Allegation that Mr. C. W. W. Kannangara received a gratification to appoint one Mrs. Gunasekera as Head Teacher.
- 40 M. Allegation that Mr. C. W. W. Kannangara accepted a gratification of Rs. 250 from one Mr. Julius Lecamvasam, a teacher, on the promise of using his influence to prevent the transfer of Mr. Lecamvasam from the Agalawatte School at which he was stationed.

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- N. Allegation of the payment of a gratification to Mr. C. W. W. Kannangara to secure his influence in favour of a school at Kittammahara.
- O. (1) Allegation that a sum of Rs. 250 was paid to Mr. A. E. Goonesinghe on behalf of one Mrs. R. P. Kaluarachchi, a teacher, in order to secure his services in connection with the question of her transfer from one station to another.
- (2) Allegation that Mr. C. W. W. Kannangara solicited a gratification of Rs. 500 to use his influence in the matter of transfer of Mrs. R. P. Kaluarachchi from one station to another. 10
- P. NOTE.—Appendix P is omitted, *vide* paragraph 40 of the report on page 11.
- Q. Allegation of the receipt of gratifications by Mr. G. C. S. Corea.
- R. Statement of Mr. C. M. Edwin de Silva :
- (1) Allegation of the solicitation of a gratification by Mr. A. E. Goonesinghe for services rendered and to be rendered to Mr. de Silva in the matter of obtaining the latter's reinstatement in the Excise Department.
- (2) Allegation that other Councillors ceased to support Mr. de Silva's efforts to obtain reinstatement by reason of receipt of 20 gratification from interested parties.
- S. Allegation of a payment of a gratification of Rs. 100 to Mr. A. E. Goonesinghe to induce him to use his influence to secure the transfer of one Mr. H. P. C. Fernando, a minor official in the Railway, from Nawalapitiya to Colombo.
- T. Allegation that certain Councillors received loans and other gratifications from the caterers to the State Council.
- U. Allegation that Mr. Susanta de Fonseka received a gratification to desist from working on behalf of one Mr. L. D. Nepo Singho, whose innocence in the matter of a conviction on a charge of selling ganja 30 he was at the time endeavouring to establish.
- V. Allegation by Mr. L. B. Tillekeratne that Mr. E. W. Abeygunasekera accepted a gratification of Rs. 70 from him to further his interest as a teacher.
- W. Statement of Mr. P. A. Dissanayake, Village Committee Chairman, Hanguranketa.
- X. Statements of A. P. S. Gunasekera, Barathanu Silva and Alwis Silva.
- Y. Statement of Mr. C. A. Tranchell.
- YY. Statement of Mr. E. E. Davidson.
- Z. Statement of Mrs. Grace Clara Wijesinghe. 40
- ZZ. Statements of Messrs. P. S. Seyed Ibrahimso Marikar and W. A. de Silva.

APPENDIX A.

MINUTE.

The following Draft of a proposed Ordinance is published for general information : —

L.D.—CF 13/41

An Ordinance to supplement the provisions of the Commissions of Inquiry Ordinance for the purposes of an inquiry to be held in pursuance of a special Commission issued by the Governor.

10 BE it enacted by the Governor of Ceylon, with the advice and consent of State Council thereof, as follows : —

1. This Ordinance may be cited as the Special Commission (Auxiliary Provisions) Ordinance, No. of 1941. Short title.

2. (1) In this Ordinance, unless the context otherwise requires— Interpretation and construction.

“ Commissioner ” means the Commissioner appointed in the special Commission issued by the Governor.

20 “ Special Commission ” means the Commission issued by the Governor under the Seal of the Island on the thirteenth day of August, 1941, the text of which is reproduced in the Schedule to this Ordinance.

(2) This Ordinance shall be read and construed as one with the Commissions of Inquiry Ordinance : Cap. 276.

Provided that in any case of conflict or of inconsistency between the provisions of this Ordinance and those of the Commissions of Inquiry Ordinance, the provisions of this Ordinance shall prevail.

3. Subject to the provisions of section 9, no person shall, in respect of any evidence, written or oral, given by Protection and immunity of witnesses.

30 that person to or before the Commissioner, be liable to any action, prosecution or other proceedings in any civil or criminal court.

4. Subject to the provisions of section 9, no evidence of any statement made or given by any person to or before the Commissioner for the purposes of the Special Commission shall be admissible against that person in any action, prosecution, or other proceedings in any civil or criminal court. Inadmissibility in courts of law of evidence given before the Commissioner.

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Name and
 evidence of
 person giving
 evidence *in*
camera not to
 be published.

5. The Commissioner may, in his discretion, hear the evidence or any part of the evidence of any witness in *in camera* and may, for such purpose, exclude the public and the press from the inquiry or any part thereof :

Provided that the Commissioner shall hear the evidence of any witness *in camera* and shall exclude the public and the press during the hearing of such evidence where a request is made to the Commissioner by that witness in that behalf.

6. (1) Where the evidence of any witness is heard *in camera*, the name and the evidence or any part of the evidence of that witness shall not be published by any person save with the authority of the Commissioner :

Provided that where the evidence of any witness is heard *in camera* in pursuance of a request made by him in that behalf, the Commissioner shall not, under the preceding provisions of this sub-section, authorise the publication of the name of that witness except with the consent of that witness.

(2) A disclosure, made *bona fide* for the purposes of the inquiry, of the name or of the evidence or part of the evidence of any witness who gives evidence *in camera* shall not be deemed to constitute publication of such name or evidence within the meaning of sub-section (1).

(3) Notwithstanding anything in the preceding provisions of this section, the Commissioner may, in his report, publish or disclose the name of any witness who, being a member of the State Council, gives evidence for the purpose of explaining, meeting or refuting any charge or allegation made against him in the course of the inquiry.

Commissioner
 to be a public
 servant.
 Cap. 15.

7. The Commissioner shall, so long as he is acting as Commissioner, be deemed to be a public servant within the meaning of the Penal Code.

Protection and
 immunity of
 Commissioner.

8. The Commissioner shall not, in respect of any act or thing, done or omitted to be done by him in his capacity as Commissioner, be liable to any action, prosecution or other proceeding in any civil or criminal court.

Saving of
 penalties and
 proceedings for
 perjury before
 the
 Commissioner.

9. Nothing in this Ordinance shall—

(a) abridge or affect or be deemed or construed to abridge or affect the provisions of section 4 of the Commissions of Inquiry Ordinance or the liability of any person to any prosecution or penalty for any offence under Chapter XI of the Penal Code ; or

(b) prohibit or be deemed or construed to prohibit the publication or disclosure of the name or of the evidence or any part of the evidence of any witness who gives evidence at the inquiry, for the purposes of the prosecution of that witness for any offence under Chapter XI of the Penal Code.

10 **10.** Any person who acts in contravention of any of the provisions of this Ordinance shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment. Offences.

Schedule.

COMMISSION.

By His Excellency Sir ANDREW CALDECOTT, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Most Excellent Order of the British Empire, Governor and Commander in-Chief in and over the
20 Island of Ceylon with the Territories and Dependencies thereof.

(L.S.)

A. CALDECOTT.

To LUCIAN MACULL DOMINIC DE SILVA, Esquire, K.C.

GREETING.

WHEREAS I have deemed it necessary to issue a Commission to inquire into and report upon the matters hereinafter mentioned upon which information is, in my opinion, necessary.

30 Know Ye that I, Andrew Caldecott, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Commander of the Most Excellent Order of the British Empire, Governor and Commander-in-Chief in and over the Island of Ceylon with the Territories and Dependencies thereof, reposing great trust and confidence in your prudence, ability and fidelity, do by these presents nominate, constitute and appoint you the said Lucian Macull Dominic de Silva, one of His Majesty's Counsel learned in the law, to be my Commissioner for the purpose of inquiring into and reporting upon the following questions:—

40 (a) whether gratifications by way of gift, loan, fee, reward, or otherwise, are or have been offered,

Exhibits

D 2.

True copy of
the Report of
the Bribery
Commission,
May, 1943
—continued

Exhibits

D 2.

True copy of
the Report of
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May, 1943
—continued

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promised, given or paid to members of the existing State Council, with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction for which they, in their capacity as members of that Council or of any Executive or other Committee thereof, are, have been, may be, or may claim to be, concerned, whether as of right or otherwise ; and

- (b) whether such gratifications are or have been solicited, demanded, received or accepted by members of the 10 existing State Council as a reward or recompense, for any services rendered to any person or cause, or for any action taken for the advantage or disadvantage of any person or cause, or in consideration of any promise or agreement to render any such services or to take any such action, whether as of right or otherwise, in their capacity as members of that Council or of any Executive or other Committee thereof.

And I hereby authorise and empower you to hold all 20 such inquiries and make all such investigations into the aforesaid matters as may appear to you to be necessary ; and I do hereby require you to transmit to me a report thereon under your hand as early as possible.

And I do hereby require and direct all public officers and other persons to whom you may apply for assistance or information for the purposes of this inquiry, to render all such assistance or furnish all such information as may properly be rendered or furnished in that behalf.

Given at Colombo, under the seal of this Island, the 30 thirteenth day of August, 1941.

By His Excellency's command,

E. R. SUDBURY,
Secretary to the Governor.

Objects and Reasons.

On May 15, 1941, the State Council unanimously passed a resolution to the effect that a Commission should be appointed to inquire into charges of bribery and corruption made against members of the Council. His Excellency the Governor has accordingly appointed Mr. L. M. D. de Silva, 40 K.C., to be his Commissioner for the purpose of holding the necessary inquiry. The text of the Commission is reproduced in the Schedule to the Bill.

2. The object of this Bill is to supplement the provisions of the Commissions of Inquiry Ordinance for the purposes of the inquiry to be held in pursuance of the Commission which has been issued.

3. Under the existing law, a State Councillor is not a public servant within the meaning of the Penal Code and consequently, it is not an offence for any person to offer any gratification to a Councillor for any service rendered or to be rendered by that Councillor not is it an offence for a
 10 Councillor to accept any such gratification for any such service. It has however been considered desirable to grant statutory immunity and protection to all persons who give evidence before the Commissioner and to provide that such evidence shall be inadmissible against the witness in any proceedings in a civil or criminal court. (Clauses 3 and 4). This immunity is intended to protect witnesses against possible actions or prosecutions for defamation, &c., but any witness who gives false evidence before the Commissioner on oath or affirmation can be prosecuted and punished for
 20 perjury. (Clause 9).

4. The Commissioner can, in his discretion, hear the evidence of a witness *in camera*, and may exclude the press and the public during such hearing. Where a request is made by a witness that his evidence should be heard *in camera*, the Commissioner will be compelled to exclude the press and the public from the inquiry. (Clause 5).

5. The unauthorised publication in the press or otherwise of the name or evidence of a witness who gives evidence *in camera* will be an offence ; but the disclosure of the name
 30 of such witness or of his evidence to counsel at the inquiry or to other persons will not constitute an offence if such disclosure is made *bona fide* for the purposes of the inquiry.

6. The Commissioner is himself declared to be a public servant within the meaning of the Penal Code and is protected against any suit or other proceedings in a civil or criminal court in respect of any action which he may take in his capacity as Commissioner. (Clauses 7 and 8).

7. The principal object of the auxiliary provisions set out in this Bill is to enable witnesses who are in a position
 40 to testify on matters which are the subject of the inquiry to give evidence before the Commissioner without fear of possible prosecutions or actions in the courts by Councillors or other persons who may be named or against whom allegations may be made, in the course of such evidence.

Exhibits

D 2.

True copy of
 the Report of
 the Bribery
 Commission,
 May, 1943
 —continued

Exhibits
 D 2.
 True copy of
 the Report of
 the Bribery
 Commission,
 May, 1943
 —continued

8. The terms of reference of the Commission restrict the scope of the inquiry to charges and allegations that may be made against members of the *existing* State Council.

Chambers, Hulftsdorp,
 Colombo, August 13, 1941.

ROBERT H. DRAYTON,
 Legal Secretary.

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APPENDIX A I.

Ordinance No. 25 of 1942.

L. D.—CF 13/41

An Ordinance to supplement the provisions of the Commissions of Inquiry Ordinance for the purposes of an inquiry to be held in pursuance of a Special Commission issued by the Governor.

[Assented to by His Majesty the King : See Proclamation dated July 11, 1942, published in Government Gazette Extraordinary No. 8,966 of July 13, 1942].

A. CALDECOTT

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

Short title. **1.** This Ordinance may be cited as the Special Commission (Auxiliary Provisions) Ordinance, No. 25 of 1942.

Interpretation and construction. **2.** (1) In this Ordinance, unless the context otherwise requires—

“Commissioner” means the Commissioner appointed in the special Commission issued by the Governor;

“Special Commission” means the Commission issued by the Governor under the Seal of the Island on the thirteenth day of August, 1941, the text of which is reproduced in the Schedule to this Ordinance.

Cap. 276. (2) This Ordinance shall be read and construed as one with the Commissions of Inquiry Ordinance.

Provided that in any case of conflict or of inconsistency between the provisions of this Ordinance and those of the Commissions of Inquiry Ordinance, the provisions of this Ordinance shall prevail.

Protection and immunity of witnesses. **3.** Subject to the provisions of section 10, no person shall, in respect of any evidence, written or oral, given by

that person to or before the Commissioner at the inquiry, be liable to any action, prosecution or other proceedings in any civil or criminal court.

4. Subject to the provisions of section 10, no evidence of any statement made or given by any person to or before the Commissioner for the purposes of the Special Commission shall be admissible against that person in any action, prosecution, or other proceedings in any civil or criminal court.

Inadmissibility in courts of law of evidence given before the Commissioner.

5. The Commissioner may, in his discretion, hear the
10 evidence or any part of the evidence of any witness *in camera* and may, for such purpose, exclude the public and the press from the inquiry or any part thereof.

Power of Commissioner to hear evidence *in camera*.

6. (1) Where the evidence of any witness is heard *in camera*, the name and the evidence or any part of the evidence of that witness shall not be published by any person save with the authority of the Commissioner.

Name and evidence *in camera* not to be published.

(2) A disclosure, made *bona fide* for the purposes of the inquiry, of the name or of the evidence or part of the evidence of any witness who gives evidence *in camera* shall not be
20 deemed to constitute publication of such name or evidence within the meaning of sub-section (1).

7. (1) Where the Commissioner is satisfied that any person has wilfully given false information to him for the purposes of the inquiry of that any person has wilfully given false evidence at the inquiry, the Commissioner may sentence such person summarily to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months.

Power of Commissioner summarily to punish persons who give false information or evidence.

(2) The powers of the Commissioner under sub-section
30 (1) to punish any person who wilfully gives false information to him for the purposes of the inquiry may be exercised by the Commissioner on his own motion or on application made to him in that behalf by any person affected or aggrieved by the information so given.

(3) For the purpose of the effectual exercise of the powers conferred on the Commissioner by sub-section (1), the Commissioner shall be deemed to be a court and any sentence imposed or warrant or other process issued by the Commissioner shall be deemed to be a sentence, warrant or
40 process, as the case may be, of the Supreme Court and shall have-effect accordingly.

(4) Any order made by the Commissioner in the exercise of the powers vested in him by the preceding provisions of this section shall be final.

Exhibits

D 2.

True copy of the Report of the Bribery Commission, May, 1943
—continued

Exhibits
 ———
 D 2.
 True copy of
 the Report of
 the Bribery
 Commission,
 May, 1943
 —continued

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Saving of
 penalties and
 proceedings for
 perjury before
 the
 Commissioner.

Offences.

Power of the
 Commissioner
 to order
 payment of
 costs.

8. The Commissioner shall, so long as he is acting as Commissioner, be deemed to be a public servant within the meaning of the Penal Code.

9. The Commissioner shall not, in respect of any act or thing, done or omitted to be done by him in his capacity as Commissioner, be liable to any action, prosecution or other proceeding in any civil or criminal court.

10. Nothing in this Ordinance shall—

(a) abridge or affect or be deemed or construed to abridge or affect the provisions of section 4 of the Commission of Inquiry Ordinance or the liability of any person to any prosecution or penalty for any offence under Chapter XI of the Penal Code ; or

(b) prohibit or be deemed or construed to prohibit the publication or disclosure of the name or of the evidence or any part of the evidence of any witness who gives evidence at the inquiry, for the purpose of the prosecution of that witness for any offence under Chapter XI of the Penal Code.

11. Any person who acts in contravention of any of the provisions of this Ordinance shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine Not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

12. (1) The Commissioner may, by order, direct that any person who has failed to substantiate any charge preferred by him at the inquiry in respect of any Councillor shall pay to that Councillor such sum as may be specified in the Order to defray the costs, if any, incurred by that Councillor in meeting or refuting the charge preferred against him.

(2) An order under sub-section (1) may, on application made to a Magistrate's Court, be enforced against the person named in the order as though the sum directed to be paid by that person were a fine imposed upon him by that Court.

Schedule.

C O M M I S S I O N .

By His Excellency Sir ANDREW CALDECOTT, Knight Grand
 Cross of the Most Distinguished Order of Saint
 Michael and Saint George, Commander of the
 Most Excellent Order of the British Empire,
 Governor and Commander-in-Chief in
 and over the Island of Ceylon
 with the Territories and
 Dependencies thereof.

10

L.S.

A. CALDECOTT.

To LUCIAN MACULL DOMINIC DE SILVA, Esquire, K.C.

GREETING.

WHEREAS I have deemed it necessary to issue a
 Commission to inquire into and report upon the matters
 hereinafter mentioned upon which information is, in my
 opinion, necessary.

Know Ye that I, Andrew Caldecott, Knight Grand Cross
 of the Most Distinguished Order of Saint Michael and Saint
 20 George, Commander of the Most Excellent Order of the
 British Empire, Governor and Commander-in-Chief in and
 over the Island of Ceylon with the Territories and Dependen-
 cies thereof, reposing great trust and confidence in your
 prudence, ability and fidelity, do by these presents nominate,
 constitute and appoint you the said Lucian Macull Dominic
 de Silva, one of His Majesty's Counsel learned in the law, to
 be my Commissioner for the purpose of inquiring into and
 reporting upon the following questions :—

- 30 (a) whether gratifications by way of gift, loan, fee
 reward, or otherwise, are or have been offered,
 promised, given or paid to members of the existing
 State Council, with the object or for the purpose
 of influencing their judgment or conduct in respect
 of any matter or transaction for which they, in
 their capacity as members of that Council or of any
 Executive of other Committee thereof, are, have
 been, may be, or may claim to be, concerned,
 whether as of right or otherwise ; and
- 40 (b) whether such gratifications are or have been solicited,
 demanded, received or accepted by members of
 the existing State Council as a reward or
 recompense, for any services rendered to any person
 or cause, or for any action taken for the advantage

Exhibits

D 2.

True copy of
 the Report of
 the Bribery
 Commission,
 May, 1943
 —continued

Exhibits
 —
 D 2.
 True copy of
 the Report of
 the Bribery
 Commission,
 May, 1943
 —continued

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or disadvantage of any person or cause, or in consideration of any promise or agreement to render any such service or to take any such action, whether as of right or otherwise, in their capacity as members of that Council or of any Executive or other Committee thereof.

And I hereby authorise and empower you to hold all such inquiries and make all such investigations into the aforesaid matters as may appear to you to be necessary ; and I do hereby require you to transmit to me a report thereon 10 under your hand as early as possible.

And I do hereby require and direct all public officers and other persons to whom you may apply for assistance or information for the purposes of this inquiry, to render all such assistance or furnish all such information as may properly be rendered or furnished in that behalf.

Given at Colombo, under the seal of this Island, the thirteenth day of August, 1941.

By His Excellency's command,

E. R. SUDBURY, 20
 Secretary to the Governor.

Passed in Council the Thirty-first day of October, One thousand Nine hundred and Forty-one.

D. C. R. GUNAWARDANA,
 Clerk of the Council.

APPENDIX A2

Ordinance No. 26 of 1942.

L. D.—CF 13/41

**An Ordinance to amend the Ordinance intituled “ An 30
 Ordinance to Supplement the Provisions of the
 Commissions of Inquiry Ordinance for the purposes
 of an inquiry to be held in pursuance of a Special
 Commission issued by the Governor.”**

*[Assented to by His Majesty the King: See Proclamation dated
 July 11, 1942, published in Government Gazette
 Extraordinary No. 8,966 of July 13, 1942.]*

A. CALDECOTT.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:— 40

Short title.

1. This Ordinance may be cited as the Special Commission (Auxiliary Provisions) (Amendment) Ordinance, No. 26 of 1942.

2. In the event of the Bill intituled " An Ordinance to Supplement the Provisions of the Commissions of Inquiry Ordinance for the purposes of an inquiry to be held in pursuance of a Special Commission issued by the Governor " taking effect as an Ordinance upon the signification of His Majesty's assent thereto by Proclamation published in the *Government Gazette*, that Ordinance shall, with effect from the date of the publication of such Proclamation, be amended by the substitution, for section 12 of that Ordinance, of the following new section :—

12. (1) Where the Commissioner finds that a charge or allegation made or preferred against a member of the State Council has not been established, the Commissioner in his discretion may, if that member has been represented by counsel at the inquiry into such charge or allegation, award to that member, by order under his hand, such sum as the Commissioner may fix as the costs of such representation.

In fixing such sum, the Commissioner shall be guided, so far as may be, by the scales of costs and charges prescribed for proceedings in Class V. in Parts I. and II. of the Second Schedule to the Civil Procedure Code unless, in any particular case, the Commissioner is of opinion that costs should be awarded otherwise than in accordance with such scales. In this sub-section, " counsel " includes a Proctor.

(2) The payment of any sum awarded by the Commissioner by order under sub-section (1) shall be made out of public revenue and is hereby charged upon such revenue ; and any such payment shall be deemed to be a payment authorised by law for the purposes of the application of the provisions of Article 61 of the Ceylon (State Council) Order in Council, 1931.

Passed in Council the Fourth day of June, One thousand Nine hundred and Forty-two.

D. C. R. GUNAWARDANA,
Clerk of the Council.

Amendment of the Special Commission (Auxiliary Provisions) Bill, in the event of that Bill becoming law.

Exhibits
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D 2.
True copy of the Report of the Bribery Commission, May, 1943
—continued

Power of Commissioner to order payment of costs and circumstances in which such order may be made.

(Cap. 86).

APPENDIX B.

Exhibits

D 2.

True copy of
the Report of
the Bribery
Commission,
May, 1943
—continued

Allegation that on or about October 11, 1937, gratifications were paid to Messrs. E. W. Abeygunasekera, C. Batuwantudawe, E. R. Tambimuttu, and H. A. Gunasekera, Members of the Executive Committee of Home Affairs, to secure their support in Committee for the Candidature of one Mr. Loku Bandara Attanayake for the post of Ratemahatmaya of Matale East.

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Witnesses examined.—Messrs. Loku Bandara Attanayake, B. W. Fernando, H. A. C. Wickremaratne, Eva Marambe Attanayake Kum-10 arihamy, Messrs. A. Bhadurdeen, C. Ratwatte, T. L. A. Perera, D. A. Gunasekera, N. L. E. Edwin, J. B. Yatawara, Francis Wickremasuriya, Wilson Perera, J. Samaratinga, — James, L. L. Kerkoven, R. N. Wijesundera, A. M. Karunaratne, E. W. Abeygunasekera, H. A. Gunasekera, and E. R. Tambimuttu.

Finding. I find that Mr. E. W. Abeygunasekera arranged the payment of gratifications to himself and to the three others mentioned and that, in consequence of this arrangement, a sum of Rs. 500 was received by Mr. Abeygunasekera, a sum of Rs. 250 by Mr. C. Batuwantudawe, a sum, which I have not been able to fix but which is Rs. 250 or over, by Mr. 20 E. R. Tambimuttu, and a sum of Rs. 250 by Mr. H. A. Gunasekera on October 11 or 12, 1937, on the understanding that they would support the candidature of Mr. L. B. Attanayake to the post of Ratemahatmaya, Matale East.

2. *Comment.*—Mr. L. B. Attanayake made an application on July 16, 1937, for the post of Ratemahatmaya, Matale East. He was the son of Mr. K. B. Attanayake, retired Station Master living at the time, but dead at the time of the inquiry. He states that as a result of consultations between himself, his father and one Mr. Talwatte, also a retired Station Master, Mr. Abeygunasekera was approached and that he undertook to 30 secure the appointment if money could be found for the payment of gratifications to himself and the three other members mentioned. Mr. Attanayake states that he, his father, Mr. Talwatte and one Mr. B. W. Fernando came to Colombo from Kandy on October, 11, 1937, having on that day raised a sum of Rs. 2,000 on Bond No. 8,050 of the same date produced before me in evidence. Mr. Attanayake speaks of four occasions on which money passed on October 11 or 12, 1937— a payment to Mr. Gunasekera on the ground floor of the State Council building, a payment to Mr. Tambimuttu at his house, a payment to Mr. Batuwantudawe at his house and a payment to Mr. Abeygunasekera soon after lunch on the 40 second day. He says that on the occasion of these payments Mr. Abeygunasekera, his father, Mr. Talwatte, and Mr. Fernando accompanied him. Mr. Talwatte has also died since this date.

3. Mr. B. W. Fernando supports Mr. Attanayake on the question of these payments. Their evidence upon subsequent incidents connected with these transactions is supported by the evidence of Attanayake Kumarihamy, Mr. L. B. Attanayake's mother, and by Mr. H. A. C. Wickremeratne, proctor, and also by an entry in a book kept by the Colombo Apothecaries Company.

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D 2.
True copy of
the Report of
the Bribery
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—continued

4. Mr. Abeygunasekera denies these incidents in their entirety and suggests that the evidence has been given as the result of a conspiracy against him. He suggests also that this conspiracy has been hatched by Mr. Wickremeratne, who was at one time a member of the Sama Samaj party, against whose activities Mr. Abeygunasekera took a prominent part.

5. Mr. Gunasekera also denies the evidence against him in entirety. His defence is an *alibi* and a suggestion that the witness who spoke to his presence, if not deliberately giving false evidence, are mistaken as to his identity.

6. Mr. Tambimuttu denies the payment which is said to have taken place at his house and, while not denying the entirety of the evidence against him, suggests that certain action taken against him in the matter of sending a letter of demand was due to a mistake on the part of those who initiated that action.

7. Proceeding now to the details of the story, Mr. L. B. Attanayake states that his father consulted Mr. Talwatte as to how best the candidature for the post of Ratemahatmaya could be furthered. On Mr. Talwatte's suggestion contact was established with Mr. Abeygunasekera, who thereafter met the Attanayakes at Mr. Talwatte's house at Kandy. Mr. Abeygunasekera stated with confidence that the post could be secured with the influence of himself and the three other members mentioned and undertook himself to speak to the others on the question and to arrange for the payment of gratifications. He said that without paying money the post could not be secured and further that several people who had paid money had succeeded in getting other posts. The Attanayakes agreed to his suggestion. Mr. Abeygunasekera then wrote three telegrams in Mr. Talwatte's house to the others arranging to meet them on a matter of "paramount importance", words which appear to have been used by him as code words in connection with matters relating to gratifications. On October 11, 1937, the Attanayakes entered into Bond No. 8,050 in favour of Ana Suna Pana Nawanna Nagappa Chettiar, Ana Suna Pana Nawanna Annamalai Chettiar, and Ana Suna Pana Nawanna Suppramaniam Chettiar mortgaging certain immovable property in respect of a loan of Rs. 2,000. With this and perhaps other money in the father's custody the two Attanayakes, Mr. Talwatte and Mr. Fernando travelled to Colombo on the same date. On the morning of October 12, the party was introduced by Mr. Abeygunasekera to Mr. Gunasekera in a room on the ground floor of the State Council building and there, after a short discussion, a sum of Rs. 250 was paid to and received by Mr. Gunasekera in the presence of the

Exhibits
D 2.
True copy of
the Report of
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—continued

whole party. On the night of October 11 or 12—there is some confusion in the mind of Mr. Attanayake as to which date it was - Mr. Abeygunasekera accompanied the party to the house of Mr. Batuwantudawe where a sum of Rs. 250 was paid to him. From there the party, still accompanied by Mr. Abeygunasekera, went to the house of Mr. Tambimuttu and here again a sum which Mr. Attanayake is not now sure of but which he thinks was Rs. 250 or Rs. 325 was paid to and received by Mr. Tambimuttu.

Page 20

8. As stated earlier, Mr. Fernando supports Mr. Attanayake on the question of the payments. He is definite that a payment was made to Mr. Gunasekera on the morning of the 12th. He is not able to be absolutely definite as to whether the evening payments to Messrs. Batuwantudawe and Tambimuttu were made on the 11th or the 12th. He is agreed as to the amounts except that, with regard to Mr. Tambimuttu, he states with definiteness that Mr. Tambimuttu demanded and received a sum of Rs. 750 and not Rs. 250 as stated by Mr. Attanayake.

9. The Executive Committee of Home Affairs on January 11, 1938, decided to recommend another candidate for the post and this decision was communicated on January 13, 1938, to the Public Services Commission. On learning of this, the senior Attanayake was greatly incensed by what he rightly thought was a trick and consulted Mr. Wickremeratne, a proctor, 20 practising at Kandy. Mr. Wickremeratne states that he sent four letters of demand to the four Councillors concerned requesting the repayments of money paid to them without mentioning in them the purpose for which it had been paid. These letters were sent under registered cover and I have no doubt from the evidence that they were duly despatched.

10. The reactions of the four members to the letters of demand and the evidence relating to the incidents that happened after they were sent is of prime importance in arriving at a conclusion whether or not the allegation of gratifications is true. Mr. Wickremeratne states that Mr. Batuwantudawe saw him, admitted the incident, paid back a certain sum of 30 money and promised to see that the balance was paid. I need not dwell upon the details of the evidence. It suffices to say that two letters produced establish beyond doubt the truth of Mr. Wickremeratne's evidence on this point. Mr. Wickremeratne produced a copy of a letter entered in a book which I have no doubt is genuine, which reads as follows :—

“ 7th March, 1938.

Hon. Mr. C. Batuwantudawe,
Acting Minister of Home Affairs,
Colombo.

My dear Mr. Batuwantudawe,

40

I received your telegram, but your promise has not yet materialized. My client is pestering me and am afraid it will not be possible to hold out any further.

Mr. Abeygunasekera has not paid any portion of the Rs. 500 taken by him and do not think he will make any honest effort to settle this debt. It looks as the situation is becoming more and more tangled. I am not too keen on appearing in a case like this, but if the matter goes out of my hands the situation will not improve from your point of view.

I shall be obliged if you will give this matter your immediate attention.

Yours sincerely,
H. A. C. W."

The original of a letter from Mr. Batuwantudawe dated presumably March 15 (it is dated 15/3 but the '3' is not easily decipherable) was also produced, which reads :—

" 26, Palmyrah Avenue,
Colpetty,
15/3.

Dear Wickremaratne,

I am very sorry you missed me. I was away at Jaffna on business and arrived today. I am sorry for the delay in replying your letter. I am writing this to inform you that I will attend to it positively on the 26 or 27th latest. I told our friend to reply he promised to see you at Kandy. I will press him to reply to your letter.

With kind regards.

Sincerely yours,
CHAS. BATUWANTUDAWE."

The words "missed me" is a reference to an occasion on which Mr. Wickremaratne, who appears for personal reasons to have been well-disposed towards Mr. Batuwantudawe, visited him and found him not at home.

11. Statements made by Mr. Batuwantudawe were objected to by counsel who appeared for Messrs. Abeygunasekera and Gunasekera and by Mr. Tambimuttu as statements which, having been made by a deceased person, were not in law admissible in evidence against them. It was arguable that some of these statements were against the "pecuniary interest" of Mr. Batuwantudawe and as such admissible under section 32 of the Evidence Ordinance. The point, however, was not free from doubt and I upheld the objection as the fairer course. I have not taken into account anything said by Mr. Batuwantudawe in considering the cases against the others.

12. Mr. H. A. Gunasekera giving evidence before me denied that he had received a letter of demand. As against this there is the evidence of Mr. Wickremaratne that a letter of demand had been sent to him and had not been returned. Mr. Gunasekera suggested that it was possible that a registered letter might have gone astray through a faulty address or even

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—continued

Exhibits if the address had been the correct one. But I think this is most unlikely.

D 2.

True copy of
the Report of
the Bribery
Commission,
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—continued

On November 21, 1942, I wrote to Mr. Gunasekera a letter in which three facts were stated as emerging from the evidence against him—Firstly, that he received a sum of Rs. 250 from the Attanayakes to advance the case of the younger Attanayake in the matter of an application to be appointed Ratemahatmaya, Matale East; secondly, that Mr. Wickremaratne had sent a letter of demand asking for the return of the money; thirdly, that, according to the evidence this sum of money had been returned by him.

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Mr. Gunasekera says he received my letter on November 30. He had time till December 15 to furnish a short statement outlining his case. On Decem- 10
ber 12, he furnished a statement—

- (1) denying that he received the sum of Rs. 250;
- (2) denying that he had returned the sum of Rs. 250;
- (3) making no reference to the letter of demand.

I am of opinion that this was deliberately done and that Mr. Gunasekera was anxious as long as he was able to leave his reply to the question of the letter of demand open. I think he received it. This is confirmed by the view that I have formed that Mr. Gunasekera returned the sum of Rs. 250 (*vide* paragraph 27). The position, I think, is that he received the letter of demand and, without replying to it, returned the money to Mr. 20
Wickremaratne through Mr. Batuwantudawe without committing himself to writing in any way.

13. Mr. Tambimuttu states that, on receiving the letter of demand, he was very much surprised as he had never in his life received a gratification and as this was the first allegation of a gratification ever made against him. Giving evidence on oath before me he stated that he suspected blackmail. His conduct, however, was extremely curious. In the first place, he did not reply to this letter. He made no sort of complaint to the Police or to anyone else. Instead, he went to the house of the Attanayakes at Nawalapitiya and, according to him, he asked the Attanayakes what the 30
meaning of the letter of demand was. Mr. L. B. Attanayake and his mother both stated that on the occasion of this visit he returned the full amount of the money which he had received. The mother swears that she saw this payment and, whatever one may say about Mr. L. B. Attanayake himself (*vide* paragraph 16), I have no hesitation in accepting the evidence of the mother who struck me as a truthful and reliable witness. The mother's evidence had been sent to Mr. Tambimuttu by me before he gave evidence and I have no doubt that Mr. Tambimuttu's admission that he paid a visit to the house was induced by the fact that it was impossible to get over the mother's evidence with regard to that visit. According to 40
Mr. Tambimuttu, on the occasion of the visit he received a letter from the senior Attanayake to Mr. Wickremaratne to the effect that a mistake had been made, that accompanied by the younger Attanayake he visited Mr. Wickremaratne at Kandy on the same day and that Mr. Wickremaratne, following the instructions contained in the letter from Mr. Attanayake,

gave Mr. Tambimuttu a letter signed by himself to the effect that the letter of demand had been sent through a misunderstanding. Mr. Tambimuttu says that he had this letter for a considerable length of time and that he has now lost it. Mr. Wickremaratne hotly denied that he had given Mr. Tambimuttu any such letter. Mr. Tambimuttu addressing me argued that due allowance must be made for the length of time which has elapsed since the alleged incident and that he cannot be expected to have retained a letter for so many years. There is no doubt substance in this argument. But the point which impresses me is not failure of Mr. Tambimuttu to produce the letter but the fact that Mr. Wickremaratne denies having given it. If Mr. Wickremaratne had been perjuring himself, and indeed there is no reason why he should do so, he was on very dangerous ground because, if he had given a letter, he could not be sure that Mr. Tambimuttu had lost it or that, if it had been lost, Mr. Tambimuttu might not discover it at any moment. Quite apart from this, I am convinced upon the case as a whole that Mr. Wickremaratne's evidence upon this point is truthful and accurate. On questions of detail there were certain inaccuracies due to lapse of time in Mr. Wickremaratne's evidence which he himself quite frankly admitted. But there is no doubt (*vide* paragraph 18) that Mr. Wickremaratne is an honest witness trying to be as accurate as he can. I do not think upon so salient a point of so striking a character as the giving of a letter to a member of the State Council withdrawing a demand made on instructions that a gratification had been paid, Mr. Wickremaratne could make a mistake. No animosity against Mr. Tambimuttu on his part did or does exist, and I do not believe for a moment the story that Mr. Wickremaratne handed a letter to Mr. Tambimuttu exculpating him.

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14. The registered letter sent to Mr. Abeygunasekera was returned unclaimed to Mr. Wickremaratne and was produced in evidence before me. It bears the endorsement "returned letter 9th February, 1938". Mr. Wickremaratne stated that this endorsement was made by a clerk in his office. He was not quite sure which clerk had made it but he thought it was a clerk by the name of Karunaratne, who was not at the time of the inquiry employed under him. I examined Mr. Karunaratne who stated to me that the endorsement was his but that on the date in question, namely, February, 1938, he had not been in Mr. Wickremaratne's employment. He said that he joined the Trinity College office on July 7, 1937, and that he had not worked under Mr. Wickremaratne since that date. On this material it was suggested that the endorsement was a fabrication but I do not think so for a moment. Either Mr. Karunaratne is making a mistake as to the date on which he joined Trinity College or some other clerk has made the endorsement. Mr. Karunaratne gave the dates mentioned in examination-in-chief voluntarily and not under pressure of cross-examination and his conduct and attitude were not that of a person who has conspired with Mr. Wickremaratne to forge a document. Also for reasons mentioned later (*vide* paragraph 18) I reject as quite impossible the theory of a conspiracy.

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15. Mr. Wickremaratne produced the original of a letter written by Mr. Abeygunasekera on January 31, 1938, from which it appears that Mr. Abeygunasekera had promised to see Mr. Wickremaratne on February 12, 1938. Mr. Wickremaratne stated that Mr. Abeygunasekera saw him as promised and that on that occasion Mr. Abeygunasekera discussed the letter of demand, stated that he had not accepted it because he suspected its contents (presumably having learnt about it from one or more of the other members) and that he promised to pay back the amount which he had taken. In my opinion this evidence is true.

16. Turning now to the evidence of Mr. Loku Bandara Attanayake, 10 I find that there are numerous contradictions, many of which were the result of cross-examination but some of which existed before it. Contradictions on matters of detail do not necessarily mean that a witness is not speaking the truth. Very frequently a witness who has been coached or who has prepared a story is accurate on questions of detail but fails upon other tests of evidence. Mr. Attanayake was cross-examined for very nearly two days. I felt it my duty, considering the nature of the allegations made and the position of the parties against whom they were made, to give counsel the utmost latitude in the matter of cross-examination and I did not interfere with it. In my assessment of the truth or otherwise of Mr. 20 Attanayake's evidence many of the contradictions which have been made did not impress me as indications of falsehood. I found, however, that Mr. Attanayake in certain matters of detail was drawing upon his imagination through the desire to impress. He is, moreover, a witness who prepared a document for submission to the Criminal Investigation Department in which the part played by his father was stated to have been taken by him. I am inclined to think upon the evidence that this happened because father and son together prepared a statement and at the time, while anxious to fill in details of incidents, did not concern themselves in distinguishing between each other. But pressed upon this point he said 30 that he had substituted himself for his father because his father, being a pensioner, feared to disclose the fact that he had taken part in the matter of giving a gratification. I do not think for a moment that his father, a retired Station Master with a judgment matured by years if by nothing else, could have thought that it was possible to narrate a story to the Police or in Court without disclosing the fact that he himself had played a part in it. In a statement made orally to the Police Mr. Attanayake senior figures in the story. I think Mr. Attanayake junior made the statement that he did in order, as he thought, to impress me and that the statement was not true. 40 Whichever way one looks at it, his conduct is reprehensible. These and many features, the details of which I need not go into, render Mr. Attanayake, in my opinion, a witness upon whose evidence alone it would be unsafe to hold an allegation proved; but even so, I think that his evidence upon the question of the payments to the four Councillors is true although I would not found a verdict upon it without the corroboration it derives from the other oral and documentary evidence. I would here

dispose of a point that was made by counsel. The Visitors' Book at the Victoria Hotel shows the names of Mr. L. B. Attanayake and Mr. Talwatte against October 11, 1937, but does not show the name of the senior Attanayake. It is suggested that Mr. Attanayake senior did not stay at the hotel or come to Colombo and that his name has been introduced in order that he might be utilized to corroborate whatever story was uttered by Mr. Attanayake, junior. A complaint was made to the Police in June, 1938, when Mr. Attanayake, senior, was alive and it is incredible to me that Mr. Attanayake, senior, a retired Station Master, would agree, without
 10 having come to Colombo, to testify that he did come to Colombo and see certain things happen. Perjury on this scale is undertaken only by very desperate characters. The Police dropped the matter after consulting the Attorney-General as no penal offence was disclosed. But this result could not have been anticipated by the Attanayakes. I have no doubt at all that Mr. Attanayake, senior, did come to Colombo on that day and that he probably stayed at the Victoria Hotel although there was an omission by himself or his son to enter his name.

17. Mr. B. W. Fernando is, in my opinion, a truthful witness. It is true that he himself encouraged the giving of gratifications by his presence
 20 if by nothing else. Having given this point due weight, I still think his evidence is entitled to be accepted. He was cross-examined with regard to certain proceedings in insolvency but it appeared that he settled with all his creditors before the case proceeded very far. He was also cross-examined with regard to certain incidents relating to his living with a woman to whom he was not married. It was suggested by counsel for Mr. Abeygunasekera that he had been party to a false registration with regard to the parentage of a child. But there was absolutely no truth in this last charge. No reason for his giving false evidence beyond the question
 30 of conspiracy (dealt with later) was urged or can be thought of. Upon the question as to how much money was paid to Mr. Tambimuttu, he is definite that Rs. 750 was paid. Mr. Attanayake said it was Rs. 250 or Rs. 325 and appeared generally to be in doubt. I feel confident that some money was paid. Upon the amount, I think it is much more likely that Mr. Fernando's memory is more accurate than anyone else's. He was a witness who, unlike Mr. Attanayake, appeared to give evidence with a due sense of responsibility, and I have no doubt that whatever he said can be accepted as true. He has spoken to the receipt of money by all four Councillors. With regard to Mr. Abeygunasekera, his recollection is that he was paid
 40 Rs. 100 on the first day and Rs. 400 on the subsequent day. Mr. Attanayake spoke only to one payment. I think that Mr. Fernando's evidence on this point is accurate. There is one incident in his evidence worth mentioning. He says that on December 12, Mr. Abeygunasekera, on receiving payment, said, as he was wishing the party good-bye, that he was going across to the Colombo Apothecaries Company to see about some glasses. A register kept by the Company shows that on December 12, Mr. Abeygunasekera was examined for glasses and the prescription for the

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lenses suggested for him is entered in the register. This was one of those details which a witness frequently remembers and it is very remarkable that Mr. Fernando, who, according to Mr. Abeygunasekera, could not have been with him on the 12th, speaks to this incident. I do not think that Mr. Fernando made search for an incident like this and wove it into his story to give it the appearance of truth. I think it is a sign of a true story.

18. Turning now to the defences set up, Mr. Abeygunasekera in a statement in writing denied the incident. He was present during the whole of the cross-examination of the witnesses through his counsel and the suggestion made was that the whole story from beginning to end in every 10 detail was a fabrication. It is impossible to take this view. It was suggested as a reason for the fabrication that Mr. Wickremaratne, who had been a member of the Sama Samaj party, was incensed by Mr. Abeygunasekera's anti-Sama Samaj activities and had conspired with the other witnesses to put Mr. Abeygunasekera into trouble. This is much too drastic a suggestion to find acceptance in any case. Further, I believe Mr. Wickremaratne when he says that he joined the Sama Samaj party at the end of 1938 or early in 1939. At the time that Mr. Wickremaratne sent letters of demand (and of the fact of sending them there is ample proof) a Commission had not been issued to me. The letters of demand were 20 mentioned to the Criminal Investigation Department in June, 1938. There can be no doubt that they were in existence at that time. What then was the purpose of the conspiracy? Mr. Wickremaratne is a lawyer with a big practice and he must have known that the payment of a gratification by a member of the State Council was not an offence. It was not at his suggestion that the Attanayakes went to the Criminal Investigation Department. Further, if Mr. Wickremaratne was conspiring against Mr. Abeygunasekera, there was no reason suggested or that I can think of why he should involve Messrs. Tambimuttu and Gunasekera, thus making the story unnecessarily involved. I reject as impossible the theory of a 30 conspiracy. Mr. Wickremaratne struck me as a truthful witness and from his demeanour and from the evidence which he gave I am convinced that to the best of his ability he has tried to be as accurate as he can. Upon the question of how much money was paid to him by Mr. Batuwantudawe, he gave at first the figure of Rs. 125. A document referred to later (*vide* paragraph 23) discovered by him after he gave this evidence shows that the amount was Rs. 325. This, I believe, was an honest mistake. Another point sought to be made against him was that in the course of his evidence he said that he had the counterfoils of the cheque by which he paid this Rs. 125 to the Attanayakes. He also wrote to me that he was sending them 40 but found later that no such counterfoils existed. In fact, from inquiries that I have made from the Bank it is clear that no cheque was issued. This, too, I think was an honest mistake. Mr. Wickremaratne was detained for some time under an Order of Detention issued under the Defence Regulations and, at or about the time that the order issued, the Police took possession of a great many of the documents in his office. They were returned

subsequently but, even at the time of giving evidence, they had not been sorted and arranged in their original places. This was what led to the failure of Mr. Wickremaratne to discover the receipt before he gave evidence. The counterfoils were at Mr. Wickremaratne's residence and had not been taken away by the Police. This led to Mr. Wickremaratne's assumption that they could be produced.

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19. I will turn now to the defence of insufficient identification set up by Mr. Gunasekera. This defence is based chiefly upon an incident which took place at the house of one Mr. Francis Wickremasuriya at Nawalapitiya. Mr. Gunasekera had retained as his proctor one Mr. M. A. W. Gunasekera (not related to him) and the latter had decided to ascertain something of Mr. Attanayake's antecedents. He spent a few days at the house of the Station Master of Nawalapitiya and visited the house of Mr. Wickremasuriya on one occasion. While he was there, Mr. H. A. Gunasekera also arrived and there were also present some ladies. By a strange coincidence Mr. Attanayake, who had some business to transact with Mr. Wickremasuriya about a house, also arrived at the same time and happened to be seated opposite to Mr. H. A. Gunasekera. Mr. Wickremasuriya says that Mr. Attanayake asked him the question "Who are these visitors?", and it is suggested that he did so because he was unable to identify Mr. H. A. Gunasekera. Mr. Attanayake admits that he asked the question but he says that before he did so, he had recognized Mr. H. A. Gunasekera. He says that the latter pretended not to know him and that in turn pretended not to know Mr. H. A. Gunasekera. He denies emphatically that the question was put through failure to identify Mr. H. A. Gunasekera. It is not improbable that Mr. Attanayake, wondering what Mr. H. A. Gunasekera was doing there and not wishing to ask the direct question, asked, instead, "Who are these visitors?". If Mr. Attanayake had identified Mr. H. A. Gunasekera, the moment would have been one of some embarrassment to him and too much significance cannot be attached to the words actually used by him. The point made, in any case, is not of the first importance because, as stated in paragraph 16, I am not prepared to act in any matter upon Mr. Attanayake's evidence alone.

20. Before passing on I ought to say that the suggestion made on behalf of Mr. Gunasekera if accepted, will negative the other suggestion made by him that Mr. Attanayake's evidence is a total fabrication. A witness fabricating the story that Mr. Gunasekera received a gratification in the State Council building will invariably make sure of Mr. Gunasekera's identity before he gives evidence. The incident at Mr. Wickremasuriya's house happened about a week before the witness gave evidence before me for the second time on January 11, 1943. He had previously given evidence before me in July, 1942. He had made a statement about Mr. Gunasekera to the Police in 1938.

21. There is no doubt upon the evidence that money was paid to someone on the ground floor of the State Council building as stated by Mr. Atta-

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nayake and Mr. Fernando. I accept without hesitation the latter's evidence on this point. Mr. Attanayake is definite as to his knowledge of Mr. Gunasekera and identifies him with confidence. But, as stated before, on his evidence alone I am not prepared to act. Mr. Fernando does not identify Mr. Gunasekera with the same confidence but certain facts and circumstances upon which I have no doubt indicate strongly that Mr. Gunasekera was present at that incident.

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22. Making as much allowance as possible for the fact that Mr. Abeygunasekera is bold in the matter of securing gratifications (*vide* paragraph 24 of Report), I think it is most unlikely that he would have dared to introduce a party of four persons to a person, whom he introduced as Mr. Gunasekera, if, in fact, he had not been Mr. Gunasekera himself. It was broad daylight. There must have been about the premises persons and other persons whose business habitually keeps them there. Mr. Abeygunasekera would have run the risk of immediate detection if one of the four members of the party had, in the course of a casual or direct conversation, learnt that the person pointed out as Mr. Gunasekera was not Mr. Gunasekera.

23. There is also documentary evidence from which it can be inferred that Mr. Gunasekera was not personated. Mr. Wickremaratne, after he gave evidence, sent me a book in which the following entry appears:— 20

“Received from Mr. H. A. C. Wickremaratne, Proctor, S.C. and Notary Public, the sum of Rs. 325 in part payment being money paid to him by Mr. C. Batuwantudawe on behalf of himself and H. A. Gunasekera.

L. BANDARA ATTANAYAKE.
12.2.38.”

On receipt of this book, I summoned Mr. Wickremaratne to give evidence again in order that Counsel and parties may have an opportunity of cross-examining him about this receipt. Mr. Wickremaratne says that this receipt was written by a clerk to his dictation and that it was signed in his presence. I have no doubt as to the truth of this evidence. The book itself is not a ledger and the pages on which receipts were taken have been chosen somewhat at haphazard. I have examined it carefully and I am convinced that it is a genuine book. Objection was taken to it on the ground that it contains a reference to a statement made by Mr. Batuwantudawe and that this statement is not evidence against the others. I upheld this objection and I do not propose to take into account anything in this receipt which is the result of a statement from Mr. Batuwantudawe. 30

24. Although no statement direct or indirect made by Mr. Batuwantudawe is admissible in evidence against the other three Councillors, nevertheless, the fact that Mr. Batuwantudawe paid Rs. 325 (which is an act of Mr. Batuwantudawe's and not a statement) is clearly admissible in evidence and I so announced at the time that I upheld the objection. The docu- 40

ment proves that the amount received by Mr. Attanayake from Mr. Wickremaratne was Rs. 325.

25. Upon this document and upon the evidence as a whole I have no doubt that Mr. Wickremaratne received Rs. 325 from Mr. Batuwantudawe. This fact points strongly against the possibility of personation. The sum paid to Mr. Tambimuttu was returned by him. At any rate, there is no suggestion that it was paid back through Mr. Batuwantudawe. The sum paid to Mr. Abeygunasekera has never been returned. The sum paid to Mr. Batuwantudawe was Rs. 250. Why then did Mr. Batuwantudawe pay
10 Rs. 325? The payment was a response to the four letters of demand. It is a reasonable inference that Mr. Batuwantudawe was making a payment on behalf of one of the Councillors to whom letters of demand had been sent and, when the three mentioned above are excluded, only Mr. Gunasekera is left. It is a reasonable inference that Mr. Batuwantudawe was making a payment on behalf of Mr. Gunasekera. This conclusion is arrived at quite independently of the appearance of Mr. Gunasekera's name in the receipt discussed in paragraph 23.

26. If by causing Mr. Gunasekera to be personated Mr. Abeygunasekera misappropriated the money, it is difficult to account for the return
20 of the "Gunasekera money" through Mr. Batuwantudawe. I do not think it at all likely that Mr. Abeygunasekera would have handed it to Mr. Batuwantudawe. I do not think it at all likely that Mr. Abeygunasekera would have handed it to Mr. Batuwantudawe to be returned. Moreover, Mr. Abeygunasekera could have done so himself at the interview with Mr. Wickremaratne (*vide* paragraph 15).

27. How the Rs. 325 is to be apportioned between Mr. Batuwantudawe and Mr. Gunasekera is not indicated by the facts so far stated but other evidence satisfies me that Mr. Batuwantudawe was repaying only Rs. 75 and the rest was on Mr. Gunasekera's account.

30 28. On the question as to whether Mr. Gunasekera accepted a gratification, there is also the evidence relating to the letter of demand and the inferences to be arrived at from his conduct in failing to reply to it.

29. Mr. Gunasekera also set up an *alibi*. He said that he entered the General Hospital on October 17, 1937, and that he was there till the 27th of that month. He produced a certificate from the Superintendent of the Hospital to that effect. He stated that he had been ill in bed from about October 10 to 17 and that he had been under the treatment of one Dr. Kurppu whom he called. At my instance Mr. Gunasekera's bed-head ticket was produced by the Hospital authorities (a certified copy marked "B.T."
40 is appended) and it appears that on October 17, 1937, Mr. Gunasekera had a cough and a pain in the chest and had had it for twenty-four days or so. Mr. Gunasekera had told the examining doctor that his illness had originated with a cold which gradually settled down and that the pain in the chest was

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persisting. It appears that he was kept in the hospital for a "bronchitis investigation" and a very thorough investigation established that he was free from any trouble at all serious. A number of tests were made in order to make sure of this. The inference to be drawn from this is not that Mr. Gunasekera was so ill that he could not have come to the Council Chamber on the morning of 12th but that he had entered Hospital to make sure that a pain in the chest which persisted after a cold was not due to or leading up to something more serious. But the matter does not rest merely at an inference because I see on the bed-head ticked that Dr. J. R. Blaze had on the 17th-made the following endorsement:—

10

" Medical Superintendent,

Please allow this patient two hour's leave to attend a meeting tomorrow at 10 a.m.

J. R. BLAZE."

Page 25

and below this is an endorsement by the Medical Superintendent—

" Permission granted.
18.10.37."

So that it is clear that when he entered hospital he was not too ill to attend a meeting at 10 in the morning. I have no doubt that he was well enough to have been on the ground floor of the State Council building on the morning of the 12th and that, in fact, he did so. Dr. Kuruppu's evidence did not impress me. He probably treated Mr. Gunasekera; but I do not accept the suggestion made in his evidence that he was seriously ill for a week or more prior to the date of entry into the hospital.

30. Mr. Tambimuttu admits that he received the letter of demand. As stated above, he admittedly sent no reply and his conduct is altogether that of a man who has received a gratification and is fearful of its consequences. Mr. Tambimuttu had been practising as a lawyer for some time and I cannot imagine that he could have given himself or anyone else the advice in circumstances of suspected blackmail privately and alone to go and interview the person attempting to blackmail. Both the direct evidence and inferences to be drawn from his conduct establish that he accepted a gratification.

31. Mr. Batuwantudawe is dead and it is with extreme reluctance I regret that I have to find that he, too, accepted a gratification. There is direct and documentary evidence including a letter written by himself upon this point which puts the matter beyond doubt.

32. The impression left upon my mind by the incidents which have been established is that this is not an isolated occasion in which these four members acted together in receiving gratifications. The code words "of paramount importance" suggest an understanding as to the procedure to be adopted in matters that a gratification was available. Mr. Abeygunasekera is said to have stated (and I believe that he did so) that without the

40

payment nothing could be done and that with a payment the other people had succeeded. I have no doubt that this statement attributed to him is one which has been repeated in many instance to secure gratifications.

April 3, 1943.

L. M. D. DE SILVA.

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“ B.T.”

GENERAL HOSPITAL COLOMBO.

10	Case No. 1311	Age 6r	Sex M.	Civil Condition M.	Physician Surgeon Dr. Blazé
By whom sent				House Surgeon Dr. Nimalasuriya	
Name and Address of Dr. L. C. Wijesinghe, Parent or Guardian : Ret. Provincial Sur- geon				Patient's Inventory.	
Address of Patient : Ratnapura					
Birthplace : Kataluwa					
Nationality : Sihalese				Occupation : Member, State Council	
Religion : Buddhist				Income : Rs. 750 p.m.	
20	Name: Mr. Henry Abeywickrema Gunasekera	Date: 17-X-37	Time: 4 P.M.	Ward: Merchant	

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NOTES OF ADMITTING OFFICER.

Complaint: Cough
Pain in chest
Duration of Complaint: 24 days
Mode of onset and present condition:

Signature.

ABSTRACT OF CASE BY VISITING OFFICER.

30 Cough and pain in chest
X'Ray—Nil
W. R.—Anti complimentary
Urea—Normal
Heart—Normal

Date of Dis. 29.10.37.

DIAGNOSIS

Bronchitis
Investigation

(Sgd.) J. R. BLAZE,
Signature, Visiting Officer.

Exhibits **CONTINUATION SHEET.**

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No. 1131

Clerk
Dresser

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VISITING STAFF AND REGISTRAR'S NOTES	DATE	NOTES OF CASE SHOWING DAILY PROGRESS
		Pain in the chest } 24 days Cough } Onset Gradual
		Patient said to have had an attack of "Cold" which gradually settled down. Cough and pain in chest persists.
		No history of Asthma or dyspnoea
		No history of such attacks
		Patient well nourished
		Pulse 80 V & T fair
		Resp. 24
		No oedema of legs
		No dyspnoea
		Heart N.A.D.
		Lungs P.N. Resonant 20
		B.S. Vesicular
		Rhondii + both sides
		Cups + occasionally
		Abdomen Soft
		Liver not palpable
		Not tender
		Spleen not palpable
	17.X	Urine
		Alb.
		Sugar 30
		Deposits
		B.P.
		Mixt. Stimulant Expectorant 3 ⁼⁼ t.d.s.
		<i>Bld Urea & W.R.</i> M S
		<i>Sputum for Examination</i> Please allow this patient two hour's leave to attend a meeting tomorrow at 10 A.M. (sgd.) J. R. BLAZE. Permission granted. (sgd.) R. W. W. 18/X/37 40
		C & B draught 3 i t.d.s. (Not given)
	18. 10. 37	R/C. & B Draught 3 i Nocte. (Not given) t.d.s.
	19. 10. 37	B.P. on both sides to be taken daily
	20/10/37	X'Ray of chest
	21/10	B.P. 50
		R. Arm 115.70
		L. Arm 95.70
		W.R. Anti complimentary
	22/10	Satisfactory
	23/10	F
	24/10	F
	25/10	F
	26/10	F
		X'ray Nil abnormal seem
	27/10	Patient alright
	28/10	Satisfactory
	29/10	Satis
		60

Certified true copy.

RICHARD W. WILLENBERG
 M. S., G. H. C.
 26. 2. 43.

PATHOLOGIST'S REPORT.

Report on the specimen of Blood of Gunasekera Case No. 1131. Ward :
Merch.

Urea .35 M Gm %

Date: 18.X.37

(Initial illegible)

Pathologist, General Hospital.

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PATHOLOGIST'S REPORT.

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Report on the specimen of Sputum of Gunasekera Case No 1131. Ward :
Merch.

10 T. B. Nil

Date: 18/10/37

(Initial illegible)

Pathologist, General Hospital.

PATHOLOGIST'S REPORT.

Report on the specimen of Urine of Gunasekera Case No. 1131. Ward :
Merch.

Few pus cells 8-10 a field crystals of Calcium oxalates

Albumin } Nil
Sugar }

20 Date: 18.10.37.

(Initial illegible)

Pathologist, General Hospital.

APPENDIX C.

Allegation of payment of gratifications to Messrs. C. Batuwantudawe, E. W. Abeygunasekera, E. R. Tambimuttu, and H. A. Gunasekera for the purpose of securing their services in the Executive Committee of Home Affairs in the matter of the extension of a Government contract.

Witness examined.—Messrs. M. F. P. Gunaratne, D. E. Seneviratne, W. F. Wickremasinghe, M. G. Perera, C. M. Rodrigo, and A. J. Siebel.

Allegation.—These witnesses gave evidence with regard to the alleged
30 payment of gratifications to four Councillors, Messrs. C. Batuwantudawe, E. W. Abeygunasekera, E. R. Tambimuttu, and H. A. Gunasekera, for the purpose of securing their services in the Executive Committee of Home Affairs. Certain contracts held by distillers for the supply of arrack to Government were due to expire on April 30, 1939. The allegation was that money was paid to the Councillors mentioned in order to secure their support to a proposal that the contracts should be extended without calling

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for tenders. The proposal itself was put forward by the Excise Commissioner for reasons which I need not go into. It was ultimately adopted by Government.

Finding.—My finding upon this matter is that without a doubt a sum of Rs. 2,000 was paid by the distillers to Mr. Batuwantudawe. The distillers earmarked this sum for payment to members of the Executive Committee. They believed that portions of the sum would find their way to the other Councillors mentioned. One distiller at least thought that the money would be paid direct to them. Others received the impression that it would be paid through Mr. Batuwantudawe. Mr. Batuwantudawe is now dead and there is no evidence that he distributed money among the others. I do not think that any direct payments were made to them.

Comment.—In 1939 there were eight distilling plants in Ceylon, the proprietors of which were supplying arrack to Government. These suppliers consulted each other in matters of common interest and were loosely associated with each other as a body without a formal set of rules or any of the other formalities adopted by Associations proper. They regarded Mr. D. E. Seneviratne, proprietor of the Dyalagoda Distillery, as Treasurer, and Mr. W. F. Wickremasinghe, proprietor of the Anvil Distillery, as Secretary. They collected money from time to time as occasion required for meeting various expenses.

Mr. Gunaratne, the owner of Sirilanda Distillery, Kalutara, stated to me that either Mr. Wickremasinghe or Mr. Seneviratne or both came to see him and asked him for a contribution towards a fund from which the four Councillors mentioned were to be paid. Mr. Gunaratne says that Messrs. Wickremasinghe and Seneviratne (either or both) mentioned the names of the four Councillors and that he paid Rs. 500. There is no doubt about this payment. The only question is what the conversation was. Messrs. Seneviratne and Wickremasinghe deny that they mentioned the four names in the explicit manner deposed to by Mr. Gunaratne. After carefully weighing up the evidence I feel that none of these witnesses is deliberately stating an untruth. Mr. Gunaratne says that he was told by Messrs. Wickremasinghe and Seneviratne that Mr. Batuwantudawe was the go-between between them and the other members. Mr. Seneviratne states that he paid Rs. 2,000 to Mr. Batuwantudawe but that he paid no money to any of the other Councillors. It is common ground that there were informal conferences at which the distillers discussed various matters of importance to themselves. It appears that at these conferences the distillers sat in small groups for the purpose of informal discussion and that there was no meeting in the proper sense of that word. Mr. Seneviratne says that the names of the other Councillors were mentioned at these conferences as persons to whom Mr. Batuwantudawe would probably have to pay something. But he says that there was no definite arrangement with Mr. Batuwantudawe that they should be so paid. Mr. Wickremasinghe says that Mr. Seneviratne told him that Rs. 2,000 was paid to Mr. Batuwantudawe and

that Mr. Seneviratne undertook to obtain the votes of the four Councillors mentioned through Mr. Batuwantudawe. He also states that at the time it was common talk that these four members took bribes. The clear impression which I have formed is that as a result of the general talk that these four members took bribes their names were mentioned at conferences and discussions, that the manner of approach to them, if agreed upon at all, was not agreed upon with any degree of precision but that the distillers believed that the money would reach them. I believe that Mr. Seneviratne is speaking the truth when he says he paid Rs. 2,000 to Mr. Batuwantudawe and that it is also true that neither he nor Mr. Wickremasinghe nor anyone else paid any money direct to the other Councillors.

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Dr. M. G. Perera who gave evidence was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did.

Mr. C. M. Rodrigo, the other witness referred to above, was a clerk of Mr. Gunaratne and was able to speak only to the conferences and not anything that took place at them.

Mr. Siebel was merely an officer of a bank producing certain cheques before me.

L. M. D. DE SILVA.

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APPENDIX CC.

Allegation that Mr. E. W. Abeygunasekera solicited gratifications for himself and State Councillors by handing to one Mr. William, an omnibus owner, a list of members who, according to him, could have been bought at a price to vote against the motion relating to the reorganization of the Omnibus Services moved in the State Council by the Honourable the Minister for Local Administration on July 9, 1942,

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Witness examined.—Messrs. J. G. Collin Fernando, B. H. William, M. Jayasena, M. Sirisena, D. J. F. Obeysekera, S. de S. Jayasinghe, and B. de S. Jayasinghe.

Finding.—I find that the allegation is established.

2. *Comment.*—Mr. S. W. Nelson, the present Director of Transport, some time after his arrival in the Island recommended the reorganization of the omnibus services and propounded a scheme. The omnibus interests were strongly opposed to this scheme. Associations of omnibus owners as well as individual owners worked hard for its rejection. An Association by the name of the Lanka Omnibus Owners' Association was formed for the

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express purpose of agitating against it. One of the leading spirits in this Association was Mr. M. Jayasena, a witness who gave evidence before me. Whatever expenses were incurred by the Association were provided by him.

3. Mr. J. G. Collin Fernando, a Committee member of the Lanka Omnibus Owners' Association was taken by one Mr. B. H. William, also an omnibus owner, to interview Mr. E. W. Abeygunasekera. Mr. William had known Mr. Abeygunasekera previously. The interview took place at the State Council building on the ground floor. The date has not been fixed with precision but appears to have been after July 9, 1942, on which date the Minister for Local Administration moved a resolution in the State Council for the reorganization of the omnibus services, and before July 29, 1942, on which date the voting on the motion took place. Mr. Collin Fernando states that Mr. Abeygunasekera told him and Mr. William that however good a motion might be they could not expect support without paying a gratification. Mr. Abeygunasekera then tendered a list containing the names of about seven members to Mr. William and against each person's name there appeared an amount varying between Rs. 150 to Rs. 200. The amount against Mr. Abeygunasekera's name itself was left blank and the total of the amounts came to about Rs. 1,300. Mr. Abeygunasekera said that if that money was found and paid to him he could get the members mentioned in the list to vote against the motion. The list was handed to Mr. William. The two of them together left Mr. Abeygunasekera and showed the list to certain other omnibus owners who happened to be on the Council premises and discussed the matter with them. The general consensus of opinion was that Mr. Abeygunasekera could not be trusted. A decision was taken not to make a payment to him but to interview other members, to get their votes if possible without a payment, but, if that was not possible, on payment of a reasonable amount. Mr. Fernando says the list was taken away by Mr. William and Mr. William states that he last saw it with a third person. I have not been able to trace it. The list, however, was seen by a number of people. It was seen by Mr. S. de S. Jayasinghe and by Mr. D. J. F. Obeysekera, the Secretary of the M. J. Insurance Company (closely connected with the M. J. Omnibus Company), who happened to be on the Council premises. These two witnesses testified to this fact. Mr. Jayasena did not recollect having seen the list itself but was quite sure of the discussion with regard to it which followed immediately on its being handed by Mr. Abeygunasekera to Mr. William. Mr. William, who struck me as a somewhat unwilling witness, also testified to the fact that Mr. Abeygunasekera handed the list to him and that he and Mr. Fernando took it to other omnibus owners on the premises. Mr. Sirisena states that he was present on the Council premises and that the matter of the list was mentioned to him by Mr. Fernando and Mr. William. On a later date Mr. Abeygunasekera, seeing him on the State Council premises and mistaking him for his brother Jayasena, to whom he bears a resemblance, asked why he had mentioned the incident with regard to the list to Dr. A. P. de Zoysa, Dr. de Zoysa presumably having mentioned it to him or someone else.

4. On December 16, 1942, I informed Mr. Abeygunasekera of the allegation made against him giving him an outline of the evidence of the witnesses. On December 30, 1942, Mr. Abeygunasekera replied " that the allegations made against me are utterly false " and contented himself with this bare statement. For the reasons given in paragraphs 19 to 21 of my Report I was not able to examine Mr. Abeygunasekera on affirmation. He had on the date fixed for inquiry left the Island for India.

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5. I am convinced beyond any manner of doubt that the evidence with regard to this incident is true. Mr. Abeygunasekera on this and other occasions appears to have acted without much attempt at secrecy in the matter of soliciting and receiving gratifications. The view expressed by the omnibus owners that Mr. Abeygunasekera was not a man who could be depended upon appears to have reflected the current opinion of the public at the time.

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APPENDIX D.

Allegation that a sum of Rs. 75 was paid by one Mr. H. R. P. Fernando, a dismissed Excise Officer, and accepted by Mr. E. W. Abeygunasekera, who in consideration of this and of a further sum of Rs. 225 to be paid to him later undertook to press for the reinstatement of Mr. Fernando.

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Witnesses.—H. R. P. Fernando, D.L.C. Fernando, and T.L. Fernando.

Finding.—I find that the allegation is established.

Comment.—Mr. H. R. P. Fernando was an Inspector in the Excise Department from 1928 to the end of 1935. As a result of certain strong remarks made against him by a judge in Case P. C., Teldeniya, 1993, Mr. Fernando was dismissed. He says that in January, 1939, he was introduced by one Raymond Gunasekera to Mr. Abeygunasekera and that Mr. Abeygunasekera told him that he could " work up " the case. Mr. Abeygunasekera added that he personally knew Mr. T. V. Saravanamuttu, Acting Commissioner of Excise at that time, and that the latter could be induced to give relief. He impressed upon Mr. Fernando that nothing could be done without money and wanted Rs. 250 paid down as a lump sum for all services to be rendered. Eventually after some bargaining Mr. Fernando agreed to pay Rs. 300, Rs. 75 immediately and the balance of Rs 225 when the matter was satisfactorily concluded. M. Fernando says that he paid him the Rs. 75 and that thereupon Mr. Abeygunasekera on January 27,

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Exhibits 1939, gave notice of the motion appearing in Hansard, page 260, to the following effect :—

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“ That this Council is of opinion that all papers relating to the dismissal of Inspector H. R. P. Fernando from the Excise Department be tabled.”

On this occasion Mr. Abeygunasekera gave him a ticket to the gallery from where he saw the motion being handed over to the Clerk. Mr. Abeygunasekera pressed for more money and was told that it would be given as soon as Mr. Fernando was reinstated. After several interviews and disappointments Mr. Fernando dropped the matter. It appears from Hansard that 10 the motion was referred to the Chief Secretary under Standing Order 57 who reported on November 27, 1939. Mr. Abeygunasekera did not press the motion. He eventually withdrew it on March 24, 1942.

2. I have tried to trace Raymond Gunasekera through the Police and in other ways and find that he is at Bombay where I am not able to reach him. Mr. Raymond Gunasekera figures in another incident (*vide* Appendix HH). His evidence is not available.

3. Mr. D. L. C. Fernando is a brother of Mr. H. R. P. Fernando. He says that at the time the money was paid to Mr. Abeygunasekera the incident was discussed between himself, his father, and his brother and that 20 he learnt that Rs. 75 had been paid. Mr. T. L. Fernando, the father, is a very old man and his sons while giving evidence doubted whether his memory and understanding was sufficiently firm for the purpose of giving evidence. He stated that after some discussion he gave his son a sum of Rs. 75 to be paid to Mr. Abeygunasekera. Mr. Fernando has kept a record in books of his house hold expenses and receipts ever since 1904 when he married. He has two items of Rs. 50 and Rs. 26 entered against February 2 and 8, 1939, respectively as having been given to his son to be paid to Mr. Abeygunasekera. He produced certain books before me and offered to produce all the others dating back nearly thirty years, the books 30 from 1904 to 1916 having been recently destroyed. This system of keeping household expenses and receipts was unusual and aroused close scrutiny.

4. The date on which Mr. H. R. P. Fernando paid the money to Mr. Abeygunasekera was January 27, 1939, whereas the first entry in the book is on February 2. This is accounted for by the fact that before posting into the books Mr. Fernando jotted down the items on pieces of paper. Posting into the book took place once a week or once a fortnight. I have examined the books carefully and examined Mr. Fernando closely on them. I am satisfied on the evidence provided by the books themselves that they are genuine. Moreover from my estimate of Mr. T.L. Fernando, from his age 40 and from his career and from the impressions that he gave before me I cannot for one single moment imagine that he would be party to a fabrication ; nor do I think that his sons would involve him or permit him to be involved at his age in any conspiracy to give false evidence with the dangers always

consequent thereon of suffering the rigours of the penal law. The witnesses, no doubt, are related but they have given me the clear impression that they were speaking the truth and that there is no doubt in my mind that Mr. Abeygunasekera received the sum of Rs. 75 as stated by them.

5. I wrote to Mr. Abeygunasekera on December 16, 1942, informing him shortly of what the witnesses had said. Mr. Abeygunasekera's reply was "I deny the receipt of Rs. 75 or any sum whatever and I deny that I undertook to use my influence to have the dismissed officer reinstated. I also deny that there was any agreement to pay me Rs. 225 or any sum
10 whatever". I wrote to Mr. Abeygunasekera on January 28, asking him whether he wished the witnesses to be recalled in order that questions may be put to them by him or his counsel. Soon after this Mr. Abeygunasekera asked for a three months postponement of the inquiry. This I was unable to grant (*vide* paragraph 19 of Report) as a long postponement would have tended to frustrate the object of the Commission. I decided to report on the material available to me and informed Mr. Abeygunasekera accordingly. I have had no statement from Mr. Abeygunasekera beyond the letter already referred to. I do not think for a moment that my impression of this incident would have been altered if Mr. Abeygunasekera had repeated on oath
20 what he had stated to me in his letter.

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APPENDIX E.

Allegation, solicitation and acceptance of a gratification on July 28, 1942, by Mr. D. D. Gunasekera for the purpose of opposing a motion introduced in the State Council on July 9, 1942, by the Minister of Local Administration in connection with the reorganization of Omnibus Services.

Witnesses examined.—Messrs. J. C. Collin Fernando, D. P. Piyadasa, 30 S. de S. Jayasinghe, M. Jayasena, B. J. Fernando, and A. Mivanapalana.

Finding.—I find that on July 28, 1942, three persons—Messrs. J. G. Collin Fernando, D. P. Piyadasa, and S. de S. Jayasinghe—interviewed Mr. D. D. Gunasekera at the Victoria Hotel. Mr. Gunasekera made the witnesses understand that he expected a gratification and a sum of Rs. 25 was received by Mr. Gunasekera from Mr. Colling Fernando as consideration for opposing the motion then before the Council in connection with the reorganization of omnibus services.

2. *Comment.* Mr. S. W. Nelson, the present Director of Transport, some time after his arrival in the Island recommended the reorganization of
40 the omnibus services and propounded a scheme. The omnibus interests were strongly opposed to this scheme. Association of omnibus owners as well as individual owners worked hard for its rejection. An Association by the name of the Lanka Omnibus Owners' Association was formed for the

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express purpose of agitating against it. One of the leading spirits in this Association was Mr. M. Jayasena. The evidence establishes that whatever expenses were incurred by the Association were provided by him. It appears that he was somewhat magnanimous and refused contributions which other members and member associations offered to make.

3. On July 9, 1942, a resolution was moved by the Honourable the Minister for Local Administration to the effect that the recommendations of the Executive Committee of Local Administration on the Nelson scheme for the reorganization of bus services be approved. This motion was debated on July 9, 10, 28 and 29, 1942, and the voting upon it took place on the last-mentioned date. At this time the interest of the omnibus owners was greatly heightened and many of them attended the State Council meeting to witness the debate and to do whatever was possible to gain a satisfactory conclusion. A number of witnesses have stated to me and I have found without hesitation as a fact (Appendix CC) that in connection with the motion referred to, Mr. E. W. Abeygunasekera prepared a list of names of Councillors who, according to him, could be bought at a price. Against the name of each he noted the sum required and left the amount against his own name blank. This list he handed to a Mr. William in the presence of Mr. Collin Fernando. Mr. Collin Fernando states that the question of paying the amount suggested to Mr. Abeygunasekera was discussed by omnibus owners and that they, not having confidence in Mr. Abeygunasekera, decided not to make a payment to him. They decided instead that they should see various Councillors, secure their support, if possible without the payment of a gratification but pay if it was found necessary and suitable to do so. Mr. Fernando says that he saw Mr. D. D. Gunasekera's name on this list and was encouraged by this fact to approach Mr. Gunasekera without fear.

4. Mr. Fernando states that on July 28, 1942, the day immediately preceding the date on which voting on the motion took place, he was present in the Council Chamber and, after proceedings had closed, he spoke to Mr. D. D. Gunasekera on the street a short distance from the State Council building. He made an appointment to see Mr. Gunasekera the same evening at the Victoria Hotel. He then went to the office of the M. J. Insurance Company at the Victoria building. It was in this office that the Lanka Omnibus Owners' Association conducted most of its activities. From here Mr. Collin Fernando and seven or eight other members went to the Victoria Tea Rooms and had tea. Thereafter, Mr. Collin Fernando and Mr. S. de S. Jayasinghe, proprietor of the Sinha Omnibus Service, went up to the second floor of the Victoria Hotel and met Mr. Gunasekera. Some of the members appear to have been on the payment close by, and at their request Mr. Piyadasa, the Manager of the Puspauyana Omnibus Company, also went up. There was some conversation during which Mr. Gunasekera intimated that he wanted a gratification. Mr. Collin Fernando then paid him Rs. 25 in notes which was accepted by Mr. Gunasekera, who then promised to vote against the motion.

5. Mr. Piyadasa supports this story and says he saw Mr. Collin Fernando handing over the notes to Mr. Gunasekera.

6. Mr. Jayasinghe says he was present but denies that he saw a payment being made. According to the evidence of Mr. Collin Fernando and Mr. Piyadasa, if a payment was made he must have seen it. Mr. Collin Fernando also says that he received the money from Mr. Jayasena, proprietor of the M. J. Omnibus Company, or from Mr. B. J. Fernando, proprietor of the B. J. F. Omnibus Service. Both these witnesses deny that they paid Mr. Collin Fernando Rs. 25 or any other sum for the purpose
10 of gratification. Mr. Fernando says that after the payment he mentioned the fact to Mr. Jayasena. This too Mr. Jayasena denies.

7. Mr. Mivanapalana states that some time probably after August 6, Mr. Gunasekera promised to oppose legislation which was to be introduced into Council to reorganize the Omnibus Services. According to Mr. Mivanapalana himself, it is most likely that this incident took place after July 28, on which date the gratification is stated to have passed. But in any case Mr. Mivanapalana's evidence would be inconclusive of the question whether a gratification was paid or not. He was called by me at the instance of Mr. Gunasekera.

20 8. Mr. Gunasekera denies that he solicited or received a gratification. He admits that the three persons mentioned interviewed him at the Victoria Hotel and states that soon after they had left Mr. Piyadasa returned and offered him an envelope containing two or three notes. Mr. Gunasekera says that he was surprised and that he inquired from whom this money had come. On being told that it came from the party that had just left, Mr. Gunasekera says that he requested Mr. Piyadasa to return the money to the source from which it came.

9. The issue upon which a decision is called for is a very narrow one. It is common ground that the three persons alleged to have visited
30 Mr. Gunasekera at the Victoria Hotel did in fact visit him. It is common ground that a gratification was offered to Mr. Gunasekera. The only questions are whether it was offered to Mr. Gunasekera in the presence of the three witnesses and accepted by him or whether it was offered to Mr. Gunasekera on the second occasion and rejected by him.

10. My impression of Mr. Collin Fernando on the two occasions on which he gave evidence before me is that he is an entirely truthful witness and I derived this impression both from his general demeanour and from the effects which cross-examination had upon him. It would be no exaggeration to say that during the whole course of the inquiry by the Commission
40 no witness impressed me more favourably. He was technically, no doubt, in the eye of the Law an accomplice and I have had this fact before me. But any doubt with regard to his evidence with which I started on this account has been completely dispelled. It would upon his evidence alone, without the support which he received from Mr. Piyadasa, have held that a gratification passed. There is nothing, however, in Mr. Piyadasa's

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evidence which, in my opinion, suggests that he is not speaking the truth I accept his and evidence in its entirety.

11. I am of opinion that Mr. S. de S Jayasinghe is not speaking the truth and that he, like many others, is reluctant to involve himself in any incident or scene in which a gratification passed. This is an easily understood attitude and, though unfortunate from the point of view of the Commission, one which I have encountered in many witnesses. It is the same attitude which has led Mr. Jayasena or Mr. B. J. Fernando to deny that they paid a sum of Rs. 25 to Mr. Collin Fernando. Mr. B. J. Fernando went so far as to deny that he knew anything about the list mentioned in 10 paragraph 3 above (Appendix CC), which is extremely difficult to believe. My own impression is that he knows much more than he chooses to reveal. Mr. Jayasena did admit the abstract proposition that as an omnibus owner he had given bribes on other occasions. Both these witnesses knew of the advice given by Dr. A. P. de Zoysa, a member of the State Council (*vide* paragraph 22 of Report) that it was wrong and unwise to pay any gratification to secure support, and of the tacit if not express agreement to accept that advice by omnibus owners. It would have been most embarrassing to one or the other of them to have been discovered by Dr. de Zoysa as a person who had been party to the giving of a gratification. Mr. Collin 20 Fernando says (and I believe him) that the question of making payments by way of gratification to Councillors was not freely discussed because Dr. A. P. de Zoysa who was assisting and who had advised strongly against such payments would have come to know about it.

12. I have been anxious in fairness to Mr. Gunasekera to see whether any doubt gathered from surrounding circumstances can arise with regard to the receipt of a gratification by him. Is there any reason why my impression of Mr. Collin Fernando's evidence should not be given effect to in the conclusions which I have to arrive at? The only motive, if any, which Mr. Collin Fernando could have had for speaking an untruth is that he was 30 playing a part in a conspiracy to involve Mr. Gunasekera on a false charge. It is not suggested that Mr. Collin Fernando has himself any reason for animosity towards Mr. Gunasekera but Mr. Gunasekera said that he had a number of political and other enemies and the question is whether one or more of them have conspired to lay a false charge against Mr. Gunasekera.

13. Upon this point it must be noted that Mr. Collin Fernando did not volunteer to give evidence. It was Mr. Jayasena who is giving evidence before me with regard to the list of Councillors prepared by Mr. Abeygunasekera for the first time disclosed the name of Mr. Collin Fernando. He said that Mr. Collin Fernando had brought the list. Mr. Jayasena did 40 not however say that Mr. Collin Fernando knew anything about a payment to Mr. Gunasekera nor did Mr. Jayasena himself speak to or even mention, the payment. Upon the matter of the payment Mr. Jayasena's evidence was a blank. In fact it is very striking that Mr. Jayasena does not support Mr. Collin Fernando on a very material point with regard to the payment,

namely, upon the question of the source from which the money came. It is inconceivable, therefore, that Mr. Jayasena placed the name of Mr. Collin Fernando before me for the purpose of giving effect to a conspiracy against Mr. Gunasekera. No one else orally in evidence before me or in writing suggested that I should call Mr. Collin Fernando. Indeed it was not suggested to me even anonymously. This alone to large extent negatives the idea of conspiracy because, if there had been one, the conspirators would have taken action to further it. I reject as far fetched and highly improbable the possibility that there was a conspiracy in which the conspirators seized upon Mr. Collin Fernando as an useful tool after his name was mentioned to me by Mr. Jayasena but before he gave evidence. As already stated Mr. Fernando was not a volunteer.

14. Further, the sum of Rs. 25, which is alleged to have passed, is not a sum upon which conspirators would have fixed. By itself, it tends to the view that such a small sum could not have been accepted by a State Councillor. The question of the amount is a point which aroused my consideration. But the sum total effect of the evidence has been to make me believe with confidence that this small amount was accepted by Mr. Gunasekera. Nevertheless, it is not likely that conspirators concocting a false story would have fixed upon this sum.

15. A point strongly pressed by counsel for Mr. Gunasekera calls for comment. The witnesses Fernando and Piyadasa gave evidence before me on two separate occasions, on the latter of which Mr. Gunasekera was represented by counsel. On both occasions Mr. Fernando stated that he handed over notes to Mr. Gunasekera and made no mention of an envelope. On the first occasion Mr. Piyadasa stated that it was money in an envelope that was handed over to Mr. Gunasekera and on the latter occasion he stated that notes were handed over without mentioning an envelope. Being pressed on the question of his earlier evidence he stated that an envelope was in some way involved in the incident but that he was uncertain as to how exactly it had figured. Mr. Gunasekera stated that the money had been offered to him in an envelope. The first thing that strikes me strongly about this discrepancy is that, if there had been a conspiracy, this is just the kind of detail upon which the two conspiring witnesses would not have disagreed. It has been stated by eminent judges that it is the nature of a contradiction and not the contradiction itself that is material in assessing the truthfulness of evidence. The nature of this contradiction is such that it militates against the theory of conspiracy. The impression left upon my mind is that an envelope did figure in the transaction at some point at a stage or in a manner which did not create a vivid impression owing to the relative degree of unimportance which it had played, and that the discrepancy discussed is due to this fact. I have no doubt that upon the main question of the passing of the money the witnesses are truthful and that their evidence is accurate.

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**Allegation that gratifications by way of reward have been received
 by Messrs. H. E. Newnham, H. F. Parfitt, E. C. Villiers, and
 F. H. Griffith in connection with the work done by them in
 the State Council and the Committees thereof for the
 Chamber of Commerce, the Ceylon Estates
 Proprietary Association, the Planters'
 Association, and the European
 Association respectively.**

Witness-examined—Messrs. Siripala Samarakkody, H. E. Newnham, 10
 H. F. Parfitt, E. C. Villiers, and F. H. Griffith.

Finding.—I find that Messrs. Newnham, Parfitt, and Villiers have received payments coming within the terms of reference of the Commission issued to me and that Mr. Griffith has not. The essential difference between the cases of the first three members and that of Mr. Griffith is that they received remuneration for the work done in Council whereas Mr. Griffith merely received an allowance to meet his out-of-pocket expenses incurred in the course of travelling about the country to attend various meetings. He has received nothing for the work done in Council itself.

2. *Comment*.—Messrs. Newnham, Parfitt, Villiers, and Griffith were 20
 selected for recommendation for nomination by the Chamber of Commerce, the Ceylon Estates Proprietary Association, the Planters' Association, and the European Association respectively. Their names were submitted jointly by the four Associations. They receive salaries or allowances, or both. In the minutes of the Associations, in correspondence and in general they were regarded by the bodies which selected them as their "representatives". Except in the case of Mr. Newnham, the terms on which they accepted office were not embodied in a written document and is not referred to in detail in any writing which I have been able to trace.

3. The European members took up the position that their votes were 30
 not "tied", that is to say, they said that they were not the mere paid mandatories of the Associations which they represent and that the Associations had in no way sought to dictate to them the manner in which they should vote upon any particular measure. All of them, except Mr. Newnham, said that they had proclaimed this fact from many platforms on many occasions. Mr. Newnham said that he could not remember having made declarations from public platforms but he, too, asserted emphatically that in this matter the relationship between him and his Association was the same as that of the other members. As against this, a member of the State Council (Mr. Siripala Samarakkody) stated that in the course of private discussions one 40
 or more of the European members had said that they could not support certain views with which they agreed because their Associations disagreed. I find it unnecessary on evidence to reconstruct private discussions and to

decide whether whatever was there said represented accurately the relations between the members and the Associations, because I find that in any event and upon their own evidence, the three members come within the terms of reference and the fourth one, in any event, does not.

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4. Two matters arise for consideration.

- (1) Firstly, whether the members or any of them have been paid remuneration with the object or purpose of influencing their "conduct" in matters which came up before the State Council or the Committees thereof;
- 10 (2) secondly, whether it has been paid to all or any of them with the object or for the purpose of influencing their "judgment" in such matters.

If the answer to either of these questions is in the affirmative, they or he would come within the terms of reference.

5. I will deal with Mr. Newnham first as his is the clearest case. Minute No. 69 dated March 25, 1939, of the Committee of the Ceylon Chamber of Commerce is as follows :—

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20 "69. *Commercial Member*.—The following conditions in connection with the services of Mr. H. E. Newnham, C.M.G., as set out in the Chairman's letter to him of May 4, 1938 were approved :—

"(1) The Chamber of Commerce would make you an allowance of Rs. 2,000 per mensem, while the remuneration allowed by the State Council to its members would, of course, be receivable by you.

"(2) The chamber would also pay up to Rs. 200 per mensem by way of an allowance towards the salary of a confidential Secretary."

An extract from the proceedings of Standing Committee "A" of the Ceylon Chamber of Commerce of June 30, 1939, reads as follows :—

30 "Nominated Member in Council. It was decided that this should be a full time appointment."

It thus appears that Mr. Newnham held a full time appointment under the Ceylon Chamber of Commerce with a salary of Rs. 2,000 per month and an allowance of Rs. 200. He stated to me that for this salary he had many duties to perform. He had an office in the Chamber of Commerce which he had to attend normally from 9 to 4.30. He dealt on behalf of the Chamber with a number of problems. As a matter of routine, the Secretary submitted nothing to the Chairman without its being submitted to him first, the idea being that he was to relieve the Chairman of as much work as possible. He also had to represent the Chamber of Commerce in the State Council. Summing up his position, he stated that the sum received by him was "in consideration partly of the work which I had as a State Councillor

Exhibits and partly in consideration of the work which I had outside the Council.”
 D 2. With regard to his work in the State Council he said that it was part of his
 True copy of duties to make a study of all the matters that came up before the Council,
 the Report of and that he explained these matters to the relevant Committee of the Cham-
 the Bribery ber and heard its views. It was part of his duties to express these views
 Commission, either in their original or in a modified form in Council and in Committee.
 May, 1943 With many of the matters he himself was not familiar as he had no expe-
 —continued rience in Commerce before his entry into Council. He said that the
 Chamber had never given him instructions as to what he was to do or
 dictated to him his course of conduct in Council or in Committee. 10

6. Upon the first point it is clear to my mind that, in return for the remuneration paid to Mr. Newnham, he has, on his own showing, put forward in the Council and its Committee the views of the Chamber of Commerce. The extent to which he supported these views is immaterial for the purpose of deciding this point. His conduct in putting forward the views themselves was the direct result of the remuneration received. There can be no doubt about this and this fact alone suffices to bring him within the terms of reference.

7. The case of Mr. Parfitt is very similar to that of Mr. Newnham in essential features. In his case there is no minute or other document in 20 which the terms on which he receives remuneration are set out. But an extract from a letter dated March 5, 1934, from the Chairman of The Ceylon Estates Proprietary Association to him shows that an arrangement was made whereby the “representative” of the Ceylon Estates Proprietary Association in Council combined that office with that of the Secretary of the Association. Mr. Parfitt was paid Rs. 2,000 a month until about six months ago when, as the work was heavy, he limited himself to the political side and received only Rs. 1,000 a month. He is now the Deputy Chairman, the office of Secretary having been filled by a full-time officer. He stated that, when matters affecting the interests covered by the Ceylon 30 Estates Proprietary Association arose in the State Council, he went before the Executive Committee of the Association, told them what was going to happen and sought their expert advice. He noted all the views expressed and went into Council and Committee and occasionally voted contrary to the advice given. He said he took the latter course when the complexion of a problem changed in the course of debate. It is clear that in the great majority, if not all, of the matters that came up before the Council or its Committees Mr. Parfitt voiced the views of his Association although, according to him, on occasions he did not wholly support those views. The greater part of his activity in Council was concerned with pressing the 40 views of his Association. He received reward for this “conduct”. It was paid for the purpose of securing it.

8. When the existing Constitution came into effect in 1931, Mr. Villiers agreed to be a candidate for nomination as the person selected by the Planters’ Association. The question of salary was not raised at that time

but it was presumed correctly that he would receive a salary of Rs. 2,000 a month. Mr. Villiers' position is very similar to that of the other two members. To use his own language: "I put my views before my Association and get theirs. Thus, I am in a position to put the views of my Association before the members of the House." It may be that some of these views received modification by reason of the exigencies of a sudden development or for some other cause. But in the majority of cases there is no doubt that it is the views of the Association that were put before the Council and its Committees. Mr. Villiers received a reward for this "conduct".

10 It was paid for the purpose of securing it.

9. It has been suggested that the payments made to the three members must be regarded as compensation for loss of time and energy and not as reward for services rendered. It do not think this view is sustainable. All payments for service rendered includes payment for the employment of the time and energy of the person rendering the service for the benefit of the person to whom the service is rendered. This is a universal rule true even of manual labour. To isolate time and energy from the service would lead to a fallacy. In the case before me time and energy clearly cannot be isolated. It cannot be said that payment was made on that account only. The

20 Associations wanted certain views expressed in Council and its Committees and a payment was made to get them expressed and, in most cases, pressed.

10. Upon the second point, the members stated that there was no arrangement which bound them to follow the views of their Associations in matters which came up before the State Council. This may be so. But the absence of a rigid understanding or agreement that they would follow the views of their Associations in all matters does not mean that their judgment was not "influenced" by the reward paid to them. The difference between "dictation" and "influence" must be clearly kept in mind. It may be that in some matters they did not, in fact, follow the views of their

30 Associations. But it would be extremely difficult to hold that the reward paid to them for representing the Associations in the State Council did not in some measure influence their judgment upon the voting, and upon the degree of support of opposition which they gave to various measures whenever there was a clash of interest or opinion between the Associations and others. Any honest juryman sitting on a jury to decide this question of fact must answer that it did. My view is that the payment of remuneration must necessarily have influenced the exercise of their judgment and that both the givers and the takers must have been conscious of the fact.

11. There was no instance given in which Mr. Newnham took up a

40 position in Council or Committee which was contrary to the advice of the Chamber of Commerce. He mentioned two instances in which his action in Council was against the financial interests of some of the members of the Chamber. It is, of course, clear that the views of a responsible body like the Chamber of Commerce does not always coincide with financial gain. Political and other considerations must necessarily induce it in some matters to

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take a view contrary to the financial interests of some, if not all, of its members. But even if Mr. Newnham had on occasion acted contrary to the expressed views of the Chamber, this action does not lead to the inference that his judgment in the generality of matters was not influenced by the remuneration which he received. The question is a question of judgment and upon that point attention must be focussed for the moment. No judge can be heard to say that, upon a matter which he has to decide, payment received from a party interested will not influence his decision. No person interested in an issue which arises for decision can be heard to say that he made a payment to the judge as remuneration for the work the 10 judge had to do, but that he did not intend to influence the judgment.

12. No instance was given by the other two members of occasions on which they acted contrary to the definitely expressed views of their Associations, although their evidence indicated that they have on occasion taken a line somewhat different to the lines suggested at conferences with their Associations. But the observations that I have made in the preceding paragraph are true of them also.

13. The question arises whether, by reason of the similarity at the time of entry into Council of the views of Messrs. Parfitt and Villiers to the views of their Associations, it can be said that payments made to them 20 did not influence their conduct or judgment. The position occupied by these members among proprietors of estates and planters respectively was such that it must undoubtedly be true that their views on many matters coincided with the views of their Associations. I do not think that for this reason it can be said that the reward which they received does not come within the terms of reference. Recently legislation was passed by the State Council to enable reorganization of the omnibus services. One of the sitting members at the time of its passage might have been a lawyer-director of an omnibus company. His views, like the views of many omnibus owners, might have been opposed to the legislation. If, in these circumstances, 30 the omnibus-owning interests in Ceylon collectively paid him a fee of 500 guineas to induce him to listen to their views and to express them in the State Council and generally to take pains and trouble over the matter, there can be no doubt that the payment would have come within the terms of reference. It is immaterial that the views of the member might, for the great part, have been the same as those of the persons paying. It is immaterial even that the payment might have been made merely to be sure that a strong effort would be made by him. It would be impossible to say that the money was not paid for the purpose of influencing the conduct and judgment of the member. I do not think that the case 40 for the three members can be put higher than the case of the hypothetical member referred to. In fact, it is not so high because, even before their entry into Council, there was an arrangement by which they had to keep in contact with the Associations and voice their views. The payments

which they received had something of the quality of a general retainer. I think the proposition that it had no influence on them is too abstract a proposition to be related to reality.

14. Mr. Newnham was in the Civil Service before he entered the State Council and there could have been so similarity of views between himself and the Chamber of Commerce at that time. In fact, prior to entry into Council he discussed with the President of the Chamber his lack of experience in the commercial world but was assured that that was not a point against him. The question discussed in the preceding paragraph does not
10 arise in his case.

15. In the case of Mr. Griffith, as the "representative" in Council of the European Association, it is part of his duty to travel widely to attend various meetings including those at which the political events of the day are discussed by various sections of the European community. Rs. 500 is paid to him to reimburse the out-of-pocket expenses which he incurs in the course of travelling. It is paid in respect of an activity outside the Council, and I do not think it can be said that it influence his "conduct" of "judgment" in matters coming up before the Council or its Committees.

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APPENDIX G.

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Statement of Mr. L. M. Gunaratne. Statement of Mr. Simon Abeyratne.

Mr. L. M. Gunaratne is a member of the Ceylon National Congress and has been on its Working Committee for the last six years. He is also the Assistant Secretary of the Lanka Maha Jana Sabha and since 1936 of the Central Council of the Catholic Union of Ceylon. He is strongly convinced that bribery exists throughout the length and breadth of the State Council. His evidence consisted chiefly of impressions and suggested clues.

2. He suggested that in the matter of the election of Ministers gratifica-
30 tions passed between members themselves, candidates for the office paying money in order to secure the support of their colleagues in the Committee. A similar statement had been made to me by another witness and I was anxious, if possible, to examine the material upon which this belief seems to have gained a certain amount of currency. Pressed to give me a concrete instance, Mr. Gunaratne was able to give me only one case in which according to him the allegation was made. It was the occasion when Mr. Francis de Zoysa was a candidate for the office of Minister of Communications and Works. Mr. Gunaratne's belief was founded upon a statement made by one Mr. Simon Abeyratne, a retired book-keeper of Messrs. Mackinon
40 Mackenzie and Company, who was interested in Mr. Francis de Zoysa.

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Mr. Abeyratne was summoned by me and, pressed upon the matter, said that he had no definite evidence and that he did not wish to make statements which he could not prove. He thought he had no right to make them. I told him that I could ascertain the truth or otherwise of any impression which he had formed so long as he honestly told me everything he knew. He then said that he had come to the State Council building on the day on which the election for the office of Minister took place, that there were a number of people talking on the premises and that he gathered the impression that a certain member of the Committee (Mr. Ilangantileke) had received a gratification. He seems to have drawn this inference from three things—
 Firstly, from having directly heard Mr. Ilangantileke telling someone that he refused to vote for a particular candidate; secondly, from the fact that the person to whom Mr. Ilangantileke was talking appeared to be reminding him of a promise and, thirdly, from the general conversation of others who had assembled there. This material was entirely insufficient for the inference drawn particularly as Mr. Abeyratne said that in the conversation between Mr. Ilangantileke and the other person there was no mention of money having passed, and nothing to suggest that it had done so. Mr. Abeyratne's evidence amounted not even to an allegation but merely to a highly qualified impression.

3. Mr. Gunaratne also gave me information with regard to the incident of an alleged gratification to Mr. D. P. Jayasuriya, member for Gampaha. This is dealt with in Appendix H.

4. Mr. Gunaratne mentioned an occasion when he happened to be in the lounge of the Victoria Hotel where there were about 20 or 25 people present. He said that he heard Mr. E. A. Abeygunasekera, who was discussing some matter with certain other people say that Councillors had to spend Rs. 20,000 to Rs. 25,000 to get into Council and that they did not get in there to warm the benches. He suggested that this was an open announcement by Mr. Abeygunasekera (made in a voice so loud that others in the lounge could hear it) that gratifications would be welcome. I would have put this statement to Mr. Abeygunasekera if he had not gone away to Madras (*vide* paragraph 19 of Report) but I have not found it necessary to arrive at a finding on this particular statement as on other evidence I have found that Mr. Abeygunasekera did not make much effort to conceal his activities in the matter of soliciting and receiving gratifications.

5. Mr. Gunaratne stated that a certain gentleman had compiled a list of 70 people whom the Honourable Mr. C. W. W. Kannangara had helped to get into various posts by reason of having received gratifications. This inference had been drawn solely because candidates with qualifications better, in the opinion of this gentleman, than those who had been appointed to the posts had applied. For reasons similar to those mentioned in paragraph 13 of my report I did not proceed to investigate this allegation.

6. Mr. Gunaratne stated that he had heard from one Mr. A. Ratnayake of Maharagama, of a case in which Mr. Ponnambalam, member of the State Council, had paid Mr. Abeygunasekera a sum of money to secure the appointment of one of his uncles as Maniagar. I attempted to find out from the witness whether Mr. Ratnayake was aware of any concrete facts which could afford a starting point for investigation or whether he was merely repeating current gossip. I gathered the impression that Mr. Ratnayake was not aware of any concrete facts but, however, I summoned him in order to ascertain first hand whether my impression was correct. The summons sent to Mr. Ratnayake by registered letter was returned to me with the endorsement 'unknown' and I did not pursue the matter further.

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7. He also made the general statement that various people helped candidates with their election with the object of getting back favours from them and that this should not be allowed. This was too a general statement for me to go into.

8. Mr. Gunaratne suggested that a post in the Municipal Printer's Department had been obtained through a bribe to Mr. A. E. Goonesinghe but this, even if true, is a Municipal matter simpliciter not coming within the scope of my inquiry.

9. There were certain other matters mentioned by Mr. Gunaratne but it did not appear to me that action taken upon them would have led to the discovery of material which would have assisted me.

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APPENDIX GG.

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Allegation that Mr. D. P. Jayasuriya asked for a loan of Rs. 1,000 as a gratification for advancing the candidature of one Mr. Roland de Silva for a post in the Government Electrical Department.

Witnesses examined.—Messrs. Roland de Silva, B. R. de Silva, and M. Najeem.

Finding.—I find the evidence insufficient for the purpose of finding against Mr. D. P. Jayasuriya that he asked for a loan.

2. *Comment.*—On information derived from one Mr. L. M. Gunaratne I examined Mr. Roland de Silva, at present a Tugmaster under the Ceylon Wharfage Company, with regard to his candidature for appointment as an overseer in the Government Electrical Department. He stated that in 1939 he applied in writing for a post in the Department and that, after the application had been made, he asked Mr. Jayasuriya to help him. Mr. Jayasuriya introduced him to one Mr. Jansen, a superior officer in the Government Electrical Department. Mr. Jansen told him that he would

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receive an appointment and he was accordingly appointed as a Fitter-overseer on daily pay. He was discontinued after two months. He says he was not given any reason for the discontinuance. According to Mr Roland de Silva, after the interview and before he got the post, he saw Mr. Jayasuriya at the latter's request at his house, and Mr. Jayasuriya then asked for a loan of Rs. 1,000 saying that he was hard-pressed at the time. Mr. Roland de Silva says that on that occasion Mr. Jayasuriya did not, in so many words, relate the loan to the assistance which had been given by the introduction to Mr. Jansen.

3. Mr. Jayasuriya in a statement made to me in writing denied that 10 he asked for a loan of Rs. 1,000.

4. Supporting Mr. Roland de Silva's case was his brother Mr. B. R. de Silva, who gave evidence with some degree of reluctance. He stated that Mr. Roland de Silva discussed the Rs. 1,000 loan with him at the time it was asked for but that on an occasion on which he himself saw Mr. Jayasuriya about the same matter Mr. Jayasuriya said nothing about a loan or any other form of gratification.

5. Mr. Roland de Silva stated that on the occasion on which the loan was asked for the cleaner of his car, one Mr. N. Najeem, accompanied him and was present outside in the verandah of Mr. Jayasuriya's house seated 20 on a bench while he himself was talking to Mr. Jayasuriya inside. When he came out the cleaner asked him what the conversation was and was informed that Mr. Jayasuriya wanted a loan of Rs. 1,000. Questioned as to this conduct which ordinarily would be rather curious on the part of the cleaner, Mr. Roland de Silva said that he used to chat freely with his cleaner who stood in a position to him rather different to that ordinarily held by a cleaner.

6. The cleaner himself stated that, although he did not hear the conversation between Mr. Jayasuriya and Mr. Roland de Silva, he was informed of the request for a loan of Rs. 1,000. He also gave as his reason for eliciting 30 this information that his master used to treat him well and talk to him about various matters. He admitted, however, to me that Mr. Roland de Silva had not told him about the application for the post of overseer.

7. It strikes me as curious that Mr. Najeem should have learnt about the loan but not about the application. I have received the impression that, even if the story about the application for a loan was true, the story of the incident related by Mr. Najeem is false. It strikes me as an invention intended to corroborate Mr. Roland de Silva. It is impossible to arrive at a finding against Mr. Jayasuriya on the evidence, part of which, at any rate, I believe to be untrue. There is also a contradiction between Mr. Roland 40 de Silva and my informant Mr. L. M. Gunaratne. The latter says Mr.

Roland de Silva admitted having paid some money. Mr. Roland de Silva does not say so. I did not think that a "prima facie" case had been made out against Mr. Jayasuriya and I decided not to proceed further.

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Note.—Appendices H, HH and HI are omitted, *vide* paragraph 40 of the Report on page 11.

APPENDIX J.

10 **Allegation that Mr. George E. de Silva solicited a gratification from one Mr. S. C. de Zylva in connection with a motion regarding salary of teachers.**

Finding.—I find that the allegation is not established.

20 *Comment.*—Mr. S. C. de Zylva states that in 1941 Mr. de Silva undertook to give notice of a motion drafted by him regarding the salary of English Teachers. Mr. de Zylva says that in the course of an interview at Kandy in 1941 Mr. de Silva said "The Teachers must help me". Mr. de Zylva admits that this statement is vague but he says he is now convinced that the word 'help' suggested an illegal gratification because Mr. de Silva has failed to press the motion. Mr. de Silva says that the statement made by Mr. de Zylva is a "diabolical concoction". He says that on one occasion he had to be rude to him. He gives an explanation as to how the motion came not be pressed. The allegation at all times was too feeble for the purposes of a finding and I would have held that no case had been established even without a statement from Mr. de Silva. Mr. de Silva has, however, made a statement which I accept that he never by the use of the word alleged or in any other way solicited a gratification.

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APPENDIX K.

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30 **Allegation that Mr. George E. de Silva received a sum of Rs. 105 to present a petition to the State Council on behalf of one Jamaldeen Adahan.**

Finding.—The allegation is not established. Witnesses examined were Messrs. Jamaldeen Adahan and George E. de Silva.

Comment.—Jamaldeen Adahan was a Kangany employed in the Irrigation Department on a salary of Re. 1 per day. He was dismissed from service in 1938 in consequence of a petition given against him. After having endeavoured without success to secure reinstatement by petitions

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to the Director of Irrigation he asked Mr. George E. de Silva to intervene on his behalf. This was about 6 months after he was dismissed. Mr. de Silva as a member of the State Council did intercede on his behalf. Mr. Adahan says that Mr. de Silva obtained sums of money from time to time saying that he wanted money for expenses. He says that a total sum of Rs. 105 was thus paid. According to him no one was present at the time of his conversation with Mr. de Silva and he is unable to produce any witnesses in support of his allegations. Mr. de Silva hotly denies that Mr. Adahan paid him any money. He says that Mr. Adahan worked against him at the Municipal Elections at Kandy and that he has, probably, been put up by somebody to make allegations against him. I accept Mr. de Silva's statement that no money was received by him.

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APPENDIX L.

(1) Allegation that Mr. C. W. W. Kannangara received a gratification of Rs. 250 from one Mr. H. A. S. Piyasena, Assistant Teacher at Kandagoda School, to be appointed Head Teacher of that school.

(2) Allegation that Mr. C. W. W. Kannangara received a gratification to appoint one Mrs. Gunasekera as Head Teacher. 20

Witnesses examined.—Messrs. A. de S. Nilamuni, A. S. de Silva (also known as Somasiri) and D. P. Kannangara.

Finding.—I find that these allegations are not established.

2. *Comment.*—One Mr. A. de S. Nilamuni, a teacher, stated that one Mr. H. A. S. Piyasena, an assistant teacher at Kandagoda School, had paid Mr. C. W. W. Kannangara a sum of Rs. 250 and received the appointment of Head Teacher. Asked how he knew about this, Mr. Nilamuni stated that Mr. Piyasena himself had told him about the bribe. Mr. Nilamuni says that he had arranged to come to Colombo with Mr. Piyasena to see Mr. Kannangara, that he desisted at the last moment and that Mr. Piyasena had later told him that he had seen Mr. Kannangara and paid a gratification. He said further that the money had been paid in the presence of one Somasiri, a clerk employed in a cinnamon shop in Colombo, but he qualified this last statement by saying that it might have been another clerk. Both Piyasena and Somasiri denied the incident very hotly. Mr. Nilamuni did not create a favourable impression on me and my own view is that rivalry with Mr. Piyasena has led him to make this allegation without any solid foundation. It may be a conjecture on the part of Mr. Nilamuni based upon the fact that a change of regulations took place immediately before the appointment which, according to Mr. Nilamuni, enabled Mr. Piyasena 40

to be appointed. But whatever the reason, I do not feel that Mr. Nilamuni's evidence is worthy of acceptance. I have not called upon Mr. Kannangara for a defence or for even a statement upon this allegation.

3. Mr. Nilamuni also stated that a teacher by the name of Kannangara told him that money was paid by one Gunasekera to Mr. Kannangara in respect of another matter. The teacher denied this. Here, again, my estimate of Mr. Nilamuni's evidence is that it is worthless.

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APPENDIX M.

10 **Allegation that Mr. C. W. W. Kannangara accepted a gratification of Rs. 250 from one Mr. Julius Lecamvasam, a teacher, on the promise of using his influence to prevent the transfer of Mr. Lecamvasam from the Agalawatte school at which he was stationed.**

Witnesses examined.—Messrs. Julius Lecamvasam and V. G. de Silva.

Finding.—I find that the allegation is not established.

Comment.—Mr. Lecamvasam wrote to me on September 28, 1941, soon after the Commission had issued to the effect that he was in a position
20 “to give true evidence in a case of attempted bribery which I am compelled to submit for the good of all concerned”. He also asked me on that occasion as to what his position as a witness would be. I wrote to him on October 1, 1941, explaining to him that I could not tell him what his position would be until the Bill then before Council had been passed or rejected. I also asked him to send me a statement in writing giving particulars of the matters on which he wished to give evidence. On October 20, 1941, he sent me a reply in which he complained that he had been transferred in 1939 from the Agalawatta school to a school at Meeriswatta mentioning numerous hardships that he suffered at the latter place and stating that the
30 only reason given for his transfer was “exigencies of service”. He asserted that there had been no fault on his part meriting such punishment. His letters appeared to me at that time to be amongst other things, an invitation to review the question of his transfer. He gave no details in his letter of evidence relating to gratification. The only reference to gratifications was the following:—

“I am prepared to state when I am called up to give evidence instances how attempts were made to obtain bribes from me”.

which was a repetition of his earlier statement that there had been “attempted bribery”. Giving evidence before me Mr. Lecamvasam stated not merely
40 ly that an attempt had been made to obtain a gratification from him but

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that he had, in fact, in August, 1939, paid Rs. 250 to Mr. Kannangara for the purpose of avoiding a transfer from the Agalawatta school. The letters to me were written in English and, when confronted with them, the witness attempted at first to give me the impression that he could not read English. When I asked him whether he knew English, he said " I have not learnt English at school. I understand something when people converse or when people speak in English ". I asked him later the specific question whether he could write English and he said " Yes ". I then discovered that he was able to read and write English quite well and he gave it to me as an explanation of his earlier evidence that he had not learnt it at school but had taken 10 private tuition in English. He had learnt up to the School Leaving Certificate. Both from the demeanour of this witness and from what he said I feel that no reliance can be placed upon his evidence.

2. As to the incident itself, he said that on one occasion he visited Mr. Kannangara and realized from something that Mr. Kannangara had said that a gratification would be welcome. He says that on a later occasion when Mr. Kannangara came to his district he approached him and told him that he wished to see him. Mr. Kannangara then promised to visit him at his house and did so. He says that on this occasion he paid Rs. 250 to Mr. Kannangara, who took it, put it in his pocket and told him that he 20 would do what he could. He says that the money had been kept in an almirah. He says that a relation who used to work in the house was in the adjoining room and that he asked this boy (V. G. de Silva) to count the money before he handed it to Mr. Kannangara. He says that he did not count the money himself. I find it difficult to understand why he asked the boy to count it without doing so himself or at least why he did not count it after the boy had counted it. Mr. Lecamvasam questioned on this point did not give me any satisfactory explanation. Further, Mr. Lecamvasam at first said that he asked the boy whether he had seen the giving of the money, the boy answered in the affirmative and that he had made a mistake 30 if he had said a little earlier that he did not think the boy had seen the handing of the money. According to him, he asked the boy about this matter only about two months before he gave evidence and had not done so at the time when he wrote to me in September, 1941. The boy was called by me and he stated that he had counted the money and seen it being handed over to Mr. Kannangara. Mr. Kannangara denies the incident. The evidence of these two witnesses impressed me most unfavourably and, in my opinion, the allegation is not established. There were numerous differences between Mr. Lecamvasam and the education authorities including several unsuccessful petitions to Mr. Kannangara. There is ample 40 motive for untruth on the part of Mr. Lecamvasam.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX N.

Allegation of the payment of a gratification to Mr. C. W. W. Kannangara to secure his influence in favour of a school at Kittammahara.

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Witnesses examined.—Mr. Edirisuriya Mudalige Wille Peter Edirisuriya Siriwardena.

Finding.— I find that there is no evidence which supports the allegation.

Comment.—This gentleman is the manager of a Buddhist school at Kittammahara. His name was disclosed to me by a State Councillor as a person who was likely to know of a gratification paid to Mr. C. W. W. Kannangara. A rival school was started in his district in the year 1941 and there was trouble between the two schools. Representations were made that the second school was not necessary and that it should not receive encouragement from Government. According to the evidence, Mr. Kannangara took a special interest in the matter. Questioned specifically on the point whether a gratification had been paid, his witness said " I do not suggest that he has been bribed but he has been influenced by the Secretary and by a priest—Tal pawila Seelawansa. There is nothing which tends to show that the Minister has been given a gratification ". Asked by me whether he had heard that a bribe had been given, he answered " The usual talk in the village is that. But I do not attach too much importance to that ".

2. There is absolutely no evidence that a gratification had passed.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX O.

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(1) **Allegation that a sum of Rs. 250 was paid to Mr. A. E. Goonesinghe on behalf of one Mrs. R. P. Kaluarachchi, a teacher, in order to secure his services in connection with the question of her transfer from one station to another.**

30

(2) **Allegation that Mr. C. W. W. Kannangara solicited a gratification of Rs. 500 to use his influence in the matter of transfer of Mrs. R. P. Kaluarachchi from one station to another.**

Witnesses examined.—Dr. A. P. de Zoysa, Mr. R. P. Kaluarachchi, and Mrs. R. P. Kaluarachchi.

Finding.—I find that these two allegations are not established.

2. *Comment.*—Mr. R. P. Kaluarachchi was a clerk in the Clerical Service employed in Colombo. His wife was a trained teacher stationed

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at a school also in Colombo. Somewhere in the year 1935 there was a proposal to transfer Mrs. Kaluarachchi to a station outside Colombo and she desired to do what she could to remain in Colombo. Dr. A. P. de Zoysa giving evidence before me stated that the Kaluarachchis told him that they had interviewed Mr. A. E. Goonesinghe on the matter and that Mr. Goonesinghe had asked for and been paid a sum of Rs. 250 as a gratification for doing what he could in the matter resisting the transfer. They informed Dr. de Zoysa that on one occasion Mr. Francis de Zoysa, to whom the matter had been related, had, presumably by using a second receiver, listened to a conversation between the Kaluarachchis and Mr. Goonesinghe and verified the statement they had made. On examining the Kaluarachchis, they both denied that any money had been asked for by or paid to Mr. Goonesinghe. They denied that they had said so to Dr. de Zoysa. In fact, they kept Mr. Goonesinghe a considerable distance from the matter of the transfer. They said that Mr. C. W. W. Kannangara had asked for a gratification of Rs. 500 for the purpose of using his influence to prevent the transfer. Dr. de Zoysa is a school-mate of Mr. Kaluarachchi and is well-known to him. Questioned by me as to whether he told Dr. de Zoysa about the Kannangara incident, he said "I did not tell De Zoysa about Mr. Kannangara because that will be prejudicing the other members". I do not know what he means. The evidence of the Kaluarachchis stands discredited in respect of both matters because they have withdrawn the allegation which they made against Mr. Goonesinghe and made an allegation against Mr. Kannangara which curiously, if true, they did not mention to Dr. de Zoysa. It is difficult to discover the truth of this matter, if indeed any truth there is. There is no other material which I have been able to obtain of either incidents and it is clear that neither of them have been established.

April 3, 1943.

L. M. D. DE SILVA.

NOTE.—Appendix P is omitted, *vide* paragraph 40 of the Report on page 11.

30

APPENDIX P.

Allegation of the receipt of gratifications by Mr. G. C. S. Corea.

Witnesses examined.—Messrs. Stanley de Zoysa, W. Sathasivam, N. Muttiah, J. Somasunderam. C. V. Bhatt, D. J. Dias, R. L. A. Seneviratne, and M. D. Marker.

Finding.—There is no evidence upon which the finding of an offer to or receipt of a gratification by Mr. G. C. S. Corea can be based.

2. *Comment.*—Mr. Stanley de Zoysa, Advocate, stated to me that in the presence of himself and several members of the Gampaha Courts Mr. W.

40

Sathasivam, a proctor, had stated that he had seen an item in an account book of one of his clients which he had reason to think was in respect of a payment made to a State Councillor. I summoned Mr. Sathasivam, who admitted the incident. He stated that one Mr. Nallasivam Pillai of the Chalmers Granaries had had a case in the courts in the course of which he (Mr. Sathasivam) had occasion to examine his books. He said that he saw an entry "control Kanaka—Rs. 1,250" in the cash book, that he asked Mr. Nallasivam Pillai what this was and received the reply "It is only a contribution that we make on account of our business". Mr. Sathasivam says that he was told by Mr. Nallasivam Pillai that, as a result of a contribution, the merchants made great profits. Mr. Sathasivam unfortunately did not follow up the matter and question Mr. Nallasivam Pillai further. He said that Mr. Nallasivam Pillai was his client, and I understood that he felt it would be embarrassing to press him further for details. The "vilasam" of the firm for which Mr. Nallasivam Pillai was working was N. M. A. and it had, at the time of the inquiry held by me, closed down business in Ceylon. I tried very hard through the Police and through other agencies to trace Mr. Nallasivam Pillai but I was unable to do so. The evidence, if accepted with its utmost implications, establishes that a sum of Rs. 1,250 was distributed in gratifications in the matter of the control of some commodity or commodities but does not suggest necessarily that it was paid to a State Councillor.

3. Mr. Sathasivam went on to state that he coupled this incident with another incident. He said that he learnt that Mr. Corea was entertained by certain Indian merchants at a party at which no Ceylonese was present. But from this I am unable to draw any inference adverse to Mr. Corea upon the matters referred to me.

4. Mr. Sathasivam went on to say that one Mr. C. V. Bhatt, an aluminium merchant of some standing in the Pettah, told him that monies were being paid to Mr. Corea through one Mr. Desai by the Indian merchants. Mr. Sathasivam added that he did not know how far the statement was true. Mr. Bhatt, on being examined by me, flatly denied the statement although I pressed him somewhat hard to state to me anything that he knew upon the question of gratifications to Mr. Corea. It was impossible to follow this particular line of investigation further. Probably, Mr. Bhatt in the course of a casual conversation did state to Mr. Sathasivam what was a conjecture on his part and denied having done so to me.

5. Mr. Sathasivam went on to mention a number of Indian merchants who were, probably, in his opinion, in possession of information on the question of gratifications paid to Mr. Corea. He mentioned the firms of V.E.S.P.L. and R.M.S., both of whom I summoned. The agents of V. E. S.P.L. denied any knowledge. The firm of R.M.S. had closed down but they had an estate in Ceylon. I was unable to get any of the principals or agents of the business, the only person at the time of the inquiry in Ceylon being the Superintendent of the estate, who was not able to give me any

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information. Mr. Sathasivam stated with some confidence that Mr. R. L. A. Seneviratne, a broker at Messrs. Harrisons and Crosfield, Limited, was likely to know something about the matter, but Mr. Seneviratne appearing on summons from me denied any knowledge. He also said that he had acted on behalf of one Mr. Dias, Head Teacher of the Government School at Kalalgoda, and suggested that Mr. Dias had given a gratification to the Minister for Education. Mr. Dias denied this and also all knowledge of Mr. Sathasivam. Mr. Dias did not strike me as an untruthful witness. It did not appear to me worth-while to spend any more time on statements made by Mr. Sathasivam. My impression of him was that his evidence 10 was based largely on surmise.

6. There is nothing to show that any gratification was offered to or accepted by Mr. Corea.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX R.

STATEMENT OF MR. C. M. EDWIN DE SILVA.

- (1) **Allegation of the solicitation of a gratification by Mr. A. E. Goonesinghe for services rendered and to be rendered to Mr. de Silva in the matter of obtaining the latter's reinstatement in the Excise Department.**
- (2) **Allegation that other Councillors ceased to support Mr. de Silva's efforts to obtain reinstatement by reason of receipt of gratification from interested parties.**

20

Witnesses examined.—Mr. C. M. Edwin de Silva.

Finding.—I find that allegation is not established.

Comment.—Mr. de Silva was an officer in the Excise Department and he was dismissed as a result of certain observations that were made by a Magistrate upon his conduct. On appeal the Supreme Court set aside the judgment of the Magistrate holding, and made allusion to the Magistrate's 30 observations on Mr. de Silva. Charges were framed against Mr. de Silva by the Department and he was dismissed in 1929 or soon after. Mr. de Silva complains bitterly that he had been unjustly treated by the Department and he says that he saw Mr. A. E. Goonesinghe about the matter. He says that Mr. Goonesinghe gave notice of a motion but did not move it asking the motion to stand down each time it was reached. At this time, according to him, one Mr. V. E. Goonesinghe, a brother of Mr. A. E. Goonesinghe, suggested that a sum of money should be paid to Mr. Goonesinghe and that, if it was not paid, nothing would be done.

2. There is nothing to support this statement which, even if established, does not bring Mr. A. E. Goonesinghe directly on the scene. Whatever the truth of the matter may be, there is not sufficient evidence to call upon Mr. Goonesinghe for a defence and I have not done so.

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3. Mr. de Silva also invited me to investigate the conduct of certain other Councillors who had been concerned with his affairs and who, according to him, either abandoned his cause or acted against his interests. He suggests that the only inference to be drawn is that a gratification had passed. I am unable to draw this inference and I have not called upon the
10 Councillors in question to explain their conduct as such a proceeding would, in my opinion, be quite unwarranted. There may have been a number of reasons, valid in the minds of the Councillors concerned, other than gratification, for their conduct. Mr. de Silva was genuinely anxious to help me and he gave me useful information, with regard to an alleged gratification paid by the Government clerks in Class III. (*vide* Appendix P) and other information useful as starting-points for investigation.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX S.

20 **Allegation of a payment of a gratification of Rs. 100 to Mr. A. E. Goonesinghe to induce him to use his influence to secure the transfer of one Mr. H. P. C. Fernando, a minor official in the Railway, from Nawalapitiya to Colombo**

Witnesses examined. — Messrs. E. N. A. Ebert and H. P. C. Fernando.

Finding. — I find that the allegation is not established.

2. *Comment.* Mr. E. N. A. Ebert, an Engine Driver and a Committee member for a short time of the Railway Guards and Enginemen's Association stated that one Mr. H. P. C. Fernando in his presence told one Mr. Francis
30 Goonesinghe (who, I believe, is not related to Mr. A. E. Goonesinghe) that one Mr. Amarasekera had obtained a transfer through Mr. A. E. Goonesinghe by paying Rs. 100 and asked Mr. Francis Goonesinghe to arrange with Mr. A. E. Goonesinghe for a transfer for himself also; that Mr. Francis Goonesinghe undertook to take Mr. Fernando to Mr. A. E. Goonesinghe and to arrange this transfer; that he (Mr. Ebert) agreed to take Messrs. Fernando and Francis Goonesinghe in his car to Mr. A. E. Goonesinghe's house; that Mr. Francis Goonesinghe asked Mr. Fernando to bring Rs. 100 and that, on the occasion of the visit to Mr. A. E. Goonesinghe, Mr. Francis Goonesinghe received an envelope containing Rs. 100 from Mr. Fernando. Mr.
40 Ebert says that he saw Mr. Fernando putting the money inside the envelope. The story is that, on reaching Mr. A. E. Goonesinghe's office, Mr. Ebert

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stayed outside while Mr. Francis Goonesinghe and Mr. Fernando went in ; that they both came back looking elated after a short time and told him that Mr. A. E. Goonesinghe had rung up Mr. Mills, the Transportation Superintendent, Colombo, and that the transfer had been effected.

3. Mr. Fernando denies the payment of Rs. 100. I have grave doubts, judging from demeanour and other circumstances, of the truth of the statement of Mr. Ebert that he saw Mr. Fernando putting Rs. 100 inside the envelope. The impression on my mind is that Mr. Ebert is reconstructing an incident which he thinks probably happened without seeing the money or hearing a conversation about the money. I think the evidence is entirely 10 insufficient to establish the truth of the allegation.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX T.

Allegation that certain Councillors received loans and other gratifications from the caterers to the State Council

Witnesses examined.—Messrs. D. H. Jayawardena, D. W. Jayawardena, and W. Robert Silva.

Finding.—I find the evidence insufficient to establish the allegation.

2. *Comment.*—On a statement made to me by a member of the State 20 Council that loans and other concessions were probably being received by other members from the caterers to the State Council in circumstances which suggested that they were being obtained by way of gratification, I examined the caterers.

3. Mr. D. H. Jayawardena was the caterer to the State Council for six years continuously till September, 1939. According to him, certain Members Messrs. E. W. Abeygunasekera, D. D. Gunasekera, R. S. Tennekoon, and C. Batuwantudawe - in addition to running up an account for refreshments and food supplied, used to send chits for the supply of petrol, whisky, brandy, tinned goods and articles of a similar nature. Mr. D. H. 30 Jayawardena said that the highest amount on this account payable at any time by a member was about Rs. 480. He says that on several occasions he told the members that he could not supply goods and refreshments to any one of them of the value of more than Rs. 150 a month, which was the maximum amount out of the salaries of members which the caterer could claim direct from the Clerk of the Council. Mr. D. H. Jayawardena said that on the occasions that he spoke to them they did not threaten to take action against him in any way. When I repeated the question he hesitated, searched his mind and said that Mr. Gunasekera and Mr. Abeygunasekera had threatened to get his contract cancelled if he refused to 40 continue the existing system. He said that he had told his brother Mr.

D. W. Jayawardena, who was his manager, what had happened between himself and the Councillors. Mr. D. W. Jayawardena giving evidence before me had no recollection that Messrs. Gunasekera and Abeygunasekera had threatened to get the contract cancelled. If Mr. D. H. Jayawardena's evidence is accepted, there certainly appears to have been conversation at which the Councillors resisted the efforts of the caterer to discontinue the system but the evidence that they actually threatened to get the contract cancelled is somewhat feeble. It is not that I think that Mr. D. H. Jayawardena is deliberately speaking an untruth but the sort of threat, if threat there was, does not appear to have made a deep impression upon him and probably did not amount to anything more than some angry words among others. Whatever might be said about the notions entertained by the Councillors with regard to the caterer's duties, unless a direct or indirect threat to take action against him is established they would not come within the terms of reference, because whatever concessions they received from the caterer cannot be said to have been a gratification "to influence their conduct or judgment as members of the State Council". I accordingly hold that this allegation is not established.

4. The discussion in the previous paragraphs has proceeded on the assumption that what Mr. D. H. Jayawardena says with regard to what was expected of him is truthful and accurate. As I felt that in any case I would be unable to hold that a gratification passed, I did call upon the Members for a defence and I wish to make it clear that nothing that I have said amounts to a finding that they took the articles mentioned by Mr. D. H. Jayawardena in the circumstances deposed to by him.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX U.

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Allegation that Mr. Susanta de Fonseka received a gratification to desist from working on behalf of one Mr. L. D. Nepo Singho, whose innocence in the matter of a conviction on a charge of selling ganja he was at the time endeavouring to establish.

Witnesses examined.—Mr. L. D. Nepo Singho.

Finding.—There is no evidence whatsoever to support this allegation.

2. *Comment.*—Mr. L. D. Nepo Singho is a bookseller and a temperance worker. According to his evidence, he presented a petition against the Excise officers of his district regarding illicit sales of toddy and by way of retaliation was charged by them for selling ganja. He was convicted and fined Rs. 150. Being unable to pay the fine, he underwent a sentence of imprisonment. He protests that the case was a false one. He

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induced Mr. Susanta de Fonseka, Deputy Speaker of the State Council, to take an interest in his case and Mr. Fonseka was able to go so far as to persuade the Excise Department to hold a departmental inquiry into the matter of the conviction. Mr. Fonseka appeared for Mr. Nepo Singho at the inquiry but the Investigating Officer did not take a view different to that of the Magistrate. Mr. Fonseka having exhausted all methods of obtaining relief, informed Mr. Nepo Singho that nothing further could be done. Mr. Nepo Singho alleges that Mr. Fonseka desisted from further action by reason of the receipt of a gratification.

3. There appear to have been rumours in the village at the time of 10 the Excise inquiry that the Excise officers pressed the renter to do what he could on their behalf. Mr. Nepo Singho says that the son-in-law of the renter interviewed Mr. Fonseka while the inquiry was pending and that Mr. Fonseka stamped his foot and said "Nepo Singho is a poor man. I will take all the interest in it." He says however, that later one Mr. Leo Fernando persuaded Mr. Fonseka to help the Excise officer. He says that one Mr. N. D. Jayasinghe placed Rs. 500 on Mr. Fonseka's table and asked Mr. Fonseka to send for Mr. Nepo Singho and pay it to him as hush-money. All this is based on rumour. He does not say that Mr. Fonseka sent for 20 him and offered him this money nor does he suggest any occasion on which Mr. Fonseka received a gratification. He does not appear even to have heard from anyone else that Mr. Fonseka received a gratification. Mr. Nepo Singho seems to have kept on writing to Mr. Fonseka, who, finding it quite impossible to deal with him by letter, appears to have asked him to come and see him. Mr. Nepo Singho appears to have desisted because he thought a gratification had been paid. Pressed upon the question as to why he was alleging that a gratification was paid, he said it was an inference drawn from the fact that Mr. Fonseka had dropped the matter. It appears to me that there is absolutely no evidence of any sort against Mr. Fonseka, and that Mr. Nepo Singho, moved deeply for what he thinks is an unwarrant- 30 ed failure in getting relief in the matter of his conviction, imputes a gratification to Mr. Fonseka as the sole possible cause. His judgment appears completely to have lost its balance. There is no room in this matter for even the slightest suspicion that Mr. Fonseka received a gratification. I have not called upon him for a defence or even for a statement.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX V.

Allegation by Mr. L. B. Tillekeratne that Mr. E. W. Abeygunasekera accepted a gratification of Rs. 70 from him to further his interests as a teacher.

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Witnesses examined.—Mr. L. B. Tillekeratne.

Finding.—I have not investigated this matter as I have found, with regard to other incidents in respect of which Mr. Abeygunasekera was

called upon for a defence, that he both solicited and accepted gratifications. Nothing was to be gained by unduly extending the inquiry to go into this allegation.

2. *Comment.*—The evidence of Mr. Tillekeratne amounted to this: that he passed his Teachers' Examination in 1933 or 1943 and that, as he was waiting for an appointment, Mr. Abeygunasekera told him that he could get him one through Mr. Batuwantudawe, who was related to Mr. Kannan-gara, the Minister of Education. Mr. Abeygunasekera, it is alleged, took Rs. 70 from him to be paid to Mr. Batuwantudawe but later, on inquiry
10 Mr. Batuwantudawe denied to Mr. Tillekeratne that he had received any money. Mr. Tillekeratne did not get an appointment as promised.

3. Mr. Tillekeratne says that he came to know Mr. Abeygunasekera as he lives in the latter's electoral district. Mr. Tillekeratne implored of me, after giving evidence, not to disclose his name as Mr. Abeygunasekera would harass him. I do not know whether this would have happened or not but it was suggested by Mr. Abeygunasekera himself in the course of the inquiry into the "Attanayake incident" (*vide* Appendix B) that he did incite a number of people to be violent on the occasion of certain meetings which he was anxious to break up. It is possible that some or all of these
20 people are in Mr. Abeygunasekera's employ. It is irrelevant for purposes of my inquiry to enter into an investigation of these matters. I have decided not to proceed further with this allegation, because, if established it would only prove what has already been proved by other material.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX W.

Statement of Mr. P. A. Dissanayake, Village Committee Chairman, Hanguranketa.

This gentleman lives in Mr. E. W. Abeygunasekera's electoral district and made a number of allegations against him but was unable to furnish
30 me with, or give me the clue to, any direct evidence on the matters which he mentioned. He gave evidence at my instance as the result of a statement by another witness that he could be of assistance to me. He endeavoured to do his best but was unable directly to be of value.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX X.

Statements of A. P. S. Gunasekera, Barthanu Silva, and Alwis Silva.

These three witnesses belong to the labouring classes. The first witness Mr. A. P. S. Gunasekera, would appear, rightly or wrongly, to suffer from
40 a sense of grievance. His evidence and the evidence of the others related

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to a land transaction in which Messrs. E. W. Abeygunasekera, D. P. Jayasuriya, and A. P. Jayasuriya are alleged to have participated. No part of the evidence which they gave related to the Councillors mentioned in their capacity as Councillors and, after giving the witnesses a full hearing to satisfy myself of this, I did not pursue the inquiry any further.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX Y.

Statement of Mr. C. A. Tranchell.

Mr. Tranchell, whose name was disclosed to me by Mr. Edwin de Silva (*vide* comment on his statement in Appendix R) gave evidence of a transaction in which Mr. E. R. Tambimuttu solicited a sum of money for services to be rendered in securing the reinstatement of Mr. Tranchell in the Excise Department from which he had been dismissed. The evidence related to an incident in 1934 before the existing State Council came into existence and so the allegation he made was outside the scope of my inquiry.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX YY.

Statement of Mr. E. E. Davidson.

I examined Mr. E. E. Davidson, Retired Deputy Director of Education, at the instance of Mr. W. Sathasivam who thought he would have some material of importance to me. The evidence given by Mr. Davidson, so far, does not relate to any gratification. Mr. Davidson promised to search his mind for clues which would lead to the discovery of gratification and to make a further statement if he found any. Such a statement has not been forthcoming. I presume he is unable to give me any further information which will be of value to me.

L. M. D. DE SILVA.

APPENDIX Z.

Statement of Mrs. Grace Clare Wijesinghe.

Mrs. Wijesinghe was a teacher at a Buddhist Mission School some years ago and has sent me numerous letters. Owing to misfortune or some other cause Mrs. Wijesinghe's grasp of facts was not as strong as it must have been some years ago. She stated that she wanted to give evidence with regard to bribery among State Councillors but all she persisted in doing was in making allegations against Mr. G. A. Wille regarding his professional conduct in a case. I pointed out to her that this did not come within my terms of reference but it did not make the impression on her that it should have done. There is nothing of assistance to me in her evidence.

April 3, 1943.

L. M. D. DE SILVA.

APPENDIX ZZ.

**Statement of Messrs. P. S. Seyed Ibrahimso Marikar and
W. A. de Silva.**

On information received from Mr. C. M. Edwin de Silva (*vide* Appendix R) that these witnesses were likely to disclose certain gratifications paid by dealers in beedies to Councillors, I examined them. Their evidence related to alleged smuggling and other irregularities in connection with the beedi trade. There was no evidence of the payment of gratifications to Councillors.

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L. M. D. DE SILVA.

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I certify that the Report and Appendix C to the Report as herein printed are true copies of the original Report and of Appendix C as submitted to His Excellency the Governor by L. M. D. de Silva Esq., K.C., in pursuance of a Commission issued to him dated 13th August, 1941. The originals above referred to are documents in my custody.

H. A. C. DOBBS,
Secretary to the Governor.

Colombo 2nd June, 1944.

P. 3**Post Card.**

20 (Post Card)

Mrs. M. G. Perera,
171, New Buller's Road,
Colombo.

so this M.G.'s work
that crook!—

(Dr. M. G. Perera who gave evidence was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did.)

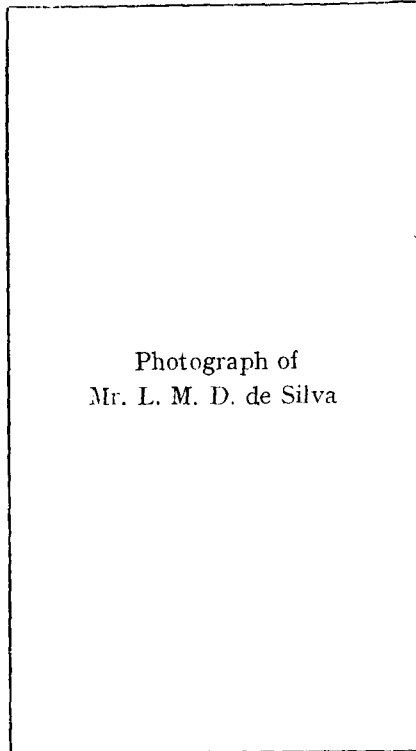
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BRIBERY COMMISSIONER HOLDS AGAINST EIGHT
COUNCILLORS

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Photograph of
Mr. L. M. D. de Silva

MR. L. M. D. DE SILVA, K.C.

Mr. L. M. D. de Silva, K.C., was appointed Bribery Commissioner on July 14, 1941, and on completion of this work last month was appointed Chairman of the Public Services' Inquiry into allegations made against Mr. M. H. Kantawala, C.C.S., late Trade Commissioner in Bombay. Mr. de Silva was Solicitor-General of Ceylon from 1931 to 1934 and also acted as a Puisne Judge of the Supreme Court. He retired from the service of the Government in 1934, and proceeded to England where he built up a lucrative practice before the Judicial Committee of the Privy Council. In 1938, Mr. de Silva was called to the Inner Bar whilst practicing before the Judicial Committee of the Privy Council, and is the only Ceylon lawyer to be raised to the rank of King's Counsel of the Bar in England.

Three Nominated European Members Resign.

**BILL TO ENABLE EXPLUSION OF
MEMBERS GAZETTED**

"I have found that eight members, whom I have been able to identify, have received gratifications within the meaning of that term in the Commission issued to me. Among these are the three nominated European members," states Mr. L. M. D. de Silva, K.C., the Bribery Commissioner, in the course of his Report which was issued as a Sessional Paper last night.

The eight members against whom the Commissioner has found for accepting gratifications or pecuniary advantages in connection with the performance of their duties as Councillors are—Mr. E. C. Villiers, Mr. H. F. Parfitt, Mr. H. E. Newnham, Mr. E. W. Abeygunasekera, Mr. C. Batuwantudave, Mr. H. A. Gunasekera, Mr. E. R. Tambimuttu and Mr. D. D. Gunasekera.

THREE RESIGN SEATS

As reported in an adjoining column the three European members who were nominated by His Excellency the Governor have been, in consequence of the Commissioner's finding, requested by His Excellency to tender their resignations and have already done so. **Almost simultaneously with the publication of the Commissioner's findings a Gazette Extraordinary was issued yesterday publishing a bill in the name of the Leader of the House to enable the State Council to expel any**

member on the ground of the acceptance of pecuniary reward or other gratification in connection with the performance of his duties as a member.

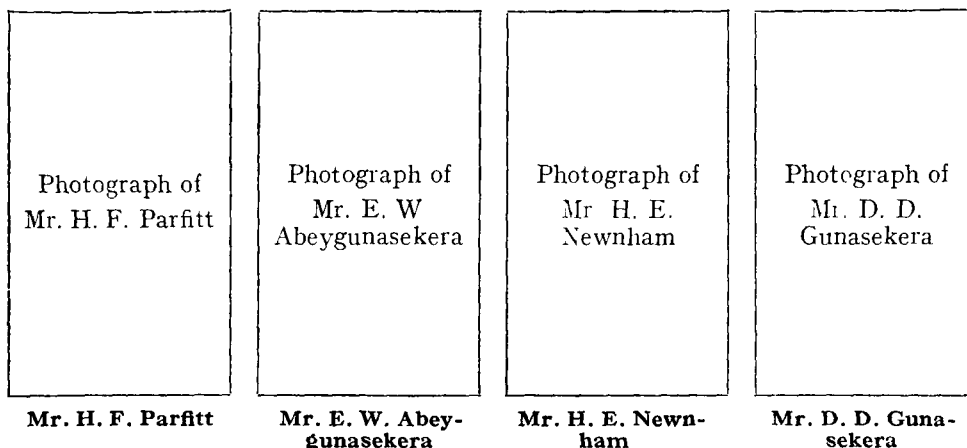
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It may be mentioned that the three European nominated members were in receipt of monthly allowances from Associations which considered the members to be their "representatives" in the State Council. The other European nominated member, Mr. F. H. Griffith, also received payment but that, the Commissioner finds, was only in respect of work done outside the Council.

- 10 There are 28 Appendices to the Report, containing details of the allegations of bribe-acceptance made against various members of the State Council, including others than those against whom the Commissioner has found. These were allegations against Messrs. C. W. W. Kannangara, Geo. E. de Silva, G. C. S. Corea, D. P. Jayasuriya, A. E. Goonesinha and D. Susanta de Fonseka ; but the Commissioner states that in their cases the allegations were not established.

WHAT THE EVIDENCE SHOWED

- 20 After stating the terms of reference of the Commission issued to him by the Governor and the circumstances that necessitated the enactment of the Immunities Ordinance for the protection of witnesses, Mr. L. M. D. de Silva

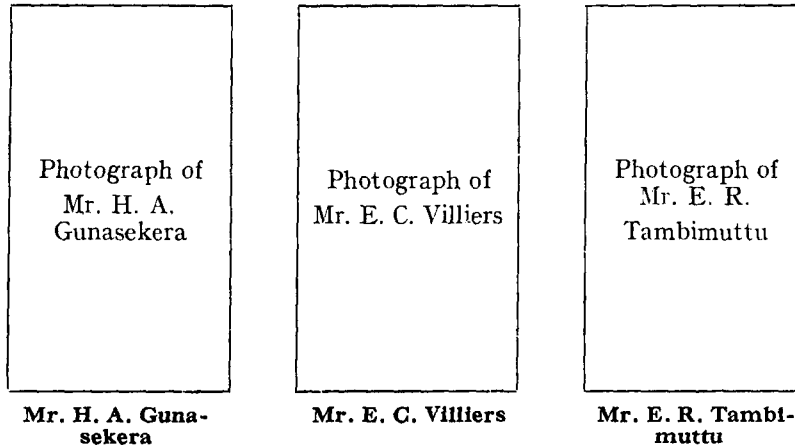


refers to the reluctance of people to come forward and give evidence and his decision to take evidence in camera, as he was enabled to do by the Ordinance.

I decided to do so, (he writes) largely in view of the absolute immunity conferred on witnesses. They were free to say what they liked before me without fear of the ordinary penalties of the law. The principle that every person is to be held innocent until he is proved to be guilty is observed in courts of law but it is not universally followed elsewhere. It is extremely

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difficult while a charge is under investigation to protect the person charged from the hum of conversation and the sting of conjecture. Fairness demanded that the evidence and the conclusions to which it led should be released together.



Sources of Information.

I have examined in all 124 witnesses. Of these, twelve volunteered to give evidence. The others were summoned by me on information derived from various sources. I received valuable information relating to one incident from a police file. As I was conscious that all the available material would not be voluntarily placed before me, I examined a certain amount ¹⁰ of material called for from Government Departments sometimes at random in order to ascertain whether there were any features particular or general which indicated the taking of gratifications by State Councillors. I also examined certain Councillors whose speeches on different occasions made me believe that their evidence might be useful. The information derived from one Councillor led to the discovery of two cases, one of receiving a gratification, the other of soliciting one.

Nature of Allegations.

What Committee System Lends Itself To.

The evidence before me covered to a small extent allegations of grati- ²⁰ fication in respect of matters which came up before open Council. In the main it covered allegations of gratification in respect of matters which came up for consideration by Executive Committees. The chief items of which complaint was made were—

- (1) appointments to various offices in the Government Service ;
- (2) nominations to Municipal and Urban Councils ;

(3) decisions on policy, the repercussions of which resulted in advantage or disadvantage to private parties.

I will deal with these separately.

Public Service Appointments.

With regard to (1), Regulation 13 of the Public Service Regulations requires the Secretary of the Public Services Commission to forward to the Executive Committee in "general control of a department" recommendations from the Head of that Department with regard to the filling up of any vacancy which has occurred. The Executive Committee then makes
 10 its own recommendation to the Public Services Commission which, through its Chairman, advises Your Excellency. The existing Council began to function on March 17, 1936. From that date up to now the number of instances in which the recommendations of the Head of a Department have not been adopted by an Executive Committee is only 20 (twenty). The number of instances in which the view of the Executive Committee has prevailed over that of the Head of a Department is 13 (thirteen). The total number of appointments made after recommendation by Executive Committees is 694 (six hundred and ninetyfour). These figures were obtained by me from the Chief Secretary. It is clear, therefore, that the actual
 20 effects, if any, of gratifications on appointments could not have been appreciable. I doubt whether the claims of a really inefficient candidate has ever been advanced by reason of the payment of a gratification. The number of such instances, if any, must have been very small indeed. The relevant material in concise form is before the Committee. It is difficult for members receiving gratifications to be so brazen with their fellow-members as to ignore completely the legitimate claims of candidates. But these facts are not widely known. They are beyond the horizon of the general public. No deep thinking is required to realize how the mind of a candidate can run riot on the possibilities of illicit influence in the field of an Executive
 30 Committee's activities. This leads to the giving of gratifications although their effect is in reality small. And what perhaps is even worse, it leads to the belief that gratifications are a powerful factor in the actual selection of candidates and thus tends to undermine faith in the efficient working of the Governmental machine.

Nominations.

With regard to (2), it has up to now been the function of the Executive Committee of Local Administration to make recommendations for the nomination of members to Municipal and Urban Councils. I have not found material on which it could be held that any particular member of the Com-
 40 mittee has received or solicited a gratification, but the evidence creates a strong suspicion that gratifications have passed to an extent which, again, I cannot fix. The number of instances of recommendations have been 183 (one hundred and eighty-three) and of these, 181 (one hundred and eighty-one) have been accepted by Your Excellency. There was here a very fertile field for the activities of those who either directly or through others

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adopt improper methods for achieving political ambition. I was invited to hold in particular cases that gratifications had passed merely by reviewing particular recommendations. But this I refused to do because the tests and standards adopted might for good reason have been other than those that might have appeared sound to me. The latitude necessary to be given to a different but honest view-point did not permit me to enter upon the relative merits of candidates. It was said, for instance, in one case that the name of a man of small education was suggested for nomination by reason of his having paid a gratification in preference to one better educated. But it obviously is not possible for me to say that the former was not really 10 the better person on grounds other than those upon which I was invited to come to a decision.

Executive Decisions.

In addition to the decisions arrived at by Executive Committees in the matters of appointments and nominations there are, of course, a number of decisions on questions of policy, the adoption or rejection of which is of advantage or disadvantage financially and otherwise to members of the general public. For instance, I have found (vide paragraph 18) that a gratification passed on the occasion of the consideration by the Executive Committee of Home Affairs of the question whether certain Government 20 contracts should be extended without competition or not. On this occasion the Head of the Department had recommended the extension and it would, I think, have been allowed even if no gratification had been paid. No executive decision upon the face of which the taint of gratification was visible was placed before me or came under my observation. I am conscious that members receiving gratifications would endeavour to prevent its effect from being seen but, nevertheless, it is my impression that in most cases the effect of gratifications on final results has not been appreciable.

It will appear from what I have said that the Committee system as it now functions lends itself readily to the giving and 30 the taking of gratifications. The giver of a gratification being unaware of the proceedings in Committee will never know to what extent it has carried weight. But, nevertheless, the possibility that it might carry weight must always loom large in the mind of the potential giver. A member receiving a gratification can without much fear of discovery ignore a promise to advance the desires of the giver. In short, under the Committee system responsibility is fugacious even where a gratification misses its intended mark.

Finding Against Eight Members

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Four Other "Probables"

The total number of Councillors in respect of whom suggestions were made was 19 (nineteen). In some cases they were based on very slender

material. I have found that eight members, whom I have been able to identify, have received gratifications within the meaning of that term in the Commission issued to me.

Among these are three nominated European members. They openly received a reward from certain bodies for the work they did in Council, and this openness and its implications draw a sharp line of distinction between them and the others.

I have also reached the conclusion that there are in all probability about four other members, whom I have not been able to identify, who have
10 received gratifications.

Individual Cases.

Under the heading "The 'Attanayake' gratification incident," the Report states :

Turning to individual cases, I have found that four members of the Committee for Home Affairs, Messrs. E. W. Abeygunasekera, C. Batuwantudave, H. A. Gunasekera and E. R. Tambimuttu, received gratifications for the purpose of supporting a candidate for the post of a Chief Headmanship. It is with regret that I include the name of Mr. Batuwantudave as he is now dead. But duty leaves me no choice. The amounts received by
20 Messrs. Batuwantudave and Gunasekera was Rs. 250 each ; by Mr. Abeygunasekera Rs. 500. While I am definite that a sum of money was received by Mr. Tambimuttu, I am unable to be sure whether it was Rs. 250 or 750. I think it was the latter amount. These payments were suggested and arranged by Mr. Abeygunasekera.

The story in short is that Mr. Abeygunasekera met the candidate and his father by appointment at the house of a friend. Mr. Abeygunasekera, after assuring the parties concerned that it was very simple for him to get the candidate appointed as the papers would come before the Home Committee, sent a telegram to the three other members requesting them to meet
30 him on a matter of "paramount importance." This appears to have been a code word used by Mr. Abeygunasekera in referring to matters connected with gratification. The candidate and his father raised Rs. 2,000 on a bond. On the same day they came to Colombo with two others, met Mr. Abeygunasekera and were introduced to one of the members (Mr. Gunasekera) in the State Council building one morning.

Escorted the Party.

After a short discussion they paid him a sum of Rs. 250. Mr. Abeygunasekera later escorted the party to the houses of the other two members where the sums mentioned were paid. It does not appear to me from the
40 evidence or the relevant papers that after they received the money they pressed the claims of the candidate. The reason no doubt was that he had no qualifications for the post comparable with those of the other candidates,

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The father was infuriated by what he rightly thought was a trick to obtain money and sent four letters of demand through a proctor. Mr. Tambimuttu thereupon returned the money in full. Messrs. Batuwantudave and Gunasekera between them returned Rs. 325. This is clear but as to how this sum is to be apportioned between them is not clear. I think Mr. Gunasekera returned the whole of the Rs. 250 and Mr. Batuwantudave Rs. 75. Mr. Abeygunasekera returned no part of the money which he received. Mr. Tambimuttu went so far as to visit the house of the candidate to return the money. While he denies 10 the return of the money, he admits the visit to the house.

He says that, on receiving the letter of demand, he suspected black-mail. But he admits that he did not send a reply. Instead, he paid the visit which I have mentioned, and it is utterly incredible that he should have done so except, as stated by the candidate and his mother, who was a witness for the purpose of returning the money and hushing up the matter. My reasons for my finding on this particular incident are set out in detail in Appendix B. But I have to mention here that in my opinion this was not a solitary occasion in which the four members concerned received gratifications. I think that they acted in concert in a number of matters using the 20 same or a similar technique. I accept the evidence that Mr. Abeygunasekera had stated that he had acted similarly in a number of other incidents. There is a great deal of evidence from independent sources which points to this. The general features of this incident itself also indicate that this was not an isolated incident.

Arrack Contract Incident.

There was evidence before me that in 1939 contractors to the Government for the supply of arrack decided to pay to the same four members a sum of about Rs. 2,000 for the purpose of having their contracts extended without competition from outside. There is evidence, which I believe, that 30 money for this purpose was paid to one of the members, now dead, Mr. C. Batuwantudawe, but there is no evidence that it was paid by him to the others. I did not for this reason call upon the members now alive to answer the allegation as it cannot be held against them that, with regard to this particular incident, they actually received the money. This matter is more fully discussed and reasons for my view given in Appendix C.

Mr. Abeygunasekera's request for postponement.

After the evidence on the incident referred to in paragraph 17 had been led and after the witnesses who supported the allegation had been cross-examined in great detail by Counsel, Mr. Abeygunasekera made a request to 60 me in writing on February 9, 1943, to postpone all the inquiries against him for three months on the plea that he had to visit Madras for treatment. He supported the application with a medical certificate to the effect that he was

suffering from asthma. I was anxious at every stage of this inquiry to give every member the fullest opportunity of meeting allegations but in my view a report was overdue and long postponement would have tended to frustrate the object of the Commission. It was issued to me on August 13, 1941. I, therefore, decided that I could not grant a long postponement and wired to Mr. Abeygunasekera requesting him to continue to appear through counsel and to endeavour to appear personally for a short while on February 15, 1943, which was a date fixed for the inquiry. My object was to record Mr. Abeygunasekera's evidence with as little inconvenience to him as possible and to continue the inquiry in the presence of his counsel. The telegram sent to the address furnished by Mr. Abeygunasekera to the Clerk of the State Council as his proper address was returned to me undelivered. The contents of the telegram were also confirmed by me by registered letter on February 11, 1943. Mr. Abeygunasekera did not appear nor did counsel who had so far been appearing for him. I decided that I would have to make my report upon the available material and proceeded with the inquiry. I also sent Mr. Abeygunasekera a registered letter in forming him of the course which I was taking.

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Refusal to Accept Registered Letters.

A feature of correspondence with Mr. Abeygunasekera is that registered letters sent to him are not accepted and are returned "unclaimed." The two letters referred to in the preceding paragraph met with this fate. I examined the postal authorities on this matter to get details of the procedure at Mr. Abeygunasekera's end and am satisfied that he habitually refuses registered letters. A proctor witness had the same experience as myself. Mr. Abeygunasekera told him that he had deliberately refused a registered letter.

Earlier in the inquiry I found it impossible to reach him by registered letter and, as at the time he was not attending meetings of the State Council, it was found necessary that Mr. E. T. Dyson, Government Agent, Central Province, should himself personally deliver a letter to him in order that there should be no doubt that it had reached him.

It is of course possible that Mr. Abeygunasekera had left Ceylon at the time I sent the two last letters but this does not alter my conclusion.

Before the medical certificate was sent I had indicated to Mr. Abeygunasekera that there were further incidents into which I proposed to inquire and had informed him of the dates of inquiry of two of them. In respect of these incidents also Mr. Abeygunasekera did not place before me his evidence on oath or affirmation.

The Omnibus Reorganization Incident.

The first of these incidents (Appendix CC) attracts attention by reason of the fact that it took place after the Commission to me had issued and by

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reason also that Mr. Abeygunasekera made very little, if any, effort at secrecy in obtaining a gratification. This is a feature which is characteristic of Mr. Abeygunasekera's activities. Mr. S. W. Nelson, the present Director of Transport, some time after his arrival in the Island in March 1942, recommended the reorganization of the omnibus services and propounded a scheme. The omnibus interests were strongly opposed to it. Associations of omnibus owners as well as individual owners worked hard for its rejection. An Association by the name of the Lanka Omnibus Owners' Association was formed for the express purpose of agitating against it. On July 9, 1942, the Minister for Local Administration moved a resolution in the State Council to the effect that the omnibus services should be reorganized on the lines recommended by Mr. Nelson. One Mr. J. G. Collin Fernando, an omnibus owner, went with one Mr. B. H. William, another omnibus owner, known to Mr. Abeygunasekera, to interview him and pressed the claims of the omnibus interests to have the motion rejected. 10

Mr. Abeygunasekera thereupon informed him that however good a cause may be they could not expect support for it without the payment of a gratification. He then handed to them a piece of paper with names of about seven Councillors written on it, a sum of money varying from Rs. 150 to Rs. 200 being 20 noted against each name.

Assured of Votes.

The exact number of Councillors and the exact amounts I have not been able to discover because the list is not now available. Mr. Abeygunasekera's name also appeared on the list but no amount was marked against his name. It was the stage of negotiation. Mr. Abeygunasekera said that, if the amounts indicated could be found, he could hand them to the members mentioned and obtain their votes. All this happened on the State Council premises on a day on which the debate on the motion was taking place. There were a number of omnibus owners who had come to witness 30 the debate. Messrs. Fernando and William took the list and showed it immediately to other owners and discussed the question of making the payments demanded. The list was seen and the discussion participated in by a number of people. The owners decided that Mr. Abeygunasekera could not be relied upon, that he himself might misappropriate the money if it was handed to him, and that the wiser thing to do was to interview different members, obtain their votes if possible without the payment of a gratification but pay something if votes could not be obtained otherwise. The decision was carried out and no money was paid to Mr. Abeygunasekera.

The view of the omnibus owners appears me to reflect correctly the 40 estimate of Mr. Abeygunasekera which members of the general public had formed as it emerged from the evidence of a number of witnesses before me. It must be mentioned here that Dr. A. P. de Zoysa, a member of the State Council, with whom the omnibus owners were in contact, had advised them

strongly against the payments or attempts at payment of gratifications. This advice was tacitly if not expressly agreed to. In consequence, no doubt, largely of this fact, such gratifications as were paid by omnibus owners appear to have been given with studied effort at concealment and I have been able to discover and obtain satisfactory evidence only in the one case.

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H. R. P. Fernando Gratification Incident.

The other incident of the inquiry into which I gave Mr. Abeygunasekera notice related to the payment to him by one Mr. H. R. P. Fernando, a dismissed Excise Officer of a sum of money to secure his services in the matter of obtaining a reinstatement. Mr. Fernando was introduced to Mr. Abeygunasekera by a friend. Mr. Abeygunasekera asked for Rs. 250. Mr. Fernando was wary and, after some haggling, agreed to pay a sum of Rs. 300, Rs. 75 immediately and the balance Rs. 225 after the matter was satisfactorily concluded. On January 27, 1939, Mr. Fernando paid this sum of Rs. 75 and thereupon Mr. Abeygunasekera provided him with a ticket in the gallery of the State Council to witness the giving of notice of the motion which appears in Volume I of Hansard, page 260, to the effect "that this Council is of opinion that all papers relating to the dismissal of Inspector H. R. P. Fernando from the Excise Department be tabled." Mr. Fernando saw the motion being handed over to the Clerk to the Council and notice being given by Mr. Abeygunasekera. The matter was referred to the Chief Secretary under Standing Order 57, who reported on November 27, 1939. Mr. Abeygunasekera did not press the motion. He eventually withdrew it on March 24, 1942. At the time of receiving payment of Rs. 75 Mr. Abeygunasekera represented to Mr. Fernando that he had considered influence with the Excise Commissioner which he would use. He pressed for more money from time to time but Mr. Fernando resisted payment until the promised reinstatement was an accomplished fact. After several interviews and disappointments Mr. Fernando dropped the matter. The details of this incident appear in Appendix D.

It appears to me from the incidents related and from other evidence that Mr. Abeygunasekera solicited and accepted gratifications with little effort at concealment, that this was widely known to the general public and that disappointments suffered in a number of matters had led potential givers of gratification to doubt the value of his promises. He appears also to have been the prime mover in arranging gratifications for others.

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The Victoria Hotel Incident.

The incident of giving a gratification by omnibus owners on the occasion of the Nelson motion referred to above was the payment of a sum of Rs. 25 to a member, Mr. D. D. Gunasekera. His name figured in the list

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mentioned. Emboldened by this fact two omnibus owners went to see him by appointment at the Victoria Hotel, Colombo, and, while pressing the merits of their cause, were confirmed in the belief that a gratification would be welcome to him. They thereupon paid him a sum of Rs. 25, which was accepted. The smallness of the sum aroused caution, but I am convinced upon the evidence that it was given and received. But I have to state here that, in my opinion, this was not an isolated occasion which Mr. Gunasekera has taken a gratification. The general features of the incident and the amount taken convince me that Mr. Gunasekera has habitually taken gratifications.

10

Case of European Members.

View That Was Not Sustainable.

The four European members, Messrs. H. E. Newnham, H. F. Parfitt, E. C. Villiers, and F. H. Griffith were selected for submission for nomination by the Chamber of Commerce, the Ceylon Estates Proprietary Association, the Planters' Association, and the European Association respectively. Their names were submitted for nomination by the four Associations jointly. After nomination they were regarded by the Associations (and in this term for convenience I include the Chamber of Commerce) as their "representatives." The allegation has been made against them that certain pay-²⁰ments which they received from the Associations bring them within the terms of reference. I have considered their cases in some detail. I have found that the first three members come within the terms of reference and that the fourth, Mr. Griffith, does not. The essential difference between him and the other three is that the latter are paid remuneration for the work which they do in the State Council whereas Mr. Griffith is paid only in respect of work done outside the Council. Even in respect of this he is only paid an allowance to meet out-of-pocket expenses incurred in travelling.

Mr. Newnham.

Mr. Newnham received a salary of Rs. 2,000 a month and an allowance³⁰ of Rs. 200 (for a Secretary) from the Chamber of Commerce. To use his own words, this remuneration is paid "in consideration partly of the work which I had as a State Councillor and partly in consideration of the work which I had outside the Council." He has to make a study of the matters that come up before the Council, to hear the views of the Chamber or its relevant Committees. According to him, he is free to take a view different from that of the Chamber but he has never, in fact, done so. On occasions he has, on matters on which the Chamber expressed no opinion, taken up a position which affected the financial interests of some of its members adversely. His activities in the State Council have been largely to place⁴⁰ before it and its Committees the views of the Chamber of Commerce. This "conduct" has been the direct results of the remuneration received. It has

been paid to him to achieve this object. There can be no doubt about this and I think that this fact alone suffices to bring him within the terms of reference.

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Messrs. Parfitt and Villiers

The cases of Messrs. Parfitt and Villiers are very similar to that of Mr. Newnham in essential features. Up to about six months ago Mr. Parfitt received a sum of Rs. 2,000 a month from the Ceylon Estates Proprietary Association for work done as its Secretary and as its "representative" in Council. From about that time he has limited himself to political work
10 only and received Rs. 1,000 a month. He has ceased to be Secretary and is now the Deputy Chairman. Mr. Villiers receives a sum of Rs. 2,000 from the Planters' Association. To use his own language: "I put my views before my Association and get theirs. Thus, I am in a position to put the views of my Association before the members of the House".

There can be no doubt that a great part of the activities of Messrs. Parfitt and Villiers consisted of voicing the views of their Association in Council and its Committees. It may be that some of these views on occasion received modification by reason of the exigencies of a sudden development or for some other cause, though in the majority of cases the views of the
20 Associations themselves were put before the Council and its Committees. They received reward for this "conduct." It was paid for the purpose of securing it.

Not Merely For Loss Of Time

It has been suggested that the payments made to the three members must be regarded as compensation for loss of time and energy and not as reward for services rendered. I do not think this view is sustainable.

All payment for service rendered includes payment for the employment of the time and energy of the person rendering the service for the benefit of the person to whom the service is rendered. This is a universal rule true even of manual labour. To isolate time and energy from the service would lead to a fallacy.
30

In the case before me time and energy clearly cannot be isolated. It cannot be said that payment was made on that account only. The Associations wanted certain views expressed in Council and its Committees and a payment was made to get them expressed and, in most cases, pressed.

"Judgment" As Well As "Conduct" Influenced.

The question arises whether the remuneration paid to the three members mentioned has not only "influenced their conduct" but also "influenced their judgment". They said that they were not mere paid mandatories.
40 They said they were under no obligation to vote according to the views of the Associations which they "represented". As against this, a Member

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of the State Council (Mr. Siripala Samarakkody) in the course of his evidence said that

in private discussion some European members had stated, with regard to certain measures, that they agreed with his point of view but that they were unable to support it because of the opposite view taken by their Associations.

I have found it unnecessary on evidence to reconstruct private discussions, and to decide whether whatever was there said represented accurately the relations between the members and the Associations. For reasons which follow immediately. I think that, in any event if the votes of the mem- 10
 bers were not "tied", that remuneration which they received must be held to have influenced their judgment.

The absence of a rigid understanding or agreement that the views of the Associations must, in all matters, be followed and supported by the members does not mean that their judgment was not influenced by the remuneration paid to them. It may even be that in some matters they did not follow those views. The difference between "dictation" and "influence" has to be clearly borne in mind. It would be extremely difficult to hold that the reward they received did not, in some measure, influence their judgment in the voting and in the degree of support or opposition 20
 given to various measures. It is immaterial to a consideration of this point that in the generality of cases there might have been no difference of opinion between the Associations and their representatives. The question is a question of judgment and, when attention is focussed on this point, it appears impossible to hold that a judge, who has received reward from a party interested, has not been influenced by reward received. It is impossible to hold with the giver or the taker that they did not think that the reward would influence judgment.

**There are differences between the cases of the three European members whom I find come within the terms of reference 30
 and the cases of the others. There was nothing furtive about the payments they received. The fact that they received remuneration was widely known in the Island.**

It was stated to me in evidence by them that the receipt of remuneration has never been a challenged so far by anyone. This means that there has been up to now, at any rate, a tacit acquiescence by the community as a whole in the payment. The Rural European Member under the Constitution of 1923 received remuneration from the Planters' Association sometime after that Constitution became operative. The principle of payment had thus been adopted even before the State Council came into existence. The 40
 absence of challenge is thus all the more notable. It is not within the scope of my functions to approve or disapprove the payments received by these three members. I must be content with pointing out that there are differences and leave it to others to use my findings for whatever purpose they

may choose. It may not perhaps be out of place for their assistance here to state that the legal implications of the payment of a Member of Parliament by a person or body of persons for the purpose of securing their votes or of influencing them was fully discussed in the House of Lords by Lord Shaw in the Osborne Case reported at page 787 in Volume 101 of the Law Times Reports. The propositions there laid down may, of course, need adaptation before they are applied to members of the State Council of Ceylon.

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“ Bribes ” in Election of Ministers.

10

No Direct Evidence.

There is a current belief that in the matter of the election of Ministers and acting Ministers by members of Executive Committees gratifications have been paid by candidates to their fellow-members of the same Committee. Such gratifications would have been paid in circumstances which would admit of the observance of secrecy and would, consequently, be more than usually difficult to discover. The incidents would have taken place among people thrown together frequently in the course of their work and consequently with ample opportunities of contact and approach. No direct evidence has been placed before me of such gratifications and such
20 evidence as has been given was based on rumour and amounted to nothing more than hearsay. While I am unable to discover any specific instance of the payment of a gratification for the purpose mentioned and unable even to say with definiteness that such gratifications have been paid, I, nevertheless, think it likely that the nine (excluding the European members) members, to whom I have made reference in paragraph 16, would have accepted gratifications for this purpose if they had been approached. The general influence of their presence and behaviour would have made itself felt in this matter also both in the Committees of which they are members and in the minds of the general public. The notions entertained about
30 them have led, I think to beliefs out of proportion to the facts. It is possible that on one or more occasions candidates, not necessarily the successful ones, have paid gratifications to the members mentioned.

Cases Of Suspicion Only.

There has been evidence relating to incidents upon which I cannot in justice to the members concerned, hold that they have accepted gratifications but upon which there is room for strong suspicion. I will by way of illustration give three instances.

In one case a person (Mr. X) asked a professional man (Mr. P) to intervene on his behalf to secure nomination to an Urban Council. Mr. X
40 told Mr. P that a gratification could be paid to a certain member to secure his support in the Local Administration Committee but Mr. P advised strongly against such a course. Some time later Mr. P on meeting Mr. X

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inquired whether the gratification has been paid and then Mr. X admitted that it had. Mr. X confronted with Mr. P's evidence admitted to me that a gratification had been paid but stated that it had been paid on his behalf by the leader (Mr. L) of a certain section of the Urban Council and that the latter had told him of the payment. Mr. X said he did not take any direct part in arranging or paying the gratification. Mr. L denied that he paid a gratification to a Councillor or that he had anything to do with such a thing.

Now the evidence against the Councillor consists only of the evidence of Mr. X. It is purely hearsay. It is impossible upon this evidence to hold 10 against the Councillor concerned that a gratification was received. But the following impressions were clearly formed by me. There was no need for Mr. X to tell Mr. P an untruth. Mr. X knew that he would not rise in Mr. P's estimation and there could have been no direct or indirect motive for Mr. X to tell an untruth to Mr. P. The occasion of the communication was such that nothing but the over-riding claims of truth could have induced Mr. X to say what he did to Mr. P. As between Mr. X and Mr. L, what is the truth? It is impossible for to be sure. Either Mr. X handed the gratification himself and not wishing to say so in giving evidence before me brought Mr. L into it falsely or Mr. L is giving false evidence in denying 20 that he paid a gratification. There is also the possibility that Mr. L told Mr. X that he had paid a gratification without having done so. This last-named possibility seems most unlikely to me upon the details of the case (Appendix H). As against the member there is, however, only hearsay evidence and this, on well-founded principles, is insufficient for purposes of proof. Suspicion only is established.

A Municipal Nomination Incident.

In another case I received information that a certain gentleman (Mr. X) in affluent circumstances had paid a gratification to secure for his brother the support of a member of the State Council in the Committee of Local 30 Administration in the matter of a nomination to a Municipal Council. Incidentally I may mention that the candidate was unsuccessful. I summoned Mr. X, who at first stated that he had heard that a gratification had been paid but denied any further knowledge of it. He made to me the highly improbable statement that, though he was very interested in his brother and was working actively for him, he did not, when he heard that it had been paid, inquire how much had been paid or to whom it had been paid or by whom it had been paid. In fact, he professed to have forgotten the name of the person who had told him about it.

After indulging in a number of fanciful stories, all of which 40 were palpably untrue, this witness said he would like to "cancel" all that he had previously stated and tell me the truth. He then went on to say that he and another person, out of the Island at the time of the inquiry, had paid a certain member of

the Committee of Local Administration Rs. 1,000 to be divided between himself and another member of the Committee. The rendezvous for the payment was Walker's Petrol Station. There was no other evidence available upon the incident.

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The Councillor denied the payment. The evidence of Mr. X was open to serious criticism in that it lacked frankness and in that it changed from one story to another. It was impossible on his uncorroborated evidence to hold that the money had been paid to the member mentioned. Yet I have received the following clear impressions. Mr. X was a most reluctant
10 witness. I do not think that in his earlier evidence he ran the grave risk of being punished for giving false evidence for any object other than that of shielding himself and the member concerned from the truth. I do not think that he mentioned the particular Councillor to shield another. His very reluctance prompts the belief that his final statement is true. Here then again grave suspicion arises but proof is lacking.

Another Nomination Incident.

In another instance (Appendix HI) the Principal of a College, who was also a candidate for nomination to an Urban Council, stated to me that together with a proctor friend he visited the house of the member of the
20 Committee of Local Administration referred to in the last paragraph in order to press his claim. When this was being done, the Councillor abruptly interrupted the candidate and his friend and told them that another candidate was spending lavishly. Both the candidate and his friend have stated on oath that from the tone and gesture of the Councillor they inferred without hesitation that a suggestion of a gratification was being made. Both of them came to this conclusion without consultation and immediately, so much so that they did not proceed any further but took their leave of the Councillor and moved away. From the demeanour of these witnesses and from what they said I felt that they were speaking the truth and that, in
30 all probability, the inference which they had drawn was a correct one. The Councillor, on being confronted with the statements of the two witnesses, stated that he did not remember them and that in any case he repudiated the suggestion which they had made. The stage at which conversation ceased leaves the evidence insufficient to arrive at a finding against the Councillor that a gratification had been suggested but gives rise in my mind to strong suspicion.

Names In Cases Of Suspicion Should Not Be Published.

In certain cases I have found that although there is no proof of the solicitation or receipt of gratifications there is room for strong suspicion. I
40 have done so in order that I may place on record as fully and as accurately as I can the impressions created on my mind. The question whether the report is to be published or not is not a matter for me.

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But with regard to these cases I desire to point out that the principle that every man must be presumed to be innocent until the contrary is proved has to prevail. Consequently I did not call upon any of the Councillors concerned for a defence although I asked for and received statements in two cases. The principle just mentioned, though given effective recognition by Courts of law, is frequently ignored elsewhere. In everyday affairs suspicion carries a taint which abstract legal principle is powerless to prevent.

The fact that I have found suspicion established but proof lacking places 10 on me a special responsibility with regard to these cases. I am of opinion that it would not be fair or proper to publish the names of the Councillors involved. I therefore request that Appendices H, HH, HI, and P be not published. The substance of the first three has been stated in the report without disclosure of names. The substance of Appendix P does not need special mention. The appendices could be seen by those who have to work out the details of the action, if any, consequent on decisions taken on this report.

“ Seized ” Salaries of Members.

2,912 Cases !

20

Another factor which enters into the general consideration of the questions before me is the number of seizures of the salaries of Councillors which have taken place since the present Council came into existence. The number of Councillors whose salaries have been seized is 18. The number of seizures has up-to-date reached the colossal figure of 2,912—a figure almost beyond the limits of comprehension. The range of the decrees in which the seizures were made was Rs. 11·61 to Rs. 56,200.

Mr. Abeygunasekera's salary has been seized 732 times. This is the highest number of seizures of the salary of any single member. Mr. D. D. Gunasekera's salary has been seized 617 30 times. Seven members have had their salaries seized over a hundred times.

It is, of course, not every person who is embarrassed by debt that will solicit, or agree to accept, a gratification. But there can be no doubt that financial embarrassment is frequently the precursor of the solicitation or acceptance of gratifications. It is a matter of common knowledge derived from experience in the courts that many a person held in high esteem, has, in circumstances of financial embarrassment, descended to criminal misappropriation. Precise details of the number and nature of unsatisfied 40 decrees against members of the Council are not known to the public but there is already sufficient knowledge on the subject as to give rise to public anxiety and misgiving.

Unidentified Receivers of Gratifications

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I feel that the terms of reference of the Commission impose upon me the duty not only of finding that certain specified members have accepted or solicited gratifications but also of ascertaining as far as I can to what extent the practice prevails among other members of Council whom I cannot identify. It is, of course, not likely that all cases of gratification that have taken place have come under inquiry. The estimate which I have formed from the evidence as a whole of the 124 witnesses who appeared before me and from material I have gathered elsewhere is that there are, in all probability, four members who have received gratifications, although I have not been able to identify them. This is an inference drawn from broad features. It is an impression for what it is worth. It necessarily is not as reliable as my earlier findings with regard to eight members. I am conscious that it has an unsatisfactory aspect in that it does not particularise persons and consequently does not release the innocent from suspicion. But it is the best that I can do when faced with the only kind of evidence obtainable in an investigation into bribery. I have considered carefully whether an impression such as this should be stated or whether silence is the wiser course. I felt it my duty to those for whose assistance I have been ordered to provide this Report that I should state it.

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Popular Belief Exaggerated.*Disproportionate To Truth, Says Commissioner.*

I have found that, in all probability, nine Councillors (in addition to the three European members) come within the terms of reference. The actual number may be eight or ten, but not more. There is a widespread belief that it is much greater. One witness went so far as to suggest that the practice extended through the whole length and breadth of the Council's activities. Mr. Francis de Zoysa, now unfortunately dead, on May 15, 1941, suggested guardedly in Council that current belief left untouched only "20 or 30" members (vide Hansard of that date). On a consideration of the evidence given by the witnesses, on a reading of the debates in Council and of articles in the press. I have no doubt that for the larger part these beliefs are honestly held. But strength of belief, apart from other considerations, is not a test of truth. Executive decisions are taken after weighing up a number of factors, some in favour of a decision, some against it. In the eyes of interested persons the factors in their favour loom larger than those against them. Many disappointed persons honestly think that a decision against them is a perverted decision and surmise that a gratification has promoted it. There are still other persons less honest who, though they do not believe that a decision is perverted, attack it on all available grounds, including the ground of gratification, merely because it happens to be a decision against them. These factors tend to make popular belief out of proportion to the truth. Leavened by a certain amount of truth it swells to an inordinate size.

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PAYMENTS FOR SECURING A CHIEF HEADMANSHIP

Why Bribery Commissioner Held Against Four Councillors.

The Appendices to the Bribery Commission (published in the "*Daily News*" yesterday) contain fuller details of the allegations made against different Members of the State Council in regard to the acceptance of gratifications and pecuniary rewards.

As stated in the Report, the Commissioner (Mr. L. M. D. de Silva K.C.), found that, arising out of one incident, four members of the Executive 10 Committee of Home Affairs, Messrs. E. W. Abeygunasekera, C. Batuwantudave, H. A. Gunasekera and E. R. Tambimuttu, received gratifications on the promise of supporting a candidate's claims to the post of a Chief Headman.

In the first of the Appendices dealing with allegations in detail, the Commissioner gives the following finding in connection with this incident and follows it up with this comment. —

"I find that Mr. E. W. Abeygunasekera arranged the payment of gratifications to himself and to the three others mentioned and that, in consequence of this arrangement, a sum of Rs. 500 was 20 received by Mr. Abeygunasekera, a sum of Rs. 250 by Mr. C. Batuwantudave, a sum which I have not been able to fix but which is Rs. 250 or over, by Mr. E. R. Tambimuttu, and a sum of Rs. 250 by Mr. H. A. Gunasekera on October 11 or 12, 1937, on the understanding that they would support the candidature of Mr. L. B. Attanayake to the post of Ratemahatmaya, Matale East."

Commissioner's Comments

S. M.'s Son Who Wanted To Be R.M.

In regard to this incident the Commissioner writes :

Mr. L. B. Attanayake made an application on July 16, 1937, for the 30 post of Ratemahatmaya, Matale East. He was the son of Mr. K. B. Attanayake, retired Stationmaster living at the time, but dead at the time of the inquiry. He states that as a result of consultations between himself, his father and one Mr. Talwatte, also a retired Stationmaster, Mr Abeygunasekera was approached and that he undertook to secure the appointment if money could be found for the payment of gratifications to himself and the three other members mentioned.

Mr. Attanayake states that he, his father, Mr. Talwatte and one Mr. B. W. Fernando came to Colombo from Kandy on October 11, 1937, having on that day raised a sum of Rs. 2,000 on Bond No. 8,050 of the same date produced before me in evidence.

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Mr Attanayake speaks of four occasions on which money passed on October 11 or 12, 1937—a payment to Mr. Gunasekera on the ground floor of the State Council building, a payment to Mr. Tambimuttu at his house, a payment to Mr. Batuwantudave at his house and a payment to Mr. Abeygunasekera soon after lunch on the second day.

He says that on the occasion of these payments Mr. Abeygunasekera, his father, Mr. Talwatte and Mr. Fernando accompanied him. Mr. Talwatte has also died since this date.

Mr. B. W. Fernando supports Mr. Attanayake on the question of these payments. Their evidence upon subsequent incidents connected with these transactions is supported by the evidence of Attanayake Kumarihamy, Mr. L. B. Attanayake's mother, and by Mr. H. A. C. Wickremeratne, proctor, and also by an entry in a book kept by the Colombo Apothecaries Company.

Mr. Abeygunasekera's Denial.

Mr. Abeygunasekera denies these incidents in their entirety and suggests that the evidence has been given as the result of a conspiracy against him. He suggests also that this conspiracy has been hatched by Mr. Wickremeratne, who was at one time a member of the Sama Samaj party, against whose activities Mr. Abeygunasekera took a prominent part.

Mr. Gunasekera also denies the evidence against him in entirety. His defence is an "alibi" and a suggestion that the witnesses who spoke to his presence, if not deliberately given false evidence, are mistaken as to his identity.

Mr. Tambimuttu denies the payment which is said to have taken place at his house and, while not denying the entirety of the evidence against him, suggests that certain action taken against him in the matter of sending a letter of demand was due to a mistake on the part of those who initiated that action.

Proceeding now to the details of the story, Mr. L. B. Attanayake states that his father consulted Mr. Talwatte as to how best the candidature for the post of Ratamahatmaya could be furthered. On Mr. Talwatte's suggestion contact was established with Mr. Abeygunasekera, who thereafter met the Attanayakes at Mr. Talwatte's house at Kandy.

Mr. Abeygunasekera stated with confidence that the post could be secured with the influence of himself and the three other members mentioned and undertook himself to speak to the others on the question and to arrange for the payment of

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gratifications. He said that without paying money the post could not be secured and further that several people who had paid money had succeeded in getting other posts.

The Attanayakes agreed to his suggestion. Mr. Abeygunasekera then wrote three telegrams in Mr. Talwatte's house to the others arranging to meet them on a matter of "paramount importance," words which appear to have been used by him as code words in connection with matters relating to gratifications. On October 11, 1937, the Attanayakes entered into Bond No. 8,050 in favour of Ana Suna Pana Nawanna Nagappa Chettiar, Ana Suna Pana Nawanna Annamalai Chettiar and Ana Suna Pana Nawanna 10 Suppramaniam Chettiar mortgaging certain immovable property in respect of a loan of Rs. 2,000. With this and perhaps other money in the father's custody the two Attanayakes, Mr. Talwatte and Mr. Fernando travelled to Colombo on the same date. On the morning of October 12, the party was introduced by Mr. Abeygunasekera to Mr. Gunasekera in a room on the ground floor of the State Council building and there, after a short discussion, a sum of Rs. 250 was paid to and received by Mr. Gunasekera in the presence of the whole party. On the night of October 11 or 12—there is some confusion in the mind of Mr. Attanayake as to which date it was—Mr. Abeygunasekera accompanied the party to the house of Mr. Batuwantudave 20 where a sum of Rs. 250 was paid to him. From there the party, still accompanied by Mr. Abeygunasekera, went to the house of Mr. Tambimuttu and here again a sum which Mr. Attanayake is not now sure of but which he thinks was Rs. 250 or Rs. 325 was paid to and received by Mr. Tambimuttu.

Another Candidate Was Recommended.

As stated earlier, Mr. Fernando supports Mr. Attanayake on the question of the payments. He is definite that a payment was made to Mr. Gunasekera on the morning of the 12th. He is not able to be absolutely definite as to whether the evening payments to Messrs. Batuwantudave and Tambimuttu were made on the 11th or the 12th. He is agreed as to the 30 amounts except that, with regard to Mr. Tambimuttu, he states with definiteness that Mr. Tambimuttu demanded and received a sum of Rs. 750 and not Rs. 250 as stated by Mr. Attanayake.

The Executive Committee of Home Affairs on January 11, 1938, decided to recommend another candidate for the post and this decision was communicated on January 13, 1938, to the Public Services Commission. On learning of this, the senior Attanayake was greatly incensed by what he rightly thought was trick and consulted Mr. Wickremeratne, a proctor, practising at Kandy. Mr. Wickremeratne states that he sent four letters of demand to the four Councillors concerned requesting the repayment of 40 money paid to them without mentioning in them the purpose for which it had been paid. These letters were sent under registered cover and I have no doubt from the evidence that they were duly despatched.

The reactions of the four members to the letters of demand and the evidence relating to the incidents that happened after they were sent is of prime importance in arriving at a conclusion whether or not the allegation of gratifications is true. Mr. Wickremeratne states that Mr. Batuwantudave saw him, admitted the incident, paid back a certain sum of money and promised to see that the balance was paid. I need not dwell upon the details of the evidence. It suffices to say that two letters produced established beyond doubt the truth of Mr. Wickremeratne's evidence on this point. Mr. Wickremeratne produced a copy of a letter entered in a book which I have

10 no doubt is genuine, which reads as follows :—

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“7th March, 1938,

Hon. Mr. C. Batuwantudave,
Acting Minister of Home Affairs, Colombo.

My dear Mr. Batuwantudave,

I received your telegram but your promise has not yet materialized. My client is pestering me and am afraid it will not be possible to hold out any further.

Mr. Abeygunasekera has not paid any portion of the Rs. 500 taken by him and do not think he will make any honest effort to settle this debt. It

20 looks as the situation is becoming more and more tangled. I am not too keen on appearing in a case like this, but if the matter goes out of my hands the situation will not improve from your point of view.

I shall be obliged if you will give this matter your immediate attention.—

Yours sincerely, H. A. C. W.”

The original of a letter from Mr. Batuwantudave dated presumably March 15 (it is dated 15/3 but the “ 3 ” is not easily decipherable) was also produced, which reads :—

“ 26 Palmyrah Avenue
Colpetty, 15/3.

30 Dear Wickremeratne,

I am very sorry you missed me. I was away at Jaffna on business and arrived today. I am sorry for the delay in replying your letter. I am writing this to inform you that I will attend to it positively on the 26 or 27th latest. I told our friend to reply, he promised to see you at Kandy. I will press him to reply to you letter.

With kind regards. Sincerely yours, Chas. Batuwantudave.”

The words “ missed me ” is a reference to an occasion on which Mr. Wickremeratne, who appears for personal reasons to have been well-disposed towards Mr. Batuwantudave, visited him and found him not at home.

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Objection That Was Upheld.

Statements made by Mr. Batuwantudave were objected to by counsel who appeared for Messrs. Abeygunasekera and Gunasekera and by Mr. Tambimuttu as statements which, having been made by a deceased person, were not in law admissible in evidence against them. It was arguable that some of these statements were against the "pecuniary interest" of Mr. Batuwantudave and as such admissible under Section 32 of the Evidence Ordinance. The point, however, was not free from doubt and I upheld the objection as the fairer course. I have not taken into account anything said by Mr. Batuwantudave in considering the cases against the 10 others.

Mr. H. A. Gunasekera giving evidence before me denied that he had received a letter of demand. As against this there is the evidence of Mr. Wickremeratne that a letter of demand had been sent to him and had not been returned. Mr. Gunasekera suggested that it was possible that a registered letter might have gone astray through a faulty address or even if the address had been the correct one. But I think this is most unlikely. On November 21, 1942, I wrote to Mr. Gunasekera a letter in which three facts were stated as emerging for the evidence against him. Firstly, that he received a sum of Rs. 250 from the Attanayakes to advance the case of 20 the younger Attanayake in the matter of an application to be appointed Ratemahatmaya, Matale East; secondly, that Mr. Wickremeratne had sent a letter of demand asking for the return of the money; thirdly, that, according to the evidence this sum of money had been returned by him. Mr. Gunasekera says he received my letter on November 30. He had time till December 15 to furnish a short statement outlining his case. On December 12, he furnished a statement—

- (1) denying that he received the sum of Rs. 250 ;
- (2) denying that he had returned the sum of Rs. 250 ;
- (3) making no reference to the letter of demand.

30

I am of opinion that this was deliberately done and that Mr. Gunasekera was anxious as long as he was able to leave his reply to the question of the letter of demand open. I think he received it. This is confirmed by the view that I have formed that Mr. Gunasekera returned the sum of Rs. 250. The position, I think, is that he received the letter of demand and, without replying to it, returned the money to Mr. Wickremeratne through Mr. Batuwantudave without committing himself to writing in any way.

Mr. E. R. Tambimuttu's Explanation.

A Letter That Was Lost.

Mr. Tambimuttue states that, on receiving the letter of demand, he 40 was very much surprised as he had never in his life received a gratification and as this was the first allegation of a gratification ever made against him.

Giving evidence on oath before me he stated that he suspected blackmail. His conduct, however, was extremely curious. In the first place, he did not reply to this letter. He made no sort of complaint to the Police or to anyone else. Instead, he went to the house of the Attanayakes at Nawalapitiya and, according to him, he asked the Attanayakes what the meaning of the letter of demand was. Mr. L. B. Attanayake and his mother both stated that on the occasion of this visit he returned the full amount of the money which he had received. The mother swears that she saw this payment and, whatever one may say about Mr. L. B. Attanayake himself
 10 (vide paragraph 16), I have no hesitation in accepting the evidence of the mother who struck me as a truthful and reliable witness. The mother's evidence had been sent to Mr. Tambimuttu by me before he gave evidence and I have no doubt that Mr. Tambimuttu's admission that he paid a visit to the house was induced by the fact that it was impossible to get over the mother's evidence with regard to that visit. According to Mr. Tambimuttu, on the occasion of the visit he received a letter from the senior Attanayake to Mr. Wickremaratne to the effect that a mistake had been made, that accompanied by the younger Attanayake he visited Mr. Wickremaratne at Kandy on the same day and that Mr. Wickremaratne, following the instructions contained in the letter from Mr. Attanayake, gave Mr. Tambimuttu
 20 a letter signed by himself to the effect that the letter of demand had been sent through a misunderstanding.

Mr. Tambimuttu says that he had this letter for a considerable length of time and that he has now lost it. Mr. Wickremaratne hotly denied that he had given Mr. Tambimuttu any such letter. Mr. Tambimuttu addressing me argued that due allowance must be made for the length of time which has elapsed since the alleged incident and that he cannot be expected to have retained a letter for so many years. There is no doubt substance in this argument. But the point which impresses me is not failure of
 30 Mr. Tambimuttu to produce the letter but the fact that Mr. Wickremaratne denies having given it. If Mr. Wickremaratne had been perjuring himself, and indeed there is no reason why he should do so, he was on very dangerous ground because, if he had given a letter, he could not be sure that, Mr. Tambimuttu had lost it or that, if it had been lost, Mr. Tambimuttu might not discover it at any moment. Quite apart from this, I am convinced upon the case as a whole that Mr. Wickremaratne's evidence upon this point is truthful and accurate. On questions of detail there were certain inaccuracies due to lapse of time in Mr. Wickremaratne's evidence which he himself quite frankly admitted. But there is no doubt that Mr.
 40 Wickremaratne is an honest witness trying to be as accurate as he can. I do not think upon so salient a point of so striking a character as the giving of a letter to a member of the State Council withdrawing a demand made on instructions that a gratification had been paid, Mr. Wickremaratne could make a mistake. No animosity against Mr. Tambimuttu on his part did or does exist, and I do not believe for a moment the story that Mr. Wickremaratne handed a letter to Mr. Tambimuttu exculpating him.

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Mr. Wickremaratne produced the original of a letter written by Mr. Abeygunasekera on January 31, 1938, from which it appears that Mr. Abeygunasekera had promised to see Mr. Wickremaratne on February 12, 1938. Mr. Wickremaratne stated that Mr. Abeygunasekera saw him as promised and that on the occasion Mr. Abeygunasekera discussed the letter of demand, stated that he had not accepted it because he suspected its contents (presumably having learnt about it from one or more of the other members) and that he promised to pay back the amount which he had taken. In my opinion this evidence is true . . .

A Truthful Witness

10

Mr. B. W. Fernando is, in my opinion, a truthful witness. It is true that he himself encouraged the giving of gratifications by his presence if by nothing else. Having given this point due weight, I still think his evidence is entitled to be accepted. He was cross-examined with regard to certain proceedings in insolvency but it appeared that he settled with all his creditors before the case proceeded very far. He was also cross-examined with regard to certain incidents relating to his living with a woman to whom he was not married. It was suggested by counsel for Mr. Abeygunasekera that he had been party to a false registration with regard to the parentage of a child. But there was absolutely no truth in this last charge. No 20 reason for his giving false evidence beyond the question of conspiracy (dealt with later) was urged or can be thought of.

Upon the question as to how much money was paid to Mr. Tambimuttu, he is definite that Rs. 750 was paid. Mr. Attanayake said it was Rs. 250 or Rs. 325 and appeared generally to be in doubt. I feel confident that some money was paid. Upon the amount, I think it is much more likely that Mr. Fernando's memory is more accurate than anyone else's.

He was a witness who, unlike Mr. Attanayake, appeared to give evidence with a due sense of responsibility, and I have no doubt that whatever 30 he said can be accepted as true. He has spoken to the receipt of money by all four Councillors. With regard to Mr. Abeygunasekera, his recollection is that he was paid Rs. 100 on the first day and Rs. 400 on the subsequent day. Mr. Attanayake spoke only to one payment. I think that Mr. Fernando's evidence on this point is accurate.

There is one incident in his evidence worth mentioning. He says that on December 12, Mr. Abeygunasekera, on receiving payment, said, as he was wishing the party good-bye, that he was going across to the Colombo Apothecaries Co. to see about some glasses. A register kept by the Com- 40 pany shows that on December 12, Mr. Abeygunasekera was examined for glasses and the prescription for the lenses suggested for him it entered in the register. This was one of those details which a witness frequently remembers and it is very remarkable that Mr. Fernando, who, according to Mr. Abeygunasekera, could not have been with him on the 12th, speaks to this

incident. I do not think that Mr. Fernando made search for an incident like this and wove it into his story to give it the appearance of truth. I think it is a sign of a true story.

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Mr. Abeygunaseker's Defence.

Turning now to the defences set up, Mr. Abeygunasekera in a statement in writing denied the incident. He was present during the whole of the cross-examination of the witnesses through his counsel and the suggestion made was that the whole story from beginning to end in every detail was a fabrication. It is impossible to take this view. It was suggested as a reason
10 for the fabrication that Mr. Wickremaratne, who had been a member of the Sama Samaj party, was incensed by Mr. Abeygunasekera's anti-Sama Samajist activities and had conspired with the other witnesses to put Mr. Abeygunasekera into trouble. This is much too drastic a suggestion to find acceptance in any case. Further I believe Mr. Wickremaratne when he says that he joined the Sama Samaj party at the end of 1938 or early in 1939. At the time that Mr. Wickremaratne sent letters of demand (and of the fact of sending them there is ample proof) a Commission had not been issued to me. The letters of demand were mentioned to the Criminal Investigation Department in June, 1938. There can be no doubt that they were in existence
20 at that time. What then was the purpose of the conspiracy? Mr. Wickremaratne is a lawyer with a big practice and he must have known that the payment of a gratification by a member of the State Council was not an offence. It was not at his suggestion that the Attanayakes went to the Criminal Investigation Department. Further, if Mr. Wickremaratne was conspiring against Mr. Abeygunasekera, there was no reason suggested or that I can think of why he should involve Messrs. Tambimuttu and Gunasekera, thus making the story unnecessarily involved. I reject as impossible the theory of a conspiracy. Mr. Wickramaratne struck me as a truthful witness and from his demeanour and from the evidence which he gave I am
30 convinced that to the best of his ability he has tried to be as accurate as he can. Upon the question of how much money was paid to him by Mr. Batuwantudave, he gave at first the figure of Rs. 125. A document referred to latter discovered by him after he gave this evidence shows that the amount was Rs. 325. This, I believe, was an honest mistake.

Another point sought to be made against him was that in the course of his evidence he said that he had the counterfoils of the cheque by which he paid this Rs. 125 to the Attanayakes. He also wrote to me that he was sending them but found later that no such counterfoils existed. In fact, from inquiries that I have made from the Bank it is clear that no cheque
40 was issued. This, too, I think was an honest mistake. Mr. Wickremaratne was detained for some time under an Order of Detention issued under the Defence Regulations and, at or about the time that the order issued, the Police took possession of a great many of the documents in his office. They were returned subsequently but, even at the time of giving evidence, they had not been sorted and arranged in their original places. This was what

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led to the failure of Mr. Wickremaratne to discover the receipt before he gave evidence. The counterfoils were at Mr. Wickremaratne's residence and had not been taken away by the Police. This led to Mr. Wickremaratne's assumption that they could be produced.

In A Nawalapitiya House.

I will turn now to the defence of insufficient indentification set up by Mr. Gunasekera. This defence is based chiefly upon an incident which took place at the house of one Mr. Francis Wickremasuriya at Nawalapitiya. Mr. Gunasekera had retained as his proctor one Mr. M. A. W. Gunasekera (not related to him) and the latter had decided to ascertain something of Mr. 10 Attanayake's antecedents.

He spent a few days at the house of the Station Master of Nawalapitiya and visited the house of Mr. Wickremasuriya on one occasion. While he was there, Mr. H. A. Gunasekera also arrived and there were also present some ladies. By a strange coincidence Mr. Attanayake, who had some business to transact with Mr. Wickremasuriya about a house, also arrived at the same time and happened to be seated opposite Mr. H. A. Gunasekera.

Mr. Wickremasuriya says that Mr. Attanayake asked him the question "Who are these visitors?" and it is suggested that he did so because he was 20 unable to identify Mr. H. A. Gunasekera. Mr. Attanayake admits that he asked the question but he says that before he did so, he had recognised Mr. H. A. Gunasekera. He says that the latter pretended not to know him and that he in turn pretended not to know Mr. H. A. Gunasekera. He denies emphatically that the question was put through failure to identify Mr. H. A. Gunasekera. It is not improbable that Mr. Attanayake, wondering what Mr. H. A. Gunasekera was doing there and not wishing to ask the direct question, asked, instead, "Who are these visitors?" If Mr. Attanayake had identified Mr. H. A. Gunasekera, the moment would have been one of some embarrassment to him and too much significance cannot be attached 30 to the words actually used by him. The point made, in any case, is not of the first importance because I am not prepared to act in any matter upon Mr. Attanayake's evidence alone.

There is no doubt upon the evidence that money was paid to someone on the ground floor of the State Council building as stated by Mr. Attanayake and Mr. Fernando. I accept without hesitation the latter's evidence on this point. Mr. Attanayake is definite as to his knowledge of Mr. Gunasekera and identifies him with confidence. But, as stated before, on his evidence alone I am not prepared to act. Mr. Fernando does not identify Mr. Gunasekera with the same confidence but certain facts and circum- 40 stances upon which I have no doubt indicate strongly that Mr. Gunasekera was present at that incident.

Making as much allowance as possible for the fact that Mr. Abeygunasekera is bold in the matter of securing gratification, I think it is most unlikely that he would have dared to introduce a party of four persons to a person, whom he introduced as Mr. Gunasekera, if, in fact, he had not been Mr. Gunasekera himself. It was broad daylight. There must have been about the premises peons and other persons whose business habitually keeps them there. Mr. Abeygunasekera would have run the risk of immediate detection if one of the four members of the party had, in the course of a casual or direct conversation, learnt that the person pointed out as Mr. Gunasekera was not Mr. Gunasekera.

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There is also documentary evidence from which it can be inferred that Mr. Gunasekera was not personated. Mr. Wickremaratne, after he gave evidence, sent me a book in which the following entry appears :—

“ Received from Mr. H. A. C. Wickremaratne, Proctor, S. C., and Notary Public, the sum of Rs. 325 in part payment being money paid to him by Mr. C. Batuwantudave on behalf of himself and H. A. Gunasekera. L. Bandara Attanayake. 12-2-38.”

On receipt of this book I summoned Mr. Wickremaratne to give evidence again in order that Counsel and parties may have an opportunity of cross-examining him about this receipt. Mr. Wickremaratne says that this receipt was written by a clerk to his dictation and that it was signed in his presence. I have no doubt as to the truth of this evidence. The book itself is not a ledger and the pages on which receipts were taken have been chosen somewhat at haphazard. I have examined it carefully and I am convinced that it is a genuine book. Objection was taken to it on the ground that it contains a reference to a statement made by Mr. Batuwantudave and that this statement is not evidence against the others. I upheld this objection and I do not propose to take into account anything in this receipt which is the result of a statement from Mr. Batuwantudave.

30

An Alibi Examined.

Mr. Gunasekera also set up an alibi. He said that he entered the General Hospital on October 17, 1937, and that he was there till the 27th of that month. He produced a certificate from the Superintendent of the Hospital to that effect. He stated that he had been ill in bed from about October 10 to 17 and that he had been under the treatment of one Dr. Kuruppu whom he called. At my instance Mr. Gunasekera's bed-head ticket was produced by the Hospital authorities (a certified copy marked “ B.T. ” is appended) and it appears that on October 17, 1937, Mr. Gunasekera had cough and a pain in the chest and had had it for twenty-four days or so. Mr Gunasekera had told the examining doctor that his illness had originated with a cold which gradually settled down and that the pain in the chest was persisting. It appears that he was kept in the hospital for a “ bronchitis investigation ” and a very through investigation established that he was free from any trouble at all serious. A number of tests were made in order to

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make sure of this. The inference to be drawn from this is not that Mr. Gunasekera was so ill that he could not have come to the Council Chamber on the morning of the 12th but that he had entered Hospital to make sure that a pain in the chest which persisted after a cold was not due to or leading up to something more serious. But the matter does not rest merely at an inference because I see on the bedhead ticket that Dr. J. R. Blaze had on the 17th made the following endorsement :—

“ Medical Superintendent,

Please allow this patient two hours' leave to attend a meeting tomorrow at 10 a.m. —J. R. Blaze ” and below this is an endorsement by the Medical Superintendent—

“ Permission granted.
 18-10-37.”

So that it is clear that when he entered hospital he was not too ill to attend a meeting at 10 in the morning. I have no doubt that he was well enough to have been on the ground floor of the State Council building on the morning of the 12th and that, in fact, he did so. Dr. Kuruppu's evidence did not impress me. He probably treated Mr. Gunasekera ; but I do not accept the suggestion made in his evidence that he was seriously ill for a week or more prior to the date of entry into the hospital. 20

Mr. Tambimuttu's Conduct.

Mr. Tambimuttu admits that he received the letter of demand. As stated above, he admittedly sent no reply and his conduct is altogether that of a man who has received a gratification and is fearful of its consequences.

Mr. Tambimuttu had been practising as a lawyer for some time and I cannot imagine that he could have given himself or anyone else the advice in circumstances of suspected blackmail privately and alone to go and interview the person attempting to blackmail. 30

Both the direct evidence and inferences to be drawn from his conduct established that he accepted a gratification.

Mr. Batuwantudave is dead and it is with extreme reluctance I regret that I have to find that he, too, accepted a gratification. There is direct and documentary evidence including a letter written by himself upon this point which puts the matter beyond doubt.

The impression left upon my mind by the incidents which have been established is that this is not an isolated occasion in which these four members acted together in receiving gratifications. The code words “ of paramount importance ” suggest an understanding as to the procedure to be adopted in matters that a gratification was available. Mr. Abeygunasekera 40

is said to have stated (and I believe that he did so) that without the payment nothing could be done and that with a payment the other people had succeeded. I have no doubt that this statement attributed to him is one which has been repeated in many instances to secure gratifications.

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Allegations Against Other Councillors.

Allegations were also made against a number of other Members of the State Council.

The Commissioner did not proceed further with the allegation against Mr. D. P. Jayasuriya as no prima facie case was made out against him.

10 The Commissioner has accepted the word of Mr. George E. de Silva, Minister of Health, in two cases that he never solicited or received a gratification.

Four allegations have not been established against Mr. C. W. W. Kanangara, Minister of Education. In one the evidence of the witness has been held to be worthless and in another the Commissioner says that there is ample motive for untruth. In the third the Commissioner has concluded that there is absolutely no evidence that a gratification passed. In the fourth, the evidence of two witnesses stand discredited.

20 In the allegation against Mr. G. C. S. Corea, Minister of Labour, Industry and Commerce, the Commissioner says that it did not appear to him worthwhile to spend any more time on statements made by the witness.

There has been nothing, according to the Commissioner, to support the allegation against Mr. A. E. Goonesinha, a former Member of the State Council, and the evidence has been held to be entirely insufficient.

The Commissioner also held that there had been not even the slightest suspicion that Mr. D. Susanta de Fonseka, Deputy Speaker, had received a gratification.

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30 RS. 25 BRIBE TO OPPOSE NEW 'BUS SERVICE PLAN

Owners Who Felt That M.S.C. Could Not Be Trusted.

The motion relating to the reorganisation of the motor 'bus services (moved in the State Council by the Minister of Local Administration on July 9 last year) led to the acceptance of gratifications by two State Councillors who were approached by interested parties and asked to oppose the motion.

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The allegations in this connection were made against Mr. E. W. Abeygunasekera and Mr. D. D. Gunasekera (the Member of Bandarawela). In each case the Bribery Commissioner (Mr. L. M. D. de Silva, K. C.) holds that the allegations have been established.

Object Of Association.

With regard to the allegation against Mr. D. D. Gunasekera, the Commissioner in Appendix E of the Report writes :—

Mr. S. W. Nelson, the present Director of Transport, some time after his arrival in the Island recommended the reorganization of the omnibus services and propounded a scheme. The omnibus interests were strongly 10 opposed to this scheme. Associations of omnibus owners as well as individual owners worked hard for its rejection. An Association by the name of the Lanka Omnibus Owners' Association was formed for the express purpose of agitating against it. One of the leading spirits in this Association was Mr. M. Jayasena. The evidence establishes that whatever expenses were incurred by the Association were provided by him. It appears that he was somewhat magnanimous and refused contributions which other members and member associations offered to make.

On July 9, 1942, a resolution was moved by the Minister of Local Administration to the effect that the recommendations of the Executive Commit- 20 tee of Local Administration on the Nelson scheme for the reorganization of bus services be approved. This motion was debated on July 9, 10, 28 and 29, 1942, and the voting upon it took place on the last-mentioned date.

Crowded Council Galleries.

At this time the interest of the omnibus owners was greatly heightened and many of them attended the State Council meeting to witness the debate and to do whatever was possible to gain a satisfactory conclusion. A number of witnesses have stated to me and I have found without hesitation as a fact that in con- 30 nection with the motion referred to Mr. E. W. Abeygunasekera prepared a list of names of Councillors who, according to him could be bought at a price.

Against the name of each he noted the sum required and left the amount against his own name blank. This list he handed to a Mr. William in the presence of Mr. Collin Fernando. Mr. Collin Fernando states that the question of paying the amount suggested to Mr. Abeygunasekera was discussed by omnibus owners and that they, not having confidence in Mr. Abeygunasekera, decided not to make a payment to him. They decided instead that they could see various Councillors, secure their support, if possible without the payment of a gratification but pay if it was found 40 necessary and suitable to do so. Mr. Fernando says that he saw Mr. D. D. Gunasekera's name on this list and was encouraged by this fact to approach Mr. Gunasekera without fear.

Rs. 25. Handed Over.

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What Happened At Pettah Hotel.

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Mr. Fernando states that on July 28, 1942, the day immediately preceding the date on which voting on the motion took place, he was present in the Council Chamber and, after proceedings had closed, he spoke to Mr. D. D. Gunasekera on the street a short distance from the State Council building. He made an appointment to see Mr. Gunasekera the same evening at the Victoria Hotel. He then went to the office of the M. J. Insurance Company at the Victoria building. It was in this office that the Lanka Omnibus Owners' Association conducted most of its activities. From here
10 Mr. Collin Fernando and seven or eight members went to the Victoria Tea Rooms and had tea. Thereafter, Mr. Collin Fernando and Mr. S. de S. Jayasinghe, proprietor of the Sinha Omnibus Service went up to the second floor of the Victoria Hotel and met Mr. Gunasekera. Some of the members appear to have been on the pavement close by and at their request Mr. Piyadasa, the Manager of the Puspauyana Omnibus Company, also went up. There was some conversation during which Mr. Gunasekera intimated that he wanted a gratification. Mr. Collin Fernando then paid him Rs. 25 in notes which was accepted by Mr. Gunasekera, who then promised to vote
20 against the motion.

Mr. Piyadasa supports this story and says he saw Mr. Collin Fernando handing over the notes to Mr. Gunasekera.

Mr. Jayasinghe says he was present but denies that he saw a payment being made. According to the evidence of Mr. Collin Fernando and Mr. Piyadasa, if a payment was made he must have seen it. Mr. Collin Fernando also says that he received the money from Mr. Jayasena, proprietor of the M. J. Omnibus Company, or from Mr. B. J. Fernando, proprietor of the B. J. F. Omnibus Service. Both these witnesses deny that they paid Mr. Collin Fernando Rs. 25 or any other sum for the purpose of gratification.
30 Mr. Fernando says that after the payment he mentioned the fact to Mr. Jayasena. This too Mr. Jayasena denies.

Mr. A. Mivanapalana states that some time probably after August 6, Mr. Gunasekera promised to oppose legislation which was to be introduced into Council to reorganize the Omnibus Services. According to Mr. A. Mivanapalana himself, it is most likely that this incident took place after July 28, on which date the gratification is stated to have passed. But in any case Mr. A. Mivanapalana's evidence would be inconclusive of the question whether a gratification was paid or not. He was called by me at the instance of Mr Gunasekera.

40

Issue Very Narrow.

Mr. Gunasekera denies that he solicited or received a gratification. He admits that the three persons mentioned interviewed him at the Victoria Hotel and states that soon after they had left Mr. Piyadasa returned and

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offered him an envelope containing two or three notes. Mr. Gunasekera says that he was surprised and that he inquired from whom this money had come. On being told that it came from the party that had just left. Mr. Gunasekera says that he requested Mr Piyadasa to return the money to the source from which it came

The issue upon which a decision is called for is a very narrow one. It is common ground that the three persons alleged to have visited Mr. Gunasekera at the Victoria Hotel did in fact visit him. It is common ground that a gratification was offered to Mr. Gunasekera. The only questions are whether it was offered to Mr. Gunasekera in the presence of the three witnesses and accepted by him or whether it was offered to Mr. Gunasekera on the second occasion and rejected by him. 10

My impression of Mr. Collin Fernando on the two occasions on which he gave evidence before me is that he is an entirely truthful witness . . . I would upon his evidence alone, without the support which he received from Mr. Piyadasa, have held that a gratification passed. There is nothing, however, in Mr. Piyadasa's evidence which, in my opinion, suggests that he is not speaking the truth and I accept his evidence in its entirety.

I am of opinion that Mr. S. de S. Jayasinghe is not speaking the truth and that he, like many others, is reluctant to involve himself in any incident or scene in which a gratification passed. This is an easily understood attitude and, though unfortunate from the point of view of the Commission, one which I have encountered in many witnesses. It is the same attitude which has led Mr. Jayasena or Mr. B. J. Fernando to deny that they paid a sum of Rs. 25 to Mr. Collin Fernando. 20

Idea of Conspiracy Negatived.

" This Small Amount Was Accepted "

I have been anxious in fairness to Mr. Gunasekera to see whether any doubt gathered from surrounding circumstances can arise with regard to the receipt of a gratification by him. Is there any reason why my impression of Mr. Collin Fernando's evidence should not be given effect to in the conclusion which I have to arrive at? The only motive, if any, which Mr. Collin Fernando could have had for speaking an untruth is that he was playing a part in a conspiracy to involve Mr. Gunasekera on a false charge. It is not suggested that Mr. Collin Fernando has himself any reason for animosity towards Mr. Gunasekera but Mr. Gunasekera said that he had a number of political and other enemies and the question is whether one or more of them have conspired to lay a false charge against Mr. Gunasekera. 30

Upon this point it must be noted that Mr. Collin Fernando did not volunteer to give evidence. It was Mr. Jayasena who is giving evidence before me with regard to the list of Councillors prepared by Mr. Abeygunasekera for the first time disclosed the name of Mr. Collin Fernando. He 40

said that Mr. Collin Fernando had brought the list . . . I reject as far fetched and highly improbable the possibility that there was a conspiracy in which the conspirators seized upon Mr. Collin Fernando as an useful tool after his name was mentioned to me by Mr. Jayasena but before he gave evidence. As already stated Mr. Fernando was not a volunteer.

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10 **Further, the sum of Rs. 25, which is alleged to have passed, is not a sum upon which conspirators would have fixed. By itself, it tends to the view that such a small sum could not have been accepted by a State Councillor. The question of the amount is a point which aroused my consideration. But the sum total effect of the evidence has been to make me believe with confidence that this small amount was accepted by Mr. Gunasekera. Nevertheless, it is not likely that conspirators concocting a false story would have fixed upon this sum.**

Could Get The Votes.

If Members On His List Were Paid.

As regards the allegation against Mr. Abeygunasekera in connection with the 'bus service organisation motion the Commissioner has the following comment :—

20 Mr. J. G. Collin Fernando, a Committee member of the Lanka Omnibus Owners' Association was taken by one Mr. B. H. William, also an omnibus owner, to interview Mr. E. W. Abeygunasekera. Mr. William had known Mr. Abeygunasekera previously. The interview took place at the State Council building on the ground floor. The date has not been fixed with precision but appears to have been after July 9, 1942, on which date the Minister for Local Administration moved a resolution in the State Council for the reorganization of the omnibus services, and before July 29, 1942, on which date the voting on the motion took place. Mr. Collin Fernando states that Mr. Abeygunasekera told him and Mr. William that however
30 good a motion might be they could not expect support without paying a gratification. Mr. Abeygunasekera then tendered a list containing the names of about seven members to Mr. William and against each person's name there appeared an amount varying between Rs. 150 to Rs. 200. The amount against Mr. Abeygunasekera's name itself was left blank and the total of the amounts came to about Rs. 1, 300. Mr. Abeygunasekera said that if that money was found and paid to him he could get the members mentioned in the list to vote against the motion. The list was handed to Mr. William.

“ Could Not Be Trusted ”

40 *Current Opinion Of The Public.*

The two of them together left Mr. Abeygunasekera and showed the list to certain other omnibus owners who happened to be on the Council premises and discussed the matter with them.

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The general consensus of opinion was that Mr. Abeygunasekera could not be trusted. A decision was taken not to make a payment to him but to interview other members, to get their votes if possible without a payment, but, if that was not possible, on payment of a reasonable amount.

Mr. Fernando says the list was taken away by Mr. William and Mr. William states that he last saw it with a third person. I have not been able to trace it. The list, however, was seen by a number of people. It was seen by Mr. S. de S. Jayasinghe and by Mr. D. J. F. Obeysekera, the Secretary of the M. J. Insurance Company (closely connected with the M. J. Omnibus Company), who happened to be on the Council premises. These two witnesses testified to this fact. 10

An Unwilling Witness.

Mr. Jayasena did not recollect having seen the list itself but was quite sure of the discussion with regard to it which followed immediately on its being handed by Mr. Abeygunasekera to Mr. William. Mr. William, who struck me as a somewhat unwilling witness, also testified to the fact that Mr. Abeygunasekera handed the list to him and that he and Mr. Fernando took it to other omnibus owners on the premises. Mr. Sirisena states that he was present on the Council premises and that the matter of the list was mentioned to him by Mr. Fernando and Mr. William. On a later date Mr. Abeygunasekera, seeing him on the State Council premises and mistaking him for his brother Jayasena, to whom he bears a resemblance, asked why he had mentioned the incident with regard to the list to Dr. A. P. de Zoysa, Dr. de Zoysa presumably having mentioned it to him or someone else.

Left The Island For India.

On December 16, 1942, I informed Mr. Abeygunasekera of the allegation made against him giving him an outline of the evidence of the witnesses. On December 30, 1942, Mr. Abeygunasekera replied "that the allegations made against me are utterly false" and contented himself with this bare statement. For the reasons given in my Report I was not able to examine Mr. Abeygunasekera on affirmation. He had on the date fixed for inquiry left the Island for India. 30

I am convinced beyond any manner of doubt that the evidence with regard to this incident is true. Mr. Abeygunasekera on this and other occasions appears to have acted without much attempt at secrecy in the matter of soliciting and receiving gratifications. The view expressed by the omnibus owners that Mr. Abeygunasekera was not a man who could be depended upon appears to have reflected the current opinion of the public at the time. 40

The Ceylon Daily News.**INDEBTEDNESS OF COUNCILLORS**

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An important aspect of the report of the Bribery Commission is the incidence of debt in the State Council. The salaries of no less than eighteen State Councillors have been seized in execution of decrees entered against them. Up to April, 1943, the number of seizures had risen to the astounding total of 2,912, and the judgment debts in respect of which the seizures had been effected had ranged between Rs. 11·61 and Rs. 56,200. Some
 10 State Councillors had been in a chronic state of indebtedness. Two of them had their salaries seized hundreds of times while seven others had theirs seized over a hundred times. The disclosures reveal the existence of a very unsatisfactory state of financial embarrassment among the country's legislators which could not but have done harm to the prestige of its Legislature. Though there is no clear indication that a decree has been entered against any Minister, what the Bribery Commissioner says generally on the indebtedness of Councillors is worthy of note: "Precise details of the number and nature of unsatisfied decrees against members of the Council are not known to the public but there is already sufficient knowledge on
 20 the subject as to give rise to public anxiety and misgiving."

The impecunious condition in which some members found themselves had also been noticed by the Governor. His Excellency drew attention to it in his despatch on Constitutional Reform and endeavoured to correct it by making a recommendation in these terms: "It should be laid down that no member should occupy his seat while his allowance is under seizure, and that if it be under seizure at any date posterior by three months or more to its first seizure the seat should be held vacated and a successor elected." This is a very salutary suggestion. A man who habitually fails to discharge his financial obligations has no right to preach honesty to others. Even
 30 if he has incurred his debts honestly, feelings of self-respect and a sense of duty to his constituents should make him straighten out matters rather than continue to hold an awkward position. It is not pleasant to have the finger of suspicion pointed at one. That is unfortunately the fate of those who have unsatisfied decrees against them. The Bribery Commissioner says very rightly that "many a person held in high esteem has, in circumstances of financial embarrassment, descended to criminal misappropriation."

One conclusion only can be drawn from the observations made by His Excellency the Governor and the Bribery Commissioner on the problem
 40 of debt in the State Council and that is the necessity for incorporating in the new Constitution a provision making it obligatory on the part of a Councillor who has any judgment debts due by him to resign his seat after a reasonable period has elapsed since his allowance first came under seizure. Such a step would go a long way in maintaining the prestige of the Council.

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nued*

It would not only promote a high standard of conduct among those who aspire to be the country's representatives in the Legislature but improve considerably the quality of the Legislature itself. It may appear a harsh penalty to exact from a man who may have incurred his debts honestly, but membership of a Legislature demands the observance of sterner rules of conduct than those observed by an ordinary citizen in fulfilling his daily duties. Freedom from debt aids the growth of integrity, vigilance and good judgment qualities which are essential to the making of a good parliamentary representative. With it a State Councillor can without fear scrutinise the actions of the Executive, and insist on the maintenance of the highest standards of administration that obtain in other countries. Without it his words, however brave and spirited, will carry no weight. The most broadbased legislative assembly will be of little use when its members are oppressed by debt. 10

P 1.
The Ceylon
Daily News,
25th May,
1943

P 1.

The Ceylon Daily News.

EXTENSION OF ARRACK CONTRACTS

Rs. 2,000 Payment For Four Councillors.

" My finding upon this matter is that without a doubt a sum of Rs. 2,000 was paid by the distillers to Mr. Batuwantudawe. The distillers 20 earmarked this sum for payment to members of the Executive Committee. They believed that portions of the sum would find their way to the other Councillors mentioned. One distiller at least thought that the money would be paid direct to them. Others received the impression that it would be paid through Mr. Batuwantudawe.

" Mr. Batuwantudawe is now dead and there is no evidence that he distributed money among the others.

" I do not think that any direct payments were made to them," writes the Bribery Commissioner (Mr. L. M. D. de Silva K.C.) in his report regarding an allegation of payment of gratifications in respect of the extension of 30 a Government contract.

" Fund For 4 Councillors "

The allegations were made against Messrs. C. Batuwantudawe, E. W. Abeygunasekera, E. R. Tambimuttu and H. A. Gunasekera. The Commissioner writes :—

In 1939 there were eight distilling plants in Ceylon, the proprietors of which were supplying arrack to Government. These suppliers consulted each other in matters of common interest and were loosely associated with each other as a body without a formal set of rules or any of the other for-

malities adopted by Associations proper. They regarded Mr. D. E. Seneviratne, proprietor of the Diyalagoda Distillery, as Treasurer, and Mr. W. F. Wickremasinghe, proprietor of the Anvil Distillery, as Secretary. They collected money from time to time as occasion required for meeting various expenses.

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P 1.
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Mr. Gunaratne, the owner of Sirilanda Distillery, Kalutara, stated to me that either Mr. Wickremasinghe or Mr. Seneviratne or both came to see him and asked him for a contribution towards a fund from which the four Councillors mentioned were to be paid. Mr. Gunaratne says that
10 Messrs. Wickremasinghe and Seneviratne (either or both) mentioned the names of the four Councillors and that he paid Rs. 500. There is no doubt about this payment. The only question is what the conversation was. Messrs. Seneviratne and Wickremasinghe deny that they mentioned the four names in the explicit manner ^{described} disposed to be Mr. Gunaratne. After carefully weighing up the evidence I feel that none of these witnesses is deliberately stating an untruth. Mr. Gunaratne says that he was told by Messrs. Wickremasinghe and Seneviratne that Mr. Batuwantudawe was the go-between between them and the other members.

Paid to Mr. Batuwantudawe

20 Mr. Seneviratne states that he paid Rs. 2,000 to Mr. Batuwantudawe but that he paid no money to any of the other Councillors. It is common ground that there were informal conferences at which the distillers discussed various matters of importance to themselves. It appears that at these conferences the distillers sat in small groups for the purpose of informal discussion and that there was no meeting in the proper sense of that word. Mr. Seneviratne says that the names of the other Councillors were mentioned at these conferences as persons to whom Mr. Batuwantudawe would probably have to pay something. But he says that there was no definite arrangement with Mr. Batuwantudawe that they should be so paid. Mr.
30 Wickremasinghe says that Mr. Seneviratne told him that Rs. 2,000 was paid to Mr. Batuwantudawe and that Mr. Seneviratne undertook to obtain the votes of the four Councillors mentioned through Mr. Batuwantudawe.

He also states that at the time it was common talk that these four members took bribes.

The clear impression which I have formed is that as a result of the general talk that these four members took bribes their names were mentioned at conferences and discussions, that the manner of approach to them, if agreed upon at all, was not agreed upon with any degree of precision but that the distillers believed that the money would reach them. I believe that
40 Mr. Seneviratne is speaking the truth when he says he paid Rs. 2,000 to Mr. Batuwantudawe and that it is also true that neither he nor Mr. Wickremasinghe nor anyone else paid any money direct to the other Councillors.

Dr. M. G. Perera who gave evidence was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did.

Exhibits

D 8.
The Ceylon
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D. 8.

The Ceylon Daily News of 25th May, 1943.

(Not reproduced, same as P 1.)

D 9.
The Ceylon
Daily News,
28th May,
1943

D. 9.

The Ceylon Daily News.**UNNAMED COUNCILLORS**

One point in the Bribery Commissioner's well-considered Report that is provoking surprised comment is his suppression of certain names. According to the Report the total number of Councillors in regard to whom suggestions of bribery were made was nineteen. This number includes the eight (three of them being the European nominated members) who have been found by the Commissioner to have accepted gratifications in respect of their duties as members of the Council. In the case of seven other members the Commissioner holds that the allegations of bribeacceptance were not established to his satisfaction. This accounts for fifteen of the nineteen Councillors against whom members of the public laid charges of bribery. As regard the remaining four, however, there is an unaccountable and in our opinion inadvisable reticence. It is true the Commissioner did not find them, on the evidence placed before him, guilty of the charges. But it is equally true that he was not, on the evidence submitted, able to exonerate them. In these four cases, to quote the Report, the Commissioner found that "although there is no proof of the solicitation or receipt of gratifications there is room for strong suspicion."

The Commissioner's Report, therefore, furnishes the public with the names of eight Councillors found guilty and seven other members in respect of whom the charges were not established, but throws a veil over four against whom there is ground for strong suspicion. The public is quite justified in regarding this as highly unsatisfactory, nor is it in our opinion quite fair to the forty other members that any one of them may be liable to be identified by guesswork as one of the unnamed suspects. The Report itself makes it clear that these four cases were not connected with matters lightly to be dismissed. They involved the nomination of members to municipal and urban councils in respect of which there has been cause often for public uneasiness. "I desire to point out," declares the Commissioner, "that the principle that every man must be presumed to be innocent until the contrary is proved has to prevail. The fact that I have found suspicion established but proof lacking places on me a special responsibility . . . I am of opinion that it would not be fair or proper to publish the names of the Councillors involved."

Accordingly the names of these four Councillors against whom suspicion of accepting bribes was established have not been mentioned in the Report and the appendices detailing the allegations against them have been suppressed by His Excellency the Governor at the request of the Commissioner. We question the propriety of this procedure. It was the State Council itself which initiated this spring cleaning of the House and it would be a pity if so necessary a task were not carried to its logical conclusion. The Leader of the House should not rest content with the decision not to publish the names of Councillors suspected of corrupt practices nor the appendices containing particulars of their cases. The Commissioner writes on paragraph 40 of his Report that the appendices "could be seen by those who have to work out the details of the action, if any, consequent on decisions taken on this Report." Either a select committee should be set up to go into these cases, or the Commissioner himself should be instructed to investigate them further. When the Commission began its work many people who could have given evidence failed to come forward because they thought the investigations would come to nothing ; in the light of the published Report they can easily be persuaded to change their minds, and it is possible that further evidence for or against the suspected members may be collected. In the meantime it is only fair that particulars of the allegations against them should be published.

Exhibits
D 9
The Ceylon
Daily News,
28th May,
1943—*continued*

No.

Supreme Court of Ceylon
No. 84 of 1945 (Final)

District Court, Colombo
No. 15069.

In the Privy Council
On an Appeal from the Supreme Court of Ceylon

BETWEEN

DR. M. G. PERERA of Colombo

Plaintiff-Appellant.

AND

1. ANDREW VINCENT PEIRIS of "Winston,"
Tewatte Road, Ragama and

2. THE ASSOCIATED NEWSPAPERS OF
CEYLON LIMITED, Colombo

Defendants-Respondents.

RECORD
OF PROCEEDINGS
