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22



PARLIAMENTARY SERIES

(House of Representatives)

No. 1

The Fifth Session of the First Parliament

REPORT OF THE BRIBERY COMMISSION, 1948-49

Session 1951

Tabled in the House of Representatives on July 10, 1951, and ordered to be printed

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My No. D. 37/49.
Your No. N. 47/48.

Office of the
Public Service Commission,
P. O. Box No. 500,
Colombo, 28th July, 1950.

SIR,

HEREWITH I return the Interim and Second Interim Reports of the Bribery Commissioner. The Public Service Commission has now completed the action necessary in those cases in which the Bribery Commissioner reported that Public Servants had committed offences in terms of the reference to the Bribery Commissioner.

2. The procedure adopted has been as follows:—

Each officer so reported on has been called upon by the Public Service Commission to show cause why he should not be punished on the findings of the Bribery Commissioner and on the evidence recorded by him. He has been allowed to call further evidence before the Commission, if desired, and has also been permitted to present his case to the Commission through Counsel.

3. This procedure has been approved by the House of Lords in the case of the General Medical Council *versus* Spackman as being suitable for adoption by tribunals exercising disciplinary powers in cases where the accused officer has been found guilty of misconduct in a Court other than a Court exercising criminal jurisdiction. The principles to be followed were thus stated:—

"The duty of considering the defence of a party accused, before pronouncing the accused to be rightly adjudged guilty, rests on any tribunal which is given the duty of investigating his behaviour and taking disciplinary action against him. The accused should not be condemned without being first given a fair chance of exculpation. This does not mean that the tribunal has to rehear the whole case by endeavouring to get the previous witnesses to appear before it. The tribunal will primarily rely on the sworn evidence already given.

In weighing the rebutting evidence produced before it, the tribunal is entitled to bear in mind that it is not given on oath, although it might have been given under oath at the trial, and is further entitled to attach to the conclusion of the Court all the weight that is due to the effect on a trained judicial specialist of sworn testimony given subject to cross-examination; but all this does not exonerate the tribunal from refusing to allow the accused to put before it relevant matters in support of his denial."

4. I have quoted the above passages from the opinion of the House of Lords in view of the criticism of the procedure adopted by the Public Service Commission in this matter which has appeared in the Press. The hearing of these cases, in most of which additional evidence has been called, has also taken a considerable amount of the Commission's time in a year when the ordinary work of the Commission has again increased.

The fact that only one copy of the evidence recorded by the Bribery Commissioner has been available for the use of the Members of the Commission as well as for the parties and Counsel appearing before them has also been a cause of much inconvenience.

2——J. N. R 27060 (7/51)

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5. A schedule of the cases disposed of with the orders passed in each case is given as an appendix to this letter.

Secretary to the Governor-General.

6. The following persons on whom the Bribery Commissioner has also reported are no longer public servants.

Case R 4 J. W. de Alwis, Sanitary Engineer, since retired.

Case R 50 H. William Caldera, Peon, since retired.

Case R 52 M. L. Don Manuel, Village Headman, since retired.

Case R 126 L. B. Inbuldeniya, Storekeeper, since discontinued.

Case R 123 D. H. Wijesinghe, Clerk, since retired.

Case R 77 M. K. M. Mustapha, Village Headman, dismissed on departmental charges.

The question whether any action should be taken in respect of the pensions of the first five of the above would be a matter for the Ministry of Finance, and I have reported their names to the Ministry of Finance.

7. The files of the Bribery Commission are being returned under separate cover.

I have the honour to be, Sir,
Your obedient servant,

(Sgd.) C. N. PAGET,
Chairman,
Public Service Commission.

...ARY
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APPENDIX

First Interim Report

R. 19	T. L. Piyatissa, Police Constable No. 1924 ..	Dismissed from the Public Service.
	B. M. Muttubanda, Village Headman, Paragoda	Dismissed from the Public Service.
R. 107	D. B. Kannangara, Kachcheri Mudaliyar, Colombo	Acquitted
	T. A. Hendrick Singho, Village Headman, Makanda, Morandana and Minungama, Colombo District	Acquitted
R. 113	D. C. Panditha, Village Headman, Hikkaduwa East, Galle	Acquitted
R. 53	S. Navaratnam, Conductor, Dewahuwa Farm, Gallewala	Dismissed from the Public Service.
R. 2	*Baptist Mohotti, Inspector of Schools, Weligama	Acquitted

* This case was heard by the Bribery Commissioner *in camera*.

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R. 64	*G. K. F. Wickramasekera, Inspector of Schools, Talpe	Reduced to Grade II to a point in the salary scale 3 increments below maximum.
R. 5/1	C. Doyne Goonetilleke, Assistant Valuer, Valuation Department	Dismissed from the Public Service.
R. 25	G. M. Jayatissa, Checker, Stamp Room, Government Press	Dismissed from the Public Service.
R. 113	T. S. Fernando, Examiner of Motor Cars ..	Dismissed from the Public Service.
	T. J. Mather, Divisional Road Transportation Officer, Jaffna	Dismissed from the Public Service.
	D. St. C. Dabrera, Examiner of Motor Cars	Dismissed from the Public Service.
	J. A. B. Fernando, Examiner of Motor Cars	Dismissed from the Public Service.
	H. L. Wright, Examiner of Motor Cars ..	Dismissed from the Public Service.
R. 11	*Sheik Abdullah, No. 3523, Head Driver, Harbour Tug 'Goliath'	Salary reduced by 3 increments, the deduction to operate as a deferment.
	*S. Bastiampillai, No. 3561, Head Driver, Harbour Tug 'Samson'	Salary reduced by 3 increments, the reduction to operate as a deferment.
	*H. R. Hopwood, No. 3504, Greaser, Harbour Tugs, Colombo Port Commission ..	Salary reduced by 3 increments, the reduction to operate as a deferment.
R. 37	S. Tharmalingam, Police Constable, No. 967	Acquitted
R. 26	C. L. de S. Wijesundera, Chief Clerk, Magistrate's Court, Balapitiya	Dismissed from the Public Service.
R. 75	*G. J. Perera, Police Constable, No. 1680 Ginigathena	Dismissed from the Public Service.
R. 104	*T. B. Nugegoda, Colonisation Officer, Kagama Colony	Dismissed from the Public Service.
R. 33	*R. W. M. K. Appuhamy, Village Headman of Polgolla	Dismissed from the Public Service.
R. 51	W. A. F. Perera, Clerk, Government Factory, Kolonnawa	Dismissed from the Public Service.

Second Interim Report

R. 95	G. A. Geevananda, Station Master, Ganewatte	Dismissed from the Public Service.
	M. S. J. Peiris, Clerk, Ganewatte Railway Station	Dismissed from the Public Service.
	G. A. P. Ranaweera, Clerk, Ganewatte Railway Station	Salary reduced by four increments.

* These cases were heard by the Bribery Commissioner *in camera.*

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R. 100	L. Kulatunga, Police Sergeant, No. 2288 ..	Dismissed from the Public Service.
	T .B. Samarakoon, Police Sergeant, No. 1862	Dismissed from the Public Service.
	P. S. de Silva, Police Constable, No. 157 ..	Dismissed from the Public Service.
	U. Ariyadasa, Police Sergeant, No. 1008 ..	Dismissed from the Public Service.
R. 70	D. M. Samarasinghe, Vidane Aratchchi of Meegahatenne	Acquitted
R. 84	M. Ahmed, Manager, State Farm, Polonnaruwa	Dismissed from the Public Service.
R. 89	S. P. Vantwest, Foreman, Marketing Department	Dismissed from the Public Service.

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BRIBERY COMMISSION, 1948-1949

INTERIM REPORT

To: HIS EXCELLENCY THE GOVERNOR-GENERAL

YOUR EXCELLENCY,

A Commission was issued to me by Your Excellency on the 18th May, 1948, to enquire into and report on the following matters:—

1. (1) Whether, during the period commencing on 1st September, 1939, and ending on 28th January, 1948, gratifications by way of gift, loan, fee, reward or otherwise, have been offered, promised, given or made to members of the Public Service (either on the permanent establishment of the Government or temporarily employed) with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction in which they in their capacity as members of the Public Service have been or may be concerned;

(2) Whether, during the period aforesaid, such gratifications have been solicited, demanded, received or accepted by members of the Public Service 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 service or to take any such action, in their capacity as members of the Public Service;

(3) Whether members of the Public Service, and in particular those members in departments responsible for the administration of control schemes and the distribution of foodstuffs, textiles and other essential commodities, have, during the period aforesaid, whether in their own names, or in the names of their wives, dependants, relatives or any other persons on their behalf, accumulated any money or purchased any securities or other property, movable or immovable, in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption;

(4) Whether, during the period aforesaid, any tenders for the performance of contracts have been accepted, or contracts otherwise given, by any department of Government to any private person or body of persons in any improper manner or for any corrupt or improper purpose or motive or upon any terms and conditions intended or likely to allow any undue profits or other advantage to any such person or persons; and

2. In the event of the inquiry disclosing the existence of bribery or corruption among the members of the Public Service in their capacity as Public Servants, to make recommendations as to the ways and means of preventing or checking such evils in the future.

The Commission was gazetted on the 21st May, 1948.

2. Thereafter, Mr. G. S. Peiris, C.C.S., was appointed Secretary to the Commission on 8th June, 1948. A chief clerk, a typist and stenographers were thereafter provided. A room was provided in the House of Representatives, Committee Room No. 3.

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3. The Bribery Commission (Auxiliary Provisions) Act No. 9 of 1948, conferring certain special powers and immunities in respect of this Commission was assented to by Your Excellency on the 23rd June, 1948, and gazetted on the 25th June, 1948.

4. Mr. G. S. Peiris, who had done valuable work as Secretary in the initial stages of the Commission, was appointed Secretary to the Ceylon Embassy in the United States of America and left Ceylon on 30th September, 1948. Before he left Mr. T. Rajathurai, Cadet, C.C.S., had been attached to the Office of the Commission, from 26th July, 1948, to assist the Secretary, and after the departure of Mr. Peiris, he was appointed Secretary.

5. It was necessary to decide the best way of obtaining material relating to the Terms of Reference of the Commission. Shortly after the 8th June, 1948, I issued through the Secretary to the Commission a Press notification in English, Sinhalese and Tamil, inviting all persons who could speak to facts falling within the Terms of Reference of the Commission to forward to the Secretary memoranda setting out those facts. A sufficient number of copies of the Press notification was also sent to all Government Agents and Assistant Government Agents, with the request that the notices be exhibited in conspicuous places in their respective Districts. I also sent a questionnaire to the Heads of all Departments of Government, requesting them to furnish me with information regarding all matters covered by the Terms of Reference of the Commission which might have been discovered by them or have been brought to their notice. I had to depend on information provided to me by the public and by the Heads of Departments, and by persons who were or had been members of the Public Service. The extent of my inquiries was naturally determined by the information provided to me.

6. At one stage I considered it desirable that I should have access to the files of the Commissioner of Income Tax in appropriate cases. But Section (4) of the Income Tax Ordinance prevented that. On the 23rd June 1948, a letter was addressed to the Secretary to the Hon. the Prime Minister requesting that Section (4) of the Ordinance be amended to enable this Commission to obtain information available to that Department. No reply was received to this letter. I still hold the view that a Commission of this kind should be permitted to have access to the files of the Income Tax Department. Much of the investigation would have been facilitated, if that information had been available.

7. The response to the Press notification was on the whole not unsatisfactory. 592 representations in all were received by the Commission. They came from various parts of Ceylon—some as far distant as Badulla, and Batticaloa and Hambantota. But it was clear that the public did not appreciate the limits of the Terms of Reference, more particularly that the Commission while it could inquire into any cases of bribery, could not inquire into all cases of corruption, but only those cases where money had been accumulated or purchases of immovable property had been made as a result of bribery or corruption. Further, the time limits set by the Terms of Reference, *viz.*, 1st September, 1939 to 28th January, 1948, were overlooked. A fair proportion of the memoranda related to events after January, 1948. Much of the information also was vague in character, and did not appear to provide a starting point for investigation. The result was that 467 of the representations could not be further pursued, though efforts were made to induce the petitioners to give more specific information. 125 representations were finally selected as suitable for investigation. I may add that every one of the representations was considered by me.

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8. As regards the procedure for the preliminary investigations, I decided that the convenient course was to hold the sittings of the Commission in Colombo; I did at one time consider the possibility of sitting in some, at least, of the more distant places, but in practice the necessity to go outside Colombo did not arise. I summoned the petitioners and their witnesses to Colombo, and I think that the time saved and the inconveniences avoided more than compensated for any advantages that may have otherwise accrued. I am of opinion that no really relevant matter was not investigated, as a result of the sessions being held in Colombo and not outside. I decided that this was the most practical course to adopt.

9. In practice all the preliminary investigation was held *in camera*. The witnesses came to Colombo and gave their testimony on oath or affirmation. There was no legal bar to a witness being represented by Counsel, but in fact no witness insisted on having Counsel to represent him and lead his evidence. I conducted the original investigation myself, and recorded the evidence given by the witnesses, and was in a position to decide what evidence was relevant, and also what evidence was sufficiently strong to justify the calling on any member of the Public Service to answer the allegations made against him. Not only the original petitioners, but witnesses who could support them, or could speak to any other relevant facts, were examined by me. In many cases, I called, through the Secretary, for official files and official information, which were readily provided. I had also occasion to call for information from the various Banks, and from Notaries and other persons, and in all cases information was fully provided.

10. The work of collecting the necessary information had to be done by myself and the other officers of the Commission. I had no desire, and in fact no occasion, to obtain the assistance of the Police Force as such in the carrying out of investigations.

11. I commenced the preliminary investigations on July 2nd, 1948, and after the 15th July, 1948, (the last day for delivery of memoranda according to our notice) sat almost continuously for a long period. I have held in all 73 sittings, and have recorded the evidence of 394 witnesses, some of them long witnesses. The evidence of the last witness, in the preliminary investigations, was recorded on the 23rd February, 1949; but very few sittings for this purpose were held after the second stage, namely, the hearing of evidence after calling on a member of the Public Service to answer to a specific allegation, was reached. For the purpose of convenience, I shall refer to this second stage, as the Inquiry stage. The first inquiry was held on the 19th November, 1948.

12. In the course of the preliminary investigation stage, it was evident that in several cases further investigation was not justified. This was for various reasons; in some cases the witnesses were not sufficiently specific; in others the facts when investigated did not come within the Terms of Reference; in others the *prima facie* evidence was not strong enough to justify inquiry; in a few instances, the member of the Public Service when called upon for an explanation, provided one which could be accepted as reasonable. In these cases further inquiry was not pursued.

13. In those cases in which a sufficiently strong *prima facie* case was made out at the preliminary investigation, the member of the Public Service concerned was called upon to answer to the allegation and to provide his explanation. These answers were considered by me. The services of

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Mr. Douglas Janszé, Senior Crown Counsel, were placed at my disposal by the Attorney-General from the 1st of October, 1948, and for this I am much indebted to the Attorney-General. The exigencies of the service necessitated the recall of Mr. Janszé to his Department on the 28th February, 1949, and his work was taken over by Mr. J. A. P. Cherubim, Crown Counsel. With the aid of Crown Counsel, the evidence at the preliminary investigation was carefully considered, and it was decided in certain cases to call upon members of the Public Service for their answers and explanations. When these were received, the whole matter was again re-considered, and in appropriate cases, the matters were fixed for inquiry. All the witnesses and the respondents were called upon to provide reasons for desiring that the inquiry should be in public or *in camera,* before I made the decision whether a matter should be heard in public or *in camera.* The member of the Public Service against whom the allegation was made was designated " Respondent ".

14. Several inquiries have been held, and I have been sitting almost continuously at these inquiries. Counsel appeared for almost all the respondents, and the matters were keenly contested, and have taken up a good deal of time. The inquiries are not yet all finished. Owing to this lapse of time, I have decided that it is desirable to issue to Your Excellency an Interim Report, setting out my findings in those matters which have so far been concluded. The reasons for these findings are contained in the Appendix to the Report, where the evidence has been fully discussed. The evidence recorded and the files relating to these matters will be forwarded to Your Excellency, as soon as they are desired.

15. I have to add that the respondents have not been notified by me of these findings, nor have I notified the witnesses in the matters which were not further pursued, or which were inquired into.

16. A further report will be sent to Your Excellency as early as possible.

FINDINGS

17. My Findings on the inquiries into allegations falling under Section 1, sub-sections (1) and (2) of the Terms of Reference, namely,

(1) Whether, during the period commencing on 1st September, 1939, and ending on 28th January, 1948, gratifications by way of gift, loan, fee, reward or otherwise, have been offered, promised, given or made to members of the Public Service (either on the permanent establishment of the Government or temporarily employed) with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction in which they in their capacity as members of the Public Service have been or may be concerned;

(2) Whether, during the period aforesaid, such gratifications have been solicited, demanded, received or accepted by members of the Public Service 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, in their capacity as members of the Public Service;

are as follows:—

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PROVINCIAL ADMINISTRATION

In Public

No. R. 19.

Respondents :

1. T. L. Piyatissa,
   Police Constable 1924,
   Police Station,
   Mawatagama.

2. B. M. Muttu Banda,
   Village Headman,
   Paragoda,
   Kurunegala District.

Allegations :

(1) that the two respondents on or about 28.8.47 received and accepted a gratification of Rs. 15 and a bottle of arrack from B. M. Wickremasinghe, in consideration of promises made by them not to take action against the said B. M. Wickremasinghe in connection with a complaint made to the 2nd respondent by one Tikiri Banda,

(2) that the two respondents in or about November, 1947, demanded a gratification of Rs. 20 from L. H. Samara as a reward or recompense in consideration of promises made by them to recommend an application made by the said L. H. Samara for a licence to purchase a gun, and

(3) that in or about September, 1947, 1st respondent received and accepted, and the 2nd respondent solicited a gratification of Rs. 5 from L. H. Samara as a reward or recompense for the action taken by 1st respondent in connection with a complaint made by the said L. H. Samara against one W. M. Appuhamy.

I hold that the allegations have been established against both the respondents.

In Public

No. R. 107.

Respondents :

1. D. B. Kannangara,
   Kachcheri Mudaliyar,
   Kachcheri,
   Colombo.

2. T. A. Hendrick Singho,
   Village Headman,
   Makandana, Morandana & Niungama,
   Colombo District.

Allegations that :

(1) in or about September, 1946, the 2nd respondent offered, and the 1st respondent accepted as a gratification, two bottles of whisky, curd and vegetables, in order that the 1st respondent should take action to have the 2nd respondent appointed Village Headman of Makandana and two other villages;

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(2) in or about September, 1946, the 1st respondent solicited a gratification of Rs. 500 from 2nd respondent on the promise to take action to have 2nd respondent appointed Village Headman of the said villages; and

(3) in or about January, 1947, the 1st respondent solicited a gratification of Rs. 1,000 on a promise to take action to have P. D. B. Gunawardena, another applicant, appointed Village Headman of the said villages.

I hold that all three allegations have been established.

In Public

No. R. 113.

Respondent :

D. C. Panditha,
Village Headman,
Hikkaduwa East,
Galle District.

Allegation that the respondent :

in or about the years 1944, 1945 and 1946 solicited and received from M. H. L. P. Kurukulasooriya a gratification of a bag of paddy at each harvest for reducing his assessments of the crop of paddy fields belonging to Kurukulasooriya, his brother and sisters.

I hold that the allegation has been established.

In Public

No. R. 53.

Respondent :

Suppiah Navaratnam,
Conductor,
Dewahuwa Farm,
Galewela.

Allegation that the respondent :

on or about 23rd December, 1947, received the sum of Rs. 75 from N. S. Saraideen in consideration of a promise by him not to take charge of the goods in the boutique, if such sum was paid.

I hold that the allegation has been established.

EDUCATION DEPARTMENT

In Camera

No. R. 2.

Respondent :

Baptist Mohotti,
Inspector of Schools,
Weligama.

Allegation that the respondent :

in or about November, 1946, demanded a gratification of Rs. 25 from S. Rajakaruna, a teacher who had been employed at the Govinna Boys' School, Kalutara, from 1.7.1945 to 28.2.1946, as a reward or recompense for the issue of the endorsement on Form T. C. for his services at the said school.

I hold that the allegation has been established.

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In Public

No. R. 61.

Respondents :

1. D. A. Wijesinghe,
   Education Officer, (Uva),
   Badulla.
2. D. J. Hettiaratchchi,
   Head Teacher,
   Kendagolla Mixed School,
   Badulla.

Allegation that the first respondent :

in or about 1946 and 1947 received and accepted from the 2nd respondent presents of rice, vegetables, fruit and other food stuffs, with intent to cause or knowing he was likely to cause the said 2nd respondent to believe that he would in his capacity as Education Officer take action for the advantage of the 2nd respondent in matters affecting him.

Allegation that the second respondent:

in or about 1946 and 1947 did give presents of rice, vegetables, fruits and other food stuffs to the 1st respondent for the purpose of influencing his judgment and conduct in respect of any matters affecting the 2nd respondent, in which he may be concerned as Education Officer.

I hold that the allegations have not been established.

In Camera

No. R. 64.

Respondent :

G. K. F. Wickremasekera,
Inspector of Schools,
Talpe.

Allegation that the respondent :

on or about 25th May, 1947, solicited a loan of Rs. 500 from P. M. T. Karunaratne, Teacher, Niyagama Government Boys' School, knowing that the said Karunaratne was likely to believe that if he did not comply with this request, the respondent would in his capacity as a member of the Public Service take action for his disadvantage.

I hold that the allegation has been established.

In Public

No. R. 92.

Respondent :

M. S. de Silva,
Principal,
Taxila Vidyalaya,
Horana.

Allegation that the respondent :

on or about 26.7.1947 solicited a gratification of Rs. 50 from H. Pabilis Perera, as a reward or recompense in consideration of a promise by the respondent to certify that the attendance, progress and conduct of H. Somawathie and H. Premawathie,

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daughters of H. Pabilis Perera, to whom Government Scholarships had been awarded, had been satisfactory during the month for which allowances payable under the said scholarship were claimed.

I hold that the allegation has not been established.

In this case I have awarded costs in the sum of Rs. 150 to the respondent.

MEDICAL DEPARTMENT

In Camera

No. R. 4.

Respondent :

J. W. de Alwis,
Sanitary Engineer (Retired),
Department of Medical & Sanitary Services,
Colombo.

Allegations that the respondent :

(1) in or about September, 1946, solicited a gratification of Rs. 2,000 from H. P. de Silva as a reward or recompense in consideration of a promise to take action for his advantage in the capacity of Sanitary Engineer in connection with a contract for the construction of a maternity home at Palatuduwa,

(2) on or about 30th May, 1947, demanded and obtained from the said H. P. de Silva a promissory note for Rs. 3,000 with the payee's name not filled in, in consideration of a loan of Rs. 2,000 to him, knowing that he was likely to believe that if he did not give the said promissory note, the respondent would, in his capacity as Sanitary Engineer take action for his disadvantage in connection with a contract for the construction of a maternity home at Palatuduwa, and,

(3) between 25th May, 1947, and the 29th January, 1948, demanded and obtained from the said H. P. de Silva the sum of Rs. 600 in addition to the sum of Rs. 2,000 lent to him, knowing that he was likely to believe that if he did not give the said sum of Rs. 600, the respondent would in his capacity as Sanitary Engineer take action for his disadvantage in connection with a contract for the construction of a maternity home at Palatuduwa.

I hold that all the allegations against the respondent have been established.

In Camera

No. R. 73.

Respondents :

1. Dr. C. O. Perera,
Medical Superintendent,
Mental Hospital,
Angoda,

2. Dr. H. C. P. Gunewardena,
Visiting Surgeon,
General Hospital,
Colombo.

Allegation against both respondents that :

in or about July, 1944, each of them received and accepted a gratification of Rs. 50 from K. D. S. Abeygunawardena—an Assistant Postmaster in the Post and Telegraph Department—as

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a reward or recompense for recommending that the said K. D. S. Abeygunawardena be sent before a Medical Board with a view to getting the said K. D. S. Abeygunawardena improperly condemned by a Medical Board as unfit for further service.

I hold that the allegation against the two respondents has not been established.

VALUATION DEPARTMENT

In Public

No. R. 5/1.

Respondent :

C. Doyne Goonetilleke,
Assistant Valuer,
Valuation Department,
Colombo.

Allegations :

(1) that in or about the year 1943 he solicited or demanded a gratification of 15 per cent. of the assessed value of a property known as Notarisgederawatta situated at Koggala, from D. S. Wickremasinghe, one of the co-owners of the said property, as a reward for making a valuation of the said property for the advantage of its co-owners,

(2) in or about the year 1943 he received and accepted from the said D. S. Wickremasinghe the sum of Rs. 1,000 as an advance in part payment of the said reward.

I hold that both the allegations have been established.

GOVERNMENT PRESS

In Public

No. R. 25.

Respondent :

G. M. Jayatissa,
Checker, Stamp Room,
Government Press,
Colombo.

Allegation :

that the respondent on or about 28th March, 1946, obtained a sum of Rs. 300 from D. M. Wijewardena, promising to get him a job at the Government Printing Office.

I hold that the allegation has been established.

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MOTOR TRANSPORT DEPARTMENT

In Public

No. R. 115.

Respondents :

1. T. S. Fernando,
   Examiner of Motor Cars,
   Colombo.
2. C. Rajasingham,
   Divisional Road Transport Officer,
   Kurunegala.
3. T. J. Mather,
   Divisional Road Transport Officer,
   Jaffna.
4. D. G. Jayatilleke,
   Examiner of Motor Cars,
   Colombo.
5. D. St. C. Dabrera,
   Examiner of Motor Cars,
   Nuwara Eliya.
6. J. A. B. Fernando,
   Examiner of Motor Cars,
   Colombo.
7. H. L. Wright,
   Examiner of Motor Cars,
   Colombo.

Allegations against these respondents :

that each of them received and accepted a gratification of *ten rupees* from the South Western Bus Co., Ltd., as a reward or recompense for *every* report made to a licensing authority to the effect that an omnibus belonging to the said Company complied with the provisions of the Motor Car Ordinance and the Regulations made thereunder, and was fit to be licensed as an omnibus for carrying passengers. The allegations were in respect of the period 1944 to January, 1948, and varied in the case of different respondents.

I hold :

As regards *1st respondent* (T. S. Fernando),

that it has not been established that he accepted gratifications in the manner and for the purpose indicated in the allegation in the years 1945 and 1946. I further hold that it has been established that he accepted gratifications in the said manner and for the said purposes in April, 1947, in June, 1947 and in January, 1948.

As regards *2nd respondent* (C. Rajasingham),

that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the years 1944 and 1945. There is no allegation that he has received gratifications in later years.

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As regards *3rd respondent* (T. J. Mather),

that it has not been established that he accepted gratifications in the manner and for the purposes indicated in the allegation for the years 1944, 1945 and 1946. I further hold that it has been established that he accepted a gratification in the said manner and for the said purpose in April, 1947.

As regards *4th respondent* (D. G. Jayatilleke),

that it has not been established that he accepted gratifications in the manner and for the purposes indicated in the allegation for the years 1944 and 1945. There is no allegation that he has received gratifications in later years up to 28th January, 1948.

As regards *5th respondent* (D. St. C. Dabrera),

that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the year 1945. I further hold that it has been established beyond reasonable doubt that he accepted gratifications in the said manner and for the said purposes in September, 1946 and in December, 1946. There were no allegations regarding 1947 and January, 1948.

As regards *6th respondent* (J. A. B. Fernando),

that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the years 1945 and 1946. I further hold that it has been established beyond reasonable doubt that he accepted gratifications in the said manner and for the said purposes in April, 1947, in June 1947, and in January, 1948.

As regards *7th respondent* (H. L. Wright),

that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the year 1946. I further hold that it has been established beyond reasonable doubt that he accepted gratifications in the said manner and for the said purposes in April, 1947 and in June, 1947.

In Public

No. R. 50.

Respondent :

H. Wilman Caldera,
Peon (Retired),
Motor Transport Department,
Colombo.

Allegations that the respondent :

(1) in or about February, 1944, solicited a gratification of Rs. 250 from L. A. Jayaweera Appuhamy as a reward or recompense in consideration of a promise by him to obtain for the said Jayaweera Appuhamy a permit for four tyres and four tubes;

(2) in or about February, 1944, received and accepted from the said Jayaweera Appuhamy a gratification of Rs. 250 as a reward or recompense in consideration of the promise set out in (1);

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(3) on or about 17th November, 1947, solicited a gratification of Rs. 150 from V. Charlis Appuhamy as a reward or recompense in consideration of a promise by him to take action to obtain for the said Charlis Appuhamy a certificate of competence to drive motor cars, omnibuses and lorries;

(4) on or about 17th November, 1947, accepted from the said Charlis Appuhamy a gratification of Rs. 50 as a reward or recompense in consideration of the promise set out in (3), and

(5) in or about December, 1947, received and accepted from the said Charlis Appuhamy a gratification of Rs. 50 as a reward or recompense in consideration of the promise set out in (3).

I hold that all the allegations have been established.

COLOMBO PORT COMMISSION

In Camera

No. R. 11.

Respondents :

1. S. D. Sheik Abdulla,
   No. 3524, Head Driver,
   Harbour Tug " Goliath,"
   Colombo Port Commission.

2. Saverimuttu Bastiampillai,
   No. 3561, Head Driver,
   Harbour Tug " Samson,"
   Colombo Port Commission.

3. H. R. Hopwood,
   No. 3504, Greaser,
   Harbour Tugs,
   Colombo Port Commission.

Allegations against *1st respondent* :

(1) that in or about December, 1947, he demanded a gratification of Rs. 40 from Kamburawalage Lionoris, an employee of the Master Attendant's Department, as a reward or recompense for the Chief Clerk of the Colombo Port Commission for his services in obtaining arrears of pay for the employees of the Master Attendant's Department;

(2) that on or about 27th December, 1947, he demanded a gratification of Rs. 40 from Sheik Abbas Sheik Abdulla, an employee of the Master Attendant's Department, for the purposes set out in para (1), and

(3) that on or about 27th December, 1947, he received and accepted a gratification of Rs. 40 from the said Sheik Abbas Sheik Abdulla for the purposes set out in para (1).

I hold that :

(1) the allegation that he demanded a gratification of Rs. 40 from K. Lionoris has not been established. At the most, this may have been preparation and not a specific demand.

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(2) and (3) the allegations that in December, 1947, he demanded and thereafter accepted and received a gratification of Rs. 40 from Sheik Abbas Sheik Abdulla for the purposes set out in para (1) have been established.

Allegation against *2nd respondent* :

that on or about 24th December, 1947, he received and accepted a gratification of Rs. 40 from Kamburuwalage Lionoris, an employee of the Master Attendant's Department, for the purposes set out in para (1) of the allegations against the 1st respondent.

I hold that the allegation has been established.

Allegation against *3rd respondent* :

that on or about 24th December, 1947, he received and accepted from the 2nd respondent gratifications collected by the said 2nd respondent for the purposes set out in para (1) of the allegations against the 1st respondent.

I hold that the allegation has been established.

In Camera

No. R. 11/3.

Respondents :

1. Sebastiampillai Augustine,
   No. 8503, Serang,
   Master Attendant's Department,
   Colombo Port Commission.

2. Mariampillai Seenimuttu,
   No. 8623, Serang,
   Tug " Samson,"
   Colombo Port Commission.

3. Sebastiampillai Joseph,
   No. 8616, Lascar,
   Tug " Hercules ",
   Colombo Port Commission

4. Anthonypillai Arulanandam,
   No. 8554, Lascar,
   Tug " Hercules ",
   Colombo Port Commission.

Allegations against *1st respondent* :

(1) that in or about December, 1947, he demanded a gratification from Sesuvadian Sebastian, an employee of the Master Attendant's Department, as a reward or recompense for the Chief Clerk of the Colombo Port Commission for his services in obtaining arrears of pay for the employees of the Master Attendant's Department;

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(2) that in or about December, 1947, he demanded a gratification of Rs. 20 from Juwani Marian, an employee of the Master Attendant's Department, as a reward or recompense for the Chief Clerk of the Colombo Port Commission for his services in obtaining arrears of pay for the employees of the Master Attendant's Department.

Allegation against *2nd, 3rd and 4th respondents* :

that in or about December, 1947, they demanded a gratification of Rs. 20 from Juwani Marian, an employee of the Master Attendant's Department, as a reward or recompense for the Chief Clerk of the Colombo Port Commission, for his services in obtaining arrears of pay for the employees of the Master Attendant's Department.

I hold that the allegations against all these four respondents or any of them have not been established.

DEPARTMENT OF AGRICULTURE

In Camera

No. R. 79.

Respondent :

T. M. Z. Mahamooth,
Deputy Director of Agriculture,
(Animal Husbandry),
Department of Agriculture,
Peradeniya.

Allegations :

(1) that in or about July, 1946, the respondent acted together with his wife Mrs. T. M. Z. Mahamooth with a common purpose for obtaining a gratification of Rs. 200 from H. R. Wilson, a temporary peon employed in the Department of Agriculture, as a reward or recompense in consideration of a promise by her that he would be given permanent employment in the said Department ;

(2) that on or about 31.7.1946, he took action for the disadvantage of the said H. R. Wilson by issuing orders for his discontinuance with effect from 1.8.1946 because he did not comply with a request made by Mrs. T. M. Z. Mahamooth for a gratification of Rs. 250, and

(3) that in or about August, 1947, he solicited a gratification of Rs. 200 from S. H. Marasinghe, Watcher, Cattle Quarantine Station, Slave Island, as a reward or recompense in consideration of a promise to cancel his transfer from the said station to the Government Farm, Narahenpita.

I hold that all the allegations have not been established.

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IRRIGATION DEPARTMENT

In Public

No. R. 82.

Respondent :

P. G. M. Guinan,
Assistant Mechanical Superintendent,
Irrigation Department Workshop,
Ratmalana.

Allegation :

that on or about 9th November, 1946, the respondent solicited a gratification of Rs. 150 from E. Suwandaratne, an applicant for a post of lorry driver in the Irrigation Department, as a reward or recompense in consideration of a promise to take steps to have him selected for the said post.

I hold that the allegation has not been established.

POLICE DEPARTMENT

In Public

No. R. 37.

Respondents :

1. S. Tharmalingam,
Police Constable, 967,
Police Station,
Mawatagama.

2. M. Piyadasa de Zoysa,
Police Constable, 3513,
Police Station,
Mawatagama.

Allegation that the *1st Respondent* :

on or about 27th December, 1946, solicited a gratification of Rs. 500 from N. M. Ran Banda as a reward or recompense in consideration of a promise to see Inspector Reuben of the Mawatagama Police and to see that no further action was taken by the Police in connection with the seizure by the Police of a quantity of rice belonging to the said N. M. Ran Banda;

Allegation that the *2nd Respondent* :

on or about 27th December, 1946, solicited a gratification of Rs. 100 as a reward or recompense from N. M. Ran Banda, who had been arrested by Inspector Reuben of the Mawatagama Police for having obstructed the Police in the discharge of their duties, in consideration of a promise to have the said N. M. Ran Banda released on bail.

The allegation against the 2nd respondent was not pursued as the witnesses were unable to identify him as the person who solicited the gratification of Rs. 100. He was discharged during the course of the inquiry.

As regards the 1st respondent, I hold that the allegation has been established.

(See also Case No. R. 19 under Provincial Administration).

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MAGISTRATES' COURTS

In Public

No. R. 28.
Respondent :

C. L. de S. Wijeyasundere,
Chief Clerk,
Magistrate's Court,
Balapitiya.

Allegation :

that the respondent on or about 13th November, 1947, demanded and accepted from Bertram Warasuvitarne a sum of Rs. 5 for attending to his normal duties in connection with the execution of a bail bond for the release on bail of Aratchchi Gamage Peter *alias* Babyappu, an accused in M. C., Balapitiya 59,871.

I hold that the allegation has been established.

In Camera

No. R. 118.
Respondent :

S. Paramagurunather,
Record Keeper,
Magistrate's Court,
Panadura.

Allegation :

that the respondent on or about 18th October, 1947, demanded and received a gratification of Rs. 2 from H. F. Marku Fonseka as a reward or recompense for attending to his duties in connection with the execution of a bail bond for the release on bail of P. H. Francis Rodrigo, the accused in M. C., Panadura, Case No. 49,297.

I hold that the allegation has not been established.

18. My Findings on the inquiries into allegations falling under Section 1, sub-section (3) of the Terms of Reference of the Commission, namely,

(3) Whether members of the Public Service, and in particular those members in departments responsible for the administration of control schemes and the distribution of foodstuffs, textiles and other essential commodities, have, during the period aforesaid, whether in their own names, or in the names of their wives, dependants, relatives or any other persons on their behalf, accumulated any money or purchased any securities or other property, movable or immovable, in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption;

are as follows:—

POLICE DEPARTMENT

In Public

No. R. 67
Respondent :

L. B. Deegala,
Police Sergeant, 532,
Kurunegala.

Allegation that the respondent :

during the period 1st September, 1939 to 28th January, 1948, accumulated money and purchased immovable property in such

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circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegation has not been established.

In Camera

No. R. 75.

Respondent :

G. Jonathan Perera,
Police Constable, 1680,
Ginigathena.

Allegation that the respondent :

during the period 1st September, 1939, to 28th January, 1948, accumulated money in such circumstances that the only reasonable presumption is that such accumulations were made as a result of bribery or corruption.

I hold that the allegation has been established.

LAND COMMISSIONER'S DEPARTMENT

In Camera

No. R. 104.
Respondent :

T. B. Nugegoda,
Colonization Officer,
Kagama Colony,
Anuradhapura.

Allegation :

that during the period 1st September, 1939 to 28th January, 1948, the respondent accumulated money and purchased property in such circumstances that the only reasonable presumption is that such accumulation and purchases were made or effected as a result of bribery and corruption.

I hold that the respondent between the beginning of 1944 and the 28th January, 1948, accumulated money in such circumstances that the only reasonable presumption is that such accumulations were effected as a result of corruption.

19. My Findings on the inquiries into allegations falling under Section 1, sub-sections (1), (2) and (3), of the Terms of Reference of the Commission, are as follows:—

PROVINCIAL ADMINISTRATION

In Camera

No. R. 33.

Respondent :

R. W. M. K. Appuhamy,
Village Headman,
Polgolla,
Katugastota,
Kandy District.

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Allegations that the respondent :

(1) in or about 1946 solicited a gratification of Rs. 500 from P. W. P. H. Ukku Banda as a reward or recompense by him in his capacity as Village Headman to obtain an allotment of Crown land for the said person;

(2) in or about 1946 solicited a gratification of Rs. 50 from C. W. Kiri Banda as a reward or recompense for a consideration similar to that stated in (1);

(3) in or about 1946 solicited a gratification of Rs. 75 from D. T. Geeris as a reward or recompense for a consideration similar to that stated in (1);

(4) in or about 1946 solicited a gratification of money from H. Ranhamy as a reward or recompense for a consideration similar to that stated in (1);

(5) in or about 1946 received and accepted a gratification of Rs. 50 and a bottle of arrack as a reward or recompense for a consideration similar to that stated in (1);

(6) in or about 1946 solicited a gratification of money from B. Jamis, as a reward or recompense for a consideration similar to that stated in (1);

(7) on or about 6th September, 1946, received and accepted a gratification of Rs. 25 from B. Jamis as a reward or recompense for a consideration similar to that stated in (1); and

(8) during the period 1st September, 1939 to 28th January, 1948, accumulated money and purchased immovable property in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the facts spoken to in relation to paras (1) to (5) have been established, and that the facts in paras (6) to (8) have not been established.

In Public

No. R. 105.

Respondent :

W. M. Loku Banda,
Village Headman,
Palliporuwa,
Kegalle District.

Allegations that the respondent :

(1) in or about October, 1947, solicited a gratification of Rs. 25 from G. R. Punchi Banda as a reward or recompense in consideration of a promise by him to attest in his capacity of Village Headman of Palliporuwa a letter addressed to the Tea Controller by Jayasoma Menike, wife of the said G. R. Punchi Banda, consenting to the registration of a land called Ambagahamulawatta in favour of the said G. R. Punchi Banda;

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(2) during the period 1st September, 1939, to 28th January, 1948, purchased movable and immovable property in such circumstances that the only reasonable presumption is that such purchases were made or effected as a result of bribery and corruption.

I hold that both allegations have not been established.

In Camera

No. R. 112.
Respondent :

E. P. Ranasinghe,
Village Headman,
Hambantota,
Hambantota District.

Allegations that the respondent :

(1) in or about the year 1946, demanded and received a gratification of one rupee from S. E. M. Yakab as a reward or recompense for certifying his application for a permit to obtain kerosene oil;

(2) on or about 12th May, 1946, demanded and received a gratification of ten rupees from S. S. Soodin as a reward or recompense for giving him a letter to enable him to obtain a permit to transport paddy from Bolani to Hambantota;

(3) on or about 25th August, 1947, demanded and received a gratification of five rupees from the said Soodin as a reward or recompense for giving him a letter for the purpose set out in (2);

(4) in or about the year 1947 solicited a gratification of one hundred rupees from A. H. M. Junaid in consideration of a promise by him to permit Junaid to retain 129¾ bushels of paddy which in his capacity of Village Headman, he ought to have obtained from him for the Government;

(5) in or about the year 1947, he received and accepted a gratification of fifty rupees as a reward for having permitted the said Junaid to retain 129¾ bushels of paddy as set out in para (4);

(6) during the period 1st September, 1939 to 28th January, 1948, accumulated money in such circumstances that the only reasonable presumption is that such accumulation was made or effected as a result of bribery or corruption.

I hold that :

all the allegations have not been established.

In Camera

No. R. 121.
Respondent :

U. B. Labutala,
Village Headman,
Makempe,
Hewaheta,
Nuwara Eliya District

Allegations that the respondent :

(1) during the period 1941 to 1946 received and accepted gratifications amounting to Rs. 216 from H. M. H. Kiri Banda in consideration

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of a promise by him not to report to Government that the said Kiri Banda had removed from his paddy field certain quantities of paddy in excess of the amount he was entitled to remove;

(2) in or about November, 1946, received and accepted a gratification of Rs. 10 from H. M. H. Kiri Banda as a reward or recompense in consideration of a promise to take action to obtain for the said Kiri Banda a permit to asweddumize a field called Ambalantenne; and

(3) during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased immovable properties in such circumstances that the only reasonable presumption is that such accumulations and purchases were made or effected as a result of bribery or corruption.

I hold that the allegations have not been established.

PUBLIC WORKS DEPARTMENT

In Public

No. R. 51.

Respondent :

W. A. F. Perera,
Clerk,
Government Factory,
Kolonnawa.

Allegations that the respondent :

(1) in or about June, 1947, solicited and received a gratification of Rs. 200 from W. W. Wilfred Mendis in consideration of a promise by him to take action to get the latter a job at the Government Factory, Kolonnawa;

(2) in or about June, 1947, solicited and received a gratification of Rs. 100 from G. K. Podisingho for a consideration similar to that stated in (1);

(3) in or about June, 1947, solicited and received a gratification of Rs. 100 from P. W. A. Albert Perera for a consideration similar to that stated in (1); and

(4) in or about 1947, accumulated money in such circumstances that the only reasonable presumption is that such accumulations were made or effected as a result of bribery or corruption.

I hold that all the allegations have been established.

20. No inquiries have been held by me into allegations falling under sub-section (4) of Section 1, of the Terms of Reference.

I have the honour to remain,
Your obedient servant,

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

Office of the Bribery Commission,
House of Representatives,
Colombo, June 1, 1949.

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SECOND INTERIM REPORT

To: HIS EXCELLENCY THE GOVERNOR-GENERAL

YOUR EXCELLENCY,

A Commission was issued to me by Your Excellency on the 18th of May, 1948, to enquire into and report on the following matters:—

1. (1) Whether, during the period commencing on 1st September, 1939, and ending on 28th January, 1948, gratifications by way of gift, loan, fee, reward or otherwise, have been offered, promised, given or made to members of the Public Service (either on the permanent establishment of the Government or temporarily employed) with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction in which they in their capacity as members of the Public Service have been or may be concerned;

(2) Whether, during the period aforesaid, such gratifications have been solicited, demanded, received or accepted by members of the Public Service 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 service or to take any such action, in their capacity as members of the Public Service;

(3) Whether members of the Public Service, and in particular those members in departments responsible for the administration of control schemes and the distribution of foodstuffs, textiles and other essential commodities, have, during the period aforesaid, whether in their own names, or in the names of their wives, dependents, relatives or any other persons on their behalf, accumulated any money or purchased any securities or other property, movable or immovable, in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption;

(4) Whether, during the period aforesaid, any tenders for the performance of contracts have been accepted, or contracts otherwise given, by any department of Government to any private person or body of persons in any improper manner or for any corrupt or improper purpose or motive or upon any terms and conditions intended or likely to allow any undue profits or other advantage to any such person or persons; and

2. In the event of the inquiry disclosing the existence of bribery or corruption among the members of the Public Service in their capacity as Public Servants, to make recommendations as to the ways and means of preventing or checking such evils in the future.

2. An interim Report containing my findings on the inquiries held by me up to the period ending 30th April, 1949, was forwarded to Your Excellency on the 1st of June, 1949, I have now completed the inquiries into the matters falling under Section 1 of the Terms of Reference of the Commission issued to me and, accordingly, I have the honour to forward to Your

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Excellency a second Interim Report, setting out my finding on the matters that have been inquired into by me since the 1st of May, 1949. My reasons for these findings are contained in the Appendix to the Report, where the evidence has been fully discussed. The evidence recorded and the documents relating to these matters will be forwarded to Your Excellency as soon as they are desired. I shall be glad to receive a direction as to what is to be done with these papers.

3. I have to add that neither the respondents nor the witnesses have been notified by me of these findings.

4. My Report on Section 2 of the Terms of Reference will be forwarded to Your Excellency as early as possible.

FINDINGS

5. My findings on the inquiries into the allegations falling under Section 1, sub-sections (1) and (2) of the Terms of Reference, namely,

(1) Whether, during the period commencing on 1st September, 1939, and ending on 28th January, 1948, gratifications by way of gift, loan, fee, reward or otherwise, have been offered, promised, given or made to members of the Public Service (either on the permanent establishment of the Government or temporarily employed) with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction in which they in their capacity as members of the Public Service have been or may be concerned;

(2) Whether, during the period aforesaid, such gratifications have been solicited, demanded, received or accepted by members of the Public Service 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, in their capacity as members of the Public Service;

are as follows:—

CEYLON GOVERNMENT RAILWAY

In Public

No. R. 95.

Respondents:

1. G. A. Geewananda,
   Station Master,
   Ganewatte,
   (now at Galboda).

2. M. S. J. Peiris,
   Clerk, Railway Station,
   Ganewatte,
   (now at Wadduwa).

3. G. A. P. H. Ranaweera,
   Clerk, Railway Station,
   Ganewatte,
   (now at Balapitiya).

4. B. de Silva Weerakkody,
   Station Master,
   Ganewatte,
   (now Clerk, Colombo Fort).

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Allegations:

(1) that the 1st, 2nd and 3rd respondents between March, 1946 and May, 1947, while they were officers attached to the Ganewatte Railway Station did on several occasions receive and accept gratifications in money from S. Kahasinhala, E. L. M. Kiri Banda, K. Herat, H. M. Ukku Banda and H. M. Jamis Appuhamy in addition to the usual charges payable to the Ceylon Government Railway, when applications were made to them to book Railway wagons to transport goods or cattle by rail from the Ganewatte Railway Station ;

(2) that the 4th respondent did similarly receive and accept gratifications in money from H. M. Jamis Appuhamy in respect of the period 1945.

I hold that the allegations against the 1st, 2nd and 3rd respondents have been established subject to this, that the bribe paid by Herat was to the 1st respondent alone, and not to the 2nd or 3rd respondents, and that the period of bribe taking of the 2nd respondents was in 1946 alone.

I hold that the allegations against the 4th respondent have not been established.

POLICE DEPARTMENT

In Public

No. R. 100.

Respondents:

1. L. Kulatunga,
   Police Sergeant 2288,
   Alawwa,
   (now Sub-Inspector).

2. T. B. Samarakoon,
   Police Sergeant 1862,
   Polonnaruwa.

3. U. Ariyadasa,
   Police Sergeant 1008,
   Chunnakam.

4. P. S. de Silva,
   Police Constable 157,
   Depot Police,
   Maradana.

Allegation:

That in about March, 1946, they did solicit a gratification of Rs. 2,000 from one S. Kodithuwakku as a reward or recompense in consideration of a promise by them to take action to prevent the prosecution of the said S. Kodithuwakku for certain offences under the Control of Prices Ordinance.

I hold that the allegation against each of the four respondents has been established.

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LAND COMMISSIONER'S DEPARTMENT

In Public

No. R. 108.

Respondents:

N. S. B. Amunugama,
Colonization Officer,
Nachchaduwa Scheme,
Hidogama N. C. P.,
(now Colonization Officer,
Minneriya, N. C. P.)

Allegations:

(1) that in or about 1946, he solicited a gratification of Rs. 100 from G. D. Charles Appuhamy as a reward or recompense in consideration of a promise to take action to get a lease of about three acres of Crown land;

(2) that in or about 1946, he received and accepted a gratification of Rs. 80 from the said G. D. Charles Appuhamy as a reward or recompense in consideration of a promise to take action to get him a lease of about three acres of Crown land;

(3) that in or about May, 1946, he solicited and received a gratification of Rs. 25 from M. D. K. Dissanayake as a reward or recompense in consideration of a promise to give him a recommendation to enable him to obtain a loan of seed paddy from the Government;

(4) that in or about October, 1946, he solicited a gratification of Rs. 50 from W. M. Mudiyanse as a reward or recompense in consideration of a promise to settle a dispute which had arisen between him and one Don Siyadoris relating to a piece of Crown land;

(5) that in or about October, 1946, he received and accepted a gratification of Rs. 25 from the said W. M. Mudiyanse as a reward or recompense in consideration of a promise to settle a dispute which had arisen between him and one Don Siyadoris relating to a piece of Crown land.

I hold that none of the allegations has been established.

6. My findings on the inquiries into allegations falling under Section 1, sub-section (3) of the Terms of Reference of the Commission, namely,

(3) Whether members of the Public Service, and in particular those members in departments responsible for the administration of control schemes and the distribution of foodstuffs, textiles and other essential commodities, have, during the period aforesaid, whether in their own names, or in the names of their wives, dependants, relatives or any other persons on their behalf, accumulated any money or purchased any securities or other property, movable or immovable, in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption;

are as follows:—

PROVINCIAL ADMINISTRATION

In Camera

No. R. 69.

Respondent:

H. Y. R. Silva,
Village Headman,
Kalugamuwa,
Gelioya.

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Allegation:

That the respondent during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased immovable properties in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegation has not been established.

In Public

No. R. 70.

Respondent:

D. M. Samarasinghe,
Vidane Aratchchi,
Meegahatenne,
(living at Kevitiagala).

Allegation:

That the respondent during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased movable and immovable property in his own name or in the name of his wife or of his dependants, relatives, or any other person on his behalf in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegations has been established.

In Public

No. R. 77.

Respondent:

M. K. M. Musthapha,
Village Headman,
Sainthamaruthu Division No. 1,
Kalmunai.

Allegation:

That the respondent during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased movable and immovable property in his own name or in the name of his wife or of his dependants, relatives, or any other person on his behalf in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegation has been established.

In Public

No. R. 91.

Respondent:

M. S. Kariapper, Gate Mudaliyar,
formerly, Vanniah,
Karavaku Pattu, E. P.
(now, Member of Parliament, and
Parliamentary Secretary to the
Minister of Home Affairs).

Allegation:

That the respondent during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased movable and immovable property in his own name or in the name of his

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wife or of his dependants, relatives, or any other person on his behalf in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegation has not been established.

In Camera

No. R. 94.

Respondent:

T. D. Thomas Appuhamy,
Village Headman,
Agalawatta.

Allegation:

That the respondent during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased movable and immovable property in his own name or in the name of his wife or of his dependants, relatives, or any other person on his behalf in such circumstances that the only reasonable presumtion is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegation has not been established.

In Camera

No. R. 119.

Respondent:

N.M.K. Jamis Peter *alias*
M. K. Jamis Peter Nanayakkara,
Village Headman, Panagamuwa,
Talpe Pattu, Galle District.

Allegation:

That the respondent during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased immovable property in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegation has not been established.

DEPARTMENT OF AGRICULTURE

In Public

No. R. 84.

Respondent:

M. Ahmad,
Manager, State Farm,
Polonnaruwa,
(now Agricultural Instructor,
Akkaraipattu).

Allegation:

That the respondent during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased movable and immovable property in his own name or in the name of his wife or of his dependants, relatives, or any other person on his

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behalf in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegation has been established.

FOOD COMMISSIONER
(Control and Distribution)

In Camera

No. R. 126.
Respondent:

K. B. Imbuldeniya,
Storekeeper, Overflow Rice Store,
Kandy.
(now not in the Public Service)
156/7, Peradeniya road,
Kandy.

Allegation:

That the respondent during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased movable and immovable property in his own name or in the name of his wife or of his dependants, relatives, or any other person on his behalf in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

I hold that the allegation has been established.

7. My findings on the inquiries into allegations falling under Section 1, sub-sections (1), (2) and (3), of the Terms of Reference of the Commission, are as follows:—

PROVINCIAL ADMINISTRATION

In Public

No. R. 52.
Respondent:

M. K. Don Manuel,
Village Headman,
Pitipane North,
Homagama.

Allegations that the respondent:—

(1) in or about August, 1946, received and accepted a gratification of Rs. 10 from G. Don Elias Perera, as a reward or recompense in consideration of a promise to recommend his application for a permit to purchase a gun;

(2) in or about 1947, received and accepted a gratification of Rs. 5 from M. Oparis as a reward or recompense in consideration of a promise not to take action against him for felling a jak tree without the sanction of the proper authority;

(3) on or about 21st February, 1947, received and accepted a gratification of Rs. 10 from M. Themis Singho as a reward or recompense in consideration of a promise not to take action against him for felling a jak tree without the sanction of the proper authority;

(4) on or about 4th March, 1947, received and accepted a gratification of Rs. 10 from M. Themis Singho as a reward or recompense in consideration of a promise not to take action against him for felling a jak tree without the sanction of the proper authority;

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(5) on or about 24th April, 1947, received and accepted a gratification of Rs. 7 from M. Themis Singho as a reward or recompense for the issue to him of a certificate of worth;

(6) on or about 24th April, 1947, received and accepted a gratification of Rs. 2 from M. Themis Singho as a reward or recompense for the issue to him of a certificate of worth;

(7) during the period 1st September, 1939, to 28th January, 1948, accumulated money and purchased immovable property, in such circumstances that the only reasonable presumption is that such accumulations and purchases were made or effected as a result of bribery or corruption.

I hold that allegations (1) and (7) have been established, and that allegations (2), (3), (4), (5) and (6) have not been established.

COMMISSIONER FOR DEVELOPMENT OF AGRICULTURAL MARKETING

In Public

No. R. 89.
Respondent:

S. P. Van Twest,
Foreman,
Marketing Department,
Captain's Gardens,
Colombo.

Allegations that the respondent:—

(1) during the period 1st September, 1939, to 28th January, 1948, accumulated money in such circumstances that the only reasonable presumption is that such accumulations were made or effected as a result of bribery or corruption;

(2) between 1st January, 1942, and 28th January, 1948, retained sums of money varying from Rs. 2 to Rs. 25 from the monthly salaries, allowances and arrears of salaries of the following workmen, knowing that the said workmen had reason to believe that if they took action to recover the said amounts, he would have taken action for the disadvantage of the said workmen, in his capacity as Works Foreman of the Marketing Department, Captain's Gardens Colombo: (1) D. Jayasekera, (2) L. J. de Silva, (3) E. J. Silva, (4) B. Peter Peiris, (5) A. Arthur Alwis, (6) J. S. Simon *alias* D. S. Jayasuriya, and (7) H. Don Manual Appuhamy ;

(3) in or about 1943 received from one B. Peter Peiris a gratification of Rs. 25, as a reward or recompense for getting him employment in the Marketing Department;

(4) in or about August, 1946, received from the said B. Peter Peiris a gratification of Rs. 15 as a reward or recompense for withdrawing a notice of discontinuance of his services as from 1st September, 1946;

(5) in or about November, 1947, solicited a gratification of Rs. 25 from one L. J. de Silva in order that he may be recommended for appointment to a post in the Marketing Department's bakery at Borella.

I hold that the allegation in paragraph (1) has not been established, and that the allegations in paragraphs (2), (3), (4) and (5) have been established.

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MAGISTRATES' COURTS

In Public

No. R. 123.
Respondent:

D. H. Wijesinghe,
Chief Clerk, (now retired),
Magistrate's Court,
Colombo South.

Allegations that the respondent:—

(1) during the period 1st September, 1939, to 28th January, 1948, accumulated money in such circumstances that the only reasonable presumption is that such accumulations were made or effected as a result of bribery or corruption;

(2) on or about the 16th April, 1947, received a gratification of a sum of Rs. 5 from one K. Hendirick Perera, an accused person in Case No. 10862 of the Magistrate's Court, Colombo South, in order to expedite the execution of a bail bond for his release on bail.

I hold that the allegation in paragraph (1) has not been established, and that the allegation in paragraph (2) has been established.

8. No inquiries have been held by me into allegations falling under subsection (4) of Section 1 of the Terms of Reference. But certain investigations have been conducted under this head, which did not result in a subsequent inquiry. Some mention will be made about this in the final report.

I have the honour to remain,
Your Obedient Servant,

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

Office of the Bribery Commission,
House of Representatives,
Colombo, 26th August, 1949.

4——J. N. R 27060 (7/51)

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BRIBERY COMMISSION, 1948-1949

FINAL REPORT

To: HIS EXCELLENCY THE GOVERNOR-GENERAL.

YOUR EXCELLENCY,

A Commission was issued to me by Your Excellency on the 18th of May, 1948, to enquire into and report on the following matters :—

1. (1) Whether, during the period commencing on 1st September, 1939, and ending on 28th January, 1948, gratificatoins by way of gift, loan, fee, reward or otherwise, have been offered, promised, given or made to members of the Public Service (either on the permanent establishment of the Government or temporarily employed) with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction in which they in their capacity as members of the Public Service have been or may be concerned;

(2) Whether, during the period aforesaid, such gratifications have been solicited, demanded, received or accepted by members of the Public Service 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, in their capacity as members of the Public Service;

(3) Whether members of the Public Service, and in particular those members in departments responsible for the administration of control schemes and the distribution of foodstuffs, textiles and other essential commodities, have, during the period aforesaid, whether in their own names, or in the names of their wives, dependants, relatives or any other persons on their behalf, accumulated any money or purchased any securities or other property, movable or immovable, in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption;

(4) Whether, during the period aforesaid, any tenders for the performance of contracts have been accepted, or contracts otherwise given, by any department of Government to any private person or body of persons in any improper manner or for any corrupt or improper purpose or motive or upon any terms and conditions intended or likely to allow any undue profits or other advantage to any such person or persons ; and

2. In the event of the inquiry disclosing the existence of bribery or corruption among the members of the Public Service in their capacity as Public Servants, to make recommendations as to the ways and means of preventing or checking such evils in the future.

2. The issues raised under Section 1 of the Terms of Reference of the Commission have already been dealt with by me in the first and second Interim Reports forwarded to Your Excellency on the 1st June, 1949, and the 26th August, 1949.

3. I have the honour to forward to Your Excellency my Final Report wherein I have dealt with the matters raised in Section 2 of the Terms of Reference of the Commission issued to me.

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4. I desire to acknowledge the assistance rendered to me by the following:—

(*a*) The Hon. the Speaker of the House of Representatives for allocating for the use of the Commission a room in the Parliament building, and also for releasing on occasions the services of Mr. M. L. J. Perera, a Reporter of the House, who has performed important duties in recording evidence at the investigations and inquiries.

(*b*) The Hon. the President of the Senate for releasing for the use of the Commission a room in the Senate building and also for releasing on several occasions the services of the following Reporters, who have been of considerable assistance to the Commission in the recording of evidence: Messrs. K. E. Assauw, J. G. de Silva and G. Pereira.

(*c*) The Heads of all Departments and members of the Public Service who have readily and freely provided the Commission with information.

(*d*) Banks, Companies, Firms and private persons who provided the Commission with valuable material for investigation and inquiry.

(*e*) The Interpreters who had an important duty to perform. Much service was rendered by Messrs. D. W. Jayakody, K. W. de A. Wijesinghe and S. Joseph.

(*f*) The Staff of the Commission who have given me their wholehearted and generous support. I may mention the able and valuable help given to me by Mr. N. G. de Silva, Chief Clerk, who was with me at the beginning of this Commission and his successor, Mr. P. J. A. Fernando, who with equal ability carried out the work towards the later stages. I wish also to mention the work of the Stenographers who had to carry out a heavy duty in the recording of evidence at investigations and inquiries and in coping with the office correspondence. All the three Stenographers, Messrs. H. A. Fernando and D. E. C. de Silva, and Miss R. A. G. de la Harpe did most valuable and accurate and speedy work. I may say that Mr. H. A. Fernando was with me from the beginning to the end and bore a heavy share of the burden of the work.

As regards the Secretaries, Mr. G. S. Peiris and Mr. T. Rajathurai, I cannot adequately express my indebtedness to them for organizing this office, and making themselves responsible for its successful working; for making themselves familiar with its innumerable details; for providing me with the necessary information on all matters, and for their intitiative and tact in dealing with all situations as they arose.

(*g*) Crown Counsel Mr. D. Janszé and Mr. J. A. P. Cherubim, who had heavy duties to perform in examining the material available at the investigations, and preparing the way for the inquiries that followed. They also presented the case at the inquiries and were of considerable assistance in the elucidation of the truth. I wish to thank the Attorney-General for having kindly placed at my disposal the services of these Crown Counsel.

I have the honour to be,
Your Excellency's Obedient Servant,

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

Office of the Bribery Commission,
House of Representatives,
Colombo, 16th September, 1949.

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CHAPTER I—THE SCOPE OF THE COMMISSION

A. Section 1 of the Terms of Reference

There were two main functions of this Commission. The first was under Section 1, and included four aspects. Section I; sub-sections (1) and (2) related to inquiries into cases of alleged offers or demands or acceptances of gratifications, during the relevant period, by members of the Public Service. This involved the holding of investigations and inquiries into a number of individual cases. The Commission also had to hold investigations and inquiries under Section 1 (3) into allegations that certain individuals had accumulated money, or purchased securities or other property movable or immovable, as a result of bribery or corruption. A number of inquiries were held in this connection, and many other cases investigated. The Commission also had under Section 1 (4) to deal with allegations as to whether any tenders for the performance of contracts had been accepted or contracts otherwise given by any Department of Government to any private person or body of persons in any improper manner or for any corrupt or improper purpose or motive, or upon any terms and conditions intended or likely to allow undue profits or other advantage to any such person or persons.

2. There was a fair amount of material investigated and inquired into under Section 1 (1), (2) and (3). The investigations for many reasons could not be further pursued in many cases, and no definite allegation could be made against an individual which justified an inquiry in public or in camera. In other cases the inquiries were proceeded with, and the results of these are contained in the two interim reports. The same applies to Section 1 (3) in connection with which there were a number of investigations, and some inquiries followed. Information at any rate was available in a fair quantity with regard to the matters under Section 1 (1), (2) and (3), and the investigations and inquiries took a considerable time.

3. In the case of Section 1 (4), however, there as a marked paucity of information, and no case was discovered in which the stage of investigation had to be continued into the stage of inquiry. If this indicates the fact that there were no tenders or contracts of the kind indicated, it is a matter for congratulation. On the other hand, however, there are reasons for thinking the public had little interest in or knowledge of these matters. The only information which was worth investigating came from persons who were or had been at one time in the Public Service, and related to matters in their knowledge as Public Servants. Members of the public who obtained an advantage were not likely to give information to us, and even their rivals would not have been able to substantiate any charges, which would have been based mainly on suspicion. The Audit Department who were also appealed to for information did not supply any specific information on this point. I shall, however, have occasion to make some comments under this head later in my report. (See parapraphs 58 — 88.)

4. The first function of investigation and inquiry into the matters contained in Section 1 (1) to (4) took, as I have said, a considerable amount of time, and perhaps overshadowed the second function referred to in Section 2.

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B. Section 2 of the Terms of Reference

5. Section 2 runs as follows : —

> "In the event of the inquiry disclosing the existence of bribery or corruption among members of the Public Service in their capacity as Public Servants, to make recommendations as to the ways and means of preventing or checking such evils in the future."

6. This involves two questions: first, a finding whether bribery or corruption exists in the Public Service and, second, a statement of the remedies suggested.

C. Does Bribery and Corruption exist in the Public Service ?

7. At the beginning of the Commission, an attempt was made to obtain some statistics as to the number of cases of bribery at any rate that have been brought to the Courts or for departmental inquiry together with the results. "Corruption" is a wide term, and difficult to define, and such definitions as have been found are not very helpful. The definition in the Shorter Oxford Dictionary is "moral deterioration, depravity," or again "perversion of integrity by bribery or favour ; the use or existence of corrupt practice." It was more difficult to request statistics as to corruption. An appeal was made to the District Judges, and Magistrates, and to the Attorney-General, and to the Chief Commissioner of Police as to decided cases. Collected statistics were difficult to obtain, but it appears that 15 cases were investigated by the Criminal Investigation Department from 1944 to 1947, and prosecutions launched in 8 cases ; only 3 of these were successful, and in 2 cases the accused were fined. In the third case the accused was bound over in Rs. 250 to be of good behaviour for two years.

8. There are perhaps many reasons for the paucity of cases. The giver of the bribe was not usually willing to come forward and give evidence, often because he was satisfied with the advantage obtained, or because he also was liable as an abettor, and had no immunity. There is reason to think that when he wished to complain, he was told of this liability and in consequence was deterred. Further, the giver of the bribe may be regarded as an accomplice, whose word is not ordinarily worthy of credence ; and corroboration was not usually available. There is reason to think that in the absence of corroboration many cases were not brought into the Courts. Complaints to Heads of Departments were also delayed or not inquired into. Often the papers had, according to departmental practice, to be referred first to the officer complained against. This was the most marked in cases where an officer complained about one of his superiors. I am inclined to think that Heads of Departments generally thought such complaints a nuisance, especially as no satisfactory means of investigation were available. In one case which I inquired into, it was stated that complaints against superior officers operated like a "boomerang", and injured the person who launched the complaint, and not the person aimed at.

9. Another reason for the paucity of cases was the difficulty of proof ; the prosecution had not only to prove the acceptance or demand of a gift, but also to establish that it was for an illegal purpose or as an illicit reward. The experience was that many cases broke down upon this point. Another reason was the delay in obtaining a verdict. Cases were held up for several months for various reasons, and even the early stages of investigation by the Police were in many cases protracted. Departmental inquiries were protracted and cumbrous.

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10. On the whole I do not think the paucity of cases establishes the absence of bribery or corruption in the Public Service.

11. It may be argued also that though there has been a fair response to the call for information by this Commission, comparatively few cases were investigated and less inquired into, and that many of these cases related to persons who held comparatively minor positions. This was inevitable as these minor officials were mostly in immediate contact with the public, and the handing over of the bribe or the alleged corrupt practice was carried out in person. In this connection it is not without interest to note that by far the largest number of complaints referred to Village Headmen and in some cases to Superior Headmen. There was also an indication that school teachers were to a large extent convinced that their affairs were regulated by favours shown as a result of the receipt of gratifications, and suggestions were made that bribery and corruption existed to a large extent among the higher officers and even extended to the Head Office. This is a very disquieting feature. That the teachers of our youth should have such a feeling must have a most demoralizing effect upon schools, and whether the feeling is right or wrong, drastic steps should be taken to restore the teaching profession to the high traditions it once held, and to a position of respect and confidence in the community.

12. But I do not think the extent of the evil is to be gauged by the number of the complaints; for teachers at any rate may be more capable of expressing themselves than other persons. It may, on the other hand, be noted that there are comparatively few complaints against Departments, where there is no real denial that corruption existed—in one case at any rate where the Head of the Department frankly admitted that bribery existed to a large extent. There is also the fact that where both the giver and the receiver are satisfied, the truth is not likely to come to light, and it is only when there is a failure of the consideration, or some later ground of quarrel or difference, that a complaint is likely to be made.

13. But our own inquiries at any rate showed the existence of bribery in many departments during the period in question. The fact that these mostly related to minor officials may be due to the fact that these were the cases where actual evidence of the passing of the gratification was available. There is a strong indication that in many cases intermediaries were willing to take the money and promise the benefit, by bribing a higher officer. These intermediaries are often referred to as "brokers". These "brokers" may be in the Public Service or outside it, but they purported to be in touch with important persons in the Service. Whether they passed over the gratifications to the person indicated is a matter of some doubt, but they were able to create an atmosphere and induce the belief that they were in a position to influence decisions. In the case of higher officials, there was an indication that such "broker" was in touch with the Government Official and, apparently, in his confidence. But these brokers were unwilling to give evidence before the Commission, or denied that they participated, and the evidence failed at this point.

14. There is no doubt that there is a good deal of public belief that bribery and corruption has invaded even the higher official rungs of the ladder. In common talk important persons are mentioned, and even vague and general complaints have been made to this Commission about several such persons. But at the same time, though efforts were made to get specific evidence, these efforts failed, and the truth perhaps is that there is no such evidence available, whether because it does not exist, or whether it is not given. I do not think, however, this popular view should be altogether disregarded. It has its unfortunate reactions on the traditions

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of the Service. In the Report of the Bengal Administration Enquiry Committee of 1945, the matter has been put in a manner which deserves consideration. At paragraph 233, the Committee, dealing with the Restoration of the Traditions of the Public Service, said : —

> "The lead should be taken by Public Servants themselves. They should once more be brought to regard bribery and corruption as the grossest dereliction of duty and the foulest slur on the traditions of the Service. Public Servants should indeed go further. They should not only be honest, but should avoid placing themselves in a position in which they might be suspected of dishonesty."

15. The Committee quoted with approval the dictum of the Board of Enquiry set up in 1928, as regards the Home Service :

> "It was laid down that it was of fundamental importance that in a Court of Law justice should not only be done, but should manifestly and undoubtedly be seen to be done. We apply without hesitation an analogous rule to other branches of the Public Service. A Civil Servant is not to subordinate his duty to his private interest ; but neither is he to put himself in a position where his duty and his interests conflict. He is not to make use of his official position to further those interests; but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed."

16. There is another body of information, which is of importance and that has been supplied by the Heads of Departments and other members of the Public Service. The evidence on the whole supports the view that, at any rate in the Departments which are constantly in touch with the public, there is a great deal of bribery and corruption. Many Heads of Departments admitted that there was bribery and corruption in the Public Service; in one case, at any rate, one Head of a Department frankly admitted that there was considerable bribery and corruption in his own Department, which could not be brought to justice, for lack of legal evidence.

17. There are distinctions to be drawn between the different classes of the service. Some of the new departments brought into being by the exigencies of the war were very largely, in some cases almost entirely, staffed by persons holding temporary appointments on comparatively small pay — pay which was not commensurate with the responsibility of the office, and with the duties they had to perform. For example, in the Food Control Department and the Textile Control Department, almost the whole of the minor staff and several of those holding staff appointments were temporarily employed; and all these officers had to perform highly important functions and to exercise discretions which subjected them to grave temptations. Storekeepers and persons of the Inspectorate class had highly responsible duties to perform and in the exercise of their powers they had to make important decisions which affected the traders and the public. In fact, the war brought into being a large number of these departments, and the establishment of controls and fixing of prices were enforced through minor officials. Permits and licences were needed for the purchase of many articles and the persons who really controlled the issue of such permits were persons of the rank of Inspectors or Village Headmen. Though there was not evidence to any extent which justified inquiry, there can be little doubt that traders and the general public were willing to pay for obtaining permits and licences, and it is clear, though legal evidence is not great, that minor officials and even perhaps higher officers were able to make a good deal of money in this way. This kind of bribery or corruption is very difficult to trace and to combat, but many Heads of Departments were agreed that much corruption existed in these new departments and that the possibility of detection was remote.

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18. One important feature was the inadequacy of supervision. Owing to the stress of war conditions, this inadequacy was further emphasised. But the evil was not the result of the war, although the war multiplied the opportunities for the practice of this evil. The real difficulty is that in the case of most departments, they have to employ officers in outlying districts where supervision is in many cases slight and inadequate. Persons of the class of Inspectors, sub-Inspectors and Headmen operate in their districts, and exercise considerable powers, without a sufficient degree of control and supervision. The opportunities are great for bribery and corruption, and many officers succumb to the temptation. Even in the older Departments this tendency is shown, and one officer of an old standing Department gave a very graphic description of how the newly recruited officer is led astray. This related to a period some time past, (See file R/60), but it may be of significance today.

19. The degeneration of the young officer is brought about by various stages :

(1) when he goes on his earlier detection inquiries, pressure is brought to bear on the recruit to swear to facts which never took place or took place differently, so as to fill in gaps in the evidence needed for the purpose of securing conviction;

(2) in the Inspector's office itself bribery is done openly, by interested persons who arrive at the beginning of the month and distribute envelopes containing money, among all the staff. The reaction of the new recruit is closely watched. If he does not accept the money, his official life is made a burden, and faults are always found with his work. If he adapts himself to the general acceptance of bribes, his way is made easy, and he has more money to spend;

(3) in the case of illicit dealers, a different procedure is generally employed. The Inspector obtains contact by means of a minor official or an outsider who collects the bribe and brings it to the Inspector. These dealers however have to provide for a certain number of arranged cases of detection, where an accused is found, willing to plead guilty.

20. I am satisfied that the description given by this officer is a genuine and bona fide experience. The officer was not willing to mention the names of the officers involved, as he had a family and feared for his job, and in all the circumstances I did not insist that he should reveal these names. He struck me as an honest officer, who had strong feeling against bribery and corruption. The picture he drew is a vivid and convincing one, but for his own benefit I refrain from mentioning his name.

21. This officer made one pregnant remark. He said that the degeneration of the recruit was made necessary, because " one honest man can spoil things for a number of people. " I have come to the conclusion that it is difficult, if not impossible, to embark upon a career of bribe taking or corruption, without the other members of the office becoming aware of this at some time. It is well worth the while of Government to cultivate this idea. There has been too much of a tendency on the part of Heads of Departments to regard the subordinate officer who complains as a mischief-maker and a nuisance. In some cases such a man may be a menace to the discipline of the office, and the importance of discipline cannot be minimised. But loyalty to a Department or to the Head of it does not imply connivance in illegal practices of superior officers, and every complaint made by a junior officer against his senior should be honestly and diligently inquired into. Also such a complaint should not be required to be forwarded through the superior officer involved in the complaint, but

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may be sent direct to the Head of the Department. Further, the complaint should not be sent as a mere matter of routine to the officer complained against, at any rate until sufficient inquiry has been made into the complaint. Rules should be drafted having this object in view, first, the elimination of corruption in the office and, secondly, discipline in the office.

22. In other words the Head of every Department should seek the co-operation of all his officers in the fight against bribery and corruption. I believe that much good work can be done from within the office itself. One honest man in the office may break the power of all the dishonest officers. But to achieve this, he must be able to make his voice heard. The honest man should by rewards or promotion be given an incentive to help keep the office clean, but at the same time the person who complains as a result of malice or ill-feeling alone should be suitably dealt with. Anti-corruption societies formed within each Department should be encouraged, but great care should be taken by the Head of the Department to see that the right persons are in control of such societies. These societies can of course do great mischief if they fall into the wrong hands.

23. In this connection it is of the utmost importance that every Head of a Department should, as far as possible, know every member of his staff personally and be in a position to judge both his work and his character. He should frequently visit all parts of the office and get into personal touch with the subordinates. He should inaugurate surprise checks of their work from time to time. He will thus be able by the force of his personality to impose a real *esprit de corps* in his Department, and exercise the same influence that a successful Head of a School has over his pupils.

In this connection, it should also be borne in mind that even anonymous or pseudonymous petitions may in many cases provide material for investigation. These should not be disregarded, but suitable investigations should be pursued.

24. I have perhaps gone outside the immediate point. I was dealing with the statements of the Heads of Departments and of other members of the Public Service. These persons must be regarded as having sufficient experience to form their opinions. A very large number of these officers have expressed the view that there is a good deal of bribery and corruption in the Public Service. It is admitted that the actual evidence needed for the launching of a prosecution in the Courts, or a departmental inquiry against an individual, was not available always. But there have been a few successful prosecutions and some Departmental inquiries have resulted in the dismissal or discontinuance of the person complained against. In the case of the new Departments, which were largely manned by temporary officers, the practice of discontinuance after the required notice was resorted to in many cases. In fact, some Heads of Departments found this an easy way out. The temporary employee could be discontinued, without the elaborate procedure of inquiry prescribed for the permanent employee. Many officers who were suspected of dishonesty, or of irregularities were got rid of by notice of termination of their services.

25. I think the statements of these Heads of Departments and other public officers show that there is a great deal of bribery and corruption in the Public Service. This was accentuated in the case of the new Departments and the controls created by the war. How far that extended, and whether it affected the higher grades of officers to an appreciable extent, is not so clear. Most of the officers who stated that there was much bribery and corruption had great experience, and were able to give good reasons for their belief.

26. This applies not only to the purely administrative Departments but also to the office staffs of our District Courts and Magistrates' Courts.

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This is shown by our own inquiries, and also by a letter written by a distinguished District Judge of wide experience, now a Justice of the Supreme Court. He mentioned certain instances where he had actually detected offenders, and dealt with them himself, and added—

> "I discovered nothing could be done in the office without the payment of some gratification to the peons and clerks."

This is a very striking commentary on the principal District Court in the Island.

27. Some Heads of Departments were also able to speak with regard to the Departments of which they had been in charge. Admittedly there are Departments in which the presence of bribery and corruption is not marked, but many of the new Departments and some of the old Departments were mentioned as examples of the contrary. I have already commented on the fact that in the case of some of the Departments picked out by these officers few or no complaints have actually been made to this Commission, and have pointed out that the number of complaints made to us is no gauge of the amount of corruption in the various Departments.

28. There has also been a tendency on the part of Government, particularly when some machinery existed, to utilize this machinery to the breaking point. The most marked instance was the utilization of the Headmen to work the various control systems which came into existence. The Headmen system had in the past been the subject of much adverse criticism, and corruption has been from time to time declared to be rampant in that system. Yet the important duties, connected for example with the Internal Purchase Scheme, were assigned to these same Headmen. It is true that the conditions of service have been improved from time to time, but the Headmen are still poorly paid. Yet they had to administer the system of licences and permits required under the controls, and to collect and measure the produce purchased by Government. There was a considerable body of complaint, some of it inquired into by this Commission, directed against this administration, and there is no reason to doubt that there were ample opportunities for bribery and corruption, and that the opportunities were not neglected. The Assistant Government Agent of one district pointed to the fact that there had been in his area a marked decrease of yield per acre from paddy after compulsory purchase by Government came in, and this was not a solitary instance. The Assistant Government Agent thought that this indicated a large degree of concealment of paddy, connived at by the Headmen, and there is some ground for this opinion. It is difficult also to escape the conclusion that there was a good deal of trafficking in rice and textile coupons. In one instance reported to this Commission, far more textile books were issued in one area, than the population of the area justified.

29. On the other hand, it can be argued that in the emergency which arose, any available machinery had to be utilized, and that the Headmen system, however imperfect, was the only machinery which could be adapted to the situation. Any temporary makeshift would have been as bad or worse. There is no doubt much substance in this. But where the system failed was in the provision of adequate supervision, and the absence of any real safeguards against bribery and corruption. The heavy demands of the service in ordinary circumstances, and the greater demands in periods of emergency, left little available time for the superior officers, Assistant Government Agents and Government Agents, to do sufficient inspection of their areas, and keep in touch with the outlying areas. It is

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necessary that this work should not be neglected. It is of utmost importance that the provincial heads of Departments should be in the closest touch with the needs and difficulties of their areas. Every Assistant Government Agent and Government Agent should visit every village in his area several times a year and be in touch with the wants of every villager. He should allow free access for any man who wishes to make a complaint—not only by petition but also by personal interview. This has been stressed by the members of the Public Service themselves, and arrangements should be made so to organise the routine work of the office, that it leaves ample time for field work, and intimate acquaintance with every village and if possible every villager in the area. A great deal of good can be achieved by this, and the illegal practices of the minor and even higher officials will be considerably checked, if not eliminated. The regulations of Governor Maitland, drawn up in 1807 and 1808, for the guidance of Collectors, are applicable even today:

> "The Collector must make himself acquainted with the various districts in his province and the various headmen....by making frequent circuits through the whole of his province. It is by adopting this measure alone that any Collector can get a thorough knowledge either of the real character of the Headmen under him, or of the actual situation of the country. The Collector must make a complete tour of his whole district every year, and must give an habitual and systematic attention to all representations and complaints of the people. He must have a practically unlimited knowledge of every aspect of his district—its agriculture, trade, industry, social customs...."

30. On the other hand there should be an intensification of the work which has already been started, in the way of Rural Development, to organize village life and to give opportunities for the villagers themselves to supervise, and in some degree to control or at any rate to criticize the acts of the Headman. A Village Society, if properly organized and made truly representative, would be the most effective check on the illegal practices of the Headmen. It will also have the effect of bringing to the Government the real needs of the area and thus it will assist in the administration of the area. There are difficulties in the way, arising out of caste or interest, and great care should be taken to see that one particular section of the village does not seize the real power. The Village Headman, though his services may be desirable in an advisory capacity, should have no real part in the decisions of the Village Society. Even if he is allowed to be a member, he should not be allowed to hold office or to vote, and care should be taken that his "party" does not usurp the power. Further, no political party existing in the country should be enabled to utilise the Society for its purposes. A Village Society should be and remain a meeting of villagers interested in the affairs of their village.

31. The matter of the organization of Village Societies is of considerable moment, and I have considered it principally from the angle of the prevention of bribery and corruption. But of course it can contribute to the better administration of village areas. In view of the difficulties, the subject will have to be handled delicately and, at the start, these Societies will have to be carefully watched. But they do appear to provide some solution to the problem we have to face. The misdeeds of Headmen are largely due to the fact that village life is now unorganized, and the village is a mere series of individuals. A properly organized Village Society will be the means of bringing to light all abuses on the part of the officials. If, therefore, we have on the part of the Heads of Provincial Administration a real,

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lively interest in the problems of each village, and a Village Society capable of criticising irregularities and illegalities and willing to expose these matters, there ought to be a powerful check on the present abuses, and the life of the ordinary villager should be in consequence easier and happier.

32. The proposal, I understand, is also to create Divisional Committees consisting of Chairman of Village Societies, and officers of the Inspector or similar grade operating in the area. Such a body may have a powerful influence in checking abuses on the part of the officers in the Public Service. To help the administration there will be District Committees at each Kachcheri manned by the Government Agent and the Superior officers of the Departments in the area.

33. Matters brought up by the Village Societies will then either be settled at an early stage, or referred to a higher body, and abuses can thus be more readily corrected, and at any rate eventually brought for consideration if necessary to Cabinet level—and at any rate to the Ministries concerned. From our point of view, this idea deserves encouragement and a humble but important section of the population are likely to be relieved of the incubus of corruption. Whatever the final form of this scheme, the establishment of Village Societies should be tried out as early as possible.

34. One other section of the population is in urgent need of relief and this applies to the workmen employed by Government. At present they are in many cases subjected to illegal impositions. In the complaints to this Commission, and in some of the inquiries held by us, there has been evidence that these workmen and minor officials have in several instances to pay money to get their employment, and that in some cases illegal levies were made from their monthly pay. The men are in many instances entirely in the power of the Foreman or other paying officer, and the monthly payments were in some instances made by minor officials without any adequate supervision. In one instance at any rate heard by this Commission (File R/89), the evidence showed that when advances were made to workmen, the Department made no attempt to check the fact that the Foreman made the correct advances, or recovered the proper amounts from the workmen. The Department was only anxious to see that the amount given to the Foreman for the purpose of advances was returned at the proper time by the Foreman. No attempt was made to obtain from the workman an acknowledgment of the amount advanced to him, and there was no check on the amount recovered from the workman. Under cover of this lax practice, the Foreman had made illegal levies on all the workmen. It appears to me that the system adopted was thoroughly bad. If an advance is given to a workman, that should be properly authenticated by the workman, and the deduction should be made on his pay sheet, and only the balance due to him should be paid to the workman. This would undoubtedly mean more labour for the accounting branch, but the extra work is well worth while, and would form an effective check to abuses such as arose in this case. It is impossible to say how common this lax practice is in the Public Service, but it provides an opportunity for a dishonest official to make money at the expense of the workmen.

35. There was also evidence in some cases that the entire payment of wages was left in the hands of a minor official like a Foreman, and that no real supervision of this was available. Where complaints arose, some other officer was sent on occasions to make the payment, but this was not satisfactory, as the new official did not know the workmen. In my opinion it should be the working rule of every Department that the pay should be given to the workmen, in the presence of at least two officers—the officer in charge of the work and a superior officer, if possible. Whether this is

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possible, in view of the number of the officers available, I cannot say, but in the absence of such rule there will always be complaints and abuses.

36. In view of the fact that Government is more and more occupying the position of a very large employer of labour, this matter is of some importance, and I think an effort should be made to get the workmen to organize themselves, and to put a stop to wholesale abuses. What form the organization should take I am reluctant to say, because this is a matter of considerable dispute, and there is hardly any evidence before this Commission to justify my expressing an opinion. But that the workmen should organize themselves, and be in a position to prevent themselves being victimized is obvious. That is the best answer I can give for the prevention of these abuses.

37. I may mention that the whole question of the recruitment, employment and discontinuance of labour, especially unskilled labour, needs careful investigation. In practice, labour has to be recruited and discontinued very largely at the discretion of the immediate supervising officer, who may be of the grade of an overseer, inspector or manager. There are great opportunities for corruption at each stage. More practical methods should be devised to supervise this branch of the work by higher officers.

38. Again the whole question of payment on the checkroll raises important problems, and it cannot be said to be a satisfactory system, but no alternative to it has been suggested. One evil that has been prominently brought to our notice is the manipulation of the checkroll by the officer preparing it, so as to include a number of fictitious names. This is done to increase the amount drawn but not disbursed by the officer in charge. In none of the matters inquired into was the charge brought home to any officer, but that there is a good deal of truth in the general allegation is hardly a matter of doubt, and it is not easy of detection, especially after the lapse of time. Here again, more frequent and more satisfactory supervision seems to be the most adequate answer, and also the rule that two officers at least should be present at the payment, and at the time the workman signs the paysheet. Another suggestion was that the man's rice ration book should also be produced at the time of payment, and the number entered in the paysheet. There can be little doubt that Government is losing much money in this way, and further money spent on supervision and extra clerical labour may in the long run be money saved.

39. One difficulty in the course of this inquiry has been the fact that many public officers have taken the existing systems for granted, and have not applied their minds to the question of improving or supervising them. Many believe that bribery and corruption are unavoidable evils, which have traditionally existed in this country, and are so deeply embedded in our system that they cannot be eradicated. This state of mind is not conducive to any progress. I may say that the amount of suggestions given me by the Heads of Departments for the prevention or the checking of abuses has not been considerable.

40. In my opinion a great deal more can be done by the Heads of Departments. What is obvious is that every Head of a Department must know what are the danger points in his Department. If he is so burdened with routine and other work in his Department as not to have time to be conversant with the affairs of his office, measures should be taken to relieve the pressure on him, and to leave him time for real supervision. But mere knowledge of these danger points is not sufficient, unless prompt and energetic steps are taken to combat the evils, and in his Annual

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Report every Head of a Department should have a special section dealing with steps he has taken in this direction. If the Head of the Department has to report, it is very probable that he will be active in the matter. Transfer of the suspected officer to other duties may, and I think is, often useful, but this is only a temporary expedient and does not go to the root of the matter. Besides, it may not be easy to achieve in the case of technical officers. Where it can be effected, rotation of officers in the various duties may be of help. No man should be left too long in any of the danger points. Enforcement of compulsory leave may also bring abuses to light. No officer should be allowed to become an institution. This interchange of duties will also be beneficial to the efficiency of the department. Further, the delegation of duties to various officers should be strictly defined, and the most important duties, especially those which involve the exercise of a discretion should be undertaken only by the most senior officer, and not lightly passed to subordinates. All delays in the making of orders should be carefully watched, for the evidence shows that one prolific source of bribery is in connection with the expediting of orders. Delays are used by the bribe taker for the purpose of obtaining gratifications.

41. Active steps are necessary in all these matters. Every office will have its own particular problems, and it will be the function of each Head to devise a scheme suitable to meet the peculiar difficulties. The schemes of each Department or office should be specially reported by the Head, and comment made as to the manner in which they work. At first there may be a variety of schemes, but the more important changes introduced may be made of universal application. It is only by continuous watching and planning that abuses can be prevented and kept in check.

42. Further, the Head of each Department must be familiar with the members of his Department, and accessible to them. Even the fact that the Head goes round the office frequently may have a salutary effect. Staff Officers will also have their duties in this connection. At present they are perhaps working too much in the seclusion of their own rooms. This system of "purdah" has its disadvantages, as the degree of supervision exercised is diminished. Except where special circumstances demand it, there is no reason why many Staff Officers should not be working in the same room as their subordinates, or at least in a position where they can keep an eye on the office. In any new scheme of building which may be devised, rooms may be made which have glass partitions, so that the activities of the office can easily be overlooked at all times. In the absence of any special convenience of this sort, I think there should be a staff officer or senior officer in each room. This will act as a check both on the higher and on the minor staff.

43. The employment of peons also leads to abuses; for, the evidence shows that these minor employees, whether truthfully or not, create the idea that they are suitable intermediaries for the conveyance of gratifications to superior officers. Unfortunately in most offices the only introduction of the member of the public into the office is through a peon. A good many of these peons may be converted into messengers who go round at frequent and stated intervals and empty the trays, but it never should be the duty of a peon to introduce any person to the office. This could be remedied by the creation of a Reception Room at the entrance of every office. This work of Reception should be in charge of a senior clerk, or even on occasions of a junior Staff Officer. The person in charge should be frequently changed, and the rotation of duties should include Reception. It will be the duty of the Reception Officer to know which official to direct the visitor to, and he should have telephonic communication with the rest of the office. He will direct the visitor to the proper official who can deal with his affaris, if he cannot deal with the matter

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himself. The absence of a properly constituted Reception Room has led to numerous abuses, and these minor employees have seized the opportunity provided to them for exacting gratifications for themselves and perhaps for others. For the most part, they lead an idle and useless existence. I may note that the Cadres Commission has also commented on these peons. Peons for particular officers should only be provided under special circumstances.

44. In my opinion the provision of a properly equipped Reception Room would eliminate or lessen the opportunities for bribery and corruption. If necessary, special hours in the week may be allotted for interviewing the Head or the superior officers. It is important that the Head of the Department himself should be accessible to the public for interview, as far as it is reasonably possible.

45. Another ground for loss to Government arose from the granting of contracts to contractors. There are a certain number of Court cases which establish that through the collusion of the contractor with a public officer, the contractors were able to charge and obtain payment for work which had in large part not been done. There were a certain number of complaints made to this Commission also, but no evidence sufficiently precise and satisfactory has been provided to us, which could form the basis for any inquiry. But that this evil exists there can be little doubt. That it is not the work of the contractor alone is certain. Without the concurrence of the inspecting or passing officer this form of corruption cannot continue. One inquiry before this Commission (File R/4), showed that a public officer had a very considerable hold over the contractor, and that he was able to make illegal levies on the contractor, which the latter had no power to refuse.

46. This is a very considerable evil, and one difficult to combat. It affects Departments like the Public Works Department where considerable works of construction have to be undertaken. Other Departments dealing with construction are the Port Commission, Marketing Department, the Department of Agriculture, the Education Department, Irrigation Department, Medical Department and the Railway Department. The evil affects institutions such as hospitals which have to obtain their supplies, e.g. for diet, from contractors, and schools which provide mid-day meals. In fact, this evil pervades all spending Departments which deal with construction or service. The actual loss to Government in this way must be colossal, but there is no means of measuring the extent of the evil and Audit itself is powerless. All measurements are made by the executive officer and the truth of the measurement is only guaranteed by his certificate. Audit may check the certificates, but has no means of testing how far the certificates guarantee the facts. In a debate on the question of roads, the Minister of Transport and Works declared that it was well known that out of every vote of Rs. 500,000,000 for expenditure, Rs. 100,000,000 is wasted or robbed. The extent of the actual robbing is not clear, but it must be considerable. The evil is well recognized, and it is difficult to combat. More satisfactory supervision of the work of the inspecting and passing officer and more frequent test checks may diminish the evil. I was favourably impressed with the suggestion of the Auditor-General that an independent body of Quantity Surveyors of high experience should be employed to carry out the necessary test checks and final measurements. Such a body may well save considerably more than their cost, and in any case will be effective to check bribery and corruption. These Quantity Surveyors may work under the Auditor-General or alternatively, under the Treasury.

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47. But the only effective remedy is that the financial affairs of public servants should be kept under the closest scrutiny and examination. There is no reason why the financial position of a public servant should not be an open book, if not to the public, at least to the proper authorities. At present it is difficult to know what the exact circumstances of a public servant are. The remedy is that he should be required to disclose them, and continue to do so at regular intervals. Any sudden acquisition of wealth should be accounted for. Most of the senior Public Officers were not opposed to this, but some thought it would be an unnecessary burden, and would make public service unpopular. I myself do not think that many honest persons will be deterred from entering the Public Service because they have to disclose their affairs. Failure to disclose material information should be a good ground for dismissal.

D. Section 1 (3) of the Terms of Reference: Accumulations

48. Section 1 (3) of the Terms of the Commission opened up new ground for investigation and inquiry; this related to the accumulation of money and the purchases of securities and other property movable or immovable as a result of bribery and corruption. It was not reasonably possible to examine the circumstances of every member of the Public Service, and there was no means available of obtaining the information readily. It was found necessary to call for information as to these matters, and to act upon the information supplied. A body of information was obtained, which was investigated and in some cases followed up by inquiries against named respondents. Unfortunately the persons giving information did not always observe the time limits set upon our inquiry, viz. 1st September, 1939 to 28th January, 1948, and the statements related to matters both before and after those dates, and had to be carefully sifted. Some informants were obviously annoyed because this Commission declined to investigate matters that arose after 28th January, 1948.

49. It was not easy to obtain the material for investigation, which was often in vague or general terms, but there were three matters which could be investigated :

(1) the purchase of landed property and mortgages of land,
(2) the building of houses,
(3) deposits in the Post Office Savings Bank, or in the Ceylon Savings Bank, and in other Banks.

50. As regards (1), this Commission freely consulted the Registrars of Land, and obtained valuable information from them. Vague and uncertain information about purchases of property were often turned into specific evidence of such purchases. On the whole the assistance given by the Registrars of Land was very useful. In some cases, where the names of Notaries were discovered, they were able to supply important evidence, and to provide us with lists of purchases, which may otherwise have passed unnoticed. Incidentally it may be remarked that in some cases the Government had not been notified of the purchases; in other cases purchases in the name of the wife had not been disclosed, and it was pleaded by the officer that he was not aware of the rule. Purchases in the names of others were very difficult to trace, but where the purchases had been made in the names of children or close relations, it was in some instances possible to obtain precise evidence of the facts, but this was not an easy task. For, many devices were employed to disguise this, and in one instance at any rate it took the form of a purchase by the parents-in-law, who later gave a gift of the property in the nature of deferred dowry to the real purchaser. It may be surmised that there were a number of cases where properties were bought by others in trust for the public officer, but the evidence to establish this was difficult to obtain.

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51. There is however one factor which militates against the adoption of this method of purchase on a large scale. The public officer has to find a person dishonest enough to connive at this deception, and yet reliable enough to hand over the property when required to do so. The public officer will be chary about going to law, and even if he does resort to law, there may be defences available to defeat his claim. In my opinion the dangers are so obvious, that few public officers would care to use any but their closest relations or friends to take up the position of trustee in this matter.

52. As regards (2), there has been a tendency on the part of an officer who has made money to build a big house, and the evidence about such buildings is in many cases available. At the same time, there is a tendency on the part of the Public Servant to attribute the building to some relation who is not in the Public Service, or to minimize the cost of the building. There are difficulties in deciding what the real cost of the building is, or even in getting a satisfactory valuation of the building. Often it is urged by the public officer that he had collected material for the building over a course of years, and where the presumption is in favour of the public officer, he may well escape from being brought to book.

53. As regards (3), this Commission had power to obtain information from the Banks, and this information has been readily and fully supplied. In ordinary investigations under the Public Service Regulations, such a power does not appear to exist, and a very valuable source of information is lacking. Even this Commission had difficulty in tracing the Bank in which the public officer kept his account, and in the case of the Ceylon Savings Bank and the Post Office Savings Bank it was further necessary to obtain the number and date of the Deposit Book. In several cases this had to be obtained from the public officer himself.

54. Though the case did not arise, it may have been possible to obtain similar information about purchases of shares from companies. But such purchases of shares may not be generally known, and information about them not ordinarily available.

55. For the future it is desirable that all information should be readily made available to any body which has the work of investigation and inquiry into cases of bribery and corruption. The obvious means of having this information is to compel its disclosure by the public officer himself.

56. I have referred to three of the most profitable sources of information concerning the financial position of a public officer. In these cases some information can be obtained. But it is obvious that the public officer may have other means of dealing with accumulations, which are more difficult to trace. In several cases of which this Commission had information, accumulations of money, whether legitimate or otherwise, were kept in an iron safe. Where the public officer does not deposit his money in a public Bank or Company, or use it for the purchase of property, it is very difficult to get information of his accumulations. Another difficult case to trace is that of an officer who obtains much money but spends it all and lives to the limit of his income. In fact, some Heads of Departments commented on the fact that many public officers appeared to be living on a scale that was ordinarily outside their financial ability, and they regarded this as a sign that there was bribery or corruption in the Public Service. I think it is incumbent on a Head of a Department to keep a careful watch in these cases, for evidence of bribery or corruption. Economy in way of life may in several cases be evidence of honesty.

5—— N. R 27060 (7/51)

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57. The remedy which would act as the most useful deterrent is to compel public officers to make a full and complete disclosure of their affairs. Such disclosure is now required to be made in India, and I think it may be useful to follow this example. It may be a burden, but I do not see how it can be avoided, if we are to make an effective stand against bribery and corruption. Dismissal and severe penalties should follow upon any failure to make disclosure.

E. Section 1 (4) of Terms of Reference: Tenders and Contracts

58. Section 1 (4) of the Terms of the Commission provides for inquiry concerning the acceptance of tenders or the giving of contracts by Government Departments to private persons or bodies of persons in an improper manner or for a corrupt or improper purpose or motive, or upon terms and conditions intended or likely to allow any undue profits or other advantage to such person or persons.

59. As I have already mentioned there was a very poor answer to our call for information on this matter. The public were not interested, and the persons who had knowledge, if any, were not responsive to our appeal to any marked extent. There was however one matter which involved a considerable amount of investigation. It arose from a complaint by a person who had once held a responsible position in the Department of Food Supplies against that Department. This officer had been dismissed from service as the result of an inquiry by a Committee appointed by His Excellency the Governor, under Public Service Regulation 93 (ii). but the information which he volunteered was carefully investigated. There were a large number of points raised by this officer, to establish the fact that contracts had been given as a matter of favour to individuals, and he mentioned the names of several officers in the Department, and also several merchants who could supply information. All these persons were called as witnesses and examined. Some of the points raised by this officer were so vague, that they could not form the starting point of any investigation, but where specific information was given, that was investigated fully, even in cases where the officer himself only spoke from hearsay, and not from personal knowledge.

60. The burden of this complainant was that particular contracts had been given in an improper manner, and as a sign of favour to a particular merchant, and he maintained that certain officers of the Department, and other merchants could give evidence to establish this. In every case the merchants who were called not only failed to support the allegation made by this officer, but gave an explanation of the circumstances, which was not consonant with the suggestion that there was any impropriety or favour shown. It is true that in some cases there had been losses incurred under the contracts, but neither the merchants nor the officers of the Department called indicated any impropriety or favour on the part of the Head of the Department or of any other officer in the Department. In one case it was obvious that the Department took what it considered a wise course to prevent loss to Government, and at least prevented any loss on that account. This related to a sale of about 19,000 cases of tinned milk, which had partially been damaged, and some of which was unfit for human consumption, to a reputable firm, who had to examine the cases and eliminate the articles which were unfit. It was clear that the Department had no expert knowledge or available machinery for sorting out the good from the bad articles, and the firm was in a position to do this work satisfactorily. In other cases though there had been some losses, there was not the evidence of any dishonesty on the part of the Department in placing the contracts. There was a very full investigation, and

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in all these cases, it was decided that further inquiry was not justified. I do not think it will be necessary to examine each of these cases in detail, but my comments on each of the cases will be found in File R/36.

61. There were two cases however that may be mentioned as of interest. Here too there was no evidence of impropriety or favour established. One of these related to a contract for the import of 50 tons of coriander in March, 1946, (see item XIV in R/36). The contract was to be *ex.* wharf at a northern port. The merchant tendered a certain number of bags stated to be imported by himself and other bags which he claimed were imported by other merchants, and it was argued that the merchant was entitled to tender the bags imported by others. Though the Department held the view that the argument was right, a compromise was arrived at by which a lower price was paid for the bags imported by others. Unfortunately, the fact that the contract was *ex.* wharf was not communicated to the Government Agent, who took delivery, not *ex.* wharf, but at his own stores. In this respect the officer who now makes the complaint was himself at fault, in that he did not inform the Government Agent that he should take delivery *ex.* wharf. This same officer sanctioned the payment to the merchant, without satisfying himself that the delivery was *ex.* wharf. The documents show that this was done without reference to the Head of the Department.

62. Inquiries made now appear to indicate that the figures given by the merchant as to the quantity imported by him are not correct, and it is possible that he has successfully defrauded the Government. Whether the rest of the bags was imported by other merchants is not clear.

63. In this case it is evident that some mistake was made and that perhaps there was an absence of due care on the part of the officer responsible for the mistake, but I do not think there is any element of impropriety or favour which can be charged against any officer, including the one who now makes the complaint.

64. The other case refers to contracts relating to dried fish. There was a strong plea by the person complaining that favour was shown to certain merchants with regard to the import of this commodity. Lengthy investigation was made into this matter, and all the witnesses who could throw light upon the matter were examined. In the result it did not transpire that the allegations of impropriety or favour in the giving of contracts had any foundation. A large number of shipments were considered in this connection.

65. There was however evidence of very considerable losses in the case of this commodity of dried fish. The question was complicated by the fact that the Department was handling not only imported dried fish, but locally cured dried fish also. It is said that the loss by deterioration was considerably less in the case of imported dried fish, largely due to the fact that this fish was more popular and easily sold, and that it did not remain so long in storage and consequently it did not deteriorate to the same extent.

66. The evidence established that there had been appreciable losses (see item XI in R/36).

(1) From October, 1942 to January, 1944, there was a loss of Rs. 70,000 at the depot at Captains Gardens. This was a loss affecting imported dried fish entirely. This depot was under the Subsidiary Foodstuffs Department.

(2) From 10th April, 1945 to 30th September, 1945, there was a loss of Rs. 500,000 at the Dried Fish Depot at Quarry Road, which was opened only in that year and was under the Department of Food Supplies.

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(3) For the year October 1, 1945 to September 30, 1946, there was a loss of between Rs. 50,000 and Rs. 100,000 at the Quarry Road Depot —roughly about Rs. 80,000. That this article was subject to deterioration was obvious, and it is clear that the storage accommodation was insufficient and unsatisfactory, and that this contributed to the loss to a considerable extent. The evidence points to the fact that some of the dried fish was of an unpopular variety, and hence not easily sold. Further, the staff recruited by Government for running the Department was inadequate and inexperienced in handling this commodity.

67. The matter was complicated by the fact that Government decided to help the local industry in dried fish and undertook to take all varieties of dried fish offered by the producer. The producer of local dried fish expected a higher price than the price for imported dried fish. The policy of subsidy for local dried fish was approved, and the subsidy was very high as regards local dried fish.

68. A few varieties of local dried fish fetched high prices, but the majority of varieties were slow-selling and fetched low prices. Many of the unpopular varieties of local dried fish had to be paid for at high prices and fetched much less on sale, and though prices were revised from time to time, they still remained high.

69. The matter was further complicated by the local producer who began to reserve the more popular varieties for sale in the black market, and supplied mainly the unpopular varieties to Government.

70. The big loss of Rs. 500,000 in 1945 has been allocated by the Director of Food Supplies as follows:—

Rs. 200,000 loss on deterioration of local dried fish;

Rs. 150,000 loss due to subsidy on sale of about 450 tons of local dried fish, and loss due to underweight and to market fluctuations;

Rs. 150,000 loss on imported supplies due half deterioration, and half to trading losses.

71. The total cost of imported fish was about Rs. 1,000,000 and total cost of supplies from Director of Fisheries was about Rs. 800,000. The loss of about Rs. 350,000 on local dried fish was accordingly disproportionately high.

72. The causes of the loss were several :

(*a*) the policy adopted of providing a high subsidy to the local producer;

(*b*) imported dried fish was always inspected by the Department Inspectors. In the case of local dried fish, inspection as well as weightment and tare were left to the Fisheries Department;

(*c*) the superior officers of the Department of Food Supplies had little knowledge of the dried fish business, and the Inspectors were recruited from the trade and were unsatisfactory. Even with regard to imported fish the Inspectors were not conscientious or efficient. The inspection on the part of the Fisheries Department was considerably worse;

(*d*) loss on weight must have been considerable especially in the local trade. The fishermen employed various ruses to increase weight;

(*e*) owing to lack of adequate storage space, the fish had to be stacked too high, and deteriorated more quickly;

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(*f*) the sales were slow especially as regards the local varieties, and there was bad salesmanship by the Department;

(*g*) irregularity of steamer freights contributed to the deterioration of stocks;

(*h*) trade losses were incurred as a result of fluctuation of prices caused by abundance of supplies at certain periods, and the consequent decrease in demand.

It is to be noted that the bulk of the loss by deterioration applied to the local dried fish, much of which had to be sold as manure at a nominal price.

73. The Director of Fisheries was substantially in agreement with the Director of Food Supplies. He also drew attention to the subsidy and to the fact that the producers were guaranteed a fixed minimum price, and that all varieties delivered that were not price controlled were fixed at a high rate, so as to compensate producers for parting with the price controlled varieties. Unfortunately the producers did not supply any substantial quantity of the price controlled varieties, with one exception. The bulk of the supplies was of the less popular varieties. It is clear also that the weight was not the true weight of the fish, but of extraneous matter as well. There can be no doubt that the better varieties of local dried fish went into the black market, and the unsaleable varieties were dumped on the Government. The Director of Fisheries mentioned another cause of loss, namely, driage and pilferage in transit.

74. The Director of Fisheries added "from the Department's point of view, though the scheme worked under great handicap, it achieved its two purposes, viz., increased production, and low prices to the consumer during the time of grave food emergency. Viewed in this light the loss on the scheme must be regarded as a subsidy to the fishing industry." I cannot say that I accept the last comment in its entirety, but there was no question that both Departments worked under severe handicaps. The new venture was undertaken without the necessary knowledge and experience required for its effective working. I cannot say whether persons with more expert knowledge of the industry could not have been obtained, but they would certainly have been of great assistance. Those who were recruited were of poor quality. There is no question that particularly for the year 1945 the loss on local dried fish was exceptionally high. The losses were cut down in the later years, as a result of the experience gained. Apparently the object of the plan was to provide a livelihood for the fishermen, but whether they were the persons who benefited, or the middleman, is not so clear.

75. I have gone into this matter, because it is not without its interest, and it was very fully investigated. But from the point of view of this Commission it was clear that no inquiry could be continued against any Department or any officer, under Section 1 (4) of the Terms of this Commission. There was no evidence of any improper action, or of any tendency to favour any individual. It is possible that the fishermen or the producers of dried fish may have benefited, but that was the avowed policy of Government, and the Departments only tried to carry out this policy. The plea that the best was done in a time of emergency has some weight. At the same time it has to be remembered that paying out a subsidy to the fishermen or producers may have cost much less as regards administration, and we do not know the real cost to the country of this venture. The necessity of having efficient technical officers to carry out any such ventures in the future is made apparent. That is where the scheme principally failed.

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76. This Commission has also received representations from a Ceylonese Company (see File A/19), which indicate that firms with limited capital find great difficulties in making tenders, and that Ceylonese firms are much affected by this. One of the principal complaints was that the time limit fixed in the tender was too short for arrangements to be made with firms abroad. Most of the instances quoted fell outside our period of investigation, and though representatives of the firm were heard, no substantial matter arose for inquiry. The point made was that the short time limit worked to the advantage of the person who stocked the kind of article required, and who had thus a virtual monopoly as regards tenders. Allegations were also made that all Government Departments did not give reasonable facilities in the way of Letters of Credit.

77. The suggestions made by this Company may be mentioned :—

(1) that the system of calling for tenders be adopted by all Government Departments, including those still under the category—Essential Services;

(2) that tenders be called for very much in advance of the Delivery Dates required;

(3) that, as in the case of the Colombo Municipality, Departments who have budgeted a programme of supplies and/or works should notify the Trade in advance of their Annual Requirements;

(4) that in order to prevent impractical stipulations being made, a conference of Representatives of the Trade be called by the Department concerned, to receive suggestions and discuss matters;

(5) that the name of the successful tenderer should be notified, on the award being made, through the medium of the Local Press, the Ceylon Trade Journal and the Government Gazette, stating the relevant particulars and the rate or amount per unit;

(6) that the Trade be given the facility of a Letter of Credit by all Government Departments.

78. I do not propose to make any comment on these suggestions, as the evidence relating to them is meagre, but the object of these suggestions is said to be to help Ceylonese firms with limited capital to compete with non-Ceylonese firms, and so to secure to Government the benefits of healthy competition, and the advantage of obtaining contracts at more reasonable rates. In my opinion the suggestions are worthy of consideration.

F. Stores and Supplies

79. The rules regarding the procurement of Stores and Supplies required by the several Departments of Government are set out in Chapter 9 of the Financial Regulations—(pages 149 to 181). The Regulations may be briefly stated as follows :—

(1) All stores required by Government Departments must be obtained from the Government Stores—F.R. 801 (i). Our information is that this does not apply to the Railway. An exception is made in the case of emergency purchases, covering sanction for which must subsequently be obtained from the Permanent Secretary—F.R. 801 (iv).

(2) Where the stores required are not mentioned in the Government Stores Price List, they must be obtained through the Superintendent of Stores on a special indent—F.R. 816 (i).

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(3) Where stores not mentioned in the Price List are estimated to exceed Rs. 5,000 in value, they may be purchased by the Department requiring them on tenders invited through the particular Ministerial Tender Board—F.R. 880.

80. The Auditor-General has criticised the present arrangements and suggested the following improvements :—

(1) Government Departments engaged in commercial undertakings are sometimes in a position to purchase commodities at rates which are advantageous if accepted on the spot without calling for tenders. The Auditor-General suggests that Heads of such Departments might be given the discretion to purchase commodities up to a certain value as and when opportunities occur.

(2) There are now 13 Tender Boards in all, each Ministry having its own Tender Board. The Auditor-General is of opinion that the degree of integrity expected from a central Tender Board would be greater than could be expected from several individual Boards. He recommends that tenders involving sums of Rs. 10,000 and over should be dealt with by a central Tender Board while Ministerial Tender Boards could deal with tenders ranging from Rs. 5,000 to Rs. 10,000.

(3) The interests of economy and good administration would, in the opinion of the Auditor-General, be better served by the establishment of a Central Stores Board on the lines of the Stores Control Board operating in New Zealand. The functions of this Board will be to regulate the purchase, custody, distribution, use, disposal and inter-departmental transfer of stores. The Stores Control Board in New Zealand is presided over by the Minister of Public Works and this Board has at its disposal information regarding the requirements of the major departments of Government and consequently is in a position to arrange for indents in bulk, thus securing more economic rates of tender. The Auditor-General comments that the question of stores control appears to be on a higher level in New Zealand than it is here.

(4) The Annual Departmental Survey prescribed by F.R. 858 was originally designed for the comparatively small stocks carried by Government Departments in the old colonial days. The Auditor-General suggests that provision should be made for a continuous survey of stores, especially in large departments, by Departmental Stock Verifiers. These officers should have a technical knowledge of the stores, and a continuous check carried out by them would be more efficient and valuable than the work of an annual Board of Survey.

81. The Superintendent of Stores has stressed the following points regarding the procedure adopted under the new Constitution of having a separate Tender Board for each Ministry. The defects of the present arrangement are as follows :—

(1) Under the existing regulations, the Superintendent of Stores has to attend about one Tender Board meeting for a day, while a centralized Tender Board would have met about once a week.

(2) A more serious weakness is the competition that now exists between the various Tender Boards for the same class of articles.

(3) Decentralization of Tender Board work will involve Government in extra expenditure. F.R. 880 (iv) gives the discretion to the Heads of large Departments either to invite tenders through the Tender Board of the Ministry or to invite quotations locally for works to be done on agreement at rates not exceeding those at which the work could be carried out Departmentally. The Superintendent of Stores is of opinion

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that Departments that are in a position to act under this regulation are liable to grow lax in indenting for supplies from abroad with the result that all stores hitherto imported at very favourable prices from abroad will gradually be obtained on local tender at considerable extra expenditure.

(4) F.R. 42 gives the discretion to the Ministerial Tender Boards of the Marketing Department, Education Department and Agricultural Department to call for tenders for construction of buildings required by them. The Superintendent of Stores suggests that as the Tender Board of the Ministry of Transport and Works has a specialized knowledge on the subject, all tenders for Government buildings should be handled by one Tender Board.

(5) There should be one Tender Board for stores and services, except in cases where the service is one not dealt with by other Departments, for example, diets to hospitals and the supply of arrack to the Excise Department.

82. In considering the suggestions made by the Auditor-General and the Superintendent of Stores for the improvement of the present Regulations regarding the procurement, storage and verification of stores, it would be well for us to bear in mind that the scope of the activities of Government has expanded considerably during the last few years. Government is today taking an active, if not a leading part in activities calculated to increase the National Wealth of the country. The departments of Government engaged in this work are now active in expanding their activities and it is clear that the procurement of stores and supplies at economic rates is of prime importance if fraud, extravagance and waste are to be avoided. During the Financial Year 1938/1939, the cost of stores imported by the Superintendent of Stores was Rs. 9,558,134; in the Financial Year 1947-1948 the cost was Rs. 40,061,695.

83. The methods adopted in the system of purchase, inspection and storage of stores offer a vast field for Public Servants entrusted with these activities to indulge in corrupt practices. Any suggestions for improving the present system will have to be viewed by this Commission from this angle. It would certainly be easier for Government to keep a check on the activities of a single Department or Ministry rather than on the activities of 13 different Tender Boards. In fact, prior to the introduction of the new Constitution, there was only one Tender Board under the Treasury.

84. The question of concentrating in the hands of a single Department the business of obtaining the supplies required by Government was considered in England in 1918 by the Machinery of Government Committee, under the chairmanship of Lord Haldane. This Committee recommended the establishment of a Ministry of Supplies in order—

(*a*) to eliminate competition between Departments;

(*b*) to ensure that prices paid and conditions imposed under Government contracts are upon uniform lines;

(*c*) to secure economies in the use of technical staffs.

The Committee added : " The imperfect allocation of functions between supply departments which prevailed on the outbreak of the war has resulted in very considerable waste of effort and in extravagant expenditure."

85. I think that the establishment of a Ministry of Supplies will tend to eliminate a great deal of opportunities for fraud and corruption. The procurement of stores and supplies should be under this Ministry; and

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the tenders, if dealt with by the Tender Board of this Ministry could be more easily controlled and supervised. I think the case of centralization in this connection should be seriously considered.

86. The establishment of the new Ministry would enable the procurement of stores to be dealt with at a higher level than is the case today. The Minister or the Permanent Secretary would be in a position to insist that all departments plan their activities in advance and forward to him a detailed list of all their annual requirements. He will then co-ordinate the requirements of all the Departments of Government and arrange for indents in bulk. The inspection of stores that are obtained by the Ministry would be centralized. Under the present system the inspection of stores obtained under F. R. 816 (i) is carried out by each individual Department and the opportunities for corruption are thereby multiplied.

87. I have necessarily considered this matter from the angle of the checking of bribery and corruption. It is no part of my function to offer advice as regards administration, and I do not do so, but in the creation of any administrative machinery, a very active watch should be kept to see that the opportunities for bribery and corruption should be reduced to a minimum. Intensification of supervision is likely to be of the utmost value, and the suggestion that the stock verification should be continuous, and not merely annual is worthy of careful consideration.

88. The creation of a Central Stores Board should also result in better and more adequate conditions in the warehousing of stores. There is every reason to think, that the warehouses available are unsatisfactory both as to space and as to design. If the work is centralized better arrangements can be made as regards storage, and more effective steps may be taken to prevent loss.

CHAPTER II—EXISTING ANTI-CORRUPTION MEASURES

A. Administrative Measures

(1) *Preventive.*

89. These are laid down in the Government Manual of Procedure, Chapter 4—Regulations Governing Conduct of Public Officers.

Regulation 207 states that Public Servants should readily assist all persons visiting offices on business.

Regulation 211 states that no Public Servant whose remuneration is fixed on the assumption that the whole of his time is at the disposal of Government, shall, except with the approval of the Permanent Secretary, take part in affairs of any commercial, business or agricultural undertaking.

Regulation 217 prohibits the employment by an officer of Government labour on private jobs of any kind either during or out of official hours of work.

Regulation 231 requires every Civil List officer on his first appointment to furnish particulars of immovable property in Ceylon, and mortgages, shares in companies carrying on business in Ceylon and financial interests in commercial or business undertakings in Ceylon owned or held by him and his wife at the time of such appointment.

Regulation 234 provides that Ceylonese officers are permitted to acquire and to hold land or leases of land. Acquisitions by gift or purchase require the sanction of the Government Agent *before* the acquisition takes place.

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Acquisitions by inheritance, dowry or devise do not require such prior sanction but the officer may later be ordered to divest himself of them. The regulation applies to acquisitions in his own name or that of any other persons, including members of his family, and the acquisitions made by or on behalf of the wife as her own separate property.

Under Regulations 236 and 237 an officer may make investments, including purchase of shares, when his public duties do not conflict with his private interest. But he must report these through the Head of his Department to the Permanent Secretary.

Regulation 239 provides that the previous sanction of the Head of the Department shall be obtained before investments on mortgages can be made either by an officer or his wife.

Regulations 292 and 293 provide that serious pecuniary embarrassment, if occasioned by imprudence or other reprehensible cause, will be held to be an offence as affecting the respectability of a Public Servant and the trustworthiness of the officer.

Under Regulation 294, an officer becoming a party to accommodation bills, including promissory notes, whether this results in pecuniary embarrassment or not, will be subject to the same consequences.

(2) *Procedural.*

90. The following punishments may be imposed on an officer—dismissal; compulsory retirement for inefficiency; reduction in rank or loss of seniority; reduction of salary; suspension; stoppage, reduction or deferment of increment; severe reprimand; fine; and reprimand, censure or other departmentally recognized minor punishment.

91. The steps to be taken when it is proposed to take disciplinary action against an officer for misconduct are laid down in the Public Service Commission rules dated the 6th January, 1949.

I. *Disciplinary action against Civil Servants and all Pensionable Officers whose emoluments exceed £600 or Rs. 9,000 per annum.*

(A) (1) Permanent Secretary holds preliminary inquiry.

(2) Statement of charges and the allegations on which the charge is based are served on the officer. (Attorney-General may or may not be consulted.)

(3) The officer is entitled to inspect all documentary evidence used against him.

(4) Officer to reply in writing before a specified date.

(5) If the reply is unsatisfactory, papers are forwarded to the Public Service Commission.

(6) Public Service Commission appoints a Tribunal which fixes the date for inquiry.

(7) The officer may at the discretion of the Commission be represented by a member of the Public Service or by a lawyer.

(8) Witnesses, if any, may be cross-examined and the officer may cite witnesses for the defence.

(9) Evidence is not necessarily on oath but proceedings are recorded.

(10) Officer may give evidence.

(11) The findings of the Tribunal and the record of the proceedings are transmitted to the Commission.

(12) Commission decides punishment to be inflicted.

(13) Commission's findings, but not the reasons therefor, are conveyed to the officer.

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(B) Where the misconduct is not serious, the above procedure need not be followed, and an investigation of a less formal nature may be held. Punishment will be inflicted by the Public Service Commission.

II. *Disciplinary action against Public Officers other than officers of the Civil Service whose pensionable emoluments exceed Rs. 2,500 per annum but do not exceed £600 or Rs. 9000 per annum.*

(A) (1) The Head of the Department frames charges in writing against the officer after holding a preliminary inquiry if necessary. (Attorney-General may or may not be consulted.)

(2) The charge is served on the officer.

(3) An opportunity is provided to enable him to exculpate himself.

(4) The Head of the Department or an officer holding power of inquiry delegated by the Public Service Commission holds an inquiry at which the accused officer will be present and allowed to cross-examine witnesses.

(5) Accused officer is allowed access to all documentary evidence and may adduce witnesses in his defence.

(6) The officer may at the dircretion of the Head of the Department be represented at the inquiry by a member of the Public Service.

(7) If the Head of the Department considers that more serious punishment than reprimand, fine, suspension, stoppage, reduction or deferment of increment is called for, he will forward to the Permanent Secretary a copy of the proceedings together with his findings and recommendations.

(8) The Permanent Secretary will forward the papers to the Public Service Commission with his own recommendation. The Commission decides punishment to be inflicted.

(B) (1) Where misconduct is not serious enough to warant more than a reprimand, fine, suspension, stoppage, reduction or deferment of increment for a period not exceeding one year, the Head of the Department will investigate the matter in such manner as he thinks proper.

(2) The accused officer should be informed of the case against him and provided an opportunity for making his defence.

(3) The punishment inflicted by the Head of the Department will not require the approval of the Permanent Secretary or of the Public Service Commission.

III. *Disciplinary action on Pensionable Officers whose emoluments do not exceed Rs. 2, 520 per annum.*

(A) The Head of the Department may dismiss or otherwise punish for neglect or misconduct, officers of this class. The procedure will be the same as in II, (A) and (B).

(B) Officers below the rank of Heads of Departments, but holding powers of summary punishment delegated by the Public Service Commission may reprimand or inflict a fine not exceeding one week's pay on an officer guilty of minor act of misconduct.

(C) The Deputy Secretary to the Treasury will decide the punishment to be inflicted where the officers are members of the Combined Services (Accountants', Clerical, Assistant Clerks', Stenographers and Shroffs.)

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IV. *Disciplinary action on Non-pensionable Officers.*

(1) The procedure to be followed in II (A) and (B) will be observed in cases of officers whose emoluments exceed £600 or Rs. 9,000 per annum but no punishment other than a reprimand can be inflicted without the approval of the Public Service Commission.

(2) Procedure prescribed in II (A) and (B) will be observed if punishments (including dismissal) are inflicted on officers whose emoluments exceed Rs. 3,600 per annum but not £600 or Rs. 9,000.

(3) Heads of Departments may dismiss or otherwise punish officers whose emoluments do not exceed Rs. 3,600 per annum.

V. *Retirement for General Inefficiency.*

(A) Civil Servants and Officers whose emoluments exceed £600 or Rs. 9,000 per annum.

The Permanent Secretary will recommend to the Public Service Commission whether an officer be compulsorily retired or otherwise dealt with for general inefficiency. Before doing so, he shall procure from the Departments in which that officer has served statements as to his efficiency or inefficiency.

(B) Officers other than Civil Servants whose emoluments exceed Rs. 2,520 per annum but not £600 or Rs. 9,000.

The Head of the Department may defer increment for one year in cases of general inefficiency. But where he considers that the officer should be compulsorily retired or otherwise dealt with the procedure in V, (A) should be followed.

(C) Officers whose emoluments do not exceed Rs. 2,520 per annum.

The Head of the Department may retire the officer for inefficiency.

The Public Service Commission Rules do not appear to contemplate dismissal in cases of general inefficiency.

VI. *Prosecution of Public Officers.*

(1) Where an inquiry discloses that the criminal law might be set in motion, the Attorney-General must be consulted. If he does not advise prosecution, then the Departmental charges to be framed against the officer must be sent to the Attorney-General for his approval.

(2) Where an officer whose emoluments exceed Rs. 2,520 is convicted on a criminal charge, the Public Service Commission will decide whether that officer should be dismissed or subjected to a lesser penalty on account of the offence for which he would be convicted.

(3) Where an officer whose emoluments do not exceed Rs. 2,520, the Permanent Secretary will decide whether he should be dismissed or subjected to a lesser penalty. (In cases of the Combined Services the D. S. T. will make the order.)

VII. *Public Service Commission Rule 57 reads as follows:—*

An officer acquitted of a criminal charge shall not be dismissed on any charge upon which he has been acquitted, but nothing in this Rule shall prevent his being dismissed or otherwise punished on any other charge arising out of his conduct in the matter, provided that they do not raise

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substantially the same issues as those on which he has been acquitted; and the usual procedure prescribed in the Rules relating to dismissals and other punishments may be adopted for the purpose.

B. Legal

92. Under the Penal Code (Cap. 15) offences by or relating to Public Servants are mainly governed by Chapter IX. The most important section is Section 158 which penalizes a Public Servant who takes a gratification other than legal remuneration in respect of an official act. It is to be noted that the burden is on the prosecution to prove not only the taking of the gratification, but also to prove that the gratification was taken as a motive or reward for doing or forbearing to do any official act, or for showing favour or disfavour to any person, or for rendering any service or disservice to any person with the Legislature or the Executive Government or with any Public Servant as such. This in my opinion places an unnecessary burden on the prosecution, and many cases break down on this point. No doubt the prosecution must prove the taking of the gratification, but once that is proved the burden of proof relating to motive or reward should be placed on the accused person.

93. It is to be noted that as far back as 1916 in England the Prevention of Corruption Act was amended in this direction, and once the taking of the gratification was proved, the gratification was deemed to have been taken corruptly or as an inducement or reward as set out in the main act until the contrary is proved. (See 6 & 7 Geo. V. c. 64).

94. The Indian Act II of 1947 contains similar provisions. I think it is important that the presumption of corruption should be definitely against the accused person. Gratifications are usually taken in so secret a manner that it is extremely difficult to prove even the fact of the taking. The circumstances under which the gratification was taken are best known to the accused person, and it is incumbent that he should prove that it was not taken corruptly.

95. One other set of words requires amendment, viz., the words "in the exercise of his official functions." See the recent case of Tennekoon *v.* Dissanayake, 50 N.L.R. 403, and earlier cases. It should be made clear that these words include not only powers which the Public Servant actually possesses, but also powers which he professes to possess, or which he is believed or even imagined to possess.

96. Sections 159 and 160 carry the matter a little further and penalize the taking of a gratification by any other person to influence a Public Servant and for the exercise of personal influence with a Public Servant, and Section 161 penalizes the Public Servant who abets offences under Sections 159 and 160.

97. Section 162 penalizes a Public Servant who knowingly disobeys a direction of the law with intent to cause injury to any person or the Government. Section 163 penalizes the Public Servant who frames an incorrect document with intent to cause injury. Sections 164 to 167 deal with special offences by Public Servants in the Telegraph or Postal Department.

98. It is to be noted that there is no section which definitely penalizes the giving or the offering of a gratification, and apparently the framers of the Indian Penal Code (on which our Penal Code is based) thought that he should not be penalized. But Section 102 of the Code came into operation, and it was held that the giver or the offerer was liable as an abettor.

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99. It would not be practicable to deal with the matters which can come under the head of corruption, but it may be noted that under Section 392, criminal breach of trust by a Public Servant carries the enhanced penalty up to a maximum of 10 years, and under Section 392 (*a*) the same applies to criminal breach of trust in respect of money or the balance of money.

100. Besides these, the Excise Ordinance under Section 46 (2) deals with certain offences in connection with the Excise Department, and Section 62 of the Police Ordinance deals with offences by Police Officers. There were probably other provisions by the Defence Regulations, *e.g.*, Regulation 10 of the Defence (Food Control Supplementary Provisions) Regulations 1943.

101. There are also sections in the Forest Ordinance (Section 62), Irrigation Ordinance (Section 20), Customs Ordinance (Section 4) relating to those Departments.

102. It may be noted that Ordinance 49 of 1943 has also been enacted to deal with the question of prevention of corruption in the case of public bodies. The term "public body" means any Municipal Council, Urban Council, Local Board, Sanitary Board, or Village Committee, and includes any standing or select or other committee of any such Council, Board or Committee. The anti-corruption law is thus made applicable to members of local authorities. This matter falls outside the scope of our inquiries, but it may be noted as a step in the right direction.

CHAPTER III—PROPOSED CHANGES

A. The Attitude of the General Public

103. One important aspect in regard to bribery and corruption is the attitude of the public. It is unfortunately true that at the present time the public is indifferent and apathetic. They regard bribery and corruption as inevitable, and many persons are willing to take an easy way out of their difficulties, by giving gratifications to Public Servants. That this applies even to business men can hardly be in doubt, and instances have been prominently brought to our attention. The fact is that there is no real repugnance to bribery and corruption. Even those who do not resort to illegal methods themselves are not willing to undertake the burden of exposing these matters. For example, the bribery and corruption which exists in the offices of District Judges and Magistrates, and in Fiscals' offices, could have little chance of flourishing, if the proctors took an active part in bringing these evils to light. That the matter is within their knowledge is undoubted, and specific instances could have been easily discovered, if any combined efforts were made to stamp this out. It is also clear that business men have sanctioned the giving of bribes, in order to facilitate the running of their businesses, especially in times of emergency. I am afraid the tendency has been to regard the public officer who became rich through illegal practices as clever or at least fortunte, as long as he has not been found out. Generally, complaints are made, only when a person has not attained his object, or where subsequent differences have arisen between the giver and the receiver.

104. It has been put to us with great force that the chances of any improvement are not bright, as long as the public refuses to co-operate. The public cannot expect to have a better Public Service than that which it is willing to tolerate. Further, the Public Service is recruited from the general public, and it cannot be hoped that the former will have a higher moral standard than the latter.

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105. At present there is in fact a higher standard of conduct expected from Public Servants, in this very matter of bribery and corruption. It is a noteworthy fact that in the United Kingdom there have been for a considerable time Prevention of Corruption Acts relating to servants of public bodies. But as far back as 1906, the punishments meted out to these Public Servants were also extended to all agents who accepted gratifications in relation to the affairs or business of their principles. Previously, under the civil law, principals had been able to repudiate contracts brought about by gratifications, and to recover secret commissions obtained by agents. In 1906, however, the punishments under the criminal law were extended to agents of private persons or firms or companies as well as to servants of public bodies. There had been a great outcry about the existence of bribery and corruption in every walk of life and Parliament recognized that the evil existed, and took active measures to counter the evil.

106. I cannot help feeling that this represents a correct approach to a serious problem. There is no doubt that the giving of gifts to a person in authority is ingrained in our customs and traditions. Every effort must be made to root out this idea, and to clean up not only our public but also our private transactions. Bribery and corruption in all its aspects must be regarded by every man as a vicious and unwholesome thing, and repugnance to illegal practises should be instilled into the mind of the public.

107. This work is necessarily slow and unproductive at first. Much can be done by our schools to inculcate into the minds of children a real repugnance to corruption in any form. Unfortuntely it is obvious that this work is not being well done. There are maxims such as " honesty is the best policy ", but these insist upon the word " policy, " and in the present stage of our development it must be clear to the young mind that honesty as a policy does not always pay dividends. In fact, with us the dishonest man more often flourishes like the green bay tree, and the honest man has to struggle against many adversities. Anyway the insistence on the commercial value of honesty is not very convincing, when our commercial life itself does not attain that standard of perfection.

108. There is another unfortunate feature, in that, many of our teachers are impressed with the notion that in their employment bribery and corruption play so large a part. I have already commented on this (see para. 11).

109. It would be different if conditions were created in which dishonesty actually did not pay ; where the chances of detection were more frequent, and the penalties imposed followed quickly and were commensurate with the offence. I think a policy which achieved these objects is the most feasible one at present.

110. Much may, however, be done by propaganda and organization. In all schools the morale of the students should be built up, so as to create a real repugnance to corruption in any form. Where religious teaching is given in a school, the matter of honest conduct should be insisted on, and in schools where there is no religious teaching, the building up of character particularly in this direction should be a part of the curriculum.

111. As regards the adult public, every endeavour should be made by propaganda to create aversion against bribery and corruption in its many forms. At the entrance to every public office, which deals with the public directly, there should be well designed posters in the three languages directed against the evil, and specifically warning against the payment of any money, without an official receipt being given, and the payment of bribes in particular. If money is demanded for any purpose, the posters should indicate that any person who is doubtful about it, may refer the

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matter to a named superior officer at once for verification. I have already indicated that a well organized Reception Room should be established at or near the entrance to every office (see paras 43 and 44). Reception should be in the hands of Senior Clerks and Junior Staff Officers who are in a position to be of help and assistance to every visitor, and are in telephonic communication with the rest of the office ; and can direct the visitor to the proper quarter. These officers should function in rotation. Interviews even with the Head of the Department should be made as easy as possible, and, if necessary, special hours in the week may be allotted for that purpose. It should be made practically impossible for a visitor to be met in the first instance by peons or other minor officers.

112. There are many directions in which the general public may help, but perhaps the most fruitful will be the formation of a Society like the Bribery and Secret Commissions Prevention League of England, 56, Ennismore Gardens, London, S.W. 7. The main objects of the League are perhaps wider than is possible in Ceylon, but they may be adapted to Ceylon, and are as follows : —

> " To create and maintain a public opinion adverse to corrupt trading in any form ; and to let it be widely known that the giving or receiving of or offering to give or receive a corrupt commission of bribe is as dishonest as theft, or embezzlement, and is punishable by law.
>
> " To educate those people who are most susceptible to temptation, and to advise all and sundry of the penalties of breaking the law.
>
> " To hold public meetings to bring the subject prominently before public attention, and to secure the support of the Press.
>
> " To establish branches in the principal trading centres.
>
> " To publish and distribute literature setting forth the results of trials and convictions under the " Prevention of Corruption Act " and judgments or decisions bearing upon the matter.
>
> " To obtain counsel's opinion, if necessary, on any point which may be raised in connexion with the Act ; and, at the discretion of the Council, to advise members of the League whether cases which they may bring before it are breaches of the Act, and if so, whether a prosecution should be undertaken.
>
> " To inquire into the cases of the giving or accepting of secret commissions, or of blackmail, bribery, or corruption, and if thought advisable, to prosecute under the Act. "

113. I think the chief aim of such a Society would be to create an atmosphere, and by propaganda or other means, to prevent bribery and corruption. A subordinate but not unimportant function will be to help in bringing offenders to book.

114. It is of the utmost importance that this Society should be well organized, and should be in the most reliable hands. A useful beginning would be for established bodies, such as Chambers of Commerce and kindred bodies interested in business or planting, professional associations such as the Bar Council or Law Society or Medical Council, and public bodies such as the Y.M.C.A. and the Y.M.B.A. to meet and consider the nature of the constitution needed, and the steps that may best be taken. What we need are the best brains and the highest moral characters to be the representatives of such a Society. One or more of such bodies may take the initiative in this respect. There is no doubt that such a society, if well run, would do a vast deal of good. The Society will be able to keep

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the Government advised as to necessary changes in the law or procedure. It will play a useful part in the way of propaganda. It can help by advice those who wish to expose breaches of the law. It can establish branches in those centres where it is desirable that there should be branches.

115. I think it should be the duty of the Government to give all assistance to a properly formed Society of this kind, if necessary to give a grant to it to ensure its permanence, and if possible to provide it with an office, where it can function. No doubt the Society will be most efficient, if it can stand on its own feet, but at the start at any rate the Government should take steps to foster its growth. That a Society of this kind can do a healing work against corruption is undoubted; and it is important that it should have an active and vigorous life. It will at any rate keep the abhorrence of bribery and corruption prominent in the public mind, and can help to keep a careful watch on the known danger points. The Society should play an active and not merely a passive part. There should be a constant policy of propaganda devised by leaflet, poster, broadcast, or other means. The annual or periodical reports should be given great publicity, and every criticism levelled against the existing system should be carefully scrutinized by the public and by Government. The aid of the Press should also be availed of.

116. I have tried to emphasize the importance of the education of public opinion. The person who wishes to expose the evils mentioned should not be looked upon as doing an improper or unnecessary act and, in fact, reasonable immunity should be given to those who are willing to give evidence. Under the terms of this Commission, certain immunities are given to those who give evidence, and similar immunities should be extended to those who in the future come forward to expose these evils, not only before Commissions of this kind, but also before the regular Courts and at Departmental inquiries. If necessary a free pardon should be given to those who give information or evidence as regards their own part in the transaction. This will particularly apply in the case of the giver of a bribe. There has been a controversy as to whether the giver or the receiver is the most to be blamed in this connection ; but from the point of view of this Commission, it is incumbent to find out means of preventing bribery and corruption in the Public Service. There must be at least two parties to any corrupt transaction, and perhaps that is at least one too many. I think it will be worthwhile to encourage the giver to come forward and provide the evidence. At present he is too often deterred by the fear that he will also be subjected to the criminal law as an abettor.

117. I do not wish to create the impression that all or most officers in the Public Service are corrupt ; for, that is obviously not the case ; but I am of opinion that there is a great body of bribery and corruption in the Public Service, and I have indicated that in some directions a considerable loss to Government is the result. That the Public Service as a whole has not pulled its weight to check this evil is also apparent. There has been too much of a tendency to adopt a fatalistic attitude, and to say that little or nothing can be done. Some steps are needed to pull the Public Service out of its lethargy. If the evil is to be combated, it will not do for anyone to sit still and take no action. Public opinion if properly organized can do a great deal of good, but the more effective and immediate results must come from inside the Public Service itself ; for, it is the Public Servants who are or should be aware of the specific cases where investigation is necessary.

118. It is of the utmost importance, however, that the public should not for a moment tolerate the state of affairs that actually exists ; and that the public should take an active part in tracing out the cases and bringing the offenders to justice. There is unfortunately at the present moment

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no organization whose business it is to deal with these matters, and to advise those who are perhaps reluctant to make complaints against public servants to those actually in office. The creation of an efficient private organization to deal with these matters is of paramount importance.

B. Amendment of the Law

119. It is clear that the law as it now exists is inadequate and unsatisfactory. I have already referred to two matters affecting Section 158 of the Penal Code (see paras. 92 to 95). Under that Section the prosecution has to prove not only that the accused person, being or expecting to be a public officer, accepted or obtained or agreed to accept or attempted to obtain for himself or any other person any gratification whatever, other than legal remuneration, but also that he did this as a motive or reward for doing or forbearing to do any official act, or for showing in the exercise of his official functions favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Legislative or Executive Government of Ceylon, or with any public servant as such.

120. I have already pointed out that amendment is needed in two particulars—

(*a*) there should be a proviso altering the burden of proof. Once it has been established that the accused person has accepted or obtained or agreed to accept or attempted to obtain the gratification, it should be presumed, until the contrary is proved, that he did so as a motive or reward as set out in the Section or for the other purposes set out in the Section. In other words, the burden should be cast on the accused person to prove the honesty or the legality of the transaction. The English Act of 1916, and the Indian Act 2 of 1947 have established such a presumption, and imposed such a burden on the accused person, who is obviously the person who knows the transaction best, and can most effectively explain it. I do not think any undue hardship is caused to the accused person in this connection;

(*b*) a further difficulty arises by the use of the words "in the exercise of his official functions." Where a gratification has been accepted for doing an act which is not strictly within the official functions of the public servant, apparently there is no offence committed under the Section. I do not think the legislature intended that. No doubt, it must be proved that the act was an official act, and not an act done as a mere private citizen ; but if the public servant professes to be able to do the act as an official, or the giver of the gratification thinks, even mistakenly, that the public servant possesses the power to do the act ; the offence should be complete. The Section should be amended accordingly either by a change in the words used, or by the enactment of an explanation. At present the position is very unsatisfactory.

121. The mere amendment of Section 158 will not, however, be sufficient to meet the situation.

(i) 122. For some reason which is not obvious to us our Penal Code contains no provision, similar to Section 165 of the Indian Penal Code. The latter section penalises the public servant who accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration he knows to be inadequate, from any person concerned in any proceeding or business transacted or to be transacted by such public servant. The present must be of value, and not trivial, or such as it would be churlish to refuse. Here

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also a corrupt motive is needed and Act 2 of 1947 in India raises the presumption of corrupt motive where the fact of the acceptance, etc., of the valuable thing has been established, and the burden of proving that the motive was not corrupt is placed on the accused person. This is a necessary amendment.

(ii) 123. But this will not carry the matter a great deal further. There should be penalties imposed upon a public servant who is proved to be, by himself or by any other person on his behalf, in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property, disproportionate to his known sources of income. At present there is no Section of our criminal law which hits at this evil; and in the course of these inquiries we have discovered instances of this evil. It should be incumbent on an accused person to explain all undue accumulations of money and purchases of property. He is obviously the person who can best explain how he acquired the wealth, and if he cannot give a satisfactory explanation, that should be evidence of a criminal offence, which can be punished by imprisonment or fine, or both these penalties. This will be an effective deterrent to the exercise of bribery and corruption. In conjunction with this, there should be effective steps taken to compel the disclosure of assets by public servants. I shall deal with this later.

124. In my opinion, this is a much needed amendment. It will be open to the Legislature, either to make this a substantive offence in itself, or else, on the model of Act 2 of 1947, Section 5, to make it a valid ground for holding that the accused has been guilty of " criminal misconduct in the discharge of his duties." This is a new offence set up by the Indian Act, which includes —

(*a*) *habitually* accepting, etc., gratifications under the terms of Section 161 of the Indian Penal Code,

(*b*) *habitually* accepting, etc., any valuable thing under the terms of Section 165 of the Indian Penal Code,

(*c*) dishonestly or fraudulently *misappropriating* or otherwise *converting to his own* use property *entrusted* to him or under his control as a public servant, and

(*d*) by corrupt or illegal means or by otherwise abusing his power as a public servant, obtaining for himself or for any other person any valuable thing or pecuniary advantage. The maximum penalty in each case is seven years imprisonment.

125. The important point is that under Section 5 (3) of the Indian Act a presumption of guilt of this new offence of " criminal misconduct in the discharge of official duty " may be based on the proof that the accused is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. And a conviction based upon this presumption alone is not invalid.

126. I advise that the Ceylon law should also be amended in the same direction.

(iii) 127. In India it has been found advisable to make offences under Section 161 and of Section 165 and the new offence under Section 5 of Act 2 of 1947, cognizable offences, but as a safeguard no officer below the rank of a Deputy Superintendent of Police can investigate without the order of a Magistrate or make arrest without a warrant. I think it is important that similar offences in Ceylon should be made cognizable offences under our law. The power of investigation and arrest without warrant should not be extended to an officer below the rank of an Assistant Superintendent

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of Police. I think that will be a sufficient safeguard against any abuse of the power of arrest in particular. I shall later have reason to suggest that there should be a section of the Criminal Investigation Department specially detailed for duty in respect of offences involving bribery and corruption.

(iv) 128. I have considered the question whether the penalties for these offences should be increased, but I do not think a case for increase of the maximum penalty is called for. In the case of the new offence of criminal misconduct in the discharge of duty, the maximum penalty may be seven years imprisonment. What is needed is a quicker method of bringing the offender to justice, and the earlier determination of the trial, and greater firmness in imposing sentence.

(v) 129. There has been a suggestion that the penalty imposed should include an order to pay any illegal accretions, but, though this would be an effective deterrent, I do not think it will be easy to carry into effect. It is possible, however, that a conviction under the new offence suggested may be made to raise a presumption that the sum indicated is due to the Government, in any subsequent civil action brought by the Government, to recover any amount from the offender. I do not, however, think I can indicate any efficient method of putting this suggestion into practical effect. It is, however, an idea that is capable of development.

C. Organization of the Departments to Check Bribery and Corruption

130. I have carefully considered this aspect of the matter and have suggested some improvements which may be mentioned :—

(i) Declaration of Assets:—

131. In my opinion one of the most necessary changes is that every public servant, with the exception perhaps of unskilled labour and some minor employees, should be required to make a full disclosure of his assets and income. This should be extended to those persons who have authority over others, such as foremen and overseers. The disclosure of assets should be complete, and should cover purchases of movable and immovable property of every kind, all securities including mortgage bonds, promissory notes, shares in companies, all loans obtained or given, and every form of investment including insurance policies ; gifts of all kinds, including dowry received, property obtained by will or by inheritance. The disclosure need not include ordinary household furniture, but should include valuable articles like motor cars, motor cycles, refrigerators, or costly equipment and jewellery. For the sake of convenience articles which do not cost at least, say, half of the officer's monthly salary may be exempted. There should be a column wherein amounts spent on buildings or construction of any kind should be declared. All cash in hand or in any Bank over say Rs. 500 or Rs. 1,000 should also be declared. All winnings at horse races or other forms of speculation should also be included.

132. The declaration should apply to all officers now in service and to all new entrants. I think it will ordinarily be sufficient to obtain a declaration as at the present date. It has been suggested that the declaration should be of all assets and income from the year 1942, when the real stress of war began to be felt in Ceylon. I think, however, that this will be too cumbrous and unwidely, and may defeat the object desired. There should, however, be a power reserved in special cases, where investigation is found to be required, to call upon a particular officer to declare his assets and income from any date which may be determined.

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133. The declaration should be required annually. In the later declarations, all accretions should be revealed, and any changes in the assets should be shown, e.g., sale of property, and purchase of new property.

134. The declaration should include the assets of the wife as well as the husband, and all transactions in the name of dependants, relations and other persons.

135. It is to be noted that capital assets as well as income should be shown, and a comprehensive questionnaire should be drafted to catch up all these matters.

136. It has been forcibly brought home to my mind, that the returns made to the Income Tax Department and the assessments made by the Department as regards taxable income, will be a valuable guide as to the circumstances of the officer. The Department itself is prohibited from disclosing this information under Section 4 of the Ordinance, but where the information was made available in our inquiries from other sources, it proved to be very valuable information. The public officer may well be required to furnish to the Head of his Department, copies or short statements of the Returns he makes to the Income Tax Department and of the assessments made by the Department. I think it is possible to have these copies certified by the Income Tax Department, and this certificate should be made available free of charge. There is no change required in the Ordinance for effecting this object. I have felt strongly that this class of evidence should be readily available to all persons whose business it is to investigate or to inquire into the financial circumstances of any officer, and that investigations and inquiries are seriously handicapped in the absence of this information. Even the fact that no return has been sent to the Department is of importance.

137. There is no doubt that in certain cases the Income Tax Department has been able to trace income which has not been declared by the officer. Where a public prosecution follows, this information has to be disclosed in the Courts. But where the officer accepts the revised assessment and pays the enhanced tax, the matter remains in oblivion, and in many cases dishonesty goes unpunished in any other way.

138. Information relating to all the matters I have referred to should be treated as confidential, and should only be made available to the Head of the Department, and to any other body or person which may be appointed for the purpose of investigating or inquiring into these matters. The public officer is entitled to have his private affairs regarded as confidential, but he is not entitled to demand that privacy should be observed, which would interfere with the efficiency or the reputation of his department.

139. It is certain that the suggestions I have made in this connection will not receive universal support in the Public Service. Criticism may be directed to the point that even a public servant is entitled to his private life. I am, however, heartened by the fact that almost all Heads of Departments were not averse to, or actively supported, the suggestion that public servants should be compelled to declare their assets and income. If the Senior Officers give the necessary lead in this direction, the rank and file is sure to follow.

140. It may be remembered in this connection:—

(*a*) declaration of assets and income by public servants finds a place in other countries, such as India ;

(*b*) even in Ceylon there are provisions which interfere with the private life of public servants. Non-Ceylonese officers are restricted in the acquisition of land in Ceylon, and Ceylonese officers can only acquire and

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hold lands and leases of lands with the sanction of the Government Agent or Assistant Government Agent of the area in which the land is situate ; and the sanction must be obtained before the acquisition. Acquisitions of land by inheritance, dowry and devise do not require prior sanction ; but must be reported to the Head of the Department. All officers are permitted to purchase shares in local Companies, but these must be reported to the Permanent Secretary to the Ministry, through the Head of the Department. Officers who make local investments in mortgages have to obtain the prior sanction of the Head of the Department. This shows that the Government exercises an interference even now with the private life of the public servant. No doubt, this is based upon a desire that the private affairs of the public servant should not come into any real or apparent conflict with his public duties ; or in any way influence him in the discharge of public duties. The aim in our case goes even deeper than this.

(*c*) I think that this declaration of assets is one of the most potent checks on bribery and corruption. Where a public servant is dishonest or corrupt, it will, at some stage, be possible to obtain information about him, and for the purpose of checking the information, there will be a mass of information in the declarations. It will be extremely dangerous for a public officer to make a false initial or annual declaration; for, it will be possible at some time to discover the falsity. All wilful misstatements in the declaration should be punished with dismissal at least, and even carelessness in making statements should be punished fairly severely. At any rate the Department should be in a position to deal with any officer for his misstatements, and if necessary remove him from office without an elaborate procedure of inquiry and trial. From this point of view, the suggestion made will be valuable.

(*d*) The mass of the public servants will not, I think, hestitate to adopt any adequate measure, which will have the effect of restoring the service to the high degree of confidence and respect which it once maintained. No doubt there will be inconveniences to individuals, but an honest officer has nothing to fear from this disclosure. I do not think that new recruits will be deterred from joining the service, owing to the change in the terms of service. Once it is clear that corruption does not pay, and has too many pitfalls, the temptation to be dishonest will be reduced or eliminated, and the new recruit will grow up in the atmosphere of cleanliness in the conduct of public affairs. No doubt it will be possible even under this procedure for public officers who are dishonest to escape detection, but the way of the transgressor will be made much harder. It would be possible to say with more confidence that bribery and corruption do not pay, and starting from that point it may be possible to create in the minds of all public officers a real abhorrence for bribery and corruption in any form, and an intense desire to eradicate the evil.

(*e*) It will be the duty of the Head of the Department to consider all these declarations, with such assistance as he may be allowed for the purpose. His confidential report about any officer will be based on more tangible facts, when he has this mass of information. His annual report should also show what steps were taken to get rid of or to check all forms of bribery and corruption. There should always be in his report a section dealing with this subject. This will at the least ensure that he has directed his mind to the subject. But this alone is not sufficient. The Head of a Department should make himself familiar with the work and character of all persons employed in the Department. Personal contact with the various individuals should be established by constant inspections of the office and by other means. The Head must be familiar with all the danger points in his Department, and keep a special watch on these points, and

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take effective measures to check bribery and corruption. In the confidential reports there should be an appraisement by the Head of each Department as to the reputation of the employee in relation to bribery and corruption.

(*f*) In passing I may refer to a recommendation made by the Cadres Commission in Part VI, Chapter 60 of their report of March, 1948, that there should be an Establishment Officer in every Department, who will deal with Organization and Methods in the Department, or where the work does not justify it, an Administrative Secretary who will combine this work with other work. The duty of such an officer will be to plan the work and train the personnel of the Department. It should be a part of the duty of such an officer to undertake anti-corruption work, and it should be recognized that corruption in the office is a potent cause of inefficiency. Such an officer can do a vast deal of good, and I must endorse the recommendation of the Cadres Commission. At present there is little evidence of planning and training in the Departments. Eventually, no doubt, there will emerge a new Department or Branch to deal with Organization and Methods throughout the Service, and the experience gained in the various Departments can be co-ordinated, and made of general application.

141. I have dealt with this subject at some length because I think it important, and I wish the suggestion to have favourable consideration.

(ii) Other suggestions for change may be summed up as follows:—

(*a*) 142. Under the instructions issued by the Public Service Commission dated 6th January, 1949 (Public Service Commission Rules), provision has been made for compulsorily retiring or otherwise dealing with an officer for general inefficiency (see Rules 36, 43 and 47). It should be made clear by amendment, that a general reputation continued over a period of time of bribe taking or corruption would be regarded as general inefficiency. In this case also the fact that specific charges cannot be made against the officer should not be a ground that prevents the operation of the rule. The procedure applicable to the various classes of officers in the rules may be followed. In the case of promotion also, the fact of such bad reputation should be taken into account.

143. I have already pointed out that a bad reputation earned by a Department or an officer in this respect is a mark of inefficiency in the case of that Department or officer. Some summary action should be available to deal with officers in this respect. It is incumbent that every officer should not only be free from this vice, but also that he should so conduct his affairs and public business, that no appearance of corruption should be visible. I have already pointed out the comment made by a previous Commission in England in this respect (see para. 15).

(*b*) 144. In the drafting of rules concerning the conduct of public servants special emphasis should always be laid on the necessity to eliminate bribery and corruption. This should be given precedence even over the ordinary rules intended to ensure discipline, but of course the rules directed against corruption, and the rules to enforce discipline must be carefully planned and reconciled.

(*c*) 145. A complaint against a superior officer should not be required to be sent through the officer complained against, and should not be sent as a mere matter of routine to that officer by the Department, but only after sufficient investigation has been made. Complaints should be carefully investigated, and while wanton or malicious complaints should be

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severely punished in the interests of discipline, the person who makes a not unreasonable complaint should be assured of full and prompt consideration. The mere making of a complaint should not cause the complaining officer to be a marked man in the Department. This should particularly be the case when the complaint indicates bribe taking or corruption. The honest officer in a junior position should be encouraged to expose all corruption. Much can be done in this way to remove the evils of corruption. Further, even anonymous or pseudonymous petitions should not be disregarded, but where investigation is possible, such investigation should be made.

(*d*) 146. In the course of our inquiries we have been referred to Regulation 208 of the Manual of Procedure, 1947, whereby an act by an officer which is calculated to bring the Public Service into disrepute must be reported to the Permanent Secretary to the Ministry under which the officer is serving. I am afraid there has been a tendency to regard all complaints or charges against a superior officer or a Department as an act which brings the Public Service into disrepute. It is manifestly absurd to take this view, where the complaint is true, for the disrepute already exists and will have to be expunged by the removal of the offender. It is also not possible to take this view, when the complaint is made on grounds which at least are not unreasonable. For the complaining officer should be regarded as a person who is endeavouring to restore the good reputation of the Department. I think the language of Regulation 208 is vague and perhaps misleading, and I think it should be amended or explained more fully.

(*e*) 147. Officers should not be allowed to function in the same capacity for a long period. There is not only a tendency to decrease efficiency in this way, but also time is given to the officer to develop his own technique of corruption. Where possible, a rotation of duties should be set up, and an officer transferred from one set of duties to another after a reasonable lapse of time. I do not think this will result in inefficiency. On the contrary, the officer will have the opportunity of learning all the work of the Department. Enforcement of compulsory leave should also be resorted to, because when an officer is absent even for a short time, irregularities are most likely to come to light. I appreciate that this suggestion will be in some cases difficult to carry out, and some officers, especially technical officers, may have to be in the same job for a long time. But each Department should seriously tackle its own problem, and try to devise a scheme to meet its requirements.

(*f*) 148. I have already stressed (see paras 43 and 44) the necessity of a properly organized Reception Room in each office. This should be in charge of a Senior Clerk or, even where possible, of a Junior Staff Officer, and the duty of Reception should be one of the duties which is subject to rotation.

(*g*) 149. All payments out for work done should be carefully supervised, and an independent body of Quantity Surveyors to scrutinize the work done by test checks and final measurements should be appointed. There appears to be a prolific source of loss in this respect, and Government may well save a considerable amount by appointing these Quantity Surveyors (see para. 46). The system of checks and measurements at surprise visits should be intensified, and every contractor and inspecting officer of a Department should be made to feel that his work is constantly under review (see para. 45). These Quantity Surveyors may work under the Audit Department or the Treasury.

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(*h*) 150. Payment of wages to workmen should be more stringently supervised. The check roll should be more constantly subjected to inspection. The important rule is that in every case of payment there should be at least two officers present, the paying officer and a more senior officer, but there should be frequent visits by the Head of the Department or some officer on his behalf (see para 35). Vigorous steps should be taken to prevent the entering of fictitious names in the check roll. Every suggestion that this occurs should be promptly and vigorously investigated (see para 38).

151. As regards levies made on the workmen by officers such as foremen or overseers, workmen should be encouraged to organize themselves so as to be in a position to combat this evil (see para 36).

(*i*) 152. I have referred to certain suggestions with regard to the question of stores (see paras 79 — 88), and the appointment of a Central Stores Board (see para 88). I have also mentioned certain suggestions regarding the desirability of a Central Tender Board (see para 85). I do not wish to add anything to what I have already said. There is no question that this Commission only looks at this matter from its own particular angle, and that the subjects raised have vast possibilities which are outside our ken. I do not propose to add any recommendations on these matters, but I leave them for general consideration, as subjects which have some bearing on bribery and corruption.

(*j*) 153. Heads of Departments should take a more active part in eradicating bribery and corruption. I have already indicated (see para 40), that every Head should be familiar with the danger points in his own Department, and should indicate in his Annual Administration Report what steps have been taken to combat the evil. It may be impressed upon such Heads that the existence of bribery or corruption in the Department is evidence that the Department is not being well administered. The attitude " nothing can be done " should be changed to " everything must be done." It will be the duty of the Head of the Department and of his Establishment Officer, if and when he obtains such an officer, so to plan the work of the Department, and so to train the persons employed, that there is a maximum of efficiency and a minimum of bribery and corruption. Each Head is expected to know the needs of his Department, but it will be useful for the future that all officers should receive special Training in Organization and Methods. For this purpose classes may well be organized. At present this subject is neglected and Ceylon falls far behind the United States and the United Kingdom. Much may be learnt from their experience.

154. The Head of a Department should also be familiar with the work and character of all persons employed under him. He should also give all reasonable facilities to members of the public to interview him, especially with regard to allegations of bribery and corruption. Staff Officers too should be more accessible to the public; and more familiar with the conditions in their district or division.

155. Where a discretion is delegated to a minor official, care should be taken to find out, by test checks if possible or otherwise, whether the discretion is being honestly and efficiently exercised. This applies more particularly to the grants of licences or permits, which provide ample scope for corruption.

156. The Permanent Secretaries to the various Ministries should consider all reports made by the Heads of Departments under their authority, and help to create an effective policy directed against bribery and corruption in those Departments. It will be of advantage if all the Permanent Secretaries met from time to time to see whether any general plan covering all Departments could be devised.

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D. (1) New Institutions Proposed

157. The question arises whether the Departments as they are at present organized can cope with the extra work which will result from the adoption of the changes suggested. There is no question that the duties of the Head of a Department will be considerably increased. It is incumbent that the Head should be relieved of all work of a merely routine nature, and should devote himself to the more serious problems which the Department has to face. As I pointed out previously, the appointment of an Establishment Officer may relieve him of a great deal of work, but even so he may be overburdened. I think there is reason to suggest that a new Department should be created to deal with this subject of bribery and corruption. Even the duty of studying and digesting the new information made in the declarations of the officers as regards assets and income would entail a great amount of time and labour. In my opinion, the Head of each Department should forward the returns with his own comments to the new Department suggested. The first duty of the new Department will be to carry out any investigations that may be required in particular cases, and where occasion arises, to call for further information, if necessary covering earlier periods. The Head of each Department will also forward to this new Department all complaints and petitions with which he is unable to deal himself, and it will be the duty of the new Department to investigate all such matters, and to take such steps as are needed to get information. This new Department should be given all the powers of obtaining information as are now available to a properly constituted Commission, with the special powers granted to special Commissions. I would even suggest that the new Department should have as wide powers of obtaining information as are given under the Income Tax Ordinance (see Sections 54 to 62). The Department should have the power of getting information from all Government Departments or Officers, and from all Banks and Companies and individuals, and of summoning any person to give any evidence relating to the matter under investigation. It may order the production of all books and documents required.

158. The Head of this new Department should have judicial experience, and should have the power to inquire into all cases where charges can be framed. In fact, it should resemble in this respect a permanent Commission of Enquiry into matters affecting bribery and corruption. The Head of this new Department should be empowered to make orders for recommending to the Public Service Commission the dismissal of any public servant, or for dealing with him in any lesser way, and of depriving even officers who have retired of their right to pension or any other emoluments which are payable to them after retirement.

159. Besides the matters in which the Head of the new Department decides to deal with himself, special matters may be referred to him by the Public Service Commission. The Department itself may conduct independent investigation and inquiries.

160. In my opinion the Head of this new Department should be a person who has occupied the position of at least a Senior District Judge. Judicial experience is of the utmost importance to him in the conduct of his inquiries. But there should be an officer employed under him who has experience in administration, and in particular of the special class of work that he will have to administer. It appears to me that real experience in the Income Tax Department, for instance, would form a good background for such an officer. Such an officer should be able also to devote himself to the planning of the new Department, and making it run on the proper lines, as well as of studying and co-ordinating the various measures adopted by the Government Departments to combat corruption.

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161. As to the Staff required for the new Department, it is difficult to give an estimate. It may be started on a fairly moderate scale, and the establishment enlarged as the necessity for the increase is made manifest. But the staff should be sufficiently large to cope with the consideration of the returns of the public servants.

162. It should also be the duty of the new Department to call for improvements in legislation or in procedure necessary for effective working of this scheme. This new Department should busily apply itself to devising ways and means of combating the evil of bribery and corruption. It should have the power to report even a Head of a Department who is not sufficiently active in keeping his Department up to the mark. Changes which have been worked successfully in one Department, should be introduced generally throughout the Service. Suggestions for changes should be called for from the public and members of the Public Services. The new Department should work in close co-operation with the Audit Department, and the Treasury, and each of these Departments can be of considerable help and assistance to the others.

163. It should be recognized that the main function of the new Department should be preventive and curative. The task of bringing offenders to justice should only be an ancillary, though important, function, and all cases where specific charges are brought home to offenders should be given wide publicity. But what is needed is that the minds of the public and of members of the Service should be harnessed for combating bribery and corruption. The guiding idea is that all investigations and inquiries should be promptly and expeditiously conducted. Delays in investigation and in inquiry are apt to defeat the purpose in view. Procedure should be devised which will ensure expedition.

164. What I have tried to emphasize is that this evil of bribery and corruption cannot be combated by one individual or by one set of ideas. Only close and constant study of service conditions, and the varying needs of each Department can result in a substantial improvement. It would be a fundamental danger for the public or the Public Service to fall back, after one effort, into the previous state of apathy, but that is exactly what will happen, if no machinery is devised which ensures constant thinking and planning, and keeping this matter vividly in the minds of everyone by active propaganda. In my opinion the most effective instrument in this connection is the new Department I have suggested: and I think the need for such a Department is urgent.

165. The relationship between this new Department and the Public Service Commission should be carefully co-ordinated. In my opinion the new Department should be given a free hand in the preliminary work of investigation, but when this work is complete, the results of the investigations may be submitted to the Public Service Commission with recommendations as to whether further inquiry is needed or not, and the Public Service Commission will decide whether proceedings should be discontinued or not and where further inquiry is needed, whether the proceedings should be referred to the ordinary Courts, or whether the Head of the new Department should continue the inquiry. There should be no undue delay created by this reference to the Public Service Commission, and it is desirable, where matters are referred to the Courts that the Courts be required to give priority to these matters. It is also necessary that any inquiry before the Head of the new Department should be expeditious.

166. It is desirable that all statements to this new Department be made under oath or affirmation, and be recorded hy the Head of the Department. He should have all the powers of a Court, and should be constituted a Special Tribunal for the particular purposes indicated.

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167. The investigation need not necessarily be in the presence of the person to be charged, but will comprise all material matters connected with the charge, and all statements and explanations made or offered by the person to be charged. Before any inquiry by the Head of the new Department, all the relevant material collected should be presented to the person to be charged, and his answer should be invited; at the inquiry all the material collected may be utilized, and it should be within the power of the Head of the new Department even to allow new evidence after sufficient notice has been given to the person to be charged. The person to be charged must be present at the inquiry.

168. It should be within the power of the Head of the new Department or of the Public Service Commission to allow the appearance of legal representatives for any person at any stage of the investigation or of the inquiry. The question of whether the investigation or the inquiry should be held in public or in camera should also be decided by the Head of the new Department or by the Public Service Commission. Ordinarily I think the inquiry should be in public.

169. Where the Head of the new Department conducts the inquiry, he should have the same powers as a District Judge to impose penalties for criminal offences.

170. I have drawn a distinction between investigation and inquiry which perhaps needs explanation. The stage of investigation in my view covers the period when all necessary material is collected for the purpose of determining whether any charge is to be maintained or not. The stage of inquiry arises only after the person to be charged has been notified of the charges framed and of the material available, and has been called upon to answer and offer explanation. The proceedings thereafter should be in the nature of a trial in the ordinary Courts.

171. In my opinion the inquiry by the Head of the new Department will be regarded as more impartial and more satisfactory, than the present Departmental inquiry. The Head of the new Department will be free to a large extent of impressions and prejudices acquired by years of service together, and will be able to bring a new mind to bear on the problems presented to him. He will also be able to bring into account years of training in detecting the false and the true.

172. At the inquiry, the Head of the new Department should have either Crown Counsel or Counsel appointed by him to present the case. The person charged should also be allowed to have his Counsel.

(2) The Special Branch for Investigation

173. It is clear that any new Department such as I have suggested should be provided with the necessary machinery for investigation. As a result of my experience in this Commission, it has been forcibly brought home to me that an ordinary or even a special Commission is extremely ill-equipped in this respect. As far as we were concerned the lapse of time arising from the time limits set out in the Commission rendered the inquiries somewhat stale, and the complaints could not be expeditiously inquired into. No doubt we could have employed the services of the Police Force, but that would have been a slow and cumbrous process. There was no special Anti-Corruption or X. Branch in existence, as in India, trained to deal expeditiously with these matters. The Commission itself was not provided with the necessary machinery.

174. There can be no question that the investigation should follow hot upon the heels of the complaint. This will be the best means of bringing the offender to book, and it will also serve as an efficient deterrent against

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bribery and corruption, especially if offences of "corruption" are rendered cognizable, and offenders are liable to be arrested without a warrant, on the orders of an officer not below the rank of an Assistant Superintendent of Police.

175. There has been a tendency on the part of some Heads of Departments to contend that this work of investigation should not be entrusted to the Police. It has been suggested that the Treasury is a Department which may well be asked to do this job. I have considered this, but I do not think the Treasury is well equipped to perform this task. For one thing, any body that is given this work will have to be extremely mobile, and able either to move quickly itself or else to be in a position to start immediate investigation on the spot in any part of the Island, where an emergency has arisen. Further, the Treasury will not have officers of experience trained in the detection of offences; nor will they be in a position easily or quickly to form such a branch as will be needed. I have carefully considered the problem, and I do not think there is any body so well equipped as the Police Force to deal with this matter.

176. But it will not be possible to utilize the Police Force efficiently, in the present stage of its organization. It will be necessary to form a new Branch of the Criminal Investigation Department to deal with all anti-corruption matters. This Branch, in my opinion, should be in charge of a special Superintendent of Police. The officers attached to the Department should be carefully chosen, first for their established record of probity and honesty, and secondly for their intelligence, initiative and tact. It will have to be a handpicked Branch down to the lowest subordinate. I do not see why the selection of an officer to serve in this Branch should not be regarded as a compliment.

177. I have consulted the Chief Commissioner of Police and one of his officers who had some acquaintance with the working of the Anti-Corruption Branch in India. There is no difficulty in establishing a similar Branch of the Criminal Investigation Department in Ceylon, and the Police Force will be willing to undertake the duty.

178. It has been suggested that any special training of the officers in this Branch is not really needed by the Police Force, but I think acquaintance with the Indian system will be of advantage: and officers drafted into the new Branch proposed may well undergo a course of training in Madras or Bombay or Calcutta in the special work. I understand that the Special Branch was brought into existence in India to uncover corruption mainly among the personnel in the Military and other Services, but it was also extended against persons in civil employment under the Government of India. From all accounts, the Special Branch has functioned well and efficiently in India.

179. As far as Ceylon is concerned, the services of the Special Branch of Police may be called for either by the Head of any Department, or by the new Department I have proposed above, or even by the Public Service Commission. It should be open to the Special Branch also to investigate any complaints made directly to it, and to report the results of the investigations to the new Department.

180. Mobility and expedition should be the guiding star of the Special Branch. There should be no delays in bringing facts to light. The Special Branch should also be able, when required, to call in the assistance of other branches of the Police for any special purpose. There should be a power given to the Head of this Branch to start any investigation and, if necessary, to have access to the accounts of Banks, Companies, or individuals, in the course of the investigation.

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181 It will be necessary also for the Head of any Government Department to show expedition in any investigation he may undertake, and to call in the Special Branch as soon as he thinks their services are needed. The new Department should also move quickly once a complaint is made.

182. I strongly urge upon Government the necessity of establishing the new Department to deal with matters relating to bribery and corruption, and also of providing it with the necessary machinery for investigation in the form of this Special Branch of the Criminal Investigation Department. I am strongly of opinion that the appointment of a Commission long after the happening of the event to investigate and inquire into any particular matter will not lead to very satisfactory results. The Commission is always handicapped by the lack of the necessary machinery, and by the fact that the person whose conduct is in question has ample opportunity to cover his tracks. The evil of bribery and corruption is widespread, and there is every prospect of this evil remaining with us always, unless vigorous action is taken to counter it.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

16th September, 1949.

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APPENDIX TO INTERIM REPORT

No. R. 2.

RESPONDENT :

Baptist Mohotti,

Inspector of Schools,

Weligama.

IN CAMERA

Heard on 10th, 13th and 15th January, 1949.

Respondent : Baptist Mohotti, Inspector of Schools, Weligama.

The matter for inquiry in this case was that the respondent in or about November, 1946, demanded a gratification of Rs. 25 from S. Rajakaruna, a teacher who had been employed at the Govinna Boys' School, Kalutara, from 1.7.45 to 28.2.46, as a reward or recompense for the issue of the endorsement on Form T. C. for his services at the said school.

The respondent had been the Circuit Inspector of Schools for Kalutara, and lived at Matugama during that period. The annual examination of Govinna School was held on 31.7.46. At that time Rajakaruna had been transferred from Govinna School to Pasyala. But he was entitled to have his certificate endorsed for the period of his service at Govinna for the year (viz. 1.7.45 to 28.2.46). The annual returns produced show that the respondent had assessed his services at Govinna as satisfactory. In the case of a teacher who has been transferred to another school, but whose service at the examination had been satisfactory for the relevant period, it was the duty of the Circuit Inspector to fill up Form T. C. 22 with the necessary details, and to forward it to the teacher at the new address. The teacher then pasted the T. C. form in his Certificate Book.

For some reason T. C. form 22 filled up and signed was not received by Rajakaruna. It is hardly relevant for this inquiry to determine whether this was due to carelessness on the part of the respondent, or to the vagaries of the post. Rajakaruna was naturally agitated at the non-receipt of the T. C. form and wrote three letters to the respondent at Matugama, but the respondent had in the meantime been transferred to Colombo, and no reply was received by Rajakaruna, who had also tried to meet respondent at Matugama without success. Later Rajakaruna came to Colombo and tried to get in contact with respondent, and visited the book stall at 183 Galle Road, which was the address given by the Education Office, and also the premises in Havelock Town, about which he had got information from a peon at the office, but he was unable to meet respondent. He then wrote to respondent the letter S. R. 2 dated 28.10.46. This is admittedly a genuine document. Rajakaruna there mentioned that he had written previously and got no reply, and had been to Matugama without success. He also mentioned the visit to Havelock Town on the 19th of October, when he did not meet the respondent. This is important, as I shall presently show. He also mentioned the visit to the book stall at Bambalapitiya.

This letter was undoubtedly received by the respondent, for he returned the letter to Rajakaruna with his own entry "This form should be filled in and returned". He enclosed T. C. form 22 and wanted certain particulars to be supplied by Rajakaruna. This entry was on 4.11.46. It is to be noticed that respondent made no comment on the statement that previous correspondence had been sent by Rajakaruna and that Havelock Town was to be regarded as the respondent's residence. He did not mention what his correct address was in his entry.

I think this letter S. R. 2 confirms the evidence of Rajakaruna with regard to his earlier efforts to get in touch with respondent. Rajakaruna said that he promptly returned the T. C. form with the necessary entries by post. The earlier evidence given before notice was served on the respondent, suggested that he took the form personally to respondent. I think Rajakaruna was speaking the truth when he said he sent the form by post. This was certainly the handiest and quickest method of getting his endorsement. The respondent, however, had no recollection of receiving the form back, and nothing was done about the endorsement.

Meanwhile, Rajakaruna had started writing to the Director of Education about the matter, his first letter being dated 2.11.46, i.e. before he received the form from the respondent. No reply was received from the Director. Eventually as nothing happened, Rajakaruna decided to come to Colombo in order to meet the respondent. This was probably on a Friday or Saturday in the first half of November. Rajakaruna went to the premises in Havelock Town, which was a shed put up and left

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behind by the Military. Here he met the respondent, who spoke to him in a rough voice and found fault with him for trying to lay down the law. Respondent added that this was much delayed work and could not be done for nothing. When he was asked what he expected, respondent replied—"If you give me Rs. 25, I will write it and give you." Rajakaruna replied that he could not do so, and respondent said—"I cannot do without anything." Rajakaruna then went away. Thereafter he did not write to or see the respondent. The subsequent correspondence by Rajakaruna was with the Director of Education, and it appears in evidence that he wrote letters dated 30.11.46 and 13.12.46 and finally on 6.2.47 (S R. 3.) This last letter enclosed a copy of the letter of 13.12.46, which stated that Rajakaruna had sent several letters to respondent to get the endorsement but that these had fallen on deaf ears. He had also written three letters to the Director, but the Director had been "too silent". He asked for an interview. This had the effect of waking up the Department from its long silence, and the Director sent to Rajakaruna a copy of a letter—S. R. 1—sent to respondent on 20.2.47, as follows:—

"Mr. B. Mohotti, Inspector of Schools,
(through E. O., W. P.)

Mr. S. Rajakaruna, Govt. Boys' School, Pasyala.

Please forward to this teacher the endorsement on form T. C. 22 for his service at K L/Govinna B. for the period 1.7.45 to 28.2.46."

This was signed by or for the Director.

It is a remarkable fact that even this letter produced no result, and the T. C. form was not sent to Rajakaruna. Respondent said he has no recollection of receiving such a letter. It is, I think, incredible that the Department would have sent the copy to the teacher, unless the original had been sent to the Inspector. Nor is it conceivable that the letter would have been lost in transit through the Education Officer. This must have been received by the respondent, but he did nothing. This must indicate at least gross carelessness on the part of the respondent.

It was strongly contended that the fact that Rajakaruna did not mention the visit in November to the respondent and the demand of the respondent in his correspondence with the Director, points to the falsity of his story. Rajakaruna, however, said that he feared to mention this, because when allegations are made against superior officers, without outside corroboration, the teacher is censured or punished, and his career as a teacher is not likely to be prolonged. The evidence of H. W. Perera, Inspector of Schools, shows that on the whole there is some substance in that fear, and a teacher may well be deterred from putting forward an allegation of a demand for a gratification where he has only his own evidence to support the allegation. In my opinion, Rajakaruna was influenced by that fear, and refrained from mentioning the visit of November and what happened there.

The respondent denied the fact that he ever met Rajakaruna at Havelock Town, or asked him for a gratification. He said he had no recollection of meeting Rajakaruna, except at the inspection in July, 1945. He suggested that Rajakaruna had been instigated by N. W. Charles Appuhamy, Head Teacher at Govinna School. It is correct that respondent had made an unfavourable report against Charles Appuhamy at the 1946 inspection, and it is said that the latter was punished on that report. But Rajakaruna had left Govinna School some months before, and there is no evidence of any intimacy between him and Charles Appuhamy. It must have been clear to Rajakaruna that no adverse endorsement had been entered against himself, or he would have heard it from the Director soon after the inspection. There were no favours he could reasonably expect from Charles Appuhamy in the future. I do not think there is any substance in this contention.

The respondent also led evidence to show that he did not visit the Havelock Town premises during the relevant period. The premises in question was a military hut built of cadjan, left by the military. The respondent admits that he took over the premises in September, 1946, and from that month he stored some motor car parts in a planked room there. He said he did not go into occupation of these premises until 1.1.47, and only moved his furniture in there during the Christmas vacation of 1946. During November he did not visit the premises at all, except to preside at the S. S. C. examination at the end of November. He lived from the end of September up to the end of December, 1946, at 183, Galle Road, Bambalapitiya, above a book stall, where he shared a room with another teacher. S. D. Lanerolle, the tenant of that house was called in evidence. He supported the respondent and said that the respondent was in residence at his house from the end of September to the end of December, 1946. He was, however, not in a position to say whether the respondent had any connection with the premises in Havelock Town, and admitted that the respondent was absent from his house for weekends, and also during the week for varying periods. It was uncomfortable both for the respondent and for Lanerolle to have respondent in the book-stall house, and as an office the premises must have been most inadequate and unsatisfactory.

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Two Head Teachers of schools close to the military shed were also called: G. N. Jayawardena and M. M. Fernando. Their schools were in the same premises. Jayawardena, however, was not living on the premises during the relevant months, and his opportunities for observation were limited. Fernando lived about a hundred yards away from the shed, and could have seen. They both, however, speak of a locked room, in which goods were stored. Fernando said that spare parts of a car were taken there in September. I think the evidence of these two witnesses and Lanerolle tend to show that respondent was not living continuously in the military shed until 1.1.47. But I am not prepared to hold that the respondent did not visit the shed from time to time during the months September to December, 1946. I do not think the memory of the two teachers is to be depended on in that respect. I was inclined to think that these witnesses were anxious to help the Inspector in giving evidence.

There are certain other facts which tend to discredit respondent's story. Rajakaruna had himself visited the premises on the 19th October, 1946, on information supplied by a peon at the office. (cf. letter S. R. 2 of 28.10.46 already mentioned). It is difficult to believe that he would have discovered these premises, if respondent had no connection with them, and never visited them. Further, respondent said that he applied for permission to occupy these premises (he thought) in November, 1946, but did not move in until 1.1.47. Further there was a pseudonymous petition against respondent in November 1946, that he was using the premises for an illicit purpose. As a result the Education Officer, S. W. Sahabandu, visited the premises on 26.11.46 to find the building empty, but with a locked room. Sahabandu reported on 26.11.46 (S. R. 4).:—

> "Mr. Mohotti found it difficult to rent out a house in Colombo for his whole family. He lives alone temporarily at 183, Galle Road, Bambalapitiya. His furniture is stored up till he gets a house in one of the rooms attached to C/Havelock Town School. He has obtained permission for this, and he is paying an economic rent of Rs. 5 a month. Storing up furtniture does not mean that he resides in the place. He may be stepping in now and again to see if his furniture is safe...."

> And on 3.12.46—S. R. 5—he reported again: "Mr. Mohotti's furniture is stored in one of the temporary class rooms, not used by the pupils of the school. Mr Mohotti has had this class room planked at his own expense."

It is clear that the bulk of this information must have been received from the respondent. In evidence before me, Sahabandu said that the word used by Mohotti was "things" and not "furniture", and that he assumed it was furniture. This did not impress me.

The matter was raised again in 1948, for some purpose that is not clear, and on 30.8.48—S.R. 6—the respondent himself wrote:

> "I was in occupation of the cadjan sheds at Havelock Town till 1.5.48 (the period I was in Colombo).... The furniture was stored there before I went into occupation...."

Respondent said this refers to the taking in of the furniture during the Christmas holidays. But the language seems to go further.

I am inclined to think that there was some furniture in the premises from September 1946—the spare parts of the car may also have been there. The furniture certainly continued to be stored there after respondent left Colombo and went to Weligama. From 1.12.46, respondent has not been paid any rent allowance by Government.

I reject the evidence of the respondent that he did not visit the premises in the early half of November. I think he was on the premises when Rajakaruna visited the premises in November. I may add that the respondent's travelling claim (B. M. 3) does not necessarily contradict the evidence of Rajakaruna. At any rate, Saturday the 16th November was a blank day. It is no doubt unfortunate that the diary forms are not available now. B. M. 4 is not the copy of any original document.

I have carefully considered the evidence in the case with regard to the demand of the gratification by respondent. Rajakaruna's evidence has been supported to a great extent by the correspondence, but there is no confirmation on this point. I was impressed with the evidence he gave. He cannot be regarded in any sense as an accomplice, and I accept his story beyond reasonable doubt. I accordingly hold that the respondent in or about November, 1946, demanded a gratification of Rs. 25 from S. Rajakaruna, a teacher of Govinna Boys' School as a reward or recompense for the issue of the endorsement on Form T. C. 22 in respect of the period of his service at the said school from 1.7.45 to 28.2.46.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 4.

RESPONDENT :

J. W. de Alwis,
Sanitary Engineer (Retired),
Department of Medical and Sanitary Services,
Colombo.

IN CAMERA

Heard on 14th, 15th, 16th, 21st and 22nd February, and 9th of March, 1949.

Respondent : J. W. de Alwis, Sanitary Engineer (Retired), Department of Medical and Sanitary Services (Presently of The Manor, Waragoda, Kelaniya).

The matters for inquiry relating to this respondent are as follows viz., that

(1) in or about September, 1946, he solicited a gratification of Rs. 2,000 from H. P. de Silva as a reward or recompense in consideration of a promise to take action for his advantage in the capacity of Sanitary Engineer in connection with a contract for the construction of a maternity home at Palatuduwa, and

(2) on or about 30th May 1947, he demanded and obtained from the said H. P. de Silva a promissory note for Rs. 3,000, with the payee's name not filled in, in consideration of a loan of Rs. 2,000 to him, knowing that he was likely to believe that if he did not give the said promissory note, the respondent would, in his capacity as Sanitary Engineer take action for his disadvantage in connection with a contract for the construction of a maternity home at Palatuduwa, and

(3) between 25th May, 1947, and the 29th January, 1948, he demanded and obtained from the said H. P. de Silva the sum of Rs. 600 in addition to the sum of Rs. 2,000 lent to him, knowing that he was likely to believe that if he did not give the said sum of Rs. 600, the respondent would in his capacity as Sanitary Engineer take action for his disadvantage in connection with a contract for the construction of a maternity home at Palatuduwa.

The respondent was on the material dates the Sanitary Engineer employed under the Director of Medical and Sanitary Services. H. P. de Silva was a contractor who had entered into a contract with Government to build a maternity home at Palatuduwa in the Tangalle District. H. P. de Silva unfolds such a tangled web of deceit and oppression that for its proper understanding, it will be necessary, as far as possible, to deal with the events in chronological order. The three matters for inquiry will then fall more naturally into place.

In the Government Estimates, financial provision had been made for a maternity home to be built at Palatuduwa for 11 beds, but for some reason unknown, tenders were called for in respect of a 22-bed maternity home. Tenders closed on 21.5.46. H. P. de Silva made the lowest tender, and respondent on 17.6.46 recommended that tender for acceptance. According to the respondent, the Tender Board always gave the contract to the lowest tenderer.

At the next meeting of the Tender Board held on 23.7.46, the Tender Board ruled, in a minute to the respondent, that it was "highly irregular and subject to surcharge" to call for tenders for a 22-bed maternity home for which full money provision was not available. Thereafter the respondent conceived the idea that the situation could be met by adapting the tender, and applying the rates to fit a 11-bed home, but he did not immediately take action on this idea. Meanwhile, about 2.8.46, the respondent was informed that the Tender Board had accepted the tender of H. P. de Silva for a 22-bed home of Rs. 46,000 odd, but it was stipulated that no contract was to be signed until supplementary estimates were passed for a 22-bed home.

The respondent, however, did not wait for the supplementary estimates but about 5.8.46 he asked for the authority of the Director to enter into a contract for a 11 bed ward (letter JWDA. 1) and stated that the work could be put in hand at once. Before me, he explained that the Minister for Health was anxious

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to have the homes completed quickly. On or about 6.8.46, respondent's letter was taken personally to the Director, whose sanction was obtained. H. P. de Silva was informed that the contract would be signed on 22.8.46, but it does not appear that he was told that the home was a 11-bed home. Meanwhile the rates quoted were adapted to fit a 11-bed home. The authority was formally given by the Director by letter dated 9.8.46 (JWDA. 2). On 22.8.46 the contract for the 11-bed home was signed (HPDS. 3). The revised figure was Rs. 36,376 and the building was to be completed by 22.2.47. H. P. de Silva went on the land and started work on 26.8.46. But in September (JWDA. 3 of 20.9.46) the respondent was requested to call for fresh tenders, and so on 21.9.46 (HPDS. 1) respondent wired to H. P. de Silva to stop the Palatuduwa work and call at the office and he met the respondent. It is clear that about this time the respondent still had the idea that he could pursuade the Tender Board to give covering sanction to the contract already entered into on 22.8.46. The respondent admits that he was anxious to obtain this covering sanction because that would have relieved him of the danger of being surcharged on this account.

These matters are of importance because H. P. de Silva asserted that when he met the respondent about the 23rd September, 1946, the respondent asked him for a gratification of Rs. 2,000 for the purpose of restoring the contract to him. H. P. de Silva replied that he had no money, and at that time it appears that he did not have the necessary funds. This is the matter set up in paragraph (1).

Respondent attended the Tender Board meeting held on the 24th September, 1946, and at or after that meeting took the opportunity of putting forward his views about the matter. There was no question that at this time H. P. de Silva had incurred expenses under the contract and had a claim for compensation against the Government. According to respondent, the Tender Board was not unsympathetic, and respondent thought that the covering sanction could be obtained from them.

On the 25th September, 1946, H. P. de Silva wrote letter HPDS. 2 regarding the stoppage of the work. The letter was addressed to the Sanitary Engineer and pointed out that much of the material had already been transported to the site and advances given for further supplies and that the workmen and overseer had been taken to the site. It was claimed that a sum of over Rs. 9,500 had been spent on work done and materials collected and that a loss of over Rs. 10,000 was anticipated.

On the 27th September, 1946, fresh tenders were called for, but none were sent. It appeared in evidence that one W. D. D. de Silva applied for a tender form but was informed by the respondent on 4.10.46 that no forms were issued as an agreement had already been entered into with another contractor for this work. (See HPDS. 39A and 39B). It also appears that H. P. de Silva, acting on the instructions of the respondent, restarted work on 5.10.46, but on a small scale, (See HPDS. 31 of 18.10.46 written by H. P. de Silva and not repudiated by any letter from the respondent).

On 9.10.46 respondent wrote to the Director pointing out the hardships caused to the contractor and adding that as a result of his mentioning these matters to the Tender Board on 24.9.46, he felt that the Tender Board would give covering sanction.

These matters came before the Tender Board at their meeting on 6.11.46 and the Board decided to grant covering sanction for the contract entered for the 11-bed ward on the basis of the lowest tender received for a 22-bed ward. The Board, however, pointed out that the contract had been entered into without Treasury sanction and contrary to verbal discussions of the Board relating to the calling of fresh tenders. Formal information concerning this was given to the Director by letter of 30.11.46 (JWDA. 10), but the respondent received information about it on 6.11.46.

These facts show that there were some fairly serious irregularities in connection with this contract and the Tender Board had reported the matter to the Public Services Commission, but nothing came of this report.

For the purposes of our inquiry the important matters are as follows: The contract for the 11-bed ward was entered into without the necessary authority. The Director of Medical and Sanitary Services had given his permission to have the contract entered into, and was therefore also responsible for it. But when the work was stopped, the respondent allowed the contractor to resume his work long before covering sanction was asked for or given by the Tender Board. Even when fresh tenders were called for, one person who applied for a tender form was refused the form for a reason which was at the time incorrect and misleading. The final order of the Tender Board giving covering sanction was acted upon long before formal information of it was communicated to the respondent. It

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is not possible to avoid the conclusion that the respondent was taking all the action in his power to rescind the stoppage of work, and to restore the original contract. In this he succeeded. I am inclined to accept the respondent's explanation that he was acting in this way, in order to avoid the danger of a surcharge made on him, and to protect his own interests in this respect. But it must be remembered that the respondent was also acting in the interests of the contractor, H. P. de Silva, and it is not unlikely that he conceived the idea that this contractor should give him a gratification for these services. The circumstances appear to lend a certain measure of support to the story of H. P. de Silva that the respondent did ask for a gratification of Rs. 2,000 on this occasion. H. P. de Silva, however, had no money and was not in a position to pay this sum, even if he desired to do so. He must however have been impressed with the fact that his contract was restored to him and that the loss which he anticipated did not arise.

Meanwhile, H. P. de Silva carried on the work, and on 23.11.46 a cheque for Rs. 2,000 was received by him, probably as an advance. On 6.1.47 respondent visited the site, and as a result of his report a cheque for Rs. 2,326.95 was issued to H. P. de Silva on 17.2.47. An extension of the time limit of the contract was also asked for, recommended by respondent, and allowed. On 2.4.47 H. P. de Silva received another cheque for Rs. 1,500 probably as an advance. Up to this date H. P. de Silva had received Rs. 5,826.95.

On 17.5.47 respondent again visited the site. About this time H. P. de Silva said he was in need of money badly. Eventually H. P. de Silva saw respondent at his office on 29.5.47 and an arrangement was made that the respondent should lend a sum of Rs. 2,000 to H. P. de Silva, but H. P. de Silva was to give a promissory note for Rs. 3,000 in respect of the transaction. This is the matter raised in paragraph (2). The promissory note (HPDS. 27) was actually signed next day, i.e., on 30.5.47, and H. P. de Silva received not the whole of the Rs. 2,000, but that sum less Rs. 200 deducted in advance, as interest. It was admitted that H. P. de Silva visited respondent's house on that date.

As this document (HPDS. 27) is an extremely important document, I may add that the original was available at the inquiry. It was a promissory note dated 30.5.47 for the sum of Rs. 3,000. The body of the note was apparently filled in by H. P. de Silva, who has also signed it. But H. P. de Silva said that the name of the payee was left blank. An examination of the note shows, and it was admitted, that the name of the payee was inserted in a different ink and in a different handwriting. The name of the payee now appears as D. S. Fernando of Elliot Road. This fact supports the story of H. P. de Silva that the name of the payee was originally left blank. The rate of interest on the note was 10 per cent. per annum.

There is the fact also that H. P. de Silva had not received any payment since the 2nd April, 1947. The next payment was not made till 27.6.47 when a cheque for Rs. 2,278.38 was given to him. The voucher for this amount had been drawn up on 16.6.47. The extension of time applied for by H. P. de Silva was approved on 25.6.47—up to 31.8.47. On 27.6.47 (the date of the cheque), H. P. de Silva also signed the agreement relating to this extension. Thereafter, about 30.9.47 a further extension was granted up to 30.10.47 but with the full penalty of Rs. 50 a week for delay after 31.8.47. H. P. de Silva appears to have signed this by 3.11.47, and to have made no protest at the time. Thereafter no formal extension was given, but the penalty continued in force.

It may also be mentioned that H. P. de Silva received further payments, viz., cheque for Rs. 1 900 on 5.8.47, and Rs. 4,081.95 on 24.9.47, bringing the total payments to Rs. 14,087.28.

We are now approaching the matters referred to in paragraph (3), which also have a most important bearing on paragraph (2). A State telegram dated 29.9.47 was found in the office file, whereby respondent summoned H. P. de Silva to call at the office immediately. The respondent could not supply the reason for the telegram and it was not obvious why it was sent. But the telegram is interesting because of its proximity to the events I shall presently narrate. On 1.10.47 H. P. de Silva undoubtedly sent a registered letter to the respondent at his private address in Kelaniya. The date on the registered letter receipt issued to H. P. de Silva was not easily decipherable, but the carbon copy sent by the Post Office definitely fixed the date as 1.10.47. The receipt is marked HPDS. 6.

According to H. P. de Silva, he enclosed in the registered letter his own cheque for Rs. 200 dated 1.10.47. The counterfoil of the cheque and the cheque itself (HPDS. 24) have been produced, and both bear that date, and that fact by itself has considerable importance, and supports the story of H. P. de Silva. The

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counterfoil supports his story. The cheque itself (HPDS. 24) does not bear the indorsement of the respondent, but it was a cash cheque, and the indorsement was not necessary. I shall later examine the history of this cheque.

In all, before the end of January 1948, H. P. de Silva says he sent the respondent four cheques, by registered post, in payment of the promissory note of 30.5.47.

(1) was the cheque already referred to of Rs. 200 sent by the registered letter of 1.10.47 (receipt HPDS. 6);

(2) another registered letter was sent on 19.11.47 for which receipt (HPDS. 7) was produced, bearing that date. This was said to contain a cheque for Rs. 1,100 (HPDS. 18) issued in favour of H. P. de Silva by a trader and bearing date 19.11.47. The cheque has also been produced; it bears no indorsement by the respondent, but its subsequent history is of interest;

(3) a third registered letter was sent on 2.1.48. Receipt HPDS. 8 was produced bearing that date. This was said to contain a cheque for Rs. 1,000 (HPDS. 29) issued in favour of H. P. de Silva by another trader on 31.12.47. The difference in dates is accounted for by the intervention of the New Year holidays. The cheque was produced; it does not bear the respondent's indorsement, but its subsequent history is of importance,

(4) a fourth registered letter was sent on 28.1.48. The receipt (HPDS. 10) was produced dated 28.1.48. The letter was said by H. P. de Silva to contain a cheque of his own (HPDS. 25). The counterfoil supports this story, but the cheque itself bears no indorsement by the respondent, though its subsequent history is interesting.

There can be no question that the four registered letters were sent to respondent at his private address in Kelaniya, and it is admitted that they were received, though there is a dispute as to the contents. The cheques were also genuine documents which were duly negotiated. It is also clear that H. P. de Silva was in funds at the time of the two larger cheques. On 18.11.47 he had received from Government a cheque for Rs. 7,314.67. This he deposited with the trader K. T. N. de Silva, and obtained *inter alia* from that trader the cheque dated 19.11.47 for Rs. 1,100 (HPDS. 18), which was the cheque which he said was forwarded to respondent, under registered cover (HPDS. 7). He received a further payment from Government on 24.12.47 of Rs. 3,675. The total amount obtained so far on the contract by H. P. de Silva was Rs. 25,076.95 which was a substantial portion of the whole contract. The cheque for Rs. 3,675 was deposited by H. P. de Silva with the trader B. H. G. de Silva, and he obtained *inter alia* from that trader the cheque for Rs. 1,000 (HPDS. 29 dated 31.12.47), which he said was forwarded to respondent under registered cover (receipt HPDS. 8).

H. P. de Silva emphasized the correspondence of the dates of the cheques with the dates of the receipts for the registered letters. It is difficult to believe that this correspondence is entirely fortuitous.

It is interesting at this stage to consider the case for the respondent. He denied that he solicited a gratification of Rs. 2,000 in September 1946. He also denied that he lent H. P. de Silva the sum of Rs. 2,000, or the sum of Rs. 1,800 after the deduction of Rs. 200 as interest, or any other sum. He also denied that he obtained the promissory note for Rs. 3,000 (HPDS. 27). He also denied that he received any cheques in the four registered letters which were undoubtedly sent to him on the dates I have mentioned. A large number of witnesses were called, nominally by Crown Counsel, but I think they may fairly be regarded as witnesses for the respondent in this connection.

The most important of these witnesses was D. S. Fernando a contractor who had many contracts with the Director of Medical and Sanitary Services, and who was well known to the respondent. D. S. Fernando said that the money had been lent by him to H. P. de Silva, who applied for help about a month previously. The amount lent on 30.5.47 was Rs. 3,000, and H. P. de Silva brought to him a promissory note fully filled up, with the name of the payee (i.e., D. S. Fernando) inserted. He was unable to offer any explanation as to the fact that the name of the payee was in a different ink and in a different handwriting to the rest of the document. This was the first and only occasion in which he had lent money on promissory notes, and he gave a somewhat vague account as to how he raised the money for the loan. He asserted that interest to the amount of Rs. 175 was paid in cash by H. P. de Silva up to the end of December. He had no document to substantiate this. He also said that Rs. 1,000 out of the capital was paid to him by H. P. de Silva. There were however certain features in his evidence which were contradictory of his story. There can be no doubt that he knew very

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little about the promissory note HPDS. 27, although this was the first and last venture in that kind of transaction. He boldly asserted that the interest on that promissory note was 12 per cent., although the note itself mentioned the interest as 10 per cent., and his own calculation of interest up to the end of December, 1947 (i.e., Rs. 175) was on the basis that the interest was 10 per cent. When confronted with the note and his own calculation, he vaguely suggested that he had been cheated by H. P. de Silva, but he was unable to explain why he had not discovered the fraud earlier. Again he said he got the cheque for Rs. 1,000 by letter and got it cashed by one D. V. Jayamana. At the earlier investigation he was asked whether this cheque was the cheque HPDS. 29, already mentioned, which bore the indorsement of D. V. Jayamana, but he denied that. At the later inquiry he maintained stoutly that the cheque which he received from H. P. de Silva was HPDS. 29. I think it is fairly obvious that at the early stage he was very uncertain of his position, and afraid to make any admission. The subsequent history of this cheque will be gone into later, but I may say that the explanations tendered with regard to it cannot be believed. I was satisfied that D. S. Fernando was not speaking the truth and that he had deliberately set out to shield the respondent.

I shall now proceed to deal with the subsequent history of the 4 cheques said to have been sent by H. P. de Silva to respondent.

The first two cheques were HPDS. 24 of 1.10.47 and HPDS. 18 of 19.11.47. HPDS. 24 for Rs. 200 bore the indorsement of one H. S. Fernando, who established the fact that he received it from E. C. de Soysa, a contractor to the Director of Medical and Sanitary Services. This was admitted by E. C. de Soysa. The cheque HPDS. 18 for Rs. 1,100 was passed to Samuel & Co., and it was established that the firm got it from E. C. de Soysa.

E. C. de Soysa has given evidence, and it is clear that the cheque for Rs. 200 (HPDS. 24) was not received by him from H. P. de Silva. E. C. de Soysa said so, and he was utterly unable to account for his possession of the cheque. But he made one important admission, namely, that besides the Government contracts, he had private contracts with the respondent, and had supplied material to him, cement, bricks, timber, &c., to the amount of Rs. 4,000 or Rs. 5,000, and that the respondent used to give him cheques in payment. He was, however, unable to say whether respondent gave him other people's cheques, or to say definitely that HPDS. 24 was given to him by the respondent or not. He was positive this cheque had not been given to him by H. P. de Silva, and was not able to indicate any other person than the respondent who might have given him the cheque.

E. C. de Soysa, according to H. P. de Silva, had visited him in Ambalangoda and had acted as a kind of envoy from the respondent, and suggested that H. P. de Silva should settle matters with the respondent, and even said he would pay any amount outstanding. H. P. de Silva said he had been to the Bribery Commission and it was too late to settle. E. C. de Soysa admitted the meeting, but denied that he suggested a settlement. I prefer the story of H. P. de Silva. E. C. de Soysa was a glib and talkative person who protested his honesty too much. I was not impressed with his evidence. It was clear that he had a number of contracts with the Medical Department, and had been on the most friendly terms with the respondent for a number of years.

As regards the cheque HPDS. 18 for Rs. 1,100, this was also negotiated by E. C. de Soysa. He said he received the cheque from H. P. de Silva himself. H. P. de Silva brought the cheque and wanted it cashed. It so happened that E. C. de Soysa was taking Rs. 1,000 in cash to pay to the firm of Samuel, and he gave the cash over and took the cheque. How he settled the extra Rs. 100 is not clear. E. C. de Soysa handed over the cheque to the firm and a clerk of the firm of Samuel proved that E. C. de Soysa paid in that cheque.

I am of opinion that the whole story was false. It is clear that when H. P. de Silva got this cheque from the trader K. T. N. de Silva, he could easily have obtained either cash or a cheque which he could cash. It seems clear that the cheque was taken in the form it was taken for some special purpose, and not for mere cashing. There was no reason why H. P. de Silva should apply to E. C. de Soysa for the cash. I have already mentioned that E. C. de Soysa was in the habit of receiving cheques from the respondent in the way of business. When E. C. de Soysa was first summoned before me, it was fairly obvious that he knew he would be questioned about this cheque for Rs. 1,100 and he proceeded to give a dramatic account of what happened. At that time nothing was known of his connection with the cheque for Rs. 200, and I think he had also forgotten it and was taken by surprise when his connection was established.

I have considered his evidence and disbelieve it. Though called by Crown Counsel, it was plain that he was a witness who was anxious to shield the respondent.

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The other two cheques, HPDS 29 of 31.12.47 and HPDS 25 of 28.1.48, were said to have been negotiated by D. S. Fernando. He said that the cheque for Rs. 1,000 was sent to him by H. P. de Silva in part payment of the capital amount of Rs. 3,000. The cheque HPDS. 29 for Rs. 1,000 was paid into the account of D. V. Jayamana, the Shroff of the Agricultural Corps. It will be remembered that when D. S. Fernando was first shown this cheque, he denied that this was the cheque he received in payment. Later he changed his story and made this cheque his sheet anchor. He was positive that this was the cheque he received from H. P. de Silva, although his indorsement did not appear on the cheque. Anyway, by the time of the inquiry in the presence of the respondent, he had his story ready.

D. S. Fernando said that on the morning of the first Sunday in 1948 he wanted cash for that cheque, so he went to the church which D. V. Jayamana attended, and asked Jayamana to give him the cash. Jayamana did not have the cash, but took him to one A. D. Appuhamy of Barnes Place, and got Rs. 1,000 from him and gave it over to D. S. Fernando. Why the cheque was not handed over to Appuhamy is not clear. Appuhamy, who was also called, said that Jayamana came and took Rs. 1,000 from him, but he said this happened after dark one day. Now they were all intelligent witnesses, and the discrepancy has not been explained. An attempt was made to understand the financial relationship of Jayamana and Appuhamy. Both gave contradictory evidence about their dealings. Jayamana said they both gave and took loans from each other, and that Appuhamy also received the revenue from Jayamana's coconut lands on occasion. Appuhamy admitted the loans, but denied that he received the revenue from the coconut lands; this is a very serious discrepancy. One would have expected Jayamana, who is a shroff, to give a coherent account of his loans to Appuhamy, but in fact he gave a confused and unreal account. Though the transactions were considerable, Jayamana kept no books. If anything, Appuhamy gave a yet more incoherent account of the loans, and was obviously unable to explain them. Eventually a clerk of Appuhamy, who had been through Appuhamy's books, gave evidence. On 20.10.47 Appuhamy borrowed Rs. 10,000 from Jayamana. This was repaid in two instalments. Rs. 5,000 was repaid on 25.2.48 (this was a deposit in Jayamana's Bank), and Rs. 5,000 repaid on 29.6.48. There was another borrowing of Rs. 5,000 on 8.6.48, which was repaid in five instalments, between 26.6.48 and 25.10.48. It was obvious that the Rs. 1,000 transaction early in January 1948, was not entered in any book. In fact there were no transactions in January 1948.

One further fact should be noted. Not only was D. V. Jayamana known to the respondent, but his brother D. F. C. Jayamana was on terms of the closest friendship with the respondent. D. V. Jayamana received the cheque for Rs. 1,000 shortly after 2.1.48. Letters from the Bank have shown that a cheque for Rs. 1,000 drawn on Grindly's Bank, No. 7,598/7 was credited to the account of the respondent on 7.1.48. This clearly is a cheque drawn by D. V. Jayamana, and was removed from the Bank by D. V. Jayamana on 26.7.48, shortly after this investigation started. (See HPDS 45, 46 and 47A.) This is certainly a significant fact. The respondent said that this sum of Rs. 1,000 of 7.1.48 was borrowed by him from D. F. C. Jayamana as he was anticipating certain expenditure; but the proximity of the dates of the two cheques can point to an interchange of cheques between the respondent and D. V. Jayamana, perhaps through D. F. C. Jayamana. The removal of the cheque from the Bank points in the same direction.

I formed a very clear opinion that D. S. Fernando, D. V. Jayamana and Appuhamy were trying to shield the respondent, and were willing to give untruthful evidence for that purpose. I disbelieve the story of D. S. Fernando that the promissory note was made in his favour, and that Rs. 1,000 was paid to him by the cheque HPDS. 29. This cheque is of the utmost importance, because it undoubtedly represents a payment made in respect of the promissory note. I also disbelieve D. V. Jayamana and Appuhamy.

As regards the fourth cheque for Rs. 100, HPDS 25 of 28.1.48, D. S. Fernando asserted that he cashed this cheque for H. P. de Silva at the latter's request. The cheque was given to D. K. Mathew, a trader, and it is likely that D. S. Fernando gave it to him, and Mathew said so. But the question is how D. S. Fernando came to possess this cheque. I have already commented on the credibility of D. S. Fernando and I disbelieve him in this respect also.

I may now deal with the explanation given by the respondent as regards the four registered letters undoubtedly received by the respondent at his private address. The explanation was tentative at the start, but became more definite as time went on. Respondent said that the first three letters were written in Sinhalese, and that he did not preserve the Sinhalese letters, nor pass them over to the office. Clearly this cannot be accepted for Sinhalese letters have been preserved in the file. Also the respondent was able to read Sinhalese and there was no need to throw away those letters.

The contents of the letters were also spoken to. In two instances they were said to be requests for further payment. But this is extremely improbable for H. P. de Silva had received large payments shortly before the letters were sent, in particular

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the payment of Rs. 4,081.95 on 24.9.47, Rs. 7,314.67 on 18.11.47, and Rs. 3,675 on 24.1.47. About the period of these letters funds had come in freely to H. P. de Silva, even though his building had not been inspected by the respondent. It is also said that H. P. de Silva on one occasion asked for the removal of the penalty of Rs. 50 a week for delay. But H. P. de Silva had long before that signed an agreement accepting the penalty, without making a single protest. I disbelieve the explanation offered by the respondent. I think it is clear that the letters were sent on a private and not an official matter, and the coincidence of the dates of the cheques sent and of the letters point to the fact that the cheques were enclosed in the letters. It is clear that no replies were sent to any of these letters.

As regards the letter dated 28.1.48, the position is somewhat different, for, the respondent produced a letter in English by H. P. de Silva bearing that date (JWDA. 11). This was addressed to the Sanitary Engineer, Torrington Square, and was a reply to a letter of 15.1.48, and informed him that all the defects were corrected and requested him to take charge of the keys at his earliest convenience. The respondent claimed that this was the letter sent under registered cover, but it is difficult to understand why a letter addressed as it was, was sent to the private address, especially since it is admitted that no replies were sent to the previous registered letters. I have formed the opinion that this letter (JWDA 11), though written on 28.1.48 was not enclosed in the registered letter, but was sent independently on that date. There does not appear to be any reason for registering the letter or sending it to the private address. However, this letter JWDA 11 created a more favourable impression in respect of the respondent, which I have taken into account, but against it is the fact that a cheque for Rs. 100 was drawn by H. P. de Silva on the same date.

I may add that the excessive payment of interest, about 5 per cent. per month, was not done under compulsion, but that H. P. de Silva was willing to pay this interest to the respondent. In all, about Rs. 600 was paid as interest for the few months. But this does not alter the fact that respondent accepted interest at these high rates. I may add that I accept the evidence of H. P. de Silva, that the actual amount lent was not Rs. 3,000 but Rs. 2,000 and that Rs. 200 was deducted as interest at the time of payment. There is no doubt that H. P. de Silva was much beholden to the respondent for the financial aid given.

I have dwelt on all these matters because they are extremely relevant to the matters of inquiry in paragraphs (1), (2) and (3). The terms of the Commission issued to me preclude me from inquiring into matters which arose after 28.1.48, even if they would otherwise fall within the scope of the inquiry. But the events after 28.1.48 in this case are of importance and significance and throw considerable light on the matters fixed for inquiry and I shall deal with these as shortly as possible.

On 23.1.48 a payment of Rs. 4,800 was made by Government to H. P. de Silva. This was shortly before the cheque HPDS. 25 was drawn. On 9.2.48 respondent informed the Director that the maternity home was completed. H. P. de Silva maintained that when he claimed his promissory note (HPDS. 27) back, respondent pointed out that the note was for Rs. 3,000 and wanted the balance Rs. 1,000 paid. This H. P. de Silva paid in February, 1948, in cash, to respondent, at his house. There is no corroboration of this, and respondent denied it. But keeping in view the credibility of witnesses, I much prefer the story of H. P. de Silva. Even then the troubles were not over, for respondent made some excuse and did not return the promissory note. On 17.3.48, M.O.H., Tangalle, took over the maternity home, but found certain glass panes cracked. But before that day D. S. Fernando had obtained the promissory note and filed action D. C. Colombo 9002 S on it. About this time a seizure of the balance due to H. P. de Silva was made by one Daniel Silva in a Balapitiya case. D. S. Fernando said he went into Court because of this, but how he had information of it is extremely doubtful. It may be mentioned that, according to D. S. Fernando, all the interest to December 1947, and Rs. 1,000 out of the capital had been paid to him; but he went into Court without making any demand from H. P. de Silva or informing him about it. H. P. de Silva stated that he was first informed of the action by the respondent about 20.3.48. At this point respondent still had the upper hand because he had to recommend the final payment which was a substantial amount. H. P. de Silva appears to have seen the respondent again, about 23.3.48, and was asked to see the proctors, Moonesinghe & Jayamana, and respondent handed him a sketch (HPDS 12), showing where the office of the proctors was. On 24.3.48 respondent took H. P. de Silva by car to the office of the proctors and left him there, advising him to settle the matter with the proctors. Respondent met Proctor Jayamaha in the Courts, where the latter dictated a letter of authority (HPDS. 11) authorizing the Director of Medical and Sanitary Services to pay the proctors the sum of Rs. 2,116.76 out of the Palatuduwa contract money. Rs. 2,116.76 was the amount said to be due in the action D.C. Colombo 9002 S. H. P. de Silva said he signed this because he was powerless against the respondent, who had still not recommended the final payment. This letter was sent by the proctors on 24.3.48 to the Sanitary Engineer (respondent) by JWDA. 7. The Sanitary Engineer forwarded it to the Director about 7.4.48. The final voucher

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was also prepared by the respondent and forwarded to the Director with a recommendation that the moneys due in the two cases against H. P. de Silva should be deducted. Meanwhile the Director of Medical and Sanitary Services had ruled that no further payments could be made without an inspection.

On 24.4.48 respondent inspected the work at Palatuduwa and on 3.5.48 reported that final payment could be released. At the same time summons had been served on H. P. de Silva in case 9002 S. on 21.4.48 and decree entered on 4.5.48. The Director was not willing to pass payment until the question whether the cracked panes had been replaced was settled. On 15.5.48 a voucher (HPDS. 32) for Rs. 2,116.76 was forwarded to the proctors, Moonesinghe & Jayamaha. On 19.5.48, a telegram was sent by respondent to H. P. de Silva asking him to call at the office (HPDS. 13). Respondent signed as " Saneng " i.e., Sanitary Engineer. On the same day the proctors, Moonesinghe & Jayamaha, wired to H. P. de Silva asking him to see them. It is difficult to resist the conclusion that both these telegrams had the same inspiration, viz., to get H. P. de Silva to come and sign the voucher. Anyway, on 20.5.48 H. P. de Silva arrived and signed the voucher (HPDS. 32). He said he was taken to the proctor's office by respondent. Proctor Jayamaha could not say on oath whether respondent was present on that occasion but inclined to think he was not. The perfected voucher was sent to the Director. On 25.5.48 the cheque for Rs. 2,116.76 was sent to the proctors by the Director, but that cheque was in the name of H. P. de Silva and had to be indorsed by him, before it could be negotiated, and the currency of the cheque continued only for fifteen days—expiring on 9.6.48. On 3.6.48 respondent sent telegram HPDS. 15 to H. P. de Silva to come immediately, and on 5.6.48 he sent a further telegram HPDS. 16 to the respondent: "It expires 9th, endorse before." Both these telegrams are signed " Alwis " and clearly relate to the cheque for Rs. 2,116.76. However, at this final stage H. P. de Silva did not come to sign the cheque. He had however taken some action. On 3.6.48 he wrote to Dr. Chellappah, the Director, a personal letter asking for an appointment, when he could bring facts and documents to prove how he had been cheated by one of the Staff officers. He added that he was badly pressed financially that he could not go to Court. He mentioned that he had earlier thrown out a hint about this in a letter dated 20.3.48, in which he referred to his " troubles ", which would be brought to the notice of the Director in a subsequent letter.

H. P. de Silva on 12.6.48 wrote to the Bribery Commission, and on 16.6.48 he requested the Director to stop the cheque for Rs. 2,116.76 (HPDS. 33). This was done and the cheque was returned by the proctors to the Director.

During all this time there can be no question that the respondent was taking an interest in case No. 9002 S. in a manner completely out of keeping with his official position. It is true that Mr. Jayamaha, the proctor, could not remember respondent coming to see him in connection with the signing of the voucher by H. P. de Silva, but it has to be borne in mind that this proctor may be regarded as a friend of the respondent. However, the sketch given by respondent of Jayamaha's office, shows that he knew the place well, and it did not appear necessary to give the sketch if, as respondent says, D. S. Fernando had himself been present on that occasion, and he and H. P. de Silva had discussed a settlement. The giving of the sketch points to D. S. Fernando not being present on that occasion and I accept the story of H. P. de Silva in preference to that of respondent. Proctor Jayamaha also spoke to the fact that on all or most of the occasions when his client D. S. Fernando came to see him, he was instructed to telephone the respondent and did so, and asked for advice on many matters. The telegrams sent in connection with the voucher and the cheque also point to the fact that respondent had a personal interest in the case.

I have considered the explanation given by the respondent in this connection. He said that both D. S. Fernando and H. P. de Silva came to see him with a view to a settlement between them, and that all he did was to advise them as to how the settlement could be carried out. As regards the telegram HPDS. 13 signed " Saneng." on 19.5.48, he indicated that it must have been sent for some official purpose. He admitted that, at the urgent instance of D. S. Fernando, he drafted one telegram, and gave it to D. S. Fernando for transmission. The last telegram of 5.6.48 (HPDS. 16) was sent in response to a telegram by H. P. de Silva asking for the date when the cheque expired. This telegram was not produced. The sketch HPDS. 12 was given to H. P. de Silva after D. S. Fernando had left the office.

Respondent's story does not ring true, and I disbelieve it. It is clear that at each stage there was difficulty in getting H. P. de Silva to put down his signature and I am satisfied that the authority of the respondent had to be invoked in order to persuade H. P. de Silva to sign. I also hold that H. P. de Silva felt that he was powerless to act against the respondent, who had to pass the final payment.

There is one point which affects H. P. de Silva, It is clear that he took no action to dispute the proceedings in case 9002 S. He has explained that he felt he was powerless against the respondent. It may also be said for him that it was very difficult for him to resist the claim of D. S. Fernando, who would be regarded, till the contrary was proved, to be a holder in due course of the promissory note.

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It is a matter for comment that in testing the evidence for the respondent we have at each point come across mysteries which had to be solved on the evidence. Many of the circumstances I have related point strongly to the truth of the story of H. P. de Silva and tend to negative the story of the respondent and the various witnesses who gave evidence in his favour. I have examined all this evidence and have come to the conclusion that the story of H. P. de Silva has been established beyond reasonable doubt. He had a difficult task to perform, almost single-handed, but he has succeeded in performing it.

I hold:

(1) that the respondent in or about September 1946, solicited a gratification of Rs. 2,000 from H. P. de Silva as a reward or recompense, in consideration of a promise to take action for his advantage in the capacity of Sanitary Engineer in connection with a contract for the construction of a maternity home at Palatuduwa;

(2) that the respondent on or about 30th May, 1947, demanded and obtained from the said H. P. de Silva a promissory note for Rs. 3,000 with the payee's name not filled in in consideration of a loan of Rs. 2,000 to him, knowing that he was likely to believe that if he did not give the said promissory note, the respondent would in his capacity of Sanitary Engineer take action for his disadvantage in connection with a contract for the construction of a maternity home at Palatuduwa; and

(3) that the respondent between 25th May, 1947 and 29th January, 1948, demanded and obtained from the said H. P. de Silva the sum of Rs. 600 in addition to the sum of Rs. 2,000 lent to him, knowing that he was likely to believe that if he did not give the said sum of Rs. 600, the respondent would in his capacity as Sanitary Engineer take action for his disadvantage in connection with a contract for the construction of a maternity home at Palatuduwa.

A. E. KEUNEMAN,

Commissioner,
Bribery Commission.

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No. R. 5/1.

RESPONDENT :

C. Doyne Goonetilleke,
Assistant Valuer,
Valuation Department,
Colombo.

IN PUBLIC

Heard on 26th and 27th January, 25th February and 18th March, 1949.

Respondent: C. Doyne Goonetilleke, Assistant Valuer, Valuation Department, Colombo.

The matter which arose for inquiry, relating to this respondent, was that :

(1) in or about the year 1943 he solicited or demanded a gratification of 15 per cent. of the assessed value of a property known as Notarisgederawatte, situated at Koggala, from D. S. Wickremasinghe, one of the co-owners of the said property, as a reward for making a valuation of the said property for the advantage of its co-owners ;

(2) in or about 1943 he received and accepted from the said D. S. Wickremasinghe the sum of Rs. 1,000 as an advance in part payment of the said reward.

It may be noted that in paragraph (2), the date was originally given as "in or about June, 1943", but in the course of the inquiry, by consent, the word "June" was deleted.

The Koggala acquisitions started about 1942, when a large area, about ten square miles of property, were either acquired or requisitioned for the purpose of an airfield. The acquisitions included the land Notarisgedarawatta, on which stood a large house popularly described as "half a ship". The owners of this land were D. S. Wickremasinghe and his brother and minor sister, but matters relating to the acquisition were left by them in the hands of their uncle K. F. de Silva, and the only one of the co-owners who took any interest in the proceedings was D. S. Wickremasinghe.

The acquisition proceedings continued till the 7th of September, 1944. The co-owners claimed a sum in excess of what the Department were willing to offer. Before the proceedings were completed, the co-owners were given two advances, Rs. 1,000 in cash on 27.4.42, and Rs. 5,000 by cheque on 31.5.43. Thereafter certain other claimants intervened and the advances were stopped. These claimants were, before the award, bought off for Rs. 4,000, and disappeared from the proceedings. The award was made by agreement on 7.9.44, and the co-owners were given two cheques (1) for Rs. 30,000, and (2) for Rs. 34,500, both dated 8.9.44, (see K.F.D.S. 17). Of this total of Rs. 70,500, the amount allowed in respect of the building was about Rs. 60,000. The allegation at the inquiry was that an agreement was arrived at to pay the respondent 15 per cent. of the amount allowed for the building and this worked out at 15 per cent. of Rs. 60,000, namely, Rs. 9,000. The land was assessed at the same rate as the surrounding lands.

It is in evidence that in the course of the acquisition, a number of intermediaries, also called "brokers", came on the scene, and claimed that they could influence the assessment, if bribes were paid to the Assessor. Though Captain Eastman, the Head of the Government Valuation Department himself visited the lands for valuation, and accepted responsibility for the assessments, it seems clear that the bulk of the work of assessment fell upon the respondent, who was resident in Galle District for the greater part of the period. The evidence led against the respondent indicated that K. F. de Silva and D. S. Wickremasinghe got in touch with the respondent through two of these "brokers", viz., Piyadasa and Robert.

K. F. de Silva was the person who brought these matters before this Commission, and in the course of the investigation D. S. Wickremasinghe was also summoned and his evidence was recorded. I think it has been established by

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clear and convincing evidence that there was considerable bad feeling between K. F. de Silva (the uncle) and D. S. Wickremasinghe (the nephew), from shortly after the date of the award in September 1944, for some years. I shall have occasion to deal with this later, but I think it is important to remember that the suggestion of collaboration between these two witnesses cannot be sustained. It is impossible to regard them as fellow conspirators. In fact D. S. Wickremasinghe was summoned before this Commission because it appeared that his story was a complete denial of the allegations of K. F. de Silva. But when D. S. Wickremasinghe was confronted with his own letter (K.F.D.S. 1 of 8.9.44), he changed his original story, and made certain allegations against the respondent, which were, however, in considerable disagreement in many details with the evidence of K. F. de Silva. It was manifest that these two witnesses had not come to give a story prepared between them. It will be necessary to assess the value of the evidence of each of these witnesses separately.

The story of K. F. de Silva is that he was asked to act on behalf of the co-owners in relation to the acquisition. The main object was to get as high a valuation as possible for the property in question. K. F. de Silva got into touch with the respondent through the "broker" Piyadasa, and an arrangement was made by him with the respondent, that the respondent should be paid 15 per cent. of the value of the building on the land. D. S. Wickremasinghe endorsed this agreement. In pursuance of this arrangement, the initial sum of Rs. 1,000 was paid as an advance to respondent by D. S. Wickremasinghe, who had obtained a Rs. 1,000 note from the Bank of Ceylon, Galle Branch. K. F. de Silva said that he was present when the note was handed over, and said that this was done at the respondent's house—Mithila, Richmond Hill Road, Galle. K. F. de Silva was unable to fix the date of the arrangement, or of the payment of the Rs. 1 000, but in his earlier evidence he suggested that the latter may have been in February 1944, or even perhaps in the latter part of 1943. This was the only payment actually made to the respondent, and it was a direct payment, not made through a "broker" although the "broker" Piyadasa was also present at the time.

K. F. de Silva also said that he met the respondent on several occasions during the course of the acquisition proceedings. He also negotiated with the other claimants to the land Notarisgederawatta; and the principal claimant Wickremasuriya agreed to take Rs. 4,000, and to give up the claim. These claimants then withdrew from the proceedings.

The acquisition proceedings were completed on 7.9.44 and the cheques were paid by Government on 8.9.44 to D. S. Wickremasinghe. On 8.9.44 K. F. de Silva received the letter (K.F.D.S. 1) from D. S. Wickremasinghe. This letter is of considerable importance, and the principal features may be reproduced.

D. S. Wickremasinghe first says that he "had no time to come that way." The letter goes on:—

> "Gave Amarasuriya Rs. 100. He expects a big amount. After all what did he do there."

This refers to a genuine transaction. Proctor Amarasuriya had appeared in the acquisition proceedings. He was given a cheque for Rs. 100 but returned it. He was later given a cheque for Rs. 150 and accepted it. This is shown by the oral evidence, the counterfoils of D. S. Wickremasinghe, and K. F. de Silva's post card dated 24.9.44. This post card was accidentally discovered in the official files during the course of the inquiry. K. F. de Silva advised the payment of Rs. 150.

> "I did not meet G. P. S. to pay Rs. 100."

This relates to Proctor Samarawickrema who had also something to do with the acquisition proceedings.

> "Paid Piyadasa Uncle Rs. 1,000, only."

This is not the "broker" Piyadasa, but an uncle of D. S. Wickremasinghe. This is interesting because the counterfoil shows that the sum was paid to Piyadasa's son for fear that Piyadasa would waste the money.

> "The lessee I paid Rs. 140".

There was a lease subsisting in regard to the land and the lessee had to be compensated for the balance period of the lease.

> "Herewith sending two cheques for Rs. 4,000 and 10,000 in your name, and a cheque to be deposited in Courts for Suja in favour of D. & R. Amarasuriya for Rs. 23,500."

The Rs. 4,000 cheque (K.F.D.S. 19B) has been produced. It bears the indorsement of Wickremasuriya, the chief claimant, who had to be paid off. Wickremasuriya's receipt (K.F.D.S. 7 of 9.9.44) has also been produced for the Rs. 4,000.

The Rs. 10,000 cheque (K.F.D.S. 19A. of 9.9.44) has also been produced. It has been paid to the account of K. F. de Silva and bears his indorsement. This is an important cheque for our inquiry.

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The cheque for Rs. 23,500 (K.F.D.S. 19C. of 9.9.44) has also been produced and has been paid to the Proctor firm of Amarasuriyas. This was the 1/3rd share due to the minor sister of D. S. Wickremasinghe referred to in the letter as "Suja".

"I have issued a cheque to Proctor A. P. D. on T. Coy mortgage. He advanced Rs. 5,800 for it."

This is a separate and genuine transaction.

"I can get you the balance amount if required."

Then follows a most important sentence for our purposes:

"I think Mr. Goone's amount is 9,000. We have already paid him 1,000."

D. S. Wickremasinghe now admits that "Mr. Goone" is C. D. Goonetilleke the respondent, and I think there is a plain reference to the respondent. The total due, namely Rs. 9,000, is significant, and the statement is made that "*we* have already paid him Rs. 1,000."

"Gave Carolis Silva 10."

This is a payment to a clerk.

"I wonder whether Piyadasa wants anything for his trouble."

This refers to "broker" Piyadasa, and shows that Piyadasa had taken some "trouble".

"I have given 1,000 for Valdert Uncle. You can pay him the other 1,000 having a hold on some land of his or something".

This refers to a payment to another uncle. It is corroborated by the post card of K. F. de Silva (K.F.D.S. 14 of 24.9.44). The evidence shows that money was lent to him on a mortgage.

I have referred at some length to this letter because, in my opinion, it is a vitally important piece of evidence. I accept the evidence that at this time there was no disagreement between K. F. de Silva and D. S. Wickremasinghe, and that up to this point the payment to the respondent was not in question. It has been suggested that this letter was subsequently concocted by the uncle and the nephew with the aid of the cheque counterfoils of D. S. Wickremasinghe. The intrinsic evidence of the letter is against this view. The counterfoils have not been strictly followed but bear out the letter, and the references are all to genuine transactions. The letter reads much too naturally to be taken as a concoction. There are also references to far too many transactions. Also the letter has been written on a scrap of paper, perhaps torn out of some exercise book. Everything points to the fact that this is a genuine letter, written naturally on this occasion.

The evidence is that K. F. de Silva, after he received the cheques, including that for Rs. 10,000, changed his views with regard to the desirability of paying the balance of Rs. 8,000 to the respondent. As early as the 12th of September, 1944, he saw an opportunity of purchasing a land in the name of D. S. Wickremasinghe for the sum of Rs. 3,500 (K.F.D.S. 2), but later, after the quarrel, D .S. Wickremasinghe did not want this and retransferred the land to K. F. de Silva on the 14th of March, 1945 (K.F.D.S. 3). K. F. de Silva was reluctant to pay this considerable sum to respondent, after he had received the money into his hands. D. S. Wickremasinghe, however, felt bound by his promise to pay the respondent, and conceived the idea that K. F. de Silva had misappropriated the money. Unfortunately the two persons did not meet face to face and discuss the matter, but indulged in a spate of talk to others. The result was that a bitter estrangement arose between the uncle and the nephew, and though K. F. de Silva visited his sister on occasion, the uncle and the nephew were not on speaking terms. I accept the story that there was this estrangement between the two.

K. F. de Silva appears to have adopted the view that the respondent was setting up his nephew against him, and he retaliated by starting a campaign against the respondent. He began the attack by sending two pseudonymous petitions, K,F.D.S. 13 dated 17.11.44 in the name of Bastian Silva, and K.F.D.S. 12 dated 28.11.44, in the name of Ratnatunga. He adopted this more than dubious device because he wanted to create an atmosphere that there were several complaints against the respondent, but his conduct is open to condemnation. K. F. de Silva followed these up with two petitions in his own name (K.F.D.S. 8A and K.F.D.S. 8B to the Governor and the Chief Secretary, both dated 13.12.44.) alleging that the respondent had received "certain sums of money" from D. S. Wickremasinghe as a bribe or gratification for the Koggala acquisition. Comment has been made on the use of the ward "sums" because the evidence at the inquiry pointed to only one payment, namely of Rs. 1,000. But K. F. de Silva said that he was informed at the time that D. S. Wickremasinghe had also paid a part of the Rs. 8,000, and the latter appears to have contemplated doing so at one stage.

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An inquiry was held into those petitions by Captain Eastman, the Head of the Department, and D. S. Wickremasinghe was taken before him on 5.1.45, and denied that he had paid the respondent any bribe. The evidence of D. S. Wickremasinghe was that he was taken to Eastman by the respondent himself in his car, and the respondent does not deny this. For some utterly inexplicable reason, K. F. de Silva was not invited to make any statement to Captain Eastman, and when he wrote later about it, he was merely informed that the inquiry had been held and that the allegation was not established (K.F.D.S. 9 dated 17.1.45), and though he expressed surprise by his letter K.F.D.S. 10 of 19.1.45, nothing further happened. It may be noted that the post card K.F.D.S. 14 of 24.9.44 was produced probably at this inquiry before Captain Eastman. It is extremely unfortunate that K. F. de Silva was not summoned for that inquiry. Had the letter K.F.D.S. 1 been produced before Captain Eastman, the result of the inquiry may well have been different. As it was, Captain Eastman found that there was no substance in the petitions.

K. F. de Silva and D. S. Wickremasinghe have recently been reconciled by their relations, but I think it was obvious at the inquiry that no cordiality had been established between them.

It may be convenient to deal now with the evidence of D. S. Wickremasinghe. What he said before this Commission must be viewed with the gravest suspicion in view of his statement made to Captain Eastman. He admitted that he made a false statement there, and even his memory was at fault, and had to be checked and counter-checked by the documents. In substance his version is considerably at variance with the story given by K. F. de Silva, but he admitted that the letter K.F.D.S. 1 of 8.9.44 was written at that time and that his relations with his uncle were friendly then. He also admitted the estrangement between himself and his uncle after September 1944, which continued for some time. During this period he made his statement to Captain Eastman. He believed at the time that his uncle had misappropriated his money, and also was reluctant to admit that he had given a bribe. Apparently he also felt bound by his promise to the respondent, and was annoyed that the sum had not been paid. Before me he admitted that he paid a bribe of Rs. 1,000, but under circumstances so different from those told by K. F. de Silva, that it is impossible to believe that the two of them had been conspirators in this matter. He also admitted an arrangement to pay a further sum, making Rs. 9,000 in all, but he was a little vague as to the details.

The story of D. S. Wickremasinghe regarding the payment of the Rs. 1,000 is as follows:—

He stated that the money was paid at the house of respondent — Thistle Court at Mahamodera, Galle — and not at Mithila, Richmond Hill Road. He went there with a "broker" called Robert, and K. F. de Silva did not accompany him. The respondent himself was not present at the time, and the Rs. 1,000 was given to respondent's wife. D. S. Wickremasinghe also tried to fix the date of the payment. He said he paid it shortly after the Government gave him an advance of Rs. 5,000 (this was on 31.5.43), and that he drew a cheque for Rs. 1,000. The first cheque drawn by him for Rs. 1,000, after the date 31.5.43, was on 7.6.43, (K.F.D.S. 5), and D. S. Wickremasinghe was certain that the Rs. 1,000 was paid on or about that date. It is clear that on that date respondent had not gone into residence at Mithila, Richmond Hill Road. According to the respondent, he left Thistle Court, Mahamodera, on 31.5.43 and till 5.7.43 lived either in Mount Lavinia or Ambalangoda. He certainly has established that he did not go to Mithila till after the end of June 1943, but previous to that his letters had been addressed to him by the Department to Thistle Court.

The evidence of D. S. Wickremasinghe is, as I said before, open to the gravest suspicion, and I am not prepared to act upon it, except where it is supported by contemporary documents. It has to be remembered that, although a cheque for Rs. 1,000 was drawn on 7.6.43, there are at least two other cash cheques which D. S. Wickremasinghe has not been able to account for. There is in his Bank statement a drawing of Rs. 1,300 on 6.11.43 and a drawing of Rs. 1,000 on 20.12.43 (cheque K.F.D.S. 24). D. S. Wickremasinghe said he remembered drawing a cheque for Rs. 50 in favour of "broker" Robert on the same day. The only cheque which can connect with that is shown in his counterfoils as a cheque for Rs. 50 in favour of himself on 9.7.43. But there are other drawings of Rs. 50 later. I do not accept D. S. Wickremasinghe's evidence that he got this note for Rs. 1,000 on 7.6.43 and paid it to respondent's wife on or about that day. There is no question that in view of his changing attitude, D. S. Wickremasinghe was in considerable difficulties, and he tried to reconcile his evidence as best as he could. His letter K.F.D.S. 1 is the only piece of real evidence that I can accept. Here he mentioned no date, nor did he say that the payment was made to respondent's wife. He did not mention the place of payment. The use of the ward "*we*" may support the idea that K. F. de Silva was a party to the payment, but I do not regard that as conclusive.

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The real question I have to consider is whether I can accept the evidence of K. F. de Silva. No doubt he must be regarded as an accomplice, and his evidence must be very carefully scrutinized. There is also the fact that he has sent pseudonymous petitions to the authorities. He has sent previous petitions against the Public Trustee, which he did not substantiate, but there is no material to show that these were false to his knowledge. He has also admitted that he had boasted on occasions that he obtained advantages for D. S. Wickremasinghe, which were not obtained by him. He had also for the safeguarding of his nephew told "Uncle" Valdert that he had a control over D. S. Wickremasinghe's money, which he did not in fact possess. As regards the incident itself, great stress was laid on the fact that *in camera* he said he had got the note for Rs. 1,000 from the Bank of Ceylon, but I do not think too literal a meaning should be attached to that phrase, which later he did not admit he used.

But though his memory was at fault in some matters, I formed a very favourable view of his evidence, and I think he was speaking the truth regarding this incident. There is no legal corroboration of his evidence, but the terms of letter K.F.D.S. 1 written under the circumstances already described go far to confirm his story. I have already given reasons for holding that this letter was a genuine letter written at the time, and not concocted for the purpose of this inquiry. It has been suggested that the payment of Rs. 1,000 and the agreement to pay the percentage may have been made through an intermediary, who had played false and pretended to have an authority from the respondent that he did not possess. But substantial sums were involved, which persons in the position of K. F. de Silva would not have left to an intermediary, and I think in this case the intermediary was principally useful for the purpose of effecting introductions. The letter K.F.D.S. 1 also is not in keeping with payments to an intermediary.

In passing I may refer to another matter. K. F. de Silva's house had also been requisitioned, not acquired, and he claimed rent compensation for it in excess of what was assessed by the Department. It is clear that the respondent had nothing to do with this matter, and signed no letters relating to it. But K. F. de Silva had correspondence with the military authorities who requisitioned, and the dispute was not finally decided till December 1943. But in the course of cross-examination K. F. de Silva said he thought that respondent had a hand in this, and would have talked to him, if he met him during this period, but he did not mention anything to the respondent. The point has relevance to the date of the payment of Rs. 1,000. If it was paid on or about 7th June, 1943, as D. S. Wickremasinghe maintained, then the correspondence was going on about rent compensation at the time, and this is really a point against the payment having been made about that date. K. F. de Silva was not able to fix the date of the payment and thought it was in the latter part of 1943 or early 1944, perhaps February 1944. This fact may be used as an argument to show that the payment of Rs. 1,000 was not made as early as June 7th, 1943, but I do not see that any other conclusion can be drawn from it. In fact, K. F. de Silva said the money was paid at Mithila, Richmond Hill Road, and the evidence established that the respondent did not move into Mithila until about 5.7.43. A great deal of correspondence (C.D.G. 1 to 7) relating to rent compensation has been put in but I do not think any other material point arose, except that K. F. de Silva obtained only a small increase in the compensation, although he had claimed a fairly large amount.

There have also been some documents (C.D.G. 9 and 10) put in about the claim for damage compensation in 1946, when the premises of K. F. de Silva were handed back by the Military. In this matter K. F. de Silva claimed about Rs. 10,000 and was originally offered about one-third that amount, but he finally obtained about two-thirds of his claim. The other point of interest was that when respondent went to inspect the premises, K. F. de Silva refused to let him come in, and according to respondent, threatened to assault him. It is clear that there was bad feeling between K. F. de Silva and respondent at this time.

I have carefully considered the evidence of K. F. de Silva, and I am satisfied in all the circumstances that he has materially spoken the truth, and I accept his evidence that he made an agreement with the respondent, on behalf of the co-owners, to pay him 15 per cent. of the assessed value of the buildings on Notarisgederawatta and that he saw D. S. Wickremasinghe hand over the Rs. 1,000 note to the respondent. This was in the latter part of 1943 or early 1944. The note was given to the respondent himself, at Mithila, Richmond Hill Road. I have considered the evidence of D. S. Wickremasinghe and this evidence does not raise any reasonable doubt in my mind about the truth of K. F. de Silva's story.

I have also considered the evidence given by the respondent. No doubt, he has been able to prove that he advised the Government Agent to announce that no gratifications should be given to public servants, and the Government Agent had formed a good opinion of his fairness and honesty. The respondent has suggested that the witnesses were influnced by what was said by the intermediaries or

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"brokers" and falsely pretended that they had personally dealt with him. I have already dealt with this argument. Respondent has also denied the allegations made against him. I was, however, not impressed by the evidence of the respondent and the evidence called for him did not raise a reasonable doubt in my mind as to the truth of K. F. de Silva's evidence.

There is one matter in respondent's evidence which specially calls for comment. He admitted that in 1946 he purchased in the name of his wife two properties, one at Torrington Place, and the other at School Lane. In respect of these properties he expended about Rs. 80,000 and Rs. 20,000 ; over a lakh of rupees in both transactions. He had obviously not saved these amounts from legitimate earnings, and he told an extraordinary story as to how these sums were obtained.

The story is that respondent's mother-in-law had a large iron-safe in which she kept well over a lakh of rupees in cash. She apparently had large sums in the safe ever since her husband's death in 1914, and at any rate after the respondent's marriage in 1936. This money he described as his wife's dowry money, but modified that statement by saying that on the first birthday of his son in 1942, the mother-in-law gave him the use of the money. In 1946 he got cash from the safe to the sum of about a lakh and yet the cash was not exhausted. Although the suggestion was that the money was given over in 1942 because the son had reached the age of one year, respondent subsequently said that the mother-in-law kept some control over the money and would not allow him to buy an estate, but insisted on the purchase of house property. Finally, in 1946, she gave nearly Rs. 80,000 for the purchase of the premises and putting up the building in Torrington Place, because respondent had daughters attending St. Bridget's Convent, and also gave over Rs. 20,000 for the purchase of the premises in School Lane. Even at her death she had about Rs. 20,000 in the safe, which the respondent said came into her Testamentary case at her death. The Testamentary case has been obtained and contains no mention of the Rs. 20,000.

The story is the more remarkable in that respondent admitted that his mother-in-law had a Bank account and operated on it. Why she did not put this large sum in the Bank is incomprehensible. It is suggested that the mother-in-law was old-fashioned in her ideas, but she was not so old-fashioned as to scorn having and operating a Bank account. Had these facts been available to the Commission before the inquiry started, I think the Commission would have inquired into the allegation whether respondent had accumulated this money by bribery or corruption, but the inquiry does not relate to such an allegation, and I do not propose to decide any such matter. For the purpose of this inquiry I think it is sufficient to say that I definitely disbelieve the explanation given by the respondent as to the manner in which he obtained this money. His story is contradictory and unconvincing. I think no credit is to be attached to the evidence of the respondent.

I may add that even if I had held that the money had been obtained by bribery and corruption, that would not be sufficient for me to hold that the particular allegations in the inquiry had been established. I have not taken this matter into consideration except for the purpose of assessing the value of the respondent's evidence.

On the evidence I hold that the respondent—

(1) in or about the year 1943 solicited or demanded a gratification of 15 per cent. of the assessed value of the building on the property known as Notarisgederawatta, situated at Koggala, from D. S. Wickremasinghe, one of the co-owners of the said property, as a reward for making a valuation of the said property for the advantage of its co-owners, and

(2) in or about 1943 received and accepted from the said D. S. Wickremasinghe the sum of Rs. 1,000 as an advance in part payment of the said reward.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 11.

RESPONDENT :

First : S. D. Sheik Abdulla,
No. 3524, Head Driver,
Harbour Tug "Goliath",
Colombo Port Commission.

Second : Saverimuttu Bastiampillai,
No. 3561, Head Driver,
Harbour Tug "Samson",
Colombo Port Commission.

Third : H. R. Hopwood,
No. 3504, Greaser,
Harbour Tugs,
Colombo Port Commission.

IN CAMERA

Heard on 19th February, 6th April, and 29th April, 1949.

Respondents :

1st: S. D. Sheik Abdulla, No. 3524, Head Driver, Harbour Tug "Goliath", Colombo Port Commission.

2nd: Saverimuttu Bastiampillai, No. 3561, Head Driver, Harbour Tug "Samson", Colombo Port Commission.

3rd: H. R. Hopwood, No. 3504, Greaser Harbour Tugs, Colombo Port Commission.

The matter for inquiry concerning the *1st respondent* was whether :

(1) in or about December 1947, he demanded a gratification of Rs. 40 from Kamburawalage Lionoris, an employee of the Master Attendant's Department, as a reward or recompense for the Chief Clerk of the Colombo Port Commission for his services in obtaining arrears of pay for the employees of the Master Attendant's Department ;

(2) on or about 27th December, 1947, he demanded a gratification of Rs. 40 from Sheik Abbas Sheik Abdulla, an employee of the Master Attendant's Department, for the purposes set out in para (1), and

(3) on or about 27th December, 1947, he received and accepted a gratification of Rs. 40 from the said Sheik Abbas Sheik Abdulla for the purposes set out in para (1).

The matter for inquiry concerning the *2nd respondent* was whether on or about 24th December, 1947, he received and accepted a gratification of Rs. 40 from Kamburawalage Lionoris, an employee of the Master Attendant's Department, for the purposes set out in para (1), of the allegations against 1st respondent.

The matter concerning the *3rd respondent* was whether he on or about 24th December, 1947, received and accepted from the 2nd respondent gratifications collected by the said 2nd respondent for the purposes set out in para (1) of the allegations against the 1st respondent.

It is in evidence that the employees of the Master Attendant's Department had petitioned for an increase in wages and overtime. The desire for improvement in their conditions appears to have been general, and even senior employees, such as

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drivers of tugs, joined in the petitions. The representations were successful, and the first benefit obtained was an increase in wages or salary. That appears to have been granted in the latter part of 1946, and about October 1946 or so the employees received certain sums as arrears, as the wage increase operated retrospectively. That was the first payment of arrears. A little later, apparently in the first half of 1947, certain arrears were again paid. This arose in consequence of the increase of wages, and its effect on the computation of overtime pay. Both these payments arose from a general increase of wages paid to public servants.

The third and most important payment of arrears arose from the granting of the request that overtime should be computed at eight hours for every twenty-four hours service and not six hours as heretofore. Employees worked on the basis of twenty-four hours continuous service, succeeded by twenty-four hours off duty. For the continuous service they received originally overtime calculated at six hours out of the twenty-four hours. The request granted was that overtime was computed at eight hours out of every twenty-four hours. This also operated retrospectively and every employee received a substantial amount, which was paid in December 1947.

The allegations by the witnesses was that the idea became current that the payment of all these arrears had been successfully worked at the office, and that gratitude to the office should be manifested by making a collection from all those who received arrears, each man paying in his grade according to a recognized tariff. The collection was to be paid to a person described as the Chief Clerk, and the name of Fernando was mentioned as a recipient. This Fernando has not been identified, and it is not perfectly clear that there was a person designated "Chief Clerk" at the time. The 3rd respondent says there was no such officer, but he talks of two Fernandos, one the Head of Establishment, and the other the Head of the Paying Branch. The evidence at this inquiry related only to the alleged collections made from the employees and there is no evidence how the moneys, if collected, were in fact disbursed. We do not know the total sum in fact collected though there is a suggestion that it was a considerable amount. We can only test what the particular witnesses observed.

The first witness called by Crown Counsel was S. A. S. Abdulla, No. 3512, Greaser. To prevent any confusion between this witness and the 1st respondent who has a somewhat similar name, I shall in future refer to the witness as Abbas, a name by which he has been referred to in the evidence. Abbas had been in the Department since 1934 and on tugs since 1938. He had been during the war period in the Ceylon Royal Naval Volunteer Reserve and in 1943 was a Petty Officer there. Early in 1946 he returned to the Department, and shortly after was promoted from fireman to greaser. It was suggested that Abbas was angry with the 1st respondent because two brothers and a cousin of the 1st respondent had been appointed second drivers, and that the 1st respondent did not recommend Abbas for the post. It is true that these relations of 1st respondent were appointed to these posts, and that Abbas was at the time an applicant, but it is clear, not only from Abbas, but also from the 1st respondent, that the latter's brothers and cousin were in fact senior to Abbas in service, and that the promotions were made in proper course. Apparently, there are other greasers also senior to Abbas, and though he with many others made application for the vacant posts, I do not think he seriously expected to be appointed, and I definitely hold that Abbas had no enmity against 1st respondent on this account. There can be no doubt that the record of Abbas both in the Navy and in the Department has been excellent. He said that he was satisfied with the promotion he received to the rank of greaser and I think that it is true, though he may have hoped ultimately to climb up to a higher post.

According to Abbas, the 3rd respondent Hopwood had one advantage over the other employees in that he spoke English, and he had the reputation of being in touch with the officers of the Master Attendant's Department. Third respondent had taken an active part in getting signatures for the original petition, and about June 1947, 3rd respondent announced on the tug that notice had come that the arrears claimed would be paid. Earlier, in January or February 1947, there had been a meeting arranged by 3rd respondent in which it was decided that after the receipt of the arrears, money should be collected and paid to the office. First respondent was present. In December 1947, also there was a meeting about this matter, when it was decided that after payment of arrears, collections should be made from the employees on the tug. Third respondent was present at the time.

Abbas stated that he paid his contribution of Rs. 40 to the 1st respondent. He did not see 2nd respondent taking money, but it was common knowledge. In my opinion, Abbas gave evidence extremely well, and was unshaken in cross-examination. I formed a very high opinion of him as an unbiassed and truthful witness. As regards the dates of the meetings and of his payment, his evidence cannot be

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accepted as absolutely correct—it was guess-work—and, in fact, none of the witnesses called either by Crown Counsel or for the respondents were able to establish the exact dates on which arrears were paid. Possibly it took place about the 23rd and 24th of December, 1947, but we cannot be sure.

No doubt, Abbas must be regarded as an accomplice, but his action, like that of the respondents also, appears to have been based on a mistaken and misguided sense of gratitude for favours received. All his seniors as well as the others were of opinion that the payments should be made, and he appears to have acquiesced in it. I thought that his evidence was good enough to act upon, even if he was regarded as an accomplice.

The second witness called by Crown Counsel was K. Lionoris, No. 3544, Greaser. This man had also been in the Department for some time, and joined the Navy about the time of the outbreak of war, and there rose to be a Petty Officer. After the war he returned to the Department as fireman, but was soon promoted to be greaser. His record, according to the 1st respondent, was good, and he was an efficient officer, but the 2nd respondent thought that he was somewhat swollen-headed and inclined to be disobedient. But no actual incident was referred to, and I am inclined to think that this evidence is at least an exaggeration. It was alleged against Lionoris also that he had a grudge because he was not appointed second driver. Second respondent says that Lionoris wanted a recommendation in this respect, but he did not give it. That was not definitely put to Lionoris, but in any case, for reasons I have given in the case of Abbas, I do not think there is much substance in the suggestion. Further, Lionoris is said to have borrowed Rs. 50 from 2nd respondent about six months before December 1947. He was in hospital with a stab injury, and was suddenly removed from his bed and dumped on the floor at the hospital. He used the money to get himself put back on to the bed. He later paid the money back to the 2nd respondent. The 2nd respondent said that Lionoris asked for another loan later, which he did not give. Lionoris denied this and I am inclined to accept his story.

According to Lionoris, it was the 1st respondent who first requested the payment of Rs. 40 from him. At first he was reluctant to pay, but both the 1st and the 2nd respondents warned him that he would be reported to the office. It is not quite clear on what date these things took place, and whether they merely constituted preparation, or an actual demand. The money was apparently to be paid to the Head Clerk Fernando. Anyway, Lionoris received his arrears, and the next day he brought the money, Rs. 40, and gave it to the 2nd respondent, who was then his Head Driver. Lionoris says he saw others also paying money to the 2nd respondent on the bridge. The 2nd respondent passed over the money collected to the 3rd respondent.

Lionoris was not successful in establishing the exact day when he made payment. He also made a mistake about the day of the week on which Christmas fell in 1947. On this point he was clearly guessing, not very successfully. The log book contradicts the date he gave. He was certainly not so impressive a witness as Abbas, but on the whole he gave his evidence so well that I was disposed to accept his evidence, although he may be regarded as an accomplice. I think his record in the service has been excellent, in spite of the evidence of the 2nd respondent.

I may add that the evidence does not disclose that either Abbas or Lionoris was a member of the organization known as the Boatmen's Union since proscribed or that their evidence was influenced by political considerations. Nor have these witnesses given evidence before the Jayasuriya Commission held with regard to certain other complaints against officers of the Department earlier. They were possibly not in the Department at the time, but on war service. I have not been able to find that either of these witnesses have been actuated by any dishonest motive, and I think they both gave their evidence very well.

The third witness called by Crown Counsel was A. Sebastiampillai, No. 8046, Boatman in the Master Attendant's Department. This witness was not entitled to any arrears for overtime, and did not receive any. He did not pay any gratification, and cannot be regarded as an accomplice. He speaks to events which he observed, about the 23rd of December. He speaks to the fact that he saw 3rd respondent collecting money from drivers, greasers and firemen of the tugs at the time when arrears were being paid. Other persons were also collecting moneys from other employees.

This witness's record in the Department has not been so good as that of the other two witnesses, Abbas and Lionoris. The tug master of the "Sinha Bahu". M. P. Rajamuttu had reported him and claims that he had this witness transferred from his branch. The witness Lionoris said he asked for a transfer and got it, and his version may well be correct. There has certainly been bad feeling between the witness and Rajamuttu, and this witness gave evidence before the

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Jayasuriya Commission of the receipt of a bribe of Rs. 5 by Rajamuttu. This apparently was not accepted by the Commissioner in the absence of corroboration. In any event, for some reason, the increments of the witness were stopped for some time, after he gave evidence.

Rajamuttu, who also gave evidence before me, said that Sebastiampillai (witness) was an ardent member of the proscribed Boatmen's Union. Sebastiampillai admits that he was an active member once, but ceased to be a member when the Union was proscribed, and Rajamuttu's evidence is not sufficiently strong to rebut this statement. In fact, Rajamuttu made certain confident statements which he had later to water down or withdraw. Sebastiampillai has certainly been warned for neglect of duty, but not for dishonesty. He may at one stage have been active in making demands for improved conditions and may have influenced his fellow workers, and this may have been a source of irritation to some of his superiors. I do not think the evidence of Rajamuttu to be sufficient to discredit Sebastiampillai as a truthful witness.

The only matter that Hopwood, 3rd respondent, alleged against Sebastiampillai was that he wanted 3rd respondent to draft a petition, and 3rd respondent did not do so. I do not think this would be a likely motive for Sebastiampillai's giving false evidence in this case against the 3rd respondent.

One of the principal witnesses called for the respondents was Hopwood, the 3rd respondent, No. 3504, Greaser. This respondent had been in the Department before the war, and did not join the Navy during the war. He was an efficient officer, and in due course was promoted from fireman to greaser. In his evidence he claimed that he received this promotion before Abbas and Lionoris were promoted, although he was junior to them in the service. This fact had not been put in cross-examination to Abbas and Lionoris. It could have been established by other evidence than by the word of the respondent, but no other evidence was led. I am not disposed to accept this evidence. Even if it is true, at the present moment, Abbas and Lionoris are also greasers, and I do not think that their present evidence can be attributed to anger or jealousy on their part. The 3rd respondent also spoke to the displeasure of Abbas and Lionoris about the promotion of the 1st respondent's brothers and cousin to be second drivers. But for reasons I have already mentioned, I do not accept this evidence. As regards the other witness, Sebastiampillai, 3rd respondent suggested that this man had always been an ardent member of the proscribed Boatmen's Union, and further that the witness requested 3rd respondent to write a petition against the tug master, Rajamuttu, which 3rd respondent refused to do. I was not impressed with the suggestion that Sebastiampillai was actuated by dishonest motives in the giving of the present evidence.

Third respondent also denied that he took a prominent part in obtaining signatures for the request for arrears, and that he made any announcement in June 1947, that the arrears would be paid. He denied that anyone in the General Office was responsible for obtaining the arrears. He also stated that he did not act as liaison officer between the employees and the senior staff.

According to the 3rd respondent, the notice concerning arrears was read out in June—by the Chief Engineer, Hutchinson, but no one supports him in this. Some of the witnesses called for the respondent never heard of the payment being sanctioned, till a few days before the payment was made. There was some evidence that the Engineer read out the notice in December.

According to the 3rd respondent, he received his arrears on December 23rd. He did not collect any "pagga" or bribe. He left the premises with Wijesooriya and Simon and had tea at a restaurant and thereafter helped Simon to purchase a bottle of Kepler's Malt and Cod Liver Oil.

D. A. Wijesooriya, No. 3581, who worked on the "Hercules", and S. A. Simon, No. 3537, who worked on the "Sinha Bahu" supported this story.

I did not regard this evidence as impressive, and it did not raise in my mind a reasonable doubt as to the truth of the evidence of Abbas and Lionoris.

The evidence of M. Ishak, No. 3521, Head Driver of the "Sinha Bahu" was to the effect that he was never called upon to pay bribes on any occasion, and that there was no talk of bribes or of a subscription list. There was no evidence that this witness actively associated himself with the collection of the bribes, but his denials do not carry the case of the respondents far. Also, he was a friend of the 1st respondent.

Another witness K. H. Vithoris Silva, No. 3569, fireman of the "Samson" stated that he drew arrears on the 24th December, and neither paid nor was asked to pay any amount as a bribe. The 3rd respondent was not present at the time nor was Linoris. Vithoris was called because Lionoris had mentioned a man called Vithoris at the earlier investigation, before the respondents were noticed. He said that Lionoris had made a guarded statement about his giving evidence, but had not asked him to say that he saw anyone giving "pagga".

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Both Simon and Vithoris had worked under the respondents, or some of them. I was not impressed with either of them or with Wijesooriya.

The 1st respondent gave evidence and spoke of his good record in the Department for a long period of years. He denied that he had made any demand from Abbas or Lionoris; and that he had received any money from Abbas. He stated that there was no talk of raising money to pay the persons instrumental in getting the arrears. He emphasized the fact that Abbas asked him to recommend him for the post of second driver, but that he declined to do so, and his brothers and a cousin were appointed. I have already dealt with the suggestion that Abbas was angry about this, and I need only add that it is curious that Abbas has not attempted in this inquiry to implicate those relations of 1st respondent as collectors of bribes. 1st respondent added that he heard about the arrears about two months previously from general talk, and he did not remember the Engineer making any announcement about it.

The 2nd respondent also gave evidence. He stated that he drew his arrears on the 24th December, and went back home. He did not demand or receive any money from Lionoris, and stated that no collections were made on any occasion. He mentioned that there had been differences with Lionoris, who was swollen-headed after his return to the Department. He also mentioned the borrowing by Lionoris of Rs. 50 and the request for another loan, and Lionoris' request that he be recommended for the post of second driver. I have already dealt with these matters, and only add that I was not impressed.

I have carefully considered all this evidence called for the respondents, and in the result I cannot say that it raises a reasonable doubt in my mind about the evidence of Abbas, Lionoris and Sebastiampillai. I have been struck with the fact that this is not the kind of story which would ordinarily be invented by people of this class. An appeal to sentiment to this kind of man may well be successful, and I am not surprised that a collection could be made in the circumstances. I was also impressed by the good record in the Department of Abbas and Lionoris. They have held fairly responsible offices, and have done their duty well. No doubt, the record of the respondents have also been good, but I can well understand that they may have been induced, by the appeal to sentiment and gratitude, to associate themselves with this collection. I do not think they would at first sight have regarded their action as criminal or dishonest. Unfortunately, however, there is no evidence to show what happened to the collections made. Perhaps all the employees did not contribute, but the chances are that a fairly considerable amount was in fact collected. The employees had suddenly received a windfall, and would not ordinarily have grudged a small contribution by way of gratitude. Was the money paid to any officer of the Department, and, if so, to whom? This we do not know, and perhaps shall never know.

As regards the allegations against the three respondents, I answer them as follows : —

Against the 1st Respondent. I hold that—

(1) the allegation that he demanded a gratification of Rs. 40 from K. Lionoris has not been established. At the most, this may have been preparation, and not a specific demand;

(2) and (3) the allegations that in December 1947, he demanded and thereafter accepted and received a gratification of Rs. 40 from Sheik Abbas Sheik Abdulla, for the purposes set out in paragraph (1), has been established.

Against the 2nd Respondent, I hold that—

in December 1947, he received and accepted a gratification of Rs. 40 from Kamburuwalage Lionoris for the purposes set out in paragraph (1) of the allegations against the first respondent, and

Against the 3rd Respondent, I hold that—

he in December 1947, received and accepted from the 2nd respondent gratifications collected by the said 2nd respondent for the purposes set out in paragraph (1) of the allegations against the 1st respondent.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 11/3.
RESPONDENTS :

First : Sebastiampillai Augustine,
No. 8503, Serang,
Master Attendant's Department,
Colombo Port Commission.

Second : Mariampillai Seenimuttu,
No. 8623, Serang,
Tug "Samson",
Colombo Port Commission.

Third : Sebastiampillai Joseph,
No. 8616, Lascar,
Tug "Hercules",
Colombo Port Commission.

Fourth : Anthonypillai Arulanandam,
No. 8554, Lascar,
Tug "*Hercules*",
Colombo Port Commission.

IN CAMERA

Heard on 18th February, 1949.

Respondents :

1st. : Sebastiampillai Augustine. No. 8503, Serang, Master Attendant's Department, Colombo Port Commission.

2nd. : Mariampillai Seenimuttu, No. 8623, Serang, Tug "Samson", Colombo Port Commission.

3rd. : Sebastiampillai Joseph, No. 8616, Lascar, Tug "Hercules", Colombo Port Commission.

4th. : Anthonypillai Arulanandam, No. 8554, Lascar, Tug, "Hercules", Colombo Port Commission.

The matter for inquiry relating to the 1st. respondent was :

(1) whether in or about December 1947, he demanded a gratification from Sesuvadian Sebastian, an employee of the Master Attendant's Department, as a reward or recompense for the Chief Clerk of the Colombo Port Commission for his services in obtaining arrears of pay for the employees of the Master Attendant's Department ;

(2) whether in or about December 1947, he demanded a gratification of Rs. 20 from Juwani Marian, an employee of the Master Attendant's Department, as a reward or recompense for the Chief Clerk of the Colombo Port Commission for his services in obtaining arrears of pay for the employees of the Master Attendant's Department.

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The matter for inquiry relating to the 2nd, 3rd and 4th respondents was a matter connected with allegation (2) against the 1st respondent, namely, whether in or about December 1947, they demanded a gratification of Rs. 20 from Juwani Marian, an employee of the Master Attendant's Department, as a reward or recompense for the Chief Clerk of the Colombo Port Commission for his services in obtaining arrears of pay for the employees of the Master Attendant's Department.

The evidence disclosed that certain arrears were paid to the employees of the Master Attendant's Department in December 1947. Some of the employees of that Department felt that the arrears had been obtained by the efforts of the office of the Colombo Port Commission and it was suggested that collections should be made by the employees according to their grades, to be paid to the Chief Clerk, of the office as a reward or recompense. There is evidence of discussions relating to this matter. The important question to decide was whether demands were made in December 1947, at the time the arrears were paid or immediately before or after. Earlier discussions and resolutions would have been in the nature of preparation, and would not constitute a demand or solicitation.

There are two witnesses who gave evidence at this inquiry in support of the allegations. The first was S. Sebastian, No. 8518, Coxswain, who said he received about Rs. 300 towards the end of 1947. He averred that the 1st respondent Augustine told him that he should contribute money to pay the Chief Clerk, and that he had heard that others had also been asked. He himself was spoken to twice in February and June 1947, but no request was made from him in December 1947, when the arrears were actually received. The evidence is not sufficient to bring home the allegations to the 1st respondent. Not only may the request be regarded merely as preparation, but the allegation against 1st respondent was that the request was made in December 1947. S. Sebastian was at one time a prominent member and the Secretary of the Harbour Boatmen's Union, which body was at one stage proscribed by the authorities; and it may well be that the persons who were interested in making the collection decided to leave him alone at the time when the arrears were due to be paid.

The other witness was J. Marian, No. 8633 Lascar. At the inquiry he stated that the 2nd respondent Seenimuttu asked him for a contribution of Rs. 20 to pay to the Chief Clerk, and that he saw the 2nd respondent collecting money from all in the tug "Samson" on 23.12.47. Marian did not pay. The 1st, 3rd and 4th respondents made no request for money on that occasion, but they had asked for money from him for different purposes on previous occasions. He was confronted with his statement made at the earlier investigation that serang Augustine 8503 demanded Rs. 20. that serang Seenimuttu also made demand, and that Joseph, Arulanandam and others also made demands. He was not able to offer any reasonable explanation of that evidence, and it constitutes a serious discrepancy in his evidence. There may have been some confusion in the mind of the witness, but it is difficult to accept his evidence in the absence of corroboration. There are also certain discrepancies between the two witnesses as to where Marian was living shortly before these proceedings.

None of the respondents gave evidence, but I find it not easy to say that Marian has satisfied me beyond reasonable doubt that the 2nd respondent demanded a gratification from him in December 1947, or that he collected contributions from others about that time. His evidence does not touch the 1st, 3rd and 4th respondents.

On the whole, I hold that the allegations against all these respondents or any of them have not been established beyond reasonable doubt.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 19.

RESPONDENTS :

First : T. L. Piyatissa,
Police Constable 1924,
Mawatagama Police Station.

Second : B. M. Muttu Banda,
Village Headman,
Paragoda.

IN PUBLIC

Heard on 10th and 23rd of March, 1949.

Respondents :

1st : T. L. Piyatissa, P.C. 1924, Mawatagama Police Station.

2nd : B. M. Muttu Banda, Village Headman, Paragoda.

The allegations against these two respondents relate to the following matters : —

(1) that they on or about 28.8.47, received and accepted a gratification of Rs. 15 and a bottle of arrack from B. M. Wickremasinghe, in consideration of promises made by them not to take action against the said B. M. Wickremasinghe in connection with a complaint made to the 2nd respondent by one Tikiri Banda,

(2) that they in or about November 1947, demanded a gratification of Rs. 20 from L. H. Samara as a reward or recompense in consideration of promises made by them to recommend an application made by the said L. H. Samara for a licence to purchase a gun, and,

(3) that in or about September 1947, 1st respondent received and accepted, and the 2nd respondent solicited a gratification of Rs. 5 from L. H. Samara as a reward or recompense for the action taken by 1st respondent in connection with a complaint made by one W. M. Appuhamy against the said L. H. Samara.

In the third matter, the last words are incorrect and should read "a complaint made by the said L. H. Samara against one W. M. Appuhamy."

The witnesses who gave evidence in support of the allegations were L. H. Samara, B. M. Wickremasinghe and also H. M. Wijekoon Banda. Each of these witnesses spoke to each of the incidents.

L. H. Samara is a person of some standing in the village. He is the Village Committee Officer, and is possessed of landed property which the 2nd respondent assessed as worth Rs. 3,000, and may be worth more. He has never been charged or convicted in any court, and his conduct at any rate after 1945 appeared to have been exemplary. Evidence was given by the Korala, Seneviratne Banda, that prior to that date complaints of assault and violence had been made against him. These appear to have risen out of land disputes between him and his father and brother. One of the complaints was that he threatened to shoot his brother with his father's gun. Samara in his turn made counter charges against his relations. It is important to note that inquiries were made into these complaints, and that nothing resulted from the inquiries. Samara was not charged with threatening to shoot his brother, or with any other offence, but the stories were revived when Samara made an application for a gun licence later, and the reputation of being irritable and quarrelsome clung to him — a reputation for which there was no solid foundation. Admittedly none of the charges merited bringing into court.

On 12.7.46 Samara was appointed a Rural Volunteer to assist the Police and the Headman in patrol and other duties (see L.H.S. 11).

The witness H. M. Wijekoon Banda is also a man possessing some property, and nothing has been established against his good character. He also was selected as a Rural Volunteer for an adjoining hamlet. He was undoubtedly a friend of Samara, and it was said that he cultivated Samara's fields on *ande*. But he had no interest in any of the matters alleged, and could in no way be regarded as an accomplice.

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B. M. Wickremasinghe is a young man of no particular standing in the village. The little property he possessed, he has now sold to Samara.

It may be convenient to deal with the allegations in the order of their dates. The first matter is that contained in para (1) and relates to the 28th of August, 1947. A complaint had been made to the 2nd Respondent and forwarded to the Police, that Wickremasinghe had attempted to outrage the modesty of Tikiri Banda's wife, and the 1st respondent was sent for inquiry on 28.8.47. Wickremasinghe was at first reluctant to admit the nature of the complaint against him and said it was for breaking pots and pans — this he later said was a separate charge. The official witness however did not agree that any such charge was inquired into at that time. First respondent took the 2nd respondent with him for the inquiry. After the statements of the complainant parties and Wickremasinghe, who also had a complaint against Tikiri Banda, were recorded, the two officials went to the house of the 2nd respondent. The three witnesses who gave evidence accompanied the officials. On the way, the 2nd respondent suggested that a bottle of arrack should be produced, and Wickremasinghe purchased it. The arrack was consumed by the two officials and Wijekoon Banda. Later in the course of the evening, a suggestion was made by the officials that Rs. 15 should be paid to the 1st respondent. Wickremasinghe left for that purpose accompanied by Samara, while Wijekoon Banda remained behind. The money (Rs. 15) was actually paid that night after dark, and was witnessed by all the three persons. The charge against Wickremasinghe never matured thereafter. It is true, that the Inspector himself decided that in the absence of witness, no prosecution should be launched (see evidence of H. B. Weerasekera for the respondent).

The two respondents said that they did not return to the house of the 2nd respondent, but attended to various other duties, including an inquiry into a separate complaint by one Ratnatilleke Banda, which continued from about 5 p.m. to 10 p.m. The witnesses against the respondents admitted that there was such a complaint and it is a point in their favour that they knew all about it, but they said the inquiry only lasted for a much shorter time. I do not accept the story for the respondents that they never returned to the 2nd respondent's house. That house was not far from Ratnatilleke Banda's boutique. I was not impressed with the 1st respondent's story that he left the village dinnerless and went to the house of another Headman, where after midnight a meal was prepared for him.

There are inconsistencies in the stories of the three witnesses, but in spite of that I think it has been established beyond reasonable doubt that the bottle of arrack and the sum of Rs. 15 were actually given by Wickremasinghe to the respondents. In making the demand, it is clear that the two respondents acted jointly.

The next matter in order of date is that contained in paragraph 3. Samara said that in pursuance of duties given to him by the 2nd respondent, he posted up notices in the village, and had to find fault with Appuhamy for going about at night without a light. Appuhamy resented this, and tore down notices and abused and threatened him. Samara complained, and the Police again sent 1st respondent for inquiry. The 2nd respondent came with the 1st respondent for inquiry, on 20.9.47, and statements were recorded. Later, on the suggestion of the 2nd respondent, Samara paid Rs. 5 to the 1st respondent, for the trouble he had taken. This was done at the house of 2nd respondent.

It is in evidence that an inquiry into the matter was held on 20.9.47. First respondent said Samara wanted Appuhamy arrested and taken to the Police Station, but this was not put to Samara, when he gave evidence, and I think it was an afterthought. Both respondents denied that money was solicited or received by them. I was, however, more impressed by the evidence of the three witnesses, and I hold that it was established beyond reasonable doubt that a gratification of Rs. 5 was solicited by the 2nd respondent and paid to the 1st respondent on this occasion by Samara. I may add that the 2nd respondent did not specify the amount to be paid in his solicitation.

The other matter remaining refers to the gun licence — see paragraph 2. On 23.8.47 Samara applied for a licence to possess a gun (see L.H.S. 1.). This application was sent to the Korala, who had previously been the Village Headman of Paragoda and knew Samara. The Korala reported against the issue of the licence. (See L.H.S. 7 of 27.10.47). In this the Korala mentioned that Samara had never been convicted, but referred to the complaint that Samara had threatened to shoot his brother, and had quarrelled with his father, and that he was " quickly irritated and quarrelsome ". This refers to the complaints I have mentioned much earlier, where after inquiry, the matter was not pursued any further and no charges were framed.

The matter was apparently sent to the Police thereafter, and 1st respondent was instructed to make inquiries. For that purpose he came for inquiry with the 2nd respondent about 9.11.47. The 2nd respondent appears to have given a report on that date (L.H.S. 6), which followed the lines of the Korala's report.

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According to Samara and his witnesses, the respondents came to see Samara and talked to him about the gun licence, and mentioned about the quarrels with his relations. The request was made that Rs. 20 should be paid—both respondents taking part in the conversation. Samara asked why he had to pay the money, and was told that without the payment, it would be difficult to get this done. Samara however would not agree to pay this sum.

The 1st respondent's story is that he went to the village on 9.11.47 to inquire into the question of the gun licence and met 2nd respondent. First respondent had already seen the Korala's report and told 2nd respondent about it. He inquired from the people he met on the road and was told that Samara was quarrelsome. He met Samara on the road, and Samara asked about the gun licence. He replied that Samara would get a reply from the Government Agent or the Superintendent of Police. First respondent made no inquiries from Samara himself, nor told him the things that he had heard from the passers-by nor of the earlier complaints.

I do not think this last is a likely story. It is impossible to think, that although he was charged to make inquiries, the 1st respondent would not have had some talk with Samara about his fitness to possess a gun. Of the two stories, I much prefer the story of Samara and his witnesses and I hold that it has been established beyond reasonable doubt that the respondents solicited the payment of Rs. 20 to recommend the issue of the gun licence. The fact that the Korala had given an adverse report may well have influenced the respondents in asking for the payment. In fact 2nd respondent stated that he informed Samara that the Korala had made an adverse report.

There are certain matters affecting the three witnesses which I may mention. As regards Samara, it was strongly urged that he had a motive for making a false allegation, because on the 13th of March, 1948, the two respondents came and searched his house on information received that he had an unlicensed gun. Admittedly the search was made on that day and Samara did not obstruct the search. The respondents however, and another Constable Gunaratne, said that he allowed this reluctantly and was annoyed, and declared that if they did this kind of thing in future, he would not allow them to remain in service. In fact, no gun was found, and Samara said he was not annoyed, nor uttered those words. No record of the words were made in the 1st respondent's note book.

There is also the fact that on 31.5.48 — two months later — the feelings between Samara and the 2nd respondent were so good that Samara went to him for a report on character on the occasion of his re-election as Village Committee Officer, and the 2nd respondent gave him a very good report (L.H.S. 10).

I do not think the search of his house on 13.3.48 rankled with Samara, or was a motive for making false allegations. As regards Wijekoon Banda, it has been suggested that the fine of Rs. 7.50 imposed on his wife for cutting a jak tree was the motive for making a false allegation. This is, however, a trivial matter and I do not think Wijekoon Banda had any enmity against 2nd respondent.

Again it was urged that it was extremely unlikely that the three witnesses were together on each of the three occasions. Samara and Wijekoon Banda had been enrolled as Rural Volunteers, and although it does not appear to be part of their duty to accompany Police Officers in the village, it was not unnatural that they should do so. It would at least have given these two a sense of importance. As regards Wickremasinghe, he stated that after he gave the Rs. 15 to the respondents they showed some friendship to him, and this is not an improbable story. Police patrols did not come every day, and must have been something of an event in the village.

I must also mention the evidence of Attygalle, the Superintendent of an Estate, about the conversation in the bus. I have considered the evidence and while it points to an expression of regret by Samara that the 2nd respondent had to be implicated, I do not think it can be regarded as an admission that the 2nd respondent was innocent. But Attygalle himself has jumped to that conclusion.

Another point made was that no complaint was made by the three witnesses about these gratifications before the complaint to this Commission. Samara had sent petitions about the gun licence on 19.3.48 and 17.5.48 to the Government Agent (see L.H.S. 2 and 3). But he may well have thought that it was unwise to mention the gratification at that stage, when he had not heard the result of his application.

I was satisfied with the evidence, especially of Samara and Wijekoon Banda. The evidence of the two respondents did not impress me well.

As I have already stated, I hold that all the allegations have been established against both the respondents.

A. E. KEUNEMAN,

Commissioner,
Bribery Commission.

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No. R. 25.

RESPONDENT :

G. M. Jayatissa,
Checker,
Stamp Room,
Government Press,
Colombo.

IN PUBLIC

Heard on 22nd and 23rd of November, 1948.

Allegation against G. M. Jayatissa, Checker, Stamp Room, Government Press.

The allegation is that Jayatissa, on 28.3.46, obtained the sum of Rs. 300 from D. M. Wijewardena, promising to get him a job at the Government Printing Office.

The evidence of Wijewardena is that towards the end of 1945, Jayatissa told him that if Rs. 400 was given, it would be given to Mr. Chalon, Assistant Works Manager at the Government Printing Press, and Wijewardena would obtain a pensionable post in the Government Press. Wijewardena replied that he would give Rs. 300 and, if that was not sufficient, he would pay the balance Rs. 100 from the salary he obtained.

On the 28th of March, 1946, about 12 noon, Jayatissa came by arrangement to the co-operative stores where Wijewardena was Manager, and was paid Rs. 300 on the verandah of the dispensary next door. The apothecary at the dispensary S. B. Ranasinghe, and the orderly A. H. Dias, corroborated the story and spoke to the fact that Jayatissa received from Wijewardena on that date a bundle, of which the last sheet was a ten rupee note. On being questioned, Wijewardena stated that the money was given to obtain employment at the Government Printing Press.

Wijewardena left the co-operative stores at the end of March 1946. There are certain discrepancies in his evidence, but after considering this, and after comparing the evidence given by Rev. Jayasekera, I am satisfied that Wijewardena gave one month's notice before leaving. I do not accept the suggestion that Wijewardena was discontinued because there had been shortages. It is true that there were shortages almost every month, and that the Committee of the Co-operative Store decided to retain the security which Wijewardena had deposited with them, until he satisfied them that there had been no lack of supervision. But it is clear that the Committee did not hold Wijewardena otherwise responsible for the shortage. In fact, Wijewardena had done better than previous managers, and actually worked without a cashier for a part of the time.

According to Wijewardena, he went on four successive Sundays to Chalon's house at 8th Lane, Colpetty, to take lessons as a proof-reader. Chalon denied this, and stated that he had never set eyes on Wijewardena before these proceedings started.

Wijewardena stated that he frequently appealed to Jayatissa either to get him the job or to return the money. Jayatissa kept making one excuse after the other. Eventually Wijewardena went to Chalon in 1948 and inquired about the matter, and was told that no money was paid to Chalon. Chalon denied that such a visit was paid.

Eventually Jayatissa wrote the letter D. M. W.—2 of 30.6.48, in which he stated "I will come on Saturday evening. Then I would be giving *it* to you." Wijewardena stated that this was a promise to return part of the money. Jayatissa gave a different explanation which I shall presently mention.

I was very much impressed with the evidence given by S. B. Ranasinghe, and this gives material corroboration to the evidence of Wijewardena. There are certain discrepancies in his evidence, and between him and Wijewardena. The most important was whether Ranasinghe had written a letter later on stating that he was shifting his employment and address, and asking for the address of Wijewardena's brother. This does not shake my confidence in Ranasinghe's story. It is true that Ranasinghe and Wijewardena were friends, but I do not think the acceptable evidence shows that they were on such terms that Ranasinghe would

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be willing to give false evidence to support Wijewardena. The evidence of the orderly, Dias, was not so convincing, but I accept it in so far as it corroborates the evidence of Ranasinghe.

The evidence of Wijewardena also obtains support from a number of circumstances. Wijewardena knew the name and the private address of Chalon. He also produced a number of proof sheets, which admittedly come from the Government Printing Press. (D.M.W. 6A to E were actually produced). These are proof sheets with corrections on them. They could only have been obtained through an employee in the Government Printing Press, and there is no suggestion that Wijewardena knew any such employee other than Jayatissa. It is also clear from Rev. Jayasekera's evidence, that Wijewardena was hoping to obtain a job under Government, as early as 8.1.46.

As regards letter D.M.W. 2, I accept Wijewardena's explanation, and hold that this refers to the return of the first instalment of the money. The explanation given by Jayatissa does not ring true, and in point of fact, was not put to Wijewardena. Jayatissa's explanation is as follows:—Wijewardena had asked him to get a little ganja for preparing a "churna" for his wife, who was ill. The word "it" in the letter referred to the ganja, which he had obtained. It is of significance that this letter was written about ten days after Wijewardena had made his first complaint to this Commission, and when Wijewardena, was, according to his story, pressing Jayatissa to repay the money. Apart from this the obtaining of ganja even in small quantities would have been a hazardous adventure.

The motive alleged for the false charge by Wijewardena also does not bear examination. According to Jayatissa the two were friendly. About June 1948, Jayatissa's mother complained about the bad cultivation of her field by Wijewardena, and Jayatissa advised his mother to give the field to Wijewardena's brother. This was done in July. Even if Wijewardena heard of this in June, it leaves a very short period of time available for him to invent his story and to obtain the material for it. (*Vide* his complaint to this Commission dated 20th June, 1948.) Further, Jayatissa himself says that outward friendship continued till 30.6.48 the date of D.M.W. 2. In fact, on that date Wijewardena was expecting a favour from Jayatissa, according to the latter's story. In fact, there never was an open breach between the two in respect of the field, and Wijewardena denied that there was unfriendliness in consequence of the field being given to his brother for cultivation.

There is one other matter that is of importance, and that is Wijewardena's diary for 1946. (D. M. W. 7). The entries in the diary afford confirmation of the story of Wijewardena. For example, there is an entry on March 1st, that Wijewardena gave one month's notice. Under March 28th, there is an entry "Rs. 300 gave to Jayatissa to give to Mr. Chalon about the new post of Reader at G. P." Under March 30th, there is a note of the stocktaking and the delivery of the keys. Under the dates April 7th, 14th 22nd, and 28th, there are entries that Wijewardena went to see Mr. Chalon—on three of these dates Jayatissa is also mentioned. This supports Wijewardena's story that he went on four consecutive Sundays to see Chalon although one of the dates—viz. 22nd—happened to be a Monday. Under date April 30th is entered the receipt from the Government Press of proofs brought by Jayatissa. On May 3rd is entered a visit to the Secretary of the Co-operative Stores—"to talk about my money". Counsel for Jayatissa depended upon this entry, but wished to read "inquiry" for "money". I think that Wijewardena's reading is correct.

There are other entries confirming Wijewardena's story, to which it is not necessary to refer.

Counsel for Jayatissa argued that the diary should be rejected for the following reasons:

(*a*) that it is a fabrication,
(*b*) that a very large number of dates were blank and could have been filled up at any time, especially as the entries were in pencil,
(*c*) that the diary was only produced at a late date, viz. the public inquiry.

As against these, is to be put the fact that Wijewardena at the public inquiry strongly objected to the diary being read or marked at all. He protested from the beginning to the end—on several occasions. This is hardly compatible with fabrication of the diary for the purposes of the inquiry. Counsel for Jayatissa suggested that this was "strategy", but it seemed to me that there was genuine reluctance to allow the diary to be seen by anyone. Wijewardena happened to look at the diary in connection with a date, and Crown Counsel took the diary and discovered the various entries to which I have referred. They were not mentioned by Wijewardena, until questions were asked by Crown Counsel. The reason for the reluctance is probably, as Wijewardena said, that there were private entries, not intended for the eye of the public.

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In my opinion these entries were properly made on the respective dates. Wijewardena has so stated. The entries materially support the story of Wijewardena.

I have considered the evidence of Chalon. He is the Assistant Works Manager of the Government Press, and has denied the story of Wijewardena, so far as he was concerned. No doubt Wijewardena must be regarded as an accomplice, and his evidence must be received with caution. I think, however, that the material he has provided supports his story, even though much of it cannot be treated as legal corroboration. Further, it is difficult to imagine that Chalon would have been picked out by Wijewardena, unless he had been specially mentioned and evidence of the visits to him does not appear to be invented. I am satisfied on the evidence that Wijewardena did visit Chalon in his house, to get some lessons as a proof reader; Jayatissa was not competent to teach him this. I also hold that he went later to Chalon to ask about the money. In view of Chalon's denials, there is no doubt that the visits bear a sinister appearance, but there is no evidence that Chalon received any part of the money. I do not believe Chalon's evidence that he never saw Wijewardena until the date of the inquiry.

I was not impressed with the other witnesses called for the respondent, and I do not think their evidence carries the matter any further.

I hold that Jayatissa, on 28.3.46 obtained the sum of Rs. 300 from D. M. Wijewardena, promising to get him a job at the Government Printing Office.

A. E. KEUNEMAN,
Commissioner
Bribery Commission.

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No. R. 28.

RESPONDENT:

C. L. de S. Wijeyasundare,
Chief Clerk,
Magistrate's Court,
Balapitiya.

IN PUBLIC

Heard on 5th and 6th January, 1949.

Respondent: C. L. de S. Wijeyasundare, Chief Clerk, Magistrate's Court, Balapitiya.

The matter which arose for inquiry was whether the respondent on or about 13th November, 1947, demanded and accepted from Bertram Warasuvitarne a sum of Rs. 5 for attending to his normal duties in connection with the execution of a bail bond for the release on bail of Aratchi Gamage Peter *alias* Babyappu, an accused in M. C. Balapitiya 59871.

The principal witness called by Crown Counsel was Bertram Warasuvitarne, Superintendent of Gallinda Estate, Talgaswila, who had come to Court on 13.11.47 in connection with two matters:—

(*a*) a charge against his cook, Peter, and
(*b*) a trial relating to Sebastian Joseph fixed for that date.

According to Warasuvitarne, the Magistrate ordered bail for Peter in the sum of Rs. 500. At first it was contemplated that the amount should be deposited in cash, but it happened that one Silson de Silva, a small trader in tea fluff, happened to be in Court in connection with the redemption of a security bond in another case and he was willing to be a surety for Peter. Silson had one deed in Court, but as that was insufficient in value, he was taken to Ambalangoda and produced another deed for the same land and also obtained a certificate of worth from the Headman. The party then returned to the Balapitiya Court.

Warasuvitarne and Silson together with the accused Peter were taken by a peon to the Chief Clerk's (respondent's) room. The respondent was not present but the peon informed the parties that a fee of Rs. 3 was payable. The deed together with the Rs. 3 were placed on the table. When the respondent came in, he put the Rs. 3 in his drawer, and spoke to the peon, who informed the parties that in the case of bail in Rs. 500 a further payment of Rs. 2 was needed. This further sum was also paid over. In each case Warasuvitarne who had no change borrowed the money from Silson. Warasuvitarne believed this was a legal fee. It was only a little later when he found that no receipt had been given to himself, or to Silson, or to Peter that he became suspicious. Warasuvitarne mentioned the matter to his Proctor Gunasekera, and also to his brother-in-law T. T. Fernando, on that very day.

This evidence was corroborated by Silson, Gunasekera and Fernando. I was impressed by this evidence. It was clear to me that Warasuvitarne did not know the respondent on that day, and in fact only discovered his name and office through his Proctor Gunasekera, later, at the instance of this Commission. There does not appear to be any motive for a false charge. The suggested motive that his vanity was wounded on that day by his being kept waiting, and by requests made on his behalf not being attended to at once, appears unreal, and I do not think they bear examination. There is not the slightest evidence that Warasuvitarne showed any signs of impatience on that day. The suggestion that Warasuvitarne and the other witnesses were induced to make this false representation by Wyman Silva, a Proctor's clerk, who had reason to be annoyed with the respondent seems fanciful to me. No doubt Silva knew this man (he had stood bail for him) and had met him that day, but I do not think Wyman took any part in the matters which I have mentioned. It is also not at all clear that Wyman Silva had been even censured, as a result of the respondent's complaint. The Record Keeper Gunawardene and respondent are in conflict on this point.

It is argued that there are inconsistencies in the evidence of the various witnesses, but the only one which required examination relates to Proctor Gunasekera. This witness, in his evidence *in camera* said that he met Warasuvitarne in the course of the morning, and that the latter told him that the clerk was asking for Rs. 5 and that he (the Proctor) advised him not to pay anything but to deposit cash security. If correct, this indicated that Warasuvitarne consulted the proctor before he paid the Rs. 5 and not after he had paid that amount. Proctor Gunasekera insisted that this was not correct, and that he was consulted as regards the form of the security and indicated that it should be in cash. A little later as he was leaving Court, the Proctor was informed by Warasuvitarne that a fee of Rs. 5 was taken, but no receipt was given. I carefully watched this witness, and formed the impression that he was a reliable witness. I do not think the discrepancy is due to any

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dishonesty, but it may throw some doubt about the accuracy of his memory, and it is possible that his memory had been refreshed at some stage, prior to his giving evidence. In any event I was satisfied on the whole of the evidence that the conversation took place, after the payment and not before the payment.

It has also been urged that the evidence of Warasuvitarne was rejected in the case relating to Sebastian Joseph. (M. C. Balapitiya 59442). In that case Joseph was charged with the offence of pretending to be a Labour Inspector, and of attempting to hold an inquiry on Gallinda Estate under colour of such office. I have examined the record and I find that the evidence that Joseph pretended to be a Labour Inspector was given by the clerk and the conductor of the Estate, and not by Warasuvitarne, the Superintendent, who only assumed that the information given to him by his subordinates was true. In fact the Magistrate expressly states that "the evidence of the Superintendent lends colour to the truth of the defence", and it was the evidence of the subordinates that was rejected. In the present matter I was impressed with Warasuvitarne's evidence and I cannot find in the previous case any grounds for thinking this witness untruthful.

In my opinion a very strong prima facie case was made against the respondent, by the four witnesses I have mentioned.

The respondent denied the allegation that any money was solicited or accepted by him. It is not in dispute that the respondent dealt with the matter of bail in Peter's case. According to the respondent on 13.11.47, he did not see Warasuvitarne at all, but Silson came to him with Wyman Silva, and asked him if a cheque would be accepted. Respondent somewhat curtly informed him that it would not. Later Silson came again and asked whether cash would be accepted, and was told that a money order in favour of the Government Agent, Galle, was needed. (Respondent says this was the practice, but his witness Sebastian Joseph mentioned instances where cash was accepted as security). Silson also wanted the accused Peter to be brought into the respondent's room, but was told that this could not be done till the bail papers were produced. Thereafter Sebastian Joseph came with some Tamil letters, needed in his case, to be translated, and while the papers were with the Tamil clerk, was given a seat by the respondent's table. Silson came later for the third time, and had the bail bond executed by himself and Peter. No money was asked for or taken on that occasion.

Sebastian Joseph was also called and spoke to what he saw on that occasion. He further said there were a number of people in the room, when the bond was executed.

The evidence of these two witnesses did not raise in my mind any reasonable doubt as to the truth of the story given by the witnesses called by Crown Counsel. No doubt, it would have been extremely opportune for the respondent that Warasuvitarne's "enemy" should actually be present when the bail bond was signed, but this is not a substantial point for comment, and it is the fact that Sebastian Joseph was present in Court on that day. There was however no special urgency for the translation of the Tamil letters on that day. Joseph's case had actually been postponed for the 4th December at the time. The letters, it is said, had been given by Joseph to his Proctor previous to the 11th November, but the Proctor had failed to get them translated. So Joseph arranged himself for the translation, but there was no urgency to get the letters the same day—they could have been given by the Tamil clerk to Joseph's Proctor. Eventually, out of eleven documents, only two were translated. But even these were not paid for by Joseph, who did not know if any payment was made in respect of them. The rest were left to be given to the Proctor. I think it was extremely unlikely that Joseph, even if he gave the documents for translation on that day, would have waited in the crowded office in the hope of receiving the translations.

I was not at all satisfied with Joseph's evidence and I reject it. The witness's account was glib and unconvincing. He stated that he did not know before he got into the box that he had to give evidence concerning Silson but his story sounded like a carefully prepared story. There can be little doubt that Joseph has strong grounds for animosity against Warasuvitarne, and he said he intended to bring an action for damages in connection with the prosecution that failed. I also reject the story of the respondent as to the happenings of that day. His evidence was far from convincing. His memory even with regard to the alleged practice of the Court was not supported on many points by the witnesses he called himself. In my opinion respondent has utilised Joseph as a ready tool for the purpose of defeating the allegation made.

I hold that the respondent on or about 13th November, 1947, demanded and accepted from Bertram Warasuvitarne a sum of Rs. 5 for attending to his normal duties in connection with the execution of the bail bond for the release on bail of A. G. Peter *alias* Babyappu, an accused in M. C. Balapitiya 59871.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 33.
RESPONDENT :

R. W. M. K. Appuhamy,
Village Headman,
Polgolla,
Katugastota.

IN CAMERA

Heard on 18th, 19th and 21st January, 1949.

Respondent : R. W. M. K. Appuhamy, Village Headman, Polgolla, Katugastota.

The matters for inquiry were eight in number, viz., that the respondent—

(1) in or about 1946, solicited a gratification of Rs. 500 from P. W. P. H. Ukku Banda as a reward or recompense by him in his capacity as Village Headman to obtain an allotment of Crown land for the said person ;

(2) in or about 1946, solicited a gratification of Rs. 50 from C. W. Kiri Banda as a reward or recompense for a consideration similar to that stated in (1) ;

(3) in or about 1946, solicited a gratification of Rs. 75 from D. T. Geeris as a reward or recompense for a consideration similar to that stated in (1) ;

(4) in or about 1946, solicited a gratification of money from H. Ranhamy, as a reward or recompense for a consideration similar to that stated in (1) ;

(5) in or about 1946, received and accepted a gratification of Rs. 50 and a bottle of arrack as a reward or recompense for a consideration similar to that stated in (1) ;

(6) in or about 1946, solicited a gratification of money from B. Jamis, as a reward or recompense for a consideration similar to that stated in (1) ;

(7) in or about 6th September, 1946, received and accepted a gratification of Rs. 25 from B. Jamis as a reward or recompense for a consideration similar to that stated in (1) ; and

(8) during the period 1st September, 1939 to 28th January, 1948, accumulated money and purchased immovable property in such circumstances that the only reasonable presumption is that such accumulations or purchases were made or effected as a result of bribery or corruption.

At some time before August 1945, Government acquired Katugastota Estate near Kandy, for settlement in allotments on villagers, preferably on those who were landless. In this connection a number of Land Kachcheries were held by the Government Agent. The dates are very vaguely spoken to by the witnesses but the Divisional Revenue Officer was able to fix three dates for the Land Kachcheries ; Mr. Dyson held one about 26.8.45, and Mr. Aluwihare held two about 6.8.46 and 4.12.46. There were a very large number of applicants, and eventually about two hundred villagers were allotted blocks in this land.

It is in connection with claims for these allotments that gratifications were said to have been solicited or received by the respondent.

The case in paragraph (1) relates to Ukku Banda, a Fiscal's Officer. His claim was not on the basis of his being a landless villager, for, it was shown that he was the owner of not inconsiderable property, and it is clear that his claim did not fall under the Land Development Ordinance. His claim apparently was that he or his father had originally been the owner of certain blocks acquired, and that these blocks had been encroached upon by the Company from whom the Crown acquired. Either in some proceeding or by private arrangement, the value of the improvements effected by the Company had been assessed at Rs. 920, and in substance, Ukku Banda claimed that the blocks in question should be settled on him for the payment of Rs. 920 to Government. It is possible that this man misconceived his rights and thought he had rights, perhaps, under the Land Development Ordinance. Anyway his claim was not rejected out of hand, and he stated that he attended a large number of Land Kachcheries on notice received from the Government Agent.

According to Ukku Banda, on a date which he was not able to specify, he met the respondent and spoke to him about his claim. The respondent pointed out that another claimant had spent Rs. 3,000 in disbursements for various people, and said that if he wanted the land, he should pay at least Rs. 500 to obtain it. Ukku Banda refused to pay any amount for that purpose.

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Ukku Banda's evidence has been attacked on several grounds. Firstly, he had made no complaint to any official, before he mentioned it to this Commission but, as will appear later, complaints to officials were not very productive of results. There can be little doubt that applicants regarded the respondent as a person who could make or mar their claims, and it is in evidence that the Divisional Revenue Officer depended largely on the Headman with regard to the elucidation of facts affecting the claimants.

Next it was urged that the respondent had given evidence against Ukku Banda's wife in a case where a money claim arose as a result of a partition case. (R. W. M. K. A. 1). In this case, Ukku Banda's wife succeeded in her claim, but the amount was reduced from Rs. 300 to about Rs. 100, and I do not think this can be regarded as a sufficient motive for the making of a false allegation regarding a gratification.

Further it was urged that the respondent had been instrumental in securing the conviction and the sentence of imprisonment for six weeks of a brother of Ukku Banda. But this occurred about twenty-five years ago, and I do not accept the story that the respondent took action in the case.

It was also urged that Ukku Banda and the other witnesses were very friendly and in some cases gave evidence in each other's cases. There is some substance in this, but I do not think this shows that the allegations are false. It was further urged that they were members of a co-operative society which sent a petition against the respondent, alleging that he was trying to destroy the society. There was certainly such a petition in 1943, but Ukku Banda said he did not know about this, and on his account he became a member after that date. He is now the President of the Society. I do not think he was a party to the petition.

In my opinion, Ukku Banda gave satisfactory evidence and the amount asked as a gratification (Rs. 500) is in keeping with the unusual nature of his application and his financial circumstances.

The case in para. (2) related to Kiri Banda. According to him, on a date fixed for allotment, he met the respondent. As he understood the situation, he had first been selected to obtain an allotment, but later no land was allotted to him, the respondent stating that he was not a fit applicant. On the day in question, the respondent walked with him and told him that he would only get the land if he saw to the respondent's trouble. When asked what amount was needed, the respondent mentioned the figure of " at least Rs. 50 ". Kiri Banda said he could not cultivate the land, if he gave bribes.

The matters urged against Kiri Banda are not substantial. He was charged twenty or twenty-five years ago for transporting toddy, but the respondent ultimately withdrew the plaint. He denied that he was ever charged with shooting a bull—the person charged, he said, was the watcher of a land of which he was kangany. No attempt was made to counter this evidence. He was a committee member of the Co-operative Society, and knew of the petition against the respondent alleging that he was trying to destroy the Society.

In Kiri Banda's favour is the fact that he made an allegation as regards the demand by the respondent as early as 23.9.46 (see D.T.G. 2 and 2 A) D.T.G. 2 is a true copy issued which bears a wrong date (23.9.47). The original available before me bore the date 23.9.46. In this Kiri Banda mentioned the fact that at first he had been allotted two acres of land, but that this was altered because the respondent stated that he had been fined in Court, and that the respondent did this because he had demanded Rs. 50 for his recommendation and did not receive the money. This appears to place the demand at the time of the Land Kachcheri in August 1946.

It is an extraordinary fact that no notice was taken of this serious allegation. The petition was referred by the Government Agent to the D.R.O. only in respect of the man's claim for allotment, and the D.R.O. dealt only with the points referred to him. The D.R.O. reported that Kiri Banda " was a troublesome man and had several cases in Court ". This information was apparently supplied by the respondent. The information cannot be reconciled with the evidence given at this inquiry. The allegation with regard to the bribe demand was ignored.

In my opinion, Kiri Banda was a satisfactory witness.

Para. (3) related to the allegation made by Geeris. He places the incident between the Land Kachcheri held by Mr. Dyson and that held by Mr. Aluwihare—in his earlier evidence he suggested it was a little earlier than July 1946. The respondent said: " If you want land, you will have to give Rs. 100 or Rs. 75. If you do not give do not expect to get land." Geeris kept quiet, but did not give the money.

A strong point was made against Geeris that he had been disbelieved by the District Judge in D. C., Kandy, P. 875. At first sight this seemed a fairly considerable point. Geeris however maintained that this order was set aside in appeal. In these circumstances the record of the case was obtained, and it appeared that his statement was correct. The District Judge had made an important

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mistake as regards the boundaries of the land in question as given in the deeds, and that probably influenced his view as regards the truthfulness of the witnesses. In the circumstances, I am not inclined to regard the expression of opinion of the District Judge as of importance. It seems clear that eventually the claim against Geeris was withdrawn, and Geeris, who was *guardian ad litem* in the case, was left in possession of the property claimed by the minor.

Geeris's son was also warned for altering some school certificate. But this was at the instance of the police and not of the respondent. Geeris was a member of the Co-operative Society, but said he did not know of the petition against the respondent. There was no inquiry into the petition.

An important fact concerning Geeris is that at the Land Kachcheri of 4.12.46, he stated to the Government Agent in the presence of the assembled villagers that the respondent solicited Rs. 75 from him for the purpose of assisting him to get the land. He asserted that he would have succeeded, if he had paid the amount. The evidence, I think establishes the fact that Geeris spoke of a direct request for that amount, and also mentioned that an intermediary, Punchirala, had approached him on behalf of the respondent. No inquiry into this allegation was made or ordered by the Government Agent, but on the application of the respondent, he was given permission to bring a defamation action against Geeris (D.T.G. 1). The action was after trial dismissed by the District Judge, but no costs were ordered. The fact that the defamatory allegation was made was established, but the judgment did not establish that the allegation was true. The District Judge decided the case on other grounds, but did not rule out the possibility that the allegation might have been true. It is however of importance in this inquiry that the allegation was made. This confirms to some extent the story of Geeris, and it probably required some courage on his part, for he was a member of what has been described as a "lower" community.

In my opinion Geeris gave his evidence in a satisfactory manner.

Paras. (4) and (5) related to H. M. Ranhamy, who alleged that after his application for land, the respondent asked him for money, Rs. 50, to assist him to get the land. Ranhamy met the respondent at his house. The respondent pointed out that people who had gone to jail could not get land, and Ranhamy was conscious of the fact that some 18 years before he had been involved in a fight together with other relations of his, and had been convicted and received a jail sentence of six months. Ranhamy, accordingly, sold a head of cattle for Rs. 75 and gave the respondent Rs. 50 and a bottle of arrack worth Rs. 10. This was given a few days before the final allotment, but the date is not clear. In the result Ranhamy received a block of land, and it is important to note that he was quite satisfied with the block he received. He made no complaint to anyone till he was summoned by this Commission.

Apart from his early lapse, there was nothing of any substance urged against Ranhamy. It was alleged that his house was searched once, but no charge was framed against him on that occasion, and, as far as we know, he had no other criminal record. It appears that his brother is an Island Reconvicted Criminal, but Ranhamy said he was not on good terms with his brother. The respondent said that he had occasion to warn Ranhamy to be careful in his conduct, but it is doubtful whether there was any occasion for that, and the warning was denied. No doubt, Ranhamy must be regarded as an accomplice in this matter, but there are certain points in his favour. He was not refused land; on the contrary he has received an allotment with which he is satisfied. There does not appear to be any strong motive for making a false charge against respondent. Ranhamy is from a different village from the other persons who gave evidence against respondent. There does not appear to be any special intimacy between him and the other persons. On the whole, in spite of his being an accomplice, I thought well of his evidence.

Paras. (6) and (7) relate to B. G. Jamis who alleged that the respondent solicited money from him, and that he paid respondent Rs. 25 in connection with the allotment. His earlier evidence suggested that he did this in order to get the block eventually allotted to him, but in the later stages he said he was dissatisfied with the block he received, and paid the money in order to get a better block. It was also suggested that he had been behaving in a manner which was considered improper and undesirable in the village. He is of the same community as Geeris. He has made no earlier complaint. I was not impressed with his evidence, and, in the absence of corroboration, I am not prepared to act upon his evidence.

It has been urged that there has been no corroboration of the stories of any of the five witnesses, but, as was pointed out by the witnesses, it was not likely that these incidents would take place in the presence of witnesses.

The respondent himself gave evidence and denied each of these incidents. He has also given evidence under para. (8) with regard to his purchases of property and deposits in the Mercantile Bank, Kandy. There was a dispute as to the property he owned before September 1939. It is manifest, however, that he did

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own some property which must have enhanced in value at that date. The respondent has disclosed his purchases of land. (See his letter of 28.10.48 to the Commission). According to this, he purchased properties for the following amounts :—

in 1941 .. Rs. 300
in 1942 .. Rs. 400
in 1943 .. Rs. 150 in his wife's name,
in 1944 .. Rs. 450 in his daughter's name for her dowry,
in 1945 .. Rs. 400
in 1946 .. nil
in 1947 .. Rs. 1,000 in his wife's name.

The deeds in respect of these purchases were available to us.

There is nothing outside his means in the case of his purchases, and the important year, 1946, is blank. The purchases in 1947 are much above the average.

The witnesses called by Crown Counsel suggested that he had purchased other lands as well but this evidence was largely based on hearsay, and in one or two instances appeared to be wrong. I do not think much reliance can be placed on that evidence. There was one land especially to be considered, viz., Malaboda-ange Kumbura said to have been purchased by respondent in the name of his son-in-law, Wijekoon, on 12. 4. 47. A deed was actually taken in the name of Wijekoon, the consideration being Rs. 1,500. It is perhaps a little peculiar that, from January to December, 1947, respondent had drawn a number of cheques, amounting in all to Rs. 1,575 in favour of Wijekoon. The respondent however said that the proceeds of the cheques were given to him for his own expenditure. Wijekoon himself gave evidence and stated that for service overseas with the military he had received a gratuity of Rs. 1,500, and had also saved about Rs. 2,000 on his pay during his service. He produced two of his own cheques of 29.3.47 and 10.4.47 which covered the amounts paid for the land in question. In the circumstances, I cannot hold that the purchase money for this land was supplied by respondent.

There was also a conflict of evidence about the renovation or rebuilding of respondent's house, but there was no clear evidence to indicate the amount the respondent probably spent on this. In the circumstances I am inclined to give respondent the benefit of this item.

As regards respondent's Bank Account, it was opened by a deposit of Rs. 1,000 on 12.7.46. This was said to represent savings during the previous years. On 17.9.46, respondent deposited Rs. 1,101.50. This deposit, I think, can be clearly identified with the consideration received by him on that very date by the sale of one of this lands Gorakagaha Kumbura for Rs. 1,100. In 1947, from March to November, he deposited various amounts—Rs. 500, Rs. 600, Rs. 140, Rs. 400, Rs. 350 and Rs. 225. These are fairly substantial deposits, but the explanation given for them cannot be regarded as unreasonable. Respondent said that they were partly his savings from his returns from property and business ; partly money drawn out and re-deposited (he was drawing moneys out at this period), and money given him for rice purchase by Government, part of which he deposited in the Bank for the time being. At the same time I do not accept the respondent's statement that he had carried on a trade in timber and brick during the war years. No one of his witnesses supported the respondent on this point, and some of the witnesses called by Crown Counsel repudiated that evidence.

It is clear that there is no evidence of lands purchased and money paid into the Bank in 1946. It was urged that this point told strongly in respondent's favour as regards paras. (1) to (7). I have taken this into consideration, and certainly there is nothing to show a great increase in wealth during the period, so as to indicate that the respondent had received any considerable number of gratifications.

I have carefully considered all this evidence, and have come to the conclusion that the facts spoken to in relation to paras. (1) to (5) have been established beyond reasonable doubt, and that the facts in paras. (6) to (8) have not been established.

I hold that paras. (1) to (5) must be answered in the affirmative, and paras. (6) to (8) in the negative.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 37.

RESPONDENTS :

First : S. Tharmalingam, P. C. 967,
Mawatagama Police Station,
(now Wellawa Police Station).

Second : M. Piyadasa de Zoysa P. C. 3513,
Mawatagama Police Station,
(now Maho Police Station).

IN PUBLIC

Heard on the 11th of February and the 7th of March, 1949.

Respondents :

1st : S. Tharmalingam, P.C. 967 of Mawatagama Police Station, now Wellawa Police Station,.

2nd : M. Piyadasa de Zoysa, P.C. 3513 of Mawatagama Police Station, now Maho Police Station.

The matter for inquiry *concerning the 1st respondent* was (1) that on or about 27th December, 1946, he solicited a gratification of Rs. 500 from N. M. Ran Banda as a reward or recompense in consideration of a promise to see Inspector Reuben of the Mawatagama Police and to see that no further action was taken by the Police in connection with the seizure by the Police of a quantity of rice belonging to the said N. M. Ran Banda.

The matter for inquiry *concerning the 2nd respondent* was (2) that on or about 27th December, 1946, he solicited a gratification of Rs. 100 as a reward or recompense from N. M. Ran Banda, who had been arrested by Inspector Reuben of the Mawatagama Police for having obstructed the Police in the discharge of their duties, in consideration of a promise to have the said N. M. Ran Banda released on bail.

The matter relating to the 2nd respondent can be dealt with in a few words. Neither Ran Banda, nor the other available witness Tikiri Banda, was able to identify the 2nd respondent as the person who solicited the gratification of Rs. 100. They had only seen the person who solicited the bribe once for a short time, on the 27th December, 1946, and were unable to say that the 2nd respondent was that person. The 2nd respondent was accordingly discharged from the inquiry.

The inquiry continued only as regards the 1st respondent, Tharmalingam. He was only identified by Ran Banda. The two other witnesses who spoke to the incident, viz. James Singho and Appuhamy, were not able to identify 1st respondent as the person who solicited the bribe.

On the night of 26.12.46 the Police at Mawatagama received information that an attempt would be made to transport rice by lorry without a permit. Inspector Reuben accordingly left for the scene about 11 p.m. with three Police Constables, 1st respondent, Sirisena and another. On the way the party met two Village Headmen and some rural volunteers, and lay in ambush by the side of the road, to await the lorry. No lorry arrived, but a car from Mawatagama turned up and stopped near the house which was later the scene of the raid. The car went away shortly after. The Police thought that the occupants of the car had received warning of the ambush, and realized that the lorry would not come that night. It was decided to search the two houses, by which the car had stopped. One house, that of the *Ex* Headman Banda, was searched, but nothing suspicious was found Then the Police searched the other house, said by the Police party to be occupied by Sena Banda and his mother Ukku Menika, and not by Ran Banda. There the Police party say that they first discovered a quantity of rice and paddy in an open room which did not appear to be excessive in quantity. Later they found a room locked up, and obtained the key from Sena Banda. On opening the room, they found 22 bags of rice ready packed. They measured the rice and found 29 bushels — Ran Banda said he had 32 bushels. The rice was re-packed in the bags. The Police seized the bags and were about to put them in the carts, for removal to the Police Station, when Ran Banda arrived at the scene. This was about 2.30 in the morning.

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Ran Banda's story is that he was returning to this house, of which he was the occupant, about midnight, when he saw a crowd of persons in the house. He thought at first that they were burglars, and so went off to get the assistance of Jamis Singho and Appuhamy, who were labourers under him. He crossed the oya, and came back with these two persons and the three of them stood behind coconut trees and watched the house for some time. Eventually Ran Banda recognized the Headman of Haterabage and went up into the house. He found the rice being taken away, and protested, claiming the rice as his. The Constables, one of whom was the 1st respondent, seized him and mishandled him. Ran Banda denied that he used violent language or incited the other occupants of the house to create trouble. He denied also that he was given into anybody's custody.

The Police version is different. Inspector Reuben, 1st respondent and Sirisena say that Ran Banda stood in the doorway, and declared that not a grain of rice would be removed, using hot words and seized 1st respondent by the hand, and also later called on the other occupants of the house to prevent the removal. The Headman of Kandepola, Pinchi Banda, also called on behalf of the 1st respondent, drew a definitely milder picture. Eventually, Inspector Reuben arrested Ran Banda for obstruction and handed him to the custody of Sirisena, where it is said he remained, until he was removed by car to the Police Station.

We now come to the crucial point of this inquiry. While he was in the house, Ran Banda said that 1st respondent took him to the verandah, and wanted Rs. 500 for dropping the matter. Ran Banda stated that he had not so much money, but was willing to pay Rs. 50 and the balance later, but 1st respondent refused to accept credit. This incident was also vouched for by his witnesses Jamis Singho and Appuhamy. No doubt, these two persons are merely labourers working under Ran Banda, but I was impressed with their evidence, more especially with the fact that they frankly stated that they could not identify the 1st respondent, whom they had only seen in the dark. They had however heard the name of Tharmalingam mentioned the next day. If Ran Banda had desired to do, he could easily have pointed out the 1st respondent to the witnesses outside the inquiry room. As the evidence stands, however the only person who identified the 1st respondent is Ran Banda himself.

Ran Banda swears that the person who made the demand was the 1st respondent. Whatever story we may accept of the alleged obstruction, there can be little doubt that Ran Banda on this night was in close contact with the 1st respondent, and that inside the house there was a light burning at the time. Ran Banda also saw 1st respondent in the morning at the Police Station, and on the various dates for which the obstruction case was fixed. No doubt, he was, at the earlier inquiry at a loss for the name of the 1st respondent, and I think that he was not very familiar with the name. But I am satisfied that he did identify the 1st respondent on this occasion, as the person who demanded the gratification. There does not appear to be any reasonable motive for picking on the 1st respondent as the man, unless Ran Banda identified him.

Though the Police had taken strong action in seizing the rice, Inspector Reuben was in difficulties in formulating any charge against the occupants of the house. At first he toyed with the idea of charging them for hoarding rice, and a plaint was drafted on that footing, but the idea was soon abandoned as impracticable. While he hesitated on this point, he proceeded with the case against Ran Banda, who was taken to the station and locked up in the cell. Next morning he was taken to Court and was held on remand till the 28th December, 1946, when he was released on bail. On the 7th January, 1947, he was charged with obstruction under Section 344 of the Penal Code. There were several dates thereafter, 10.2.47, 17.3.47, 21.4.47, and finally 13.6.47. Meanwhile, on 3.2.47 Ran Banda sent a petition (N.M.R. 4, received on 6.2.47) to the Superintendent of Police, Kurunegala, setting out his grievances, and specially mentioned that " one of the constables took him aside and wanted Rs. 500 for dropping the matter." It is to be noted that up to this time no plaint had been filed against the occupants of the house. It is significant that the plaint was only filed on 17.2.47 against Sena Banda and his mother, Ukku Menika. The charge was that they attempted illicitly to transport 29 bushels of rice, without a permit. After various postponements, the case (N.M.R. 1 — M. C., Kurunegala, 36233), was heard on 13.6.47. After hearing the evidence of Inspector Reuben, the Magistrate held that the evidence did not disclose an attempt to transport and at the best the evidence showed only purport. The accused in that case were discharged.

Later on the same day (13.6.47), the case against Ran Banda was taken up (N.M.R. 2 — M.C., Kurunegala, 35440). The Journal entry made by the Magistrate is as follows : —

> " S.I. Reuben moves to withdraw the case as the accused tenders an apology to him and to P.C. Dharmalingam, and the charge under Section 344 cannot be substantiated. Mr. Perera (Counsel for Ran Banda) states he withdraws the allegations in the petition, and desires no further inquiry to be held. I discharge the accused. "

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It is clear from this entry that :

(1) Inspector Reuben moved to withdraw the case.

(2) The Inspector stated the accused Ran Banda tendered an apology to him and to 1st respondent. There is nothing to show that Ran Banda made his apology in open Court.

(3) The Inspector stated that the charge under Section 344 cannot be substantiated. If this was so, no apology was needed from Ran Banda. Any apology may have come from the Police.

(4) Counsel for Ran Banda withdrew allegations in a petition. This appears to be the petition making the allegations of bribery.

Ran Banda said he made no apology in Court, and that he did not himself withdraw the allegations in the petition, but that on the instructions of Counsel, he went and whispered to Tharmalingam that unless the case was withdrawn against him, the charge of bribery would be pressed.

Inspector Reuben gave an account of this incident in Court, which is entirely irreconcilable with this entry. He said that Ran Banda pleaded guilty and was warned. It is impossible to reconcile this with the Magistrate's entry that Inspector Reuben moved to withdraw the case and said that the charge under Section 344 cannot be substantiated. I cannot think that the Magistrate could have omitted to mention the plea of guilt and the warning. Inspector Reuben also said that the apology was made in open Court. I prefer to accept the denial of this by Ran Banda.

In fact, the entry inclines me to the view that this was a settlement negotiated between Inspector Reuben and Counsel for Ran Banda. The latter was probably anxious to obtain a bloodless victory, while Inspector Reuben was keen to obtain a withdrawal of the allegations of bribery. It should be remembered that the petition included a charge of the demand of a bribe by the Inspector, though the facts spoken to at the investigation before me showed that the bribe was demanded by a Constable, under circumstances which threw a suspicion of participation on the Inspector. (See N.M.R. 4.)

It is also significant that in the entry apology was said to be made to the Inspector and 1st respondent. This would appear to relate to the petition. Inspector Reuben says no apology was made to him. These explanations of Inspector Reuben appear to have been evolved for the purpose of meeting certain investigations into this matter by superior officers.

Inspector Reuben was the main witness for the 1st respondent. I regret I am unable to accept his story. He said that there was no talk between 1st respondent and Ran Banda, and that after the arrest Ran Banda was throughout in the hall. I also reject the evidence of the 1st respondent and Sirisena on this point. The Village Headman says he did not see them going to the verandah. I do not think this evidence is sufficient to raise a reasonable doubt as to the truth of the evidence of Ran Banda and his witnesses.

I do not accept the evidence that Ran Banda was kept strictly under the custody of Sirisena, and that no one took him to the verandah.

One point that was raised was whether the oya was crossable that night. The evidence of the Village Headman, Pinchi Banda, on this point is vague and unreliable. I accept the evidence of Ran Banda and his witnesses that the water in the oya was only knee deep, and that they did cross the oya on this night.

One other point may be mentioned. According to Ran Banda and his witness, Appuhamy, 1st respondent on that night wore a *verti* and a shirt or vest. The Inspector, the two Policemen, and the Headman say he was in uniform. The evidence shows that 1st respondent arrived to join the raiding party just as the Inspector was getting into the car. Inspector Reuben and 1st respondent said he arrived in uniform. Sirisena said he arrived in mufti and was sent back to change. I do not think any practice has been established, that raiding parties must go in uniform. Inspector Reuben went with the party, and could vouch for his men. I cannot accept the recollection of the Police party on this point. I think the memories of Ran Banda and his witness are more reliable.

In all the circumstances I hold that it has been established that on or about 27th December, 1946, the 1st respondent solicited a gratification of Rs. 500 from N. M. Ran Banda in consideration of a promise to see Inspector Reuben of the Mawatagama Police, and to see that no further action was taken by the Police in connection with the seizure by the Police of a quantity of rice belonging to the said N. M. Ran Banda.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 50.

RESPONDENT :

H. Wilman Caldera,
Retired Peon,
Motor Transport Department,
Colombo.

IN PUBLIC

Heard on 9th December, 1948.

Respondent : H. Wilman Caldera, retired peon,
Motor Transport Department, Colombo.

The matter for inquiry was under five heads :

(1) that the respondent in or about February, 1944, solicited a gratification of Rs. 250 from L. A. Jayaweera Appuhamy as a reward or recompense in consideration of a promise by him to obtain for the said Jayaweera Appuhamy a permit for four tyres and four tubes,

(2) that the respondent in or about February, 1944, received and accepted from the said Jayaweera Appuhamy a gratification of Rs. 250 as a reward or recompense in consideration of the promise set out in (1),

(3) that the respondent on or about 17th November, 1947, solicited a gratification of Rs. 150 from V. Charlis Appuhamy as a reward or recompense in consideration of a promise by him to take action to obtain for the said Charlis Appuhamy a certificate of competence to drive motor cars, omnibuses and lorries,

(4) that the respondent on or about 17th November, 1947, accepted from the said Charlis Appuhamy a gratification of Rs. 50 as a reward or recompense in consideration of the promise set out in (3) , and

(5) that the respondent, in or about December, 1947, received and accepted from the said Charlis Appuhamy a gratification of Rs. 50 as a reward or recompense in consideration of the promise set out in (3).

In substance there were two distinct transactions disclosed by the witnesses.

The matters contained in allegations (1) and (2) concern Jayaweera Appuhamy, who carried on a bakery. In 1944 he was the owner of a Ford car of 8 H.P,. No. Z.8507, which he used to distribute bread. He had become the owner of that car on 2nd July, 1943 ((L.A.J.A. 2) , and had a petrol ration of thirty gallons, some months he received more. Some time before February, 1944, he applied for four tyres and four tubes (450 x 17) to the Commissioner of Motor Transport. It is clear that at that time tyres and tubes were very difficult to obtain.

According to the evidence of Jayaweera Appuhamy, he paid a visit to the Motor Transport Office about February, 1944, to enquire what had happened to his application, and he met the respondent, whom he had previously seen at that office. Respondent talked to him and told him that tyres and tubes were short, but that, if he gave Rs. 500, *i.e.* Rs. 250 in advance, he could obtain the tyres in a week's time, and could pay the balance Rs. 250 after he received the tyres. Jayaweera Appuhamy had money with him, and offered the Rs. 250 to respondent who, however, insisted on one formality, namely, that the money should be put into an envelope so as to resemble a letter. After the envelope was obtained and the money placed in it, respondent took the money, went upstairs, and came back with the message that everything was all right. However, Jayaweera Appuhamy did not receive the tyres and tubes. He made several visits to the office, but respondent evaded him. Eventually he got three tyres in April 1947.

In support of his statement, Jayaweera Appuhamy produced document L.A.J.A.1. He said he had made entries in books, which had been accidentally burnt, but discovered this document with his license in his wallet, just before he gave evidence *in camera* when he was looking for written evidence. This is an invoice form of the Colombo Commercial Company, which contains jottings concerning the expenses incurred on the day in question. According to this, Rs. 800 was taken by the witness, and various sums expended, including Rs. 135.82 to the Commercial Company, and Rs. 250 as "pagga". The document is in pencil and is not dated,

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but I have carefully considered the evidence on the point and I think this document is genuine, and relates to the date in question. According to the witness, he took back about Rs. 400 with him. This document lends a little support to the witness's story. I am of opinion that the entries were made on the day in question and were not entered later.

A point was made of the fact that in his evidence *in camera*, the witness had made no mention of the fact that respondent wanted a further sum of Rs. 250 paid after the tyres were delivered. The witness admitted this and explained that this had never materialised, and was accordingly not mentioned. Further, the witness had *in camera* said that he had not up to date received the tyres in respect of which he paid "pagga." Witness maintained that this was correct, and that his subsequent acquisition of tyres was not attributable to the "pagga."

I think these explanations were honestly given. The witness, no doubt, must be regarded as an accomplice, and there is no legal corroboration of his evidence. The only other person who was present at the time, Carolis Silva, is now dead. I formed a very favourable impression of this witness, and hold that he is a truthful witness, and, in spite of the fact that he is not corroborated, I am prepared to act on his evidence. He certainly made no complaint to anyone, but he explains that when he enquired for Caldera everybody present laughed at him. He certainly was a credulous person, but in those days this is hardly to be wondered at.

The allegations (3), (4) and (5) concern V. Charlis Appuhamy. This witness had served with the R.A.S.C. from 17.2.44 up to 24.8.47. He was looking out for employment, and as he had been a military driver, he desired to obtain a civil certificate of competence. On the 17th of November, 1947, he went over to the office of the Commissioner of Motor Transport, and was given a form to fill up for the purpose. He was asked to affix Rs. 15 worth of stamps to his application. He had the necessary photographs and duly filled up the form. The respondent helped the witness to get the form duly stamped in the office, and after that was done, met him outside the building, and asked the witness for Rs. 150, promising to obtain the licence for him. Witness promised to pay the respondent that sum. Witness replied that he was an experienced driver, but was told that his military experience was not relevant in his application for a civil licence. On that day, witness paid respondent Rs. 50. The witness had over Rs. 100 with him at the time. Respondent promised to have the matter settled soon. Nothing happened for some time, and eventually the witness paid another visit to the office, where he was asked by respondent to come later. He did so about December 1947, and was told by respondent that everything was correct and he need not come again. Respondent asked for the balance payment, and witness paid another Rs. 50 to the respondent, promising to pay the balance Rs. 50, when he actually received the licence. No licence was in fact received.

Witness produced two post cards written to him by respondent. Respondent admits that he wrote these. V.C.A. 1 of 17.1.48 runs as follows :—

"My dear friend,

Your application has been sent by post. As soon as you receive it send to me. No sooner I receive it, I shall have it attended to and sent to you.

Caldera."

The next admitted post card V.C.A. 3 dated 17.3.48, signed by respondent, related to some oversight and ends — "I will be sending that on Saturday without fail."

I am satisfied on the evidence that these post cards relate to the witness's application for a certificate of competence. I shall deal later with respondent's explanation. They tend to show that the respondent was taking a very keen and friendly interest in the application and support the story of the witness. Apparently the witness had been promised by respondent, that no test was necessary, as he had paid money, and did not present himself for any test. Witness wrote letters to respondent, and met him on several occasions, but was put off from time to time. Later he tried to get back his money but without success.

This witness also must be regarded as an accomplice, and there is no legal corroboration of his story. The documents V.C.A. 1 and V.C.A. 3 lend support to the story, and are of importance. I thought the witness distinctly a good one, and was prepared to accept his story, even in the absence of corroboration. Here again the witness has fallen a victim to his own credulity, but I think that people of his class are convinced that little can be achieved without bribery, and have not much choice as to the intermediary whom they employ.

I may add that I am satisfied that there has been no connection between these two witnesses, Jayaweera Appuhamy and Charlis Appuhamy, and that they did not see each other before the date of the public inquiry.

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The respondent also gave evidence, denying that he received any gratifications. He was a peon at the Motor Transport Office, and had retired recently. He knew both the witnesses. Jayaweera Appuhamy used to come about various matters connected with his business. Charlis Appuhamy also came with Jayaweera Appuhamy, and wanted a "route licence" for a motor lorry, on the same day that he applied for a driving licence, or a little later. The respondent obtained a form for the route licence from the Municipal Council, and forwarded it to Charlis Appuhamy. The post cards were written in respect of the application for the route licence and not the application for the driving licence. Later, Charlis Appuhamy wanted respondent to take "pagga" and give it to the Motor Examiner. The respondent refused to do this. Charlis Appuhamy and Jayaweera Appuhamy, who were friends, resented this and started abusing respondent. There was a big row. Respondent thought the motive for making false allegations was due to this.

The suggestion that Charlis Appuhamy was interested in two licences was not put to him in cross-examination, and I am satisfied that this story is invented, in order to explain away the post cards. It was not even suggested to Charlis Appuhamy that he had a lorry or intended to become the owner of one. Respondent was unable to get anyone in the office to corroborate him about the occurrence of the row, or about the complaint said to have been made by the two witnesses, or even of the fact that the two witnesses were seen together.

The respondent was a very unsatisfactory witness and I disbelieve his story that the two witnesses ever came together, or that there was any row such as the respondent described. I reject also the explanation which the respondent has tendered about the post cards.

I answer the allegations (1) to (5) in the affirmative, and hold that the respondent solicited a gratification of Rs. 250 from Jayaweera Appuhamy in or about February, 1944, for the purposes mentioned in para (1), and that respondent, at the same date received and accepted the gratification of Rs. 250 from Jayaweera Appuhamy for the same purpose. I also hold that the respondent about 17th November, 1947, solicited a gratification of Rs. 150 from Charlis Appuhamy for the purposes set out in para. (3), and received and accepted Rs. 50 on or about the 17th November, 1947, and another sum of Rs. 50 in or about December 1947, for the same purpose.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 51.

RESPONDENT :

W. A. F. Perera,
Accounts Clerk,
Government Factory,
Kolonnawa,
now of P. W. D. Office,
Badulla.

IN PUBLIC

Heard on 13th, 20th and 21st December, 1948.

Respondent :

W. A. F. Perera, Accounts Clerk, Government Factory, Kolonnawa, *now* of P. W. D. Office, Badulla.

The matters which arose for inquiry were as follows : —

(1) that in or about June 1947, the respondent solicited and received a gratification of Rs. 200 from W. W. Wilfred Mendis in consideration of a promise by him to take action to get the latter a job at the Government Factory, Kolonnawa,

(2) that in or about June 1947, the respondent solicited and received a gratification of Rs. 100 from G. K. Podisingho for a consideration similar to that stated in (1),

(3) that in or about June, 1947, the respondent solicited and received a gratification of Rs. 100 from P. W. A. Albert Perera for a consideration similar to that stated in (1),

(4) that in or about 1947, the respondent accumulated money in such circumstances that the only reasonable presumption is that such accumulations were made or effected as a result of bribery or corruption.

The witnesses, Mendis, Podisingho and Albert Perera actually speak to the payment of money to the respondent. The date of the payment was not fixed, but it was after the general strike commenced in June 1947. I shall have to consider the question of the date later. According to Mendis he had been to the Factory a few days earlier than the date of payment. On this occasion, Mendis met the respondent, and talked to him about obtaining a job. Respondent informed Mendis that he had to deposit a sum of Rs. 200 as *security* and to provide a fifty cents stamp. Mendis stated that on this occasion he also saw Podisingho and Albert Perera there, but this is certainly incorrect, and Podisingho and Albert Perera do not support him in this. The fact appears to be that the three had met at the Factory on more than one occasion, and some confusion of mind about the various dates may have arisen. It is much more likely that the three persons first met on the day the payments were made. Mendis raised the money (Rs. 200) from his uncle, Caldera and returned a few days after and made the payment to respondent, in the presence of Podisingho and Albert, who also paid money on the same day. Caldera spoke to the lending of the Rs. 200 to Mendis for this purpose.

There were some discrepancies in the story of Mendis and of Caldera. Mendis in particular was apparently under the impression that he had to give a precise answer to every question, and as a result he got into difficulties on some occasions. Caldera's explanation as to how he raised the money also had certain inconsistencies. The question of how long Caldera took to raise the money was also in doubt. Further, when Mendis complained to the Director of Public Works (document W.A.F.P. 1) he mentioned that he went to pay the money on "the following day" after the first conversation, and that the money was obtained from his "parents". In fact, Mendis's father was dead at the time, and his mother did not have sufficient funds. Further, in this document (W.A.F.P. 1) he mentioned that one of the persons there was G. K. Podisingho—to that extent his story is confirmed. But he also mentions another man, Nandesena, who apparently did not make a payment at the same date. Mendis explained that Nandesena was a person in the same predicament as himself, and not a person who paid on the same date. There is, however, evidence provided by the respondent which may be regarded as supporting the evidence of Mendis. The respondent says that in or about May 1947, he had occasion to borrow a sum of Rs. 100 from a lorry driver employed at the Factory called K. G. Perera. About June 1947,—after the strike was over—respondent met Mendis outside the Factory gate and Mendis asserted that the money lent was his, and requested that payment be made to him. Respondent did not see Mendis

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again, till about the 29th of April, 1948, Mendis again claimed repayment, and as K. C. Perera agreed, that evening respondent paid Mendis Rs. 50, which Mendis claimed as interest, and wanted the whole of the capital (Rs. 100) paid to him. There was an argument, and the respondent pushed Mendis aside.

It is a curious fact that this story was not put to Mendis, when he was in the box, and we have not got his explanation. But the dates are significant. Mendis had complained to the Director of Public Works about the 28th of February, 1948, giving a story similar to his present evidence. The matter was referred to respondent, who replied on 27th April, 1948, denying all knowledge of Mendis. Yet he claims that two days later he paid Rs. 50 to Mendis. His allegation that he did not identify Mendis as the man who complained cannot be accepted. The respondent's evidence on this point is contradictory and, in my opinion untruthful. K. C. Perera, who was called for the respondent, denied that he had ever lent respondent money under any circumstances, and it is extremely unlikely that he had this money to lend, and would have lent it without any document, and free of interest. The only importance in the story is that the respondent acknowledged liability towards Mendis.

The respondent admits that in the case of a man called Premawardena, who had made to the Department a similar allegation to that made by Mendis, he paid him Rs. 150. Respondent says in this connection that Premawardena had lent him Rs. 300 without receiving any document, and was quite satisfied when Rs. 150 was paid back. The fact appears to be that when these charges were made against the respondent, he made efforts to settle with the persons who complained.

G. K. Podisingho confirmed Mendis' story of the payment of the money to respondent. I was very favourably impressed by this witness, and thought that he was a truthful witness, although he was vague on some points, especially about dates. Podisingho said he had first visited the Factory during the strike, after having met Mr. Bandaranaike, the Minister. He believed that Mr. Bandaranaike had telephoned to the Factory Engineer. He was allowed to go up and see the Engineer (he believed it was Mr. Claessen), and was told that he had first to register at the Employment Exchange. On his way out Podisingho met the respondent, who asked him to deposit Rs. 100 as security. Later " about two or three weeks after " having registered at the Exchange, Podisingho returned to the Factory with the money, and handed it over to respondent in the verandah, and was asked to sign a form, which he did. Thereafter no job came his way, and on numerous occasions, Podisingho met the respondent and asked for the money. Failing to get it, Podisingho handed a memorial (W.A.F.P. 3—dated 27.2.48), to the Minister, Mr. Kotelawala, personally. This was referred to the Director of Public Works, who held some informal inquiry into it. Later, Podisingho had the Rs. 100 returned to him by the respondent.

Podisingho is a person possessed of property, and gave me the impression that he was a respectable man, on whose word reliance could be placed. The dates he gave as regards the various events are certainly vague — more especially as regards the date of the payment back to him. In his evidence *in camera* he had mentioned Albert and Podiappuhamy as persons who gave bribes. Albert has confirmed this, but it is interesting to note that Podiappuhamy is not mentioned as giving money on this occasion. Podisingho did not mention Mendis as giving money. Mendis, it may be mentioned, had mentioned Podisingho in his first complaint. The evidence shows that there were other people besides the three witnesses called who were making the same kind of complaint against the respondent. It is true that Mr. Claessen does not remember having seen Podisingho, and thinks it impossible for Podisingho to have seen him during the strike. Mr. Claessen interviews two or three applicants a week and cannot be expected to remember them all. I shall deal with the difficulty in getting into the Factory premises during the strike later. I think it extremely likely that respondent paid back the Rs. 100 to Podisingho, who appears to have been persistent in demanding repayment.

Albert Perera also gave evidence of having met the respondent near the gate and of having been asked to bring Rs. 100 as security. Albert says that he paid the money on the same occasion on which Mendis and Podisingho paid. He had not had any money paid back to him by respondent.

There were some inconsistencies in Albert's evidence. For instance *in camera* he said that Podisingho paid the money through the window. The evidence at the public inquiry was consistent. All the witnesses said that the money was paid outside the room, and that thereafter the respondent went inside and handed out forms through the window, which were signed at the window and handed in through the window. At one stage there was a dispute as to whether there was a window ledge on which a form could be signed. But the Office Assistant, Mr. Wettesinghe, said that there was an opening in the window that resembled a counter, and could easily be mistaken for a counter.

On the whole, I was disposed to accept the evidence of the three principal witnesses, and of Caldera. As I have mentioned, the evidence of Podisingho was very reliable.

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I have considered the evidence called by the respondent. The respondent himself has been in financial difficulties since 1934 or 1935, and his affairs have been in the hands of the Charity Commissioner for some time. He admits that till the new scales of salary came in about 1946, he was continuously in debt. But his own evidence discloses that even in 1947 he had occasion to "borrow" under curious circumstances. I disbelive his story that the amount received from Mendis was received through K. C. Perera. I have already commented on the case of Premawardena, about which we have only the evidence of the respondent. That evidence is very strange and peculiar. I do not accept the respondent's denials of the story of the three witnesses.

I was also not impressed by the suggestion that there may have been an unknown enemy in the Factory who had inspired these complaints. Eventually it was suggested that some workman who had not received an advance may have inspired them. But recommendations for advances were only made by the Staff Officers and the only function of the respondent as Accounts Clerk was to note the actual amount advanced each month. The Accountant alone had discretion to give advances, over three-fourths of the basic wage.

I was not impressed with the evidence of the Office Assistant, Wettesinghe, who was in a difficult position. It is clear that he had been referred to as an "outside partner" of the respondent in one of the complaints to the Department, and the evidence at the inquiry showed that respondent himself said that the money had been given to Wettesinghe. The respondent denied this, and there is no evidence that Wettesinghe participated in this fraud, but I had the impression that Wettesinghe was not averse to stretching a point in favour of the respondent.

The evidence of Mr. Claessen appeared to me to be honest, but I was not prepared entirely to trust his memory with regard to the events of the strike. There can be little doubt that in the earlier days of the strike *i.e.* after the second or third day—the situation was tense, and probably no outsider was allowed into the premises. But the tenseness of the situation was reduced as time went on. This is shown by the fact that the Police guard was reduced from time to time and probably, at a later stage, the orders not to admit outsiders into the Factory may have been observed with less strictness, and after the strike was officially over, the orders may have been more honoured in the breach. At any rate it is likely that if the orders were not observed, Mr. Claessen may not have been informed of it. Clearly the clerks came back at an early stage, and there is some evidence that workmen were admitted in batches. No doubt, Mr. Claessen was passing through an anxious time, and it is possible he may not remember speaking to Podisingho, who claimed he had been sent by a Minister. Podisingho says Mr. Claessen informed him that registration at the Exchange was essential, and this is just the answer which Mr. Claessen would have given. I think that during some part of the duration of the strike, and after the strike was over, certain applicants were able to get into the premises. The evidence given by Mr. Claessen does not raise in my mind a reasonable doubt as to the truth of the evidence given by the three witnesses.

It is difficult to place the exact date of the payment of the money, but the evidence of Podisingho inclines me to the view that the money was paid towards the latter part of the strike, or after the strike was officially over. It must be admitted that the evidence of Mendis and Albert Perera appears to put the date back somewhat, but the dates in any event are vague, and would depend on the knowledge by the witnesses of the date of commencement of the strike. Rumours may have reached different witnesses at different times.

A point has been raised that the money was asked for and given *as security* and that this cannot be regarded as a gratification within the terms of the Commission. No doubt, as far as the three witnesses were concerned, they had a complete answer in this respect, but we have to deal with the mentality not of the witnesses, but of the respondent. As far as the respondent was concerned, it is clear that he regarded the money paid, not as legally due, but as an illegal gratification. Further, the collection of the three different sums from three different people may be regarded as an "accumulation of money," and there can be little doubt that it was effected as a result of corruption.

I accordingly answer the matters under inquiry (1) to (4) in the affirmative. I hold that respondent about June 1947, solicited and received a gratification (1) from W. W. Wilfred Mendis of Rs. 200, (2) from G. K. Podisingho of Rs. 100, (3) from P. W. A. Albert Perera of Rs. 100, in consideration of promises by respondent to take action to get these men jobs in the Government Factory, Kolonnawa. I hold (4) that respondent in 1947 accumulated money in such circumstances that the reasonable presumption is that such accumulation was made and effected as the result of corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 53.

RESPONDENT :

Suppiah Navaratnam,
Conductor,
Dewahuwa Farm,
Galewela.

IN PUBLIC

Heard on 23rd and 24th November, 1948 and 10th February, 1949.

Respondent : Suppiah Navaratnam, Conductor,
Dewahuwa Farm, Galewela.

The matter for inquiry in this instance was that the respondent on or about 23rd December, 1947, received the sum of Rs. 75 from N. S. Saraideen in consideration of a promise by him not to take charge of the goods in the boutique, if such sum was paid.

The respondent at the time in question was stationed at Matale, and described himself as Superintendent of Food Control Barriers. In fact, he exercised supervision over the barriers and also visited and inspected various shops and boutiques in the area. On the evidence of the Assistant Government Agent, Mr. Wirasinha, it appears that, in this last respect, he was acting outside his proper functions as he did not possess a duly executed letter of authority to inspect, but respondent had been authorised to act in this capacity also, by the Office Assistant, Mr. Velupulle.

The incident in question arose in this way. On the 18th December, 1947, respondent visited the boutique of Madar Saibo, and met the witness Saraideen, the son of the owner. Respondent inspected the boutique, and made an entry in the register of ration cards (D.H.A. 2). In this entry respondent stated that he had discovered a shortage of 28¾ measures of rice. This is admitted to be a fairly serious shortage, and although the owner of the boutique may not have been liable to prosecution, his licence could have been cancelled. Both Saraideen and the respondent speak to this visit on the 18th of December. There are divergences in their evidence as to whether the rice was measured or not, and as to whether respondent was accompanied by any person other than his driver. There appears to have been some talk about a prosecution, but nothing was done and eventually respondent left the boutique.

The next event was that on the 23rd of December, 1947, respondent visited the same boutique. This is the evidence of Saraideen, who says that respondent was accompanied by another gentleman and the driver. Respondent said he had orders to seize the goods and to prosecute. The other gentleman then intervened and suggested that Rs. 100 should be paid to avoid the prosecution and the seizure. Saraideen offered to pay Rs. 50, and said he had no more money. Eventually the amount was compromised and Rs. 75 was paid to the respondent. No further action was taken by respondent and he and his party went away.

Nothing further happened till 15. 1. 48, and no action whatever was taken against Saraideen or his father. According to respondent, he reported his visit of 18. 12. 47 to the Office Assistant, Mr. Velupulle, and also handed in a written report of that incident. It is certainly strange that no action was taken, for, it is admitted that the shortage was serious. There can be little doubt that no inquiry was held in the matter, for, respondent received no notice to attend any inquiry. Velupulle himself was not a witness before me, but the Assistant Government Agent, Wirasinha, does not appear to have his attention called to the matter. It was certainly a matter which called for some inquiry. I cannot accept the suggestion that respondent's report was turned over to Inspector Abeysinghe by Mr. Velupulle —the reason will presently appear.

On 15. 1. 48 Price Control Inspector Abeysinghe visited Saraideen's boutique. He examined the Register of Ration Cards (D.H.A. 2) and found respondent's entry of 18. 12. 47, and inquired about it. Saraideen then told his story and Saraideen's statement was reduced to writing and signed by Saraideen. There can be no doubt that this statement (D.H.A. 1) was taken on this date. Abeysinghe took over the register and gave a receipt for it (D.H.A. 3).

This statement is important and must be examined. Substantially, it supports the story of Saraideen, but there are certain discrepancies. For one thing there is no mention of the fact that three persons came to the boutique on 18. 12. 47 and

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23. 12. 47 ; also, there is the statement attributed to respondent on the 18th, that stocks were short. This Saraideen was not admitting before me. But I do not think these blemishes seriously affect the value of this statement. Counsel for respondent also suggested that the statement attributed to respondent " that he had to see to the trouble of his boss " illustrates the deep animus that Abeysinghe had against Velupulle. I shall touch on this shortly.

There can be no doubt serious differences had arisen between the Office Assistant Velupulle and Inspector Abeysinghe before 15. 1. 48. Previous to that date Velupulle had occasion to complain to Wirasinha against Abeysinghe, and some of these matters subsequently formed the subject matter of charges framed against Abeysinghe, but the inquiry into these has been postponed from time to time, and has not yet been completed. It is not possible in this inquiry to assess the value of those charges. Further, Abeysinghe had himself swung into the attack, and had on the 15th of January, 1948, itself posted a list of charges against Velupulle, shortly before he left to visit Saraideen's boutique. These matters also were subsequently the subject of inquiry. In some of them, Abeysinghe was not able to bring home the charge to Velupulle. There can be no question that there was bitter feeling between the two officers, and it seems clear that Abeysinghe was trying hard to pin certain charges on to Velupulle, and it seems clear that his interest was concentrated upon his attack upon Velupulle, and that he had little interest in bringing the minor officers to book.

According to Abeysinghe, he made a verbal report to Velupulle about the Saraideen affair, and was told to mind his own business. He also says he handed in a written report to Velupulle, but nothing came of it. It is difficult, in the absence of Velupulle, to assess this evidence. Clearly, if Velupulle received either the verbal or the written report, the matter went no further, for Wirasinha does not appear to have been informed of the matter. Velupulle may have distrusted Abeysinghe and refused to act on his report, or there may have been other reasons for his action. I have already mentioned that it is strange that the discovery of the shortage of rice on the 18th was not inquired into, or reported to Wirasinha. Either respondent did not report this to Velupulle, or Velupulle did not pass this on, or take action himself.

One other matter may be mentioned, Abeysinghe had an opportunity of speaking to Wirasinha on 10. 3. 48. He says he mentioned the Saraideen incident to Wirasinha, but Wirasinha does not support him. Wirasinha says that what was mentioned was the fact that respondent unlawfully carried out inspections of boutiques, and has no recollection of seeing D.H.A. 1 or D.H.A. 2. He says he would have taken action, if he had seen either. I think Wirasinha's version is to be accepted. At the same time, what was being inquired into on 10. 3. 48, were the charges against Velupulle, and respondent had ceased to function in Matale at the time. I also think that Abeysinghe was really interested in bringing home the charges against Velupulle, and was not so interested in the charge against respondent.

The respondent denied the allegations of Saraideen as to the demand and acceptance of the gratification. He further stated that he never visited the boutique of Saraideen on 23. 12. 48. In fact, he set up a substantial alibi. He said he had been at the Aluvihare barrier, over twenty miles away from Saraideen's boutique, from 2.30 p.m. to 5.30 p.m. on that date. (Saraideen said he had come in the evening). The sheet anchor of his alibi was the notebook (S.N.4) of Gunasekera, Preventive Officer at Aluvihare. Under date 20. 12. 47, is an entry in pencil by respondent " Inquiry on 23. 12. 47 at 2.30 p.m.". This is said to relate to an inquiry concerning a Guard Jinadasa. Under date 23. 12. 47, is another entry by respondent as follows : " F. C. Guard Jinadasa to proceed to Ukkuwela barrier from 6 a.m. on 24. 12. 48. He is severely warned. Awaiting the inquiry of D. F. C. on the inquiry. S. Navaratnam, 23. 12. 47, 5.30 p.m.".

The evidence of respondent and Gunasekera was that he had spent the time from 2.30 or so till about 5.30 p.m. at the Aluvihare barrier. Respondent stated that his own diary was lost, and that he had discovered the loss on enquiry at the Matale Kachcheri.

On the face of it, there was one curious mistake in the entry of the 23rd December, 1947. That related to the date 24. 12. 48, for the transfer of the guard. Respondent said he gave the guard only one day's notice and not one year's notice, and that " 1948 " was a mistake for " 1947 ". But it is not a mistake usually made. After the evidence was over I decided to call for respondent's diary and travelling claims for this period from the Kachcheri, and these documents were sent to the Commission.

The respondent's diary (D. H. A. 5) completely upsets the alibi set up by the respondent, and throws the greatest doubt upon his story. It should be borne in mind that Saraideen's boutique at Madhipola can be reached by making a detour of a few miles from the road to Galewela, and that respondent had denied that he went to Galewela barrier on the 23rd.

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Under date 23. 12. 47, the respondent's diary (D. H. A. 5) reads as follows :—

"3 p.m. leaving to Galewela barrier. 5.45 p.m., at Galewela barrier. Inspected P. O's diary, the Vehicles Register, and the Attendance Register and signed them. 6.30 p.m. leaving to Beliyakanda.....

7.15 p.m., at the premises of S. M. N. Naina Mohamed Rawther. .....

7.45 p.m. leaving to Ukkuwela barrier.

11.30 p.m. returned to Ukkuwela barrier."

Faced with this document, the respondent admitted that these entries constituted his movements for the day. His travelling claim also shows that he went to Galewela on that day.

He also admitted that his earlier story that he had spent the evening at Kandy was incorrect, in view of the later entries in the diary. Respondent admitted that he was at Galewela at 5.45 p.m. He could not have been at Aluvihare barrier at 5.30 p.m. Although respondent stated that in fact he went to Aluvihare barrier on 23. 12. 47, I disbelieve his story. The entries in his diary (D. H. A. 5) under 18. 12. 47, 19. 12. 47, 20. 12. 47, 21. 12. 47, and 22. 12. 47 show that when he went to Aluvihare barrier he made entries to that effect in his diary. The absence of any reference in the diary to Aluvihare barrier on 23. 12. 47, is significant. I think the entries in Gunasekera's diary (S. N. 4) have been put in at a later date, and that respondent and Gunasekera are both parties to that interpolation. The inquiries into Jinadasa's matter seem to have continued long after 23. 12. 47, and there is no independent evidence that any inquiry was held on that date concerning Jinadasa. There is also the curious mistake of "1948" for "1947". Probably the entry was made some time in 1948. The hour "5.30 p.m.", is clearly and deliberately false and intended to mislead.

I think both the respondent and Gunasekera are untruthful witnesses, and I entirely reject their evidence, and although I do not propose to use my summary powers to punish them, I think there is enough material to do so.

I have carefully considered the evidence of Saraideen, and have taken account of the fact that he must be regarded as an accomplice. On the other hand, he was suddenly called upon to face a serious situation, and took the easiest course open to him to avoid prosecution and the seizure of his goods. There is also the fact that although a serious shortage was discovered, no inquiry was instituted into the matter. It is curious that in respondent's diary under date 18. 12. 47, no mention is made of this discovery.

Saraideen himself gave his evidence well and in spite of the fact that there is no legal corroboration of his story of the taking of the gratification, I am prepared to accept his story. His village is remote from any town, and he gave his information at an early date.

I hold that the respondent on December 23rd, 1947, received the sum of Rs. 75 from N. S. Saraideen, in consideration of a promise by him not to take charge of the goods in the boutique, if such sum was paid.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 61.

RESPONDENT :

First : D. A. Wijesinghe,
Education Officer,
Badulla.

Second : D. J. Hettiarachchi,
Head Teacher,
Kendagolla Mixed School, (now of Ettampitiya Mixed School).

IN PUBLIC

Heard on 25th, 28th and 29th January, and 4th March, 1949.

Respondents : 1st D. A. Wijesinghe, Education Officer, Badulla,
2nd D. J. Hettiarachchi, Head Teacher, Kendagolla Mixed School, (now of Ettampitiya Mixed School.)

The matter for inquiry against the 1st respondent was that in or about 1946 and 1947, he did receive and accept from the 2nd respondent presents of rice, vegetables, fruit and other food stuffs, with intent to cause or knowing he was likely to cause the said 2nd respondent to believe that he would in his capacity as Education Officer take action for the advantage of the 2nd respondent in matters affecting him.

The corresponding matter for inquiry against the 2nd respondent is that in or about 1946 and 1947, he did give presents of rice, vegetables, fruits and other foodstuffs to the 1st respondent for the purpose of influencing his judgment and conduct in respect of any matters affecting the 2nd respondent, in which he may be concerned as Education Officer.

The allegations were in the main supported by three Assistant Teachers in Kendagolla Mixed School during the relevant period—viz., Herat, Solange and Pragnaratne. Herat joined the school only about 5th December, 1946, but the other two teachers had been in the school since about 1943. These witnesses spoke to the preparation of parcels of rice, vegetables, &c., by the 2nd respondent for transport to Badulla, on many occasions. They each also spoke to their having seen the parcels carried to the 1st respondent's house by the 2nd respondent and his servant, Sudu Banda—on two or three occasions each. They asserted that 2nd respondent had stated that he was a friend of 1st respondent and had given him rice and vegetables. Another witness, George Senanayake, also spoke to having seen parcels carried to the house of 1st respondent by 2nd respondent and his servant on a few occasions. Herat was fairly specific as to dates, and said he had accompanied the 2nd respondent and saw the delivery of the parcels on 7.12.46 and 11.1.47. *In camera* he had given the earlier date as 6.12.46.

It seems clear that some differences had arisen between the 2nd respondent and Solange and Pragnaratne even before the arrival of Herat at the school. On one occasion the two of them were "driven" from the school on the pretext, so they say, that they had not prepared some reports, which were needed. This was on the 18th November, 1946. They say the real reason was that they had just been promoted to Grade II and the 2nd respondent on 14.11.46 had asked for Rs. 10 each for the entertainment of the Inspector, and they had refused to pay. Anyway, it seems clear that on 23.11.46, they ceased to have meals with the 2nd respondent and took a new house and catered for themselves. The 2nd respondent has a different explanation and suggested improper behaviour especially on the part of Solange towards a servant. As this does not represent a matter which has been set down for inquiry, I do not propose to decide it and the only matter relevant for the present inquiry is that in November certain differences had arisen between these persons.

In January, 1946, all the three teachers say that the 2nd respondent started a new system of keeping the attendance register which they thought was intended to facilitate the making of false claims as regards the number of the children given the midday meal by 2nd respondent. In the absence of specific evidence by the 2nd respondent on this point, I think it is very probable that he ordered the Assistant Teachers, when a child was absent, not to insert the figure "0" but to leave the space blank. The three Assistant Teachers appear to have protested

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against this, and feelings became embittered. It is important to remember that the three teachers were embittered against the 2nd respondent. Eventually two letters were sent by Herat to the Director of Education, directed against the 2nd respondent, on 22. 1. 47 and 23. 1. 47, in which the 2nd respondent was charged with certain irregularities, including the falsification of the registers and the misappropriation of garden produce. Herat made it clear that he did not want an inquiry by the Education Officer at Badulla, (i.e., 1st respondent), and desired that the inquiring officer should come from Colombo, and should have no knowledge of the Uva Office. This is an important fact which will have to be weighed. The Director of Education however in the ordinary course referred these petitions to the 1st respondent, who paid a surprise visit to Kendagolla School on 6. 2. 47. In the course of this inquiry the 1st respondent required the teachers of the school to state in writing their reasons for desiring an officer unconnected with the Uva Office to be the inquiring officer. The answers of these three assistant teachers are important.

Herat wrote :—

> "The Head Teacher has told me and the other Assistant Teachers that the Education Officer is a personal friend of his, and that occasionally he sends him rice, vegetables, and so on, as presents, and that if he erred in his duties, he had nothing to fear".

He added later that the suspicion he entertained did not amount to a charge against the Education Officer.

He also stated that Alawatugoda, the Chief Clerk of the Education Office, was an intimate friend of the 2nd respondent, and visited the 2nd respondent almost weekly.

Pragnaratne wrote in the same strain, viz., that the 2nd respondent had told the teachers that he is an intimate friend of the 1st respondent and that he sends him rice, paddy, &c. He added that Alawatugoda is an intimate friend of the 2nd respondent, and comes often to the school and enjoys drinks there and in Badulla.

Solange wrote also about the statements of 2nd respondent that he is a friend of the 1st respondent, and referred to the friendship between 2nd respondent and Alawatugoda. He talked of the suspicions engendered.

These statements (D. A. W. 16 A, B, and C), are important, because they were made on an early occasion in the presence of 1st respondent, and they certainly contain an allegation regarding the sending of rice, paddy, and vegetables by 2nd respondent to 1st respondent. It is to be noted however that none of these teachers say that they have seen the deliveries being made. The teachers say they were told about this by the 2nd respondent. On the other hand it has to be remembered that at this stage the teachers were concentrating on their attack against the 2nd respondent, and did not wish to be diverted into an attack against the 1st respondent. They also feared that if a definite charge was made against the 1st respondent, the tables may be turned on them by the Education Department. Even a fairly combative person like Herat clearly wished to avoid making a charge against the 1st respondent. See also his qualified apology D. A. W. 19 of 7. 2. 47.

The evidence I have mentioned so far points strongly to the following conclusions :—

(1) that the 2nd respondent on various occasions prepared parcels for despatch to Badulla;

(2) these parcels appear to have contained rice, paddy, and vegetables. The failure to mention at an early date liquor and meat is a point to be considered ;

(3) the 2nd respondent told the teachers that he was sending parcels to the 1st respondent ;

(4) that there was considerable intimacy between the 2nd respondent and Alawatugoda, Chief Clerk at the Education Office, Badulla. Second respondent does not deny that Alawatugoda paid him visits about once a month, and that they had drinks together.

I think that the 2nd respondent emphasised to the teachers the influence he had at the Uva Office. I do not think the rest of the evidence shakes my confidence in the strength of these conclusions. There has been considerable correspondence between the teachers, especially Herat, and the Director of Education, but for the moment I need only say that there has been some vacillation on the part of the Education Department as to the policy to be pursued, and an unsuccessful attempt to get Herat to specify definite charges against the various officers, including 1st respondent, and Alawatugoda. There has also been displayed a spirit of combativeness, bordering on insubordination, on the part of Herat.

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I think at this stage it is convenient to deal with the explanation offered by the 1st respondent. As early as the 19th of December, 1946, 1st respondent wrote to the Director of Education (D. A. W. 17) reporting the conduct of the Chief Clerk, Alawatugoda, mentioning the notoriety as regards bribes and drinks, the fact that he meets teachers in his room and transacts business with them, and the complaints that he spends his week-ends with the 2nd respondent. The letter mentioned that 1st respondent had asked for the transfer of Alawatugoda in September 1946, apparently verbally. This is important, because this was before the three assistant teachers had made their complaints.

First respondent wrote a further letter (D.A.W. 18 of 7.1.47) in which he mentioned the efforts of Alawatugoda to get his family to Badulla, and enclosing a letter accusing Alawatugoda and 2nd respondent of acts of immorality and drunkenness.

As a result of this correspondence, Alawatugoda was actually transferred from Badulla, but he subsequently succeeded in getting back to Badulla in another Department, the Kachcheri.

A further point made by the 1st respondent is that after the inquiry of 6.2.47, he sent in a report dated 20th February, 1947, to the Director, that the 2nd respondent had been guilty of :—

(1) carelessness in marking registers, and

(2) misappropriating garden produce ;

and suggested that the 2nd respondent, as a minimum punishment, should be transferred out of the province. In the report, 1st respondent also reported against the three teachers, and suggested that they should be transferred out of Badulla.

In March, 1947, the 2nd respondent asked permission to take legal steps against the three teachers, but the 1st respondent recommended that this permission should not be given (D. A. W. 21 of 2.4.47.)

Previous to this, an order had arrived that the 2nd respondent should be transferred to another station. Second respondent protested against this, and the transfer was at first delayed, and later cancelled, and a formal inquiry into the charges against the 2nd respondent was ordered.

The argument for the 1st respondent is that the three teachers completely misunderstood these matters, and thought that the 1st respondent had shown considerable partiality to the 2nd respondent. That the three teachers were ignorant of what was happening behind the scenes is clear, and it is very likely that the attitude of the teachers towards the 1st respondent would have been different, had they known all the facts. It is also urged that the action by the 1st respondent throws a grave doubt on the fact that at any rate at this stage the 1st respondent was receiving presents from the 2nd respondent. Herat at any rate speaks of presents in December 1946, and January 1947, and he was not in Kendagolla before December 1946.

I do not propose at this moment to deal in detail with the other correspondence between the teachers and the Director, but a point of some substance is that in the correspondence there is no definite statement that any of them had actually seen the delivery of the presents, at the house of the 1st respondent. There is no question but that the allegations made by the teachers (principally Herat) were confused and indefinite, and that no sharp distinction is drawn between the allegations against Alawatugoda and a Circuit Inspector called Pethiyagoda, and the allegations against the 1st respondent. During the early stages and even to the end there is no clear allegation that the teachers had witnessed the delivery of the presents to the 1st respondent. I have already mentioned that the three teachers were anxious not to be drawn into making allegations against the 1st respondent, except in so far as it had some bearing on the question as to whether an independent officer should be ordered to hold the inquiry, and whether the inquiry of 6.2.47, was an impartial inquiry. The spearhead of the teachers' attack was directed against the 2nd respondent; but even taking this into account, the point made has some substance.

Eventually, on 14.7.47, the Director of Education took decisive action. The 2nd respondent was transferred to another station, and the three teachers were transferred away from Kendagolla. By this time the bitterness between these persons had reached a serious pitch, and the Police had to intervene. But while the 2nd respondent was sent to a fairly healthy station, the three teachers were sent to unhealthy ones ; this probably intensified the suspicions of the three teachers against the 1st respondent, but he does not appear to be responsible for the actual transfers.

I have carefully considered the oral evidence given in the case. I was not much impressed with the evidence of Solange and George Senanayake. Herat and Pragnaratne gave better evidence—Herat certainly appeared to be a combative person, who was labouring under a deep sense of grievance. There were certainly

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discrepancies in his evidence, and the reference to liquor and meat among the presents may have been exaggerations. Pragnaratne also did not fare too badly in giving evidence, but the effect of the oral evidence was not strong enough to remove the doubts raised in my mind which arose from the explanation tendered by the 1st respondent. I do not think the witnesses were able to bring home beyond reasonable doubt the fact that parcels were delivered at the house of the 1st respondent.

As regards the 2nd respondent, I certainly hold that he did prepare parcels for despatch to Badulla and that he stated that he was on intimate terms with the 1st respondent, and had sent parcels of rice, paddy, vegetables, &c., to the 1st respondent. This statement of course could be utilized against him, but not against the 1st respondent. But in all the circumstances of this case, I am not satisfied beyond reasonable doubt that he did actually send these presents to the 1st respondent. I cannot entirely exclude the argument that this was merely an idle boast, made in order to impress the teachers that he wielded considerable influence. I think he utilized his intimacy with Alawatugoda also to create the same impression.

In the result, I am not able to hold beyond reasonable doubt—

(1) that the 1st respondent in or about 1946 and 1947 received and accepted from the 2nd respondent presents of rice, vegetables, fruit and other food stuffs ;

(2) that the 2nd respondent in or about 1946 and 1947 gave presents of rice, vegetables, fruit and other foodstuffs to the 1st respondent.

The 1st respondent has applied to have costs awarded to him for this inquiry, but in all the circumstances which I have mentioned, I am not satisfied that I should exercise my discretion to award costs to the 1st respondent. His application is refused.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 64.

RESPONDENT:

G. K. F. Wickremasekera,
Inspector of Schools,
Mihiripenna, Talpe,
(now at Batticaloa).

IN CAMERA

Heard on 22nd December, 1948, and 8th, 9th and 24th February, 1949.

Respondent: G. K. F. Wickremasekera, Inspector of Schools, Mihiripenna, Talpe.

The matter for inquiry relating to this respondent was that he did on or about 25th May, 1947, solicit a loan of Rs. 500 from P. M. T. Karunaratne, Teacher, Niyagama Government Boys' School, knowing that the said Karunaratne was likely to believe that if he did not comply with this request, the respondent would, in his capacity as a member of the Public Service, take action for his disadvantage.

The respondent was the Inspector of Schools, living in Talpe, and functioning from Baddegama and Galle. He has very recently been transferred to Batticaloa. Karunaratne was the Head Teacher of Niyagama School, within his Division. In the earlier stages the relations between these two officers was not unfriendly. Karunaratne said that the respondent used to come and stay at his house, when he had occasion to come to Niyagama, and that respondent took loans of small amounts for his needs, and did not return these loans, and that he had also supplied him with medicinal herbs. He also produced a letter of 14.12.46 (P.M.T,K, 10) whereby respondent had asked him to supply a certain medicine. The letter was admitted by the respondent, who, however, denied that he received either this medicine or any of the small loans mentioned by Karunaratne, or that he stayed with respondent, on his visits to Niyagama. At any rate, there were no serious differences between the two, prior to January 1948.

The facts leading up to the demand for the loan are as follows:—The Boy Scouts Association had arranged that certain Scouts should proceed out of Ceylon to attend a Jamboree. It was at first suggested that Galle District should send two Scouts. It was the business of the Local Association to raise the necessary money, which was at first fixed at Rs. 1,500 and later raised to Rs. 2,300 per Scout. For this purpose a concert was held at Baddegama on 1.3.47, and after deducting expenses, it is said a sum of Rs. 478 was obtained, to which the respondent added a sum of Rs. 22 making the round sum of Rs. 500, which had to be sent to Scout Headquarters. It is the case for the respondent that this sum was in the hands of P. G. E. de Silva, Treasurer of the Teachers' Association of that area, who had organized the concert. P. G. E. de Silva said that he kept the money in his house at Matara where he went for week-ends. Owing to the intervention of the holidays, it is said, no meeting of the Association was held till 26.5.47, when the accounts were passed. An account (G.K.F.W. 16) was produced bearing date 26.5.47, and bearing the signatures of respondent, P. G. E. de Silva, and David—said to be the auditor. But the minutes of this meeting were not produced, and the Secretary was not called to speak to them. The money was not forwarded to Scout Headquarters till later. I shall deal with this in due course.

Another event that may be mentioned was a meeting at Niyagama School, presided over by Simon Abeywickrema, M.P. It has been established that this meeting took place on 24.3.47, and that it was a meeting of the Parent-Teachers' Association of Niyagama Boys' School. Apart from the evidence of Karunaratne, there is the respondent's letter of 9.3.47 (P.M.T.K. 8) which proves this fact. I may mention that this was not a Scout meeting, although the Scouts appear to have provided a guard-of-honour, and some scout warrants were presented on that occasion. This appears to have been the suggestion of the respondent (see P.M.T.K. 8). I shall have to refer to this meeting later.

It is important to remember that the money for the Scouts had to reach Scout Headquarters by 3.6.47. At some stage, it was realized that Galle had not collected enough money to send two Scouts, and it was decided that only one should be sent to the Jamboree. On 28.5.47, Mr. E. R. de Silva, Principal of Richmond College, sent a cheque for Rs. 775—the amount of his collections—(see P.M.T.K. 4). It is not without importance that in that letter he says "The District Commissioner would have sent you Rs. 500." The District Commissioner was the respondent, and Mr. E. R. de Silva expected him to have sent that amount already. Scout Headquarters acknowledged receipt by their letter P.M.T.K. 5 of 31.5.47 and stated that

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no money had been received from the respondent. On 30.5.47, the Scout Commissioner, Mr. E. W. Kannangara, wrote to respondent saying that only Rs. 775 had been received from Mr. E. R. de Silva, and pointing out that the passage money had to be paid on 3.6.47 (P.M.T.K. 2). A reply by return was called for.

In the meantime on 19.5.47, Karunaratne had received a telegram from respondent as follows:—"See me tomorrow or today without fail" (P.M.T.K. 1). There is a note of urgency in this telegram and I believe Karunaratne when he says that on this day he went to the respondent's house at Talpe. He found the respondent away from home, but met his wife. In point of fact, on that day respondent was conducting an inspection at Ampegama. The respondent returned to Niyagama. A few days later Karunaratne received a letter in English from respondent asking him for the loan of Rs. 500, as he was temporarily short of money. There was also enclosed in that a letter from Mr. E. W. Kannangara. Karunaratne was not very proficient in English, and had that letter translated to him by the English teacher, Gunadasa, and also by his friend Siripala, who knew English. Karunaratne was very positive that he received that letter on 25.5.47, and had noted that date on the telegram (P.M.T.K. 1), and also the date when the letters were given back to respondent, viz., 28.7.47. But it is clear that these dates were inserted on the telegram some time after the letters were returned to respondent, and Karunaratne gave a rather confused story as to how he remembered the date. Karunaratne decided not to give the Rs. 500.

The letters were said to have been returned under the following circumstances. Respondent came to Niyagama and sent Gunadasa with a message that he had spent sleepless nights thinking about these letters. Respondent was in a dilemma realizing that whatever he did may prove wrong and hurtful to himself. However, he was persuaded to give over the letters to the respondent, through Gunadasa.

There are several points to be considered in this connection. Mr. E. W. Kannangara and the Secretary of the Scouts Association were not able to find any letter written by Mr. Kannangara to the respondent prior to the 30th May, except a circular sent much earlier. But neither Karunaratne nor Siripala were able to recognize the circular as the letter they saw. Crown Counsel suggested that what they saw may have been a draft letter to Mr. E. W. Kannangara, similar to the letter drafted for P. G. E. de Silva, when the money was actually sent, but this is not the evidence. Anyway this has been urged as a factor of doubt affecting the story of Karunaratne.

I may mention here that the respondent offered an explanation for his telegram P.M.T.K. 1 of 19.5.46. He said he had received a letter dated 16.5.47 (G.K.F.W. 4) from witness Gunadasa who was a Scout Master. The letter mentioned the "scout function, recently held under the Chairmanship of Mr. Simon Abeywickrema" and suggested that the respondent should get down Karunaratne to accompany him and get the patronage of Mr. E. R. de Silva for a concert to be held at Niyagama school to raise funds to provide uniforms for the Scouts of the school. This letter did not mention that Karunaratne had been consulted but said he would like the idea because he had a son in Richmond College. Respondent said he sent the telegram to Karunaratne on receipt of this letter.

Crown Counsel argued that this letter was a fabrication. The meeting had not been "recent". It was held as far back as the 24th of March, 1947, and although the holidays had intervened, the word "recent" was hardly appropriate. Further, the meeting could not be described as a "scout function"—it was, in fact, a meeting of the Parent-Teachers' Association. In view of the delay, "immediate action" could hardly be demanded. Gunadasa, in speaking about this, said he was training some scouts in singing to provide items for the concert and when the idea was abandoned, he sent the Scouts to provide an item at the Baddegama concert. This was obviously incorrect, as that concert was held as far back as 1.3.47, long before this letter. It was afterwards suggested that the item had been provided at campfires, which were held. Karunaratne denied this. Another point is that while respondent in his telegram insisted on Karunaratne coming "without fail", he did not say that Karunaratne was to come to Galle or explain the reason why he was wanted. The telegram was a peremptory summons, and Karunaratne had to travel at least 25 miles. Karunaratne naturally interpreted it as a summons to Talpe. There hardly appears to have been urgency in summoning Karunaratne. Further, it is a singular fact that when Karunaratne did not arrive, respondent never wrote to him explaining his telegram, and making another appointment to meet Mr. E. R. de Silva. In fact, no attempt was made to get in touch with Mr. E. R. de Silva. The matter was allowed to die out.

I do not think on the evidence I can hold positively that the letter G.K.F.W. 4 was an entire fabrication, though I have grave doubts about that. At any rate, I am satisfied that this letter was not and could not have been the occasion for the telegram. The explanation is extremely artificial and unconvincing, and the note of urgency to be found in the telegram is not accounted for. However addicted the respondent may have been to the sending of telegrams, this was hardly an occasion for his employing that medium of communication in the manner he did.

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Another point of considerable importance is the delay in sending the Rs. 500 to Scout Headquarters. The respondent's story is that the money had always been in the hands of P. G. E. de Silva, the Treasurer of the Teachers' Association. P. G. E. de Silva had kept the money at his home in Matara. The money could easily have been handed to the respondent who was District Commissioner, but the respondent said he was unwilling to handle teachers' money under any circumstances. As an alternative, the money could have been sent to the Galle Association, but this was not done. It could have been forwarded direct to Scout Headquarters, but it is said that there must be a letter of the respondent forwarding it. Respondent and P. G. E. de Silva said that such a letter was given earlier, but that P. G. E. de Silva had mislaid the letter and was waiting for another covering letter. Shortly after the accounts were passed on 26.5.47, P. G. E. de Silva went for the week-end with the letter, but mislaid it on the way. Thereafter, P. G. E. de Silva wrote to respondent. This letter was not produced and there are divergent stories as to the contents. According to respondent, P. G. E. de Silva wrote that the letter was lost and that he was coming to see respondent and get another letter. Respondent therefore typed a letter on 3.6.47—(incidentally the last day for the sending of the money)—and waited for P. G. E. de Silva to arrive. P. G. E. de Silva, however, said that he wrote from Matara about the loss of the letter and asked respondent to send him to his school another letter. That letter never arrived, and so after waiting some days he went to see the respondent. P. G. E. de Silva did not know that the money had to be sent by the 3rd of June, 1947. This is a serious divergence.

P. G. E. de Silva is said to have arrived only on the 5th June, with the money. It may be mentioned that respondent on 2.6.47 had sent a telegram to Scout Headquarters (P.M.T.K. 9) that only one Scout was being sent to the Jamboree and that a letter would follow. The letter was not sent till 5.6.47, after the time limit had expired. In order to get a cheque for transmission with the letter, respondent and P. G. E. de Silva had to go to Galle and ask a Schoolmaster M. A. Fernando, Headmaster of Bennette College, for a cheque for Rs. 500. The respondent still had compunction about handling teachers' money.

The letter P.M.T.K. 3 is of importance. Though sent on the 5th June, it bore date 3rd June, 1947. Respondent was not certain whether this was the letter he kept ready typed for the arrival of P. G. E. de Silva. The contents of the letter are interesting. It starts with excuses for the delay, and mentions the Rs. 775 sent through Mr. E. R. de Silva, and goes on, "I send herewith Rs. 500. These are the proceeds from a concert organized by me." Respondent in his evidence insisted that the concert was organized by the Teachers' Association, and not by himself. P. G. E. de Silva insisted that he kept the money in his hands, because it was money collected by the Teachers' Association, of which he was the Treasurer. It is remarkable that no mention is made in the letter of the Teachers' Association and that the claim is made that the concert was "organized" by the respondent. After all their trouble the Teachers' Association deserved at least some of the credit, and it is strange that the Treasurer did not see that they got the credit for this amount. It is also to be noted that M. A. Fernando was not called to speak to the circumstances under which he gave the cheque for Rs. 500. I think this letter throws considerable doubt on the evidence that this concert was organized by the Teachers' Association, and that the money was kept with the Treasurer. I have already commented on the fact that the minutes of that Association were not produced, and that no one was called to speak to those minutes.

What happened about the balance due for the one Scout sent is not in evidence. P.M.T.K. 3 speaks of Mr. E. R. de Silva being asked to advance the amount.

There is one fact I think I should comment on. Statements of the respondent's bank balance in the Bank of Ceylon (P.N.T.K. 14 and 14A) are available, and show that throughout the month of May 1947, his balance was under Rs. 500. On the 3rd June it rose to Rs. 611.26, and after that it began falling till on the 11th June, 1947 it was below Rs. 500 and remained so till the last few days of the month.

Respondent said he had money in the house, and also that he was in a position to borrow from his father-in-law, but we have only his word for that. The fact remains that he would not have been in a position during these two months to draw a cheque for Rs. 500. Even for the few days in June when his balance topped that figure, a cheque for Rs. 500 would have brought the balance perilously low. I think there are a number of circumstances that help to give some confirmation to the story of Karunaratne and Siripala. I do not think that story was a pure invention.

There has been a good deal of evidence relating to subsequent events mainly intended to discredit Karunaratne. I shall deal with these shortly. In February 1948, Karunaratne charged one Louisa with assaulting him with an ekel broom and the Magistrate held that the evidence of Karunaratne and his wife was untrue, and acquitted the accused.

Further considerable differences arose between Karunaratne and some of his assistant teachers, and between Karunaratne's wife, Podinona, and her assistant teachers in the Girls' School. Matters came to a head on the 12th and 13th of

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January, 1948, when the respondent went to inspect the two schools. The Boys' School was inspected on the 12th in the absence of Karunaratne with leave, and apparently nothing was found, because the respondent gave Karunaratne a good endorsement. In the afternoon, however, respondent called up the teachers of both schools, and apparently they came to hot words in the course of which Mrs. Karunaratne used the word "umba" to an assistant teacher. The respondent resented this word as used in his presence, and Mrs. Karunaratne was subsequently called upon to answer to this matter. Karunaratne was not present at the time. Then next day respondent met Karunaratne, who was apparently in a bad mood, and referred to an assistant called Livinis as a dog ("balla"). These matters were subsequently the subject of an inquiry before Mohandiram Jasinghe, and in spite of the denials of Karunaratne and his wife, Mr. Jasinghe held against them.

There were several charges against Karunaratne, and he and his wife had made counter-charges against the assistant teachers. One of these matters may be mentioned. This was the charge that Karunaratne bought bread for the children's meals at 20 cents and charged Government 24 cents. Mr. Jasinghe inquired into this, and in spite of an elaborate defence by Karunaratne, who brought his friend Siripala as a witness, held against Karunaratne and rejected his story. As a result of this finding, Karunaratne has been interdicted.

I do not think this finding has the same force as a finding by a Court of law, but it is a matter to be taken into account in weighing the value of Karunaratne's and Siripala's evidence.

Another point that has been urged is that no complaint about the respondent had been made before the complaint to this Commission.

No doubt, there are matters which affect the credibility of Karunaratne, and a motive has been made out against him, that may point to a false allegation in this instance. Moreover, Karunaratne has on certain occasions acted in an aggressive and undesirable manner. This, however, does not touch the witness Siripala, except Mr. Jasinghe's finding that the defence set up in the bread case was not true. The facts were not gone into before me, and I do not think that I can fairly use the finding against Siripala. There is no doubt of the fact that Siripala and Karunaratne were good friends. But as I have indicated, the circumstantial evidence in the case strongly helps to confirm the truth of the allegation made before me. The attempt to refute the allegation has broken down in many cases.

From my own observation, I was not unfavourably impressed by the evidence of Karunaratne and Siripala. Gunadasa was not a good witness, and I do not accept his evidence. The respondent himself struck me as willing to snatch at any evidence to further his own interest. His explanations were not convincing. No doubt he takes part in the work of many Associations, and it is very likely that he is a good worker in these and in his official duties. It is quite possible that he has spent some money on these outside activities. There were divergences between his evidence and that of P. G. E. de Silva which make it difficult to accept the evidence of either as the truth. I have already commented on these matters. Respondent has also failed to call witnesses whose evidence may have been useful for his case. I may mention that the question arose in the inquiry as to whether respondent on his earlier visits to Niyagama stayed with Karunaratne or with the Rubber Inspector Cooray. For some reason, Cooray himself was not called, but a Headman and a Chairman of a Village Committee were called to give vague evidence, which did not establish the dates on which respondent was seen at Cooray's house. It is clear that after the breach between respondent and Karunaratne in January 1948, when Mr. Jasinghe came for the inquiry both Mr. Jasinghe and respondent stayed at Cooray's house for the night. The real question was whether respondent stayed with Karunaratne previous to the breach, and these witnesses did not help.

In view of the allegation framed, I do not think it necessary to decide whether the respondent accepted the hospitality of Karunaratne and took small loans from him. I do not, however, reject that evidence.

In all the circumstances, I hold that the respondent on or about 25th May, 1947, solicited a loan from P. M. T. Karunaratne, Head Teacher of Niyagama Government Boys School, knowing that the said Karunaratne was likely to believe that if he did not comply with this request, the respondent would, in his capacity as a member of the Public Service, take action for his disadvantage.

I may add that it is very likely that the respondent intended to repay the money borrowed from Karunaratne and did not intend to appropriate the amount himself.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 67.

RESPONDENT :

L. B. Deegala,

Police Sergeant 532,

Kurunegala.

IN PUBLIC

Heard on 30th November, 1948.

Respondent : L. B. Deegala, Police Sergeant 532, Kurunegala.

The principal matters at this inquiry were :

(1) the nature and extent of the purchases of movable and immovable property made by respondent in his name or that of his wife, during this period,

(2) the extent of the accumulations of money by respondent during the period, and

(3) whether the said purchases and accumulations were made or effected as a result of bribery or corruption.

The evidence of the two Basnayakes did little more than direct my attention to the purchases of property. The evidence they gave about improper conduct of the respondent as a Police Officer was not corroborated, and appears to be not reliable. I do not think any consideration of this is needed.

Respondent himself gave evidence of purchases and sales of motor vehicles by which he claimed a profit. On the figures in his statement he made a profit of over Rs. 3,000 between 1941 and 1944. It is not possible to say that he has established this by satisfactory evidence, but at the same time it is known that the values of second hand motor vehicles were rising at the time and I am prepared to accept the position that respondent did make some profit by these transactions. It is not possible to say how much. At any rate I do not think that the purchases of these vehicles was from money corruptly accumulated.

The Basnayakes and the respondent gave evidence relating to the purchases of land. There are four transactions which may be mentioned.

(1) On 2.12.43, respondent purchased on deed 3954 certain lands from his father-in-law for Rs. 200.

Respondent declared he had no recollection of this transaction and never paid Rs. 200 to his father-in-law. It is, however, possible that this is a small portion of adjoining lands which he already held at Ambanpola, and it may have slipped his memory. The important point, however, is that the consideration was only Rs. 200, a comparatively small amount, to account for.

(2) On 26.2.46, respondent's wife purchased certain shares of a land for Rs. 200 and on 17.8.46, another small share for Rs. 8.

According to respondent the money for the purchase was obtained from Mrs. E. C. Bakmiwewa, who had adopted him as a child and was very fond of his wife. There is evidence of this lady that she did give the money. In the statement made to this Commission, however, respondent said that his father-in-law purchased it for the wife. In spite of this discrepancy, I am not prepared to reject the evidence. Further, only the sum of Rs. 208 was involved in this transaction.

(3) On 15.1.46, by Deed 5971 (L.B.D.7) the respondent purchased a land for Rs. 2,500.

According to his story he sold his car in 1945, for Rs. 3,000, and used this money for the purchase. It does appear that respondent sold his car when he came to Colombo on duty. I think the respondent has sufficiently accounted for the source of the purchase money. The land is said to have been purchased with the sanction of Government.

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(4) On 28.11.47, the respondent purchased another property by Deed 1113 (L. B. D. 8) for Rs. 8,000.

This would be a sum ordinarily outside his visible means, but the respondent has accounted for the money used for the purchase. He says that Rs. 5,000 was obtained by the sale of all his Ambanpola property under Deed 1112 of the previous day. It appeared that Mrs. E. C. Bakmiwewa had gifted the bulk of these lands on 25.7.39, to respondent by Deed 885. The deed purports to be a purchase for Rs. 500 but the respondent says it was in fact a gift. One F. H. Bakmiwewa, uncle of respondent, is said to have certain rights in the land under Deed 885, and he was one of the signatories to Deed 1113. F. H. Bakmiwewa was deaf and dumb, and respondent says he undertook to look after him. The exact rights of F. H. Bakmiwewa are not clear, for the Deed 885 has not been produced. Respondent says that he utilized the whole of the Rs. 5,000 to pay for his purchase under Deed 1113. There is no doubt the amount was available, if F. H. Bakmiwewa made no claim to any part of that sum. I do not think I can reject the respondent's story that he used this sum.

As regards the balance Rs. 3,000, respondent says that this was obtained from savings he had with him. He states that he had been saving for a long time, and had his savings in his almirah. I have doubts about the truth of this story. Respondent has emphasized the fact that his aunt, Mrs. E. C. Bakmiwewa, had given him presents which over a course of years amounted to Rs. 3,000 or 4,000. Mrs. E. C. Bakmiwewa said that between 1938 and 1942 she may have given him Rs. 2,000 in monthly sums of Rs. 30 or Rs. 40, while he looked after her affairs. But after 1942 the scale of her presents was reduced, and certain sums were given to him or his wife or his children on varying occasions. Respondent's salary was small and whatever he obtained from outside may well have been absorbed in his expenses. Moreover, respondent had for many years maintained a Savings Bank Account and it is strange that he did not bank his savings.

There are, however, certain factors which weigh in favour of the respondent. He no doubt, has access to richer relations. He has accounted for the major part of the purchase money. He may have saved something. Further, he purchased land in his own name, with the sanction of Government. Accordingly, while he has no doubt accumulated this sum of Rs. 3,000 I do not think I can say that the accumulation was made as the result of bribery or corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 73.

RESPONDENTS :

First : Dr. C. O. Perera,
Medical Superintendent,
Mental Hospital,
Angoda.

Second : Dr. H. C. P. Gunawardene,
58, Kynsey Road,
Colombo.

IN CAMERA

Heard on 8th March, 14th March, and 17th March, 1949.

Respondents :

1st : Dr. C. O. Perera, Medical Superintendent, Mental Hospital, Angoda.

2nd : Dr. H. C. P. Gunawardene, 58, Kynsey Road, Colombo.

The allegations against the two respondents were that in or about July, 1944, each of them received and accepted a gratification of Rs. 50 from K. D. S. Abeygunawardene—an Assistant Postmaster in the Post and Telegraph Department, as a reward or recompense for recommending that the said K. D. S. Abeygunawardene be sent before a Medical Board with a view to getting the said K. D. S. Abeygunawardene improperly condemned by a Medical Board as unfit for further service.

On the material dates the 1st respondent was the Medical Superintendent of the Mental Hospital, Angoda, and the 2nd respondent was the Surgeon, Out-Patients Department, General Hospital.

K. D. S. Abeygunawardene was an Assistant Postmaster stationed in 1944 and earlier in Nuwara Eliya. According to him, he was ordered to be transferred from Nuwara Eliya, and had to give notice that he was vacating the Government bungalow allotted to him by the Assistant Government Agent. Almost at the last moment, apparently on his representations, the transfer was cancelled, but the bungalow had been allotted to another officer of the Postal Department, and the Assistant Government Agent refused to reallot the bungalow to Abeygunawardene. Abeygunawardene resented this, and resisted the order to vacate the premises by the Assistant Government Agent. Eventually the Postmaster-General intervened and Abeygunawardene was compelled to leave the premises. There is no question that Abeygunawardene had a strong feeling that the treatment he had received was unjust, and that he perhaps exaggerated the injustice which he felt was done to him. His principal complaint was that the bungalow was allotted to another member of his Department. He appears to have decided to bring an action against the Postmaster-General. There does not, however, appear to be any good legal grounds for an action for damages.

To bring the action, Abeygunawardene had to be out of the Department. If he had resigned, he would have to lose his pension rights, and the 22 years of service in the Department would have been wasted. He accordingly conceived the idea of being condemned by a Medical Board. About this time he obtained a certain number of medical certificates, but they were not sufficient to justify his claiming the right of retirement. At this stage someone suggested that a certain Mr. R. L. Nelson had experience in these matters, and was able to secure condemnation by a Medical Board. Abeygunawardene got in touch with Nelson who said he needed a fee of Rs. 300 to secure that object. At one stage Abeygunawardene said the amount was Rs. 250 Nelson himself had at one time been in the Railway, and had retired, after being condemned by a Medical Board. He had thereafter interested himself in many odd matters. He typed petitions for Government servants who had grievances. He also appeared as "approved representative" in Workmen's Compensation cases, and pressed the claims of workmen who claimed compensation. Nelson pretended that he did not charge for his services, but I think it is fairly clear from the evidence that he was making a profit from this work. It is said that he also secured condemnation of public servants by Medical Boards, and he

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seemed at any rate to have been actively helping in another case from Kandy (that of Jayewardena—who was charged in M. C. Kandy), to the extent of standing bail for Jayewardena in the sum of Rs. 5,000 cash, a sum which Nelson could not have deposited out of his own resources. Jayewardena's defence was that he was of unsound mind. This was not accepted, and Jayewardena was convicted. But it appears that he has since been sent from the Prison to the Mental Home at Angoda.

Nelson and Abeygunawardena concocted a plan to have the latter condemned as of unsound mind. This was a fraud, as Abeygunawardena was at the time perfectly rational. He had just previously had a series of examinations by various Doctors in Kandy, Nuwara Eliya, &c., who had diagnosed various diseases, malaria, bronchial asthma, neuritis, &c. Some of these certificates were in April and May, 1944. Dr. C. O. Perera thought there was significance in these diagnoses, because many of these diseases may also have resulted in mental disorders. But the significant fact is that none of the Doctors detected or observed any signs of mental disorders. They would naturally have so stated if they observed signs. Nelson himself did not observe any indications, nor did Advocate Wanigetunga, who was consulted by Abeygunawardena shortly after he was condemned by the Board. Mrs. Abeygunawardena also stated that her husband was in good mental condition—but her evidence will have to be considered later. There can be no question that at the time of the inquiry before me Abeygunawardena was in full possession of his mental faculties, and this was admitted by both the respondents. Abeygunawardena declared that he was in sound mental condition. Abeygunawardena admitted that the injustice he suffered smarted him, but denied that his mind became unbalanced by it. According to Abeygunawardena, Nelson's plan of campaign was to collect a number of certificates from Colombo Doctors, and he instructed Abeygunawardena to say as little as possible, and to answer slowly if spoken to. The first Doctor chosen was the 2nd respondent, Dr. Gunawardene, who was visited in his private house by the two men, and was paid a fee of Rs. 25 or Rs. 50. Abeygunawardena's evidence was that no examination was made by the 2nd respondent. At any rate no certificate was issued by the 2nd respondent on this visit. Such a certificate would have been on the Doctor's private note-paper. Later another visit was paid to the Out-Patients Department at the General Hospital, where a certificate on an official form KDSA. 6 was obtained. Abeygunawardena had no recollection of meeting the 2nd respondent on this occasion, but he must have done so for he has signed the form KDSA. 6. Under the heading "Duration of illness, &c., appear the words "abt 2 years. Has been on leave for about 3 months for various complaints." Under heading "Signs & symptoms observed by the Medical Officer" appears "Pt. answers questions slowly. Seems to take considerable time to collect his thoughts." Under the head "Nature of disease or injury" appears "? Mental". The recommendation is that Abeygunawardena be sent before a Medical Board and leave was recommended till then. The certificate bears date 3.7.44. The 2nd respondent emphasized the fact that he had put down his own observations, and argued that he must have talked to Abeygunawardena. This seems very probable. The diagnosis of mental disease is, however, preceded by a question mark, and must have been in the nature of a guess.

The next certificate was obtained from Dr. B. E. Fernando, F.R.C.S. (now dead) and is also dated 3.7.44. Dr. Fernando was attached to the General Hospital, but was seen at his bungalow. His certificate or letter (KDSA. 7) reads as follows :—

> "This is to certify that I have examined K. D. S. Abeygunawardena who complains of headache, sleeplessness, excitability, lack of concentration and sudden fits of violence. This appears to be a case of early manic depression psychosis. It will be advisable to refer him to a mental specialist for investigation and treatment."

This is a little more specific as to the nature of the disease, but is based on statements alleged to have been made by the patient. I think it is extremely likely that the bulk of the complaint was made by some one other than the patient perhaps by Nelson, as suggested by Abeygunawardena. Coming from the patient, the complaint may well have been suspect. Apparently the complaint had made a deep impression on the Doctor. The Doctor was given a fee of Rs. 50.

In passing, it may be mentioned that the 2nd respondent has emphasized the fact that both these certificates are dated the same day 3.7.44. Abeygunawardena said he went to see the 2nd respondent at his house on a day prior to that on which he saw Dr. B. E. Fernando. Second respondent suggested that Dr. Fernando's report was produced before him before he issued his own certificate. This is a distinct possibility. In any case the Out-Patients Department certificate would make no mention of other medical reports produced.

On 4.11.44 a letter signed by Mrs. Abeygunawardena was sent to the Postmaster-General (KDSA. 11) in which reference is made to the Medical Certificate submitted from General Hospital for a Medical Board, and a request is made that the Medical Board should be arranged in Colombo. On 15.7.44, Abeygunawardena received telegram KDSA. 2 informing him that the Medical Board had been fixed for 26.7.44.

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Thereafter Nelson took Abeygunawardena to see Dr. C. O. Perera, 1st respondent, and a fee of Rs. 50 is said to have been paid. Abeygunawardena admitted that he had a talk with 1st respondent for a short time. First respondent said that questioning the patient was a part of the observation and treatment; and this may be taken as correct. There appears to be little doubt that 1st respondent saw the patient only on this occasion. He issued a certificate (KDSA. 1 and 7) which runs :

> "17.7.44. Mr. K. D. S. Abeygunawardena who has been sent for a consultation by Dr. B. E. Fernando is under my observation and treatment. At present he appears to be mildly depressed and complains of insomnia and headache."

According to Abeygunawardena the person who mainly did the talking was Nelson, who appeared to be on friendly terms with 1st respondent.

First respondent has emphasized that this certificate does not go far, and only states that the patient "appears to be mildly depressed". The statement that the patient "is under my observation and treatment" would, however, be ambiguous and misleading. This may create the impression that 1st respondent had the patient under observation and treatment for some considerable time or on several occasions. The evidence of Dr. Cyril Fernando, who was a member of the Medical Board later, tends to show that this was a natural interpretation of the words. First respondent, however, argued that if he saw the patient once and arranged to see him on further occasions, he was correct in using the phrase "is under my observation and treatment." Dr. Cyril Fernando agreed that this was so, and I am inclined to think that the language was not deliberately misleading, but at the same time I feel that the language was open to misconstruction, and I am inclined to think that, in fact, it was misinterpreted by the Medical Board.

Following on the issue of the certificate, Nelson drafted a letter to be signed by Mrs. Abeygunawardena to the Postmaster-General. This letter KDSA. 3 was signed on 18.7.44 and forwarded, and was found in the file.

The relevant portions are as follows :—

> "I beg to enclose a further Medical Certificate from Dr. B. E. Fernando (apparently KDSA. 7) ..... as regards my husband's illness which he informed me was due to mental troubles ..... As he is dangerous at times to himself and to others, I am afraid it is my duty to acquaint you of the fact, and to inform you that he is taking treatment from the Angoda Institute under Dr. C. O. Perera."

This letter asked that the case should be investigated by a Mental Expert, or that arrangements be made to have a Mental Expert on the Board.

A footnote added that two Medical Certificates are attached—It is not clear what they refer to, but they may possibly be the certificates of Dr. B. E. Fernando and of Dr. C. O. Perera. The latter certainly reached the Medical Board.

This is an important letter because it reflects on the veracity of Mrs. Abeygunawardena. She admitted that the contents of the letter were false, and that she signed it only because her husband requested her to do so. She particularly denied that her husband was violent at times, or dangerous to himself and others.

I formed the impression that Mrs. Abeygunawardena was a simple woman, who no doubt would do as her husband directed, but in spite of this letter, I thought she was, as regards the facts she deposed to at the inquiry, a truthful witness, and that she never observed any signs of mental trouble in her husband.

For some reason unknown the Medical Board in this case sat on 25.7.44, and not on 26.7.44 as originally fixed. Dr. Thiagarajah, Chairman, Dr. Cyril Fernando, and Dr. B. E. Fernando issued the certificate KDSA. 7. Dr. Thiagarajah and Dr. B. E. Fernando are now dead, but we have had the advantage of the evidence of Dr. Cyril Fernando. Judging from th report of the Medical Board KDSA.9, the reports of the 1st and the 2nd respondents were available to the Board. Dr. Cyril Fernando felt sure that the Board must have questioned the patient, and made their own observations, but there is nothing in the report to indicate this, nor are any symptoms and signs noted. The three headings : (1) History of the case, (2) Symptoms and signs noted, (3) The officer's present condition are bracketed together, and against them the entry appears "He is suffering from melancholia. Vide Report of Dr. C. O. Perera."

In this report, great prominence has been given to the report of Dr. C. O. Perera. The 1st respondent strongly asserted that in his certificate he had not diagnosed "melancholia" and that his certificate established nothing but that the patient "appears to be mildly depressed and complains of insomnia and headache." The certificate is certainly inconclusive and this was admitted by Dr. Cyril Fernando. But I am inclined to think that the words "is under my observation and treatment" may have misled the Board into thinking that the observation and treatment had been continued for some time. This was the view of Dr. Cyril Fernando at the

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earlier stages of the investigation, but he modified that view later under cross-examination. It is obvious that mild depression or the appearance of it on several occasions or for a considerable time would be a circumstance of much greater import than that disclosed at a short examination. There was another factor also. The presence of Dr. B. E. Fernando on the Board may have influenced the decision. Dr. Fernando had recited the complaints of the patient, and stated that "this appears to be a case of early manic depression psychosis", which called for investigation and treatment by a mental specialist. It is not clear that Dr. B. E. Fernando's report was actually before the Board, but it had been sent to the Postmaster-General, and probably reached the Board. It was only human that Dr. Fernando and his colleagues should be influenced by this certificate. There is a difference of opinion in the Medical Department, whether it is proper for a Doctor who had been previously consulted by a public servant about an illness to be a member of the Board and to examine that particular public servant. The Director of Medical and Sanitary Services thinks it is not proper, because the Doctor would naturally support his previously formed opinion and thus bring bias to bear on his opinion. (See KDSA. 10). Dr. Cyril Fernando on the other hand saw nothing improper in it, and pointed out that Doctors are constantly sitting on Boards, where they have been previously consulted by the patient. I am reluctant to decide a case of medical etiquette, but I am of opinion that the reasons urged by the Director are extremely cogent, and that they appear to me to be the better opinion, especially in cases where Doctors have received fees for their previous examinations of private patients. It is important not only that the Board should express their view independently of previous opinions, but that they should manifestly appear to have expressed an independent opinion. If the Doctors called up now are too few to achieve this purpose, a greater number of Doctors should be placed upon the panel.

Though Dr. Cyril Fernando thought there must have been some questioning of the patient in this case, I am inclined to think that Abeygunawardena's evidence that only a few formal questions were put to him is very probably the truth.

I have considered the evidence of R. L. Nelson. I do not believe his story that he took no part in getting Abeygunawardena the medical certificates and the report of the Medical Board, but that he only helped him in connection with the case against the Postmaster-General. I accept Abeygunawardena's evidence that Nelson helped him at each stage. No doubt it is a strong point to be remembered that Abeygunawardena was a participant in the fraud, and that his credibility is affected. But in my opinion he gave his evidence convincingly and in a straightforward way. There was no reason for him to concoct this story, and no motive against either of the respondents, and although there were discrepancies in his evidence, I did not think they were more than could be expected after the lapse of time.

In substance I hold that Abeygunawardena was in full possession of his mental capacity, when he obtained the certificates from the Doctors and was condemned by the Medical Board. There was no doubt a deliberate fraud practised by him at the instance of Nelson, and I have little doubt that Nelson played a greater part in the preliminary steps, than the Doctor can now remember. But I have also to consider whether the two respondents were parties to the fraud.

No doubt, Nelson told Abeygunawardena that he had the Doctors in his pocket, and on that assumption, Abeygunawardena may have thought that the Doctors were in the fraud. It is quite possible that he did not appreciate what was observation and treatment in the case of persons suspected to be of unsound mind.

He knew he had deceived the Doctors, and he thought the Doctors knew this also. But on the other hand it has to be remembered that the certificates given by the two respondents are indeterminate and inconclusive. If they were in the fraud, they could have said much more. It is not the case that the Doctors have asked for fees which were inordinately high. I think there is no question but that the respondents and the Medical Board were deceived, but I cannot find sufficient material to hold that there was any dishonesty on their part. As far as the Medical Board was concerned, they were also influenced by another consideration, viz., the danger of retaining in the Government Service a man who says his mind is affected, and who has to handle large sums of money. There is a tendency, as Dr. Cyril Fernando said, in these circumstances to accept the man's word as to his mental capacity.

One further point; there can be no doubt that the 2nd respondent Dr. H. C. P. Gunawardene acted as a member of the public service in issuing his certificate. The case of Dr. C. O. Perera is different. He was not acting as a member of the public service, but was issuing a certificate to a private patient.

In all the circumstances I hold that the allegations made against the two respondents have not been established.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 75.

RESPONDENT :

G. Jonathan Perera,
Police Constable 1680,
Ginigathena.

IN CAMERA

Heard on 19th November and 2nd December, 1948.

Respondent : G. J. Perera, P.C. 1680, Police Station, Ginigathena.

The matter that arose related to certain deposits in the Post Office Savings Bank and in the Bank of Ceylon (Kandy Branch) made by the Respondent. It is clear from the evidence of the respondent himself that the amounts could not have been saved from his earnings and income.

(1) Deposit in Post Office Savings Bank on 15.5.46 of Rs. 485 by the respondent.

According to the respondent, his wife received a dowry of Rs. 1,500 from her father. Later in 1945, the father got a loan of Rs. 1,000 from the daughter. Rs. 500 was repaid by the father, and out of this Rs. 485 was deposited in the Post Office Savings Bank.

The father-in-law supported the story, but the wife has not been called. The circumstances of the father-in-law were such that it does not seem credible that he could raise these sums. I do not believe the story.

With this should be considered a deposit of Rs. 350 on 23.9.47. The father-in-law is said to have returned Rs. 400, part of which was deposited. I do not believe this either.

(2) Deposit in Post Office Savings Bank of Rs. 1,100 and Rs. 100 on 30.7.46 and 31.7.46.

The respondent said he sold his Singer Sewing Machine for Rs. 550 and his Seraphina for Rs. 750 and deposited out of these the two sums. Respondent alone spoke to this. His wife was not called, nor the purchasers nor the persons who negotiated the sale. I was not impressed with the respondent's story and reject his explanation.

(3) Deposit in Bank of Ceylon of Rs. 200.

Respondent said he sold three sovereigns of his wife at Rs. 80 each, and deposited Rs. 200 out of it. The wife has not given evidence nor the purchaser. I reject respondent's story.

(4) Two deposits—(*a*) in Bank of Ceylon on 16.10.46—Rs. 800, (*b*) in Post Office Savings Bank on 14.11.46, Rs. 300.

According to the respondent, these sums were given to him for safe-keeping by his nephew K. M. A. H. Perera, out of the gratuity he had earned in the Army. There appears to be no reason why the nephew should not have deposited these sums in his own name. The nephew gave evidence but I did not believe him or the respondent on the point. The actual amount which the nephew received as gratuity is not supported by documents. The evidence of Inspector Zimsen goes against the story. I shall comment on that evidence under (5).

(5) Two deposits— (*a*) in Bank of Ceylon on 18.2.47 of Rs. 500, (*b*) in Post Office Savings Bank on 5.6.47 of Rs. 350.

According to the respondent, another nephew who had been in the Army also gave him two sums, viz., Rs. 500 and Rs. 400, for safe-keeping. This nephew, K. M. S. W. Perera gave evidence, but I did not believe him or the respondent. There is evidence that he received the whole of the gratuity by November 1946, but did not think of depositing till February 1947. There are discrepancies between the stories. As regards repayments on 20.2.48, respondent withdrew from the Post Office Savings Bank Rs. 2,225 and said it was to repay this money, as the nephew was to be married. He re-deposited Rs. 2,325 on 28.2.48 because the marriage was postponed and withdrew again Rs. 2,825 for the original purpose.

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The nephew said the marriage was fixed and not postponed. Further, the sum withdrawn was very much in excess of the sum requested, which was said to be Rs. 1,000, by the nephew. I do not believe that the withdrawal was for the purpose stated.

The evidence of Inspector Zimsen also throws the greatest doubt on the stories of the respondent and the two nephews. On a petition against the respondent, Zimsen questioned the respondent. There was no charge framed and the respondent was not willing to make a written statement, but he answered questions, and these answers were recorded, At the time the Post Office Savings Bank Book was not available, but the Bank of Ceylon account was available, and the respondent was questioned on those items. Respondent said there that his wife's father sent him money periodically, and his sister's husband, K. M. R. Perera gave him the income of the tea boutique for safe-keeping. He did not say that his nephews gave him money for safe-keeping, although according to his story, one deposit for each nephew had been made in the Bank of Ceylon. It will be noticed that the father-in-law is now stated to have paid two sums, of which only one was deposited in the Bank of Ceylon—see (1). This is hardly reconcilable with the statement to Zimsen. In his present evidence there is no mention of K. M. R. Perera leaving money with respondent for safe custody. I think these statements to Zimsen help to refute the present story of the Respondent.

It is clear that the respondent has accumulated these sums of money. In view of his false explanation, I think I am entitled to presume that these sums were accumulated as a result of bribery or corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 79.

RESPONDENT :

T. M. Z. Mahamooth,
Deputy Director of Agriculture
(Animal Husbandry),
Department of Agriculture,
Peradeniya.

IN CAMERA

Heard on 21st and 22nd of March, and 4th and 5th of April, 1949.

Respondent : T. M. Z. Mahamooth, Deputy Director of Agriculture, (Animal Husbandry.)

The matters for inquiry against the respondent are as follows:—

(1) that in or about July 1946, he acted, together with his wife, Mrs. T. M. Z. Mahamooth, with a common purpose for obtaining a gratification of Rs. 200 from H. R. Wilson, a temporary peon employed in the Department of Agriculture as a reward or recompense in consideration of a promise by her that he would be given permanent employment in the said Department;

(2) that on or about 31.7.46, he took action for the disadvantage of the said H. R. Wilson by issuing orders for his discontinuance with effect from 1.8.46, because he did not comply with a request made by Mrs. T. M. Z. Mahamooth for a gratification of Rs. 250; and

(3) that in or about August 1947, he solicited a gratification of Rs. 200 from S. H. Marasinghe, Watcher, Cattle Quarantine Station, Slave Island, as a reward or recompense in consideration of a promise to cancel his transfer from the said station to the Government Farm, Narahenpita.

Allegations (1) and (2) are intimately connected. Allegation (3) refers to a separate incident.

The respondent is now Deputy Director (Animal Husbandry) and Government Veterinary Surgeon, employed under the Department of Agriculture. He has been a long time in the Department, and has reached his present high position by merit. He has been Deputy Director since 1944, and is at the top of his Branch. He claims that he has in his career passed over several seniors in service ; that is, that he has got merit promotions over them.

Matters (1) and (2) relate to an alleged solicitation by respondent's wife for a gratification of Rs. 250 from temporary peon H. R. Wilson in order to obtain permanent employment for him. It is alleged that respondent and his wife acted with a common purpose in this connection, and that, when Wilson did not comply with the request his services were discontinued.

The only witness who spoke to the solicitation was Wilson himself. Wilson said that the request for Rs. 250 was made about the beginning of July 1946. Mrs. Mahamooth sent for him, and when he went to her house, he was asked to come to the back premises. Mrs. Mahamooth spoke to him about his service and told him that he should pay Rs. 250 to obtain the permanent appointment. Wilson did not have the necessary money, but replied that he would try to bring the money. Respondent himself was in the house at the time—in the front premises, but there is no suggestion that he took any part in the conversation, or even was present when the conversation took place. He made no solicitation himself.

Wilson consulted K. S. Gunasekera, Veterinary Overseer, about the solicitation and told Gunasekera about the request by Mrs. Mahamooth. Gunasekera advised him to raise the money and pay it, because it was worth while, but left the matter to Wilson's discretion. Gunasekera corroborated Wilson's story before me. Eventually the money was not available, and Wilson was discontinued on 31.7.46, the order taking effect as from the next day, 1.8.46. No reason was given for the

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discontinuance at that time, but as Wilson was a temporary employee, he was liable to be summarily discontinued. Wilson appears to have interviewed the Administrative Secretary, Perera, about his discontinuance, but Perera could do nothing for him. Wilson said he tried to interview the Director, but could not reach him. Wilson did not see the respondent.

The reasons for Wilson's discontinuance were explored at this inquiry. It is clear that there was no complaint against him of doing his work in an unsatisfactory manner. He has produced two excellent certificates, (S.H.M. 6 and S.H.M. 7) from the Military authorities, by whom he was previously employed, and he has also obtained a certificate (S.H.M. 5 dated 30.8.46), from his immediate superior, the Assistant Veterinary Surgeon, who described him as "honest, hardworking and intelligent", and had "no hesitation in recommending him for a job in a Government Office."

One suggestion made by the respondent is that the discontinuance was a measure of retrenchment. There is no doubt that from 1.8.46, a number of temporary hands were discontinued by order of the respondent, and this had been in contemplation at any rate from 16.7.46, (see T.M.Z.M. 1.) Some fifteen casual labourers were discontinued on 1.8.46, but they were all, except Wilson, outdoor workers, and on their protests they were almost immediately after given employment at the Botanical Gardens. Wilson was the only indoor worker discontinued, and his post was not suppressed as superfluous. It is stated that a permanent peon was needed and not a temporary one, and that a request was made for a permanent peon. But it is clear that a permanent peon was not obtained, but a temporary peon was appointed shortly after to the post. Why Wilson was discontinued before the permanent man was obtained, or a successor appointed, is not clear. He appears to have been the only worker permanently discontinued.

There was, however, another matter affecting Wilson. Some time earlier, probably about the end of June, a post-mortem was held at the laboratory. Mr. Nair, the surgeon who performed the post-mortem, took off his ring and left it on a wash-basin. After the post-mortem was over, the ring was found to be missing. There had been a number of persons in the room at the time, and they even the Veterinary Surgeon, submitted to being searched, but the ring was not found. It seems clear on the evidence before me that there was not the faintest suggestion that Wilson had been seen in the room, and he was not even searched. It was uncertain whether the ring had fallen in to the basin and been lost, or whether it had been stolen. The Police were not sent for. Respondent himself was away in India at the time, but Mrs. Mahamooth intervened and requested that the Police be summoned, but the Assistant Veterinary Surgeon, Amerasinghe (witness) did not agree. Shortly after that there is evidence that Mrs. Mahamooth staged a "black magic" seance, and a servant in her house, by gazing at a light, described the thief—the description corresponded with that of Wilson—and stated that the thief's name began with a "V". Mrs. Mahamooth was convinced that Wilson was the thief, and wanted action taken, but Amerasinghe was not impressed, and declined to take action.

Amerasinghe gave his evidence about this incident very convincingly, and in the absence of evidence to the contrary, I am satisfied he was speaking the truth in this respect, and that the "black magic" incident did take place. There is no doubt that, after the respondent returned from India, he entertained a suspicion against Wilson about the loss of the ring. I am inclined to think that he was influenced by his wife's view of the matter. It is, however, fair to Wilson to say that there does not appear to be any reason for suspecting that he stole the ring. His previous record under the Military, the certificate given him by the Department, and his subsequent career as Manager of a Co-operative Store point strongly to his honesty, and there is not a trace of evidence that he had entered the room in question during the relevant period. It was extremely unfortunate for him that a prejudice was created against him in the mind of the respondent.

I have considered the evidence of Wilson and Gunasekera, and of Amerasinghe, and I am of opinion that they gave evidence well. There were discrepancies in the story, and considerable confusion as regards a visit paid by Wilson to Gunasekera about the time they first gave evidence before this Commission. There were notable divergences between the two, as to whether a telegram had been sent by Wilson to Gunasekera, and as to the date, time and circumstances of that visit. Eventually Gunasekera discovered a telegram from Wilson, and forwarded it to the Commission, but this did not fit into the details of Wilson's version. An important point, however, is that both these men admitted that the visit took place, and gave an explanation of that visit. The Commission, in inviting Wilson to give evidence, only notified to him that his name had been disclosed by Gunasekera and Wilson visited Gunasekera to find out what the matter related to.

Overseer Gunasekera was also transferred on 1.8.46, to Bopatalawa from Peradeniya—after a few months at the latter station. The principal matter against him arose out of an anonymous petition (S. H. M. 8) alleging misconduct with women labourers. Respondent says he made enquiries from others about this,

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and acted on what he heard, but he did not question Gunasekera, who was in entire ignorance of the anonymous petition. No reasons were needed to be stated for the transfer, and no minute of the reasons was made. Gunasekera seems to have believed that the respondent did not like him, and later in 1947, left the Department, and obtained permanent employment as an Overseer under the Colombo Municipality at a lower rate of pay. He had only temporary employment under the Department of Agriculture.

I have considered the evidence in this connection and I think that a fairly strong prima facie case has been made out to establish the fact that Mrs. Mahamooth did solicit a gratification of Rs. 250 from H. R. Wilson. There is no evidence to the contrary. The respondent has denied that he was aware of the solicitation, and has ridiculed the idea that his wife asked for Rs. 250, but Mrs. Mahamooth has not been called to rebut the evidence. I have not lost sight of the fact that she is a Muslim lady, and the sittings, were held *in camera* partly because it may have been necessary for her to give evidence. She was also informed before the inquiry that though she was not a respondent, she could if she so desired, be present or be represented by lawyers at the inquiry. In the course of the proceedings, respondent's Counsel called her into the inquiry room, so that she could see Wilson, and be in a position to speak about him later. On the evidence, she does not appear to observe strict *purdah*. Amerasinghe has stated in evidence that she interfered with the work of the officers of the Department. There is reason to think that some of her father's old servants have, through her influence, been employed in the Department. In this connection V. A. Hoole, Manager, Government Dairy, Narahenpita, has produced letter S.H.M. 1 of 19.1.48, which is admitted by the respondent to be in Mrs. Mahamooth's writing. This related to a labourer, Appuhamy—an old servant of her father's. She stated that she felt pity for him and spoke to her husband and got him employed in the Veterinary Hospital. But she found that Appuhamy carried false information to one Jayatissa about the Hospital. She added "Hence I and my husband have no objection to him being discontinued end of this month."

This letter does indicate that in respect of Appuhamy, Mrs. Mahamooth interfered in the matter of his appointment and of his discontinuance. Respondent suggested that this letter was written to Hoole in order to save his good name and that of the Hospital. Hoole, however, did not take that view and did not discontinue Appuhamy. Respondent himself intervened and discontinued Appuhamy on 20.1.48. Respondent said that the man was lazy and idling. Hoole himself was transferred on 25.1.48. I do not think it is necessary to consider whether this is a coincidence or not.

A strong attack was made on Hoole's capacity as a Veterinary Surgeon, but as this matter is not relevant to the present inquiry, I do not propose to deal with it. At any rate, till after this inquiry started, there were no charges against Hoole, nor was he censured or punished.

I have held that a fairly strong prima facie case has been made out that Mrs. Mahamooth solicited a gratification from Wilson, and that case has not been answered. But the question remains whether the respondent acted with a common purpose with his wife in this connection. Wilson himself was unable to establish this common purpose, and it can only be inferred from circumstances. The principal circumstance is the discontinuance of Wilson himself. I have commented on this already. The complicating matter is the affair of the loss of Nair's ring. There was a stage when suspicion was turned against Wilson, and although I think this suspicion was ill-founded, it is a reason which may have influenced the respondent, especially as his wife seems to have taken a strong view against Wilson. I cannot eliminate the doubt as to whether the discontinuance was caused by reasons other than the failure of Wilson to accede to the request of respondent's wife for a gratification. The transfer of Overseer Gunasekera has not been shown to be connected with the solicitation, and it is possible that the private inquiries of the respondent may have induced him to transfer the man.

In all the circumstances, I cannot say beyond reasonable doubt that the allegations in paragraphs (1) and (2) have been established.

There remains the matter of Marasinghe (paragraph 3). The evidence shows that Marasinghe was a watcher at the Quarantine Station, Slave Island. At this station on a small piece of land by the Beira Lake, there was a plantation of plantains and vegetables. Marasinghe claimed to have made the plantation, and appropriated the produce. Respondent intervened and ordered him to cease taking the produce, which was to be shared by all the labour force.

In August 1947, Marasinghe received orders to go on transfer to the Government Dairy, Narahenpita. It is to be noted that four watchers in all were transferred at the same time, owing to various troubles which had arisen at different stations. Marasinghe had been over nine years in Slave Island, and had no real complaint against the transfer, but he did not wish to go and protested. He said he went to see the respondent on two occasions at Peradeniya. He was unable to fix the date of the first visit, but stated he went for the day to Peradeniya, and asked the

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respondent to defer the transfer. Respondent told him that he had planted plantain bushes and earned money in that way, and asked him to bring Rs. 200 out of that money, and said he would then see what could be done. Marasinghe returned to Colombo. He returned to Peradeniya on the 20th August, 1947, taking with him a letter from respondent's father-in-law, Proctor Akbar. He met respondent on 21.8.47, and respondent said it was useless his coming empty-handed, and that the letter did not help. Marasinghe replied that he had no money. Marasinghe's previous evidence given at the earlier investigation was different. Marasinghe there said that on the first visit respondent merely said he would look into the matter. No mention was made of the demand for money. However, in his petition to the Commission he gave a story more consistent with his present version, but he said the letter from Proctor Akbar was taken on the first visit. These divergences may be attributed to confusion of mind. A more serious matter is that there seems to be a considerable doubt as to whether Marasinghe paid two visits to Peradeniya. Marasinghe referred to his diary for 1947, to support him that he had visited Peradeniya on the 20th August, and the diary bore him out. But it is significant that there is no earlier—or for that matter—later entry in the diary to show that he went to Peradeniya a second time at or about this time. His diary shows visits to places in Colombo, such as Hulftsdorp &c., but there is only one single entry relating to Peradeniya. The Attendance Register (T.M.Z.M. 10) shows that he has been marked present on all dates in August prior to the 20th, though after that date he has been absent on occasions, and his leave application (T.M.Z.M. 9) for the 19th and 20th has been produced. On this evidence it is very difficult to hold that Marasinghe paid two visits to Peradeniya. Respondent said he came only once.

The respondent's account of that visit is as follows : Marasinghe came early one morning—about the 20th August, and was asked to come to the office at 9 a.m. He arrived there, and talked about the transfer. Respondent told him "You are a troublesome man. I cannot do anything. Go away." There was no talk of money. This was the only time Marasinghe saw him with reference to the transfer.

There is no corroboration of Marasinghe's story. He made no complaint about this, until he wrote to this Commission. I do not think his evidence can be regarded as satisfactory, and I hold that the allegation in paragraph 3 has not been established.

In the result I hold that the allegations in paragraphs (1), (2) and (3) have not been established.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 82.

RESPONDENT :

P. G. M. Guinan,
Assistant Mechanical Superintendent,
Irrigation Department Workshop,
Ratmalana.

IN PUBLIC

Heard on 28th March, 1949.

Respondent: P. G. M. Guinan, Assistant Mechanical Superintendent, Irrigation Department Workshop, Ratmalana.

The allegation against the respondent was that he on or about 9th November, 1946, solicited a gratification of Rs. 150 from E. Suwandaratne, an applicant for a post of lorry driver in the Irrigation Department, as a reward or recompense in consideration of a promise to take steps to have him selected for the said post.

The respondent was responsible *inter alia* for the examination of lorry drivers, who applied to be taken on. During the material period he functioned at the Ratmalana Office. He has now been transferred to more responsible duties.

The only witness who speaks to the solicitation is the witness Suwandaratne, who applied for the post of lorry driver under the Department—E.S. 5 of 28.7.46. He was called for an interview by letter E.S. 6A dated 4.11.46. The interview was fixed for 11.11.46, and he was asked to bring testimonials and his Employment Exchange card. On the 11th, Suwandaratne went to the Ratmalana Office, and surrendered his driving licences, testimonials, and Employment Exchange card to the Head Clerk, Sebastian, who gave them to the Subjects Clerk, Jayaseram. Respondent took Suwandaratne for a driving test on the same date.

Suwandaratne's story was that in the course of the test, respondent asked him for a gratification of Rs. 150. The two were together in the front seat, and the other drivers were in the back of the lorry, and could not hear what was said. Respondent stated that the other drivers could have heard, but I do not think this is a substantial point, for the respondent may well have modulated his voice, so as not to be heard at the back of the lorry. After the driving test, the drivers were called one by one into little room, and when Suwandaratne went in, respondent repeated his request for the sum of Rs. 150, and instructed Suwandaratne how he was to pay the money. Suwandaratne said he would bring the money when he came again. Here also there is a conflict between the two. Suwandaratne said that the interview was in a room in the main office adjoining the Head Clerk's Office. Respondent maintained that he was in the workshop at the time, in a crowded room, where it was impossible for him to make the request without being heard. The evidence of the Chief Clerk, Sebastian, however, showed that at one stage respondent had a room in the General Office which he shared with another officer, Illesinghe, who was not in the room all the time. The description of this room corresponds with the description given by Suwandaratne, and gives some support to the story of Suwandaratne, and tends to negative respondent's statement that his office was always in the workshop.

Suwandaratne said that after the interview he went back to the Subjects Clerk and had his driving licence returned to him, while his testimonials and exchange card were retained. He said he was informed by the respondent that he had passed that test. Meanwhile he tried to raise the money, and succeeded in borrowing Rs. 50 from the proprietor of a hotel, Saundias de Silva. He also tried to borrow Rs. 150 without success, from a lorry driver, Edwin Silva. Saundias de Silva said that Suwandaratne borrowed Rs. 50 from him to get a job and returned it shortly after.

Edwin Silva said that he was asked for Rs. 150 for the purpose of getting a job in the Irrigation Department, but he did not give the money. The story of Suwandaratne gets some measure of support in this respect, but the witnesses were not sure of the dates.

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Suwandaratne argued that the non-return of the testimonials and the card indicated that he had passed the test, and he contrasted his experience with the P. W. D. on another occasion, where all the documents were returned on the same day, and he was informed that there were no vacancies available for him.

There undoubtedly was considerable delay in informing Suwandaratne of the results of the test, and it was not till 9.1.47—(E. S. 1) that he was told that he had been found unsuitable for the post, and his testimonials and Exchange card were returned to him. The date of E. S. 1 was originally 15.11.46, but that has been scored off and 9.1.47 inserted. The envelope bore the date 10.1.47 — (see E. S. 1A.) This delay was one of the features in the case which needed explanation.

Suwandaratne said that after he received E. S. 1 he went and saw the respondent and was informed that the letter was a mistake. It is of interest to note that Suwandaratne did not take the Rs. 50 which he said he had borrowed, nor offer it to the respondent. In fact, he met respondent on another occasion when he had Rs. 100 with him, and he did not offer this sum to respondent. His explanation that he thought his appointment would be delayed, if he made only a part payment, is not very convincing. Suwandaratne has also written letters about this matter to various persons, but has not mentioned the demand for a gratification.

The respondent has denied the story that he demanded a gratification from Suwandaratne, and has given an explanation which must be considered. According to him, he was only employed to test drivers as to their mechanical fitness to drive lorries according to the standards of the Department, and he was not responsible for interviews or the fitness of the drivers in other respects. I am inclined myself to think that respondent had larger duties and responsibilities, until Mr. Pearce was appointed Deputy Engineer about December, 1946. Up to that time the only other officer who could have decided all the matters was the Chief Engineer, whose time must have been fully occupied. According to respondent, he tested the drivers, and on the same day he made a note on the letter from the Department fixing the interview, whether the candidate was unsuitable or suitable for appointment. At the same time, he made out on a separate sheet of foolscap a list of all the drivers tested, and made a comprehensive report on each. Thereafter, the papers were handed to the Chief Clerk's Department, and respondent's responsibility ceased. Respondent had no control over the Chief Clerk and could not even consult the files, without special permission. The Chief Clerk sent the papers on to the Chief Engineer who made his decision, and that decision had to be conveyed to the applicants by the Subjects Clerk. Any delay could not be attributed to the respondent.

As regards Suwandaratne, the letter brought by him fixing the interview, is available (E. S. 6A) It is signed by the Chief Engineer. On it appears the endorsement "not suitable" signed by the respondent, and dated 9.11. This is an important document, and it is claimed that this shows that respondent formed the opinion on 9.11.46 that Suwandaratne was not suitable for employment and that this negatived the demand for a gratification. It is difficult to hold that the endorsement by the respondent was made at a later date, because two other documents were produced (P. G. M. G. 2 and 3) which bear similar endorsement "not suitable" on the same date 9.11. These relate to two different drivers. Also two letters relating to two other drivers (P. G. M. G. 4 and 5) bear the endorsement "Passed: to be appointed", and have been produced. Incidentally these last two letters appear to indicate that respondent had somewhat wider powers than he suggested, but they are of importance in view of the respondent's claim that he made the endorsement on the very day of the test.

Unfortunately, the comprehensive list made on the sheet of foolscap is not available, and we do not know what has happened to it. But I do not think we can attribute its loss to the respondent, who had no control over the files, and could not even consult them without permission. Nor can the delay in informing Suwandaratne be attributed to the respondent. In fact, the evidence goes further. The Subjects Clerk, Jayaseram, was shown to have been the person responsible for the delay, and probably for the loss of documents. An inquiry was held into this, not only in relation to the application of Suwandaratne, but also to other matters and Jayaseram was transferred. I have considered all the evidence, and I am satisfied that the respondent was not responsible for the delay in informing Suwandaratne, or for the loss of the comprehensive list and other documents. This was an important feature of the case, which created a great deal of suspicion.

One other matter may be mentioned. In the Chief Engineer's reply dated 22nd May, 1947 (E. S. 2) to Suwandaratne's petition, the statement is made that Suwandaratne was examined on 15.12.46. The letter was based on a minute by the respondent on the petition itself (E. S. 7 of 15.5.47). The minute bears date 17.5.47. The minute contains the statement that the test was made "on or about 15.12.46". Clearly, this is wrong and was admitted to be a mistake by

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the respondent. Respondent said that he did not have the file and telephoned the office to get the particulars and was given the wrong date. There certainly has been carelessness on the part of the respondent, but I do not think his statement was intended to mislead. The respondent added in this minute that he had on the very day of the test endorsed the word as "unsuitable" on the letter calling the applicant to the interview, and on the list. This was a matter which needed explanation and I cannot say that the explanation given by the respondent is unreasonable. Why that particular date was given, has no explanation.

The explanation of the respondent throws a considerable doubt on the story of Suwandaratne. If the respondent's version is correct, there was nothing he could do after the 9th of November, 1946, to help the applicant to get the appointment, and under these circumstances it would appear to be futile to suggest to the applicant that the giving of a gratification later would alter the result. Once the entry was made on the day of the test by the respondent, his functions ceased. The delay in informing the applicant, and the loss of the comprehensive list cannot be attributed to the respondent, and the blame for it appears to lie elsewhere.

I have considered all the evidence, and while there were matters that called for comment, I cannot say that the evidence given by Suwandaratne with the support of his two witnesses was strong enough to eliminate a reasonable doubt in this case.

I accordingly hold that it has not been established that the respondent on or about 9.11.46 solicited a gratification of Rs. 150 from E. Suwandaratne in connection with his application for the post of lorry driver in the Irrigation Department.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 92.

RESPONDENT :

M. S. de Silva,
Principal,
Taxila Vidyala School,
Horana.

IN PUBLIC

Heard on 24th January and 7th February, 1949.

Respondent: M. S. de Silva, Principal, Taxila Vidyala School, Horana.

The matter for inquiry was the allegation that the respondent on or about 26.7.47 solicited a gratification of Rs. 50 from H. Pabilis Perera, as a reward or recompense in consideration of a promise by the respondent to certify that the attendance, progress and conduct of H. Somawathie and H. Premawathie, daughters of H. Pabilis Perera, to whom Government Scholarships had been awarded, had been satisfactory during the month for which allowances payable under the said scholarship were claimed.

It was in evidence that Somawathie was a Denham Scholar appointed in 1944, to a scholarship of Rs. 30 a month. Premawathie held an ordinary scholarship of Rs. 12 per month.

According to Pabilis Perera, the gratification was solicited on 26.9.47 by the respondent. The Rs. 50 was asked for with a promise to look to the benefit of the children. Pabilis Perera before me was cross-examined about a proposal by the Parents Teachers' Association to raise a fund to build a Women's Hostel, and denied that the sum of Rs. 50 was requested for that purpose. There is reason however to doubt this, for, Pabilis Perera carried his troubles to Mr. Susanta de Fonseka, and in his letter to the Director of Education dated 6.6.48 relating to the matter, Mr. de Fonseka mentioned that "the Principal had requested that the scholarship money be donated by him for the Girls' Hostel." Further, the other witness called, Edwin Perera, brother-in-law of Pabilis Perera, admitted before me that the money had been asked for by the respondent for a Women's Hostel.

The Respondent himself stated that he asked for no gratification, but he said he spoke to Pabilis Perera concerning the Women's Hostel. On his own account, he put the matter fairly strongly : "You will also have to support the resolution in the meeting by donating Rs. 50 to cover the amount due from the children for the Girls' Hostel Building Fund." Pabilis Perera was not agreeable and said he was too poor. It is possible that Pabilis Perera regarded this as a demand, and the subsequent events which I shall mention shortly, must have appeared to him as a retaliation.

There is a dispute as to the date of this conversation. Pabilis Perera is very definite that it was on 26.9.47. The respondent fixes it after 31st October. I am inclined to think that it took place in September, which is also the date mentioned by Mr. Susanta de Fonseka. It is true that the proposal about the Women's Hostel took final shape after September in the Parents Teachers' Association, but the idea originated with the respondent, who from previous experience at another school, had all the necessary details in his mind including the taking of Rs. 25 per head from each scholar.

Matters were complicated by the non-payment of the scholarship to Somawathie in respect of October 1947. It is a very strange fact that there is no official record anywhere as to the reason for the non-payment. According to the respondent he had refused to certify that the work of Somawathie was satisfactory, and had so reported on the voucher. The voucher had been sent back by the Department with a note that it was not to be paid. The voucher with the note was never filed and was subsequently lost, but the respondent says he communicated the contents to Somawathie. If this is so, it is strange that Somawathie should have written her letter of 25.11.47—H. P. P. 1—to the Director of Education. The Education Office took up the attitude that the claim for that month had not been received. (See H. P. P. 2 of 20.1.48). The respondent had, however, in reply to an earlier letter from the Department to Somawathie stating that "no claim was received", and enclosing a fresh voucher, minuted on 11.12.47 to the Director that the claim has been refused, because of his report relating to the unsatisfactory work of Somawathie. It also is true that the respondent had reported against the bad work of Somawathie as early as 10.7.47 and, according to him

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Somawathie was warned in consequence. Somawathie's marks in class were also given in evidence, and it is clear that her work for some time past had been poor. On the whole I cannot hold that the withholding of the scholarship money for the month of October 1947, was an act of retaliation on the part of the respondent.

I do not consider it necessary to consider the disallowance of the scholarship money of Somawathie for subsequent months. For some months she was paid, and not for others.

In my opinion the request by the respondent was not for a gratification for himself. The respondent was trying perhaps unwisely, to further his plan for the erection of a Womans' Hostel, in connection with his school, and I do not think that his request falls within the term "gratification" as contained in the Terms of Reference.

In my opinion, the allegation that the respondent solicited a gratification in the manner and for the consideration set out in the allegation fails.

As regards the claims for costs, if it had been clear at the outset that the money was requested for the purpose of building a Women's Hostel, probably no inquiry would have been held into the matter. I think some costs may be paid to the respondent, and I fix the sum at Rs. 150.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 104.

RESPONDENT :

T. B. Nugegoda,
Colonization Officer,
Kagama Colony, Anuradhapura,
(now at Ridi Bendi Ela Colony, Nikaweratiya).

IN CAMERA

Heard on 25th and 28th April, 1949.

Respondent: T. B. Nugegoda, Colonization Officer,
Kagama Colony, Anuradhapura,
now at Ridi Bendi Ela Colony, Nikaweratiya.

The matter for inquiry concerning this respondent was that during the period 1st September, 1939 to 28th January, 1948, he accumulated money and purchased property in such circumstances that the only reasonable presumption is that such accumulation and purchases were made or effected as a result of bribery and corruption.

The respondent was in December 1941, appointed Assistant Colonization Officer of Kagama Colony, and from that date to 28.1.48 was at Kagama Colony—about March 1948, he was transferred to Ridi Bendi Ela Colony. He was appointed Colonization Officer from 1.7.44, and continued at Kagama during the whole of the period relevant for our inquiry. The document L.B. 3 sets out of the salary and allowances of the respondent from 1941 to 1948, according to the Government Agent. Respondent claimed that he got more by way of increments, but the amount was not substantial, and it is obvious that the respondent's income was not large, and that he could not save large sums from it. The respondent himself admitted that he could not have saved more than Rs. 30 to Rs. 40 out of his own income for a month—at the utmost Rs. 60 to Rs. 70 a month.

The principal matter for inquiry related to the Bank Account of the respondent in the Bank of Ceylon, Kandy Branch. This account was started on 29.2.42 by the deposit of Rs. 200. During 1942 and 1943 there were deposits and withdrawals but during those years respondent's credit balance does not appear to have been at any time much in excess of Rs. 1,000. At the end of 1943 it was Rs. 1,005.80. In 1944, however, there was a sharp rise and at the end of that year respondent had Rs. 4,659.62 to his credit. The rise in 1945 was still greater, and at the end of the year, respondent's credit balance was Rs. 15,299.99; indeed on 6.6.45 he reached his maximum of Rs. 19,947.49. In 1946 respondent continued to have good credit, but by the end of the year his credit had fallen to Rs. 1,210.99, but this was largely due to the withdrawal of a sum of Rs. 16,000 on 17.10.46. Thereafter the account was again built up, and by the end of 1947 respondent had Rs. 4,983 to his credit. On 28.1.48 he had a balance of Rs. 5,083.40. See in this connection the letters of the Bank of Ceylon L. B. 6 and 7, and the Bank Statement L. B. 8.

During the period from the beginning of 1944 to end of 1947, very large deposits were made by the respondent from time to time, and there were also considerable withdrawals, the biggest, as I pointed out, being Rs. 16,000. It is obvious, and it is admitted by the respondent that from his legitimate income he could not have made the deposits. The respondent has offered an explanation of these deposits, which must be considered.

The explanation is that the respondent's account was really not his, but that of his elder brother L. B. Nugegoda. The account, it is said was started by the deposit of a cheque for Rs. 200 issued by L. B. Nugegoda to the respondent; cheque counter-foil T.B.N. 1, dated 29.12.42 was produced, and it is reasonable to hold that it was the deposit of this cheque which started the respondent's account on the same date 29.12.42. Respondent said he was not anxious to have a bank account, but acceded to his brother's wishes. No other cheques of L. B. Nugegoda for 1942 or 1943 were proved. The amounts deposited during this period were not large, but they were not easily within the power of the respondent to pay in.

The first substantial deposit was that of Rs. 3,200 on 29.2.44. An explanation has been given of this sum which may be accepted. On that day a paddy field belonging to respondent, L. B. Nugegoda and another brother was sold for Rs. 11,250. The deed was produced T.B.N. 3—No. 36,954 attested by Ilangantilleke,

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N.P. Each brother got Rs. 3,750; out of this respondent said he deposited Rs. 3,200. It is to be noted that respondent's bank account contained a sum of Rs. 3,200 of his own money. Respondent also said that he deposited in the Bank small sums from time to time out of his earnings. Thereafter, from time to time large sums were deposited in the account, and there were also substantial withdrawals. The respondent insisted that these large deposits were entirely his brother's moneys put into his account. Undoubtedly, L. B. Nugegoda had issued cheques to the respondent, which correspond fairly well with the dates of the deposits in the respondent's account, as follows:—

12. 4.44	..	Rs. 4,000	brother's counterfoil TBN. 4
2. 9.44	..	Rs. 360	brother's counterfoil TBN. 5
2. 9.44	..	Rs. 1,000	brother's counterfoil TBN. 6
13.10.44	..	Rs. 500	brother's counterfoil TBN. 7
31. 1.45	..	Rs. 800	brother's counterfoil TBN. 8
5. 4.45	..	Rs. 500	brother's counterfoil TBN. 9
12. 5.45	..	Rs. 100	brother's counterfoil TBN. 10
29. 5.45	..	Rs. 1,000	brother's counterfoil TBN. 11
21. 6.45	..	Rs. 1,300	brother's counterfoil TBN. 12
10.10.45	..	Rs. 3,000	brother's counterfoil TBN. 13
15. 4.46	..	Rs. 300	brother's counterfoil TBN. 14
27. 2.47	..	Rs. 1,100	brother's counterfoil TBN. 15
6. 3.47	..	Rs. 1,100	brother's counterfoil TBN. 16
30. 7.47	..	Rs. 400	brother's counterfoil TBN. 17

These are the only cheque counterfoils available, and there are no others. It will be noted that there were four deposits in 1944, six in 1945, one in 1946 and three in 1947. But there were a large number of deposits in respect of which no documentary evidence was obtainable to show that L. B. Nugegoda paid the money, namely,

Seven deposits in 1944 of sums ranging from Rs. 100 to Rs. 800;

Ten deposits in 1945 of sums ranging from 250 to Rs. 3,000;

Twelve deposits in 1946 of sums ranging from Rs. 100 to Rs. 3,830;

Seven deposits in 1947 of sums ranging from 150 to Rs. 3,800.

It is clear that very substantial amounts had been deposited otherwise than by the cheques of L. B. Nugegoda.

The respondent's case is that these amounts also were deposited by L. B. Nugegoda in cash in this account.

The story of the respondent is as follows:—

L. B. Nugegoda was married but had no children. He made a Will on 13.12.43—TBN. 2. Under the Will he gave all his immovable property to his wife, Somawathie Nugegoda during her life or until she remarried, and thereafter to the respondent. All the movable property, including money in the Bank, were given to the wife. A sum of Rs. 2,000 was to be deposited in a Bank in the name of his adopted daughter, Nanda. Respondent was to give assistance and advice to certain step-brothers and step-sisters who were named, and should spend Rs. 1,000 in their interest and welfare. Respondent was to be executor of the Will.

Respondent said that after the execution of the Will, L. B. Nugegoda thought that the Will might leave the respondent without any money to carry out his wishes as regards Nanda and the step-brothers and sisters. He accordingly decided to pay his moneys into respondent's account, so that the respondent may be sufficiently provided with money for the purposes of the Will. L. B. Nugegoda did not wish to add a codicil to the Will or execute any other document, for fear that his wife may hear of it, and disapprove. It may however be noted that from 1944 to 1946, L. B. Nugegoda paid into respondent's account sums far in excess of any liability the respondent may reasonably be expected to incur as executor of the Will.

One other aspect of this matter requires consideration. As Colonization Officer, respondent had a large amount of building to do, and for that purpose timber was required. The building work was under the control of the respondent, subject to supervision by the Government Agent, and the respondent had a discretion about the purchase of material and recruitment of labour. The respondent's brother L. B. Nugegoda had after his retirement from the Railway, started business as a timber merchant, from the year 1942. A Colombo timber merchant, A. A. Govis, spoke to this fact, and produced cheque counterfoils for 1944 and 1945 (TBN. 19 and 20) in support. For this business L. B. Nugegoda supplied the capital, and the implements of the business, while one G. R. James did the actual field work. It is said that the actual profits were equally divided between L. B. Nugegoda and James. Respondent said that it was decided that the timber should be delivered

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in the name of James alone. The respondent did not wish his brother's name to appear in this business, because that would have occasioned undesirable talk. The Respondent, however, said that he informed the Government Agent that his brother was interested in the business and that the Government Agent approved of the arrangement. We have only the respondent's word for that. He said that this was a time of emergency, and it was difficult to get tenders from timber merchants, who could obtain more profitable contracts elsewhere. But, in any event, it is surprising to hear that an arrangement of this kind was sanctioned without tenders having been called for.

The deliveries of timber to Kagama Colony commenced about March or April, 1944. There can be no question that this was a very profitable contract. During the period 23.11.45 to 13.1.48 the Government Agent made payments to James amounting to Rs. 70,911 (see T.B.N. 18), and for the whole of the relevant period over 93,000 was paid, according to the respondent, in respect of Kagama buildings. Government also, from 23.11.45, accepted timber at Kagama to be delivered to other centres. In fact, respondent himself said that the monthly profits was about Rs. 5,000, half of which went to L. B. Nugegoda and half to James. James himself, who gave evidence, placed the profit somewhat lower. James who was a "man of straw" in 1942, had later become possessed of considerable immovable property, worth about Rs. 20,000. James said he got his half share, but gave it back to L. B. Nugegoda for safe-keeping. He paid no income tax for some time, but was in 1947 called upon to make a return to the Department from 1944, and was ultimately assessed for tax purposes on the *whole* of the income from the business. He acquiesced in the assessment, and paid tax on the *whole* of the income from the business since 1944. There is something not quite understandable in his attitude to the payment of income tax.

James said that he only kept small note books in which he jotted down entries, but that these were not available now. James said that L. B. Nugegoda kept books of the business, ledgers and cash books, but none of these were produced, and Counsel informed me that there are no books available. On James's computation, there was a profit of at least Rs. 2,000 to Rs. 2,500 a month from the business, and it is certainly a striking fact that the books were not made available to us. No real explanation was offered as to why the books were not available, and I can only draw the conclusion that the books would not have supported the explanation given by the respondent.

There are many curious features disclosed by the explanation of the respondent. First, the reluctance of respondent to have his brother's name disclosed as a contractor to Government, even after he had disclosed that fact to the Government, Agent. Then in spite of this reluctance, L. B. Nugegoda utilized the Bank account of respondent in substance as his banking account for the business. The cheque book was kept in the custody of L. B. Nugegoda, and cheques were sent to respondent from time to time for signature. These cheques were mainly for business operations. When respondent needed small sums of money, he was ordinarily given cash by his brother. Respondent said that his brother may not entirely have trusted him not to waste the money. The position of James is also peculiar. He certainly received some profit from the business, and at the later stages he said his half share may have been as much as Rs. 30,000; but the bulk of this money was retained by L. B. Nugegoda, and when James wanted to buy a land, L. B. Nugegoda gave him the money. I have already commented to James' attitude towards the payment of income tax. Further, although books were kept during this period, no books were produced, nor any real explanation given for their non-production. The books, if produced, would have thrown some light on these matters.

One other matter deserves special consideration. On 18.10.46 (see L.B. 5) a property was purchased in the name of L. B. Nugegoda for the sum of Rs. 19,000. The respondent averred that for this purchase a cheque was issued from his account for Rs. 16,000 on 17.10.46. This is shown in the Bank Account L. B. 8 as a withdrawal. At this time the total amount in respondent's account was Rs. 16,377.39, and after the withdrawal only Rs. 377.39 remained. The respondent's brother, L. B. Nugegoda, has also sent us his bank book, and in this there is entry of a deposit of Rs. 16,000 on 17.10.46, so that, we may take it that that amount reached L. B. Nugegoda's Bank on that date. There is however no corresponding drawing on or about 18.10.46, until 22.10.46, when Rs. 11,660 was withdrawn from L. B. Nugegoda's account, but there may be a connection with two other withdrawals, of Rs. 4,000 on 12.10.46 and Rs. 4,340 on 19.10.46. All the three items total Rs. 20,000.

There is certainly some support for the statement that the Rs. 16,000 drawn from respondent's account was used for the purchase of the property in question, and I am prepared to accept that fact. This has been strongly relied upon by the respondent to show that the moneys paid into respondent's account were in fact the moneys of L. B. Nugegoda, and were utilized for the purchase of land for L. B. Nugegoda. That is certainly a point. But there are other features to be noted. First, respondent's account undoubtedly contained his own moneys as well,

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including a sum of Rs. 3,200, which respondent had received by the sale of his own land on 29.2.44. There is no suggestion that he had drawn this out, or any substantial part of it. If he did not, then the Rs. 16,000 used for the purchase of the land on 18.10.46, was in part at least respondent's money. Why was his money used for the brother's benefit? There is no satisfactory answer.

One other matter arises. The whole idea of paying moneys into respondent's account was said to be for securing a sufficient amount in the name of the respondent to carry out the terms of the Will. It will be remembered that under the Will all immovable property vested in the wife till her death or remarriage; and all movable property vested in the wife absolutely. This purchase of landed property on 18.10.46 appears to contradict the suggestion that L. B. Nugegoda was anxious to have a large sum of money in respondent's Bank account for the purposes of the Will.

One other point may be mentioned. L. B. Nugegoda has not been called as a witness. I accept the position that he is a sick man, and that he may not be able to stand the strain of the inquiry. He appeared to have been ill on the actual date of inquiry, and had to be seen by a doctor. I have in the circumstances allowed in evidence an affidavit of his T.B.N. 22. The fact remains that L. B. Nugegoda has not been cross-examined. Further, his affidavit gives very meagre details. He said that he wished to leave the major part of his money to the respondent, as he expected him to look after the family. He got respondent to open a bank account, and deposited monies to his credit—substantial sums being deposited. He did not execute a codicil for fear his wife would hear about it. He and James did the Kagama contract work and shared the profits. He had control over his brother's expenditure, and had to give permission when cheques were drawn for large sums. The cheque book was kept by him. In October 1946, he purchased a property for Rs. 19,000 because respondent would get the property after the wife's death. He had not preserved the books of account of the Kagama Colony contracts. Respondent had no interest in respect of the Kagama Colony contracts. This affidavit gives very little assistance. L. B. Nugegoda does not tell us how it was that the books of account were "not preserved". He does not tell us whether he paid income tax on these amounts during the period 1944-1947. He gives us no help in elucidating the working of the business, nor does he say what happened to the profits of James retained by him. There is nothing of substance which one can seize on in this very non-committal affidavit. It looks as if the affidavit was deliberately kept vague. L. B. Nugegoda has also sent his account at the National Bank. There have been various deposits and withdrawals, but on the whole the credit balances are not high. It is difficult to make much sense out of this account, in the absence of an explanation.

The fact which is obvious is that respondent had a bank account in which moneys were deposited to an extent far in excess of what he could deposit out of his legitimate income. An explanation was needed of these deposits, and respondent has tendered an explanation. There are points in the explanation which are favourable to the respondent, and I have commented on them, but none of those points are conclusive or unambiguous. On the other hand, there is so much not explained, and so much corroborative material not furnished, which could have been furnished or its absence accounted for, that the explanation appears disgenuous and unconvincing. It is not possible to hold that the explanation is reasonable, and I definitely hold that the respondent has not given a reasonable explanation of the manner in which his Bank account was operated. I reject the explanation tendered by the respondent. The account which he has given is artificial and improbable.

There can be little doubt that the position held by the respondent provided opportunities for corruption.

In all the circumstances I hold that the respondent between the beginning of 1944 and the 28th January, 1948, accumulated money in such circumstances that the only reasonable presumption is that such accumulations were effected as a result of corruption.

I do not think it is possible to hold definitely that the purchase of 18.10.46 was made by the respondent himself, though in the name of his brother. There are certainly circumstances which point in that direction. In this case the relations between the two brothers were at the least peculiar, and I am inclined to think that respondent was a hidden partner in the Kagama contracts, if not the real person to get the profits, subject to payments to L. B. Nugegoda and James.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 105.

RESPONDENT:

W. M. Loku Banda,
Village Headman,
Palliporuwa,
Kegalle.

IN PUBLIC

Heard on 6th and 7th of December, 1948.

Respondent : W. M. Loku Banda, Village Headman, Palliporuwa, Kegalle.

The following matters arose for inquiry against this respondent :—

(1) that in or about October 1947, he did solicit a gratification of Rs. 25 from G. R. Punchi Banda as a reward or recompense in consideration of a promise by him to attest in his capacity of Village Headman of Palliporuwa a letter addressed to the Tea Controller by Jayasoma Menika, wife of the said G. R. Punchi Banda, consenting to the registration of a land called Ambagahamulawatta in favour of the said G. R. Punchi Banda;

(2) that during the period 1st September, 1939 to 28th January, 1948, he did purchase movable and immovable property in such circumstances that the only reasonable presumption is that such purchases were made or effected as a result of bribery and corruption.

As regards allegation (1), the evidence given is mainly that of G. R. Punchi Banda and the petition drawer Artigala. Punchi Banda desired to have his wife's tea property registered in his own name, and about the 11th of October, 1947, he was informed by the Tea Controller that a letter of consent by the wife, duly attested by the Village Headman, was required. As far as the correspondence goes, on 17th October, 1947, Punchi Banda wrote enclosing a letter of consent from his wife not attested by the Headman, and stating that his wife was in a delicate state of health. The Tea Controller wrote back, asking that the letter of consent should be attested by the Headman. Eventually, on 3rd November, 1947, the attestation by Punchi Rala, the Village Headman of Thalgaspitiya, of the wife's letter was obtained and this was forwarded to the Tea Controller.

According to Punchi Banda, the Village Headman of the area where he resided was the respondent, and Punchi Banda went to him on three occasions, but the respondent put him off with various excuses. In the first evidence *in camera* before this Commission the witness appeared to suggest that the respondent had asked him for a bribe of Rs. 25; at least it was not suggested that the respondent sent a message through Artigala. But at the public inquiry, the witness said that the message was brought by Artigala from the Headman, that Rs. 25 was required—this was later modified to "Rs. 25 or Rs. 20." Artigala himself speaks to the conversation, in which the respondent asked for Rs. 20. *In Camera* he had given the figure first as Rs. 15 and later as Rs. 15 or Rs. 20. I think the discrepancies as to the amount demanded are significant, and it is difficult to understand why there should be such a discrepancy, if the respondent had really demanded a specific sum. It may be possible that these two witnesses may have gathered an impression that the respondent would not give his attestation without payment of a gratification, and some colour is given to this by the evidence of Punchi Rala, Village Headman of Thalgaspitiya, who says that Artigala told him that it was not possible to get the attestation from respondent without the payment of money. But this does not help to confirm the story that the respondent made a positive demand for money.

There are also other matters which throw a doubt on the story of Punchi Banda and Artigala. There had been a previous petition by Punchi Banda against the respondent complaining that the respondent took over paddy for the Government, and issued receipts only for half the amount taken. In fact, after the inquiry into this petition, the respondent was discontinued from his acting appointment as Vel Vidane. The grounds of his discontinuance are however not very clear. More important was the fact that in partition case D. C., Kegalle, 4384

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(W. M. L. B. 1.) the respondent championed the cause of a defendant, who claimed to be the adopted son of Punchi Banda's brother and contested the interest claimed by Punchi Banda by inheritance from his brother. As a result, Punchi Banda, though eventually successful, was put to great expense and inconvenience, and had good reason to resent the respondent's attitude. Artigala himself had some grounds for ill-feeling against respondent, who did not issue him a worker's rice ration book. Artigala succeeded in getting this book in spite of the respondent for the 7th Series, but did not get one for the 8th Series. Artigala's claim for this type of ration book appears to be very shadowy.

I do not think it necessary to mention the evidence of Singha relating to the sapu tree. This hardly touches the case, and appears to be based on a misunderstanding.

The respondent denied the stories of Punchi Banda and Artigala. In this state of the evidence it is impossible to hold that the first allegation has been established. I answer allegation (1) in the negative.

As regards allegation (2), the actual immovable properties acquired by the respondent in his own name, during the relevant period, are as follows :—

W. M. L. B. 15 of 10.12.39	purchased for Rs.	100
W. M. L. B. 11 of 20. 2.40	do.	50
W. M. L. B. 12 of 13.10.40	do.	100
W. M. L. B. 13 of 2. 9. 41	do.	200
W. M. L. B. 14 of 18.8. 44	do.	500.

The respondent had before September 1st, 1939, a certain amount of ancestral property, a portion of which (see W. M. L. B. 22) had in the year 1916 been valued at Rs. 1,200 and had probably greatly increased in value by 1939. Respondent had also made some small purchases in his own name or that of his wife about 1935 and 1936. On a careful examination of the evidence it is not possible to say that the respondent could not have sufficient legitimate savings to pay for these properties.

Further, the Village Headman had from time to time renovated his house, until it became one of the best in the neighbourhood. But it is difficult to assess the cost of these renovations, in the absence of reliable evidence. The respondent contended that most of the material necessary for the renovation was obtained from his own properties. It is extremely difficult to decide what amount was likely to have been spent on the house during the relevant period, and I think the respondent should have the benefit of this item also.

Another item however calls for closer examination. The respondent admits that in or about 12th December, 1944, he purchased a half share of a young she-elephant, and paid Rs. 2,000 for his share. As the animal was too young to be hired out for work, this may be regarded as a luxury purchase. The respondent averred that he obtained the purchase money by taking Rs. 500 from his savings and that the balance was obtained by the sale of timber from his lands to one Punchi Mahathmaya for Rs. 1,500. Respondent and Punchi Mahathmaya both admitted that no receipt was ever given for the payment of this amount. Punchi Mahathmaya said he kept books in which this payment was entered, but no books of account were produced. Further, it was admitted by the respondent that his brother was entitled to half the amount, and had permitted respondent to utilize that also for the purchase. It is to be noted that the brother was not called to give evidence. It is also to be remembered that in August, 1944, the respondent had already expended Rs. 500 in the purchase of land—(see W. M. L. B. 14.)

I am unable to accept the evidence that the respondent obtained the amount of Rs. 1,500 by the sale of timber in 1944. The respondent has failed to establish this by satisfactory evidence.

There are two other transactions which may be considered. They are purchases of landed property in the name of two sons of the respondent. The first (W. M. L. B. 6) was a purchase by a son, Jayetilleke Banda, of land for the sum of Rs. 600 on 21.2.46. The evidence shows that Jayetilleke Banda was employed as a storekeeper under Government, and earning a fair salary. As far as I can judge, Jayetilleke Banda was capable of raising the money required, and there is no evidence that this transaction was not genuine.

The second transaction (W. M. L. B. 4) involves the purchase on 23.5.47 of a property used as a bakery in Mawanella for Rs. 6,300. On the deed the purchaser was a son of the respondent, Chandratilleke Wijekoon. The evidence however raises the question whether the respondent was not the real purchaser. If so, it is obvious that the respondent could not raise so large a sum from his legitimate income, and the respondent did not dispute this. Curiously enough, though respondent was aware that the witnesses alleged that he was the purchaser, he did

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not elect to call Chandratilleke Wijekoon. Respondent himself said that this son raised the money, partly by getting Rs. 200 from his wife's parents, and partly from savings from cultivation of paddy at Hingurakgoda, and at one stage it was suggested, by running the bakery first and saving the profits. The evidence is confused, and unconvincing.

There are other features which rouse suspicion. The respondent was present at the time of the sale, he says in the capacity of the purchaser's father. He did not however sign as witness to the deed. But the most peculiar feature is that the respondent signed the letter of authority to the Notary to search for encumbrances in the registers, although the son was present at the time. The reason given was that the son was inexperienced in these matters, but all the son need have done was to sign a document prepared by the Notary.

This certainly appears to indicate that the respondent had some interest in the property purchased, but the difficulty is to assess what that interest is, and there is no reliable evidence to establish that fact. Accordingly, though I regard that transaction with grave suspicion, I do not think it is possible to hold that the respondent paid the whole or a great part of the purchase price. Again with regard to the Rs. 2,000 paid for the half share of the elephant, I am certainly not prepared to accept the story of the respondent, but I am unable to hold beyond reasonable doubt that the Rs. 1,500 already mentioned was money obtained by bribery or corruption. Had the burden lain on the respondent in these matters my decision would have been different, but as the matter stands now, I hold that allegation (2) has not been established.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 107.

RESPONDENTS:

First : D. B. Kannangara,
Kachcheri Mudaliyar,
Kachcheri,
Colombo.

Second : T. A. Hendrick Sinhgo,
Village Headman,
Makandana.

IN PUBLIC

Heard on 25th, 26th and 29th November, 1948.

Respondents : 1st : D. B. Kannangara, Kachcheri Mudaliyar, Kachcheri, Colombo.
2nd : T. A. Hendrick Singho, Village Headman, Makandana.

The matter involved in this inquiry concerns two persons, D. B. Kannangara, Kachcheri Mudaliyar, Colombo, 1st respondent, and T. A. Hendrick Singho, Village Headman of Makandana and two other villages, 2nd respondent.

It was alleged:

(1) that in or about September 1946, the 2nd respondent offered, and the 1st respondent accepted as a gratification, 2 bottles of whisky, curds and vegetables, in order that the 1st respondent should take action to have the 2nd respondent appointed Village Headman of the said villages;

(2) that in or about September 1946, the 1st respondent solicited a gratification of Rs. 500 from the 2nd respondent on the promise to take action to have the 2nd respondent appointed Village Headman of the said villages;

(3) that in or about January 1947, the 1st respondent solicited a gratification of Rs. 1,000 on a promise to take action to have P. D. B. Gunewardena, another applicant, appointed Village Headman of the said villages.

The witness who spoke to (1) and (2) was G. Don Abraham.

As regards (3) P. D. B. Gunawardena and H. Goonetilleke were the witnesses. Abraham averred that he had accompanied the 2nd respondent, Hendrick Singho, to the house of the 1st respondent, Kannangara. Abraham helped to carry some articles—the curd and the vegetables, while 2nd respondent carried the bottles. They found the 1st respondent at his house—about dusk. The bottles were given by the 2nd respondent to the 1st respondent, and the other articles were placed close to the 1st respondent, who accepted them. The 1st respondent then said "Although you have promised this, you will have to spend about Rs. 500 or Rs. 600." He said the money was required "to pay to the Lokka". Second respondent replied : "I do not mind if money has to be spent." There was also talk on that occasion about a Pirivena certificate, and this was shown to the 1st respondent.

The evidence of Abraham did not show that he was an accomplice in this matter. He maintained that he was unaware till the end of the person to whom the articles were to be given. Abraham maintained that he was a friend of the 2nd respondent, and a distant connection by marriage.

As regards count (3), P. D. B. Gunawardena gave evidence. This incident is alleged to have taken place on the 3rd January, 1947. There was some confusion about the date, but it was eventually fixed as 3rd January, 1947, because on that date a registered letter written by witness Haramanis was sent to the Government Agent relating to another matter. The receipt for the registered letter was produced. This visit was after the Government Agent had held the first inquiry on 30th November, 1946, and it was paid in order to get information about the result. Gunawardena asked the 1st respondent what had happened about the Headmanship. First respondent said 2nd respondent had got the post (at the public inquiry the words were that 2nd respondent's claim had weight). The 1st respondent added "If you are prepared to give me Rs. 1,000, I can get you the job, alleging that

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the certificate of Hendrick Singho is a false one." Gunawardena replied that he had not even 10 cents to spend on this. Gunawardena was accompanied by H. Goonetilleke on this occasion, but the latter did not go into the 1st respondent's room. As Gunawardena left and was going down stairs he told Goonetilleke about this incident. Goonetilleke confirmed this in his evidence.

In order to follow the story better, it is necessary to set out the events relating to this appointment.

Originally there had been a separate Village Headman for Makandana. Gunawardena had acted as Headman for a few years, and during this period he had been a reliable and efficient officer, according to the evidence of the Divisional Revenue Officer. Later, Government decided to amalgamate Makandana with two other villages, and applications were called for to fill the post of Headman. It is important to note that the educational qualification required was the passing of the 8th Standard in Sinhalese or some equivalent examination. Among the candidates were the 2nd respondent and Gunawardena. The later had the necessary qualification. The 2nd respondent based his claim on a certificate from the Principal of a local pirivena given in 1946 that he had attended the pirivena up to 1926 and had attained the 5th grade there. Incidentally it may be taken that the 5th grade at the pirivena was equivalent to the 8th standard in Sinhalese.

The Government Agent, Mr. Coomaraswamy, held the inquiry on 30th November, 1946, at Batuwandara Girls' School. Among other things, the candidates were asked to produce their certificates. The 2nd respondent produced the letter from the Principal of the pirivena. According to some witnesses the 1st respondent went up and took the certificate from the pocket of the 2nd respondent.

Mr. Coomaraswamy after the inquiry placed the 2nd respondent first, subject to his educational claims being passed by the Education Department. Apparently there was a doubt as to the significance of the 5th grade at the pirivena. If the educational qualification was not satisfied, Gunawardena who was placed second, was to be appointed. Enquiry was accordingly made from the Education Department, who replied that the 5th grade at the pirivena was equivalent to the 8th Standard in Sinhalese.

Accordingly the Government Agent appointed the 2nd respondent as Headman. This was done on 18th December, 1946, and a letter was written to the Divisional Revenue Officer on the 20th. This was probably posted later, for there is evidence from the Divisional Revenue Officer that he did not receive this letter till January 3rd, 1947. The Christmas holidays had intervened. The Headman was installed a little later.

A short time later, on the 9th January, 1947, Gunawardena sent a petition to the Inspector-General of Police, complaining about the production at the inquiry of a "forged" certificate by the 2nd respondent. This appears to have been forwarded to the Government Agent towards the end of January 1947, and sent to the Divisional Revenue Officer for investigation. The latter enquired and reported on the 7th March, 1947.

According to that report the Principal of the Pirivena attended and stated that the records of the Pirivena had been removed to Kuruwita owing to danger of air raids, and asked for time for production of the records. He was given time, but absented himself, and merely sent a letter to say that the records were not forthcoming. The Divisional Revenue Officer thought the priest's action in issuing a certificate in 1946 with regard to matters which happened in 1926, being based on mere memory was highly questionable. He added: "there is no doubt that the whole thing is a fraud" and recommended that the appointment of the 2nd respondent be quashed.

These papers passed through the hands of Mr. Kannangara the 1st respondent, who on 1.4.47 minuted "It is not understood why the D.R.O. calls the certificate a 'fraud'. His recommendation is rather drastic, and I do not think there is any attempt on the part of the candidate or the priest to deceive the G.A." This was forwarded to Mr. E. G. Gunawardena, the Office Assistant, who minuted on 12th April, 1947, as follows:—

> "The Pirivena certificate was issued by the priest in respect of the period 1920-1926 from mere memory. The priest is unable to produce any records in support of his certificate. I doubt, therefore, whether any value can be attached to the certificate. If that is so the appointment should be quashed."

I think this is certainly a more realistic view of the situation, than that of the 1st respondent.

The Government Agent decided to call upon the 2nd respondent for proof of the genuineness of the certificate. This was done by the Divisional Revenue Officer who reported on 9th June, 1947.

The Divisional Revenue Officer stated that the 2nd respondent produced three new certificates. The D. R. O. wrote to two of the persons in question, and the 2nd respondent also undertook to produce them. But these persons never went

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before the Divisional Revenue Officer. Of the certificates only one (that of Wickremesinghe) referred to the vital question, whether 2nd respondent had attained the 5th grade at the pirivena. The other certificates were vague and unreliable, and though one was from an Inspector of Pirivenas, it had to be remembered that he was 73 years old, and was speaking of events 20 years old. Hundreds of pupils passed through his hands, and it must have been difficult for him to carry the facts in his memory.

The Divisional Revenue Officer had also on his own interviewed two disinterested old pupils of the Pirivena during the period in question (1920 to 1926) and they categorically stated that the 2nd respondent was at no time a student of the Pirivena. The D. R. O. commented on the fact that the two fellow pupils who gave certificates were very much older than the 2nd respondent, and not likely to have been in his class.

At this inquiry it also transpired that Hendrick must have been about 15 years old in 1920, when he is said to have joined the Pirivena. Admittedly this was very young, for that institution, the ordinary age of admission being about 21.

The D. R. O. also forwarded 2nd respondent's explanation. These papers passed through the hands of the 1st respondent, who minuted to this effect.

"In fairness to the Village Headman, it seems desirable that a staff officer holds an inquiry either at the Kachcheri or in the village when the two persons consulted by the Divisional Revenue Officer may be questioned by the Village Headman who can produce his own witnesses."

E. G. Gunawardena, Office Assistant, minuted on this. After some comments, he adds: "The V. H. has therefore failed, in my opinion, to adduce satisfactory proof of having passed the Pirivena examination specified and should be discontinued. He is still on probation."

The Government Agent minuted on this "I agree. I have dictated a minute containing my order discontinuing Hendrick Singho and appointing Gunawardena."

E. G. Gunawardena in his evidence stated that he had at this stage formed the opinion that the 2nd respondent had produced certificates which were not genuine. What the Government Agent thought is not clear. But there can be no question that 2nd respondent had failed to adduce the proof of the certificates which was required of him, and a further inquiry could hardly be regarded as a reasonable suggestion.

The remaining events may be briefly mentioned. On 1.7.47, 2nd respondent sent a petition against his discontinuance. On 7.7.47 the Divisional Revenue Officer recommended that Gunawardena was not suitable for appointment.

(1) because he had of late become a hard drinker (i.e. after the set back) and did not enjoy the same regard in the village;
(2) because he had become involved in a case for using criminal force on a girl.

As regards (2) there was a case, but Gunawardena denied the charge and was discharged. As regards (1) there is evidence that Gunawardena took to drinking, after he failed to get the Headmanship.

Eventually on 11.7.47 it was decided to hold a new selection for the post of Village Headman. Applications were called for afresh, and both 2nd respondent and Gunawardena applied. The 2nd respondent's application was received, because even a candidate without qualifications may apply.

The inquiry was held on 18.5.48. A new Government Agent, Mr. Hunter, presided. (There appear to have been many changes in this office about this time). Mr. Hunter regarded 2nd respondent as not having the necessary educational qualifications, but it does not appear that he was familiar with the previous papers on this matter. He had only recently been appointed Government Agent. Mr. Hunter selected 2nd respondent, but application had to be made to Government to appoint him without the necessary qualifications, and the appointment was not made forthwith. Gunawardena attained the third place in the selection. Immediately after the inquiry of Mr. Hunter, as the people were going away, witness K. D. Haramanis says that the 2nd respondent said that as long as Mr. Kannangara and Sir Oliver Goonetilleke were there, whatever anyone may say against him would not be entertained. The 2nd respondent added that he had spent Rs. 1,000. Haramanis had stated at the inquiry that 2nd respondent was not a suitable person for the post of Headman. One or two days after the inquiry, Haramanis repeated this to K. Marthelis Singho, who gave evidence to that effect.

This evidence, of course, can only touch the 2nd respondent.

One other fact may be mentioned, namely a minute by the 1st respondent on 6.11.47. This is mainly a recital of facts for the benefit of the new Government Agent (probably Mr. Sudbrdy).

In this 1st respondent said that the two affidavits should not be allowed to go unchallenged, but refusal to hold an inquiry would be a miscarriage of justice. He advocated an inquiry at the Kachcheri, and said that if the 2nd respondent

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failed to prove his case, strong action should be taken against the four affirmants, for affirming false affidavits. These affidavits apparently were sent after the 2nd respondent was discontinued.

The following matters for comment arise.

First it is clear that of all the officials connected with the appointment of the Headman, the only person who lent support to the certificate produced by the Headman was the 1st respondent. The Government Agent had, no doubt, accepted the Principal's certificate at the original inquiry, but there is nothing to show that his attention was called to the peculiar circumstances at that stage. That only arose after Gunawardena petitioned the Inspector General of Police. The Divisional Revenue Officer at his inquiries was satisfied that a fraud had been practised, and so reported. The Office Assistant, Gunawardena, had the view that the certificates had no value, and at a later stage that they were not genuine. The Government Agent clearly held the former view, and may have held the latter, because he did not think of recommending that the 2nd respondent should be appointed, in spite of the fact that he did not possess the educational qualification. The 1st respondent not only objected to the D. R. O's view on one occasion but on two other occasions recommended a new inquiry by a Staff Officer. That the Divisional Revenue Officer had no prejudice for any candidate is clear, because he later reported against Gunawardena also.

Another point is that there is no evidence that Gunawardena and his supporters had or could have had any information that the 1st respondent was making these minutes. They were no doubt interested in having 2nd respondent dismissed, but if the story of the 1st respondent is accepted, there was no motive whatever for making allegation (3) against the 1st respondent and no reason for any animosity against him.

The evidence of the witnesses called to establish the allegations has been assailed. Abraham, in particular, has had his character attacked. In 1930 he was convicted of causing hurt with a blunt instrument, and fined Rs. 50. In June, 1927, and 1929 he is said to have been fined Rs. 10 for theft. The documents do not disclose what was stolen or under what circumstances. These are very ancient offences. The 2nd respondent contended that Abraham had made a false complaint to him, but there was no suggestion that the Headman had not done anything less than his duty, and the reason for animosity against him is not clear. The 2nd respondent emphasised the fact that he was summoned, and no batta deposited for him. Abraham explained that his lawyers decided that the evidence of the Headman was not necessary in the case. Eventually, the party charged by Abraham was acquitted, as he had set up a bona fide claim of right. The Chairman, V. C., Wanigasuriya also added that Abraham "intermeddled in cases" and was known as "Godaperakadoru." The Chairman, however, admitted that for the last 10 or 12 years Abraham has had not convictions, and has ceased intermeddling in cases. What the nature of the "intermeddling" was is somewhat vague.

As regards H. Goonetilleke, he is a fairly young man, and the only suggestion against him by the Chairman, V. C., is that he has no regular employment (he is said to be a writer), and that he misleads illiterate persons. He is the Secretary of a Society called the "Peasants' Front". This opinion is discounted by a good certificate given to this witness by the Chairman in 1947.

Haramanis is said to be a fish monger and pingo carrier. The Chairman, V. C., said that he enjoys no respect in the village, but knew nothing bad against him. Haramanis happens to be the Chairman of the "Peasants' Front."

The 2nd respondent said he once gave information against Haramanis about a suspected excise offence, but his evidence is vague with regard to the facts on which the information was based, and there is no evidence that Haramanis was made aware of the report.

Nothing serious has been urged against P. D. B. Gunawardena, except that after "set-back", he drank too much. I do not believe he misbehaved as a result of it, but he was affected physically. A very good certificate was given to him by the Chairman, V. C., in 1943. The prosecution against him in 1947 fizzled out, and he denied the offence and was discharged. But this prosecution may have tipped the scale against him in the second appointment of the Headman.

I have considered all these matters. I think the Chairman, V. C., was obsessed with prejudices, political and otherwise, and do not think much reliance can be placed on his opinions. Abraham, for instance, has borne a good character for at least 10 to 15 years. It is clear he is not a supporter of P. D. B. Gunawardena — Even the Chairman, V. C., was unaware of this and I do not accept the 2nd respondent's evidence to the contrary. He has no considerable position or wealth, but he gave his evidence well, and without the appearance of bias. H. Goonetilleke and Haramanis undoubtedly are supporters of P. D. B. Gunawardena but they cannot be said to be of bad character. Against Marthelis nothing is known; he has recently come to the village. The 2nd respondent mentioned a complaint made by him, but there does not appear to be any ground for animosity against the Headman for what he did.

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As regards allegation (3) many points were raised for the respondents. First, there was, as I mentioned, confusion about the date, but this was eventually fixed as January 3rd, 1947. Then both Gunawardena and H. Goonetilleke said that they came to the Kachcheri at 8 a.m. This, however, must be regarded as an estimate of the time, for neither had consulted a clock. Anyway they arrived before the clerks had all assembled for work. The Kachcheri is opened about 7.30 a.m., and the Register shows that on January 3rd, 1947, the first clerk arrived at 8 a.m., and a small number up to 8.30 a.m. Thereafter they came in larger numbers up to 9 a.m. According to the witnesses they came when there were only a few clerks in the room. The 1st respondent said he did not come till 9 a.m. or a little later, and that he never comes to the office before 9 a.m. I do not accept that; as he does not sign the register, there is no record of the time at which he arrived at the Kachcheri.

Another point urged was that the 1st respondent would not have made the statement attributed to him in the presence of the clerks. Undoubtedly there were some clerks in the room at the time, though it is not clear whether they were within earshot. In any event there would have been little difficulty in modulating the voice, so that the clerks present would not hear.

Another point which struck me was that at this date (3.1.47) the question of the invalidity of the certificate issued by the Principal had not officially arisen. But this cuts both ways. It may be argued that the 1st respondent would not raise that point. On the other hand, it is not without significance that the petition of Gunawardena protesting against this certificate was sent soon after, on the 9th of January, 1947.

A strong point was made that in all the petitions there had been no reference to the alleged bribery and solicitation of bribes. This is undoubtedly a matter for consideration. But at the same time it has to be remembered that an allegation of that kind would not have helped Gunawardena at that stage. Not only would the 1st respondent be alienated, but the witnesses were uncertain as to how the other officials would respond to that charge. At the least Gunawardena may have been asked to pursue the matter in the Courts and there would have been delay. Gunawardena was convinced that he had another good point to urge against the 2nd respondent, the one relating to his educational qualification. That matter was promptly pursued, soon after the first appointment was known, and it had at least a temporary success.

I have considered the denials of the 1st and the 2nd respondent, but I am satisfied beyond reasonable doubt that the evidence of the witnesses to the allegations must be accepted. There is one point on which I have some doubt, namely, whether the 1st respondent at the first inquiry actually put his hand in the pocket of the 2nd respondent and took the certificate. The D. R. O. among others did not observe this, and I am inclined to think this is a misinterpretation of some action of the 1st respondent, which had become emphasized and magnified later in the minds of the witnesses. Subject to this I accept the evidence of Abraham, Gunawardena, H. Goonetilleke, Haramanis and Marthelis. Probably the words used by the 2nd respondent after the second inquiry were provoked by the action of Haramanis at that inquiry. I do not accept the evidence of the two respondents.

I have borne in mind the fact that nothing bad in the previous career of the 1st respondent has been brought to light, and that he was trusted by his superior officers.

I hold that :

(1) in or about September 1946, a gift of two bottles of whisky, a pot of curd and a basket of vegetables was offered by the 2nd respondent, and accepted by the 1st respondent with the object and for the purpose of influencing the judgment and conduct of the 1st respondent in respect of matters connected with the appointment of a Village Headman for Makandana, Morandana and Niungama ;

(2) in or about September 1946, the 1st respondent solicited a gratification of Rs. 500 from the 2nd respondent in consideration of a promise by the 1st respondent, in his capacity as Kachcheri Mudaliyar, Colombo, to take action to have the 2nd respondent appointed Village Headman of the said villages ;

(3) in or about January 1947, the 1st respondent solicited a gratification from P. D. B. Gunawardena, an applicant for the post of Village Headman for the said villages in consideration of a promise by the 1st respondent in his capacity of Kachcheri Mudaliyar, Colombo, to take action to have P. D. B. Gunawardena appointed Village Headman of the said villages.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 112.

RESPONDENT:

E. P. Ranasinghe,
Village Headman,
Hambantota.

IN CAMERA

Heard on 2nd, 8th and 10th of December, 1948.

Respondent : E. P. Ranasinghe, Village Headman, Hambantota.

There were several matters for inquiry against the respondent:—

(1) that in or about the year 1946, he demanded and received a gratification of one rupee from S. E. M. Yakab as a reward or recompense for certifying his application for a permit to obtain kerosene oil,

(2) that on or about 12th May, 1946, he demanded and received a gratification of ten rupees from S. S. Soodin as a reward or recompense for giving him a letter to enable him to obtain a permit to transport paddy from Bolani to Hambantota,

(3) that on or about 25th August, 1947, he demanded and received a gratification of five rupees from the said Soodin as a reward or recompense for giving him a letter for the purpose set out in (2),

(4) that in or about the year 1947, he solicited a gratification of one hundred rupees from A. H. M. Junaid in consideration of a promise by him to permit Junaid to retain 129¾ bushels of paddy which in his capacity of Village Headman he ought to have obtained from him for the Government,

(5) that in or about the year 1947, he received and accepted a gratification of fifty rupees as a reward for having permitted the said Junaid to retain 129¾ bushels of paddy as set out in para (4),

(6) that during the period 1st September, 1939 to 28th January, 1948, he did accumulate money in such circumstances that the only reasonable presumption is that such accumulation was made or effected as a result of bribery or corruption.

Apart from the question of the accumulation of money by the respondent, there is evidence of gratifications by three persons, Yakab, Soodin and Junaid to respondent.

It is convenient to take the case of Soodin first (paras 2 and 3). Soodin alone gave evidence concerning two occasions, viz. 12.5.46 and 30.8.47. Soodin told a sordid story. He was a fish merchant, but neither he nor his wife possessed any paddy fields, but he was anxious to get paddy by illegal means, and planned to get it from the Malay Colony at Bolani. Apparently the Vel Vidane, Cassim, of that area was willing to issue false permits for transport, but a letter from the respondent was a necessary preliminary. All that the letter purported to say was that the applicant was a resident of Hambantota, but it may have said more. There is no doubt that Soodin obtained permit L. A. W. 8 in 1946 and permit L. A. W. 9 in 1947 for the transport of 23 bushels and 6 bushels, respectively. It is clear that Soodin was not entitled to any paddy at all. Soodin says that he paid the respondent a gratification on each occasion for obtaining a letter to the Vel Vidane. On the respondent's letter the Vel Vidane arranged for the paddy in question to be provided, and gave the necessary permits. Strangely enough the Vel Vidane gave the rice at the control price of Rs. 6 per bushel, and it is doubtful what profit he obtained from the transactions. It is obvious that Soodin was consciously taking part in an illegal criminal transaction, and that the Vel Vidane was the principal participant in the fraud. It is said that this Vel Vidane has now been dismissed from service — for burglary. We are however concerned here with the part played by the respondent. On the face of it, the respondent had only to certify that Soodin was a resident in Hambantota, and this he could truthfully certify. It is not clear why the gratifications had to be given to him and not to the Vel Vidane. It is suggested that the gratifications were shared by the respondent and the Vel Vidane, but there is no evidence

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pointing to this. Further, there are serious discrepancies in the story of Soodin. In his evidence in the earlier investigation, Soodin suggested that the Vel Vidane asked for the respondent's letters and that was the reason he had gone to the respondent. At the final inquiry, Soodin asserted that he went in the first instance to the respondent, because he discovered that to be the normal procedure. He was unable to reconcile the two stories. There was further a serious divergence as to the amount paid to the respondent on each occasion. In the earlier investigation Soodin said that he paid Rs 10 and Rs. 5 in 1946 and 1947, respectively, and gave a detailed account of how the amounts were arrived at. At the final inquiry he maintained that he paid Rs. 15 on each occasion. His explanation that he had in the earlier investigation mixed up two distinct matters does not bear examination. Further Soodin himself was an unsatisfactory witness, and I do not accept his evidence. I answer paragraphs 2 and 3 in the negative.

The next matter I take up concerns Junaid (paras 4 and 5). Junaid's father and sister owned paddy fields in three places, and permits for the transport of paddy were issued in the name of Junaid, who took charge of the arrangements. There were three permits issued in 1947 :

L. A. W. 3 — dated 22.3. 47 — 40 bushels (father's paddy),

L. A. W. 4 — dated 20.4. 47 — 120 bushels (sister's paddy),

L. A. W. 2 — dated 16.10.47 — 38 bushels (do.).

In all 198 bushels were transported in 1947. On the evidence it is clear that Junaid was not entitled to retain the whole of the paddy, and that a portion should have been surrendered to Government, at least ten amunams or sixty bushels, after deducting the paddy to be kept in respect of 21 ration books.

According to Junaid, it was the duty of the respondent as Headman to inspect the paddy and to take away the Government share. But about three weeks after L. A. W. 3 (22.3.47) the respondent and Junaid came to an arrangement, whereby Junaid was to be allowed to retain the excess paddy on paying the respondent Rs. 5 for each amunam in excess of his rightful portion.

The respondent came again about a week after L. A. W. 2 (16.10.47), and claimed that there had been 121 bushels or a little over 20 amunams of excess paddy, and claimed Rs. 100 under the arrangement. Junaid agreed to pay the money later. On that occasion the rightful portion of Juniad, in respect of his ration books, was stated to be 68¼ bushels. I shall comment on this later.

On the 16th of December, 1947, the respondent wrote to Junaid as follows:—

(L. A. W. 1.)

"Mr. A. H. M. Junaid,

Please be kind enough to send me the money as I am in bed for the last two weeks and is unable to do anything through bearer.

E. P. Ranasinghe."

This letter is admitted by respondent. Junaid says it was brought by witness Siridias who corroborates the story. Rs. 50 was sent through Siridias, who handed it to the respondent. There is no question that the Rs. 50 was sent to the respondent on that day, though the respondent denies that the messenger was Siridias.

Junaid stated that he made no complaint to anyone, as he had the paddy. He first mentioned this to the witness Welunhamy, when the latter came to his boutique to get his complaint to this Commission typewritten. By then Junaid had become a member of the Urban Council.

Junaid's evidence has been attacked on several points. It is urged that his evidence was not accepted in D. C. Tangalle 5708. This is correct. Action was brought by Mendis Silva claiming Rs. 3,000 and interest from Junaid, who admitted the borrowing but asserted that he had paid back all but Rs. 600. Junaid produced an account book to support his story. The District Judge however preferred to accept the story of the plaintiff and entered judgment for the amount claimed in the plaint.

A strong point has also been made that Junaid was entitled to retain not only 68¼ bushels but twice that amount, viz., 68¼ bushels for each season. If Junaid was entitled to retain 126½ bushels, then the amount payable on the arrangement with respondent was Rs. 50 for ten amunams excess, and not Rs. 100 for twenty amunams. Junaid admitted that this was the case, but he stated that he accepted the respondent's estimate, and only later discovered the error. It is argued that Junaid who was a businessman could not have made this mistake.

Junaid produced in support of his story books of account — a cash book and a ledger, in which under the date 16.12.47 appear entries relating to the payment of the Rs. 50 In the cash book, L. A. W. 11 the entry is "E. P. R. on account of paddy", and in the ledger, L. A. W. 12 "E. P. Ranasinghe on account of paddy".

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I may mention that these are not the books produced in Mendis Silva's case but even these books are subject to grave criticism. Admittedly Junaid was on occasions absent for long periods — three weeks or a month — on business, and only entered these books after his return. The books cannot be regarded as regularly kept in the course of business. They also contain accounts relating to transactions with one Azeez, who has a large claim in the courts against Junaid at present. Further, the entries are entered under the heading "Trade Account" and not debited against the father and sister of Junaid. This is a misleading heading.

I am far from holding that these entries have been falsely made, but I think that they afford very slight confirmation of Junaid's story.

I may add that I thought Junaid not a bad witness, and there are two points of importance in the case :

(*a*) the respondent's letter L. A. W. 1 asking for the money, and the fact that the money was paid,

(*b*) the fact that the excess paddy was not collected by the respondent — at least ten amunams — for Government.

There was some controversy as to whether the respondent received the permits direct from the Vel Vidane, or through the Kachcheri. I am inclined to think that these were sent direct at this period. But the point is not of great substance, for, the permits must eventually have reached the respondent, whether direct or through the Kachcheri.

At this point it is relevant to consider the evidence called for the respondent. He admitted that Rs. 50 was paid on 16.12.47, but gave an entirely different explanation of this transaction. He denied the story that the payment was made in respect of excess paddy which was not requisitioned, and denied that any arrangement was arrived at in that connection. His version is that about the 10th of August, 1947, he found Junaid and a man called Udaris Silva having a dispute. Udaris claimed a big sum, over Rs. 1,000 and Junaid that anything was due. Eventually after the parties had almost come to blows, the matter was compromised by Udaris Silva accepting Rs. 150 in full settlement. The respondent himself signed the document embodying the settlement. The respondent added that Junaid was unable to find the full amount of Rs. 150 and respondent advanced him Rs. 50 for that purpose, and that this was the money respondent asked for in the letter L. A. W. 1. Udaris Silva gave evidence in support of the story, as also did another witness, Uparis.

There is no doubt that Junaid in August 1947, entered into a settlement with Udaris Silva, as regards the amount outstanding to the latter, and that the respondent was a witness to the settlement, but I think the suggestion that the respondent came to the rescue for the sake of peace and order, and parted with his own money for the purpose, is extremely artificial, and I do not think it is worthy of credence. It is also a curious fact that the suggestion that the Rs. 50 paid in December 1947, was in fact the repayment of a loan, was not put to Junaid. Counsel contented himself with asking Junaid, if there had been a row in August, and this Junaid denied. The story was only developed after Junaid had given evidence, and I do not think it can be relied on. The witnesses who spoke to the incident did not strike me as truthful witnesses. The story is not strictly in accordance with the respondent's reply to the letter sent by the Commission, which appears to deny that any money was received from any of the witnesses. The respondent said that he meant that no sums were received "as bribes", but the language he used appears to go further.

The respondent also stated that the messenger he employed to carry the letter L. A. W. 1 was not Siridias, but Uparis. On the evidence I incline to the view that Siridias was the messenger, but obviously Siridias did not know what the arrangement was between Junaid and respondent. Further, I do not think that the identity of the messenger is of great importance. The explanation of the letter is the vital point.

In this state of the evidence I think I must throw into the scales the fact that Junaid must be regarded as an accomplice, and I hold that the allegations contained in paragraphs 4 and 5 have not been established. At the same time I think there are suspicious circumstances in this connection. There remains the gratification alleged to have been given by Yakab (para 1.) Yakab, in fact obtained a permit for the purchase of kerosine oil (L. A. W. 10 dated 2.9.46). Yakab's story is that he went to respondent for the permit some days before that date, and was told by respondent that a fee of Re. 1 was needed for the issue of the permit, and that this was a legal fee. The Re. 1 was paid after some hesitation, but Yakab was so uncertain about its legality that he asked witness Welunhamy about it, and was told that it was not due. Welunhamy, who had been Town Aratchchi, and was

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then doing merely revenue duty confirmed this. Apart from the fact that no complaint was made at the time, no solid reason was urged against the acceptance of this evidence. I was inclined to accept the evidence of these witnesses, but I appreciate that this is a difficult charge to refute. Further, I am not satisfied that this can be regarded as the acceptance of a gratification within the terms of the Commission issued to me, and as I shall show later, there is no evidence of any accumulation of money by the respondent which brings this matter within the scope of this Commission. I therefore hold that the allegation contained in para 1 has not been established.

The only other matter is contained in para 6, viz., the accumulation of money as a result of bribery or corruption by the respondent. On this the chief allegation related to the erection or renovation of the respondent's house. As to the actual cost, I think the most reliable estimate is that it cost about Rs. 4,000. This is the respondent's estimate. It has to be remembered that the respondent had himself been a building contractor, until he became a Headman, and his assertion that he had building material outstanding at that time is reasonable. Further, as a result of his experience he was able to complete the work economically. The respondent also produced his Ceylon Savings Bank Book (E.P.R. 5) No. 193381. This shows that the respondent deposited certain sums:—

23. 7. 43—Rs. 1,000.

17. 12. 43—Rs. 600.

12. 2. 44—Rs. 300.

The respondent said that these sums were due to him from the Council in respect of a contract for the building of eight houses. It is certain that this contract was executed by the respondent, and the Council's books show that certain sums were paid to the respondent in respect of the work. I think that a reasonable explanation has been given by the respondent.

The only other deposits I need mention are the following sums:—

11. 9. 45 deposited Rs. 1,000.

5. 2. 46 deposited Rs. 400.

Respondent explained that this was part of the dowry given to him on his marriage. His brother-in-law who gave it is now dead. This also appears to me to be a reasonable explanation.

The cost of building the house was met by withdrawals from this account, and from moneys in his hands. I think the respondent has sufficiently accounted for the expenditure on the house. Apparently, before 1943, the only account was a trifling balance in the Post Office Savings Bank.

I hold that the allegation in para 6 has not been established.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 113.

RESPONDENT :

D. C. Panditha,
Village Headman,
Hikkaduwa East.

IN PUBLIC

Heard on 1st and 6th of December, 1948.

Respondent : D. C. Panditha, Village Headman, Hikkaduwa East.

The matter for inquiry was whether the respondent, in or about the years 1944, 1945, and 1946, solicited and received from M. H. L. P. Kurukulasooriya a gratification of a bag of paddy at each harvest for reducing his assessments of the crop of paddy fields belonging to Kurukulasooriya, his brother and sisters.

The evidence of Kurukulasooriya shows that after the Internal Purchase Scheme came into force it was the duty of the Headman to estimate the yield of paddy lands before the harvest, and to assess the actual yield after the harvest. The dates are not fixed with any precision, but at some day presumably in 1943 or 1944, Kurukulasooriya was dissatisfied with the assessment, and asked the Headman to reduce the assessment by 25 per cent. The grounds he urged were (1) that there was chaff mixed with the paddy, (2) that the paddy was undried, and reduced in weight when dried, and (3) that he did not get exactly half the quantity of rice from the paddy. The Headman was not willing to do this for nothing, and an agreement was made that the Headman should receive a bag of paddy as a gratification for each season.

About 1944, the Government compulsory levy came into being. After that, not only the owners, but the *goiyas* had to contribute to the gratification, and the Headman used to receive between one and two bags for each season. The Headman did not visit the threshing floors, and permitted Kurukulasooriya himself to make the assessments, and the Headman accepted the figures, receiving at each season the gratification. In all, the gratifications were given for five or six seasons. About 1946, the Government Agent became dissatisfied with the poor returns from fields in this area. New arrangements were made to deal directly with the cultivators and not through the Headman. On the 16th July, 1946, the Government Agent wrote to Kurukulasooriya (see letter M.H.D.P.K. 1) that if the cultivators were prepared to declare ten fold at *Yala* and eight fold at *Maha,* he was prepared to deal directly with them. This offer was accepted by Kurukulasooriya, and thereafter no gratifications were given to the Headman.

According to Kurukulasooriya, the Headman used to remove from his house, the paddy given as a gratification together with the paddy purchased by the Government. The *goiyas* were not present on these occasions.

This evidence was assailed as malicious. It was contended that Kurukulasooriya had made previous false representations against this Headman and many other officials. These incidents were gone into at length at the inquiry, but a short reference to them will, I think, be sufficient.

There is no doubt that Kurukulasooriya sent many petitions. It certainly appears that he is a somewhat impetuous person, and that he was perhaps over-inclined to think that delays and irregularities in the Government servants were to be attributed to bribery or the hope of receiving bribes. But it is not possible to come to the conclusion that he deliberately sent false petitions, or bore personal animosity. Some of the people about whom he is said to have sent petitions did not regard him as a troublesome person. According to Mr. Abeykoon, Assistant Government Agent, Kurukulasooriya thought that Government Servants were not what they should be, but he was genuinely interested in the welfare of the village and could not be regarded as a troublesome person, and did not create the impression that he was "hounding" officials.

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As against this particular Headman, Kurukulasooriya had sent petitions. The suggestion that he had petitioned against this Headman in 1933 appears to be unfounded. The allegations were against Mudaliyar Wanigatunga. In the course of this, Kurukulasooriya mentioned that the Headman had told him that nothing could be done without giving bribes to the Mudaliyar. The Headman was questioned about that as "a side issue", and that was the only way the Headman was affected.

In 1940, Kurukulasooriya petitioned against the Headman about delay in giving the report about cattle trespass. The evidence and the documents produced satisfied me that though the complaint was made on the 8th of November, 1940, the report was not given till, probably, the 20th of January, 1941—and certainly not before 13th of December, 1940. There had certainly been delay. There may have been reason for that delay.

In 1941 there were three petitions against this Headman and all Headmen in general. Kurukulasooriya himself referred to what he called "anti-crime mania". He appears to have believed that certain irregularities he complained about were attributable to corruption. Eventually these petitions were withdrawn or held not to be proved.

In 1945 Kurukulasooriya was charged with mischief in shooting cattle in two cases. The shooting was admitted and the only question was whether he was justified. There is nothing to show that anything occurred in the Headman's inquiry, which would give rise to resentment on the part of Kurukulasooriya. Similarly the Headman did no more than his duty in connection with the Village Committee Elections in 1946, in identifying the labourers on estates. No doubt, a number of persons were disqualified on that score, but the Headman could not be regarded as responsible for that.

In 1946, again, Kurukulasooriya petitioned about paddy matters to the Assistant Government Agent, Ambalangoda. A strong point is made that in none of his petitions, particularly in 1946, was any allegation of bribery made against this Headman. This is certainly a point to be considered. It is not in dispute. Why has he failed to mention his own gift to the Headman? It has been argued that the whole story should be discredited—that he gave the paddy to the Headman. On the other hand Kurukulasooriya appears to have modified his views, as a result of the emergency created by the war, and further, he might have made himself liable to penalties if he disclosed the gifts. The Assistant Government Agent himself was of opinion that many respectable persons resented Government interference, and did not think it wrong to give false returns.

I have carefully watched the witness, and formed a strong impression that he was an honest witness, who appeared to be speaking the truth as he understood it. I was satisfied that he was not the person to invent a false story. No doubt, he was to be regarded as an accomplice in this matter, and there was no legal corroboration of his story. But even in the absence of corroboration, I was prepared to hold that he has been speaking the truth. No doubt he was impetuous and sometimes dramatic in his actions, but I thought he was a reliable witness, who stood up well to cross-examination.

Another point was that the *goiyas* were not called. But it is in evidence that they were at one stage, at any rate, reluctant to testify against the Headman. In any event they would have been regarded as accomplices also, because they had acquiesced in the arrangement. They were unable to speak to the giving of the paddy, and further were not witnesses of standing, and would probably not have carried the case further.

In the course of his cross-examination, the Headman discovered two returns which purported to declare the assessment for 1945, as ten fold and over for Ottadeniya. These returns, however, were not signed by the Headman, and it is not clear how they came into being. But even if one takes them as real assessments by the Headman, they do not show the assessments for the other field Kiribathwela. These were not traced. Consequently it is not possible to say what the average assessment was for both fields. The Assistant Government Agent found that the assessments for this area were generally speaking lower than they should have been.

I have considered the evidence given by the respondent Headman. I think it is clear that he has seriously exaggerated the alleged ill-feeling on the part of Kurukulasooriya towards himself. I am satisfied that the suggestions made with regard to the petition in 1933 were unfounded. The Headman himself eventually admitted that the only matter which concerned himself in 1933 was whether he had made a statement to the effect that the Mudaliyar would do nothing without payment, and that no other allegation concerned himself. The Mudaliyar's memory was clearly at fault on this point. The Vidane Aratchchi said that there was no charge against the Headman on that occasion. As regards the other incidents,

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his evidence was at least exaggerated, and the Headman found difficulty in regard to the dates appearing on his reports relating to the petition by Kurukulasooriya of 1940. The respondent's own evidence and that of his witnesses did not raise a reasonable doubt in my mind about the truth of Kurukulasooriya's story.

I hold that the respondent, in or about the years 1944, 1945 and 1946 solicited and received from Kurukulasooriya, on five or six occasions, a gratification of a bag of paddy at each harvest for reducing the assessments of the crop of paddy fields belonging to Kurukulasooriya, his brother and sisters.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 115.

RESPONDENTS :

First : T. S. Fernando,
Motor Car Examiner,
Colombo.

Second : C. Rajasingham,
Divisional Road Transport Officer,
Kurunegala.

Third : T. J. Mather,
Divisional Road Transport Officer,
Jaffna.

Fourth : D. G. Jayetilleke,
Motor Car Examiner,
Colombo.

Fifth : D. St. C. Dabrera,
Motor Car Examiner,
Nuwara Eliya.

Sixth : J. A. B. Fernando,
Motor Car Examiner,
Colombo.

Seventh : H. L. Wright,
Motor Car Examiner,
Colombo.

IN PUBLIC

Heard on 31st January, 1st February, 2nd February, 3rd February and 28th February, 1st March, 2nd March, 3rd March, 29th March, 30th March, and 31st March, and 1st April, 1949.

Respondents :

1st : T. S. Fernando, Motor Car Examiner, Colombo.
2nd : C. Rajasingham, Divisional Road Transport Officer, Kurunegala.
3rd : T. J. Mather, Divisional Road Transport Officer, Jaffna.
4th : D. G. Jayetilleke, Motor Car Examiner, Colombo.
5th : D. St. C. Dabrera, Motor Car Examiner, Nuwara Eliya.
6th : J. A. B. Fernando, Motor Car Examiner, Colombo.
7th : H. L. Wright, Motor Car Examiner, Colombo.

The allegation against these respondents was that each of them received and accepted a gratification of *ten rupees* from the South Western Bus Co., Ltd. as a reward or recompense for *every* report made to a licensing authority to the effect that an omnibus belonging to the said Company complied with the provisions of the Motor Car Ordinance and the regulations made thereunder, and was fit to be licensed as an omnibus for carrying passengers.

The years in respect of which these gratifications were received varied in the case of each respondent.

1st respondent was alleged to have received them in 1945, 1946, 1947 and 1948.

2nd respondent in 1944 and 1945.

3rd respondent in 1944, 1945, 1946 and 1947.

4th respondent in 1944 and 1945.

5th respondent in 1945 and 1946.

6th respondent in 1945, 1946, 1947 and 1948.

7th respondent in 1946, 1947 and 1948.

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The South Western Bus Co. was incorporated about 1943, and now appears to be the biggest and most influential of the bus companies created under the Nelson Plan. Its principal office is now situated at Mount Lavinia and its buses are registered in Colombo, Dehiwala, Panadura, Kalutara and Galle, with the local authorities in those areas. For the purposes of registration and the issue of licences, it is necessary that each bus should be passed by some Motor Examiner of the Motor Transport Department.

Shortly after the incorporation of the Company, two of the Directors of the Company expressed the opinion that, for the purposes of easy and speedy licensing, it was necessary to give bribes to the Motor Examiners who had to pass the buses. The Director thought that Rs. 20 or 25 should be paid to each examiner for every bus passed. Apparently these Directors were basing their opinion on their previous experience, and it is a startling fact that no one in the Company disputed the necessity for the giving of these bribes. This throws a strange light on the opinion of the public, and of important business men, with regard to the Government officers entrusted with the business of passing the buses. It is also to be noted that these business men were not averse to obtaining their object by resorting to dishonest and criminal practices. It may be mentioned that the Examiners did not come forward in the first instance, and solicit the gratifications. Bribery was accepted as a normal and recognized method of transacting business.

The opinion of the Directors was conveyed to the General Manager of the Company, G. Caldera, who requested the officer engaged in looking after the licensing of buses, H. Algama, to put it into effect. Algama also accepted the fact that bribery was the best and the most efficient policy, but he thought the sum of Rs. 20 or 25 per bus too high, and that Rs. 10 for each bus passed was sufficient. This was towards the end of 1943. Algama spoke to the Examiners individually, and gathered that they agreed to the figure he mentioned, but no answer in words was given to him by the examiners. Algama said he spoke to 4 examiners, viz., 1st, 2nd, 3rd and 4th respondents. The licensing clerk at that time, one Quintus de Zoysa, was instructed to keep lists for the purpose, and Algama said that lists were kept on scraps of paper of the buses passed by the examiners. These early lists are not available now, and cannot be traced at the office of the Company. Money was drawn in small sums from petty cash for the purpose of paying the examiners. The expenditure was put under the heading "Entertainment." It is not clear who suggested that heading, but there was a genuine "entertainment account", and the money drawn for the purpose of paying bribes was also entred under that head. But there was a difference between the two kinds of items. In the case of genuine items of entertainment, details had to be given, and receipt provided. In the case of bribes, no details were given and no receipts provided, and the officer of the Company to whom the money was paid was trusted to see that the money reached its destination. The Company must have been anxious to see that their books did not disclose at a cursory glance that money was paid out as bribes. The payments to the examiners were always entrusted to a Staff Officer, and the Directors had confidence in the particular officer entrusted with the making of payments to examiners.

Towards the latter part of 1945, Algama was removed from the work of licensing buses, and put on to other work. R. Sahabandu succeeded him — about November, 1945. About this time also Quintus de Zoysa left the Company, and was succeeded as licensing clerk by H. A. Solomons. Solomons continued to keep the lists of the buses passed and of the examiners. Solomons' lists were in the course of the inquiry traced in the office. They are the documents SWBC. 46 A, B, C and D. They are continuous records with no missing entries starting with January, 1946 (the first entry is 21.12.45), and running up to 17.10.47. Another list SWBC. 46E has also been traced for a later period There can be no doubt that these are the genuine lists kept by Solomons. According to him they were entered from day to day. Solomons used to take buses for licensing and pay the examination fee in stamps (Rs. 20 for each bus), and enter the number of the bus and the name of the examiner in his list the same evening or the next morning.

According to Algama and Sahabandu, they drew from the office from time to time moneys in order to pay the examiners. Sahabandu, like Algama, drew the money as "Entertainment". Payments even in the time of Algama had not been made at regular intervals, and Sahabandu continued this practice. When a particular examiner had passed a fair number of buses, money was drawn and he was paid at a rate of Rs. 10 per bus. For some time Shabandu continued to draw the money out of petty cash, but sometime in 1946 there was a change in the procedure at the office. The Managing Director ordered that in the case of all payments of over Rs. 50 a cheque should be issued to the officer of the Company. Payments from petty cash practically ceased except for the small amounts, and cash payment vouchers had to be drawn up, and cheques issued to the officer. But these cheques took some time to complete, as they had to bear several signatures. Where money was urgently needed, the officer drew the money out of Suspense

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Account. For this purpose he had to draw up a Suspense Account voucher or chit, which was initialled by the General Manager. A Suspense Account Register was also opened. The original Register related to the period October, 1945 to August, 1946, but all details were not entered in it, and even the date of payment was left uncertain. A new register was opened on 8th August, 1946, which provided all the necessary details. From August, 1946, a Suspense Account voucher was needed, and all the necessary details were entered in the Register. The Accountant of the Company, T. Herath, claimed that after August, 1946, the actual date of the drawing of the money from suspense account could be established from the Register.

Though Sahabandu took over the licensing business from about November, 1945, he did not attend to the payments to examiners until February, 1946. Both he and Algama spoke to the fact that Sahabandu was first introduced to the examiners about the 5th of February, 1946. Sahabandu did not know the examiners earlier, while Algama was on very friendly terms with the examiners. I shall later have to deal with the incident of this date, and to the various occasions when Sahabandu drew money from the Company and said he paid various examiners.

For the present purpose, it is only necessary to say that the particular items spoken to by Algama and Sahabandu were actually drawn from the Company in cash, for the purpose of making payments to the examiners according to the agreed scale. All the evidence points to that. The lists kept by Solomons (SWBC. 46A to E) in which the names of examiners who passed the particular buses were entered is a strong fact. Besides, the purpose for which the money was drawn was known to all the officers of the Company, from the Managing Director to the licensing clerk. There is no doubt that Algama and Sahabandu drew moneys for genuine items of "Entertainment" as well, and the Accountant Herath has been at pains to extract those items from the books (see SWBC 56). The remainder of the drawings by Algama and Sahabandu on "Entertainment" Account, for which no details were supplied or receipts attached, relate to moneys drawn from the Company to pay bribes to examiners. The documents SWBC., 2 and SWBC., 5 also help to establish that some of these sums were definitely drawn for the purpose of paying the examiners, and that the drawings had the sanction of the Managing Director, Cyril de Zoysa. I shall deal with these two documents later, in connection with the alleged payments to examiners by Sahabandu particularly. The actual date on which the money was drawn in each case is not, however, established, except in the case of drawings from Suspense Account after August, 1946, where the Register gives the actual date of the drawing. I have already pointed out that, ordinarily, it took several days to obtain payment from the office to the officer, and several documents were needed. The date appearing in the ledgers, cash books, and petty cash books, was not necessarily the exact date of the drawing. But where the Suspense Account Register established a precise date of payment, that may be taken for certain as the date of the drawing.

There can, I think, be no doubt that the practice of paying bribes to Motor Examiners had been deliberately adopted by the Company, and that sums were drawn from time to time by Algama, and after him by Sahabandu, for that specific purpose. It is a striking fact that the Managing Director of the Company, Cyril de Zoysa, who had been Chairman of the Urban Council of Kalutara, and was a Proctor of the Supreme Court, and a Justice of the Peace, and had acted for the District Judge of Kalutara, gave his sanction to this practice. It is clear that public opinion has no repugnance to the giving of bribes, and that prominent persons are not averse to resorting to bribery for the purpose of rendering easy the carrying on of their business affairs, or for getting a business advantage. It is a commentary on the low standard of public opinion concerning bribery in this country.

One of the points that has been urged by the respondents is that there is no corroborative evidence to show that the sums drawn for the payment of bribes ever reached the pockets of the Motor Examiners. The Company did not ask for or check the details of the payments to examiners. The payments were said to have been made individually to the examiners, and the officers dealing with this matter had to be trusted to make the payments in due course, with a certain measure of secrecy. It was suggested for the respondents that the sums drawn by the officers were misappropriated by themselves and perhaps others. It was pointed out that the General Manager of the Company, George Caldera, had been a proctor who had been disbarred, and had served a period in gaol for criminal breach of trust. That was the case, but this had happened some years ago, and there is no evidence of any dishonesty or irregularity in his conduct after he came from prison, and it is a fact that Caldera had earned the confidence and trust of the Managing Director, Cyril de Zoysa, who had a good experience of men, and that Caldera had carried on his duties as General Manager of an important Company without any shadow of doubt being cast on his integrity. Caldera is now a sick man, and though one or two of the respondents at one time desired that he should be called to be cross-examined, eventually none of the respondents desired a postponement for this purpose. It is the case that Caldera, and also the accountant Herath, had

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to sanction the payments to Algama and Sahabandu, and to initial the documents prepared for the drawing of money. But Caldera did not receive any money into his hands for this purpose ; all the cash being drawn by Algama and Sahabandu. The suggestion was that Caldera connived at the misappropriation by the latter officers, and shared the proceeds with them.

I have considered this suggestion, but I do not accept it. Caldera, after his lapse, had succeeded in creating for himself a position in life, and had earned the respect and trust of his employers. There were other opportunities of enriching himself at the expense of the Company, but it is clear that he did not avail himself of these opportunities. As regards the bribes, these had to be paid over a period of years, and the chances, that failures to pay the money over to the examiners would be detected, were not inconsiderable. One examiner, now dead, is said to have visited the office of the Company, because payments were delayed in his case, and payment was made to him at the office. Nor was he the only one who is said to have come to or near the office. Conversation with any of the examiners could easily have revealed the fact that the sums drawn for bribes were misappropriated. I do not think Caldera would have run that risk. He had a good and well-paid employment, which I think he would not have endangered.

The other suggestion was that Algama and Sahabandu misappropriated the money themselves. Here again, these persons had succeeded in obtaining positions of trust on the staff of the Company, and it is difficult to believe that they would have thought the game of misappropriation worth the candle, as the possibilities of detection were not to be disregarded. These officers had earned the trust of their superiors, and in their business life had conducted themselves with integrity. While there is a bare possibility that they may have pocketed for themselves small sums, which may be regarded as unconsidered trifles, I do not think they would have dared to make away with any substantial amounts. The Company dealt fairly generously with the employees, and Sahabandu at any rate had no difficulty in getting advances from the Company, when he needed them.

I have not lost sight of the fact that Caldera, Algama and Sahabandu must be regarded as accomplices, and their evidence is subject to this infirmity. Caldera and Algama seem to have readily accepted the idea of paying bribes, but in the case of Sahabandu, he had this obligation imposed upon him, and had to carry it out. He has told of his surprise on the first occasion. In his case, and also to some extent in the case of the other two, he was perhaps more sinned against than sinning.

The case of Algama must further be distinguished from that of Sahabandu. Algama had been for a long time in contact with the Motor Transport Department, and was a personal friend of Cecil de Soysa, the Technical Assistant and Chief Examiner, and also on friendly terms with several of the Motor Examiners. It is not possible in his case entirely to exclude the idea that he may be shielding some of his friends, and implicating others with whom he was not so intimate, or as it has been suggested in one instance in this case, that he may have implicated those examiners who were on bad terms with his friends. I am not holding at this stage that Algama acted in this manner, but in the case of his evidence, the considerations which I have indicated, arise and have to be considered.

The case of Sahabandu is different. When he undertook the work of licensing about November, 1945, he was not acquainted with the examiners, except that he appears once to have taken a bus for licensing to Dabrera, the 5th respondent. But this was not his usual work. The officer who actually took the buses for licensing was Solomons, and it was very rarely that Sahabandu took the buses. Sahabandu formed no friendships with any examiner, and there was no motive for him to include, or to exclude, any examiner as having taken bribes. As between the various examiners, he could be, and apparently was, quite impartial. The considerations, that arose in the case of Algama, did not arise in the case of Sahabandu.

The actual payments alleged to have been made to the examiners remain to be considered. In the earliest stage Algama made the payments. The dates of the drawing of the money from the office have been approximately fixed, but cannot be regarded as absolutely correct. They are as follows :—

		Rs.
1. 7.44	document SWBC. 2	110
25. 1.45	document SWBC. 3	175
6. 2.45	document SWBC. 4	125
2. 2.45	document SWBC. 5	150
4. 6.45	document SWBC. 6	150
17. 6.45	document SWBC. 7	50
22. 6.45	documen t SWBC. 8	100

In my opinion it has been established that these sums amounting in all to Rs. 860 were drawn in cash by Algama for the purpose of paying examiners. The drawings were made under the heading " Entertainment . "

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According to Algama these sums were paid over to the examiners on the same or the next day. In this case no lists of the examiners who were to be paid are available in the office of the Company. Algama said that the clerk, Quintus de Zoysa, kept lists on scraps of paper, but these lists have not been found. Algama himself kept no record of the payments, but he averred that all these amounts were paid to examiners from time to time in cash, as soon as each examiner had passed a fair number of buses. The payments were made in the Motor Examiners' rooms—two small rooms, but not in the presence of the Chief Examiner, Cecil de Soyza. Speaking from recollection Algama said he paid these sums to four examiners, viz.

T. S. Fernando, 1st respondent,

C. Rajasingham, 2nd respondent,

D. G. Jayatilleke, 4th respondent,

T. Mather, 3rd respondent.

He mentioned that he may have paid Rs. 150 to Austin Fernando, who is now dead, but he was uncertain both about the amount and the date, which may have been later.

As regards these examiners, it was argued that the 1st respondent, T. S. Fernando, had been out of Colombo till 1.2.45. But up to 30.5.44 1st respondent had been in Kalutara, and passed 38 buses there in that year. Payments had on occasions been made at the Colombo office to examiners in Kalutara and Panadura. The point was made that it was unlikely that Algama would have met 1st respondent to talk to at the end of 1943 or to pay in 1944, but Algama insisted that he had met him and spoken to him in the first instance. Also 1st respondent had passed about 10 buses in Mount Lavinia and Colombo and 3 at Panadura in 1945. These figures were admitted by the 1st respondent. First respondent was in Jaffna from 1.6.44 to 31.1.45. I do not think it is possible entirely to exclude T. S. Fernando, as one of the persons to whom money was due under the arrangement.

As regards Jayetilleke, 4th respondent, he was in Colombo in 1944 and 1945 up to February, when he succeeded T. S. Fernando, at Jaffna, and did not return to Colombo for 10 months. In 1944 he passed 37 buses up to July and in January, 1945, he passed 7 buses. He was a person to whom money had to be paid, according to the arrangement. Thereafter in 1946, 1947 and up to the end of January 1948, he examined no buses of the Company. Fourth respondent said he rejected 2 buses of the Company in 1948, and he attributed the allegations against him partly to that.

As regards Rajasingham, 2nd respondent, he was in Colombo up to 15.4.45, when he was appointed Divisional Road Transport Officer and ceased to have anything to do with the passing of buses. But between October 1943 and 1.7.45, he had passed 51 to 60 buses, and was therefore a person to whom money was due under the arrangement.

Second respondent, however, made a definite allegation that Algama had been induced to make allegations against him, at the instance of Cecil de Soyza, Technical Assistant and Chief Examiner in the Motor Transport Department, who was on bad terms with him. According to 2nd respondent, Algama was a personal friend of Cecil de Soyza—this is admitted by Algama. Second respondent had been an applicant for the post of Chief Examiner when Cecil de Soyza was appointed. Second respondent further averred that he had reason to disagree with Cecil de Soyza *inter alia* with regard to the examination of drivers who applied for driving licences. Second respondent suggested that at first Cecil de Soyza passed the drivers without having examined them. Second respondent objected to this and the drivers were thereafter summoned and examined. The Board of Examiners sat for the examination. But the system of marking was unusual. The marks actually earned by the drivers were set down, but the signatures of the members of the Board were obtained, without any endorsement that the driver had passed or failed the examination. The 2nd respondent added that he subsequently discovered in some cases that a figure had been inserted in the marks, so that a driver who had actually failed was shown to have passed the examination. To meet this situation, 2nd respondent wrote the word 'failed' across the form, before he signed.

This is a serious allegation of active dishonesty or gross carelessness against Cecil de Soyza. Second respondent said he made no complaint about this because he had discovered from earlier experience that complaints against superiors in the public service acted like "boomerangs." Cecil de Soyza did not give evidence, and at the time of this inquiry, he was on leave outside Ceylon. There is no definite evidence that he himself altered the marks. But if the facts spoken to by 2nd respondent are true, there has at least been gross carelessness on the part of Cecil de Soyza. I however hesitate for two reasons to decide this matter. For one thing, I do not think it fair to decide this matter in the absence of Cecil de Soyza, especially in view of the fact that there is no corroboration of the story. For another, I am not satisfied that Algama was induced to make the allegations against the 2nd respondent at the instance of Cecil de Soyza. No doubt Algama

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was on very friendly terms with Cecil de Soysa, and informed him that the memorandum was being prepared for submission to this Commission. Algama also was not at all happy that an inquiry should be started into the present allegations. But there is nothing to support the suggestion that Cecil de Soyza influenced Algama to make a false allegation against the 2nd respondent, and I certainly did not get the impression that Algama was making a deliberately false allegation in this matter.

As regards Mather, 3rd respondent, he was in Colombo till 31.3.46. In 1944 he passed 1 bus in Colombo and 4 at Dehiwala; in 1945 he passed 23 buses in Colombo, 3 at Panadura and 3 at Kalutara, and in 1946 he passed 6 buses in Colombo and 1 at Panadura. He was a person to whom payments were due under the arrangement. On 1.4.46 he was appointed Divisional Road Transport Officer, and ceased to examine buses.

I have carefully considered the evidence in this matter, and I had a very strong impression that Algama during the period in question made payments to the examiners. But it is a different matter to decide the question who were the examiners to whom he made payments. Algama had to depend entirely on his memory. It is not suggested that he made any comprehensive attempt to find out how much was due to each examiner, and to pay each of the examiners the due amount. He paid an examiner when he thought any of them had earned a fair amount. Admittedly he made no payments to some examiners who had actually passed, buses, e.g. to Wickremesinghe (6 buses), J. C. R. Perera (4 buses) and Gunawardena (5 buses). No doubt they had not done a great deal of work. Algama's payments appear to be haphazard, and at irregular intervals. There is no specific incident which helped to fix the names of the examiners in his mind. While I cannot rule out the possibility that he paid money to each of the persons he mentioned, I do not think it safe to depend entirely on Algama's memory. There is no doubt that his memory played him false on certain occasions, as will appear in respect of later payments. I cannot eliminate a doubt that one or more of these examiners mentioned did not receive payment, and it is not possible to say which examiner was not paid.

Taking the evidence as a whole, I am not able to say beyond reasonable doubt that the payments spoken to by Algama were made to the 1st, 2nd, 3rd and 4th respondents, or to any one or more of these men.

The next payment is alleged to have taken place early in February 1946, when Rs. 500 was drawn by Sahabandu. There can be no doubt that this sum was drawn for the purpose of making payments to examiners. Sahabandu had previous to this taken over the work of licensing buses. The actual date of the drawing has not been clearly established. The document SWBC.9 appears to indicate 5.2.46, but that is not certain. The money was drawn out of Suspense Account, and is shown in the earliest Suspense Account register. But in this register the exact date of each drawing is not mentioned, and all that can be inferred from it was that the drawing took place between 31.1.46 and 7.2.46 (See SWBC.52). This was the first occasion on which Sahabandu had anything to do with the payments. As he did not know the examiners, Algama took him to the office and introduced him to the examiners. Sahabandu had worked out the amounts due, and put the money into envelopes for each examiner, and handed these to Algama, who made the actual payments. The whole of this story has been strongly assailed, but I formed the clear impression that Algama and Sahabandu did go to the examiners on this occasion and that payments were actually made. Sahabandu in particular impressed me favourably, and the description of his reaction to the distribution of the sums did not appear to be an invention. It was urged that Sahabandu would not have been able to identify the envelopes, but there were only a few envelopes to be memorized. Nor was it beyond the skill of Algama to pass the envelopes without directing attention to that fact.

But that does not dispose of the whole matter, and the question has to be determined as to the persons to whom payments were made. It has to be noted that the lists kept by the licensing clerk, Solomons, only started about the beginning of 1946, and it is not quite clear but it is likely that payments were made for buses passed before that date. There is also a significant discrepancy. At the original investigation *in camera*, both Algama and Sahabandu mentioned 5 persons, as recipients of the payments, viz.,

T. S. Fernando, 1st respondent,
Dabrera, 5th respondent,
Mather, 3rd respondent,
Wright, 7th respondent,
J. A. B. Fernando, 6th respondent.

It is clear that the alleged payment to the last named—6th respondent—must be a mistake. The 6th respondent was out of Colombo from 15.1.42 to 2.10.46, and no payments were due to him at this date. At the inquiry in public both the witnesses refrained from mentioning the name of the 6th respondent, and when

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pressed in cross-examination admitted that a mistake had been made in this case. Apparently Solomons the licensing clerk had mentioned to Sahabandu that the 6th respondent was not in Colombo for this period. The two witnesses however maintained that payments were made to the other 4 persons mentioned. This is a not inconsiderable mistake, and throws a great deal of doubt on whether the memories of these two witnesses can be relied upon to establish these early events. It has been suggested that the whole evidence of these two witnesses should be rejected, but I certainly did not form the opinion that the witnesses were deliberately inventing a story. On the contrary the evidence of Sahabandu in particular appeared to ring true.

Of the four examiners indicated, T. S. Fernando, 1st respondent, and Mather 3rd respondent were persons who had passed buses during the period, and to whom money was payable under the arrangement. Dabrera, 5th respondent had passed 12 buses in 1945, and several in 1946. Wright, 7th respondent, had returned from mobilization about November 1945, and was stationed in Colombo from that time. By February 1946, he had passed 36 buses. Both Mather and Wright were persons to whom amounts were due under the arrangement. But in this case again we are confronted with the fact that these two witnesses, Algama and Sahabandu, are not corroborated. There is no record available of the examiners to whom payments were to be made or were made, and the memories of the two witnesses are not dependable, in view of the mistake concerning the 6th respondent, and of the events which took place shortly after, which will be mentioned later. While accepting the fact that payments were actually made on that day in the manner indicated, I am not able to say with reasonable certainty that the persons named, were the recipients of the bribes, and I cannot hold that the 1st, 3rd, 5th and 7th respondents or any of them received any payments on that occasion. It is not unlikely that some of them did, but it is not possible to say which, if any, of these examiners received the money.

There was a suggestion at one time that the payments were made to Cecil de Soyza who as Chief Examiner was responsible for allotting the buses to the examiners. But it is clear that if ever there was a practice to submit the forms to Cecil de Soyza in the first instance, this was more honoured in the breach. And the lists kept by Solomons and the practice of Sahabandu indicate that the examiners could be employed without the intervention of Cecil de Soyza. I do not find any support for that suggestion.

Thereafter Sahabandu carried on the work of payment by himself. The next drawing of money to pay examiners was Rs. 390 about 18.2.46. This date is indicated by the documents SWBC.10 and 10A. But the date is not certain. There was a drawing from Suspense Account (see SWBC. 53), but the date is not definite in this earliest register, and all that can be fixed is that the money was drawn between 13.2.46 and 20.2.46. But the date was probably 18.2.46 which is the date of the Suspense Account voucher (SWBC. 10B) which was found attached to the Register. There is no question that the money was drawn to pay examiners, but the persons to whom payments were made is doubtful. In camera, Sahabandu mentioned 5 persons.

T. S. Fernando, 1st respondent,

Wright, 7th respondent,

J. A. B. Fernando, 6th respondent,

Mather, 3rd respondent,

Dabrera, 5th respondent,

i.e., the same 5 persons whom he mentioned in camera as having received payment on 5.2.46.

At the public inquiry Sahabandu showed that his memory on this point was not reliable. The only person about whom he was consistent was Wright, 7th respondent. He made inconsistent statements about Dabrera, 5th respondent and T. S. Fernando, 1st respondent. He had no recollection of paying Mather, 3rd respondent, or J. A. B. Fernando, 6th respondent. There is no question that Sahabandu was in very poor health at the time he gave evidence, and that may have impaired his memory. But in all the circumstances, I think it would be unsafe, to depend upon his memory in this respect. He admitted at one stage that he was not sure to whom he paid on the first two occasions. While I am satisfied that the money was used for the payment of examiners, I cannot hold beyond reasonable doubt that payments were in fact made to the 1st respondent, the 3rd respondent, and 5th respondent, the 6th respondent and the 7th respondent, or to any of them, on this occasion. The furthest, Sahabandu could go was to say that he paid at least two examiners.

The next two drawings may be dealt with together, viz., the sum of Rs. 200 and Rs. 260.

The Rs. 200 may definitely be stated to have been drawn on 7.9.46. The Suspense Account Register shows that date. The Rs. 260 has definitely been shown to have been drawn on 24.12.46. That date appears in the Suspense Account

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Register. The Suspense Account vouchers are not available. But some of the earlier documents produced appeared to indicate the date 20.12.46. There is no question that the money was drawn to pay examiners, and Sahabandu's positive evidence is that both these amounts were paid to Dabrera, 5th respondent. This respondent joined the Department on 1.8.45, and in the year 1945 passed 12 buses, and in 1946 passed 43 buses, making a total of 55 buses, as far as is known. He appears to have been transferred to Nuwara Eliya from 1.10.46. The alleged payment of Rs. 200 was made before he left Colombo and that of Rs. 260 after he was transferred.

Sahabandu said that the latter payment of Rs. 260 was one he could not forget, because it was made just outside the Company's office at Mount Lavinia. There was urgency he said, because 5th respondent was going on transfer. Solomons may have told him some days earlier that 5th respondent was coming. Sahabandu's recollection was that the money was drawn from Suspense Account on the very day that Dabrera came. Some part of Sahabandu's recollection must be discounted because 5th respondent had gone on transfer on 1.10.46, and the 5th respondent was able to set up a case that he was in Nuwara Eliya on 24.12.46. It is suggested that Sahabandu's whole story should be discredited. There is however the evidence of the 5th respondent that he came to Colombo about the middle of December, 1946 for a case, and came on December 28th on leave granted till 30th December 1946, 5th respondent's diary shows that he was in Welimada on the 23rd December. There is only the entry public holiday against the 24th December. An accident call is shown at Hatton on 25.12.46. There is a fair inference that 5th respondent was not in Colombo on 24.12.46. That does not entirely dispose of the matter. On his earlier visit about the middle of December, 5th respondent had an opportunity to convey information to the Company's office that he was coming for the Christmas holidays. The drawing of the money by Sahabandu on 24.12.46 is not devoid of significance. I reject the suggestion that Sahabandu drew the money for his own use. I think he drew it for an emergency which he anticipated. I cannot accept the suggestion that Sahabandu was drawing on his imagination, when he spoke of Dabrera being paid near the Company's office. His account was vivid and convincing, and there is no reason why he should invent such a story as regards 5th respondent alone. It was an unusual occurrence which he could not forget, and was unlikely to invent. Some of the details, Sahabandu has confused, but I accept his evidence that he paid the sum of Rs. 260 to 5th respondent, probably between the 28th and the 30th December, 1946. I have borne in mind that the fact that Sahabandu's memory in certain matters was unreliable, but in this case there was a particular event to fix the matter in his mind, namely the visit by 5th respondent to the neighbourhood of the Company's office, and the fact that the payment was made there.

I hold that Dabrera, 5th respondent, accepted gratifications of Rs. 200 in September 1946 and of Rs. 260 in December 1946.

The next two drawings by Sahabandu may be treated together. It is clear he drew Rs. 555 about the beginning of April 1947, and Rs. 475 in June 1947. The Suspense account shows the exact dates of those drawings. The Rs. 555 was drawn on 2.4.47 and the Rs. 475 was drawn on 16.6.47. The total of the two drawings was Rs. 1,030.

On this occasion Sahabandu seems to have attempted to make a comprehensive list of the amounts due to the various examiners, from the lists kept by Solomons (SWBC 46A to D). For this purpose Solomons typed a list with the names of the particular examiners and the numbers of the buses which they examined. He made out the list up to 3.3.47. The document embodying the list is SWBC. 12, which is an extremely important document. It has been established that Solomons typed this list from his own lists SWBC 46A to D. To this typed list Sahabandu, added in his own writing certain buses passed between 3.3.47 and 17.3.47, and buses accidentally omitted. The total of the buses passed up to 17.3.47 was as follows : —

Wright, 7th respondent	23	buses
J. A. B. Fernando, 6th respondent	32	,,
Austin Fernando (dead)	7	,,
T. S. Fernando, 1st respondent	45	,,
Mather, 3rd respondent	3	,,
Total	110	,,

It may be noted that the document shows that one of the buses of T. S. Fernando, 1st respondent, and the 3 buses of Mather, 3rd respondent, were examined in 1946. As regard the 7 buses of Austin Fernando (dead), payment was not made by Sahabandu, but is said to have been made by Algama. Apparently Austin Fernando

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came to the office of the Company and received payment there. These buses were noted as paid and were not referred to in SWBC.12 thereafter. There remained 103 buses to be paid for, and the sum payable was Rs. 1,030.

As this was a fairly substantial amount, Sahabandu, apparently on instructions did not draw the whole amount in one lump sum. Instead Rs. 555 was drawn on 2.4.47 — this happens to be the day before the Easter holidays commenced. Previous to this the list had been submitted to the Managing Director, Cyril de Zoysa, who made an endorsement "G. M. speak." G. M. is the General Manager, Caldera. After seeing Caldera, Cyril de Zoysa sanctioned the payment, but made no further endorsement on SWBC.12. Sahabandu says that he paid the money to certain of the examiners as follows:

	Rs.	c.
Wright, 7th respondent	125	0
J. A. B. Fernando, 6th respondent	150	0
T. S. Fernando, 1st respondent	250	0
Mather, 3rd respondent	30	0

It is a fact that Sahabandu noted these figures as aginst each of these examiners with the word "Pd." in red pencil on S W B C. 12. The total of the payments was Rs. 555 which is the exact amount which he received on 2.4.47. There can be little question that this document SWBC. 12 was duly prepared in the manner indicated, and it is clear it was sent by Sahabandu to the General Manager for authority to draw Rs. 1,030 on 17.3.47, and forwarded by him to the Managing Director, apparently on 27.3.47. The entries on the document SWBC. 12 show that. The money, Rs. 555 was drawn on 2.4.47.

The next amount of Rs. 475 needed to make the sum of Rs. 1,030 was drawn on 16.6.47. There is no entry in SWBC.12 to show exact amounts paid to each examiner but there is an entry in that document "Balance 475 pd. 17.6.47" with the initials of Sahabandu, and Sahabandu is positive that the balances to Wright, 7th respondent, J. A. B. Fernando, 6th respondent, and T. S. Fernando, 1st respondent were paid on that date. In fact this is the only date where payment of a specific amount to examiners can be established. Ordinarily the payments were made on the very day of the drawing or on the next day, but there were occasions on which Sahabandu could not meet the examiner for days or weeks. There is no other record of the exact day of payment to the examiners.

The document SWBC. 12 is in my opinion a genuine document, and the entries indicated by me were made at the times spoken to. The document gives considerable support to the story of Sahabandu. The whole sum of Rs. 1 030 has been accounted for.

There was an attempt made to show that the payments could not have been made in the manner indicated by Sahabandu. As regards the drawing of Rs. 555, in some of the documents, the date 3.4.47 appeared, and great play was made of the fact that Sahabandu drew the money on the first day of the Easter holidays when Government offices were closed. But the Suspense Account Register definitely showed that the money was drawn on 2.4.47—the day before the holidays. This gave some strength to the story of Sahabandu as he may have desired to make the payments before the Easter Holidays.

The 3rd respondent Mather impugned the payment alleged to have been made to him in April 1947. There is no doubt he has succeeded in showing that he was not in Colombo on 2.4.47, the date of the drawing of the money. He left Ceylon for India on 31.3.47 and did not return to Colombo till 14.4.47. He produced documents TM. 1 to TM. 8 which established this fact. This however does not dispose of the matter. Ordinarily Sahabandu paid the money on the same day he received it or on the next day, but there were occasions when he did not meet the examiner for weeks, and then he deposited the sum drawn with the cashier, until he was able to meet the examiner. No record was kept or preserved of these deposits. No doubt the sum due to the 3rd respondent was a small amount, and there was a possibility of it being forgotten. But that cannot be said in this case, for in SWBC. 12 against the name of the 3rd respondent is the endorsement "Pd. 30" in red pencil, and there are similar entries against the other examiners mentioned.

Did Sahabandu keep this money for himself? There is no doubt that he had been conscientious in making up the list, and had been at pains to find out the overdue payments for 1946, and had in his own writing added one item of that year for T. S. Fernando, 1st respondent, and had in his own writing added these 3 items for Mather, 3rd respondent. In each case he had noted the year 1946 against the buses. It is true that Mather, 3rd respondent, had been appointed Divisional Road Transport Officer as early as 1.4.46, and had not examined any buses after that date. But the earlier payments were made in February 1946,

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and the latter payments of September 1946 and December 1946, were made to Dabrera only. It is not difficult to see that 3 buses examined by Mather after February 1946 may not have been paid for. There is no doubt that apart from his visit to India 3rd respondent was stationed in Colombo. My observation induced me to accept the evidence of Sahabandu as truthful, although his memory at times was at fault. In this case he has the support of his entries and his indorsement of payment. I have considered the circumstances, and I regret that I am unable to accept the denial of the 3rd respondent, which does not raise a reasonable doubt in my mind about the truth of Sahabandu's evidence.

J. A. B. Fernando, 6th respondent, was in Colombo from 2.10.46, but had not passed any buses before that date. He was able to say that he was in the office on 2.4.47, the date of the drawing of Rs. 555. He had passed 19 buses in 1946 after October, and 19 buses in 1947, and 15 buses in 1948 in the month of January alone. That was the information obtained from the pink forms which were available. He however maintained that on 17.6.47, the date when the second sum of Rs. 475 was said to have been disbursed, he had attended the Municipal Court in connection with a case. That he did go to the Court is certain. But he admits that he went to the office first, and did not go to Court till 9.30 a.m. Further, the case was postponed, and he did not spend the whole day in Court. He said he usually fixed field work for the days he attended Court, and did not return to the office, but there was no evidence available as to whether he went on field work on that day, and if so where he went. The further contention by him and some of the other examiners that when the case finished early they did not return to office, but went home, is difficult to accept. It appears to be a gross dereliction of duty. This respondent said he attended Court 78 days in the year. I do not accept the story of the 6th respondent that he did not receive the moneys alleged to have been paid to him, and that he did not see Sahabandu till the date of the inquiry before this Commission. I accept the story of Sahabandu that Rs. 320 was paid to the 6th respondent in two instalments in April and June 1947.

Wright, the 7th respondent also denied the payments alleged to have been made to him. He had passed 61 buses in 1946, commencing on 4.1.46, (36 of these had been passed up to the end of January 1946). In 1947 he passed 26 buses and in 1948 after the end of January 3 buses. He had worked in April 1947 at the office right up to the Easter holidays, the last working day was 2.4.47. He was unable to tell what his movements were on 17.6.47. I do not accept his denial of the receipt of the payments, and his statement that he knew Sahabandu only by sight, and not personally. I accept the story of Sahabandu that he was paid the sum of Rs. 230 in two instalments in April and June 1947.

T. S. Fernando, 1st respondent, was the only one of the examiners that did not give evidence. In 1945 he had passed a certain number of buses in Kalutara, Panadura and Colombo. In 1946 he passed 6 buses in Panadura, and 57 or 58 buses in Colombo. In 1947 he passed 36 buses in Colombo and 1 in Kalutara. In 1948 before the end of January he passed 49 buses in Colombo and 3 in Kalutara. The documents this respondent produced did not show that payments to him on or about the dates alleged were impossible. I accept the evidence of Sahabandu, which is uncontradicted in this case that payment was made to the 1st respondent of Rs. 450 in two instalments in April and June 1947.

I do not propose to deal in detail with the case of Austin Fernando, the examiner who is now dead. He had examined buses in Kalutara and Panadura, and the amount of Rs. 70 due to him is said to have been paid separately by Algama at the Company's office. This amount is mentioned but excluded in SWBC. 12.

I wish to make it clear that I do not regard the entries in SWBC. 12 as evidence which can be regarded as legal corroboration of the story of Sahabandu. They are certainly not corroboration in the legal sense. But they are very strong facts which must be taken into account in making an assessment of Sahabandu's evidence and more particularly in testing his memory. I have already dealt with my views about this document. I have also come to the opinion that Sahabandu was a truthful witness.

One other drawing remains to be dealt with, viz. Rs. 280 drawn by Sahabandu on 5.1.48. The Suspense Account Register shows that date, and it is clear it was drawn for the purpose of making payments to examiners. Sahabandu in this instance did not make up a detailed list like SWBC. 12. He said the money was paid to T. S. Fernando, 1st respondent and J. A. B. Fernando, the 6th respondent, and possibly to another examiner. He was sure of two names. There is no doubt that both these examiners had passed a number of buses, and Solomons speaks to the fact that on the occasions when he took buses for licensing, these two men had made a demonstration, which Solomons interpreted as a criticism of the delay in payment. This is a fairly recent payment and Sahabandu was sure he paid these respondents. I think his memory may be relied on, and that he is a truthful witness.

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J. A. B. Fernando, 6th respondent, established that he had attended the Joint Magistrate's Court on 5.1.48, and he said the case ran on into the afternoon. But Sahabandu was not able to say that he made payment on that day. In any case 6th respondent must have attended office till about 9.30 a.m. on 5.1.48, and may well have returned in the afternoon, and in any event he was clearly in the office on 6.1.48 and could have been paid on that date.

T. S. Fernando, 1st respondent, as I said before, gave no evidence. I am unable to accept the denial of J. A. B. Fernando, the 6th respondent. I am satisfied, that though there is no corroboration or documents to support Sahabandu, his evidence can be accepted beyond reasonable doubt that payments were made to the 1st, and to the 6th respondent in January 1948.

I am restricted by the terms of the Commission into inquiring into matters arising between 1.9.39 and 28.1.48. I have no authority to enquire into matters arising after the latter date. But a body of evidence was placed before me to show that the system of paying bribes continued after January 1948. Certainly sums were drawn in February, 1948 (Rs. 530), in March, 1948 (Rs. 360), and April, 1948 (Rs. 430), for the purpose of making payments to examiners. The payments were said to have been made to T. S. Fernando, 1st respondent, Wright 7th respondent, J. A. B. Fernando 6th respondent, Jayetilleke 4th respondent and Austin Fernando (now dead). The payments were of fairly substantial amounts to all, except in the case of Jayetilleke to whom Rs. 10 was said to have been paid. On this occasion Sahabandu made out a comprehensive list on the lines of SWBC. 12 and submitted it for sanction to Algama, the Acting General Manager, who in turn sent it to the Managing Director, Cyril de Zoysa, who eventually sanctioned it. Solomons in this case did not type the details, but Sahabandu himself made up the documents from Solomons' list. The document is S.W.B.C. 15; and it is important for our purpose chiefly because it shows that SWBC. 12 was not a solitary example of Sahabandu's activities. I do not, however, propose to decide whether payments were made to the various examiners as set out in that document. The chief use of the evidence was that it gave a further opportunity to the respondents to show that the evidence of Sahabandu was false, and all I need say is that nothing was shown to prove that Sahabandu's evidence was demonstrably wrong. The list SWBC. 15 did not show the exact dates on which Sahabandu made payment to the examiners. I may add that as a result of the cross-examination and the evidence of the respondents, I saw no reason to alter my views that Sahabandu was a truthful witness. He gave a fairly consistent account of these payments, although in one or two particulars he corrected mistakes made in his evidence given in camera.

Comment has been made on one point. Throughout the course of the evidence it has only in one case been possible to fix the exact date of the payment to the examiners. It was no doubt a case in which Algama and Sahabandu were not likely to remember the dates, and there is only one case where payment was shown under a precise date, viz. 17.6.47 in SWBC. 12. No doubt there has been a certain measure of difficulty placed in the way of the respondents as a consequence, and I have taken that into account. But when the precise date (viz. 17.6.47) was given, it was not successfully countered. Also in the long run the case depended upon the question which of the witnesses was speaking the truth. On this matter I have already expressed my views.

I have already commented on the fact that this inquiry has revealed the low standard of commercial morality displayed by the company in relation to bribery. I think I may also comment on the fact that gratifications were so readily accepted by members of the public service. It is a matter for consideration that one responsible officer in this case was willing to make a charge of dishonesty or gross carelessness against another superior officer in his Department. It is also difficult to believe that gratifications could have been distributed in the manner indicated, without all the officers in the same room at least becoming at some time aware of this practice, whatever efforts were made to conceal this. But for a difference between the Motor Transport Commissioner and the Managing Director of the Company the facts elicited may never have been disclosed, but it would have been difficult to prevent rumours leaking out to the public about the readiness of some officers at any rate to take gratifications, and that would have affected the efficiency of the whole Department.

I hold as follows in respect of each of the respondents.

As regards 1st respondent (*T. S. Fernando*):

I hold that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purpose indicated in the years 1945 and 1946. I further hold that it has been established beyond reasonable doubt that he accepted gratifications in the said manner and for the said purposes in April 1947, in June 1947 and in January 1948.

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As regards 2nd respondent (C. Rajasingham) :

I hold that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the years 1944 and 1945. There is no allegation that he has received gratifications in later years.

As regards 3rd respondent (T. J. Mather):

I hold that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the years 1944, 1945 and 1946. I further hold that it has been established beyond reasonable doubt that he accepted a gratification in the said manner and for the said purposes in April 1947.

As regards 4th respondent (D. G. Jayatilleke) :

I hold that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the years 1944 and 1945. There is no allegation that he received gratifications in later years up to 28.1.48.

As regards 5th respondent (D. St. C. Dabrera):

I hold that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the year 1945. I further hold that it has been established beyond reasonable doubt that he accepted gratifications in the said manner and for the said purposes in September 1946 and in December 1946.

As regards 6th respondent (J. A. B. Fernando):

I hold that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the years 1945 and 1946. I further hold that it has been established beyond reasonable doubt that he accepted gratifications in the said manner and for the said purposes in April 1947, in June 1947, and in January 1948.

As regards 7th respondent (H. L. Wright):

I hold that it has not been established beyond reasonable doubt that he accepted gratifications in the manner and for the purposes indicated in the allegation for the year, 1946. I further hold that it has been established beyond reasonable doubt that he accepted gratifications in the said manner and for the said purposes in April 1947 and in June 1947.

The allegation against him regarding 1948 is a mistake, as regards the portion of that year relevant for our inquiry.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 118.

RESPONDENT:

S. Paramagurunather,
Record Keeper,
Magistrate's Court,
Panadura.

IN CAMERA

Heard on 10th December, 1948, and 12th January, 1949.

Respondent : S. Paramagurunather, Record Keeper, Magistrate's Court, Panadura.

The matter for inquiry was that the Respondent, on or about 18th October, 1947, demanded and received a gratification of Rs. 2 from H. F. Marku Fonseka as a reward or recompense for attending to his duties in connection with the execution of a bail bond for the release on bail of P. H. Francis Rodrigo, the accused in M. C. Panadura, Case No. 49,297.

The witnesses who spoke to the gratification were H. F. Marku Fonseka and Arthur Santiago Rodrigo, the brother of P. H. Francis Rodrigo.

Marku Fonseka's actual occupation is in some doubt. He said he had been a tavern keeper over ten years ago, and that he had subseqently kept a hotel, but the Village Headman, John Perera, had not heard of him as a hotel keeper, and it is doubtful if he had that occupation. He also held a stall in the public market for sale of vegetables for a short time. The Headman said Marku Fonseka was a paid bailsman, who on occasion stood bail for accused persons, but mainly acted as " broker " or " go between " for the purpose of providing others as bailsmen for accused persons. The respondent too gave evidence to the same effect. Marku Fonseka I think came frequently to the Courts, and earned income by standing bail himself or by providing others as bailsmen. I am inclined to think that this is his main occupation that is known to us. It is curious that at times when he had defaulted, and notices from the Court could not be served on him, he was still providing bail for accused persons. I think there is some substance in the suggestion that there is a ring of persons who earn income by providing bail, and that Marku Fonseka is an active member of that ring.

According to Marku Fonseka's story, he was approached on the 18th October, 1947, by Arthur Rodrigo, brother of the accused in the case in question, and went to the Courts prepared to stand bail. Later he collected his deeds and went to the Headman to get a certificate of worth. The Headman was paid Rs. 2 for this service, and according to Financial Regulations (F. R. 1225), this is a legal fee. I do not know the reason why this charge is made legitimate, but it does appear that the levy of this fee makes it much easier for the Court official to pretend that a similar fee is payable to himself in the case of bail; and I cannot think it desirable that such a view should become prevalent among accused persons or those interested in them. Marku Fonseka obtained the certificate of worth and returned to the Courts, where respondent was acting as Chief Clerk. Rs. 2, was demanded by respondent, and paid to him by Marku Fonseka, who obtained the sum from Arthur Rodrigo. The bail bond was then executed and the accused released.

Arthur Rodrigo confirmed portions of this evidence, and said he was present when the sum of Rs. 2 was paid to respondent. He appears to have provided the money. Arthur Rodrigo was a watch repairer who carried on business not far from the Courts. He said he had been to the Courts before in the way of buisness, and had once repaired a clock there for Rs. 10, but is clear from the Court books that he had been paid three separate sums (Rs. 7.50, Rs. 22.35 and Rs. 19) in May, 1947 for work in repairing clocks, and probably other work as well. Whether he was familiar with the practice of the Courts is not so clear, and he says he regarded the payment to respondent as a legal fee, or rather that he did not know the contrary.

Respondent gave a different story. His version was (1) that this case was instigated by a fellow clerk called Peter Fernando, who was angry with him, and (2) that there was unpleasantness between Marku Fonseka and himself on 18th October, 1947, and that this was a motive for the false allegation.

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As regards the first contention, I was not impressed. Shortly, respondent's story is that prior to May, 1947, he was preferred to Peter Fernando for the acting post of Chief Clerk, when the latter was absent, and that he had acted as Chief Clerk on several occasions, although Peter Fernando was the senior officer. But if this is the case, it is strange that the clerk Adikaram, who was called by respondent, had not known of it, or heard any talk in the office about it. Adikaram was under the impression that Peter Fernando was the man who regularly acted for the Chief Clerk. The peon Peter Perera was, in my opinion, an unreliable witness and went much further than the respondent. He referred to the various occasions on which Peter Fernando referred disparagingly to respondent as "Demala". Respondent, who must have heard this, did not refer to this at all. I am not prepared to accept the peon's evidence. Further, it is clear from the respondent's evidence that from May 1947, Peter Fernando was the officer who acted for the Chief Clerk, and if any resentment continued, it was probably on the part of the respondent. No doubt, Peter Fernando knew Arthur Rodrigo, and gave him work, but I am not satisfied that the two of them and Marku Fonseka were often together. I do not accept the suggestion that the clerk Peter Fernando instigated Arthur Rodrigo, or Marku Fonseka to make the allegation in question.

There is more substance in the second contention, where the respondent's evidence gains some support from Adikaram. The actual date of the "Unpleasantness" is not given by Adikaram, but he appears to refer to the 18th October, 1947. Adikaram was under the impression that Marku Fonseka wanted the bail bond executed without the necessity of a certificate of worth. Here there is a contradiction, for the respondent says that the request made was that the accused should be brought from the cell in Court, and kept in the office, while the deeds and the certificate of worth were obtained. But in any case, Adikaram said that loud words were exchanged, the respondent was somewhat harsh, and there was "a commotion like thing". It is possible that Adikaram did not exactly follow what took place, but he did speak to the exchange of words between the two, and I formed the impression that his evidence was reliable and impartial.

The peon Peter Perera tried to add further significance to the quarrel by saying that Marku Fonseka, as he went out, said he would do a good thing one day or another. I do not accept this evidence.

All this took place in the office, some time before the bail bond was executed. Respondent said that this took place on a Saturday, when he intended to leave Court at one o'clock sharp, as he was on leave and going to Jaffna that day. There was accordingly some ground for urgency in providing bail.

It is very likely that the witness Arthur Rodrigo was aware of this unpleasantness.

There is one other matter I may take into account. Marku Fonseka first wrote to this Commission on 14.7.48, alleging that the Chief Clerk accepts bribes at the rate of Re. 1 per Rs. 100, and after the case is over a bribe of Rs. 2 has to be given to the Record Keeper in order to take back deeds. This respondent is the Record Keeper, and it is significant that no allegation of taking bribes at the execution of bail bond is made against him. When asked for particulars, Marku Fonseka wrote to this Commission, giving case numbers for the years 1943 and 1944, and apparently earlier, where bribes had been taken. The number of the case in question now (M. C. Panadura 49,297) has not been mentioned in this letter. It was in a later letter that the respondent was specifically mentioned as a bribe taker.

I think that in all the circumstances, the respondent is entitled to the benefit of a reasonable doubt. Marku Fonseka must be regarded as an accomplice in any event, and the fact that there was unpleasantness with the respondent, on the very day in question, throws further doubt upon his evidence. Arthur Rodrigo was a better witness and it is not clear that he was an accomplice, but I do not think his evidence is quite strong enough to establish the allegation. In the circumstances I hold that the allegation I am inquiring into has not been established.

The inquiry, however, leaves an unpleasant impression that all has not been well in this Court with regard to the taking of bail in regard to accused persons. It is not clear why accused persons should be put into the cell as a matter of course, when the Magistrate has ordered bail in their cases. The rule seems to save trouble only for the Fiscal's Guards and the Police officials. In many cases, these accused, have not been in the cell up to the time when the Magistrate ordered bail in the case. Also, on past occasions, there is a strong suspicion that illegal payments have been recovered by the officer dealing with bail, but the evidence has not been sufficiently definite to identify the persons implicated. As I have already pointed out the legal charge made by the Headman for the certificate of worth appears to facilitate the taking of bribes by Court officials in the case of bail bonds. Further, the existence of a ring of what may be called professional bailsmen is disquieting.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 121.

RESPONDENT :

U. B. Labutala,
Village Headman,
Makempe,
Hewaheta.

IN CAMERA

Heard on 17th February and 11th March, 1949.

Respondent: U. B. Labutala, Village Headman, Makempe, Hewaheta.

The matters for inquiry relating to this respondent are as follows:—

(1) that during the period 1941 to 1946 he received and accepted gratifications amounting to Rs. 216 from H. M. H. Kiri Banda in consideration of a promise by him not to report to Government that the said Kiri Banda had removed from his paddy field certain quantities of paddy in excess of the amount he was entitled to remove;

(2) that in or about November 1946, he received and accepted a gratification of Rs. 10 from H. M. H. Kiri Banda as a reward or recompense in consideration of a promise to take action to obtain for the said Kiri Banda a permit to asweddumize a field called Ambalantenne; and

(3) that during the period 1st September, 1939 to 28th January, 1948, he accumulated money and purchased immovable properties in such circumstances that the only reasonable presumption was that such accumulations and purchases were made or effected as a result of bribery or corruption.

The respondent also bears the name of Labutala Walauwe Ukku Banda, and has been Village Headman of Makempe since 1918.

The witnesses who spoke to the payments of gratifications (1) and (2) were H. M. H. Kiri Banda and D. H. Ukku Banda. According to Kiri Banda, he regularly paid gratifications to the respondent in order to get his correct share of the paddy.

In his explanation given at the inquiry, this was not with the intention of getting excess paddy for himself, but to prevent the respondent from claiming excess paddy for Government, and compelling him to remove less than he was entitled to remove. Kiri Banda did not live in the respondent's area, and removed his paddy grown in this area to Wegama, outside the area, and needed a permit for that purpose.

In his original statement to this Commission, Kiri Banda gave precise evidence, showing that he had paid Rs. 25 for each of four or five seasons, and Rs. 20 and Rs. 15 for other seasons. At the later inquiry he said he could not remember giving Rs. 25 on any occasion. He said he gave Rs. 20 and Rs. 15 for the Maha and Yala seasons respectively. His explanation of this discrepancy was not satisfactory. The other witness Ukku Banda stated that on one occasion he carried Rs. 15 to the respondent on behalf of Kiri Banda and Kiri Banda confirmed this. Originally he said this was in 1943, but in his later evidence he insisted that it was in respect of the Yala season 1946. Here again the explanation was unsatisfactory.

It was argued that these witnesses had a motive for making a false charge against the respondent. The enmity is said to have started with a prosecution launched against ten persons at the Village Tribunal of Hanguranketa for gambling. It was suggested that some of these persons were relations of Kiri Banda and Ukku Banda, but the latter denied this, and it is at the least doubtful if any relations of these two men were charged. At any rate, neither Kiri Banda nor Ukku Banda showed any signs of anger against the respondent. There is vague talk by the respondent these two had stolen praedial produce. But the fact that they were not even charged discounts this story. A recent ground of anger is said to be that Kiri Banda's brother contested the respondent's son-in-law at a Village Committee election; but Kiri Banda's brother won the election, and I do not think there is much substance in the argument.

There is, however, the fact that both Kiri Banda and Ukku Banda must be regarded as accomplices, and their evidence was not really strong enough to support the allegations that regular payments were made to the respondent. As regards the other allegation (2), that Rs. 10 was paid to the respondent to get a permit for asweddumizing the land Ambalantenne, it transpired in evidence that the respondent had recommended that Kiri Banda should be allowed to asweddumize only three seers of this land for only one season each year. But for some reason, Kiri

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Banda was allowed to asweddumize the whole land for both seasons. It does not appear that the respondent went out of his way to press this application, and I do not think the evidence brings home this allegation beyond reasonable doubt.

The evidence of Ukku Banda that the respondent collected excess paddy under the Internal Purchase Scheme is not strong. The only other person who speaks to this is G. Dingiri Banda, but this witness admitted that he had been on the worst of terms with the respondent from about 1944, and only spoke to the collection of this excess paddy in the years 1943 and 1944. Certified copies of a number of cases between Dingiri Banda and his close relations on the one side, and this respondent on the other (see U. B. L. 1, 2, 3 and 4), were produced in this connection. I do not think any reliance can be placed on the evidence of Dingiri Banda, and his story that he made friends with the respondent and even gave him a bribe of Rs. 5 cannot be accepted. This was after January 1948, and is outside the scope of our inquiry.

There is, however, no doubt that the villagers were dissatisfied with the respondent's measurements of paddy, and once as a result of a petition signed by 28 persons, the Korala was sent to make the measurements. Of these 28 persons, only Ukku Banda and Dingiri Banda gave evidence before me.

I hold that the allegations in paragraphs (1) and (2) have not been established beyond reasonable doubt.

Allegation (3) relates to the accumulation of wealth and the purchase of properties by the respondent. It is clear that even before September 1939, the respondent had acquired property. The respondent has produced a number of deeds obtained by him for this period (U. B. L. 7 to U. B. L. 23). He said that by September 1939, he was worth about Rs. 3,000, and that he had paddy land and high land which was cultivated with vegetables. For the years relevant to our inquiry, he gave a list of the properties acquired by him. He appears to have expended the following sums in the purchase of properties:—

				Rs.
1940	..	..	..	150
1941	..	..	..	250
1942	..	..	..	150
1943	..	..	..	500
1944	..	..	..	500
1945	..	..	..	350
1946	..	..	..	700
1947	..	..	..	1,700

These were purchases in his own name, and in the names of his wife and children. The witnesses called by Crown Counsel could not prove any further purchases.

It may be noted that the purchases were more continuous after 1939, and also bigger sums were expended every year, especially from 1943 to 1947. In 1947 as much as Rs. 1,700 was spent by the respondent. But I think the respondent has been able to give an explanation of how he got this income, which is not unreasonable. He said his earnings increased after the war. He had always been a keen grower of vegetables, and he and his children won prizes for this. Vegetables fetched good prices during the war years, and he was able to earn Rs. 50 or Rs. 60 a month from this source. He also led evidence that he kept cows, and was able to make Rs. 50 or Rs. 60 a month from the sale of milk. He also had his pay as Headman, which at the end of the period was Rs. 80 with allowances. He sold his excess paddy to Government. His wife also earned small amounts by sewing. The evidence certainly tended to show that this was a hardworking and thrifty family. The total of his purchases of land was Rs. 4,300 for the relevant years, and during the war period he was able to save Rs. 500 or Rs. 600 a year. His expenditure was low on household necessities, most of which was produced on his lands.

One other item which he spent money on was the building of a house. The witnesses estimated that it would have cost Rs. 1,500 or Rs. 2,000, but the respondent said the actual cost was Rs. 500, as the material was supplied from his lands, and the labour provided by his family. I cannot say that this explanation is unreasonable.

I cannot hold that the allegations in paragraph (3) have been established.

All the allegations against the respondent fail.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

14——J. N. R 27060(7/51)

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APPENDIX TO SECOND INTERIM REPORT

No. R. 52.

RESPONDENT:

M. K. Don Manuel,
Village Headman,
Pitipane North,
Homagama.

IN PUBLIC

Heard on 15th March, 16th March, 4th May and 5th May, 1949.

Respondent:—M. K. Don Manuel, Village Headman, Pitipane North, Homagama.

There are a number of matters for inquiry relating to this respondent, as follows:—

(1) that in or about August, 1946, he received and accepted a gratification of Rs. 10 from G. Don Elias Perera, as a reward or recompense in consideration of a promise to recommend his application for a permit to purchase a gun;

(2) that in or about 1947, he received and accepted a gratification of Rs. 5 from M. Oparis, as a reward or recompense in consideration of a promise not to take action against him for felling a jak tree without the sanction of the proper authority;

(3) that on or about 21st February, 1947, he received and accepted a gratification of Rs. 10 from M. Themis Singho, as a reward or recompense in consideration of a promise not to take action against him for felling a jak tree without the sanction of the proper authority;

(4) that on or about 4th March, 1947, he received and accepted a gratification of Rs. 10 from M. Themis Singho, as a reward or recompense in consideration of a promise not to take action against him for felling a jak tree without the sanction of the proper authority;

(5) that on or about 24th April, 1947, he received and accepted a gratification of Rs. 7 from M. Themis Singho, as a reward or recompense for the issue to him of a certificate of worth;

(6) that on or about 24th April, 1947, he received and accepted a gratification of Rs. 2 from M. Themis Singho, as a reward or recompense for the issue to him of a certificate of worth;

(7) that during the period 1st September, 1939, to 28th January, 1948, he accumulated money and purchased immovable property, in such circumstances that the only reasonable presumption is that such accumulations and purchases were made or effected as the result of bribery or corruption.

I propose to deal with the allegations against the respondent in the order of the paragraphs.

(1) The allegation is that the respondent in or about August, 1946, received and accepted a gratification of Rs. 10 from G. Don Elias Perera in connection with the issue of a gun licence to the latter.

It is clear that Elias Perera applied for a gun licence to the Government Agent, and that the matter was in due course referred to the respondent for his report. It is admitted that Elias Perera actually saw the respondent in this connection, and that the respondent recommended the application. The licence was actually issued on 17.9.46. Elias Perera was anxious at first to get the licence, but later decided not to purchase the gun, because he was a little short of money, and also because there had been an increase in that district of crime in which guns were used, and Elias Perera thought it possible that some of his enemies might implicate him in a case.

Elias Perera gave evidence that the respondent demanded and received a bribe of Rs. 10 for recommending the issue of a gun licence. That was some time before the licence was actually issued.

The payment of the bribe was corroborated by the witness Sardiel, who was at the respondent's house at the time on other business—he said he had come to purchase paddy from the respondent. Sardiel saw the payment of the money by Elias Perera to the respondent.

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The evidence of both these witnesses was attacked on more grounds than one. But the chief point made against them was that they were members of a society called the Govi Peramuna or Peasants' Front in Hewagam Korale. This Society appears to have come into existence shortly before the Parliamentary elections, and to have lasted for a few months, and to have died a natural death after the elections. At the time there was dissatisfaction over the Internal Purchase Scheme, and in particular (1) with the requisition of paddy at Rs. 6 a bushel, (2) with the imposition of what has been described as the "acreage tax". It was generally agreed by all the witnesses, that the amount of Rs. 6 given by Government was inadequate, and hardly covered the cost of production. At the time also paddy was selling in the black market for about Rs. 20 per bushel. The demand was made by the Govi Peramuna that the paddy should be taken by Government at Rs. 15 per bushel (see pamphlets MDKM.1 to 4). At the same time the Government had decided to take compulsorily 3 bushels per acre from each cultivator per year in the first instance. This was not done by the issue of a requisition order, which the Government Agent had the right to issue, but was collected at the time of the measurement of the paddy. The Govi Peramuna took the view that the collection so made was illegal, and advised the cultivators to refuse to give the "acreage tax". In point of fact, the collection was later recognized to be unlawful, and the law had to be amended to permit the collection of "acreage tax".

There is evidence that a number of cultivators refused to give the "acreage tax", and a few test cases were instituted, and one of these cases related to Leoris Senanayaka—the original petitioner and one of the witnesses in these proceedings. He was in the first instance convicted, but the conviction was set aside in appeal. But as a result of the initial conviction a number of persons apologized to Court and surrendered the paddy.

The respondent maintained that both Elias Perera and Sardiel had enmity against him for reporting them for the refusal to give the "acreage tax".

Elias Perera denied that he was a member of the Govi Peramuna, or refused to give the "acreage tax". It is true that the other witness, Sardiel, said that Elias Perera was a member—he thought a Committee member. but he added that he attended only one or two meetings, and that he could not remember seeing Elias Perera at them. Respondent said Elias was reported by him, but he was clearly uncertain as to whether a case was instituted against Elias Perera. I take the view that Elias Perera did not play any important part in the Govi Peramuna, and that he had no real cause for animosity against the respondent. Respondent said that Sardiel was reported, but that the report was not taken seriously by the authorities. I do not think Sardiel had any grudge against the respondent.

The mere fact that these persons may have had some connection with the Govi Peramuna is inconclusive. That Society had a grievance against the Government, but I am not prepared to accept the suggestion that the members now wish to wreak vengeance on the respondent, who was merely the tool of Government, because they cannot attack the Government itself. I do not think the ordinary peasant is so unintelligent, as some of the witnesses suggest, and is unable to discern where the blame should be laid in this matter.

In my opinion both these witnesses gave good evidence. Elias Perera was to be regarded as an accomplice in this matter, but Sardiel was clearly not an accomplice, and in fact was an entirely independent eye-witness, who happened to be at the spot at the time. I have considered the denial by the respondent, but I was not impressed by his evidence, and reject his denial.

I hold that it has been established beyond reasonable doubt that the respondent in or about August, 1946, received and accepted a gratification of Rs. 10 from Elias Perera, for the purpose set out in paragraph (1).

(2) The allegation is that the respondent in or about 1947, received and accepted a gratification of Rs. 5 from M. Oparis in connection with the felling of a jak tree. Oparis was uncertain of the date of the giving of the money. He paid Rs. 5 to respondent, about two years ago, because respondent told him that he could fell the tree, if he paid the money.

Oparis had certainly played a more important part in connection with the Govi Peramuna. Their meetings were held in his house at one stage, and resolutions were passed that paddy should not be given. Oparis said in spite of this he surrendered the "acreage tax", though many others refused to do so.

I do not accept the evidence of the respondent that Oparis stabbed a cousin of his and was fined. That was mentioned at a very late stage. The suggestion made to Oparis was that a relation of his was convicted. I have considered the evidence of Oparis. There is no doubt that his allegation is vague, and on the whole I did not think he was so impressive a witness that I could act upon his evidence in the absence of corroboration. He was clearly an accomplice, and the respondent has denied the allegation.

I hold that it has not been established beyond reasonable doubt that the respondent in or about 1947, received a gratification of Rs. 5 from M. Oparis for the purpose set out in paragraph (2).

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(3), (4), (5) & (6). These allegations may be treated together as they relate to gratifications given by M. Themis Singho, as follows:—

(*a*) 21.2.47 — Rs. 10 — for the felling of a jak tree;
(*b*) 4.3.47 — Rs. 10 — for a similar purpose;
(*c*) 24.4.47 — Rs. 7 — in connection with the issue of a worth certificate;
(*d*) 24.4.47 — Rs. 2 — in connection with the issue of a worth certificate.

I do not propose to deal in detail with each of these, because they all depend upon the degree of credibility to be attached to the evidence of Themis.

Themis must be treated as an accomplice. Further it has been suggested that he had a grudge against the respondent, because the respondent had been a member of the party that raided the house of Themis's father and brother, and removed 1½ bushels of paddy. This was said to be on 30.3.47. There was however no prosecution. The fact that the house was searched and the paddy removed is not denied by Themis. This may have been a motive for Themis to bring a false charge against the respondent, and is a circumstance that must be taken into account.

Themis is not corroborated as regards the giving of the bribes, but his brother Kadoris averred that he was present on one occasion, when the respondent asked for a bribe. Kadoris admits the raids, and that is a fact to be weighed. The father, Peter, refused to accept the tendered price of Rs. 6 per bushel and insisted on getting more. Eventually the Government Agent wrote to him that if he refused to accept payment, that the paddy would be treated as a free receipt to Government. Thereafter the father, Peter, accepted the sum of Rs. 9.

Themis produced in evidence his diary for 1947 (MDLS.2) and pointed to various dates, where entries had been made, supporting his evidence. At first sight, the diary appeared to give considerable support to the story of Themis—though of course it would not amount to legal corroboration. But the cross-examination made me doubtful about the value of this diary, and there was a distinct possibility that one item at least, that of 4.3.47, may have contained an interpolation made after the witness had given evidence in *camera*. The other entries also may well have been entered on blank pages, which exist in the diary, for the purposes of production at the inquiry. I considered the evidence of the witnesses, and I was not much impressed with the evidence of either Themis or Kadoris, and I think it will be unsafe to act upon this evidence. I hold that the allegations in paragraphs (3), (4), (5) and (6) have not been established beyond reasonable doubt.

(7). This relates to accumulations of money, and purchases of property from September, 1939, to January, 1948, by the respondent. The respondent's salary and allowances for the period were about Rs. 5,000 or a little more. He had a wife and 10 children to support. For the years, 1939 to 1946, his monthly salary was Rs. 25, and his allowance at the highest was Rs. 30 a month. In 1946 he received as arrears a sum of Rs. 130. For 1947 his earnings from his employment varied from Rs. 90 to Rs. 100 a month. This must have been barely sufficient for his household expenses. He claimed however that he had his own paddy and coconuts and vegetables, and that he could live economically and save some money.

Respondent also said he had cattle—38 buffaloes, including milch cows, 2 cart bulls and carts, and obtained some income from them. There is no corroboration of this, but he may have had some cattle. During the relevant period respondent in his statement admitted that he purchased in the name of his son Senaratne two properties—a field for Rs. 250 on 25.5.42, and a land called Delgahalanda in Pitipane for Rs. 10,000 on 3.7.45. Respondent had also between 1940 and 1945 purchased 8 shares of lands at sums varying from Rs. 5 to Rs. 35. For our purposes these small shares may be disregarded. The purchase of Delgahalande however needs some explanation. The sum paid was out of all proportion to the other purchases of respondent, and the purchase was made in the name of one only of 10 children.

In his statement, the respondent offered an explanation, as follows : —

		Rs.
Item (1)	Savings accumulated before 1.9.39	2,000
Item (2)	Rents from lease No. 1346 7.12.41	300
Item (3)	Sale of wife's land on deed 7892 of 14.6.43 ..	400
Item (4)	Sale of respondent's land on deed 6882 of 16.6.45 ..	500
Item (5)	Borrowed from Lekamwasama on Mortgage Bond 1900 of 3.7.45 (i.e., on the same day of the purchase of Delgahalande)	4,000
Item (6)	Borrowed on Mortgage Bond 843 of 18.8.45 from Noris Perera (MKDM 7)	1,500
Item (7)	Borrowed from son-in-law H. Obias Singho ..	1,000
Item (8)	Borrowed from son M. D. Ediris	500
	Total ..	10,200

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Of these items (2), (3), (4) and (5) may be accepted. Item (4)—the mortgage for Rs. 4,000 was on the same day as the purchase, namely 3.7.45 and may well be connected with the sale. The actual cash provided by the respondent for Delgahalande was Rs. 6,000. The other items are not so satisfactory. Respondent said he had saved Rs. 2,000 by September, 1939. There is no other evidence of this savings. The respondent had two daughters, one of whom married before 1939, and the other in 1942 or 1943. In the second case a cash dowry of Rs. 1,000 was given. Respondent said he did not provide this money, but his wife collected it from her village. Respondent added that he had Rs. 700 to Rs. 1,000 in his house at the time, and it was only when he was reminded of his earlier evidence, that he stated he had Rs. 2,000 with him from 1939. The wedding also cost about Rs. 1,000, but respondent said he received cash presents from the guests. The evidence regarding this item of Rs. 2,000 is so ambiguous and uncertain that I reject it.

Item (6) loan from Noris of Rs. 1,000 also cannot be related to the purchase of 3.7.45, because it was obtained some time later, viz. on 18.8.45. This was admitted by respondent, who later said he used the money to pay off some small debts.

Item (7) relates to a loan from respondent's son-in-law. Obias Singho who was married before September, 1939, and received a dowry of land—worth about Rs. 1,000 admitted that no promissory note or other document was given in this connection. In this evidence at one stage, respondent said that the loan was taken before 3.7.45, and after some hesitation, he finally said it was taken after that date, for the purpose of redeeming Lekamwasama's mortgage of Rs. 4,000. Obias Singho who also gave evidence said it was given about 18.12.46 to redeem the mortgage of Rs. 4,000.

The serious discrepancies in the respondent's story, throw a considerable doubt upon the truth of his story. It is also strange that the son-in-law Obias was willing to risk the whole value of the dowry he received for the benefit of Senaratne. No document was available to support the story. I reject the story of respondent and Obias Singho.

As regards item (8), I do not accept the story that respondent's son lent him Rs. 500. Ediris was not called as a witness, and I cannot accept the respondent's story.

I was also not impressed with the explanation that respondent desired to give his son Senaratne the property qualifications required in order to obtain the office of Headman. No doubt Senaratne acted for a time as Deputy Headman, but the vacancy in the permanent office only arose in December, 1947, when the respondent retired from service. Further there was no necessity to give Senaratne so valuable a property, and he already had a property worth Rs. 250.

Finding himself in a difficulty, respondent insisted that he had saved about Rs. 100 a month from September, 1939, and had that money available. This was mentioned for the first time in his evidence, and it was not consistent with respondent's first statement nor with his evidence up to that point. It is unlikely that he had saved another Rs. 2,800 or so in addition to the Rs. 2,000 said to have been saved before 1940. I formed the opinion that respondent was willing to clutch at any straw to support his explanation. I reject the respondent's story in this respect.

I am of the opinion that this purchase for Rs. 10,000 was a transaction of the respondent alone, and that Senaratne's name was used merely as a cover for the respondent.

Another matter may be mentioned. The mortgage of 3.7.45 for Rs. 4,000 to Lekamwasama was redeemed on 18.12.46. This was done in a very short space of time. Even if we give credit to respondent in the amount he borrowed from Noris Perera viz. Rs. 1,500 on bond 843 of 18.8.45, there is a substantial amount to be accounted for, but the respondent stated that he utilized this sum for the payment of small debts. I have already given reasons for rejecting the story that Obias Singho lent respondent Rs. 1,000. The respondent has failed in his explanation to show he was in a position to redeem the mortgage of Rs. 4,000.

I need not deal in detail with the other witnesses called by Crown Counsel. Their substantial point was that the respondent at the measuring took 1 or 1½ measures extra for each bushel of paddy measured. Respondent admitted that he did so, but maintained that he did it on orders from the Government Agent, to make up for driage and shrinkage in the case of wet paddy. Abeysekera, Divisional Revenue Officer, said that the Assistant Government Agent (Emergency) at one of the Division Day Meeting of Headmen authorized the taking of 1 or 1½ measures extra per bushel, in the case of wet and uncleaned paddy. The authorization was given verbally, and the villagers were not notified. I think I must accept this evidence, but it is remarkable that so important a change should not have been notified to the public in writing. This vested a wide discretion in the Headmen, which may well have been used dishonestly, and for private gain.

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I do not propose to deal with the building of the house by the respondent. He admits that it cost Rs. 2,000 to Rs. 3,000, but this took place after 28.1.48. The respondent's attempt to account for the raising of the amount is however not trustworthy, in particular the alleged borrowing from his brother-in-law, Manis Singho. It is strange that respondent was able to have the money available so soon.

I think it is clear that the respondent had accumulated during the period in question substantial sums of money, which he used for the purchase of a property and the redemption of a mortgage. The circumstances in which the purchase was made are suggestive of an attempt to cover the transaction, by taking it in the name of the son. The reasons given for the purchase are most unsatisfactory. The evidence given by the respondent was contradictory and untrustworthy. It is not possible to reconcile the accumulation with the legitimate income of the respondent, and the attempt to do so has broken down badly.

As regards allegation (7), I hold that the respondent during the period 1.9.39 to 28.1.48, accumulated money, and purchased immovable property in such circumstances that the only reasonable presumption is that such accumulations and purchases were made and effected as a result of bribery or corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 69.

RESPONDENT :

H. Y. R. Silva,
Village Headman,
Kalugamuwa,
Gelioya.

IN CAMERA

Heard on the 19th January, 1949, and on 26th July, 1949.

Respondent : H. Y. R. Silva, Village Headman, Kalugamuwa, Gelioya.

The matter for inquiry regarding this respondent was that during the period 1st September, 1939, to 28th January, 1948, he accumulated money and purchased immovable properties in such circumstances that the only reasonable presumption was that such accumulations or purchases were made or effected as a result of bribery or corruption.

The respondent was appointed Village Headman in 1939. He was already married at that date, and he claimed that he and his wife owned 18 acres fully planted tea, as well as other property at that date. This was by deed 3522 of 13.11.30 (H.Y.R.S. 5). By deed 3158 of 16.5.44 he also took on lease for 5 years another 2 acres of tea land (H.Y.R.S. 6). His total tea holding during 1944 to 1947 was thus 20 acres.

During the relevant period 1939 to 1948, respondent had purchased certain lands valued at about Rs. 3,000. He had also taken conditional tranfers of a number of lands to the value of about Rs. 3,000, but these were not permanent investments and many of these lands had been retransferred during our period, and had to be cancelled out.

On the first date of inquiry, it was found that the information given by respondent had not been sufficiently full, and further explanations were called for from him.

As a result of these explanations, it was decided to hold further inquiry, but to restrict the inquiry to the Bank account of respondent at the Bank of Ceylon (Kandy Branch), and especially to the years 1944 to 1947. The Bank account really started in 1942 but the substantial deposits were in the years I have mentioned. It was marked R.B.A. 2.

The deposits were as follows : —

1944	—	a	total	of	Rs. 4,187
1945	—	„	„	„	„ 3,905
1946	—	„	„	„	„ 5,020
1947	—	„	„	„	„ 6,342

During the years 1944 to 1947 a sum of Rs. 19,000-odd was deposited in the Bank—on the face of it a considerable sum. During the same period respondent had also withdrawn about Rs. 16,000-odd. His balances at the Bank fluctuated from time to time, the highest balance was about Rs. 5,000 for a short time.

Respondent by his letter of 30.6.49 offered an explanation of these deposits—

1. Cash received from sale of lands and amounts repaid on conditional transfers during 1944-47 .. 4,832.00
2. Cash received from salary and allowances 1944—47 .. 3,452.95
3. Cash received on loans given—

G. A. Appuhamy	:	1,956
M. M. Baseer	:	2,050
A. M. Hassen	:	185
A. Abdul Hameed	:	100

.. 4,291.00

4. Amount of cash earned by sale of green tea leaf during the period .. 9,000.00

These amounted to over Rs. 21,000.

The first two items may be taken as approximately correct. The 3rd and 4th items were however in dispute.

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As regards item 3, the story of the respondent was that he issued cheques to these persons as short loans which were ordinarily repaid in a day or so, and re-deposited in the Bank. In his evidence on the last date of inquiry, respondent claimed that the loans and repayments of G. A. Appuhamy amounted to Rs. 2,856, and not to Rs. 1,956 a difference of Rs. 900.

Respondent contented himself with obtaining letters from the 4 persons mentioned under item 3 and did not request that they be summoned. But there is a possibility that he may have misunderstood the position, as he says he did.

The letters are as follows:—

From	G. A. Appuhamy	—	H.Y.R.S. 1.
„	M. M. Baseer	—	H.Y.R.S. 2.
„	A. M. Hassen	—	H.Y.R.S. 3.
„	A. Abdul Hameed	—	H.Y.R.S. 4.

The letters had been signed only a few days before the last date of inquiry, but the alleged payments on loan were, except in one instance supported by cheque counterfoils.

There is certainly no very satisfactory proof of these loans and repayments. The letters show an acknowledgment by the 4 persons that they had borrowed money and repaid the amounts shortly after. It is not clear from where the details were obtained. In the case of G. A. Appuhamy and Baseer, respondent had other dealings besides the loans and repayments. Respondent depended on his counterfoils, but in many cases, the words "on loan" in the counterfoils have been put in ink some time after the loans; in others the words "on loan" are put in pencil. There is always the suspicion that the respondent has been creating a case out of his counterfoils, but there is nothing sufficiently definite to bring the suspicion home to the respondent. The respondent was also unable to show that any of the repayments by these persons corresponded with any of the deposits in the Bank. At the same time I am satisfied that respondent did in fact make short time loans to these persons, and though the amounts of those loans are in some doubt, I am unable to reject the respondent's explanation as unreasonable. With some hesitation, I think that item No. 3. may be passed.

There remains item No. 4 of Rs. 9,000 obtained from the sale of green tea leaf. Respondent has shown that he possessed 20 acres of fully planted tea in the years, 1944 to 1947. but the actual sales have not been satisfactorily proved. The only two witnesses specially named by respondent were called, but only spoke to comparatively small purchases over a limited period. But at the same time these two witnesses supported respondent's story that he sold to other purchasers also. These witnesses also showed that from 1 acre of tea, the respondent could get over 1,500 lbs. of green tea leaf per year, and could earn over Rs. 300 per annum per acre at the ruling price of about 20 cents a lb. The gross takings from the sale of tea leaf would have been in the region of Rs. 6,000 a year or more. The question of the actual profits made was considered. Respondent thought at first that he made a profit of Rs. 150 a month, but later in view of his income tax returns, reduced this to about Rs. 50 a month. There was also contradictory evidence on the part of the respondent as to whether he deposited in the Bank the gross takings from the sale of green leaf, or only the net proceeds after deducting the working expenses. But in the later stages of his evidence, respondent contended that he deposited in the Bank most of the gross takings from sale of tea.

The evidence as a whole was not very satisfactory, but at the same time I think it was possible for respondent to deposit in the Bank moneys from sale of green tea leaf to the amount of Rs. 9,000 during the years 1944 to 1947. Though I have some doubts, I cannot say that the explanation offered is false or unreasonable. With some hesitation, I pass item 4 also.

On the whole of the evidence I am unable to hold beyond reasonable doubt that during the relevant period respondent accumulated money or purchased immovable property as a result of bribery or corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R.70.

RESPONDENT :

D. M. Samarasinghe,
Vidane Aratchi,
Meegahatenne.
(living at Kevitiagala.)

IN PUBLIC

Heard on 13th, 14th and 23rd June, and 5th July, 1949

Respondent:

D. M. Samarasinghe, Vidane Aratchi, Meegahatenne. (Living at Kevitiagala).

The matters for inquiry relating to this respondent are:—

(1) the nature and extent of the purchases of movable or immovable property made by him whether in his own name or in the name of his wife or of his dependants, relatives or any other person on his behalf during the period 1st September, 1939, to 28th January, 1948;
(2) the extent of the accumulations of money made by him during the said period;
(3) whether the said purchases or accumulations were made or effected as a result of bribery or corruption.

The evidence disclosed that the respondent was appointed Vidane Aratchi of Meegahatenne Division in August, 1938. His father had died many years before that, leaving an estate which was subject to debts, which were not finally cleared off till 1942. The respondent's wife had been a teacher for many years before her marriage in 1930 and continued as a teacher during the period of our investigation. The income from her profession during the whole of our period (1939 to 1948) was in the region of Rs. 12,000 and the respondent during the same period earned about Rs. 8,000, making a total of about 20,000. Evidence was however led to show that up to the end of 1941, and even in 1942, the respondent and his wife had not been able to effect any appreciable savings. The Post Office Savings Bank books of respondent (PDWW. 3) and of his wife (PDWW. 4) show that until the end of 1941 there had been hardly any deposits in that Bank, and the balances were throughout the period negligible. In fact, the respondent did not deny that until the end of 1941 he and his wife could not save any money; though he maintained that he had in the house some money, usually about Rs. 1,000 for his various expenses. There is no independent evidence of this. The real deposits in the Post Office Savings Bank began in 1942, when the respondent deposited about Rs. 750 in his own, and about a similar amount in his wife's account, making a total of about Rs. 1,500.

The deposits were as follows:—

1942 : in his own name about Rs. 750
in his wife's name about Rs. 750
1943 : in his own name about Rs. 150
in his wife's name about Rs. 300
1944 : in his wife's name about Rs. 2,000
1945 : in his own name about Rs. 1,350
in his wife's name about Rs. 2,100
1946 : in his own name about Rs. 1,200
in his wife's name about Rs. 2,200
1947 : in his wife's name about Rs. 2,000

The respondent had also lent moneys in this period, as follows :

In 1944 : Rs. 850 to D. H. Karawita. This was sued upon in November, 1947 (see PDWW. 8).
21.9.46 : Rs. 2,000 on Mortgage Bond No. 4028 to a chetty.
4.7.47 : Rs. 300 to N. O. Wijetilleke—This was sued upon in November, 1947 (see PDWW. 7).
7.6.47 : Rs. 2,750 on a Mortgage Bond to Noisa Fernando and Sederis.
September, 1947 : Rs. 2,000 on a Mortgage Bond.
September, 1947 : Rs. 500 on a Mortgage Bond.

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It is also alleged that on 28.11.47 he lent Rs. 1,000 on a promissory note in the name of his sister-in-law to P.D.W. Wijegunewardena. But respondent maintained that this was not his transaction but one with his sister-in-law, Mrs. Illapperuma. This was sued on in PDWW.9.

The respondent also by deed 4131 of 14.5.47 (DMS. 8) bought the land Nekathwala for Rs. 5,000. It was suggested that respondent took Rs. 3,000 from his Bank Account on 13.5.47 for this purpose, and a withdrawal of Rs. 3,000 is shown in PDWW.3. The respondent also said that he had obtained a loan of Rs. 2,750 from Omis Samaranayaka in this connection, on a promise to convey a half share to him, but he did not so convey the land. He transferred a half share to Omis Samaranayaka's brother Derenis, for the amount of Rs. 2,750 and took a mortgage from Derenis for the full amount. I shall comment on this transaction later.

The respondent also collected savings certificates from 1943 or 1944, to the amount of about Rs. 2,000. He said he cashed some of these in 1947.

There were other matters alleged against the respondent which may be mentioned.

He is said to have purchased a car, but this was in May, 1948, and falls outside the period of our inquiry.

He is said to have built a new house. The date of the building is in some doubt, but a *new* house was mortgaged by the respondent in 1937 (see Mortgage Bond 1675 of 6.4.37). This appears to be the building in question. There is however some evidence that there were additions to the house thereafter. On the whole the dates are so uncertain that I think this item should be left out of consideration.

There was also a suggestion that the respondent had become a co-owner of Gembrook Estate in Pelmadulla of about 100 acres. It has been said that respondent himself stated he was a co-owner but the deed stands in the name of his brother-in-law, Seneviratne, the Apothecary, and there is no proof that respondent provided any part of the money for the purchase. The brother-in-law is said to have made a lucky purchase of a coconut estate which he got cheap in the depression, and subsequently sold at a very much higher price. I think there is no proof that the respondent provided any part of the consideration for Gembrook Estate.

The evidence called by Crown Counsel was as follows, in addition to the documents.

P. D. W. Wijegunewardena gave some evidence regarding the new house. He admitted that the respondent went into occupation of the house in 1937. He said the house was completed in about 1941, but was not very definite with regard to the dates. Witness said the respondent earned money as inquirer into crimes, as Supervisor of the Co-operative Stores before he became Vidane Aratchi, and that he received rewards as Vidane Aratchi. Witness said that respondent had very little property before 1940.

Admittedly Wijegunewardena and respondent were not on good terms, and there were several reasons for the enmity. Wijegunewardena himself was in great financial difficulties, and had been sued for considerable amounts.

As regards the promissory note for Rs. 1,000, Wijegunewardena said that all his transactions were transactions with the respondent, but the note was given in blank, and was sued upon by Mrs. Ilapperuma. Judgment was eventually entered for Rs. 700 payable in instalments.

Another witness was M. A. D. Tudor Kularatne, who said he had been an intimate friend of respondent from about 1944. In 1944, and 1945, the respondent gave him paddy collected from Headmen for sale, and he transported 3 lorry loads of paddy, and also about 4 tons of manure, sold it in the Black Market, and shared the proceeds with respondent. He said the lorry could hold 60 to 100 bags of paddy. The paddy was carried by night to Kularatne's house and there sold to various persons who came there. Kularatne had no documents to prove these transactions. Kularatne said in cross-examination that in July, 1948, enmity developed between himself and the respondent over the Village Committee elections. The paddy was taken from respondent's house. The respondent himself owned about 20 acres of paddy. When in drink, Kularatne had stopped the car of the Assistant Superintendent of Police, and had been slapped for this. He admitted he owed respondent a little money over the various transactions, and had at one time borrowed Rs. 1,000 from him which was paid in full — see DMS. 3. and 4. He said that the document DMS. 3 written by respondent related to the paddy and bone manure transactions, on which he owed respondent Rs. 100.

In passing I may mention that it had been suggested that respondent had given Rs. 2,500 on a post-dated cheque to the D. R. O., W. M. Oliver Perera. Oliver Perera himself denied that he gave such a cheque or borrowed the money. Kularatne himself said that he did not see such a cheque, or have anything to do with the cashing of it. There is no proof of this transaction in respect of Rs. 2,500.

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Another witness was P.A.D.D. Jayewardena, who carried on a rubber purchasing business. Respondent sold his rubber to this witness, and also borrowed from him on occasions sums varying between Rs. 100 to Rs. 400 which he paid back or settled out of the rubber sales. Towards the end of 1942 respondent started sending his rubber for sale to the Government store. Respondent said he had 2 acres of rubber.

Jayewardena produced a letter PDWW. 1 of 26.11.42 in which respondent asked for Rs. 500 for an urgent business. Respondent said he wanted the money "today" and would repay it on "Monday". This letter is admitted. Jayewardena said he lent this sum, and has not been repaid. The amount was not entered in the books of his boutique which were produced before me, as it related to a private transaction. The boutique accounts showed that in January, 1943, Jayewardena had borrowed money from respondent, and the balance due from Jayewardena was finally settled in December, 1943, without taking this sum of Rs. 500 into account. Respondent could not definitely remember if he received the Rs. 500 but affirmed that all outstanding accounts were settled at the end of 1943. There is an element of doubt with regard to the lending of the Rs. 500, but this does not affect the significance of the letter PDWW. 1, which shows that the respondent was in urgent need of cash on 26.11.42 and did not have the amount available in cash in his house. Jayewardena denies that there was ill-feeling on his part against the respondent.

W. M. Oliver Perera, District Revenue Officer, denied that he cashed a post-dated cheque with the respondent. He had given certain valuations of respondent's property in *camera*—and said he had made a mistake about that.

Respondent gave evidence himself and called witnesses. It is convenient to deal with the witnesses first.

W. M. P. Corea, retired Mudaliyar of Pasdun Korale East, said he had reported on the respondent's financial position in 1938, in connection with his appointment as Vidane Aratchi. From memory, he said that the respondent had Rs. 8,000 to 10,000 worth of property. Whether this relates to the whole of the estate of respondent's father or to respondent's share of that estate is not clear. Witness had found respondent a good officer, and an excellent worker.

A. E. Panditaratne—District Revenue Officer of Pasdun Korale East from 1.9.42 to March, 1945, explained the working of the Internal Purchase Scheme. The Vel Vidane prepared I.P.S. forms at the time of sowing, containing estimates of yield. After the harvest was reaped, officers were appointed to check, and the cultivator was allowed to remove the paddy without permits from the threshing floor. Acreage levy (3 bushels per acre per year) was handed over to the Village Headman on receipts. The Village Headman had to hand the paddy received to the Storekeeper at the Vidane Aratchi's store, and received receipts. The Vidane Aratchi had to keep a register of paddy received, which had to correspond with the receipts. I.P.S. officers had to measure the paddy, which was eventually removed to the Matugama Government Store. Bone manure was sometimes issued through Local Assistance Committees, unofficial bodies, who kept their own stores.

The D. R. O. was not an I. P. S. officer, and could only speak to the initial stages of the scheme, before March, 1945. I.P.S. forms were only sent to him to prepare statistics. This witness thought that it was not possible for the respondent to have misappropriated 400 or 500 bushels of paddy.

Don Omis Samaranayaka spoke to the matters connected with the purchase of Nekathwala (DMS. 8 of 14.7.47). Respondent negotiated for it, and asked for Rs. 2,750 from him. The whole land was purchased for Rs. 5,000. Omis's brother, Derenis Samaranayake, had been for many years in possession of the whole field, and threatened to dispute the possession. Apparently, the Rs. 2,750 was rent, on the undertaking that half the land would be conveyed to Omis, but in view of Derenis's attitude, a half share was conveyed to Derenis and a mortgage taken by respondent for the sum of Rs. 2,750. It is not clear why the mortgage was not executed in the name of Omis, who said he sold a land to raise the sum of Rs. 2,750. Omis said that respondent gave him a document that he would get half the field, but he said he had not brought the document. No action was taken by Omis to get back the amount lent from respondent. Omis said he got a share of the paddy from this field, and respondent said that the arrangement had subsequently been varied and that Omis was to be given a share of another land. But even this has not been implemented. The whole position is exceedingly queer, and I cannot accept the fact that Omis actually lent the respondent the sum of Rs. 2,750 in order to make the purchase. As I have pointed out already, respondent appears to have drawn out Rs. 3,000 from his Bank Account one day before DMS. 8, and it is possible that that sum was used for the purchase. The other Rs. 2,000 has not been accounted for. It is possible that Derenis had to be bought off, but I cannot believe that Omis had any financial connection with this transaction.

W. F. de Alwis Seneviratne was another witness. He is not to be confused with the Apothecary Seneviratne who purchased Gembrook Estate. This witness lent respondent, his brother, and his mother Rs. 2,000 to help them pay off debts due from the estate of respondent's father. The mortgage bond was No. 1,675 of 6.4.37, in which the *new* house was also specially mortgaged. No principal or interest was

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paid for a year, so Seneviratne sued in D. C. Kalutara 20,915 (DMS. 1) and obtained decree. No writ was taken out, but an arrangement was made to liquidate the amount by the transfer of rubber coupons. These were transferred, and from time to time cash payments were also made, but it was not till 1942 that the claim was fully paid up. It took 4 years to recover the Rs. 2,000 by the sale of coupons and by cash payments.

D. B. Thewaraperuma, another witness, spoke of the complaint he made to the respondent in 1948 against P. D. D. Jayawardena (see DMS. 6). Action was not taken against Jayewardena, but against his servant or contractor, who was fined.

The respondent also gave evidence. He said that his father died leaving 76 shares of land (see inventory, DMS. 12, in Testamentary Case 1391, D. C., Kalutara). The net estate was valued at Rs. 9,438.85 by the Commissioner of Stamps. To this had to be added a rubber land of some acres, on which one Kalpage had a mortgage of over Rs. 2,000 (see DMS. 13A). The father died about 1920 or 1921 and left debts. In order to settle these debts the sum of Rs. 4,000 was borrowed on mortgage from W. F. de A. Seneviratne's father. In 1937 a further mortgage was needed from Seneviratne himself to settle outstanding debts (No. 1675 of 1937). Respondent said that this last mortgage was paid up by 1940, but Seneviratne himself said that the final payment was made in 1942. The debt was liquidated by the transfer of rubber coupons and by cash payments, over a period of 4 years. The respondent said that there was an amicable division of the father's estate and he got a house and property, 6 acres rubber in 3 blocks, 2 acres coconut and 1 acre cinnamon. He claimed that from the rubber he got about Rs. 1,000 a year, and for the whole period (1939 to 1948) he got about Rs. 6,000 from this source. He produced assessment cards of 1935 showing an allotment of over 2,000 lbs. of rubber. He claimed that from paddy he got Rs. 2,000 for the whole period, from coconut Rs. 800, from cinnamon Rs. 100. But it appears from the evidence that for the period September, 1939, to December, 1941, he had little or no savings, and that his deposits in his own name and in that of his wife were negligible. They appeared to live up to the full limit of their income. I do not think there were any savings during that period. The fact that the mortgage entered into in 1937 in respect of the father's debts was not settled till 1942 also points in the same direction. It was not till 1942 that real deposits in the Post Office Savings Bank were made, a sum of about Rs. 1,500 being deposited in both accounts in that year. There was evidence even in that year (1942) that he was short of cash (see PDWW. 1 of 27.11.42 written to P. D. D. Jayewardena) In 1943 the amount of the deposits was not large. In the period 1944 to 1947 sums of roughly Rs. 2,000 a year were paid annually in both accounts. In addition to that, in 1944 respondent lent Rs. 850, in 1946 Rs. 2,000, in 1947 about Rs. 7,500, without taking into account the promissory note for Rs. 1,000 in 1947 said to have been lent in the name of his sister-in-law. As regards the Rs. 1,000, the evidence is that respondent was the person who negotiated the matter throughout, but it is possible that he was lending his sister in-law's money.

In addition, respondent had to spend Rs. 5,000 on the purchase of Nekathwala in 1947. Out of this sum Rs. 3,000 may probably have been taken from the Savings Bank and used for the purchase, but there was another Rs. 2,000 to be accounted for. I do not believe and I reject the evidence that Omis Samaranayaka lent respondent Rs. 2,750 towards that purchase. There is no documentary evidence to support it, and the circumstances, I think, give the lie to this transaction. The transfer by respondent of the half share to Derenis—DMS. 8—No. 1055 of 5.8.47—has no bearing on this matter as no money passed on that transaction, but a mortgage bond was executed by Derenis Samaranayaka for the full amount of the consideration—(see DMS. 9—No. 1056 of the same date).

A considerable sum of money was accumulated by the respondent and his wife during 1947—something very near Rs. 10,000, which is completely out of keeping with his accumulations in previous years. I do not think it is an answer to calculate the total income which the respondent and his wife may have earned over the whole period (1939 to 1948), for the evidence shows that up to the end of 1941, the amounts saved by the two were negligible, and even 1942 and 1943 did not appear to be good years for them, although about Rs. 1,500 was deposited in 1942 in the Savings Bank. It is, no doubt, possible that earnings from property increased during the war years. But the cost of living had also gone up, and it is not possible to accept the contention of the respondent that he had hardly any expenditure, and that his mother maintained him out of her income. That should apply to the years up to 1941 and also to 1943 as well, where it seems clear that there was no possibility of respondent and his wife saving any money.

I may mention that respondent also said he had a hoard of sovereigns, about 25 or 30 in all, which he sold in 1945 and 1946 at top prices, and that he deposited some of the proceeds in the name of his wife at the Savings Bank. There is no corroboration of the story, which I find difficult in accepting. In cross-examination he also said he had received a dowry of Rs. 3,000 on his marriage in 1930, but this appears to have been spent on the house he built in 1937.

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Respondent denied that he obtained any paddy unlawfully under the Internal Purchase Scheme, and denied the allegations of Kularatne that he had given him 3 lorry loads of paddy and 2 tons of bone manure for sale in the Black Market. Kularatne, he said, was an enemy of his now, because of certain charges made. Respondent had given Kularatne a loan of Rs. 1,000 at one time. Respondent maintained that there was no means for him to obtain stocks of paddy. He produced DMS. 16 which purports to be an account of income and investments, but this is not a satisfactory document. There is no corroboration of the fact that the respondent received as much as Rs. 6,000 from rubber during 1939 to 1948, or Rs. 2,000 from paddy. The realization of Rs. 2,000 by sale of the sovereigns in 1945 and 1946 is, I think, not true. The item Rs. 1,200 as a supervisor of Co-operative Credit Societies is not borne out by any other evidence, and relates to the period before 1940; nor is the item Rs. 1,000 as fees and travelling allowance as inquirer substantiated. The commission earned by giving certificates of worth in the case of bail bonds—(Rs. 5,000) is I think greatly exaggerated, and is not confirmed by any other evidence. The heading "investments" is also misleading, and I do not think it is complete. The document was admittedly written up for this inquiry.

The striking fact is that from 1944 there has been a very appreciable improvement in the financial position of the respondent, and it is at least a notable coincidence that this year also saw the establishment of the Internal Purchase Scheme. 1947 was certainly the peak year in his fortunes. The respondent was closely cross-examined as regards the various deposits in the name of himself and of his wife, and his transactions of lending and purchase. In many cases he said he could not remember how he had obtained the sums; in other cases he gave explanations which were unsatisfactory or false.

It is to be noted that the actual withdrawals from the Savings Bank were few in number. In respondent's own account (PDWW. 3) there was, during the relevant period, only one withdrawal, viz. Rs. 3,000 on 13.5.47. This item has already been mentioned in connection with the purchase of Nekathwala. In the wife's account, during our period, there were two withdrawals—Rs. 1,500 on 21.6.47, and Rs. 1,000 on 5.9.47, though there are several withdrawals in March, 1948, and subsequent months. Even if this total of Rs. 2,500 is allocated to the various lendings of the respondent in 1947, there is a considerable amount of money which is unaccounted for in that year.

The suggestion of respondent that he and his family were supported out of the income of his mother does not apply to the period 1939 to 1943. Respondent has himself admitted that for a part of that period, neither he nor his wife could save, and it is clear that the income received was barely sufficient for the needs of his family. The Bank accounts and transactions of the respondent are a fair index of his fortunes from year to year. He has not satisfactorily accounted for his accumulations in 1944 to 1947. In fact, the accumulations in 1947 are completely out of keeping with the legitimate income which he may have received in that year. Can it be said that these accumulations were the result of bribery or corruption? The statement of respondent's emoluments is shown in PDWW. 5, and his wife's emoluments in PDWW. 6. The respondent never earned more than Rs. 40 a month till July, 1944, and after that the monthly salary and allowance rose from about Rs. 66 to Rs. 131 in January, 1948. The respondent's wife's personal emoluments are shown in PDWW. 6. In 1943, her annual income was Rs. 1,306, in 1944, Rs. 1,332; in 1945, Rs. 1,535; in 1946, Rs. 2,009; and in 1947, Rs. 2,430. These earnings taken in conjunction with the other income of the respondent do not account for the large accumulations especially in the year 1947, if expenditure is deducted. I have considered the evidence of Kularatne. He was not altogether a satisfactory witness, and his conduct especially when under the influence of drink was not good. He must be regarded as an accomplice, and was not since 1948 on good terms with the respondent. But I was struck with the fact that he has now come forward with this evidence, which reflects upon him also, and I am inclined to think there is some substance in what he says. It is however possible that he has exaggerated the story, and I do not base any finding on his evidence alone.

There are, however, other elements in this matter beyond the mere failure to account. In his evidence the respondent made statements which I find are false. His explanations on many points were glib but unconvincing, and I formed the impression that his evidence was unreliable. On many points there was no corroboration of his evidence, and I thought that respondent was not unwilling to exaggerate the various items of income which he claimed.

In all the circumstances, I hold that respondent made considerable accumulations of money and effected purchases of immovable property in particular in the year 1947, and that these accumulations and purchases were made and effected as a result of corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 77.

RESPONDENT:

M. K. M. Mustapha,
Village Headman,
Sainthamaruthu Division No. 1,
Kalmunai.

IN PUBLIC

Heard on 25th and 26th of May, 16th and 17th of June and 1st of July, 1949.

Respondent: M. K. M. Mustapha, Village Headman, Sainthamaruthu Division No. 1, Kalmunai.

The matters for inquiry relating to this respondent are as follows:—

(1) The nature and extent of the purchases of movable and immovable property made by him in his name, or in the name of his wife, or in the names of his dependants, relatives or any other persons on his behalf, during the period 1st September, 1939, to 28th January, 1948;

(2) the extent of the accumulations of money made by him during the said period; and

(3) whether the said purchases or accumulations were made or effected as a result of bribery or corruption.

The respondent was appointed Village Headman about the year 1932, and was married in 1933. After his marriage, on 26.3.34, by dowry deed No. 7256, (M.K.M.M. 5), respondent and his wife received from her parents a 3/4th share of 9 acres of paddy and a garden—both valued at Rs. 1,500. The respondent said that for his dowry he had also been promised Rs. 5,000 in cash, but there is no mention of this in M.K.M.M. 5. A separate writing was said to have been given, which is now lost. I shall refer to this later.

In addition to this, on 6.6.34, by M.K.M.M. 12, the father and mother of the respondent donated certain lands to him—apparently the properties belonged to the mother. The properties were valued at Rs. 2,500, and consisted of paddy lands of about 16½ acres and of a garden.

Before 1.9.39 the respondent apparently made no purchases of land for himself. His purchases began in 1940, after the war. The purchases and investments began after that date. The first list consists of transactions disclosed by the Registrar of Land and by the respondent in his answer, and is as follows:—

15. 7.41 purchase of garden for Rs. 1,000
12. 8.45 purchase of paddy land Rs. 1,200 (M.K.M.M.16)
8.12.45 purchase of two gardens Rs. 300
5. 3.46 deed 874 mortgage for Rs. 9,000
12. 4.46 deed 920 purchase for Rs. 450
5. 4.46 deed 9299 purchase for Rs. 3,000
14. 9.46 deed 1126 purchase for Rs. 8,000 (M.K.M.M.11)
2.10.46 deed 1187 mortgage for Rs. 1,000
4.10.46 deed 1196 purchase for Rs. 300
7.10.46 deed 1209 purchase for Rs. 300
19.10.46 deed 1229 purchase for Rs. 1,000
6.11.46 deed 1277 purchase for Rs. 2,000
8. 5.47 deed 1675 mortgage for Rs. 1,000

Totalling in all about Rs. 29,000.

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To these have to be added the following transactions, disclosed by two Notaries :—

16. 1.40 deed 2485 assignment of mortgage for	Rs. 450
20. 6.42 deed 4497 transfer to respondent's wife for	Rs. 300
19. 9.42 deed 4926 transfer to respondent's wife for	Rs. 200
16. 8.44 deed 7335 transfer to respondent	Rs. 200
22. 9.45 deed 456 usufructuary mortgage (M.K.M.M. 19) to respondent	Rs. 3,200
28.12.45 deed 749 mortgage to respondent (M.K.M.M. 20) for ..	Rs. 1,000
16. 9.46 deed 1133 usufructuary mortgage to respondent (M.K.M.M. 24) for	Rs. 3,500
21. 7.45 deed 323 transfer and mortgage to respondent's wife for ..	Rs. 1,000
15. 1.46 deed 783 transfer to respondent's wife for	Rs. 600
These totalled about..	Rs. 10,000

The items are not in dispute, but the explanations will be dealt with in due course.

In June, 1945, just before the death of respondent's father, respondent received the following donations from his father :

Deed 8516—9.6.45—about 45 acres, value ..	Rs. 5,000
Deed 8517— 9.6.45 —7 small lots, value ..	Rs. 1,500
Deed 8518—9.6.45—assignment of mortgage ..	Rs. 695
Deed 8519—9.6.45—assignment of mortgage ..	Rs. 360
Deed 8529—14.6.45—about 45 acres	Rs. 2,000

In addition, the respondent's father-in-law transferred to respondent 65 buffaloes and 10 cows, by M.K.M.M. 3, on the day of his death, 18.6.45.

The respondent's father is said also to have given to respondent Rs. 5,000 in cash one month before his death. There is no evidence to corroborate this, and nothing to show that the father had so much cash. I do not accept the fact that respondent received this sum from his father.

Leaving out of account the donations received by the respondent, there is a considerable sum to be accounted for in the relevant period. During this time also respondent built a house. The actual expenditure on the house is in dispute, but there is no question that it was a large house with about nine rooms. I shall deal with this question later.

There was a body of evidence to show that the respondent's father, in spite of the fact that he owned property, was not in affluent circumstances, before his death, but before I deal with the oral evidence on this point, it will be of interest to consider two actions in Court in which he was concerned. The first is D. C. Batticaloa 386 M. (M.C.M.Y. 8) in which respondent's father was sued on a mortgage bond for Rs. 1,000 in 1941. Judgment was entered against him and the land was sold, and was purchased by the respondent for Rs. 1,120 on 12.8.45, (M.K.M.M. 16)—this is one of the purchases in the first list. The sale actually was in 1942. The respondent has an explanation for this. He said that without his knowledge the father had transferred the mortgaged property to a niece of the respondent as dowry. Respondent disapproved of this, and induced the mortgagee to put the bond in suit, and at the sale, became the purchaser. But this does not explain why respondent's father made no effort to pay the mortgage; and I think it is a fair inference that the father was not in a position to do so.

The second case was D. C. Batticaloa 364 M. (M.C.M.Y. 9). In this the respondent's father was sued on a promissory note of 1941 for Rs. 369.75. The respondent's father admitted liability, and filed affidavit stating that he could not pay the amount, and asking for payment by instalments. The explanation offered by respondent is most unconvincing. He said his father had borrowed this amount really for the benefit of respondent's brother's estate, and was reluctant to pay the amount out of his own pocket. But if the respondent's father was a rich man, as he is now represented to have been, it is passing strange that he should have asked for instalments in respect of so small an account.

In my opinion, both these cases indicated that respondent's father was not possessed of any substantial amount in cash in the year 1941 and thereabout. This further indicates that his income from paddy, etc., could not have been considerable.

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There is also the oral evidence that respondent's father had been involved in much litigation in respect of mosque matters—he was the Chief Marikar of the mosque. There is also the evidence of M. K. M. Yusoof, M. I. Jainudeen Pariharia (respondent's brother-in-law)—and the Kathi, M. C. Kariapper, to the effect that respondent's father was not well off. I accept their evidence on this point. As regards the Kathi, M. C. Kariapper, there is evidence that he was present at the death bed of respondent's father, and actually signed as witness to the transfer of buffaloes to the respondent—M.K.M.M. 3 of 18.6.45. This shows that he was intimately in touch with respondent's father, and in a position to know his circumstances. Besides, M. C. Kariapper was a very intelligent and impressive witness.

There was also evidence that before 1940 the respondent himself was not in a good position financially. In 1939 some money was needed apparently to meet the marriage expenses of a sister-in-law, and on 7.12.39, by Mortgage Bond 2457 a sum of Rs. 700 was borrowed from one Adam Bawa. Respondent himself, his mother-in-law and his wife were signatories to that bond. Apparently what was mortagaged was a property belonging to the father-in-law's estate. The fact that respondent signed indicates that he had some responsibility in this matter. The sum raised was not very large, and the fact of borrowing suggests that the parties did not have the ready cash. Respondent's explanation that he had the cash, but wanted the responsibility to be taken by his mother-in-law is unconvincing. The mortgage was not discharged for some time.

There was another action against respondent in 1940—C.R. Kalmunai 879 M. for Rs. 75, on a promissory note. The action was contested, because respondent alleged that only Rs. 40 was due on the note. Respondent said he succeeded on that plea. The fact that the action was contested cannot be utilized against the respondent, but the fact of the borrowing of this small sum is not in keeping with the respondent's claim that he had a great deal of cash at this time. The evidence of M. K. M. Yusoof, M. I. Jainudeen Pariharia (brother-in-law of respondent), and M. C. Kariapper (Kathi) also shows that respondent was in bad circumstances in 1939. I accept their evidence in this respect. These witnesses must have known the respondent's circumstances, and M. C. Kariapper in particular was a convincing witness. It is also a fact to be remembered that the respondent did not begin purchasing property till 1940, and for the first few years on a small scale only.

These points have to be borne in mind, in considering the respondent's explanation that the bulk of the money expended on the various transactions between 1940 and 1947 were obtained by profits from Agriculture, i.e., from paddy. The respondent's estimate of income from this source is contradictory. In his evidence the respondent said:—

> "I have not got accounts of my income. I am not in a position to state the number of amunams I gave to the Government. I may have got roughly about Rs. 1,000 or Rs. 1,500 from the Government by the sale of paddy per year."

This was stated in examination-in-chief. Respondent was reminded by his Counsel of his letter to this Commission M.K.M.M. 18 where he had said that he received approximately Rs. 4,000 per year by sale of paddy to Government, and he added:—"Yes, that is the correct figure." He added that he received 68 amunams of paddy, and calculated at the rate of Rs. 60 an amunam, making Rs. 4,080 a year. But this is also unsatisfactory. On the evidence before me the rate of Rs. 60 per amunam was not reached except for a very short time out of our period. Most of the time the Government rate was Rs. 45 or less. Further, it is not clear that respondent obtained 68 amunams of Paddy net a year. There was a great deal of contradiction between the various witnesses as to the gross and net yields of paddy in this area. The G. A's estimate of total yield (M.C.M.Y. 19) has been found to be inaccurate in another inquiry, and need not be considered. Perhaps the estimate of M. C. Kariapper of one amunam of paddy per year as net income is nearest the mark. Further, we have only the word of the respondent that the whole of his paddy holdings consisted of cultivable and cultivated land of good quality. I am not prepared on the evidence to accept this.

There is also the fact that respondent never paid any income tax for this period. If all his income was legitimate income, as a Headman he should have known that he must make a declaration to the Income Tax Department. The fact that he made no declaration is a point against him, more particularly as the bulk of his income was obtained by the sale of Paddy to Government. There is also the fact that no corroboration from Government of the value of the paddy respondent sold to Government was obtained.

It is, I think, clear that respondent's income from paddy must have fluctuated from year to year, and I am inclined on the evidence to hold that respondent's own estimate of Rs. 1,000 to Rs. 1,500 as the yearly return from the sale of paddy to Government is much nearer the truth, than his estimate of Rs. 4,000. Taking Rs. 1,500 as his net income per year from paddy, in the eight years from 1940 to

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1947, he would have earned from this source about Rs. 12,000. Taking the much exaggerated figure of Rs. 4,000 a year, his income from paddy would have amounted to about Rs. 32,000 for our period. The other substantial source of income was from respondent's employment, which for the period September, 1939, to January, 1948, amounted to Rs. 5,867.27. It will be noted that the actual investments shown in the two lists amount to more than his income from these two sources. But the respondent contended that the lists of transactions by him should not be assessed at their face value. Certain transactions had to be minimized for various reasons. One of these transactions was the usufructuary mortgage 874, dated 5.3.46 (mentioned in the first list). This is the explanation the respondent gave of this matter: this was a loan to a close relative, M. M. Ismail. Ismail had borrowed Rs. 9,000 from his own brother M. A. L. Kariapper, and the brother wanted the money back, and Ismail made efforts to raise the money elsewhere, and approached respondent by himself and through the Notary D. S. Gnanamuttu. Respondent had at the time only Rs. 5,000 with him. Podi Singho, Village Headman, was present at the time, and agreed to lend respondent Rs. 2,000 as a "kaimathu" without interest. Respondent was also able to raise another Rs. 2,500 from one O. M. Aliyar (not the witness Aliyar), also as a "kaimathu." Out of the money he had and the money he raised, respondent lent Rs. 9,000 to Ismail on the usufructary mortgage. No document was given either to Podi Singho or to O. M. Aliyar and, in fact, neither they nor respondent received a cent by way of interest. Eventually Ismail sold some of his properties for Rs. 13,000 to M. I. M. Aliyar on 14.9.46, and the mortgage bond 874 was discharged on that day. M. I. M. Aliyar produced bond 874 which contained an endorsement that it was discharged on 14.9.46. Respondent received the Rs. 9,000 but did not immediately pay back the moneys he had borrowed from Podi Singho and O. M. Aliyar. In fact, they were not paid back till 1948, and only in small amounts.

Two questions arise in this connection. First, did respondent borrow on this occasion from Podi Singho and O. M. Aliyar the sum of Rs. 4,500? O. M. Aliyar was not called. Podi Singho and the Notary Gnanamuttu supported respondent's story—the latter only to the extent that Podi Singho promised to give Rs. 2,000 to respondent. The whole story is a strange one. Respondent said he was influenced to do a charitable act without profit to a close relation. This is hardly in keeping with his character as a keen, I may say, hard business man even in respect of his own relations. Witness in his action against his own niece in 1942, when he induced the mortgagee to sue his niece, and bought the property he coveted for himself. It is difficult to appreciate the fact that he lent Rs. 9,000 without any return. It is still more difficult to appreciate the conduct of Podi Singho and O. M. Aliyar, who lent their money without security and asked for no profit, though the money was not paid back for about two years. Podi Singho himself was a great personal friend of the respondent, and I think he has given evidence merely to help the respondent. Both Podi Singho and the respondent are now under interdiction and one of the charges against Podi Singho involves this respondent. I was not at all impressed by the evidence of Podi Singho or of the respondent. The Notary Gnanamuttu's evidence was also I thought not satisfactory or convincing, and in any case it does not go very far. I reject the story of the respondent that he borrowed this sum of Rs. 4,500 from Podi Singho and O. M. Aliyar. In my opinion respondent provided the whole sum of Rs. 9,000 on 5.3.46.

The next point is whether the respondent received back the sum of Rs. 9,000 on 14.9.46. On this point the story of the respondent has corroboration in the deed 874, which was made available by M. I. M. Aliyar. It has also been proved that M. I. M. Aliyar purchased property from Ismail on 14.9.46 for the consideration of Rs. 13,000. The encumbrance sheet M.K.M.M. 31 shows that. It follows that respondent had this additional Rs. 9,000 for his investments from 14.9.46, and I think the face value of his investments shown in the two lists should be reduced by Rs. 9,000.

Another matter requiring consideration is the deed M.K.M.M. 11. dated 14.9.46. This is a deed by respondent's mother-in-law and some of her children. The consideration on this deed was Rs. 8,000, but the deed itself shows that Rs. 3,000 was actually paid on that occasion, and Rs. 5,000 was said to have been acknowledged to have been received earlier. Respondent's case is that the Rs. 5,000 was never paid to him previously. On the contrary at his marriage in 1933, his father and mother-in-law had promised him a cash dowry of Rs. 5,000. This was not paid. It may be noted that a dowry deed to the value of Rs. 1,500 in land was given to him shortly after his marriage (see M.K.M.M. 5 of 26.3.34). It is, I think significant that there is no mention of the agreement to pay a cash dowry in that deed. As far as I know Jainudeen Pariharia, the brother-in-law, was not questioned about the agreement to pay a cash dowry of Rs. 5,000. Respondent spoke of a separate writing given to him, which he said had now been lost. I am not satisfied with the story that a cash dowry was promised at the marriage. But on the other hand the respondent said that he was allowed to possess a land of the father-in-law's estate for many years, and it is possible that he may have earned Rs. 5,000 in that way. The evidence of Jainudeen Pariharia,

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respondent's brother-in-law, also supports the fact that respondent had been for some time in occupation of property of the father-in-law, after the latter's death. It is quite possible that the occupation of these lands by the respondent may have been set off for some purpose. On the whole I think it is advisable to deduct this sum of Rs. 5,000 from the face value of respondent's investments as shown in the two lists. Respondent also claimed that he borrowed a sum of Rs. 3,500 from I. Athambawa (M.K.M.M. 23) on 4.4.46 but this amount was paid back on 16.9.46, and I do not think that this sum should be deducted from the face value of the investments.

I have not yet dealt with the house that respondent built. He started building in 1946 and the building was completed in November, 1948. This was a large house of about 9 rooms. According to the respondent, his father had contemplated building a house for about 10 years before his death, and had collected materials for the building. Some of respondent's witnesses also mentioned this, but the evidence is not strong or convincing. According to respondent shortly before his death, the father had at least Rs. 5,000 in his hands. Why did he not go on with the building? On the other hand we have the evidence of the mason and carpenter R. K. John Silva who worked on the building from August, 1947, that timber, cement, bricks, &c., had to be purchased for the house. John Silva who had experience of building has prepared an estimate of the probable cost. His estimate is Rs. 25,390. Respondent himself estimated the value of the house at Rs. 15,000 but said he spent very much less—namely about Rs. 6,000 or Rs. 7,000 as he had the materials. I cannot accept the story of the respondent that he had any materials available—at any rate materials of any substantial value.

I have taken into account the fact that John Silva has had some litigation with respondent in connection with the building—the actual claim in Court by John Silva was not large. He has not kept any regular books, and such papers as he had are not available now. I think however that his estimate for the building is not exaggerated, and that Rs. 25,000 is about the sum, it must have cost the respondent. The whole of this sum however would not have been paid before 28.1.48. I think it would be fair to ascribe to respondent for our period one half of the cost of the building, viz., Rs. 12,500. We are not concerned with how he obtained money for the building after 28.1.48. Respondent incidentally mentioned that Rs. 4,500 was obtained by the sale of a land of his wife on 28.5.48 (M.K.M.M. 30). Half of this was apparently his wife's money.

In my opinion a sum of about Rs. 12,500 should be added to the amount of respondent's investments in respect of the building put up by him.

However one regards the real expenditure in respect of investments by the respondent, and the probable income of the respondent during this period, it is difficult to reconcile these two things, and it seems clear that the investments were considerably in excess of the probable income. I have not discussed the sources of income other than those from paddy and his employment. No specific figures are available, but the income from other sources does not appear to be very large, and I do not think it can bridge the gulf. Further in this case no margin has been left for the ordinary expenditure by the respondent on the needs of his family, during the years 1939 to 1948.

On all the evidence I am satisfied that respondent has failed to account for a considerable portion of his purchases of property and accumulations of money.

Were respondent's purchases and accumulations, the result of bribery or corruption. There was a body of evidence to that effect. M. K. Mohamadu Yusoof who carried on a small trade in goats spoke to a purchase of controlled goods from respondent's wife. This witness admitted that he was on bad terms with respondent, who purchased a share of his residing land, and that he was waiting for an opportunity to expose respondent. I do not reject his evidence, but I do not depend on it by itself. The builder R. K. John Silva spoke of a specific instance where to his knowledge 8 or 10 bags of sugar from the Latiffa Co-operative Stores, of which respondent was President, had been removed to the house of respondent's wife. John Silva had helped to remove the goods. He had also seen the removal of onions, kerosene oil, potatoes, chillies, &c., to respondent's wife's house. As John Silva was actually engaged in building the new house of respondent, which was at first close to and later the actual site of the Co-operative Stores, he had an opportunity of observing this. John Silva had also bought controlled articles above the controlled price for his workmen and also 2 sarongs for himself. He said he had also seen respondent receiving bribes for salt licences, but no person who paid a bribe has been traced. There is no doubt that John Silva has had some litigation with the respondent over the building of the new house, but I thought he was a satisfactory witness.

Another witness was M. I. Jainudeen Parihari, whose sister is married to respondent. He said that respondent made money from the Co-operative Store, he received large stocks, and disposed of some of them in the black market. He himself had bought controlled goods at respondent's wife's house and seen others

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do so. On one occasion, when there was a scare that the D. R. O. was coming to that house, he helped to remove the goods elsewhere. There had been litigation between this witness and respondent relating to the land transferred to witness (D. C. Batticaloa 333 L. in 1947). Jainudeen was successful, but had not yet recovered his land, and there was bad feeling between himself and respondent over this. Jainudeen was not a very bright witness, but I thought he gave his evidence satisfactorily.

A. L. Adam Bawa was another witness who saw the transport of controlled goods from the Co-operative Store to respondent's wife's house. He had also purchased a sarong above the controlled price.

Lastly the Kathi, M. C. Kariapper gave evidence of the respondent's wife selling controlled goods in the black market—*e.g.*, kerosene oil, sugar, &c. He saw this on one occasion, and remonstrated with the wife, especially as she was vending arrack as well. This witness was in my opinion a very intelligent and reliable witness.

I was not impressed with the suggestion that some of these witnesses were affected by the elections.

An examination of the affairs of the Latiffa Co-operative Stores revealed a very sorry state of things. The Society was named apparently after a daughter of the respondent, and the official reports indicate that it was being run as the private concern of the respondent, who was President from 31.12.43 and resigned in 1947. There was supposed to be a Committee to run the business, but the Committee, rarely met, only about once a year or so at the outside. There was a Manager, but he appears to have gone away after a time leaving a substitute who gave no security. One of the respondent's brothers-in-law was a salesman. According to the account of the respondent, he appears to have done nothing in particular, except that on occasions he took over the cash when the Treasurer was not present. The audit reports M.C.M.Y.17 A to E were adverse and commented on the fact that respondent overshadowed the Committee and conducted the stores as a one-man show. They complained of leakages of stock, and the low margin of profit that resulted. It is a curious fact that neither the respondent, the President of the Stores, nor the Secretary, A. Mohideen Bawa, who was called as a witness, had taken the trouble to read the audit reports. Eventually respondent had to retire from the Presidentship, on orders from the Government Agent, who requested all Headmen, not only respondent, to relinquish office in the Co-operative Stores. Even that did not help the Stores, which shortly after had had to go into liquidation. Respondent was appointed liquidator. This was claimed by respondent as a compliment to him, but the real reason apparently was to save trouble in the handing over of the goods (see M.C.M.Y. 12B). The stocks were in the respondent's house. As liquidator respondent carried out a policy of masterly inactivity; stocks were only sold on one day, a small quantity of the goods. Some of the rest deteriorated or perished. There was also some difficulty in getting the respondent to hand over the stocks to the Union Stores, which had been newly established.

On the whole of the evidence I am satisfied beyond reasonable doubt that the respondent treated the Latiffa Stores as his own private concern, and openly sold articles at black market prices, and even transported certain articles to his wife's house, where the goods were sold in the black market. I am unable to accept the denials of the respondent, and found his explanations unsatisfactory and unreal. There is no doubt that the respondent received an appreciable income from this source.

There were also opportunities for respondent to make money in connection with the issue of licences, as an officer under the Internal Purchase Scheme. But the evidence as regards these matters was slight.

As regards the witnesses called by the respondent to speak to various matters, I was not impressed with M. H. L. Abdul Caffoor Marikar. I was doubtful about the evidence of Gnanamuttu, the Notary, on some points. B. A. William, the D. R. O's Chief Clerk, did not carry matters very far, and I did not think he was helpful in determining the yield of paddy fields in that area. I do not think he knew much about the matter. William is also a brother of David Podi Singho, whose evidence I had no difficulty in rejecting. The Secretary of the Co-operative Stores, Mohideen Bawa, was not a helpful or reliable witness. M. I. M. Aliyar only produced a document which I have dealt with in the proper context.

On the whole of the evidence I hold that the respondent made considerable purchases of immovable property in his own name and in the names of others during the relevant period, and accumulated considerable amounts of money, and that these purchases and accumulations were made and effected as a result of bribery or corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 84.

RESPONDENT:

M. Ahmad,
Agricultural Instructor,
Akkaraipattu.

IN PUBLIC

Heard on the 7th and 8th April, 23rd and 24th May, and 6th, 7th and 29th June, 1949.

Respondent : M. Ahmad, Agricultural Instructor, Akkaraipattu.

The matters for inquiry relating to this respondent are as follows:—

(1) the nature and extent of the purchases of movable and immovable property made by him, whether in his own name or in the name of his wife or in the name of his dependants, relatives or any other persons on his behalf during the period 1.9.39 to 28.1.48;

(2) the extent of the accumulations of money made by him during the said period; and

(3) whether the said purchases or accumulations were made or effected as a result of bribery and corruption.

Respondent was appointed Agricultural Inspector from 1.2.36—see M.C.M.Y. 4—on 22.2.43 he was transferred to be in charge of the Polonnaruwa Farm—see M.C.M.Y. 8—and remained there till about the end of 1947, when he was transferred to Akkaraipattu. The evidence indicated that it was during his service at Polonnaruwa that the respondent amassed wealth.

Respondent was married on 26.10.34, (see M.C.M.Y. 35).—after he had passed all his examinations, with distinctions. but before he obtained an appointment under Government.

In his letter written to this Commission (M.C.M.Y. 15: 10.11.48 and M.C.M.Y. 16: 18.11.48) respondent set out the purchases of land he made in the name of himself and of his wife, as follows:—

(*a*) 20.3.41 deed 3461: 4 acres of paddy land in his own name for Rs. 300.

(*b*) 11.9.42 deed 10850; 10 acres of paddy land in his wife's name for Rs. 1,000.

(*c*) 27.1.44 deed 6887: 17 acres of paddy land in his wife's name for Rs. 8,500.

(*d*) 8.7.44 deed 12623: 3¼ acres of paddy land in his wife's name for Rs. 2,000.

(*e*) 18.5.45 deed 13403: House and garden in Karaitivu in his wife's name for Rs. 2,000.

Admittedly all these purchases amounting to Rs. 13,800 were made from respondent's own money. He had also in 1937 purchased a small piece of land in his wife's name, but this purchase is outside our period (1939-1948). It is to be noted that respondent was in Government service, but the only purchase for which he obtained permission from Government was for that of 20.3.41 in his own name for Rs. 300. It is difficult to accept the respondent's explanation that he understood that no permission was needed for the purchases in his wife's name, and even if this is accepted, it may show that the respondent made these purchases in his wife's name, so as to avoid the necessity of notifying Government of the purchases. It is also difficult to understand the respondent's reason for doing this. He said that complications may have arisen in the event of his death about the inheritance of the property, but complications concerning inheritance would have equally well arisen in the event of his wife's death, and respondent and his children would have inherited only fractional shares of the whole. I incline to the view that respondent did not wish Government to know of these purchases in his wife's name, and this was the reason the purchases were made in this manner.

The respondent also in M.C.M.Y. 15 disclosed the purchases and sales of motor cars by him during the relevant period :—

(*a*) 6.9.39—X 48 : for Rs. 200 transferred 3.10.39.

(*b*) 3.10.39—X 5708 : for Rs. 1,036.97 transferred in 1942 for Rs. 2,000.

(*c*) In 1946 Z 6399 : for Rs. 4,000 transferred in 1947 for Rs. 3,000.

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It was alleged by the witness called by Crown Counsel that these were not the only purchases made of movable and immovable property by the respondent during the relevant period. It was alleged that respondent had been the real purchaser of extensive lands in the name of his father-in-law and of his mother-in-law, which were subsequently transferred by them to respondent and to his wife. It was also alleged that respondent had built a "palatial" house on his land, and also acquired valuable movables, including a station wagon and a horse. I shall deal with these in due course.

As regards the lands purchased, the facts are as follows: By deed 7987 dated 4.12.44 a purchase was made in the name of the respondent's father-in-law of 2 acres of land being a building site for the sum of Rs. 4,000. Again by deed 14112 of 4.2.46 (translation is M.C.M.Y. 1A) a purchase was made in the name of the father-in-law of 75 acres of paddy land for a consideration of Rs. 60,000. Also by deed 9194 of 14.2.46 a land was purchased in the name of the respondent's mother-in-law for the sum of Rs. 2,000. Later in the course of the same year the father-in-law and the mother-in-law by deed 9768 of 14.11.46 donated the properties purchased under the three deeds 7987, 14112 and 9194 to the respondent, the value being stated to be Rs. 75,000. By M/B 14129 of 9.2.46 these lands had a mortgage of Rs. 45,000 imposed upon them at the instance of the father-in-law in favour of respondent's brother-in-law, one Abdul Hassen and one Mustapha in respect of monies said to have been lent to the father-in-law in order to make purchases under deed 14112 for Rs. 60,000. It has been strongly urged that the purchases in the name of the parents-in-law and their subsequent donation were merely a colourable transaction to conceal the fact that respondent's moneys had been utilized to make the original purchases, and the mortgage itself was alleged to be a bogus one. The respondent, however, maintained that his own moneys were not used for this purchase and that the donation to him and to his wife of 14.11.46 was in the nature of a deferred dowry, given about 12 years after the marriage. Respondent contended that this is a usual or at any rate not uncommon practice among Muslims in his district.

It should also be mentioned that further purchases were made in the name of the father-in-law of respondent in 1947; namely by deed 1497 of 3.2.47 of a coconut garden for Rs. 1,500; and by deed 2122 of 18.12.47 of a land for Rs. 7,500. It has been strongly urged that the father-in-law could not have raised these amounts, and that these were purchased out of moneys provided by the respondent.

As regards the new house put up, there was a controversy as to whether it was paid for by respondent or by his brother-in-law. Undoubtedly it was put up on one of the lands "dowried" to the respondent, but for the respondent it was maintained that it was either built or equipped as a dispensary suitable for the practice of the brother-in-law who is a registered ayurvedic physician. This house must have cost a substantial amount.

Crown Counsel called several witnesses. The first was M. C. M. Yusoof, a cultivator who claimed to be a close relation of respondent's father-in-law. Yusoof maintained that the father-in-law was an unregistered ayurvedic physician, with a small practice among poor people, earning about Rs. 30 a month from his profession, and that he had also about 20 acres of paddy land at the time of respondent's marriage and thereafter. In support of his latter point, a householder's list for 1945, 1946, relating to the father-in-law's household (M.C.M.Y. 23 and 33) was produced. At the top of this householder's list is entered "20 acres" under the heading "O.C." which means "owner cultivation." This heading was not entered by or for the householder, but apparently was entered up in the Divisional Revenue Officer's Office on information received for the purpose of dealing with the rice ration books. I shall have to deal with this a little more fully later on.

According to Yusoof, respondent's wedding in 1934 was a very quiet affair, and respondent got no dowry or promise of dowry on that occasion. This last fact is not denied by the respondent. The father-in-law's family it is said were not well-to-do.

Yusoof further said that the big house was built by the respondent and not by his brother-in-law. At the time the building was started, the brother-in-law was a student at the Ayurvedic College in Colombo. Yusoof estimated the cost of the house at Rs. 50,000.

Yusoof also gave evidence on an important point. He said he was present in the father-in-law's house about the time of the execution of deed 14112 of 4.2.46 (regarding the 75 acres of paddy) and saw the respondent handing over bundles of notes to his father-in-law for the purpose of making the purchase. The father-in-law took the money to the Notary's Office. Yusoof however was not present at the execution of this deed, or any other deed in favour of the father-in-law.

Yusoof also denied that it is customary to give deferred dowry after the time of marriage. If the parties were well-to-do, dowry was given at the date of marriage.

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Yusoof said he was on good terms with respondent and his father-in-law until 1948, when as a result of certain quarrels among the women-folk, a daughter of Yusoof was charged in the Magistrate's Court and fined. Yusoof frankly admitted that he suspected respondent of instigating the prosecution, and that there was bad feeling between him and respondent now. He said that otherwise he would not have come forward to give this evidence against respondent. Both the animus and the frankness of the witness are points to be considered.

Another witness was M. C. Kariapper who has held the office of Kathi since 1943. He said he knew respondent and his family—respondent's parents were not well off. The respondent's father-in-law was also not well off before 1940. He had about 20 acres of paddy, yielding 30 or 36 amunams of paddy a year at the highest. The father-in-law had no substantial clientele as a physician, and earned very little from his profession. It was not till after 1943, that the father-in-law showed signs of getting rich.

Kariapper said that respondent supplied the money for the father-in-law's purchases. He spoke to conversations with the respondent where the respondent had said "to rob, you must rob by lakhs, it is no use to rob by rupees and go to jail." Respondent appeared to be serious when he said this. During the time respondent was in Polonnaruwa he had huge sums passing through his hands, and it is established that in payment of wages alone, a sum of about 1½ millions passed through his hands at Polonnaruwa.

Kariapper spoke to the building of the new house and admitted that it was "built like a dispensary." This was started about 1946. He formed the strong impression that the building was paid for by the respondent, and that the dowry deed was only a colourable transaction. He had not, however, been present when the deeds in this connection were executed. Kariapper stated that it was only in exceptional cases that dowry was paid after marriage. In those cases there was a promise to pay dowry, and this was set out in a "Kadutham" written on ordinary paper at the time of marriage, and signed by the bridegroom and the girl's father, and by certain prominent officials such as the Village Headman and the Marikars of the mosque. The "Kadutham" has within recent years been superseded by the entry in the marriage register, kept under the Ordinance. Kariapper added that there was no promise of marriage without a "Kadutham." There can be no question that by virtue of his experience and office, Kariapper must be well acquainted with the marriage customs of Muslims in his area. He was keen and intelligent and I formed a very favourable view of his evidence, which I think was truthful.

It was suggested that Kariapper was annoyed with the respondent, because the respondent who had obtained his diploma later was holding a better position, than Kariapper's brother in the Department, Kariapper's brother joined the Tea Control Department. Kariapper said he had not heard that his brother had applied for the post eventually given to the respondent, and I accept his statement.

Kariapper also said that he saw the station wagon garaged in respondent's house, and used by respondent. The wagon was, however, registered in the name of respondent's brother-in-law.

Another witness was I. L. Ismail Lebbe, a tea kiosk-keeper. He said that at the time of respondent's marriage, respondent's father-in-law was not a wealthy man, and had about 20 acres of paddy, not fertile land. From his profession of physician he earned Rs. 25 or Rs. 30 a month. The subsequent acquisition of property was attributed to respondent's money. The father-in-law was in no position to save Rs. 20,000 or more.

Ismail Lebbe spoke to a transaction which is of interest. He borrowed Rs. 1,000 on a promissory note from respondent. He asked respondent for the money, and was requested to draw the note in favour of respondent's father-in-law. The money was, in fact, given to him by respondent's wife. Admittedly some payments were made by Ismail Lebbe on this account, but the promissory note was assigned to another person who sued Ismail Lebbe for the whole amount of the note. There has been bad feeling between Ismail Lebbe and the respondent about this matter, and Ismail Lebbe frankly admitted that "he had his own spite" against the respondent on this account. His frankness and his animus may both be noted.

Ismail Lebbe also spoke to the fact that lorries containing price controlled goods had on occasions come and delivered these goods at the house of respondent's wife. Ismail Lebbe had himself assisted in unloading these goods. Ismail Lebbe had himself purchased price controlled goods e.g. sugar, from respondent's wife above the controlled price—in small quantities. It appears that at Polonnaruwa there is a Co-operative Store of which respondent was President. This was known locally as the "Ahmadia Stores." The suggestion is

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that the goods came from there. The respondent, however, pointed out that the only motorable road from Polonnaruwa to Batticaloa is through Trincomalee—a very long distance for the lorry to come.

Another witness was D. N. L. Vissumperuma, a clerk in the Department of Agriculture at Peradeniya. He had been sent out to Polonnaruwa for an audit inspection on the 14th June, 1947, and again on the 14th July, 1947. He discovered certain irregularities, the principal matter mentioned was that a large number of labourers who had been marked present at muster early in the morning were absent from work at the check up by audit about noon. The audit clerk found 34 such absentees, but the overseer's lists subsequently presented to him revealed that there were 63 absentees, 14 names being common to both lists. It looked as if some persons who had been discovered to be absentees had returned before the audit check had started and that others found present by the overseer had gone out before the audit check. However, the audit clerk thought the number of absentees excessive, especially in view of the fact that for the previous fortnight, the highest number of absentees on any day was seven. As a result of the audit reports, an inquiry was held at the instance of the Director of Agriculture and charges of dishonesty and gross negligence in connection with the entries in the check roll (see M.A. 5) were framed against the respondent. Order was finally made on 30.9.47 by the Director that in his opinion the charge of gross negligence was proved (see M.C.M.Y. 26). Order was made that the increment due to the respondent on 1.2.48 be deferred by 6 months. No doubt this was a light punishment, and it does not appear that the increment in question was in fact deferred.

About this time the respondent received orders of transfer to be an Assistant Farm Manager in another area, but for various reasons the transfer was delayed, and did not take effect till December 1947, when he was sent to Akkaraipattu as Farm Manager.

Apart from the documents produced, this was the main evidence called by Crown Counsel. Against the three Muslim witnesses, it was urged that Gate Mudaliyar M. S. Kariapper, M. P., had been supported by the respondent's father-in-law at his election, but that later the two had fallen out, because the father-in-law wanted certain expenditure he had incurred refunded to him. It is quite possible that these two did fall out, but I am not satisfied that M. S. Kariapper took any steps against respondent in connection with his transfer, or induced these witnesses to give evidence before me. It is clear that on 15.9.47 (see M.C.M.Y. 12) M. S. Kariapper together with a number of Muslim M.Ps. had addressed to the Prime Minister a petition asking that respondent's transfer and "depromotion" be reconsidered and about October, 1947, respondent was seen in the company of M. S. Kariapper at the Secretariat. I do not think there is any substance in the suggestion that the present allegations are the result of ill-feeling engendered by the elections held in 1947.

Counsel for the respondent also called evidence. The first witness was N. Casipathipillai, whose wife was one of the vendors on deed 14112 of 4.2.46, relating to 75 acres of paddy. Casipathipillai was present at the execution of the deed, and said the consideration was given by respondent's father-in-law, who paid Rs. 40,000 in cash and next day redeemed an existing mortgage of Rs. 20,000 on the property. Casipathipillai did not know respondent, nor observe him there at that time. He mentioned, however, that at the time, he heard a rumour that the father-in-law was buying for the son-in-law. He was told so by the other vendor on the deed—Arumugam, and also heard this talk from villagers. It may be mentioned that the witness, Ismail Lebbe, said that the father-in-law had made statements to the same effect, and Kariapper's evidence is that respondent had himself not been silent.

M. Adam Lebbe, an old man of 93, who said he had 300 descendants, and had been a Lebbe at the mosque, said that dowries were given sometimes at the marriage, sometimes later—there was no hard and fast rule—and that sometimes writings i.e. "Kadutams" were given at the marriage, sometimes not. His evidence appeared to imply that there was usually a promise, either in writing or verbal at the time of marriage. One point important to this case was made by this witness viz., that the word "seethanam" means the immovable property given to the daughter, and that the word "Kaikuli" means the cash dowry given to the son-in-law. Adam Lebbe admitted that the witness M. C. Kariapper ought to know the Muslim customs. He added that it was exceptional to have a promise of dowry without a "Kadutham".

Another witness was A. R. M. Abubucker, M.P. He said that respondent's father-in-law got a good practice and was a well-to-do man. But this was not based on his own observation, but from what he heard. Abubucker had been one of the signatories to the petition M.C.M.Y. 12 of 15.9.47, asking the Prime Minister to reconsider the transfer of respondent from Polonnaruwa.

An important witness for respondent was his brother-in-law M. I. M. Ibrahim who is now a qualified and registered Ayurvedic Physician. This witness claimed that at his marriage on 26.9.45 he received a cash dowry of Rs. 30,000. He

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produced his marriage certificate M.A. 7 in support of this. This sets out under cages 7, 8, and 9 the arrangement with regard to "Mahr" "Seethanam" and "Kaikuli" respectively and was as follows:—

7. Amount of Mahr: if paid Rs. 2,000, not paid.
8. Amount of Dowry (Seethanam) Rs. 30,000 paid
9. Amount of Kaikuli.....

"Mahr" represents the amount given or promised by the husband to the wife, and need not be further considered.

The important point is that in the register the sum of Rs. 30,000 paid appears against cage 8, as dowry or "Seethanam", and not against cage 9, as "Kaikuli". It may be mentioned that the old priest Adam Lebbe called for the respondent said that "Seethanam" represents immovable property given to the wife, and "Kaikuli" represents cash dowry given to the husband. On the face of the document therefore there is no proof, that any cash was given to the husband on this occasion. It is suggested that in Batticaloa there is a laxity in the use of these words, but the evidence on this point is not strong. There was evidence that the cash dowry was actually paid by an uncle of the bride—one Abdul Hassen, whose evidence was also material on another point to be mentioned later. But for a reason which is not clear Abdul Hassen was not summoned or called to give evidence. So we are left with the evidence of respondent's brother-in-law and father-in-law on this point, as well as that of the respondent.

The point is of some substance, because it is contended by the respondent that the brother-in-law out of this cash dowry built the house already mentioned, assisted by his loan the father to buy the paddy land of 75 acres, and made certain other purchases of movable and immovable property, which are now attributed to the respondent. In the absence of material evidence which has not been called, I cannot hold that the respondent's brother-in-law received the whole or the bulk of his dowry in cash. It is, however, possible that he received some part in cash, though even that is not quite clear.

But even if the respondent's brother-in-law received the whole of the dowry of Rs. 30,000 in cash, had he sufficient money available to make the various purchases, and to carry out the building scheme?

Respondent's brother-in-law said he started building the new house in January or February, 1947, though the petitioner and his witnesses said that the building was started earlier, while the brother-in-law was still a student at Colombo. The house he said cost him Rs. 13,000 or Rs. 14,000 up to the present. No evidence of any builder was called to support this figure, and on the evidence as a whole I think this is a low estimate of the cost, which may have been at least double that sum. It was a large and commodious house, built at a time when building costs were high. Besides this by deed 1661 of 6.5.47 the brother-in-law bought a two roomed building in Kalmunai for Rs. 6,000. About 21.6.47 he bought the station wagon CE 7934 (see M. A. 8) for Rs. 5,500 and garaged it at the respondent's house. He had also at the request of respondent's father-in-law lent him Rs. 10,000 to secure the purchase of the 75 acres of paddy land in February 1946, that was very shortly after his marriage in October 1945.

It is obvious that even if respondent's brother-in-law received the whole of his dowry of Rs. 30,000 in cash, it could by no means cover the expenditure which he incurred in 1946 and 1947. It is clear that this brother-in-law received nothing at this period from his own father; on the contrary he lent money to the father. The brother-in-law maintained that he earned an income from his profession of Rs. 500 or Rs. 600 a month in 1947, but this is not supported by any witness and the fact remains that in 1947, he did not pay income tax, or even send in a filled up form relating to income tax. He said he had only recently received a form from the Department. As regards the building of the house, it must be borne in mind that this was built on the property of the respondent. The brother-in-law said this was the most suitable site, and an arrangement was made for exchanging this for another site with a building on it, which had been reserved for, but not given to, the brother-in-law by his own father. But nothing has up to date been done to implement this arrangement.

I have carefully considered the evidence of the brother-in-law and I cannot accept it. I am not at all satisfied that he had any cash available for the various adventures he undertook at this period, and I am satisfied in any event that if he had any cash, it represented a very small fraction of his expenditure in 1947 in particular. The lending of Rs. 10,000 to the father-in-law of respondent in February, 1946 is also a curious matter. He gave Rs. 10,000 in order to enable his father to purchase a land, which was later given as an endowment to the respondent and his wife. He obtained a mortgage for that, but up to the present no interest nor capital has been paid to him on that transaction.

Another witness was B. B. M. B. P. Mohamadu Ismail Lebbe Parihari. Parihari is a title, meaning physician, which was the profession of respondent's father-in-law, practised since 1914. His name was, however, not registered, and he had

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no qualification other than experience under his father who had previously practised as a physician. This witness said that he took from patients anything they gave from 50 cents upwards, but stipulated for fees in serious cases—ranging from Rs. 50 to Rs. 400. He said that before 1940 he had over 40 acres of paddy land which he had purchased at various time from 1915 onward. A list of these was put in—M.A. 19.

As regards his income he gave various estimates. Admittedly he had not paid any income tax during the relevant years, and to meet this he said he had a net income of Rs. 2,000 from all sources after meeting expenses, and that without deducting expenses he received Rs. 4,000 or Rs. 5,000 a year, and now about Rs. 6,000 a year. Later he calculated his annual savings at a very much higher figure, namely Rs. 5,000 to Rs. 6,000. I do not think his estimate of income at all reliable.

On the occasion of respondent's wedding in 1943, no dowry was given or promised—there was no written or oral promise, and no demand was made for dowry. It was not till 1946 that the father-in-law entertained the idea of giving dowry, because at that date respondent had marriageable children. In fact the children at that time would have been under 12 years old. Witness said he never heard of a "Kadutham" and that no writing was given, because there was no promise of dowry. At the time he had unencumbered property, but none was settled on the respondent, or his wife. In my opinion this fact does point to the conclusion that at this time the father-in-law was not in very affluent circumstances. No doubt respondent had not yet obtained Government appointment, but he had passed his examinations with credit, and was waiting for a job. He was admittedly an eligible son-in-law.

The wedding was a fairly quiet one, only 50 or 60 persons being invited, and the expenditure was restricted to Rs. 400 or Rs. 500.

The respondent's father-in-law spoke to his purchases under deeds 7987 of 4.12.44, 14112 of 4.2.46 and 9194 of 14.2.46—the last in the name of his wife. As regards deed 14112, the consideration was Rs. 60,000 and he had only Rs. 20,000 saved. He accordingly borrowed Rs. 45,000 namely,

Rs. 10,000 from his son Ibrahim,

Rs. 20,000 from his nephew Abdul Hassen

Rs. 15,000 from his relation Mustapha.

and utilized this money for the purchase of this property, and later on 9.2.46 he executed a mortgage bond in favour of these persons.

This is certainly a queer transaction, and it has been attacked. The father-in-law was undertaking a big responsibility in purchasing a property, for the consideration of which he had only one-third of the money needed. He was, however, able at short notice to raise the large loan of Rs. 45,000. Mustapha, one of the mortgagees was at the time a law student in Colombo, and it is difficult to believe he had that amount in cash available. Of Abdul Hassen's finances we know hardly anything.

Mustapha at some stage had been engaged to respondent's daughter, but the engagement was given up, and he has recently married the daughter of Mudaliyar M. S. Kariapper. Abdul Hassen was the uncle of the bride of respondent's brother-in-law, and is said to have handed over the dowry of Rs. 30,000. Further since the date of the mortgage, not a cent of interest or of capital has been paid to the mortgagees. It is said that the respondent hopes to pay this all in a lump sum in course of time. Further, though respondent's father-in-law had unencumbered property amounting to about 50 acres of paddy, the respondent elected to take as dowry this encumbered property.

For some reason which is not obvious, neither Mustapha nor Abdul Hassen has been called to show that they actually loaned the sums in question, and how they raised these sums in cash. Abdul Hassen's evidence was material on the question of the cash dowry of Rs. 30,000 also, and both these items had been assailed from the start of this inquiry.

I am satisfied from all the evidence in the case that the respondent's father-in-law was not in such a financial position that he could have saved Rs. 20,000 or any substantial part of that sum by February, 1946. I am further satisfied that he had not sufficient funds to make his later purchases, on 3.2.47 for Rs. 1,500 and on 18.12.47 for Rs. 7,500. It has to be remembered that in September, 1947, or thereabouts he is said to have purchased a car from respondent for Rs. 3,000, and to have incurred expenditure of an unspecified amount at the election of 1947.

Further the householder's list—M.C.M.Y. 33—shows the official estimate of his paddy holdings as 20 acres. It does not follow, even if he owned a larger area of paddy, that all his lands were cultivated or cultivable. I am inclined to think that his cultivated lands were not in excess of 20 acres. It is also a singular

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fact that this estimate persisted into 1946 also, after the deed of February 1946. The 75 acres said to have been bought in that month were not added to the column of "Owner Cultivation". On the other hand, in M.C.M.Y. 34, the householder's list of the respondent, an area of 63 acres is shown under "Owner Cultivation" which is appreciably in excess of what was in the actual name of the respondent at that time.

Respondent's father-in-law also spoke to the promissory note for Rs. 1,000 given by witness Ismail Lebbe called by Crown Counsel, and said the money was paid by him and not by respondent's wife.

The respondent also gave evidence, and supported the stories of his father-in-law and brother-in-law and denied the allegations made by witnesses called by Crown Counsel. He maintained that he had not financed any of the purchases made by his father-in-law and his brother-in-law, and the building of the new house. He said the horse was bought for use on the farm, and that he received an allowance of Rs. 60 a month from Government on that account. The station wagon was bought by the brother-in-law.

As regards his properties, he said that his father had 40 or 50 acres of land when he died. There were 3 children left, himself and two sisters. There is no other evidence about his land holdings before 1940.

Respondent pointed out that his leave record for 1946 (M.A. 23) showed that he had not applied to obtain leave till 5.3.46, and that he had no leave in February 1946, when the payment was made in respect of the 75 acres of paddy bought by his father-in-law. He gave evidence at length about the Government inquiry into his conduct at Polonnaruwa in 1947, and gave his explanations, and emphasised the facts that he had only been found guilty of gross-negligence and not of dishonesty, that the penalty imposed had been the light one, of deferment of increment for 6 months, and that the penalty had in fact not been enforced.

As regards his marriage, respondent said that he deemed it wiser not to ask for any dowry, as he was marrying a rich man's daughter, and at the time had no assured position. No promise of dowry was made at the wedding.

As regards the evidence of Ismail Lebbe called by Crown Counsel, respondent denied that he or his wife lent the sum of Rs. 1,000 on the promissory note, and said it was lent by the father-in-law. He denied that he transported any price controlled articles to his wife's house; as regards the Ahmadia Co-operative Stores, the name was given as a compliment to him as President, but he did not treat it as his private store.

I have already discussed a good number of the points arising in this case, but there are some outstanding points. I accept the evidence of Ismail Lebbe that the sum due on the promissory note given by him was lent by respondent's wife and not by his father-in-law, though the note was made in the latter's name. I also accept the evidence of M. C. Kariapper that respondent did tell him of "robbing by lakhs and not by rupees". I also think there is substance in Yusoof's story that he saw the money being handed over by respondent to his father-in-law, in connection with the purchase of the 75 acres of paddy. These points have a bearing on the rest of the inquiry.

I am satisfied beyond reasonable doubt that respondent's father-in-law was not in a financial position to pay for the various purchases made in the name of himself and his wife, and I am also satisfied beyond reasonable doubt that the respondent's brother-in-law did not have sufficient cash to pay for the various purchases made by him, and for the building of the new house, and that the respondent provided the money or the bulk of the money for these purchases. I was not impressed by the evidence of the respondent, and of his father-in-law and son-in-law, and material witnesses who could have supported them were not called.

I am also satisfied that the transactions culminating in the alleged dowry deed of 1946 were mere colourable transactions to conceal the fact that respondent was actually providing the money. The giving of "dowry" 12 years after marriage, when no promise of dowry was made at the time of the marriage, was probably a unique transaction, and no instance at all resembling this has been cited by any witness.

There can be little doubt that the transactions admitted by the respondent would have been sufficient to exhaust the savings of the respondent; in fact they would have strained them to the utmost. It would have been impossible for the respondent to finance his brother-in-law and his father-in-law as well out of legitimate savings. The actual evidence of Ismail Lebbe called by Crown Counsel, about the transport of price controlled articles to his wife's house and sales in the black-market was not corroborated, and not strong enough in my opinion to base

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any definite finding upon. But there are other matters to be considered. The sums accumulated and the purchases made involved considerable amounts. On deed 14112 of 4.2.46 at least Rs. 20,000 was needed, and other transfers were for substantial sums. Further attempts were made in the deeds to show that the moneys were not provided by the respondent, although both the respondent and his father-in-law were not very reticent in private conversation. I am also satisfied that the explanations of the respondent, his father-in-law and his brother-in-law were false in many respects. In all the circumstances I think I am entitled to hold that these purchases and accumulations were made by the respondent as a result of bribery or corruption. In fact there were many opportunities for this.

In the result I hold that the respondent purchased movable and immovable property of considerable value, and accumulated considerable sums of money during the period 1943 to 28th January, 1948, and that the only reasonable conclusion is that the purchases were made and the accumulations effected as a result of bribery or corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 89.

RESPONDENT :

S. P. Van Twest,
Foreman,
Marketing Department,
Captain's Gardens,
Colombo.

IN PUBLIC

Heard on the 6th May, 1949 and 2nd June, 1949.

Respondent : S. P. Van Twest, Foreman, Marketing Department, Captain's Gardens, Colombo.

The matters for inquiry relating to this respondent are as follows:—

(1) that during the period 1.9.39 to 28.1.48 he accumulated money in such circumstances that the only reasonable presumption is that such accumulations were made or effected as a result of bribery and corruption;

(2) that between 1.1.42 and 28.1.48 he retained sums of money varying from Rs. 2 to Rs. 25 from the monthly salaries, allowances and arrears of salaries of the following workmen, knowing that the said workmen had reason to believe that if they took action to recover the said amounts, he would have taken action for the disadvantage of the said workmen, in his capacity as Works Foreman of the Marketing Department, Captain's Gardens, Colombo :—

1. D. Jayasekera,
2. L. J. de Silva,
3. E. J. Silva,
4. B. Peter Peiris,
5. A. Arthur Alwis,
6. J. S. Simon *alias* D. S. Jayasuriya, and
7. H. Don Manuel Appuhamy.

(3) that in or about 1943, he received from one B. Peter Peiris a gratification of Rs. 25, as a reward or recompense for getting him employment in the Marketing Department;

(4) that in or about August 1946, he received from the said B. Peter Peiris a gratification of Rs. 15 as a reward or recompense for withdrawing a notice of discontinuance of his services as from 1.9.46;

(5) that in or about November 1947, he solicited a gratification of Rs. 25 from one L. J. de Silva in order that he may be recommended for appointment to a post in the Marketing Department's Bakery at Borella.

It was established in the evidence that prior to 1941, the respondent was not in the public service, and had then worked on a commission basis. In 1941 he was appointed Temporary Clerk in the Marketing Department, and in January 1942, Works Foreman at Captain's Gardens. The evidence of the witnesses relate to the period after this last appointment, which the respondent still holds. As far as his official duties were concerned, the respondent was a hardworking officer, who was commended for his services in a time of emergency—a very good foreman—and a prize winner in respect of his vegetable garden (see the evidence of Mr. R. H. Bassett, who was the Head of the Department till 31.10.47). Mr. Bassett said that he did a fair amount of personal supervision of the work of the respondent. There had been petitions against him, some signed, some anonymous, but he was not satisfied that the allegations were true. He had even checked the check roll, but was not able to detect anything.

It will be convenient to deal first with allegation (2), and at the same time to touch upon the allegations (3), (4) and (5), which are treated as special matters.

The first witness called by Crown Counsel was L. J de Silva, Carpenter, employed at Captain's Gardens. This witness was employed from 9.6.42 to 2.3.48 with several breaks in between these dates. He said that salaries for each month were generally paid early the next month. On pay day the witness had to sign as having received the full amount of his salary shown on the pay-sheet, but he never received his

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salary in full. There was always a deduction of Rs. 5 or Rs. 10, which the respondent retained for himself. Respondent was ordinarily the Paying Officer, but on about three occasions, in consequence of certain petitions, the Accountant of the Department made the payments. This was probably in June, July and August, 1947. On these occasions also, respondent in the presence of the Accountant said that moneys were due from the witness and took money from him. The witness did not protest because on one occasion, when he raised the question, the respondent told him that if he did not pay he would not be given work, and witness was afraid of losing his job.

This witness also spoke to the matters contained in allegation (5). The witness at this time was working at the Borella Bakery. The document D.J. 6 shows that the Bakery Manager needed a carpenter to work permanently at the Bakery. This gave greater security of employment than work at Captain's Gardens. In his minute of 19.11.47 the Bakery Manager specifically asked for carpenter L. J. de Silva "who was attached to the bakery for a long time, and who is really a good carpenter", and said that the others were not up to standard. On 24.11.47 the respondent minuted that he regretted he could not comply with the request, as L. J. de Silva was needed for important building work, "viz. alterations at Beira Lake and C. P. Bandarawela". The letter further stated that Carpenter A. S. de Alwis who was then working at the Bakery was quite fit enough to do the routine work at the Bakery. If Alwis was not wanted, a carpenter may be advertised for.

L. J. de Silva said he was told of this job by the Bakery Manager, and went to see the respondent. Respondent then informed him that Alwis had promised him Rs. 25, and that if the witness paid that amount, he would get the job. Witness replied that he had not the money to pay. The result was that he did not get the job, and Alwis was recommended. Witness had to return to Captain's Gardens. He was sent for work to Beira Lake, but was never sent on outstation duty to Bandarawela. Respondent did not deny that witness was not sent to Bandarawela.

This document D.J. 6 and the subsequent employment of L. J. de Silva make this story not unlikely, and supports it to some extent. There can be little doubt that the Bakery Manager had some experience of Alwis, and had not formed a high opinion of him as a carpenter. Respondent in his evidence emphasized the fact that Alwis had seniority in the Department, but this is discounted by the fact that he was an inferior carpenter, and the point regarding seniority was not urged in the respondent's minute.

The fact that L. J. de Silva was highly considered by the Bakery Manager and also apparently by the respondent is a point to be considered. I thought he gave his evidence before me very well, and I am satisfied beyond reasonable doubt that allegation (5) has been established. I shall deal later with the question of monthly deductions from his salary.

I shall next deal with the evidence of B. Peter Peiris, carpenter, who is involved in allegations (3) and (4). This witness was employed from 6.12.43 to 5.5.47, when he left the Department on his own accord. Witness originally went to the respondent in search of employment, and the respondent asked him for Rs. 25. Witness paid that amount and was given employment. For about 3 or 4 months thereafter respondent took no further money from him; but later he deducted and retained each month Rs. 5 or Rs. 3, according to the number of days of work. Respondent was questioned about this, and replied that it was his "pagga". Witness thought it was dangerous to protest, for fear he would not get work. This witness signed a petition to the Auditor-General D.J. 2 of 29.3.46 not with regard to the deductions, but with regard to the alleged entry of fictitious names by respondent in the check-roll and paysheet—a matter I shall deal with later. He gave an illuminating answer to the question why he did not complain about the deductions. He said the question of deductions could not be proved, while the question of fictitious names could be decided by setting a trap for the respondent. Witness apparently felt that in the Department, his word might not be accepted as against that of his superior officer. I think this fairly expresses the views of the other workmen as well.

Eventually B. Peter Peiris received D.J. 4 of 1.8.46, discontinuing him from service on 31.8.46. Witness went to the Head Baas, who advised payment to the respondent. Witness collected Rs. 20 and paid Rs. 5 to the Head Baas and Rs. 15 to the respondent, who told him to continue his work. There is no question that he remained in service till 15.5.47 (see D.J. 8), when he left of his own accord. The respondent has not offered any satisfactory explanation as to why this witness was served with notice of discontinuance, or why his services were continued thereafter. The witness gave evidence well, and in spite of the fact that he must be regarded as an accomplice I believe his story that he paid respondent Rs. 25 to get employment, and Rs. 15 to get the notice of discontinuance withdrawn. I hold that the allegations in paragraphs (4) and (5) have been established beyond reasonable doubt. I shall deal with the other matters later.

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Another witness E. J. de Silva spoke to the fact that every month the respondent deducted Rs. 5 and retained these amounts out of the salary due on the paysheet. This witness had signed the petition to the Auditor-General D.J. 2 of 29.3.46 together with B. Peter Peiris and D. Jayasekera, in which the entry of fictitious names in the pay sheet was disclosed. He also sent a petition by himself. D.J. 3 of 12.11.47. To his knowledge no inquiry was held. He questioned the respondent once with regard to the monthly deductions and was curtly requested to pay the money. Witness had once acted as Head Baas, but did not receive that permanent post. It was suggested that he had a grudge against respondent on that account. But witness denied that, and added that he did not try to get the permanent post. In cross-examination witness spoke to a particular payment to respondent of Rs. 25 to adjust certain matters relating to his pay. But as he did not mention this earlier, and it was not the subject of any allegation, I cannot hold this against the respondent.

Several other witnesses spoke to the regular monthly deductions. J. P. David Singho *alias* D. Jayasekera, carpenter, one of the signatories to D.J. 2. spoke to regular deductions of Rs. 5. A. Arthur Alwis—carpenter—spoke to deductions of Rs. 5, Rs. 7.50, or Rs. 10 a month. On one occasion when arrears of pay was payable to him, respondent retained Rs. 25 out of a total of about Rs. 112. This witness had to pay a small fine of 25 cents on one occasion it is said for using filthy language. J. A. Simon *alias* D. S. Jayasuriya spoke to deductions of Rs. 5 or Rs. 2. H. D. Manuel Appuhamy mentioned deductions of Rs. 2 to Rs. 15. All these witnesses, gave their evidence well, except Manuel Appuhamy, who did not impress me very much.

Most of them spoke to deductions being made in the presence of the Accountant when he made payments, or shortly after he left. The Accountant himself S. Suppramanian noticed that the respondent took money from various employees, apparently saying that moneys had been advanced. W. P. Seneviratne, Head Shroff, who also made payment on a few occasions, speaks to respondent taking money from workmen, saying that it was for advances.

In his defence, the respondent asserted that he was given money by the Department to advance to workmen on occasions, that he made the advances and recovered the amounts advanced on pay day. Besides these he made no other deductions. All the witnesses called by Crown Counsel admitted that they received advances when they went to outstations, and also had money expended for food and provisions, when they were at the outstations. Besides these, certain workmen had taken other advances for other purposes. But clearly these amounts would be known to the workmen, and would not be confused with the illegal deductions. Unfortunately a very unsatisfactory practice arose with regard to the advances to workmen and their recovery. The office was only concerned in seeing that the advances given to the respondent were refunded by him to the office at the correct time. The office was not concerned with the question as to whether the advances were correctly given to the workmen or recovered back from them by the respondent. When an advance was given to a workman, no attempt was made to get the signature or thumb impression of the workman to that fact, except in one or two isolated instances. The respondent said he kept these accounts himself in his diaries, and produced the diaries for 1945 to 1948 (SPVT. 4A. to 4D.)

These diaries contain entries relating to these matters, but none of these matters had been authenticated by the workmen themselves. By the expenditure of a little more labour, lists of advances signed by the workmen could easily have been obtained. These diaries do not appear to have been inspected in the office, and the deductions of amounts advanced were not entered in the paysheets. The practice was, in my opinion, very bad and unreliable. It gave the paying officer an excuse for making certain deductions and claiming that the deductions were legal—without the necessity of providing proof of the correctness of the advances or of the deductions. The office only saw to it that the respondent repaid to the office the amount advanced to him by the office.

This lax practice, in my opinion, led to the result spoken to by the witnesses. There is no reason to think that the workmen were mistakenly speaking of legal deductions which they thought were excessive. For one thing it is clear that the workmen would know the amount of the legal deductions. For another the advances were not made every month, but only on special occasions when the workmen went to an outstation, or when they received a special advance. For example, in the two cases tested before me, L. J. de Silva appears to have received advances only on about five occasions. E. J. Silva, according to the diaries, received advances on about seventeen occasoins—several of them small amounts—but this did not imply that he received monthly advances. My opinion is that under cover of the lax practice, respondent recovered further sums from the workmen as illegal gratifications.

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No doubt some discredit must attach to the workmen, who must be regarded as accomplices, for acquiescing in these deductions. But in view of the fact that their work could be dictated by the respondent, the workmen were in fear that the work would not be given to them, or that they would be discontinued altogether. I think the workmen had a genuine fear and felt powerless against the respondent. Another point made is that the witnesses were discontinued in March 1948, as a result of retrenchment. Respondent suggested that these men felt that there had been some discrimination on his part as regards who should go, and who should remain. But a very large number of workmen were discontinued—respondent thought about 90 per cent, and the workmen could hardly fail to understand that the retrenchment was imposed by the office and not by the respondent. Further, this argument would not apply to B. Peter Peiris, who left on 15.11.47 of his own accord. Respondent also claimed that he tried to find employment outside in respect of some of these witnesses.

On the whole of the evidence, I am of opinion that the allegation in paragraph 2 has been established beyond reasonable doubt.

I have also to deal with allegation (1), and this very largely depends upon the entries in the respondent's Bank Accounts. Respondent at first had an account in the Post Office Savings Bank. From 1.1.39 to 31.12.41, there was a negligible account in that Bank, the balance never exceeding Rs. 5, and the deposits Rs. 1.50. In and after 1942 there were more substantial deposits, but the biggest balance never exceeded Rs. 175. There were withdrawals and the balance fluctuated, and by January, 1948, only a balance of Rs. 2.30 remained. The deposits were mostly of comparatively small amounts in only one case in 1947 Rs. 50. This account is D.J. 10.

In 1942 respondent started two new Bank Accounts. On 8.4.42 he started an account in the Ceylon Savings Bank, (D.J. 9) and on 6.11.42 he started an account in the Bank of Ceylon, D.J.11. In both these banks there were fairly substantial deposits from month to month, several deposits in many months, partly by cheque and partly in cash. At the same time there were withdrawals.

In the Ceylon Savings Bank D.J. 9, the respondent's balances gradually increased till on 28.5.43 it stood at Rs. 1,250.90; thereafter there were fluctuations till on 28.8.43 it reached Rs. 1,403.13. Thereafter the balance gradually declined until on 19.4.48 it stood at Rs. 5.94.

In the Bank of Ceylon—D.J. 11—the account was started on 6.11.42 by the deposit of Rs. 500. Respondent was not sure where he got this amount. Thereafter there were deposits and withdrawals, and the balances fluctuated considerably. Fairly substantial amounts were deposited on occasions. The balance was over Rs. 1,400 in June, 1943, when a deposit of Rs. 950 was made, but generally much below Rs. 1,000 and often very small. In August and September, 1947, the balance was over Rs. 1,000. By 30.1.48, the balance was only Rs. 64.46.

The statement of respondent's emoluments is shown in D.J. 12. This is the account submitted by the Office, but the respondent said that certain items were omitted, namely overtime in 1942 or thereabouts (said to be a substantial amount), travelling expenses and batta. It was claimed that respondent had to do a great deal of travelling all over the Island in connection with his employment. I think respondent has made out a case that the payments to him were in excess of the amounts shown in D.J. 12. Besides that, respondent claimed that advances were from time to time, given to him, and on occasions he deposited part of these advances in his bank account. He pointed to a deposit of Rs. 950 in June 1943, as probably a portion deposited out of the advances to him. It is clear that the respondent received advances from time to time, especially when work had to be done in outstations. Besides this, respondent claimed, and his wife corroborated the fact, that his wife did dressmaking as a business and earned money. Besides respondent's son and daughter were employed, and contributed to the household expenses, the son giving his mother his whole salary of Rs. 160 and the daughter part of her salary of Rs. 120 a month. The wife claimed she was able to save up to about Rs. 300 in busy months like December, and that she saved about an average of Rs. 100 a month. This she gave from time to time to her husband to be deposited in the Bank. Although her evidence was vague, I formed the opinion that she was a truthful witness, and that she gave sums to her husband from time to time to be deposited in the Bank.

Though the sums deposited in the Banks appeared to be in excess of respondent's earnings from his employment, it was difficult to say with any degree of certainty that any portion was money obtained by bribery and corruption. The respondent did not appear to observe any system with regard to the deposits; deposits were made in any of the Banks as he felt inclined. This has turned out to his advantage, for it is very difficult to disentangle these accounts. The explanations tendered by the respondent were vague and unsatisfying, but the possible explanation given by him cannot be rejected as entirely unreasonable.

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The respondent appears to have spent the money deposited, and in the result there were no appreciable savings. His balances were fairly substantial for him at certain times, but the balances were not maintained at these levels. The drawings generally reduced them in a fairly short period of time.

I need not do more than mention that the respondent said he also on occasions won money on horse-racing, &c.

Though I think there are elements of suspicion in the accounts, I cannot hold that it has been established beyond reasonable doubt from his Bank Accounts that he accumulated money as the result of bribery and corruption.

It may have been possible to argue from the findings on allegation (2), that it followed that he had accumulated moneys from several persons, as a result of bribery or corruption. But I do not think it is necessary to consider that aspect now.

There has been one other aspect stressed in this inquiry, viz., that the respondent received illegal earnings, by entering the names of fictitious persons in the check-roll, and the paysheets. There has been a considerable body of evidence on this point, which indicated that respondent got outsiders to come and sign the paysheets in respect of these fictitious names, and paid the outsiders a small part of the money, and pocketed the balance. The witnesses had made early complaints about this—*see* D.J. 1, D.J. 2, and D.J. 3. It is a matter for regret that the matter was not vigorously pursued at the time of those complaints. Merely sending the Accountant to pay salaries was hardly a satisfactory step as the Accountant did not know the workmen. When the Accountant suggested that the signatures of the workmen in a few instances varied and that the documents should be sent to the Handwriting Expert, nothing was done to implement the suggestion. There are suspicious features in the Attendance Register, D.J. 7 A to E, and it is significant that names of alleged fictitious persons who had been named by the various petitioners in D.J. 1, D.J. 2, and D.J. 3, appeared at the bottom of the list of names, in different ink, and apparently written up on one occasion in the Attendance Registers. It is not possible at this date to check the explanation tendered by the respondent, that these may have been taken from pocket registers, and entered all together at the end of the month. The respondent emphasised the fact, that he had workmen in various centres in Colombo, and also in outstations, and that the carpenter may not have known all the workmen at the various centres. This is a possibility that cannot be entirely eliminated. I am not able on the present evidence to come to a definite finding against the respondent on this point. At the same time I think his explanation vague and unsatisfactory. He was not able to clinch by independent evidence a single instance where the person alleged to be fictitious, was a genuine person. In any event, I do not think it is necessary in view of my holding on allegation (1) to consider this matter further.

To sum up, I hold that the allegation in paragraph (1) has not been established, but that all the allegations in paragraphs (2), (3), (4) and (5) have been established.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 91.

RESPONDENT :

M. S. Kariapper, Gate Mudaliyar,

formerly, Vanniah, Karavaku Pattu,

Eastern Province.

now Member of Parliament, and Parliamentary Secretary to the Minister of Home Affairs.

IN PUBLIC

Respondent : M. S. Kariapper, Gate Mudaliyar, *formerly* Vanniah, Karavaku Pattu Eastern Province, *now* Member of Parliament, and Parliamentary Secretary to the Minister of Home Affairs.

Heard on: 28th, and 29th, July, and 1st, 2nd, 3rd, 4th, 5th, 8th, 9th, 10th, 11th, 12th, 15th and 16th of August, 1949.

The matters for inquiry relating to this respondent were as follows :—

(1) the nature and extent of the accumulations of money made by him during the period 1.9.39 to 28.1.48, whether in his own name, or in the names of his wife, dependants, relatives or any other persons on his behalf, and whether the said accumulations were made or effected under such circumstances that the only reasonable presumption is that such accumulations were made or effected as a result of bribery or corruption ;

(2) the nature and extent of the purchases of movable or immovable property made by him during the period 1.9.39 to 28.1.48, whether in his own name or in the name of his wife, dependants, relatives or any other persons on his behalf, and whether such purchases were made or effected under such circumstances that the only reasonable presumption is that such purchases were made or effected as a result of bribery or corruption.

The respondent, after a short period of training, was appointed Vanniah of Panama Pattu in the Eastern Province on 1.1.1921. He was transferred as Vanniah of Sammanthurai Pattu and assumed duties on 1.1.1929. He was transferred to Karavaku and Nintavur Pattus, and assumed duties there on 1.1.1932. He continued in that office until his retirement on 1.7.1946, on which date he ceased to be in the Public Service. During the course of his service he was in 1944 made a Gate Mudaliyar. He married about the end of 1928.

After his retirement, the respondent successfully contested in 1947 the Kalmunai seat in Parliament and was appointed Parliamentary Secretary to the Minister of Home Affairs.

For the purposes of this inquiry it has been necessary to examine the circumstances of the respondent in the period before and after the relevant dates of this inquiry, but the material dates relating to his accumulations and purchases are 1.9.1939 to 30.6.1946.

Respondent came from a family who were respected and owned property in the Eastern Province. On his marriage in 1928, the respondent's wife received a dowry—M.S.K. 55—of 81 acres of paddy land, a small coconut land a house, and subsequently by donation received another 28 acres of paddy land. Respondent himself before 1939 had acquired about 59 acres of paddy land. On the death of his father about 1937, the respondent inherited about 100 acres of paddy land—D.C. Batticaloa Testamentary 443. The respondent and his wife between them were the owners of about 287 acres of paddy land before 1.9.1939, but it was contended that some of this land was not cultivable or not cultivated.

But though respondent and his family were the owners of large tracts of property, mostly in paddy, there is evidence that the respondent suffered before 1.9.1939 from an insufficiency of cash assets. His salary was originally Rs. 200 a month, and after five years it was raised to Rs. 250, and at the end of ten years to Rs. 300 a month, together with a travelling allowance of Rs. 70 a month or thereabouts. Admittedly the years 1928 to 1934 were years of depression and financial stringency. The price of paddy was very low, and the marketing facilities for paddy were meagre or non-existent, and many lands went out of cultivation during this period. There can be no reason to doubt that during this period

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respondent fell into indebtedness, and was either sued or forced by Government from time to time to settle his debts, and there exists a special indebtedness file for him—(see A.A. 12 to A.A. 21 ; also A.A. 53 and 54). Respondent has himself been at pains to prepare for the purposes of this inquiry a reconstructed estimate of his income and expenditure for the period 1928 to 1934 (M.S.K. 89). For this period he does not claim any income from paddy, and there appear to be no deposits in the Post Office Savings Bank. In this statement respondent also claims that in 1929 he purchased a property for Rs. 6,000 from his grandfather-in-law, who had in 1928 provided his dowry for him ; in order to help this relation to pay some debts. The copy of the deed appears to support this. Respondent also claims that he incurred personal expenses in connection with his wedding to the amount of Rs. 7,500, and received in cash as "kaikuli" Rs. 1,000. There is no corroboration of this and it depends on the word of the respondent. He also mentions certain building operations in 1931, costing Rs. 5,000. Here again we have to depend on his word, and for reasons which I shall presently state, it is difficult to depend upon his uncorroborated evidence. At the same time respondent shows in this statement a mortgage loan in 1930 from J. W. Vallipuram, which was not paid until 1934, and then only in stages, after action filed (see A.A. 6 to A.A. 9). He also shows a borrowing of Rs. 3,000 in 1934 by mortgage, from Dr. Karalasingham — for the purpose of meeting the previous debt. This was in fact not repaid till 1941 (see A.A. 10 and 11), and I am not disposed to accept respondent's explanation that he could have paid it earlier, but that the creditor desired to keep the debt alive as an investment.

There is evidence that respondent had other debts which he had not settled, and in fact there were actions filed against him, some for small amounts, in one case for Rs. 1,000 on a promissory note. Again what I consider of importance is the fact that no deposits were made in the Post Office Savings Bank till after 1941, although respondent and his wife had accounts there. As against this is the fact that respondent made certain purchases of property in 1940 and 1941, to the extent of over Rs. 2,000. I am inclined to think that the financial stringency continued up to about 1941.

Respondent has also prepared a reconstructed statement of income and expenditure for the years 1935 to 1938 (MSK. 90). In this for the first time he shows an income from paddy and he claims that paddy paid a little at this period— Rs. 500 in 1935; Rs. 750 in 1936; Rs. 1,000 in 1937; and Rs. 1,500 in 1938. As against these he said he had spent on the fields Rs. 500 in 1935; Rs. 1,000 in 1936, and Rs. 1,000 in 1937. So that, the profit on the paddy was not great. He also mentions expenditure on the purchase of two cars in 1935 and 1938. On all the accounts from 1928 to 1938 respondent does not claim any profit on all his transactions, and does not claim that he accumulated any surplus.

I have formed the clear impression that the period 1928 to 1938 was a period of considerable stringency as far as the respondent was concerned. There clearly was no room in those years for any accumulation of income on his part : on the contrary he had occasion to borrow from various persons, and was unable to settle all his debts. This is true principally with regard to the mortgage debt of Dr. Karalasingham of Rs. 3,000, which was still unpaid at the end of 1938. The large tracts of property owned by the respondent gave him practically no return. His emoluments were not large. As a matter of fact, the living expenses mentioned by him—Rs. 1,800 a year—appear to be on the low side for a person of his official position.

It is manifest therefore that the respondent arrived at the period relevant for our inquiry without any cash reserves. It is equally clear that between 1939 and 1946 he had accumulated a considerable amount in cash and property, and the question arises whether these accumulations were obtained from his legitimate earnings and the income from his properties.

In substance the respondent has himself set out the purchases made in his name and that of his wife in A.A. 37—Annexure A. to his letter to this Commission of 8.3.1949. Between 1.9.1939 and 9.12.1946, respondent had expended Rs. 17,651 in the purchase of landed property in his name and that of his wife. By far the most important purchase was that of a coconut estate by deed 14264 of 15.5.1946, for the sum of Rs. 11,750. Besides this there are in this period a number of purchases of lands in the name of respondent's mother to the amount of about Rs. 4,000, (see A.A. 37A). But though there is some little evidence that some of these purchases were really made by the respondent, as there was delay in his purchasing for himself or his wife, due to the need of getting permission from Government, the evidence cannot be said to be conclusive. Respondent's mother had herself purchased lands prior to 1939, and had during our period made gifts to respondent and his sisters. She is said to be capable of looking after her own affairs. On the whole I think it will be safer to keep out of reckoning the purchases made in the name of the mother.

There was also a suggestion that some of respondent's purchases were made at below the real purchase price. But there is little firm evidence on this point. Previous transfers of some of these lands show that the prices mentioned in the

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respondent's deeds were not substantially at variance with earlier transactions. The evidence as to the real value of these lands, tendered mainly by Aliyar Adam Bawa, is not strong. He had some experience of cultivating lands, but cannot be regarded as a person experienced in the valuation of properties. On the whole I do not think the evidence of systematic under-valuation of the properties has been established. As regards the most important deed, relating to the coconut estate for Rs. 11,750, the vendor was a European planter, and there is no reason to think that the consideration was understated.

Apart from the purchase of landed property, it is necessary to consider the deposits in the Post Office Savings Bank during the relevant period. The respondent had two Bank Accounts here, in the name of himself and his wife, for a long time. During our period, four other bank accounts were opened in the name of his children, and deposits have been made in all these accounts (see Annexures, A. and B. marked A.A. 31 and A.A. 32 : also the accounts A.A. 24 to AA. 29.).

For 1939, 1940 and 1941, no deposits have been made, and only interest accrued. Rs. 200 was withdrawn in 1939.

For 1942	..	Rs. 972.64	was deposited.
For 1943	..	Rs. 2,295.00	,, ,,
For 1944	..	Rs. 8,893.64	,, ,,
For 1945	..	Rs. 12,451.84	,, ,,
For 1946	..	Rs. 7,536.22	,, ,,

In 1943 withdrawals amounted to Rs. 2,000 and in 1946 to Rs. 12,000. There were no withdrawals in 1940, 1941, 1942, 1944 and 1945. It may be mentioned that in 1947 and 1948 there were no real deposits, but amounts were withdrawn to the extent of Rs. 15,500 and Rs. 1,450 respectively.

Early in 1945 respondent also opened an account in the Bank of Ceylon, Colombo, (see A.A. 30).

The other principal matter for inquiry was the cost of a house put up by the respondent on a land held under a Government permit. The value of the house is in dispute. Respondent himself at one stage stated in a letter that the house cost him "in the neighbourhood of Rs. 50,000". Some witnesses valued it at much more, but the Assessor of the Town Council valued the building at Rs. 40,000 to Rs. 48,000. Respondent however maintained that the actual value of the building was about Rs. 30,000, but added that he had the materials, viz., bricks and timber, from other buildings and that the actual cost to him was Rs. 15,000, (according to his letter to this Commission), or Rs. 17,000 (according to his evidence). The cost of the building was in dispute, and also the date of the commencement of the building, namely, whether it was started in 1945 or 1946.

At the outset of the inquiry into the accumulations of the respondent, we have to face a notable discrepancy between the income shown in respondent's Income Tax assessment forms, and the real income which he alleges he actually received. Admittedly, if the income shown on the Income Tax returns correctly represents his actual income, there is no explanation available to respondent as regards his accumulations. These assessment forms were, on request, sent to this Commission by the respondent. The actual returns sent in by the respondent to the Income Tax Department or copies of them are said by respondent not to be in his possession. The assessment forms have been produced marked A.A. 40 A. to K.

They show the following facts:—

For Year ending	*Total Income* Rs. c.	*Including Profits from Agriculture* Rs. c.
1939 .. (A. A. 40A) ..	4,391 0 ..	.. 320 0
1940 .. (A. A. 40B) ..	4,417 0 ..	.. 350 0
1941 .. (A. A. 40C) ..	4,186 0 ..	.. —
1942 .. (A. A. 40D) ..	4,707 0 ..	.. 690 0
1943 .. (A. A. 40E) ..	4,322 0 ..	.. 320 0
1944 .. (A. A. 40F) ..	4,337 0 ..	.. 335 0
1945 .. (A. A. 40G) ..	5,162 0 ..	.. 970 0
1946 .. (A. A. 40H) ..	5,186 0 ..	.. 695 0
1947 .. (A. A. 40I) ..	4,559 0 ..	.. 700 0
1948 .. (A. A. 40J) ..	6,000 0 ..	.. Not stated
1949 .. (A. A. 40K) ..	16,000 0 ..	.. Not stated

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We are not much concerned with A.A. 40J. and K. As regards the others, it is to be noted that apart from the profits from agriculture, the only other items mentioned are profits from employment and the annual value of residence owned.

It is to be noted that the profits from agriculture stated in the return in no year exceed Rs. 1,000 and in most years are considerably below that amount. These must have been in the majority of cases based upon actual returns, sent by the respondent. The respondent stated in evidence that he did not provide returns from the year 1945, but he had stated in his letter to the Commission that he provided returns except for the year 1947, presumably the year ending 1947, and the round figure Rs. 700 given against that year bears him out to that extent. This must have been due to be sent in 1946. For the previous year ending 1946, the figure given is Rs. 695, and it was most probably based upon respondent's return sent in 1945.

Respondent maintained that these assessments did not include his income from paddy cultivation, and that between 1939 and 1946 he received a very considerable income from paddy cultivation. He said he honestly believed that income from paddy was not taxable. This is an extraordinary statement and cannot be believed, for paddy cultivation is expressly mentioned in the Income Tax form, and this must have stared respondent in the face. His contention that paddy income is not taxable in India, even if true, is beside the point; and his argument that paddy, being a national necessity, should be exempted from taxation, does not explain why he did not make a full and true return of his paddy cultivation as requested by the Income Tax authorities. If he was fighting on a matter of principle, he could have made the return and claimed exemption, or, at any rate, declined to make any return in this respect as paddy was not taxable or ought not to be taxed. Instead of this he made a return which can only be regarded as fictitious, and must have led the Income Tax Department to regard him as having made a full and true return of his income. Respondent's evidence that he honestly believed that paddy would not be taxed is based upon vague statements alleged to have been made by the Deputy Commissioner of Civil Defence, at an early stage of the war. I cannot accept respondent's explanation, and if his story is true that he did not make a full return of paddy income, it must have been done with the intention of concealing his income from the Income Tax Department, and avoiding the payment of tax. It is difficult also to accept his story that he only showed the income from what he described as "garden produce". Why this garden produce should not have been on the same footing as paddy as regards tax is not clear. It may well be regarded as a national necessity.

The respondent's explanation is all the more unacceptable, because the Income Tax Department had at any rate from 1943 been making efforts through the Government Agents and Assistant Government Agents to discover incomes from paddy. At first the Department wanted to discover all those who had sold at any place 50 or more bushels to Government. A circular was sent in 1943 by the Assistant Government Agent, Kalmunai, to all the Chief Headmen and Divisional Revenue Officers to provide the information. It is true that the respondent appears to have been absent on leave when this circular arrived, and the acting Vanniah sent a 'nil' return, but it is difficult to believe that the respondent never heard of it. In fact, his name had been returned to the Assistant Government Agent as having sold 140 bushels to Government in respect of one field of 32 acres (see A.A. 67C). This was the only return available to show that in that year respondent sold in respect of any field more than 50 bushels to Government. At the same time it appears that the lists sent in were not complete, and that the full lists are not before us.

Early in 1945 the Income Tax Department changed its tactics, and asked for returns of those who had sold more than 500 bushels to Government. The circular relating to this matter was sent out by the Assistant Government Agent *inter alia* to the Chief Headmen. The respondent admitted that he received this circular, and said he sent no return, and no return by him for this period has been found. Here again a number of lists sent by various Divisional Revenue Officers and Headmen have been produced, and comparatively few names were eventually sent to the Income Tax Commissioner. Certainly, respondent's name was not sent in as having sold to Government over 500 bushels of paddy. But here again it must be recognized that the returns were not full and complete. There were difficulties in getting the information except by a study of the A. forms, and where persons owned fields in different Kandams, the officers would have had difficulty in collating all the sales to Government. Further, where properties were leased, the whole purchase may have been placed under the name of the lessee, and the portion due to the owner may not have been mentioned in the form. It is also possible, as respondent suggested, that the officers who had to supply the information were not co-operating with the Income Tax Department.

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In early 1946 the Income Tax Department again pressed for information about those persons who had sold 500 bushels or over to Government. The respondent as Vanniah of Karavaku Pattu received the Assistant Government Agent's circular, and on this occasion he actually sent an answer to it (see A.A. 68B). This is what the respondent stated:

> "It seems practically impossible to trace .... any man who has sold 500 bushels of paddy and over to Government under the I. P. S."

This is a very significant document as there was at least one person whose transactions the respondent was able to trace without great difficulty, and that was the respondent himself. Respondent maintained that he had from Karavaku Pattu alone sold to Government more than 500 bushels, but that he did not wish to send a list containing his name alone. On the face of it, the document implies that respondent had not sold more than 500 bushels in all to Government in the year 1945. Clearly then the respondent has made a false statement for the purpose of concealing the extent of his sales of paddy to Government. The other alternative is that respondent in point of fact did not sell as much as 500 bushels to Government for the period in question.

The whole series of explanations relating to the Income Tax assessments left a very unfavourable impression on my mind about the credibility of respondent's evidence, and I have come to the conclusion that it is not possible to accept his evidence, unless there is some measure of corroboration. In the ordinary course, the Income Tax returns should furnish a true index of the financial position of the person assessed. The failure to declare the alleged income derived from agriculture may well be taken to indicate that the alleged income was not received. I shall later consider the other evidence as to whether the respondent in fact received a larger income than is shown in the assessment forms. This is a material point in our inquiry.

One of the points involved is the number of acres of paddy owned by respondent which were in fact cultivated by him during the relevant period. The most reliable evidence on this point is that of S. Visviah, Cultivation Superintendent of the Pattipola Aru Scheme, where respondent had his best lands. According to this witness, there were 154 acres belonging to this respondent which were cultivable, and 83 acres not cultivable or not cultivated. The witness was unable to speak to two fields of 24 acres in all which lay outside his area.

As regards the 83 uncultivable acres, one was a large extent called Rattiar Kandam of 60 acres. Of these 60 acres, only 40 appear to have been irrigable at any time and to appear in the Specification, but even these 40 acres had been exempted from irrigation tax for many years before 1939, because they could not be irrigated. In the days of the intensive food drive, an attempt was made to restore this field to cultivation, and, in 1942, the channel was repaired by Government who had requisitioned this field. But in 1943 it was found that the harvest was a failure, and the land was handed back to the owner. From that date respondent said he had cultivated the field, but the evidence of Visviah, who saw it in 1947 or 1948, was that to the experienced eye it had been cultivated for several years. I think the better evidence is that this field of 60 acres was never cultivated, except for the brief period in 1942. There was some mention of tobacco cultivated on this field, but no specific evidence as to the income.

Another field, Usaravelli Kandam or Visara Kandam of 23 acres was also uncultivable, according to Visviah. Visviah was not able to trace himself or through his Vatta Vidanes any field of that name belonging to respondent. In the Specification there was a field Visara Kandam of 23 acres for many years in the name of the Crown, but it was impossible to say whether it was the same land.

I think it has been established that 83 acres of the fields claimed by respondent were uncultivated. The evidence that all the 154 acres were cultivated throughout our period cannot be said to have been conclusively established. Many of the Government forms, notably the A. forms relating to the particular fields, have disappeared; they are said to have been destroyed by white ants. Apparently they were not regarded of value, once the harvest was over. Some may have been misplaced or lost on the transfer from the Emergency Kachcheri at Kalmunai to Batticaloa after the end of the Internal Purchase Scheme. However, some of the A. forms, and of the X. forms showing the purchases in each *Kandam* were produced, but there were notable gaps in the information. These forms show that several of respondent's fields were under cultivation during our period. But the most satisfactory evidence was that of Visviah, Cultivation Superintendent of the Pattipola Aru Scheme, who was able to speak to the "dappus" or cultivation agreements with regard to respondent's fields. Here again several of the "dappus" are not to be found now. Visviah showed that all the lands were cultivated at some time during the period 1.9.1939 to 30.6.1946, and later, and as regards the year 1944, it is clear that the whole of the fields were cultivated; in fact, more

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than 154 acres were cultivated—see A.A. 63. Many lands had "dappus" for several years. There may be some element of doubt with reference to the earlier years from 1939, about which the information is meagre or non-existent, but taken as a whole there is sufficient indication that at least 154 acres were cultivable and cultivated during the whole of our period. Paddy prices and marketing facilities improved after the war started, and intensive efforts were made to bring all available land under cultivation. It has also to be remembered that there were 24 acres of paddy land, outside Visviah's area, which have not been taken into account.

The actual yield of paddy land, and the amount of income derived from the cultivation of paddy were also considered at the inquiry. Both Counsel depended upon the Government Agent's return as to the yield of paddy per acre in the Pattipola Aru Scheme—apparently one of the best paddy growing areas in Ceylon. The copy of the return sent in by the Government Agent, E.P. to this Commission (A.A. 64) was unfortunately incorrect, as in the column "yield per acre" the wrong figures had been copied, namely, those which related to the fold returned. This applies to all the years except 1946 and 1947. The correct figures are set out in the document M.S.K. 35, produced through the Director of Irrigation. The figures are as follows : —

	Pattipola Aru Scheme		*Yield per Acre*
1939	..	.. average	.. 35 bushels
1940	..	.. „	.. 28¾ „
1941	..	.. „	.. 35 „
1942	..	.. „	.. 37½ „
1943	..	.. „	.. 20 „
1944	..	.. „	.. 25 „
1945	..	.. „	.. 20 „
1946	..	.. „	.. 20 „
1947	..	.. „	.. 20 „

There is a notable drop in 1943, which marks the beginning of the intensive working of the Internal Purchase Scheme, and it is possible that for the years from 1943, there was a certain amount of concealment of paddy. On the other hand, we do not know whether the computation of averages varied in the later years. Inferior lands may also have come into cultivation. At any rate, in this Scheme, it is possible to calculate that the average yield per acre varied between 20 to 25 bushels, say, 22½ bushels or three amunams.

As regards the actual working of the cultivation, there were two methods in general use. One was cultivation by the owner himself, mainly through "cultivation coolies", who had charge of six or more acres. The other method was a lease of the field. This may be by payment in advance, or by payment at the time of harvest. The general opinion of the witnesses was that cultivation by the owner himself was the most profitable. Where the field was leased, the ordinary return to the owner was one amunam or 7½ bushels of paddy at harvest time. When payment was made in advance, the equivalent in money of one amunam of paddy was paid, but of course the arrangement would vary according to the wishes of the parties. When the owner cultivated himself, it appeared that he got a bigger return, perhaps as much as 12 bushels per acre.

Some Vatta Vidanes called by Crown Counsel appeared to doubt that in the case of leases, the full amunam was always recovered, and said that concessions had to be made when there was a total or partial failure of crops. Note particularly the evidence of M. Ibra Lebbe, Vatta Vidane of Kayatiadi.

The actual amount taken by Government varied according to the holdings of the owner. There were regular deductions in respect of seed paddy and cultivation expenses. There also had to be deducted the payments in paddy to the lessee or cultivation cooly. Then there was a consumption allowance (in lieu of rice ration cards) of a maximum of 50 bushels for each household. The result was that the big owner surrendered more per acre to Government than the small owner. Assistant Government Agent Jansz said that Government set a target of 5 to 8 bushels for the small owner, and this was in many cases realized. The bigger owner would give more to Government, because the consumption allowance would be deducted from his first six acres or so, and after that all excess had to be handed over. On 150 acres he may give about 1,900 bushels.

I have taken into account the fact that some of the fields owned by the respondent are very good lands, and that some may not be so fertile. There also may have been fluctuations in the weather conditions during this period, and some harvests may have been better than others. There were several lands cultivated by

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respondent personally and some on leases. In many cases the "dappus" are silent as to the amount of the return to the owner; in others a return of one amunam is mentioned. Where we have been able to test particular instances, in some cases more than one amunam was surrendered to Government, in some cases less than one amunam. In all the circumstances I think it is fair to allow to the respondent a profit, by sale to Government, of one amunam or 7½ bushels of paddy per acre from his cultivated lands. The respondent claims that his profit was greater, but he has been content to calculate his sales to Government on that basis. There is sufficient other evidence to support the estimate of one amunam per acre profit.

The respondent has put in reconstructed estimates of income and expenditure for various periods from 1.9.1939 to 30.6.1946. They are as follows:—

M. S. K. 58 for 1939—1941

M. S. K. 60 for 1942—1943

M. S. K. 63 for 1944

M. S. K. 64 for 1945

M. S. K. 82 for 1946.

These need careful consideration.

M. S. K. 58: 1939—1941.

Under the heading income for 1939 are mentioned the salary and travelling expenses of the respondent, viz., Rs. 3,600 and 840. This item is not in dispute. Next is income from 150 acres of paddy at one amunam per acre at Rs. 15 per amunam —Rs. 2,250. For the reasons I have given, it is possible to allow this sum to the respondent. In 1940 and 1941, the salary and allowances are Rs. 4,400 and the income from paddy Rs. 2,250 for each year—making a total of Rs. 20,070 for the whole period.

Under the heading "Expenses" for 1939 to 1941, living expenses are put down as Rs. 2,000 for each year. This appears to be rather low. The purchases of property are also set out here:—in 1939—Rs. 1,000; in 1940—Rs. 600 and Rs. 1,000; in 1941—Rs. 1,000; Rs. 75 and Rs. 100. Also in 1941, under expenses appears the settling of the Mortgage Bond 2568 to Dr. Karalasingham, viz., Rs. 3,000 capital and Rs. 2,640 interest. Respondent also claims that he expended Rs. 4,000 in building a mosque in 1939. The total is Rs. 19,415, and the surplus is shown as Rs. 655 for that period.

It is possible that some of these items, particularly the expenditure on the mosque, are doubtful. The evidence of the respondent's witness S. L. A. Mohamed Ali Marikkar was confused and unconvincing. The item calculating the price of an amunam at Rs. 15 may not be correct over the whole period. In substance, however, the respondent does not claim any appreciable surplus for the years 1939 to 1941; and that at any rate, I think is correct.

M. S. K. 60: for 1942—1943.

This account requires special attention, because at the end of that period respondent claims that he had a surplus of Rs. 22,629.06. Under the income account—salary and allowances are Rs. 4,400 and war allowance Rs. 300 for each year. Besides that for 1942 he puts down an item of Rs. 3,400 received for travelling to Trincomalee, Polonnaruwa and Hingurakgoda on special duty in the emergency, in connection with the recruitment of labour for Trincomalee, and the distribution of seed paddy to be mentioned later. This is an arbitrary figure given by the respondent alone, for which there is no corroboration, and I am very doubtful about it. But against this, he has put in the expenditure column an item of expenditure on his travelling of Rs. 1,500. The balance saved is claimed at Rs. 1,900. If he did get this amount of Rs. 3,400, there is nothing to show that he saved on it. I am inclined to surcharge both the items of Rs. 3,400 (income) and of Rs. 1,500 (expenditure).

Income from paddy is shown in 1942 as Rs. 4,500, on the footing of one amunam an acre on 150 acres, at Rs. 30 per amunam. For 1943 the amount is Rs. 6,750 at Rs. 45 an amunam. For reasons I have given these items may be passed.

There is in the income column a withdrawal of Rs. 2,000 from the Post Office Savings Bank in 1943.

There is also in the income column in 1943 an item of Rs. 8,000 as commission at 5 cents per bushel of seed paddy to the amount of 160,000 bushels. Respondent's story is that he was requested in 1942 to collect and distribute seed paddy throughout the emergency area, in consequence of a drive in paddy cultivation. We have only the respondent's word for the fact that the amount he handled was 160,000 bushels, and that his commission amounted to Rs. 8,000. This figure was not

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disclosed in any Income Tax Assessment form, but there is some little corroboration of this fact by the Office Assistant to the Asistant Government Agent, S. Suppramaniam, who spoke to the fact that respondent was in charge of this distribution, and that the area brought under cultivation was about 55,000 acres, involving about 160,000 bushels. In the circumstances, it is not possible to reject this item, though whether the whole of it was profit is doubtful.

The total income is stated to be Rs. 34,785. As against this respondent mentioned expenditure of Rs. 12,155.94.

I have already discussed the item of Rs. 1,500 for travelling expenses.

Living expenses are put down as Rs. 2,000 in 1942, and Rs. 2,400 in 1943. This is on the low side.

Values of property purchased were in 1942 : Rs. 300 ; in 1943 : Rs. 160, Rs. 500, Rs. 900, Rs. 500 and Rs. 500.

Deposits in the Post Office Savings Bank are also put under Expenditure. In 1942 : Rs. 300 and Rs. 671.44 ; in 1943 : Rs. 750, Rs. 685, Rs. 100, Rs. 65 and Rs. 650 were deposited

Savings Certificates were also purchased: in 1942—Rs. 17, and in 1943—Rs. 127.50.

If respondent had so large a surplus as Rs. 22,000-odd, it is perhaps a matter for comment that he did not put the money in a Bank. But respondent said that under war conditions, he preferred to keep this in his iron safe in his house. An element of doubt creeps in but, on the other hand, many of his items may be allowed, and on others he is perhaps entitled to the benefit of the doubt. The only amount which calls for deduction from this amount is Rs. 1,900 as I explained before.

It is to be noted that the respondent in his accounts has endeavoured to show what cash he had in hand and what cash he expended. It is not a true income and expenditure account, but has been constructed to meet the exigencies of this inquiry.

M. S. K. 63 : 1944.

In this year the only items of income are as follows:—

Income and allowances	..	Rs. 4,400
Income from paddy	..	Rs. 6,750
War allowance	..	Rs. 300

With his previous surplus, he had in cash income Rs. 34,119.06.

His living expenses are put down as Rs. 2,400. He bought one land for Rs. 300. He made a large number of deposits in the Post Office Savings Bank, and purchased a number of Savings Certificates. Many of these deposits and purchases were made towards the latter part of 1944. According to respondent after the defeat of Germany he was more ready to deposit his available cash, and to buy securities. He claims that at the end of this year he had expended Rs. 14,912.50, and had a surplus in cash of Rs. 19,206.56.

M. S. K. 64 : 1945.

In this year respondent puts his salary and allowances at Rs. 4,440 ; War allowance Rs. 300, and income from paddy at Rs. 6,750.

Besides that, in January 1945, he had opened an account in the Bank of Ceylon, and withdrew considerable amounts in that year. Total income including the surplus for the previous year was Rs. 38,132.09.

In the Expenditure column he puts down various items amounting to Rs. 29,596.00. Among these items he places Rs. 2,400 as his living expenses. He purchased two properties for Rs. 500 and Rs. 236. He made large deposits in the Post Office Savings Bank—Rs. 8,000 in January 1945, alone. He opened an account in the Bank of Ceylon in January 1945 and deposited Rs. 25 and Rs. 1,842 by cheque and Rs. 3,633 in cash, and later deposited Rs. 4,740. He bought Savings Certificates to the value of Rs. 4,250.

At the end of the year he had a surplus of Rs. 8,536.09 in cash.

M. S. K. 82: 1946.

In this year his salary and allowance for six months was Rs. 2,285.01 ; his pension for six months Rs. 900, and war allowance Rs. 180.

Income from paddy was Rs. 6,750. He cashed his Savings Certificates on 15.5.1946 and obtained Rs. 7,064.51. There were a large number of withdrawals from the various Bank accounts.

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On the expenditure side, his living expenses went up to Rs. 3,000. He made certain deposits in the Post Office Savings Bank and in the Bank of Ceylon. In this year also he purchased a coconut estate for Rs. 11,750 on 15.5.46 (Deed 14264).

He claims that at the end of the year, his income, with the surplus of the previous year, was Rs. 44,920.36 and his expenditure Rs. 27,905.01, leaving a surplus of cash in his hands of Rs. 17,015.35.

A word of comment may be made with regard to the purchase on 15.5.46 of the coconut estate for Rs. 11,750. To pay for this and another Rs. 250 said to be the amount of stamp duty and notarial fees, respondent cashed his Savings Certificates and released Rs. 7,064.51. He also drew a cheque on the Bank of Ceylon for Rs. 1,250. He had applied to the Post Office Savings Bank for the withdrawal of Rs. 4,000, but this sum was not available till 28.5.46, after the deed had been executed and he found that it was not needed, and re-deposited Rs. 2,000. This is his explanation, and the documents appear to support his story.

As regards these reconstructed accounts for the years 1939 to 1946, we are unfortunately dependent to a large extent on the statements of the respondent, but in certain matters there is an element of corroboration as I have shown. On one important item, namely, the income derived from paddy, it is clear that the figures given in the Income Tax Assessments were false and unreal. It is clear that respondent received a much greater income than he disclosed. No doubt he failed to make true disclosure in order to evade the payment of Income Tax. But for the purposes of our inquiry, it is necessary, as far as possible, to try and discover the real income obtained by the respondent, during the relevant years. The evidence of the witnesses and the documents lend some support to the story of the respondent that he sold to Government as excess paddy about 150 amunams a year, possibly more. These were the profitable years for paddy cultivation. I do not think it is possible to reject the respondent's explanations as to the income he actually received. As regards the expenditure, the amount given as living expenses seems low for a person of his status, but there is no positive evidence as to the real expenditure. It is not possible to say beyond reasonable doubt that the "Income" and "Expenses" shown by the respondent have been substantially misstated. All the purchases of land, and the deposits in the various Bank accounts appear to have been explained. The respondent has, however, by his false returns to the Income Tax Department created a great deal of difficulty in this inquiry.

There is one item of expenditure which is not mentioned in these accounts; that is the cost of the building put up in Kalmunai on ground leased from the Crown. The documents are grouped under the marking A.A. 55.

The matter started with an application for the land in question by the respondent on 9.3.1945, when the respondent emphasised the necessity for him of a residence in Kalmunai, mainly for the education of his children. The need of an office was not emphasised, (A.A. 55 A.), but the fact that respondent needed the building after he retired was mentioned in the course of the correspondence. Apparently, this ground of claim was not a good one, for on 14.4.45 (AA. 55B.) the need of an office of a temporary nature at Kalmunai was emphasised by the respondent. After some correspondence respondent obtained a permit (A.A. 55E.) on 15.5.45 to put up a temporary building on the land, for use as an office only. On the strength of this, respondent had a plan of a building (M.S.K. 40), approved by the Sanitary Board, of which the Government Agent was Chairman. This was a ground floor building of three rooms, but was certainly not a temporary building. When the Government Agent pointed out that the building was not a temporary one, and inquired about the cost, the respondent replied that the building had to be safe from fire and housebreakers, as valuable documents would be lodged there, and stated that the building would cost over Rs. 6,000 (AA. 55G.). He persuaded the authorities to allow the building in the plan to be erected. Thereafter, in early 1946, respondent obtained a revision of the plan from the Sanitary Board or Town Council, allowing the erection of an upstair building and, in fact, divided up the three ground floor rooms, by partitions. The result was that he was able eventually to let the building for a rent of about Rs. 400 a month to business men. The building was at no time used by respondent as a residence or as an office for him as Vanniah.

I need only say that the respondent was a master of Manoeuvre in this respect, and was able to achieve his object by utilizing the different authorities who had to deal with this matter. The original permit was, however, unaltered until recently when the reference to the temporary building was deleted, and the respondent is still liable to have the permit discontinued after due notice, and is not entitled to compensation for the building, which he can however remove.

In his letter (A.A. 55K.) respondent has written to the Land Commissioner on 27.5.48 that he put up the building in 1945, and that the building cost him "in the neighbourhood of Rs. 50,000," owing to the high cost of materials. At this inquiry respondent stated that the figure Rs. 50,000 was incorrect. He said he was not presenting an account to the Land Commissioner, but was merely putting up an argument for being given a "preferential" lease. It is impossible to reconcile his letter

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with his statement to the Commission that the cost to him was Rs. 15,000, or his evidence at the inquiry that the cost was Rs. 17,000. Nor can his letter be reconciled with the value of the building which he now estimates at Rs. 30,000, but he explains that he obtained about Rs. 13,000 worth of materials from a demolished building. If his present story is true, he has for his purposes deliberately exaggerated the cost of the building in his letter, and this emphasises the difficulty I have already mentioned of accepting any statement of the respondent without corroboration.

But I think there is evidence to support the estimate of Rs. 50,000 as the cost of the building. M. Ismail Alim, the Assessor of rates for the Sanitary Board and the subsequent Town Council, visited the building and estimated the probable cost at Rs. 40,000 to Rs. 48,000. The rental value of the premises, as it is now divided up, is about Rs. 400 a month. I was not impressed with the evidence of A. L. M. Neina Mohamed, the carpenter, who says he erected the building, and I think that no substantial quantity of materials was obtained from any demolished buildings. Some of the witnesses called by Crown Counsel put the cost much higher than Rs. 50,000, but that was not skilled evidence. Respondent in another letter said that the building represented his "life savings" (A.A. 55 M.). On the whole, I have come to the opinion that the building cost respondent more than Rs. 40,000 and probably as much as Rs. 50,000. Neina Mohamed himself mentions Rs. 35,000 to Rs. 40,000 as the probable cost at "present rates," without any free materials.

When did the building start? The respondent himself in his letter mentions 1945, and Ismail Alim, the Assessor, also gives that date, and I think that there must have been some building in that year. The major part of the building must however have been after early 1946, when the upstair building was approved by the Town Authorities. The building was certainly occupied by November 1947, though the respondent said it was occupied before it was complete, and it was finished in 1948—after some further additions had been approved.

Under the circumstances, it is not easy to discover what expenditure the respondent incurred for the period prior to his retirement on 1.7.1946. In fact, some of the expenses after that date must have been met from the income received in our period. If we allocate even 1/3rd of the total expenditure to our period, on the basis of Rs. 50,000 for the entire building, that would amount to about Rs. 17,000, and respondent's accounts to the end of 1946 purport to show a surplus of Rs.17,015.25 up to that date. It is difficult, therefore, to say that respondent did not have sufficient cash from legitimate sources to pay for the expenses of the building during the period relevant for our inquiry.

It is clear that in 1945, and more so in 1946, there had been substantial withdrawals by respondent from the various Banks, and it is possible that some of this money may have gone into the building. Unfortunately, there are no documents to help us in this connection, but the absence of evidence enures to the advantage of the respondent.

There is evidence that in 1947 respondent incurred fairly heavy expenses in connection with his election, and if this is so, there is an element of doubt introduced as to the income of the respondent prior to his retirement. M. Y. Abdul Hameed, called by Crown Counsel, averred that respondent gave him Rs. 7,000 to be expended on the election, some portion of which was paid to the tindals of fishing gangs, and the rest to V. M. Mohamed Ibrahim—also called Ibra Lebbe—and Rasa Vattanai, i.e. the Vatta Vidane of Visarakandam. Abdul Hameed states that he expended over Rs. 10,000 on the election, and produced M. S. K. 6, an original copy of his account to prove this and the fact that he set off Rs. 7,000 against that sum. The balance he said was not recovered from the respondent.

This evidence has however been denied by Rasa Vattanai and the respondent, and the person who audited the account according to Abdul Hameed was not available as a witness. At the same time the evidence of the respondent that he expended only about Rs. 3,000-odd is uncorroborated. He was entitled to spend on the whole election over Rs. 10,000, and in the heat of battle, he may have spent at least that sum. But on the whole, I do not think the evidence is sufficiently strong for me to find that any specific sum was spent on the election.

On the whole of the evidence it is not possible to say with any degree of certainty that the purchases of property and the accumulations of money between 1.9.1939 and 30.6.1946 were not attributable to the legitimate income obtained by respondent during those years. The fact that the respondent himself has figured badly at the inquiry cannot be said to alter that fact, although it may raise grounds of suspicion.

There has been a mass of oral and documentary evidence led by Crown Counsel, and a corresponding mass by respondent's Counsel. It would have taken too long, and it would not have been of advantage, to deal with each document separately, but I think I have dealt with the most salient documents, and have generally summed up the effect of the majority of the documents. There is also the oral evidence to be considered. In dealing with it, I have to point out that the only

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issues I have to try relate to the matter of the purchases of property and the accumulation of money ; and the question whether these were made or effected as a result of bribery or curruption. There are no separate issues framed relating to specific acts of bribery or corruption.

Certain witnesses spoke to the fact that at the store in respondent's premises, more paddy was demanded than the measurements justified. These witnesses were M. K. Abubacker Lebbe, M. C. Y. M. Yusoof, M. S. H. Abdul Cader. This was attributed to the use in the store of a wrong marikkal measure. Each of these witnesses depended upon the correctness of his own measure, and the fact that when the paddy was taken to other stores, the quantity measured by them was passed as correct ; in fact, in some cases as in excess. But the correctness of the measures used by them was never proved. Further, the storekeeper was the person responsible for the measurement of the paddy, and the respondent was not present at the measurement. No case I think has been made against the respondent in this connection.

M. C. Y. M. Yusoof has also spoken to a purchase of one amunam of paddy from respondent's house for Rs. 75, above the control rate. There is no corroboration of this story and the respondent has denied it. I do not think I can take any action upon this evidence.

This same witness has spoken to the payment of a bribe of Rs. 20 in about 1943, with a view to obtaining the arrest of his brother. Here again there is no corroboration and the respondent has denied it. I think I can take no action on this evidence.

M. I. Adam Lebbe spoke to paying a bribe of Rs. 50 to respondent. This is uncorroborated and denied by respondent. I do not think I can act upon this.

Aliyar Adam Bawa spoke of witnessing two bribes being given—Rs. 300 by Rasa Vattanai, and Rs. 200 by the Vattanai of Attapola—for appointment as Assistant Purchasing Officers. The evidence is not strong, and respondent and Rasa Vattanai and the Vattanai of Attapola have denied it. I do not think I can act upon it.

P. K. Arumugam spoke to the giving of a bribe to respondent of Rs. 500 in 1946. Here again the evidence is not corroborated and is denied, and is not strong enough to base any action upon.

M. Y. Abdul Hameed stated that he gave a bribe of Rs. 500 to have his brother and his brother-in-law appointed Assistant Purchasing Officers. There is no corroboration of this, and respondent and Abdul Hameed's brother-in-law, M. Y. L. Isma Lebbe have denied this. Abdul Hameed also alleged he paid respondent Rs. 400 to prevent the appointment of an authorized distributor. This was uncorroborated and denied. I do not think the evidence strong enough to call for any action.

Aliyar Adam Bawa also spoke to the fact that respondent through his agency removed goods from the Co-operative Store illegally. The evidence is vague and contradictory, and calls for no action.

S. M. L. Mohideen Bawa, carter, related how on two occasions the cart kangany, who was taking paddy from the store to the mill, diverted his cart to the house of Mootai Karen Saibo, a dope seller, who also ran a black-market in paddy. This was denied by the cart kangany, M. Sulaiman Lebbe, who however I thought exaggerated the difficulty in passing food barriers. There was a point made that Mohideen Bawa was too young to be taken as a carter, being well below 18 years. But the principal point was that the diversion of the cart has not been brought home to the respondent.

These were all particular instances of alleged bribery and corruption, which were relevant for the purpose of showing that the purchases and accumulations were the result of bribery and corruption. I do not think they are relevant now, in view of the fact that it is not possible to say that these purchases and accumulations were not made or effected out of legitimate income. These instances have not been made the subject of special issues.

There has also been a body of evidence to show that there were large shortages of paddy at the store in respondent's premises. This ultimately resulted in the surcharging against the storekeeper in 1946, after the respondent retired. The surcharge was in respect of part of the shortage of 4.53 per cent. in the course of storing and transport. Though the Civil Defence Department had passed shortages of 3 per cent. or thereabout earlier, this may be attributed to lack of experience or laxity of administration in the earlier years and the shortage appears to be considerable. At any rate, the Civil Defence Department surcharged the storekeeper, but has not yet recovered the whole of the surcharge. On the other hand, the storekeeper appears to be the person responsible for the shortage, and the respondent who exercised supervisory duties was not responsible, and no case has been brought home against the respondent to show that he had any liability in respect of the shortage, although the respondent appears to have recommended the storekeeper for appointment at the start.

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There was also evidence that respondent was responsible for the appointment of 8 Assistant Purchasing Officers and 579 guards and watchers—(see A.A. 49, letter by the Government Agent to this Commission), and there is no doubt that respondent's recommendations must have had great weight when the Assistant Government Agent appointed the Assistant Purchasing Officers and the latter appointed the guards and watchers for the threshing floors. It has been suggested that the respondent was able to recover a good income from gratification or *santhosams*. I have dealt shortly with the specific evidence in this respect, and I do not think there is strong enough evidence to establish this.

Much stress has been laid by respondent's Counsel on the bad feeling created by the hotly contested Parliamentary Election, and he suggested that these proceedings are the result of a conspiracy on the part of the respondent's defeated opponents. It may be that some of the witnesses would not have come forward, if that bad feeling had not existed. On the other hand, some of the witnesses had been employed by the respondent before, and some had supported him at the election and fallen out with him afterwards. No doubt, many of the witnesses had some differences with the respondent. But the main facts spoken to were not disputed, namely, in respect of the purchases and accumulations, and the respondent by his lack of candour and his evasion of liabilities has created the strong impression that his profits were obtained by illegal and corrupt means. As regards the evasion of Income Tax, it appears that the respondent has now been re-assessed by the Department for the years 1945 and 1946 (M.S.K. 85 and 86).

On the whole of the evidence I am not able to hold beyond reasonable doubt that the purchases of movable and immovable property and the accumulations of money in the relevant period on the part of the respondent have been made and effected as the result of bribery and corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R/94.

RESPONDENT :

Tambawitage Don Thomas Appuhamy,
Village Headman,
Agalawatta.

IN CAMERA

Heard on 15th and 30th June and 4th July, 1949.

Respondent : Tambawitage Don Thomas Appuhamy, Village Headman, Agalawatta.

The matter for inquiry concerning this respondent was:—

(1) the nature and extent of the purchases of movable and immovable property made by him whether in his own name, or in the name of his wife, or in the name of his dependants, relatives, or any other persons on his behalf during the period 1st September, 1939 to 28th January, 1948 ;

(2) the extent of the accumulations of money made by him during the said period; and

(3) whether the said purchases and accumulations were made or effected as a result of bribery or corruption.

The respondent was appointed Village Headman of Agalawatta in 1929. At that time he was possessed of property which he estimated at Rs. 15,000 or more, including about 6 acres or so of rubber land. To these he made some slight additions before 1.9.39.

Respondent in his answer to the Commission, NLC. 1, admitted that he had the following transactions since 1.9.39, viz.:—

	Rs.
22.4.40 by Deed 6408— purchase in his own name of four lands	1,000
20.1.41 by Deed 1173— purchase in his wife's name	200
10.10.44 by Deed 8319— lent in daughter's name	125
29.8.47 by Deed 5549— purchase in wife's name	35

Respondent also admitted spending the following sums:

Rs. 1,500 to put up a boutique,

Rs. 1,000 to rebuild a kitchen and add a dining hall. It was however suggested that respondent had purchased further properties in the names of others. (see NLC. 3—list made by Notary Jayatilleke). These included—

Mortgage 3772 of 2.4.46 in favour of respondent's elder brother, T. D. Jamis Appuhamy for Rs. 1,500.

Transfer 3905 of 17.7.46 in favour of respondent's son Don Armon Tambewita for Rs. 1,000.

4 mortgages and 1 transfer in the years 1946 and 1947 for sums varying from Rs. 60 to Rs. 250 in the name of his son Don Armon.

2 transfers for Rs. 60 and Rs. 150 in November and December, 1947, in the name of another son Don Norman.

To these has to be added a purchase of "Gooneratne Walauwa"—2044 of 23.4.47—attested by Proctor Meegama for Rs. 7,000.

The total of these particular transactions for 1946 and 1947 in the name of the brother and sons was Rs. 10,595. The normal salary and allowances earned by the respondent was not in excess of Rs. 7,500 for the period September, 1939 to January, 1948. The respondent was married and had a large family. There was also a motor car purchased in the name of the son Don Armon in 1947—but really for the use of the family—for Rs. 3,000 (X.4173). This car was sold in April, 1948 and another car purchased in the name of Don Armon. We are not concerned with the latter purchase.

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I may deal first with the mortgage of 2.4.46 (NLC. 5) in favour of respondent's brother Jamis Appuhamy. Jamis was clearly a man of very little substance, and dependent on the respondent, who gave him board and lodging and even clothes from time to time. Jamis claimed to possess ¾ acre of rubber from which he obtained some income. He also said he cultivated betel—the respondent said he cultivated vegetables—and made a little money. Rs. 1,500 represented his life's savings. L. Senanayaka wanted to borrow Rs. 1,500 from respondent, who referred him to Jamis, and Jamis gave the money. It is admitted that respondent gave all instructions to the Notary about the mortgage, and I accept the evidence of Notary Jayatilleke that respondent was present at the execution of the deed and handed over the money to Senanayaka. There was a discrepancy in the deposition of Senanayaka who died during the course of our investigation. But I think the Notary's evidence is to be preferred to that of Senanayaka, and respondent and Jamis. Jamis himself was said by respondent to be illiterate. In all the circumstances I am inclined to think, that the real mortgagee in this transaction was the respondent, who lent the money in the name of his brother. I do not think Jamis has money of his own to lend.

As regards the transactions in the names of the sons Don Armon and Don Norman, there can be no question but that the person who gave instructions to the Notaries was the respondent himself, and that the sons only attended the Notaries, when they had to sign the dispensation from the search for encumbrances. Notary Jayatilleke and Proctor Meegama both testify to that, and I accept their evidence. I was not impressed with the suggestion that Notary Jayetilleke was angry, because he could not purchase "Gooneratne Walauwa". No doubt he had given an advance of Rs. 1,000 and had the deeds in his possession, but I think his explanation that as an outsider he did not wish to compete with old residents of the village is to be accepted. If he resented the purchase by Don Armon, he might easily have refused to surrender the deeds.

As regards these lands in general and "Gooneratne Walauwe" in particular, I am satisfied that it was the respondent himself who gave the instructions and arranged for the provision of the consideration. I do not think the sons played any important part in these matters. The person who showed the real interest was the respondent.

But that does not conclude the matter, for the evidence establishes the fact that in 1941 Don Armon started business in rice, textiles and other goods. Later he was appointed an authorized distributor of rice, sundries, etc. and also received a licence to deal in textiles. The licence regarding textiles has been put in (TDTA. 2) and documents TDTA. 4 to 7 support the fact that Don Armon had both licences. We have not been able to get any books which show the profits earned by the business, but it was said to be a profitable one — particularly in the war years. Don Armon himself estimated that he made a profit of Rs. 125 a month from this source. The respondent and Don Armon said that at the beginning respondent gave Rs. 3,000 to Don Armon to carry on the business. It is difficult to resist the impression that the respondent had a big interest in the boutique business, but that was perhaps not allowed to a Headman, and respondent had denied it, and there is no evidence of that fact. But I think one of two things arises here. If respondent was the real owner of the business, the profits of the business should be credited to him. I do not think it can be suggested that carrying on such a business constituted corruption. If the respondent was not the real owner, then the income from the boutique must be credited to Don Armon, and later to Don Norman.

In this connection Don Armon said that he was interested in this business up to the end of 1946. Meanwhile, on 29.1.45 he obtained an appointment as clerk at the Agalawatta Post Office, and got a small salary as well. He was later transferred to Colombo. In February 1946 he had collected Rs. 5,000 from his business and opened a Bank account in the Imperial Bank of India. There is no document to show that the Rs. 5,000 was taken from the business for this purpose.

The car (X4173) was bought in 1947 for Rs. 3,000. Towards this respondent himself contributed Rs. 1,720 and Don Armon the balance in cash. The Rs. 1,720 was said to have been obtained by withdrawing Rs. 860 and Rs. 860 from the Savings Bank account of two of the daughters of respondent, and there is evidence of these withdrawals about the relevant date. There is no evidence to contradict this.

Again for the purchase of "Gooneratne Walauwa" on 23.4.47 Rs. 7,000 was needed, and the respondent and Don Armon said that the respondent gave Rs. 3,000 for this purpose, and Don Armon provided Rs. 4,000. The important point is that in TDTA. 9, i.e. the Bank Account of Don Armon, there is evidence of the withdrawal of Rs. 4,000 on 23.4.47. Don Armon however could not produce either the cheque or the counterfoil. I think, however, that a reasonable inference is that Rs. 4,000 out of the consideration for "Gooneratne Walauwa" was provided by a cheque drawn by Don Armon on his Bank account. When the cheque was debited, the Bank account showed a balance of only Rs. 377.

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There are peculiarities in this Bank Account of Don Armon. Almost every month large sums were deposited, in many cases over Rs. 1,000 a month, and in August, 1946 as much as Rs. 3,200. There was some difficulty on Don Armon's part in explaining these deposits. These sums were considerably in excess of the probable earnings of Don Armon. The final explanation of Don Armon was that he took cheques from others and sent them to his Bank and paid out the sums later after realization to the persons who gave him the cheques. In fact it turned out that one person Kumara alone used Don Armon as his banker. The explanation, I thought, very doubtful, and it is possible that the income from the boutiques may have been much larger than was stated. But if there were irregularities in the conduct of the boutique, it is not possible to connect respondent with these irregularities. I do not propose to deal at length with the two small purchases in the name of Don Armon. The boutique business was said not to be flourishing during his period.

As regards both the sons, it is difficult to say that they were not in a position to provide the moneys they admitted spending on mortgages and purchases, and I think the respondent should have the benefit of that difficulty.

As regards the amounts for which the respondent had to account during the relevant period, he has put forward a statement, TDTA. 1. This admittedly was made up for the purposes of this inquiry, and cannot be regarded as a satisfactory statement. The respondent found difficulty in supporting the various items, which, for the most part, are based upon speculation. But at the same time, there is no doubt that respondent had a private income from his properties. It is possible that he has exaggerated the income, especially that from his rubber lands, and there is considerable scope for doubt and suspicion as regards his statement, and there is hardly any documentary corroboration. At the same time, it is not possible to say definitely that his legitimate earnings were insufficient to account for all the investments which can properly be attributed to him. I had a general impression in the case of respondent's family that all the investments were in fact made for the family, and that all the members of the family contributed towards the investments to the best of their ability.

I have not mentioned the oral evidence called by Crown Counsel, but I cannot regard it as strong. The evidence that Chalo Singho transported a lorry-load of paddy to Ibrahim Lebbe was not mentioned at the earlier stages of the investigation by any of the witnesses, and was only developed at the later stages. There was also a contradiction between the witnesses as to whether one or two lorry-loads had been taken. The alleged payment by Ibrahim Lebbe's relation Magdon to respondent in this connection is not well substantiated. The witnesses also had some ill-feeling towards respondent. The evidence of exactions by respondent of paddy from cultivators was not stressed at the later stages, and the evidence is slight. I do not think I can arrive at any finding against respondent on that evidence.

I hold that it has not been established that respondent made or effected any purchases of property or accumulations of money during the relevant period as a result of bribery or corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 95.

RESPONDENTS:

First: G. A. Geewananda,
Station Master,
Ganewatte,
(*now* at Galboda).

Second: M. S. J. Peiris,
Clerk,
Railway Station,
Ganewatte.
(*now* at Wadduwa).

Third: G. A. P. H. Ranaweera,
Clerk,
Railway Station,
Ganewatte,
(*now* at Balapitiya).

Fourth: B. de Silva Weerakkody,
Station Master,
Ganewatte,
(*now* Clerk, Colombo Fort).

IN PUBLIC

Heard on the 11th and 12th April, 1949, and 18th, 19th and 20th May, 1949.

Respondents:

1st: G. A. Geewananda, Station Master, Ganewatte, (*now* at Galboda).

2nd: M. S. J. Peiris, Clerk, Railway Station, Ganewatte, (*now* at Wadduwa).

3rd: G. A. P. H. Ranaweera, Clerk, Railway Station, Ganewatte (*now* at Balapitiya).

4th: B. de Silva Weerakkody, Station Master, Ganewatte, (*now* Clerk, Colombo Fort).

The matter for inquiry regarding 1st respondent was that between March, 1946, and May, 1947, while he was an Officer attached to Ganewatte Railway Station, he did on several occasions receive and accept gratifications in money from S. Kahasinhala, E. L. M. Kiri Banda, K. Herat, H. M. Ukku Banda and H. M. Jamis Appuhamy in addition to the usual charges payable to the Ceylon Government Railway, when applications were made to him to book Railway Wagons to transport goods or cattle by rail from the Ganewatte Railway Station.

There was a similar allegation against the 2nd respondent and the 3rd respondent in respect of the same period.

Against the 4th respondent there was a similar allegation in respect of the period 1945 of the receipt and acceptance of gratifications from H. M. Jamis Appuhamy.

On the evidence it was shown that the 4th respondent was the Station Master at Ganewatte for the year 1945 and earlier. About the end of 1945 he was succeeded as Station Master by the 1st respondent. Second respondent had worked under the Station Master as a clerk in 1946 up to about September, 1946, and has been

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then succeeded by the 3rd respondent. The 2nd and 3rd respondents had during their terms shared duties with the Station Master, and had acted as Officer-in-charge of the Station regularly, when the Station Master was not on duty.

Ganewatte Station was a centre from which traders despatched goods by Railway Wagon to Colombo and Kandy, and in view of the difficulties of transport, there was a keen demand for wagons. The goods despatched were mainly copra, coconuts, vegetables and firewood. According to the prevailing rules, priority was given to coconuts, copra and vegetables, and food stuffs generally, as well as to Government orders; the last in the list being firewood. It is clear that the supply of wagons was not equal to the demand and in particular the firewood dealers found considerable difficulty in obtaining wagons. There is no question that there was an acute shortage.

In order to meet this situation, the Railway authorities decided to start a system of registration of applications. Every application was given a serial number, and was entered in a book called the Wagon Engagement Register, and signed by the applicant and the allocation had to be made strictly according to the priorities and the order of application.

The complaint of the witnesses called by Crown Counsel was that wagons could not be obtained unless a bribe was paid to the Officer-in-Charge of the Station. The practice appears to have arisen of paying these bribes, at the rate usually of Rs. 5 for a small wagon, and Rs. 10 for a big wagon. No freight or railway charges were payable at Ganewatte Station for the wagons, as there were no suitable weighing machines at that station, and in every case freight was recovered from the consignee at the other end.

I shall deal with the evidence of each particular witness.

S. Kahasinhala was one of the firewood dealers, who did a moderate business in this commodity. He appeared to be an intelligent person, and gave his evidence well. He produced his account book S.K. 5. He kept these accounts in an old book, which had been kept for a little time on an estate, and had been obtained by him. Pages 1 to 68 relate to the estate accounts, which had nothing to do with this trader.

Kahasinhala pointed to a number of entries in this book relating to bribes. The entries relating to bribes start from page 100, and are to be found in several pages of this book, under various accounts. The bribes were paid from about March, 1946 to January, 1947. In his re-examination, Kahasinhala spoke to 41 entries of this nature appearing on about 17 different pages of his book. In a few cases there are specific references to the payment of bribes, most of these early entries. For example page 101 under date 17.3.46 " wagon 3808 to Mr. Peiris to obtain wagon Rs. 5 ". This referred to the 2nd respondent. On page 104 under date 28.3.46 appears " wagon 2737—gave pagga to O.I.C. for wagon—Rs. 5 ". Again on page 104 under date 31.3.46 " gave Mr. Peiris for wagon Rs. 5 ". Again on page 104 under date 7.4.46 " gave S.M. on account wagon 2583 Rs. 5 ". This referred to the Station Master—1st respondent. In all the other entries the bribe was said to have been incorporated in the loading expenses. The number of the wagon is given and the loading expenses are entered as Rs. 10 for a small wagon, and Rs. 20 for a big wagon. In fact, Kahasinhala explained that the actual loading expenses for putting the goods on the wagon was Rs. 5 for a small wagon, and Rs. 10 for a big wagon, and the total amount entered really included the payment to the officer-in-charge of the station. I think this explanation is reliable. Besides these, there is one entry on page 100 under date 2.4.46 which reads " to register permit Rs. 5 ". This was said to have been paid before the wagon was obtained, in order to get the wagon.

I may mention that these entries I have referred to appear under the accounts of various persons. Kahasinhala had purchased the firewood from a number of people, and the entries occur under the different accounts.

Though the book S.K. 5 cannot be regarded as a model of accounting, there was no suggestion that these entries were interpolations in these accounts. To get in these entries, it would have been necessary to write up several pages of the book, and that would have been a great trouble to any one who was fabricating these accounts, and if the book was really a fabrication it was a laborious and clumsy method of fabrication. Further it was to be noticed that there are some entries, mostly early ones, against which no entry has been made pertaining to bribes, and nothing extra was paid.

Though this book S.K. 5 has been criticized, it is difficult to hold that the book has been fabricated for the purposes of this inquiry, or any other inquiry. It has the appearance of a genuine book.

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Kahasinhala gave oral testimony in support of this book, and added that in order to counter their difficulties, it was decided that the traders in firewood should combine and make joint applications for wagons. Some 19 traders met and decided to form a company called the United Traders Co., on 23rd March, 1947. At first the 1st respondent refused to recognize the Company, or to accept applications for wagons in the names of the Company. Finally on 21st April, 1947, a letter was written to the 1st respondent signed by the 19 persons, requesting him to accept applications on behalf of the Company by the two joint Secretaries, Kahasinhala and John Perera. The Society was formed to put an end to the system of bribery that prevailed, so Kahasinhala claimed. Thereafter applications were accepted on behalf of the Company.

The Company only lasted a few months, and was never registered. Kahasinhala and the other witnesses called by Crown Counsel maintained that its dissolution was due to the 1st respondent, who worked on the individual members to bring about the dissolution. The 1st respondent suggested that the Company broke down because Kahasinhala and Ukku Banda tried to appropriate the wagons given to the Company to their own use. It does appear to be the fact that there was great scarcity of wagons about this time—the 3rd respondent among others mentions this fact, and the members of the Company may have thought that this was artificially created by the 1st respondent, and decided to leave the Company.

But the fact that the Company was formed is a matter of significance. There was no doubt a deep sense of dissatisfaction among the firewood dealers. They had previously tried to circumvent the difficulty by entering a large number of applications in the names of persons who were not actual traders. But this broke down, because when one started it, the others followed suit. When the Company was formed, a sufficient number of wagons was not available, and this got progressively worse. The Company paid no bribes, and the members believed that this was the cause of the shortage. On the 12th of May, 1947, S.K. 2 signed by Kahasinhala complained of the shortage of wagons, and alleged that the Station Master (1st respondent) had been previously in the habit of receiving illegal gratifications, and was now requesting the members of the Company to resign from the Company, promising to provide wagons individually. This was attributed to the fact that the Station Master was not paid illegal renumeration by the Company. A charge was also made that preference was shown against the Company. The letter requested an inquiry. No inquiry was held until after the Company had broken up, and none of the members of the Company, nor Kahasinhala himself, was examined.

Kahasinhala added that a complaint in Sinhalese had been sent prior to 12th May, 1947.

This letter S.K. 2 supports the evidence of Kahasinhala and others that bribes had previously been given to the station authorities, and that one reason for the formation of the Company was to eliminate the necessity for giving bribes.

Another witness called was H. M. Ukku Banda, who also spoke to the fact that he had paid bribes to the 1st, 2nd and 3rd respondents. He produced as support of his story his account book S.K. 6 which at page 132 has entries under the heading "Moneys given to the Station Master for wagons" and contained about 20 entries between the dates 27th November, 1946, to 20th February, 1947, of the payment of Rs. 5 or Rs. 10. This witness was the richest of the traders called, but he was not very intelligent nor educated. His book has been subjected to a close examination, and it certainly appears to be a badly kept book. There were undoubtedly possibilities that the page in question was inserted at a later date. The book is now completely filled up as far as it goes, but the various accounts start at unexpected dates, earlier accounts being entered up on later pages, while later accounts appear on earlier pages. It is however important to remember that the page in question does show the numbers of the wagons correctly, according to the date of supply. This is undoubtedly the book of an uneducated person, and may well have been entered haphazard and may have contained some empty pages in which accounts may have been entered later. It is not a satisfactory book. Ukku Banda supports Kahasinhala with regard to the formation of the United Traders Company, and said that one object of the Company was to eliminate the need for bribery.

Another witness E. L. M. Kiri Banda also gave evidence of the payment of bribes to the 1st, 2nd and 3rd respondents. This witness was in the habit of transporting to Kandy, and was allotted only small wagons, but to the 1st and 2nd respondents he paid Rs. 10 per wagon, and to the 3rd respondent Rs. 5 per wagon. The 3rd respondent was willing to take whatever was given. This witness produced a note book in which some of these bribes were entered· see S.K. 7—translation S.K. 7 (*a*). Between the dates 18th July, 1946, and 14th September, 1946, there are 9 entries, 3 payments to the 1st respondent, 4 to the 2nd respondent, and 2 to "Mahatmaya". Kiri Banda explained that he did not know the name of the 3rd respondent, and that the word "Mahatmaya" referred to the 3rd respondent. This

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appears on page 5 of the note book S.K. 7. The witness explained that he had paid bribes before the 18th July, 1946, and had entered these on slips of paper which he had not preserved. Owing to the trouble he was being put to, and owing to the persistence in the claim for bribes, he entered these in the note book S.K. 7. On page 1 of S.K. 7 are entered the wagon numbers. It is to be noted that on page 1 there are 3 more entries than in page 5 and it is to be presumed that no bribes were paid in respect of the extra items. The book S.K. 7 is only a rough note book, and not a regular book of account. The witness claims that the entries were written on the dates appearing in the pages. Some of the imperfections in the book give it a certain merit. It has been argued with some force that if the book was being fabricated, the witness would have entered bribes against all the dates when wagons were delivered according to page 1, and would not have overlooked the 3 entries of wagons I have referred to.

One matter may be mentioned about this witness. The witness pointed to an entry relating to arrack in the book in March, 1947, and stated that the arrack was given to the 2nd respondent. This is clearly incorrect, as the 2nd respondent was not working at Ganewatte on that date.

Another witness H. M. James Appuhamy asserted that he paid bribes to the 1st, 2nd and 3rd respondents, as well as to the 4th respondent. He produced, no book, but said he had exercise books which were eaten by white ants—in the preliminary investigation he said they were lost. It was not possible to fix the actual dates when he took wagons, as he had no note of these—in fact in respect of the period before 1946, when 4th respondent was Station Master, no Wagon Engagement Register was produced before me.

James Appuhamy and another witness K. M. Herath spoke to a special incident. Herath had bought near Ganewatte 12 buffaloes, to be hired to Killinochi Farm for ploughing. He found there were difficulties in transporting the buffaloes without a permit. So he returned to Killinochi Farm, and obtained a letter from the Manager of the Farm. Herath had booked a wagon on the 28th February, 1947, to be delivered on the 8th March, 1947 (see serial No. 136 of 1947 in G. A. G. 1 Wagon Engagement Register). But it is clear that he applied for another wagon on 4th March, 1947, without mentioning the date of delivery. This was actually delivered on the 6th March, 1947 (see serial No. 144 of 1947 in G. A. G. 1). The other wagon ordered was also delivered on the 8th March, 1947. The two witnesses say that Herath loaded 8 of the 12 buffaloes on 6th March and had 4 left over. He found it was possible to load 8 in each wagon, so he went on the 5th March and bought 4 more buffaloes, and brought all the 8 to the station and consulted the 1st respondent as to what he had to do. The 1st respondent who had already received two sums of Rs. 10 for the registration of the two wagons, demanded another sum of Rs. 40, namely Rs. 10 for each of the 4 buffaloes not covered by the letter. Herath went to his relation James Appuhamy, as he had no money left. James went with Herath to the 1st respondent and tendered Rs. 25 to him, and asked him to accept that amount. The 1st respondent accepted that amount.

James Appuhamy and Herath when they gave their evidence originally, had no access to G. A. G. 1. It is clear that their story that 2 wagons were obtained for cattle is supported by the entries in that register. It has not been suggested by the 1st respondent that each wagon could not hold 8 buffaloes, and if 8 were loaded in the first wagon on the 6th, it is not unnatural that Herath would have been anxious not to pay full price for a half empty wagon. A large number of buffaloes were actually needed at Killinochi. The sudden purchase of the 4 extra buffaloes also fits in with the short period of time between the 6th and the 8th, when the 2nd wagon was due. Also in this case the wagons were received very expeditiously, one of them being received within 2 days, and the other on the stipulated date of delivery. These are points which support the story of the two witnesses.

There were certain discrepancies in the evidence of James Appuhamy. For instance, in the preliminary investigation he said the Rs. 25 was paid by Herath in his presence. At the later inquiry he said he paid the money. Also in the preliminary inquiry he said he saw one payment of Rs. 10 for the booking of the wagon, but he denied this at the later inquiry. These are points which I have considered.

All the respondents gave evidence, and called witnesses. I may deal with some of the witnesses first. One was V. H. Anderson, Superintendant of Mahayaha Estate, Ganewatte, of 250 acres. He said he had transported copra and coconut from Ganewatte for 14 years, and that no bribe was demanded from him. His evidence however did not go far, because copra and coconut had priority, and he obtained his allocations from Colombo, though he sent chits for coconuts to the Station Master. The firewood contractors were ordinary villagers and had no priority. Anderson had heard talk about bribes, but did not believe it, because he found the Station Master strict in the allocation of wagons.

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Another witness was B. A. Don Alwis Appuhamy, who claimed to be one of the oldest residents of Ganewatte. He said he sent about 40 wagon loads of firewood about this period, and never had to pay a bribe. It turned out in cross-examination that though this witness may have applied for wagons, he had never in fact transported firewood by railway. His name does not appear in the Wagon Engagement Register G.A.G. 1. His business was to sell the firewood to 2 other dealers Belin and Wijesinghe, who transported it. There was no occasion for Don Alwis to pay a bribe to the Station authorities.

First respondent in his evidence stated that shortly after he arrived at Ganewatte —in January, 1946—he established the Wagon Engagement Register G.A.G. 1 and registered all applications for wagons according to the date of application, and allotted serial numbers. Thereafter he applied for wagons to Colombo, and when wagons arrived he allotted them strictly according to priority and serial numbers. Firewood was the last on the list of priorities, and there was always a great scarcity of wagons for firewood, and a great number of persons trying to transport firewood. The result was that every few wagons were available for firewood. First respondent said that Kahasinhala and Ukku Banda in particular wanted preference, which he refused to give. The result was they were displeased. They then resorted to the device of getting a number of persons, not dealers, to apply for permits, but this did not work as other dealers adopted the same device. Ultimately an Association was formed, the United Trading Company, consisting of 15 or 16 genuine firewood traders 2 genuine traders did not join the Company. The Company itself broke up, because Ukku Banda and Kahasinhala wanted to monopolise the wagons given to the Company. Kahasinhala asked for priority, because he was supplying to one Gajaweera, who supplied to Mahara Prison. First respondent wrote to the Prison authorities and discovered that Gajaweera's supply only amounted to 16 cwts. a day. The claim had been for more. Gajaweera and Kahasinhala were displeased about this.

The firewood dealers always complanied bitterly about the shortage of wagons, and 1st respondent complained to the Railway authorities as early as 11th July, 1946, about the non supply of wagons (see G.A.G. 8). He had sent other complaints about the short supply (see G.A.G. 7 of 29.12.46 and G.A.G. 9 of 13.5.47), but he was not able to get the wagons needed. There is in fact considerable substance in the 1st respondent's contention that a great deal of dissatisfaction was due to the fact that the Colombo authorities did not, or could not, supply the wagons needed for transporting fire wood.

The 1st respondent depended on his Wagon Engagement Register G.A.G. 1. The witnesses called by Crown Counsel alleged that this was not the book they signed always and that a different book was produced at certain times. The book G.A.G. 1 however has continuous serial numbers, and I do not think that there is much substance in the suggestion that there were two books for the registration of applications. Besides this there was a Wagon Register (not produced) and a consignment Note Register—G.A.G. 4 kept by the Railway Policemen.

It is a point in favour of the respondents that when the Divisional Inspector Puvimanasinghe eventually inquired into the matter of the complaint by the United Traders Company, he was able to report that the allocation of the wagons had been done correctly, and that if the complaint of the Company were correct it was due to short supply, and not to any other cause. But it is to be noted, that the Company had by that date dissolved, and no attempt was made to get in touch with Kahasinhala or any of the other members. The 1st respondent also had left the Station, and though the 3rd respondent was there, he merely handed the documents, and was not questioned. The Inspector examined "the Engagement Register and other documents," and came to his conclusion. In any case, it has not been shown at the present inquiry from the books that wagons were allocated out of order. There was no inquiry held into the allegation that bribes had been accepted previously.

I have given all this evidence serious consideration. It is a point that the scarcity of wagons was mainly due to the fact that they were not supplied from Colombo. The 1st respondent had made some efforts to get a sufficient supply of wagons. It is also the fact that it has not been possible to prove from the available books that the wagons have been allotted out of turn to any dealer. But at the same time witnesses of the mentality of Kahasinhala and the others would well believe that the giving of the bribes may expedite the supply of wagons to themselves, and this idea may not have been discouraged by the 1st respondent. In any event the question of whether bribes were actually given is a problem independent of this consideration to a great extent.

According to the evidence, during the period prior to April, 1947, bribes had been given, and the giving of bribes ceased after the formation of the Company. It so happened that the period immediately after the formation of the Company was a period when wagons were in very short supply. It is a point in favour of the witnesses called by Crown Counsel that as early as 12th May, 1947, in the

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complaint S.K. 2, an allegation was made that bribes had been given before the formation of the Company. The evidence of Kahasinhala is supported by his book S.K. 5, which I think is a genuine book, and not fabricated. Ukku Banda was an unintelligent and muddle-headed witness, and his book S.K. 6 was an unsatisfactory book. I certainly would have hesitated to act on his evidence alone, but I did not get the impression that he was untruthful or his book fabricated for the purposes of this or any other inquiry. The witness Kiribanda was a good witness and his book S.K. 7, though full of imperfections appeared to me to contain genuine entries. There is also the point that these three witnesses had correctly stated the numbers and the date of supply of the wagons. I was not impressed with the suggestion that the witnesses had access to the Railway books, or got the information from the Railway Policeman. I think they kept the information for the purpose of their accounts.

James Appuhamy as regards the payment of bribes for himself, did not carry the matter far, and supplied no details. But as regards the payment of Rs. 25 to the 1st respondent in respect of the extra buffaloes, I accept the story of Herath and James Appuhamy, which impressed me strongly. I do not think it is a strong point that the 1st respondent was not actually on duty on 8.3.47. He was always at the Station premises.

I have not lost sight of the fact that all these witnesses must be regarded as accomplices and that there is no legal corroboration of their stories.

In my opinion the allegations against the 1st, 2nd and 3rd respondents have been established beyond reasonable doubt, subject to this that the bribe paid by Herath was to the 1st respondent alone, and not to the 2nd or 3rd respondents, and that the period of bribe taking of the 2nd respondent was in 1946 alone.

The case against the 4th respondent is not on the same footing. We have only the statement of James Appuhamy, and no support is given to that statement by his books, or by any Railway book. There is a complete absence of detail in his story. There is also the fact that Ukku Banda, who was an old trader at Ganewatte, had nothing to say against the 4th respondent. No complaint about this bribery was made at any time to any authority. In all the circumstances, I do not think that the allegation against the 4th respondent has been established beyond reasonable doubt.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 100.

RESPONDENTS:

First: L. Kulatunga,
Police Sergeant 2288,
Alawwa.
(*now* Sub-Inspector)

Second: T. B. Samarakoon,
Police Sergeant 1862,
Polonnaruwa.

Third: U. Ariyadasa,
Police Sergeant 1008,
Chunnakam.

Fourth: P. S. de Silva,
Police Constable 157,
Depot Police,
Maradana.

IN PUBLIC

Heard on the 31st May, 1st, 24th, 27th, and 28th June, 1949.

Respondents:

1st: L. Kulatunga, Police Sergeant 2288, Alawwa (*now* Sub-Inspector).

2nd: T. B. Samarakoon, Police Sergeant 1862, Polonnaruwa.

3rd: U. Ariyadasa, Police Sergeant 1008, Chunnakam.

4th: P. S. de Silva, Police Constable, 157, Depot Police, Maradana.

The four respondents were all stationed in Galle in March, 1946, and the matter for inquiry against each of them is as follows:—

That in about March, 1946, they did solicit a gratification of Rs. 2,000 from one S. Kodituwakku as a reward or recompense in consideration of a promise by them to take action to prevent the prosecution of the said S. Kodituwakku for certain offences under the Control of Prices Ordinance.

The 1st respondent has now been promoted to the rank of Sub-Inspector.

S. Kodituwakku is a trader in Galle, who keeps a boutique in that town. At the material dates there was in existence at the Galle Police Station a Sergeant and Constables' Association. There was also a Police Mess, which apparently was catered for by the Association. A Mess Manager was appointed for the mess, and monthly deductions were made from the pay of the members to pay for the cost of catering. But money was needed to pay for the day to day catering of the mess, and finances for this purpose were obtained from S. Kodituwakku, by an arrangement whereby he was paid a commission of 8 per cent. on all moneys advanced. This practice had been in existence for several years. Kodituwakku was not an authorized distributor, and the ration books of the mess were registered with another trader L. O. de Silva, who supplied articles to the mess under the ration cards. But L. O. de Silva's account was also met by Kodituwakku, who eventually recovered the sums advanced at the end of the month out of the pay of the members of the mess.

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It may be noted that Kodituwakku had no permit to sell price controlled articles at his boutique, but he had a licence to store such articles in his boutique, see L. K. 1 of 12.2.45. This permit was obtained by Kodituwakku, after reference to the Galle Police, as it became necessary for him on occasions to keep in his boutique price controlled articles obtained from other dealers, before they were delivered to the mess.

On the 24th March, 1946, the Galle Branch of the Sergeants and Constables' Association was expecting a visit from representatives of the Colombo Branch, and arrangements were made to entertain the Colombo representatives at a lunch on the 24th March, 1946. These four respondents were appointed as a special reception committee to be in charge of the arrangements. The 3rd respondent at the time was President of the Galle Branch of the Association. All the matters relating to this inquiry arose in connection with the arrangement for the lunch on the 24th March, 1946.

The story of Kodituwakku is that all the four respondents came to him on 20.3.46 in the morning and the 3rd respondent asked him for a loan against the provisions to be supplied at the special lunch on the 24th. Kodituwakku agreed to give the loan. Third respondent had a list of articles immediately needed, most of the articles were price-controlled, and related to "sundries" for cooking purposes. Kodituwakku had no licence to sell the articles and in fact did not stock them in his boutique, but he arranged to send his assistant Gajanayake to find out whether the articles were available in other boutiques, and the price of the articles. Gajanayake came back with the information, which was conveyed to the respondents. Thereafter Gajanayake was sent out with Rs. 100 to make the purchases. It was clear to everyone that the articles could only be obtained at well over the controlled price. The respondents had no objection to the extra cost. Gajanayake, with the help of a labourer provided by the respondents, brought back the "sundries" needed. They had cost Rs. 83.60. On this occasion the respondents also said they needed rice.

On 22.3.46 the respondents, except the 2nd respondent, came in a car and took Kodituwakku to Pilana. There 250 measures of country rice were obtained from a man called Mahatun. There was some confusion in the evidence of Kodituwakku as to the manner in which payment for the rice was made, but apparently a cheque was given on the 22nd night and cash the next morning. The rice was transported back to Galle, 60 measures meant for the lunch was left in the house of the 2nd respondent, and 190 measures were left in the house of William Appuhamy, from which house they were removed next morning to the mess. The rice was purchased at black market rates, and Rs. 304 was due for 190 measures and Rs. 96 for 60 measures. The Rs. 304 was entered against the Mess account, and not against the lunch account. Altogether the sum of Rs. 400 was paid to Mahatun.

On 23.3.46 the four respondents came again to the boutique. Other articles were purchased, e.g. firewood, coconuts, coconut oil, and cabbage—the last from the Marketing Department—the money being provided by Kodituwakku.

On this day Kodituwakku prepared and presented a bill for the "sundries" bought on 20.3.46 for Rs. 83.60. No objection was taken to the prices paid by the respondents. At the instance of the respondents Kodituwakku wrote and signed the word "Labuna" (received) on the bill, though no money was received. Kodituwakku was absent at Tissa from the 24th to the 26th March. The respondents came again on the latter date to the boutique. The other bills were prepared and presented.

In all 4 bills were given—on the 23rd the bill for "sundries", Rs. 83.60—on the 26th 3 bills, Rs. 28 for cabbage from Marketing Department, Rs. 96 for 60 measures of rice, and Rs. 11.85 for firewood, &c. The whole amount came to Rs. 236 or Rs. 237, including Kodituwakku's commission, which came to about Rs. 17 and which was entered on the rice bill. No objection was taken to any of the bills, and the word "received" was entered on the bills at the request of the respondents, though no money was given.

On the night of the 26th March, the four respondents returned to Kodituwakku's boutique. The 1st respondent told Kodituwakku that trouble had arisen about his having charged above the controlled prices, and that a prosecution was contemplated. The prosecution could only be averted by paying a sum of Rs. 2,000 i.e. Rs. 200 each to the ten officials on the Committee. All the four respondents joined in persuading Kodituwakku to pay the Rs. 2,000 in order to get out of the trouble, Kodituwakku was asked to leave the Rs. 2,000 in the boutique of Thomis Mudalali, where the four bills would also be kept for return to him. Kodituwakku did not agree to pay this sum, and that same night he went and met Police Sergeant Majeed No. 176, and told him about the demand of Rs. 2,000. Majeed advised him not to pay a cent of this money.

Early the next morning (27.3.46) Kodituwakku received a message from Thomis Mudalali. He first sent Gajanayake his assistant, and eventually went himself, as he was the person wanted. There Thomis told him that the 4th respondent had

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come to him and had asked him to get Rs. 2,000 to stop a prosecution. Kodituwakku told Thomis to mind his own business and went away. At the time the 2nd respondent had come near Thomis' boutique, but said nothing. But during the course of the day the 1st, 2nd and 3rd respondents came separately and tried to persuade him to pay the Rs. 2,000.

No entry regarding the profiteering charge was made till 29.3.46 by the respondents, and plaint was not filed till 2.4.46. The plaint related to red onions, coriander and pepper, which appeared on the first bill for Rs. 83.60. Kodituwakku was eventually acquitted.

Kodituwakku admitted that in 1942 he had been convicted for profiteering in maldive fish, and fined Rs. 150. His licence for storing and selling controlled articles was cancelled. Kodituwakku said that after that conviction he never stockd maldive fish, or any other controlled articles. After he started financing the Police Mess, a Price Control Inspector found some controlled articles in his boutique, advised him to get a licence for *storing*. That was the reason why he got the permit L. K. I, for purposes of storing only.

The story of Kodituwakku was corroborated by D. Gajanayake, his assistant. Gajanayake, stated that Kodituwakku did not stock price controlled articles. He supported Kodituwakku as regards the events of 20.3.46, and stated that the respondents knew and acquiesced in the prices charged. He said he bought the articles from various boutiques and out of the Rs. 100 given to him he had a balance left of Rs. 14 or Rs. 15. The articles were brought back to his boutique and were later removed to the mess by the 4th respondent. He also said that on the 22nd evening, the respondents came and took Kodituwakku by car to get some rice. Next morning the rice was removed from the house where it had been kept. On the 23rd also respondents came and obtained firewood, &c. and a bill was prepared and given to them on that day.

Gajanayake also spoke to the visit of the respondents on the 26th morning, and the removal of the other bills, and stated that the word "received" was put on the bills, though no money passed.

The respondents came again on the 26th night, and told Kodituwakku of the proposed prosecution, and demanded Rs. 2,000 to stop the prosecution.

On the 27th there was a message from Thomis Mudalali. Gajanayake went first, and was asked to send Kodituwakku, who went. This evidence of Gajanayake is important. The main attack upon it was that Gajanayake's name was not mentioned in the Magistrate's Court Case for profiteering, or in any statement to the Police. But in the Magistrate's Court the evidence concerning the bribe was incidental, and need not have been gone into fully. There is also the fact that Kodituwakku, acting on legal advice, was reluctant to make any statement to the Police, while his prosecution was pending. The failure to mention Gajanayake's and Thomis's names to Majeed and Banda (witnesses) is also understandable. There is no reason to think that Kodituwakku regarded his assistant as a star witness. On the other hand, it would be natural for Gajanayake to be in the boutique at the times he speaks to. He gave his evidence well, and I think he is a reliable witness.

P. Thomis also gave evidence. He said that on the 27th about 8.30 or 9 a.m., 4th respondent, who had more dealings with him than the other respondents, came to him, and told him to get Rs. 2,000 from Kodituwakku so that an action may not be filed against him. Thomis asked if the officers knew about it, and was told that all had joined in it. Thomis sent for Kodituwakku, who eventually came, and when told of the demand abused Thomis. Thomis was also not put down as a witness in the Magistrate's Court Case, but his evidence may not have been considered necessary in the profiteering case. According to Thomis, he had his statement recorded in 1946. The fact that his name was probably not mentioned to Majeed and Banda (witnesses) is perhaps due to the fact that these witnesses were not conducting an inquiry into any complaint by Kodituwakku. Thomis is undoubtedly a friend of Kodituwakku, and they have accommodated each other by giving small loans without interest. But there is no indication in the evidence that Thomis has any animus against any of these respondents, or any reason to give false evidence against them. In my opinion Thomis gave his evidence well.

The story of Kodituwakku is considerably re-inforced by the two Police witnesses —Sergeant S. A. Majeed No. 176, and W. H. R. Banda P. C, *alias* R. B. Hapugaskumbura, who were both in the Galle Police in 1946.

Majeed tells of his meeting Kodituwakku one night, just before pay day, which was on the 27th and 28th March. Kodituwakku came and informed him at about 9 or 10. p.m. that the respondents had demanded Rs. 2,000 from him, in order to help him escape from a charge of profiteering. Majeed advised Kodituwakku not to pay the bribe. Next day he mentioned this to the four respondents, and asked them either not to charge Kodituwakku or else to charge the trader who had sold rice as well. The respondents did not agree and thought Kodituwakku

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should be taught a lesson, as he did not show proper respect to the Police. The previous statements of Majeed indicated that he was not very certain of the date of Kodituwakku's complaint to him, but they are reconcileable with the fact that the complaint was made on the 26th itself. It is not quite certain when Majeed first mentioned this to any superior officer, but at any rate he has done this by the 4th April, 1946, shortly after the profiteering case was filed on 2nd April, 1946. Majeed thought he must have mentioned this matter to his superior on the 27th. Majeed knew Kodituwakku, because he had been the officer who made payments to Kodituwakku.

A very strong attack was launched against Majeed by the respondents, and it was suggested that he had engineered the charge against these respondents. It was suggested that Majeed was in the pay of Kodituwakku. There is nothing in the evidence that supports this suggestion. Majeed has paid visits to Thomis and Kodituwakku but not frequently. No bad feeling on the part of Majeed against any of the respondents has been shown, at any rate prior to the profiteering case and the lunch of 24.3.46. I thought Majeed a good witness, and I think it redounds to his credit that he took a strong stand, against what he considered a false or ill-advised prosecution. The documents produced show that many of the superior officers held the same view, including the Inspector General.

P. C. Banda's evidence is also of importance. This man had been the Mess Manager from January, 1946, and made daily purchases through Kodituwakku for the mess. Kodituwakku supplied the money for these purchases. Banda is positive that Kodituwakku did not stock price controlled articles for *sale*. These goods were purchased in other boutiques through Kodituwakku or his assistant, and prices above the controlled prices had to be paid for these goods. This was well known to members of the mess, and that is admitted by the 1st respondent.

One other important matter is mentioned by Banda. On 23.3.46, he was asked by the 3rd respondent to get some rice for the Police Mess, and told that the actual place where the rice was would be pointed out by Kodituwakku. When Banda went to that boutique, he was shown the house of one William Appu, where he found 190 measures of country rice. He took that rice and transported it to the mess, and informed the 3rd respondent. He entered in his book (D2 in the Magistrate's Court Case, not available to me) "For 190—Rs. 304." He was asked by 3rd respondent not to enter the words "measures of rice" and did not do so. The entry was in close conformity with the entry in Kodituwakku's books, and the price was obtained by looking into Kodituwakku's books. There was a vague suggestion by the 1st respondent that some pages including this entry had been interpolated, but this was not put to Banda in cross-examination.

Banda's evidence has also been attacked, and the suggestion made that he obtained a commission from Kodituwakku. I do not accept that. It must have required some courage on Banda's part to stand out against his superior officers including the Mess President, the 3rd respondent. The most important point however is that his evidence concerning the rice, and the instruction given by 3rd respondent, have not been contradicted. 3rd respondent did not give evidence before me. Further Banda had no grievance previously against any of the respondents.

As regards the rice, it is a point to be remembered that Majeed had early been informed of the purchase of the rice, and had mentioned it to the respondents, and had requested them to charge the seller of the rice as well.

I thought Banda gave his evidence well and that his evidence is true. There is nothing to shake my confidence in this witness.

Banda also said that Kodituwakku and Majeed had early told him of the demand for the bribe of Rs. 2,000. Neither of those witnesses mentioned this, but no question was addressed to them on this point.

Of the respondents, the 1st respondent alone gave evidence and was the principal witness. But two other Police witnesses were called, and I may deal first with their evidence.

The first was V. J. Perera, Sub-Inspector, now at Tissa, who said that he was in Galle, and was the supervisor of the mess up to October, 1945. He said in that year he occasionally visited Kodituwakku's boutique. In 1945 Kodituwakku openly sold "sundries" to the public, price controlled articles. Witness believed that Kodituwakku was an authorized distributor. Witness however never went and purchased goods for the mess, and Kodituwakku never charged the mess above the controlled price. I thought the evidence of occasional purchases by members of the public very vague and unsatisfactory, and cannot place any reliance upon it. The only article specially mentioned was dried fish, which Kodituwakku always maintained that he stocked and which was not a price controlled article.

Another witness was P. Sederan Appu P.C. 2288, who said he was the Mess Manager in 1944 and 1945, and purchased goods daily for the mess. Kodituwakku stocked price controlled articles and sold them openly in his boutique. Kodituwakku never sold above the controlled price.

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I was not impressed with this witness. It is difficult to believe that Kodituwakku openly stocked and sold price controlled articles. His boutique was very near the Price Control Office, and not far from the Police Station. It would have been difficult to avoid detection. Further the 1st respondent said that Kodituwakku had to pay black market prices for these goods, and it would hardly have been worth his while to sell them at the controlled price. I do not accept the evidence of this witness.

The only other evidence is that of the 1st respondent. He said that the four respondents were appointed as a Reception Committee to cater for the lunch on 24.3.46. He was the Senior Sergeant in Galle in 1946, and had undertaken as his contribution to the expenses to pay the bill for sundries supplied on that occasion. The "sundries" were supplied from Kodituwakku's boutique and were not purchased outside from other boutiques. There was some confusion in his evidence as to whether the sundries were provided on 20.3.46, but eventually he stated that the Reception Committee first visited Kodituwakku on 23.3.46. First respondent denied that any rice was purchased from Pilane, and that the respondents had accompanied Kodituwakku in the car on the night of 22.3.46. Other articles were purchased on the 23rd e.g. cabbage, firewood, &c.

The 1st respondent denied that the bill for "sundries" was presented on 23.3.46. According to him all the bills were presented on 28.3.46, and were paid on that day. 1st respondent paid the bill for sundries Rs. 83.60. All the other bills were paid by the 2nd respondent who it is said was the Treasurer. But in the course of his evidence, 1st respondent said this was a mistake, and that the only payment made on the 28th, was in respect of the "sundries" — Rs. 83.60, and that the other payments had been made before the 28th out of Rs. 200 advanced to the Reception Committee by P. Sergeant Perera No. 672.

First respondent said that he had a discussion with Kodituwakku about the "sundries" bill, and asked for a reduction of the bill. He told Kodituwakku that he was personally paying that bill, and suggested that a more moderate charge should be made. He was prepared to pay over the controlled price. Kodituwakku however, was adamant, and said he would rather forego the whole bill than reduce it. It is a little strange that this appeal to Kodituwakku was not put to that witness in cross-examination, but it is more curious that Kodituwakku who was admitted to be a good friend of the respondents and had given him small loans, did not relent on the appeal being made, and make even a small reduction. Apparently if Kodituwakku had done this, there would have been no prosecution. Apparently this was the first occasion when Kodituwakku's charges had been exorbitant.

The bill for Rs. 83.60 was produced in the Magistrate's Court and was not available to me, but it appears that this bill, and in fact all the bills, bore no date and was not stamped as a receipt. It was admitted that the top of the "sundries" bill was torn off; 1st respondent said it was torn off a pad, and at no time bore a date. The other receipts were not produced before me, and it was said that the respondents could not find them now, as the Sergeants and Constables' Association has now been banned and dissolved. It is strange however that the Reception Committee did not ask for stamped receipts, and the fact that the receipts were not stamped or dated supports the story of Kodituwakku that no payment was actually made.

First respondent also said that Kodituwakku openly sold price controlled goods in his boutique, and was believed by the Police to be an authorized distributor. This is difficult to reconcile with the 1st respondent's earlier statement, that he knew that Kodituwakku's permit was merely to store and not to sell.

A large number of Police reports and statements were referred to in the course of the evidence. It was clear that some inquiries into these matters went on for a long time, but Kodituwakku quite naturally did not participate whilst his prosecution was pending. When he made a statement eventually it was not quite clear in respect of which inquiry he made this. This principal purpose served by these documents was to check the statements of the various witnesses.

My attention has been drawn to a number of alleged contradictions in the stories of the various witnesses called by Crown Counsel, and great emphasis was placed upon these. But these contradictions related to matters of detail, and after a lapse of time, these details may have become somewhat blurred in the minds of the witnesses. For instance, Kodithuwakku and Gajanayake did not agree as to the persons from whom the "sundries" were purchased on 20.3.46. But obviously Gajanayake was the person who would have best remembered where the goods were bought, Kodithuwakku may well have forgotten. Again there was a contradiction between these two witnesses as to whether on the night of 22.3.46, Kodithuwakku was picked up by the car at the boutique or at the Hospital. There was also the fact that the names of Gajanayake and Thomis had apparently not been given by Kodithuwakku to Majeed or Banda, but I have already commented on this.

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It was also suggested for the respondents that the alleged purchase of rice on the night of 22.3.46 was demonstrably false, and great emphasis was laid on the fact that when the Inspector made his raid on the mess on 4.4.46, he found only 62 measures of mixed white and country rice in the police store—the greater portion being imported rice. But the raid took place after the case was instituted against Kodithuwakku. The evidence of Majeed shows that he had raised the question of the purchase of rice with the respondents fairly early, and there was ample time for the rice bought to have been removed from the store. In any event, some country rice was found in the police store, though the quantity was not large.

As regards the rice, I was impressed with the evidence of P. C. Banda, who was to all practical purposes unanswered. I think his evidence is of the greatest importance, as supporting the story of Kodithuwakku. I think the evidence is very strongly in favour of the fact that country rice was actually purchased for the lunch and for the mess.

Another point urged was that as a result of the Departmental inquiries, no action was taken against any of these respondents, and that later the 1st respondent at any rate was promoted to the rank of Sub-Inspector. I have however to decide this matter on the evidence led before me. In my opinion, the admission by the respondents that articles were regularly purchased for the Police Mess to the knowledge of everyone, at above the controlled prices may alone have been a good ground for Departmental action. This throws a very bad light on the Police Mess in Galle in 1946.

I am satisfied beyond reasonable doubt that the evidence of Kodituwakku and his witnesses is true, and I hold that the allegation against each of the four respondents has been established.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 108.

RESPONDENT :

N. S. B. Amunugama,
Colonization Officer,
Nachchaduwa Scheme,
Hidogama, N.-C. P.
(*now* Colonization Officer, Minneriya, N.-C. P.)

IN PUBLIC

Heard on 25th March, 9th May, and 3rd June, 1949.

Respondent: N. S. B. Amunugama, Colonization Officer,
Nachchaduwa Scheme,
Hidogama, N.-C. P.,
(*now* Colonization Officer, Minneriya, N.-C. P.)

The matters for inquiry relating to this respondent were as follows :—

(1) that in or about 1946 he solicited a gratification of Rs. 100 from G. D. Charles Appuhamy as a reward or recompense in consideration of a promise to take action to get a lease of about 3 acres of Crown land;

(2) that in or about 1946 he received and accepted a gratification of Rs. 80 from the said G. D. Charles Appuhamy as a reward or recompense in consideration of a promise to take action to get him a lease of about 3 acres of Crown land;

(3) that in or about May, 1946, he solicited and received a gratification of Rs. 25 from M. D. K. Dissanayake as a reward or recompense in consideration of a promise to give him a recommendation to enable him to obtain a loan of seed paddy from the Government;

(4) that in or about October, 1946, he solicited a gratification of Rs. 50 from W. M. Mudiyanse as a reward or recompense in consideration of a promise to settle a dispute which had arisen between him and one Don Siyadoris relating to a piece of Crown land;

(5) that in or about October, 1946, he received and accepted a gratification of Rs. 25 from the said W. M. Mudiyanse as a reward or recompense in consideration of a promise to settle a dispute which had arisen between him and one Don Siyadoris relating to a piece of Crown land.

Matters (1) and (2) may be grouped together : also matters (4) and (5). For convenience I shall deal with matter (3) first. This relates to the evidence of M. D. K. Dissanayake, who was the original petitioner, and gave evidence first at the inquiry.

Dissanayake was a middle-class colonist, who was anxious to obtain a loan of seed paddy from Government. Seed paddy was generally loaned to peasant colonists, but in the case of middle-class colonists, special sanction for the loan was required from the Government Agent. Dissanayake's evidence is that in 1946 he met the respondent and talked to him about the loan of seed paddy and asked for 20 bushels. The respondent told him that without money these things cannot be done. Dissanayake gave respondent Rs. 25 to obtain him recommendation. No figure was stipulated by the respondent. Thereafter Dissanayake sent a petition to the Government Agent on 29.5.46—M.D.K.D. 2. This was referred to the respondent, who on 31.5.46 minuted on the petition that the applicant may be issued 20 bushels seed paddy on loan. The paddy was issued on 31.5.46—see issued order M.D.K.D. 1.

The respondent said that Dissanayake came and saw him before he made his written application to the Government Agent and that the respondent advised him to make the application to the Government Agent. Respondent, however, denied that he solicited or accepted a bribe. There were no witnesses to the giving of the bribe.

Dissanayake's evidence was not very strong. There was a suggestion that he had given false evidence, because of poltical motives. In camera he had admitted that he was a member of the North-Central Province United Workers and Peasants Union, but at the public inquiry he denied that he was a member, though he had

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attended some meetings. But on the other hand there was no evidence that he had played any important part in that Union, and I was not much impressed with the suggestion that he had a political motive in giving the evidence. A more important point was that *in camera* he had said that he had not seen respondent receiving money from any other person. But at the public inquiry, he said that he had seen the witness Mudiyanse paying money to respondent. He thus brought himself in line with Mudiyanse on this point. This contradiction was of some importance.

It was also evident at the cross-examination that Dissanayake was confused, and that his memory was at fault in certain matters. No doubt some of the confusion was due to the fact that the incidents happened some years before, but the general impression I received of this witness was not very good. I had also to bear in mind that this witness must be regarded as an accomplice. On the whole I do not think it has been established beyond reasonable doubt that the allegation in paragraph 3 has been established.

I shall next deal with paragraphs (4) and (5) which relates to the witness Mudiyanse. This witness had an allotment of land in Hidogama, adjoining the allotment of one Don Siyadoris. Don Siyadoris undoubtedly encroached on the allotment of Mudiyanse with his house and cattle shed. The Additional Assistant Government Agent, Mr. I. M. de Silva speaks to this. The predecessor of Mr. I. M. de Silva had warned Don Siyadoris to give possession, and in fact the grant of the allotment to Mudiyanse was cancelled, in order that the land may revest in the Crown, so as to enable the Government to take action to evict Don Siyadoris. The evidence of Mr. I. M. de Silva makes that clear. After the cancellation Mr. I. M. de Silva visited the spot on 30.11.44 and made order M.D.K.D. 3. While allowing as a concession to Siyadoris a 10-foot path over Mudiyanse's land to enable him to take cattle to his land, he warned Siyadoris that he must demolish the shed within one week and give possession of Mudiyanse's allotment, within one week of the receipt of the notice. Letter M.D.K.D. 4 of 7.12.44 was sent to Siyadoris. The D. R. O. was instructed to report whether the order was carried out.

Unfortunately the Government files which are available stop short at this point, and we do not know what was done officially thereafter. But even if the Government took no further action, it is probable that the dispute with Siyadoris must have been a live issue in the mind of Mudiyanse, who had succeeded in getting these orders made. All the matters I have mentioned took place before respondent came to Nachchaduwa.

On 1.9.45 Mudiyanse averred that Mr. I. M. de Silva asked respondent to settle the matter, and that respondent asked for the sum of Rs. 50 to settle the dispute. Mudiyanse gave Rs. 25 to respondent, and promised to give the balance of Rs. 25 when the dispute was finally settled. Witness Dissanayake was there and could have seen the payment. This was about October, 1946. Dissanayake confirmed the fact that he saw a payment by Mudiyanse to respondent. But there were contradictions in his evidence to which I have already referred.

The respondent denied that he asked for or accepted any bribe, and in fact maintained that he never became aware of the dispute between Mudiyanse and Siyadoris, until he was summoned before this Commission. Respondent also alleged that Mudiyanse bore a grudge against him. This arose in connection with the Co-operative Society. The respondent was the Chairman of the Co-operative Society and Mudiyanse was a Committee Member. Mudiyanse with two others had been appointed as a sub-committee to work the rice mill. This appears to have entailed much labour.

Mudiyanse applied to respondent for an allowance—see N.S.B.A. 2 of 14.6.48. He followed this up with another letter N.S.B.A. 3 of 17.7.48. Respondent took the view that no allowance could be paid under the rules, but that a bonus be paid after audit had been completed. The Committee adopted the same view (see N.S.B.A. 18). Thereafter at another Committee meeting at which respondent was absent, Mudiyanse induced the Committee to vote an allowance, and this was paid. The respondent maintained that this was irregular. Later at a Committee meeting the alleged action of Mudiyanse in altering or adding to certain minutes was considered, and the Committee decided that Mudiyanse had exceeded his rights and had acted dishonestly, and informed Mudiyanse that they had no further confidence in him and "did not expect any further service from him as a Committee Member until a final decision was made at the General Meeting". This was conveyed to Mudiyanse by respondent's letter N.S.B.A. 4 of 9.9.48.

We are not concerned with the correctness or legality of these proceedings. The only question is whether there is substance in the suggestion that Mudiyanse was animated by personal ill-will against the respondent. I think there is substance in the suggestion, and I hesitate to act on Mudiyanse's evidence alone. The corroboration provided by Dissanayake is also not very strong. On the whole I cannot hold that the allegations in paragraphs (4) and (5) have been established beyond reasonable doubt.

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Paragraphs (1) and (2) relate to the witness G. D. Charles Appuhamy. This witness alleged that a man called Kapuwa Dewaya had been allotted about 13 acres of land, and had died. His land was possessed by strangers, and the possibility of its reallotment arose. Charles Appuhamy wanted a piece of this land and applied to respondent. Respondent told him that the lands were improved and could not be given free, but if Charles Appuhamy paid Rs. 100 he would somehow or other get him 2 acres or so out of the land. Charles Appuhamy first paid respondent Rs. 50 and later Rs. 30, he thought in March, 1946, or thereabouts. There is considerable confusion about the date, for the land is said to have been settled at a Land Kachcheri—which may have been held in February, 1947. Eventually Charles Appuhamy did not get the land, and on several occasions asked the respondent for the return of the money. After many visits, respondent paid back Rs. 5. Charles Appuhamy was corroborated by the witness G. Charlis as regards one of the payments. Charlis was said to have been a servant of the respondent.

The respondent denied the allegation of soliciting or accepting the bribes. He urged that Kapuwa Dewaya's land was not proposed for re-settlement, and in fact, on 14.8.46 is was settled by the Land Commissioner on Kapuwa Dewaya's grandson Piyadasa. There was another land of about 13 acres which was settled at the Land Kachcheri held in February, 1947, but at that Kachcheri Charles Appuhamy did not come forward, or make claim, and the land was settled on other persons in blocks. Further, Charles Appuhamy made no complaints about this, until a very late stage. Eventually Charles Appuhamy got an allotment in Kagama Colony, where the conditions were more favourable. He had been a tenant for 15 years at Nachchaduwa and made no earlier claim for an allotment of land there. Further, respondent pointed out that L. A. Perera under whom Charles Appuhamy worked for 15 years had serious differences with respondent about the water question in 1948, and may have incited Charles Appuhamy to give false evidence, but this at the best was merely surmise.

I have considered the evidence and I cannot say that the evidence of Charles Appuhamy was strong enough, to overcome the fact that he was an accomplice. There was a great deal of confusion in his evidence, and even the date of the payment of the bribes could not be placed within the period of a year. The witness Charlis, the respondent's servant, did not strike me as providing any strong corroboration. I am not satisfied that allegations (1) and (2) have been established beyond reasonable doubt.

I need not dwell long on the evidence of the witness Samaraweera. He had, when he was a Government Servant and afterwards, made complaints against several persons, but I did not form the opinion that any of these complaints were dishonest. He had a controversy about the water question with respondent in 1948, and appears to have succeeded in establishing his view with the Government Agent. But for the present inquiry it is only necessary to note that some of the witnesses had made complaints to him, but this had been done at a comparatively late date, probably after May, 1948. I also do not intend to dwell upon the questions which related to the water supply as they occurred after 28.1.48. Those are outside the scope of our inquiry, and none of the witnesses, except Samaraweera, were personally affected by any action taken by respondent. In the result, I hold that none of the allegations (1) to (5) has been established beyond reasonable doubt.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

18——J. N. R 27060 (7/51)

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No. R. 119.

RESPONDENT:

N. M. K. Jamis Peter, *alias*
M. K. Jamis Peter Nanayakkara,
Village Headman,
Panagamuwa,
Talpe Pattu,
Galle District.

IN CAMERA

Heard on the 26th and 28th April, 1949, and 16th May, 1949.

Respondent: N. M. K. Jamis Peter, *alias* M. K. Jamis Peter Nanayakkara, Village Headman, Panagamuwa, Talpe Pattu, Galle District.

The matter for inquiry relating to this respondent is whether during the period 1.9.39 to 28.1.48 he accumulated money and purchased immovable properties in such circumstances that the only reasonable inference is that such accumulations and purchases were made or effected as a result of bribery and corruption.

The respondent, whose name may either begin or end with Nanayakkara (both forms being used) is the Village Headman of Panagamuwa in the Galle District. He held this office since 1936. On certain representations against him, he was dismissed by the Government Agent, Southern Province on 23.7.47, but he was subsequently reinstated by the Public Services Commission on 18.12.47, and has functioned as Headman from that date. I do not propose to go into the reasons for his dismissal or reinstatement.

His monthly salary and allowances from October, 1946, to January, 1948, at the highest did not exceed Rs. 100 a month.

The accumulations and purchases made or effected by him were evidenced as follows:—

(1) 8 purchases of lands during the relevant period, 5 in 1939 and 1940, 1 in 1942, and 2 in 1947—total considerations—Rs. 1,030.

(2) Loans of money on mortgage. There were 10 mortgages; 5 in 1945, or earlier for small amounts totalling Rs. 260; 3 in 1946 for Rs. 200, 600 and 250 respectively; 1 in 1947 for Rs. 2,000 (3.11.47).

(3) Purchase of a motor car on 19.5.47—about Rs. 2,000.

(4) The respondent has accounts in 3 Banks, the Post Office Savings Bank, the Bank of Ceylon, (Galle) Savings Account, and Bank of Ceylon (Galle) Current Account.

(*a*) *Post Office Savings Bank Account.*—This was started on 1.1.36, and up to the end of 1944 he had Rs. 625.93 in this Bank. But at the end of 1945, he had Rs. 2,915.85, at the end of 1946, Rs. 5,784.06, and at the end of 1947—Rs. 4,054.24, (not much being deposited). In 1947 he withdrew Rs. 2,050 apparently for purchase of the motor car.

(*b*) *Bank of Ceylon, Savings Account.*—This was started in March, 1945, and substantial amounts were deposited in 1945, 1946 and 1947. At the end of 1946, respondent had over Rs. 5,000 to his credit, but at the end of 1947, the credit balance was Rs. 286.60. There had been a number of withdrawals. In September, 1948, the balance was Rs. 46.23. In this account there were several deposits of Rs. 500 and over, the biggest being Rs. 2,500 on 26.9.47.

(*c*) *Bank of Ceylon, Current Account.*—There on the whole, deposits were of smaller amounts that in the savings account of the same Banks. This account was practically closed in September, 1948. There was one deposit of Rs. 1,000 and a few of Rs. 500 and over, There were withdrawals from the account also.

I do not think I need deal in detail with the witness called by Crown Counsel, B. L. Girigoris Appuhamy, who did not carry the matter further than I have mentioned already. He has mentioned that the respondent took contributions of paddy unlawfully from the cultivators. But he only paid these contributions in the early years. Girigoris had however been twice an applicant for the post of Headman which respondent held, in 1936 and 1947, and his story may have been coloured by this fact. He admitted that respondent took contracts in

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the names of others to repair roads and clear irrigation canals, and that respondent did business in copra and coconut, and had a small rubber holding. Girigoris was not able to establish that respondent had bought other lands than those mentioned under (1). It however appears that respondent did look after properties belonging to his relations and others, and also took leases.

The respondent has offered an explanation of the amounts deposited in the three Banks, and of his earning generally.

The respondent called witness A. R. M. Thessim to prove that he had sent to that firm his rubber and received payments—on the whole the amounts were not very big, and in only two cases, exceeded Rs. 100 (M.K.J.P.N. 2A to 2J). The sales of copra were more substantial in 1947 and 1948, but only 4 were proved (M.K.J.P.N. 3). The respondent suggested that these were the only items he was able to trace, and that there were others.

The respondent also produced a letter from Charles P. Hayley and Co., of certain cheques paid to him by that firm for produce—(M.K.J.P.N. 5). The total for 1944 and 1945 was Rs. 1,991. Respondent contended that there were often items which he could not trace, and the firm could not supply them. Another witness W. A. Piyasena, once a lorry driver but now the manager of a Forwarding Agency averred that he took loads of coconuts about once or twice a week for respondent to Deniyaya, where they could be sold at a considerable profit. He took 200 to 400 coconuts at a time. This witness was not so impressive, but I do not think his testimony can be neglected altogether, for it is clear that the respondent dealt with the produce of many lands, of which he was either the lessee or the caretaker.

Respondent said he had his own paddy and coconuts, and that he earned an income from vegetables and cassava. Respondent also sold timber on at least one occasion to one Francis de Silva. The latter said the timber was of the value of about Rs. 3,000 and was bought in 1944.

In addition to these sources of income, respondent asserted that he was in the habit of taking contracts mainly in the names of others for the construction of roads, and for the clearing of elas, and on one occasion in 1947 for the building of polling booths for the Parliamentary Elections. Two of the contracts only were in the respondent's own name. Apparently there was no actual prohibition at the time against the respondent doing the work, but it is very likely that if he had applied for all these contracts in his own name, he would not have been given the contracts. And also if it had been known that the nominal contractor was not actually doing the work, the contract would probably not have been given to that man. Assignment of the contract was forbidden, and subletting of the contract would probably have not been countenanced.

The respondent has produced a list of the contracts for the clearing of elas, etc. (M.K.J.P.N. 7). In 1944 they amounted to Rs. 4,131, in 1945 to Rs. 7,474, in 1946 to Rs. 5,575, in 1947 there was one contract for polling booths, where apparently Rs. 1,500 and Rs. 3,000 were paid to the contractor.

The respondent called some of the contractors in whose names the contracts were taken. One was Francis Silva, who *inter alia*, was the nominal contractor for the building of a road for the Village Committees in 1945 for Rs. 3,384 (M.K.J.P.N. 4). Francis Silva said he took no part of that sum, which went entirely to the respondent. Another nominal contractor, N. Ratnayake, was a clerk of Francis Silva, and was occasionally paid Rs. 10 or Rs. 15. B. A. Jayawardene was the nominal contractor for the building of the polling booth in 1947 for Rs. 5,000. He said he was paid Rs. 100 by respondent, who worked the contract and received the money. These stories are supported by two witnesses who held official positions. R. Wickremasinghe, Proctor, had to inspect the road in the Rs. 3,384 contract, as Chairman of the Village Committee. On this occasion the respondent pointed out the work done and gave explanations, and Wickremasinghe gathered that the respondent was the real contractor. Also witness P. Gnanapragasam who was Extra Office Assistant at the Galle Kachcheri inspected the elas which had been cleared. On most occasions respondent appeared and gave explanations, and in two cases stated that the contract was really his though not in his name. Gnanapragasam got the impression that a number of contracts were really worked by the respondent.

In the face of all this evidence, it is reasonable to hold that respondent was the real contractor in respect of the contracts he mentioned, and received the moneys payable on those contracts.

Respondent attempted a reconciliation of the amounts received on the contracts with the amounts deposited in the 3 Banks. It is sufficient to say that the reconciliation was not unreasonable. It is possible that the greater portion of the contract money was in the first instance deposited in the Bank. The reconciliation certainly explained all the deposits in the Bank of over Rs. 500, and these large items may be regarded as accounted for. This is an important point, and enures to the benefit of the respondent. There are also several items of Rs. 500 and less which may be regarded as accounted for.

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Crown Counsel has however pointed out that there remain several deposits, amounting to a substantial total, which are not accounted for, and this is so. Respondent however had his own income from Government for his holdings, and also he said that at least twice a year, he received advances for purchase of paddy for the Internal Purchase Scheme, of Rs. 500, and some times Rs. 750 or Rs. 1,000 which he paid into the Banks and later withdrew to pay for the paddy purchases.

Respondent also said on a few occasions he withdrew money from the Bank, and later changed his mind and re-deposited the whole or a substantial portion.

The respondent has not been able to prove many of the amounts, and has given only a general explanation of them. But at the same time, it has to be remembered that these accounts are over a number of years, and apparently the respondent did not keep a comprehensive account of all his dealings. It is a strong point in his favour that he has been able to give an explanation of the larger sums deposited (namely those of over Rs. 500) and of several of the smaller amounts, and his explanation has been accepted as reasonable. There is no doubt that he took part in many enterprises, where money could be made. Though he concealed his identity in the case of a large number of contracts, I cannot regard his conduct in this respect as corrupt. In some details, there may well be a doubt, but on the whole I cannot hold that he has accumulated money and purchased property as a result of bribery and corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 123.
RESPONDENT

D. H. Wijesinghe,
Chief Clerk, (now retired)
Magistrate's Court,
Colombo South.

IN PUBLIC

Heard on 27th May, 1949, and 20th and 21st June, 1949.

Respondent: D. H. Wijesinghe, Chief Clerk (now retired), Magistrate's Court, Colombo South.

The matters for inquiry relating to this respondent were as follows:—

(1) the nature and extent of the accumulations of money made by him during the period 1st September, 1939, to 28th January, 1948, and whether the said accumulations were made or effected as a result of bribery or corruption.

(2) that on or about the 16th April, 1947, he received a gratification of a sum of Rs. 5 from one K. Hendrick Perera an accused person in Case No. 10862 of the Magistrate's Court, Colombo South, in order to expedite the execution of a bail bond for his release on bail.

The respondent had been Chief Clerk of the Magistrate's Court, Colombo South, since its establishment on 1.2.45. He has recently retired from service about March, 1949, after about 35 years in the public service—mainly working in various Magistrates' Courts as a clerk. As Chief Clerk one of his duties was to check and verify bail bonds submitted by accused persons. In the early stages, from 1945, the Magistrate himself checked and passed the bail bonds, this was done by Mr. Ivor de Saram, who had the bail bonds and deeds and certificates of worth submitted to him on the Bench. But the succeeding Magistrates abandoned this practice, and left the passing of bail bonds to the Chief Clerk.

In dealing with the allegations, I think it will be more convenient to take up allegation (2) first. The witness K. Hendrick Perera was charged in M. C. Colombo South 10862 with transporting paddy from the threshing floor without a permit. He appeared on summons on 16.4.47 and bail was ordered in the sum of Rs. 200. He was detained in the lock up in Court until the bail papers were ready. From there he was taken by a peon to the Chief Clerk's room. The bailsman G. Arthur Silva, had come to Court with the witness, and was in the Chief Clerk's room. They were ready to sign the necessary papers, but were asked by respondent to wait. While they were waiting, a peon—not Albin Perera who will be mentioned later—came up to them and told them that if they were in a hurry and wanted the bail papers perfected quickly, they should give Rs. 5 to the respondent. Hendrick Perera said they were not in a hurry. While they waited, other persons came and paid money to respondent and had their work attended to. Hendrick Perera then thought that he would be unduly delayed, unless he paid, so he went up to respondent and paid the Rs. 5. The respondent accepted it and perfected the bail bond (W.A.P. 2 D). Hendrick Perera said that the peon Albin Perera was present at the time.

This story was corroborated by the bailsman G. Arthur Silva. He however did know Albin Perera, and did not remember seeing him there. He did not exactly identify the respondent, but said the person to whom payment was made was like him. There is however no doubt that the respondent was the officer who dealt with the bail bond on that occasion.

Neither of these witnesses could say precisely whether a Police Constable had brought Hendrick Perera to the respondent's room. A strong point was made that it was the invariable practice to send a Police Constable with the accused person from the cell to the respondent's room. D. L. Wickremasinghe No. 1261, the Court Sergeant at Colombo South at the time and Constable R. K. C. Ranasinghe No. 2892 were called by the respondent to speak to that practice. It is no doubt the case that the Court Sergeant was responsible for accused persons, until bail was given, and had to take precautions. But it is clear that he exercised a discretion in these matters. For instance only in serious cases were accused persons put in the cell, not in the case of statutory offences, and I am inclined to think that this discretion was also extended to the sending of accused persons to the respondent. It may be noted that bail was ordered only in the amount of Rs. 200 which was not a very big amount.

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These Court Officers also said that the perfecting of bail usually took only a few minutes, but it is possible that the Police Constables, once he had handed over the accused person to the Chief Clerk, did not stay in the Office. It is to be remembered that the accused was only sent for by the respondent, when the papers were ready for signature. The chances of the accused wanting to escape at this stage were remote.

Another point made for the respondent was that Hendrick Perera was convinced and had to sign a bail bond for Rs. 1,000 with another surety B. A. Abraham Perera for the purposes of appeal (D.H.W. 1) on 16.7.47. This bond was also attended to by the respondent but no money was paid on that occasion. On the other hand it has to be remembered that a fair sum of money was paid on the first occasion, and a gratification may well have been waived the second time. Further, on the second occasion, Albin Perera had signed as a witness to the signature of the surety, and for reasons which will presently appear it may have been deemed prudent not to demand any gratification then. I do not think this point is a very strong one for respondent.

It is however to be noted that Hendrick Perera and G. Arthur Silva said that, when the latter's deed had to be recovered from the Court, a gratification of Rs. 2 was paid to another officer of the Court not the respondent.

I have carefully examined the evidence of Hendrick Perera, and G. Arthur Silva. The first named, and possibly to a lesser extent the second, will have to be regarded as accomplices. But there is not the slightest reason to think that either of them had any animus against the respondent. This applies with greater force to G. Arthur Perera, who was not even quite certain about the identity of the respondent. I do not accept the argument that the peon Albin Perera procured that these witnesses should give false evidence. Albin Perera clearly had not the means to suborn these witnesses, and there is nothing to show that they were friends of his. Their names were casually discovered by him. I was myself impressed with the evidence given by the two witnesses, and I think they were speaking the truth.

Another important witness called by Crown Counsel was W. Albin Perera, who had been a peon in the Colombo South Court since February, 1945. He gave a very sordid description of the conditions in this Court. At many stages of each case illegal levies were made by various officers including the respondent, e.g. summons, for bail, for getting back the surety's deed, for getting vouchers for cash. Typewritten copies could also be obtained for payment against express orders without the Magistrate's consent. Sums were also obtained with promises to expedite the orders of the Magistrate in various matters. The Magistrate himself had little or no time for inspection of the office. During Mr. Ivor de Saram's tenure of office matters were much better. For instance, he dealt with bail matters himself. But after his departure. the Chief Clerk (respondent) dealt with these matters, and gratifications became the order of the day, and practically nothing could be done without illegal payment. The proctors knew of this and connived at it, and bribes were taken almost daily by the respondent.

Albin Perera mentioned certain specific incidents, but was not able to supply the names of the persons who gave the bribes, as he kept no notes of the cases. As regards the incident of Hendrick Perera's bribe, Albin Perera said that he must have witnessed it, as he usually sat close to the Chief Clerk and had remonstrated with the respondent about this practice of taking bribes. He could not however recall the actual incident, as there were so many cases of bribe-taking, and he did not make a note of the names of the accused persons. There is however one incident which appears to bear the impress of truth. Albin Perera on one occasion—the date is not quite certain—made a complaint to Robins, Assistant Superintendent of Police against the respondent and the Interpreter Jayakody (now dead,) and a trap was arranged in order to catch these two out. But at the last moment the decoy broke down, and declined to go on with the matter, and the trap was not set. This throws some light on this inquiry, and supports the evidence of Albin Perera that he was aware of the bribery which went on in this Court. It also shows that Albin Perera realized that his oral evidence alone may not be regarded as sufficient.

There also is evidence that on one occasion Albin Perera brought to the notice of the Magistrate that at an identification parade, a Police Constable had made a signal to one of the witnesses. Albin had been the peon who brought the witness and he observed this.

Albin Perera however made no definite charge to the Magistrate against the respondent. He said he was afraid to do so and mentioned that after one occasion when he had remonstrated with respondent he had been assaulted outside the Court premises. He contended himself by telling clients that no payments need be paid to the Court Officers.

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Matters were in this state, when Albin Perera was summoned to give evidence in the Colombo South Election inquiry, heard by Mr. Justice Dias. In the course of his evidence on May 18th, 1948, in reply to questions by the Judge, which may be regarded as leading questions, Albin Perera spoke of the bribes taken in the Colombo South Court, in very much the same terms as his present evidence.

The Permanent Secretary to the Minister of Justice read the report in the papers, and sent a memorandum to the Magistrate, Mr. D. J. R. Gunawardene, asking for the favour of a report. The Magistrate had also read the papers, and felt that there was a reflection on his supervision of the Court and held an inquiry on 26.5.48. Albin Perera was called upon to make his statement substantiating his allegation made at the election inquiry (see D.H.W. 2). Albin Perera then made a long statement. Apparently Albin had one day's notice in this connection. The present respondent and certain other Court officers were respondents to the Magisterial Inquiry. The inquiry went on for several days. On 2.6.48 Albin Perera was asked if he was calling any witnesses and he said he was not.

The present respondent thereafter called a number of witnesses, including Proctor Wimalaratne who gave evidence in our inquiry also. On 3.6.48 the Magistrate decided to interdict Albin Perera. The inquiry went on. Respondent and other Court Officers gave evidence.

Eventually on 11.6.48 the Magistrate made order (D.H.W. 2) that Albin Perera had failed to substantiate any of his allegations and that charges would be framed against him. The Magistrate said that the allegations were mischievous and false, and that Albin had been deprived of illicit income, by the act of the Chief Clerk in stopping him from bringing records from Courthouse to office. I may mention at this stage that there was no direct evidence before the Magistrate to show that Albin had obtained any illicit income, and none has been tendered at our inquiry either, but the proctors spoke to statements alleged to have been made to them by some clients. Later charges were framed against Albin Perera, and were answered by him. Thereafter on 27.9.48 the Magistrate made another order, that there was no necessity to go on with the inquiry against Albin Perera. Whilst holding that the allegations were false and that the version of the Chief Clerk was truthful, the Magistrate said that he realized that the inquiry against Albin Perera was in the nature of a criminal trial and that it would be difficult in law to prove that he made false allegations knowing them to be false. He accordingly gave Albin Perera the benefit of the doubt, and recalled his interdiction. Thereafter Albin Perera was re-instated and received his back pay.

I cannot help feeling that these proceedings were unfortunate, and perhaps ill-conceived. The Magistrate no doubt felt himself in a difficulty, more especially in view of the memorandum of the Permanent Secretary to the Minister of Justice. I cannot however understand the Magistrate's Order of 26.5.48 calling upon Albin Perera to substantiate the allegations made before the Supreme Court — nor has the Magistrate been able to say definitely under what power he was acting. The time given to Albin Perera to substantiate his statements was very short. In the middle of the inquiry, Albin Perera who might have been regarded as a complainant was himself interdicted. I can quite understand that Albin Perera thought that he had throughout been treated as an accused, rather than a complainant. Before me the Magistrate emphasised what he called the motive of Albin Perera in incriminating the respondent. But there was no evidence, apart from vague hearsay, to support the fact that Albin Perera had been deprived of any illicit income. In this respect the evidence against the respondent was considerably stronger. The last order of the Magistrate on 27.9.48 is the most difficult to understand. If, as the Magistrate held, "the allegations of Albin Perera were false, and the version of the Chief Clerk truthful", viz. on the question whether bribes were actually received or not, I do not see what difficulty arose in holding that Albin Perera made the false statements, knowing them to be false. I could understand the order, if the Magistrate was unable to hold that the charges against Albin Perera were true beyond reasonable doubt.

I have discussed this matter at some length, because great reliance was placed by the respondent on the Magistrate's Orders. No doubt the Magistrate came to certain findings on the evidence, but his reasoning is not easy to follow, nor have I been able to be satisfied that the inquiry was not coloured by the feeling that his own supervision of the Court had been assailed. I do not for a moment suggest that he was consciously biassed against Albin Perera, but I am inclined to think that the whole of the proceedings were misconceived. I shall accordingly decide this inquiry on the evidence called before me.

I formed a very favourable impression of Albin Perera as a witness. He was distinctly superior to the ordinary type of peon whom I have known. It is to be noted that this impression has been shared by others. Mr. Justice Dias, in the election petition accepted the evidence of Albin Perera in preference to the evidence of a proctor called at that inquiry who contradicted him. The Magistrate

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Mr. D. J. R. Gunawardene, had himself on 23.1.48 (see W.A.P. 5) given Albin Perera an excellent certificate as "courteous, methodical and industrious, ... very honest and efficient needing no supervision ..... intelligent and certainly qualified to do more responsible work than that of a peon". Even as a result of his inquiry, the only word the Magistrate wished to modify was the word "honest".

In connection with Albin Perera, I should mention the evidence of G. R. Wimalaratne, Proctor, called by the respondent. This does not go very far. He knew nothing personally against Albin Perera, but clients had mentioned payments made to him. The clients were not named, nor called to give evidence. His whole evidence is vague and unsatisfactory. The suggestion is that during the tenure of office of Mr. Ivor de Saram, papers relating to bail bonds and other matters were brought to the Magistrate on the Bench by Albin Perera, who had an opportunity to demand bribes from clients and seized the opportunity. This ceased when the later Magistrate came, as this work was thereafter done by the Chief Clerk. Also it is in evidence that Albin Perera was stopped from bringing papers back from the Court to the office, and so lost opportunities of making some money on these occasions. That Albin made money in this manner is not established, and I cannot accept it. It is possible that Albin Perera may have resented the order that he should not bring the papers from the Court, but that is not really in issue, for Albin Perera himself says, he prepared a trap for respondent on one occasion. It is clear that relations between the two were not friendly, but the reason for that is differently explained. But it may be noted that Albin Perera remained as a confidential peon of the Magistrate.

The respondent also gave evidence, and denied the allegations made by Hendrick Perera, G. Arthur Silva and Albin Perera. But he made one significant statement that some people, especially villagers, do offer bribes and that he has had experience of it. He did not report this to the Magistrate, but merely advised the person offering not to do it again. He said he had complaints against Albin Perera, but did not report them to the Magistrate. In fact Proctor Wimalaratne said that when he spoke to respondent about Albin Perera, respondent thought it no part of his duty to interfere in the matter. Sharp action taken on one or two occasions may have been sufficient to create a different atmosphere in the Court. Much was made of a complaint made by one Saparamadu against Albin Perera, but Sapramadu withdrew the complaint. Albin Perera said he tendered an apology to respondent, and then the complaint was withdrawn. If so, this is very curious, but respondent denied that any apology was tendered to him. Emphasis was also laid on the fact that Albin Perera began to ask for and obtain advances after Mr. Ivor de Saram left, and that was attributed to the loss of illicit income. But Albin Perera gave an explanation that he asked for advances after he got married, and this is a reasonable story.

I have considered all the evidence, and I cannot accept the denials of the respondent. I have come to the conclusion that the evidence of Hendrick Perera and G. Arthur Silva is true. I also accept the evidence of Albin Perera, and hold that he has given a substantially accurate description of the state of affairs in the Magistrate's Court of Colombo South at the period in question.

I hold that the allegation in paragraph (2) has been established beyond reasonable doubt.

There remains the allegation in paragraph 1. In this connection I propose to examine only the Bank Accounts of respondent and his wife.

The respondent produced his own pass book in the Ceylon Savings Bank. (D.H.W. 10). This was started before 1941, and on 1.1.41 respondent had a balance of Rs. 3.47. He made deposits in that year and on 31.12.41 had a balance of Rs. 611.42. Respondent's wife had an account in the Post Office Savings Bank (D.H.W. 12) at any rate from November, 1942, and an account in the Ceylon Savings Bank (D.H.W. 13) from May, 1941.

In 1941 and 1942 comparatively small amounts were deposited in all these accounts. In 1943 over Rs. 2,000 was deposited. In 1944 about Rs. 3,800, in 1945 about Rs. 1,800, in 1946 about Rs. 3,500, in 1947 about Rs. 3,500. In November, 1947, respondent had Rs. 9,956 in his account (D.H.W. 10). In that same month or a trifle earlier, respondent's wife had Rs. 9,765.87 in her account (D.H.W. 13—28.10.47) and a small amout in D.H.W. 12. Between the two, they had saved more than Rs. 19,000. This is a very substantial saving for those years. At the same time it has to be remembered that the joint incomes of husband and wife were not small, the wife being a teacher and head teacher towards the latter part of the period. The income tax assessment for the year ending 31.3.49 (D.H.W. 9) was Rs. 9,505 net for husband and wife. The items in the account have been examined, and in many cases consist of cheques, which may represent the wife's income as teacher, and even the cash deposited may be savings. It is not possible to exclude the possibility that savings could have been made to that extent, though the amounts said to have been saved are high.

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On 31.10.45 respondent started an account in the Bank of Ceylon and for that purpose appears to have drawn out Rs. 7,000 from his wife's account D.H.W. 13 about 28.10.47, and later about 7.11.47 drew out another Rs. 5,000 from his own account D.H.W. 10. These sums were deposited in the Bank of Ceylon. It may be quite true that this new account was started in order to give a dowry to respondent's sister-in-law, and Rs. 5,000 is shown to have been paid out, probably for this purpose, and other sums expended, probably for the wedding. On examination of the various accounts and the explanation tendered by the respondent I am unable to say that the explanation is unreasonable, though the large amount of the savings raises some suspicion. There is nothing definite in these accounts that can be ascertained to show that some of the sums were illegal earnings.

It may be possible on the evidence of Albin Perera to hold that the respondent has accumulated sums of money as a result of bribery or corruption, but I do not propose in this case to utilize that argument. At the same time I wish to affirm my finding that Albin Perera's evidence is substantially true. For the purposes of this inquiry however, I shall restrict the matter to the visible income shown in the Bank Books.

I hold that the allegation in paragraph (1) has not been established beyond reasonable doubt.

To sum up, my holding is that the allegation in paragraph (1) has not been established, but that the allegation in paragraph (2) has been established.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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No. R. 126.

RESPONDENT :

K. B. Imbuldeniya,
156/7, Peradeniya Road,
Kandy.

IN CAMERA

Heard on 11th and 12th July, 1949.

Respondent : K. B. Imbuldeniya, 156/7, Peradeniya Road, Kandy.

The matters for inquiry against this respondent are as follows :—

(1) the nature and extent of the purchases of movable and immovable property made by him, whether in his own name or in the name of his wife, or in the name of his dependants, relatives, or any other person on his behalf during the period 1st September, 1939, to 28th January, 1948;

(2) the extent of the accumulations of money made by him in the said period ; and

(3) whether the said purchases or accumulations were made or effected as a result of bribery or corruption.

The respondent has on three occasions been employed in the Public Service. He was a purchasing agent under the Internal Purchase Scheme in the North-Central Province from September, 1942, to February, 1945, and received Rs. 2,282/39 as salary, etc. for that period (see X. 1). He was next employed as a temporary Storekeeper in Colombo from 12.10.45 to 31.7.46, and received as salary, etc. Rs. 1,416/37 for the period (see X. 2). He was next employed as a Storekeeper, Kandy, from 8.8.46 to 1.9.48, and earned as salary Rs. 3,171/69 for the period (see X 3). The total income from salary and allowances for the three periods from 1942 to 1948 was Rs. 6,870/45.

During the relevant period the respondent made the following investments :—

	Rs.
Purchase of a building : 2129 of 27.10.43 for	.. 2,000
Loan on Mortgage Bond 9051 of 27.6.46	.. 500
Purchase of paddy fields : 9360 of 16.5.47	.. 5,500
Purchase of motor car X 5997 on 1.5.47	.. 2,800

The total of these investments was Rs. 10,800. It may be noted that after the relevant period, viz. on 16.9.48, respondent purchased 15 acres of land for Rs. 12,000. This was shortly after he was discontinued at Kandy.

There was a suggestion that respondent put up a building costing about Rs. 8,000, but this has not been proved, and in any event, this appears to fall after 28.1.48.

In April, 1943, respondent opened an account in the Mercantile Bank, Kandy Branch, and made deposits as follows:—

In 1943—Rs. 6,000.00 in all
„ 1944—Rs. 7,650.00 „ „
„ 1945—Rs. 237.00 „ „
„ 1946—Rs. 3,019.00 „ „
„ 1947—Rs. 17,617.16 „ „

The Bank Account is marked X 6. There were withdrawals as well, but towards the end of the relevant period, respondent had a balance of Rs. 15,973/52 to the credit of his account. The small amount deposited in 1945 may be noted but from February to October, 1945, respondent was not employed in the Public Service.

Respondent, however, maintained that his earnings far exceeded the amounts shown in X 1, X 2, and X 3, and purported to explain the various deposits in his Bank account.

For the period 1942/1945 he said he had made money in various ways :

(1) Income from employment under the Military in Secret Service Rs. 9,800 ;

(2) Income on commissions for purchasing paddy, etc., under the I.P.S. Rs. 5,600 ;

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(3) Income from hire of carts for the transport of paddy Rs. 3,000 ;

(4) Income from contracts as sub-contractor to the Military Rs. 3,600.

An attempt was made to verify these items. The Government Agent, N. C. P. by his letter of 12.7.49, received after the evidence was closed, showed that the commission on paddy, rice and kurakkan bought was Rs. 2,421/88 and not Rs. 5,600 as stated by the respondent—item (2) above. On the other hand, cart hire—see item (3) was paid to him as follows :—

For transporting I. P. S. stocks Rs. 4,631/03

For transporting Supply Station stocks Rs. 2,424/78

making a total of Rs. 7,055/81—which is in excess of respondent's estimate of Rs. 3,000. One cannot, however, exclude the possibility that all the cart hire mentioned was not in respect of the respondent's own carts. But as some doubt arises as to these items, I think it would be safer to allow the sum of Rs. 8,600 in respect of items (2) and (3). Even conceding this amount, there is a considerable gap between the deposits for these years and the amounts earned by the respondent, without taking into account necessary expenditure by respondent on his maintenance.

As regards item (4)—Rs. 3,600—the evidence is very unsatisfactory. This source of earning was only mentioned in the course of his examination. It was not disclosed in the respondent's letter to the Commission, answering the allegations. There is no corroboration of the fact that respondent carried on the business of sub-contractor to the Military for bricks, cadjans, etc. No documents have been produced to prove the amount. Such as were available are said to have been lost in the floods of August, 1947, at Kandy. I thought the evidence of the respondent on this point was unreal, and I have no hesitation in rejecting this item altogether.

Item (1), however, remains—Rs. 9,800. There is, apart from the word of respondent, hardly a shadow of evidence to prove that respondent was employed in the secret service under the Military. The respondent said that from January, 1942, to January, 1944, he was employed in the secret service under the Military. He produced KBI 1 to 4, in order to prove this, KBI 1 is signed by P. Heywood and dated apparently 23.1.44, but there is nothing to show that this person was a Military officer. The letters SEAC in pencil in this and in the other documents have been recently put in by the respondent before this inquiry. There is nothing to show to whom the letter was addressed.

KBI 2 is also signed by P. Heywood, and dated 25.1.44. The person to whom the letter is written is not named. The letter makes an appointment to meet at a particular spot. Reference is made to bringing R6A, and meeting R6B afterwards, and the necessity of all three persons bringing note passes and photographs. The reference to R6A and R6B creates some mystery, but the letter has been signed with a name, and this is difficult to reconcile with a secret service communication.

KBI. 3 is addressed to respondent on 20.8.45 from Military Headquarters. It refers to the failure to make payment to one Mudiyanse, and also refers to one Seneviratne, with whom the writer failed to get in touch, and finally regrets that no assistance can be given to respondent to secure employment with the Army. The last sentence is typed in different ink and apparently on a different machine, as follows : "Your Senior certificate and other testimonials will be sent in due course." Respondent admitted that he never had a "Senior certificate", and the reference to it is most suspicious and looks like an interpolation made for some purpose of the respondent's.

KBI. 4 is again a letter dated 24.8.45, and written apparently by the writer of KBI. 3. There is a reference to Seneviratne, and an expression of regret at not being able to help respondent to secure civil employment.

The furthest these letters go is to show that respondent had touch with the Military, but it is difficult to accept respondent's version. I think that he never was in the Secret Service. Even if he was, there is no satisfactory evidence whatever that he received Rs. 9,800 from the Military. It is curious that respondent did not disclose this to the Commission in his letter answering the allegations. His argument that he feared he might be shot for disclosing this, cannot be accepted in this year so far removed from the war. It is not as though respondent was still in the Secret Service, for he severed his connection with the Military, he said, in January, 1944, and all the letters were written after this severance. Respondent complained that all these Military officers had long ago left Ceylon. I thought the story of respondent fanciful and unreal, and have no hesitation in rejecting this item of Rs. 9,800.

The deposits in 1946 and 1947 were also carefully examined, and respondent purported to give explanations of them which have to be examined. I propose to deal with some of these items. Three items, in particular, require consideration.

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Respondent said he received Rs. 6,000 from his grandmother in 1947 in three instalments of Rs. 2,000 each on 8.4.47, 9.11.47 and 28.11.47. He had mentioned the deposit of Rs. 6,000 in his letter answering the allegations. But the evidence is most unsatisfactory. The grandmother had been summoned at the instance of respondent, but was said to be 85 years old and bed-ridden. She could not be called. The story that the respondent's mother, before her death, had left this sum with the grandmother, to be used for the respondent, could surely have been proved by other evidence, such as that of respondent's father. We have only the respondent's evidence for it. The circumstances are also strange. The grandmother, according to the respondent, was anxious that the money should be used for the purchase of land. Yet the grandmother gave respondent Rs. 2,000 on 8.4.47 before the date of the purchase, which did not take place till 3.5.47. On the occasion of the purchase Rs. 4,000 was paid by cheque by respondent, and the balance Rs. 1,500 in cash. Respondent said he borrowed the Rs. 1,500 from one Jayawardena for the purpose and gave him a promissory note. Why he should have borrowed, when he had a very large balance in the Bank has not been satisfactorily explained, and there is no corroboration of the story. Even after the purchase the grandmother did not immediately pay over the balance Rs. 4,000, but only did so in November, 1947 and then in two instalments. The whole story does not hang together, and I think it has been invented by the respondent. It is clear that these three deposits amounting to Rs. 6,000 have not been accounted for.

After the evidence was concluded, an affidavit of the grandmother, authenticated by her thumb impression was sent to us. This stated that she was bed-ridden and unable to move, that she had been given money (amount unspecified) by respondent's mother for his education, and that she advanced Rs. 6,000 in three instalments on 10.4.47, 7.11.47 and 28.11.47. No explanation is given for the necessity of paying these instalments, and there is no mention of the proposed purchase of land. This affidavit does not induce me to alter my opinion on this matter.

There is another item of Rs. 3,000 deposited on 12.9.47. Respondent said that this sum was given to him by his brother-in-law, W. B. Pallipane, and the purpose was to have the money available for the purchase of a field for Pallipane, when it could be found. Nothing, however, was done with the money, and it apparently was operated on later by the respondent for his own purposes. No effort was made to implement the arrangement, or to pay back the money. Pallipane gave evidence corroborating this story, but there was no document to support it. The story is all the stranger, because in 1948 Pallipane gave further sums of money (over Rs. 6,000) to respondent in connection with the building of his house, and never took account of the Rs. 3,000 previously given and unaccounted for. There is no question that respondent took an active part in the supervision of the building, and paid out moneys in that connection. But these expenses were incurred in 1948 after the period, with which we are concerned. I have considered this evidence. I reject the explanation that Pallipane lent respondent this sum of Rs. 3,000 on 12.9.47. In my opinion, respondent and Pallipane are not speaking the truth about this.

Two other items on 21.8.47 and 25.8.47 for Rs. 1,000 and Rs. 2,000 respectively are also in question. The respondent said that the total of Rs. 3,000 was the price he received by the sale of his motor car to one Majeed. The respondent gave no receipts for the amounts received by him. A witness Mohamadu was called, and said he acted as an intermediary in the transaction, and spoke to the price paid. But in cross-examination it came out that the transfer to Majeed had not yet been registered, and that the car still stood in the name of the respondent. Mohamadu said that some damage to the chassis was discovered, and that Majeed demanded the refund of Rs. 500. This, however, is not a good reason for the failure to register the change of ownership. In my opinion, the story of respondent and Mohammadu in this connection is not true. It is to be noted that Majeed was not called. I am of opinion that these two amounts of Rs. 1,000 and Rs. 2,000 have not been accounted for.

I do not propose to deal with all the other items in respondent's account. For some, his explanation may be accepted; others are doubtful, in particular, his explanation that some items represent loans previously given and then returned. No attempt was made to call any one of the borrowers except Mohamadu, who is said to have borrowed Rs. 1,000 and returned it the next day in June, 1947. But there were doubts with respect to that. It is to be noted that particularly in 1947 the large amount of Rs. 17,617/16 was deposited by respondent. In that year items amounting to Rs 12,000 have not only been unsatisfactorily explained, but I think the explanations are unreal and fictitious. I cannot hold that a reasonable explanation has been given of these transactions.

There was evidence that at each of his employments the respondent had not given satisfaction to Government. At Kekirawa (1942-1945) he had to refund certain amounts; at Colombo (1945-1946) irregularities were alleged, and at Kandy (1946-1948) he received repeated warnings, and he was discontinued at both places. I do not propose to discuss whether the allegations were true. They were denied by the respondent. There were no findings on any specific charges against him.

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In his re-examination respondent suggested that the present allegations were made, because of animus against him by certain officers in the Department. He said he had given loans to some of them, and that when loans were not given, these officers were displeased. The documentary evidence of the loans that he produced (KBI 7 to 12) is extremely slender, and not very convincing. But in any case the animus of these persons is not relevant to the present inquiry.

In the result, I hold that in the relevant period the respondent purchased movable and immovable property of considerable value, and made considerable accumulations of money, and that the only reasonable presumption is that these purchases and accumulations were made or effected as a result of bribery or corruption.

A. E. KEUNEMAN,
Commissioner,
Bribery Commission.

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