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THE CEYLON
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INSURANCE.

Insurance companies conduct their affairs not in pursuance of philanthropic sentiments but for business reasons. They would be spared much unnecessary abuse, and persons assured would save themselves also, much disappointment and vexation of spirit if this salient fact were constantly borne in mind.

Upon the happening of a loss by fire or burglary or the like, persons assured very naturally expect that their insurers will, *in accordance with the contract between them*, compensate them in respect of their loss.

Equally natural is it that the insurers for their part should expect the assured in putting forward their claims to substantiate them by furnishing proof first, that a loss insured against has in fact occurred, and, secondly, that the extent of the loss which has taken place is in fact upon the scale stated by the assured. Why the assured should resent the fulfilment of the insurer's requirement of proof of the loss and its extent is one of the mysteries of our complex human nature; in no other walk of life would any reasonable person expect another to pay him money without good and sufficient cause shown; certainly not in commercial life.

Mr. Leslie de Saram,
President of the Proctor's Association.

When these conditions, which must be fulfilled before compensation can be paid over, are pointed out by the insurer to the assured, the latter still frequently expresses astonishment at their incorpo-

ration in the terms of the policy; nevertheless, it hardly lies with him to accuse the insurers of unreasonableness because he has not troubled to inform himself of the terms of an important contract he has made.

Fire policies always, and other policies generally, contain terms and conditions which are expressed to be conditions precedent to liability; such is, e.g., a condition requiring the assured to furnish the insurer with proof of value of the goods lost or the extent of the damage suffered within a specified time. It is most important that the assured should realise that such terms and conditions, if reasonable, are enforceable at law. Moreover, even where the policy does not contain such conditions—unlikely nowadays—the insurer is entitled to insist upon their being fulfilled before being obliged to meet the claim; for the law will imply the existence of such reasonable conditions even where they have not been expressly set forth in the contract. The test which the Courts apply is simply that of reasonableness; the conditions imposed or insisted upon by the insurer must be reasonable, and the conduct of the assured in complying with those conditions must also be reasonable; the latter therefore, should take every reasonable step to provide himself with a list of items in respect of which he claims compensation, together with acceptable evidence of their value, e.g. the certificate of an expert.

The application of these rules of law which are, after all, neither more or less than common-sense requirements, is seen in a long line of interesting cases. Thus, in *Worsley v. Wood* [1790], 6 Term Rep. 710, it was said by Lord Kenyon, C.J. (at p. 718): "We are called upon in this action to give effect to a contract made between these parties; and if from the terms of it we discover that they intended that the procuring of the certificate by the assured should precede their right to recover, and that it has not been procured, we are bound to give judgment in favour of the defendant (the Phoenix Company).....These insurance companies, who enter into very extensive contracts of this kind, are liable (as we but too frequently see in courts of justice) to great frauds and impositions; common prudence therefore suggests to them the propriety of taking all possible care to protect them from frauds when they make these contracts."

In *Mason v. Harvey* [1853], 8 Exch. 819, Pollock C.B., said (at p. 821): "By the contract of the parties, the delivery of the particulars of loss is made a condition precedent to the right of the assured to recover. It has been argued that such a construction would be most unjust, since the plaintiff might be prevented from recovering at all by the accidental omission of some article. But the condition is not to be construed with such strictness. Its meaning is, that the assured will, within a convenient time after the loss, produce to the company something which will enable them to form a judgment as to whether or not he has sustained a loss. Such a condition is, in substance, most reasonable; otherwise a party might lie by for four or five years after the loss, and then send in a claim when the Company perhaps had no means of investigating it."

In *Ralston v. Bignold* [1853], 22 L.T. (O.S.) 106, where the arbitrator had found against the defendants, the Norwich Union Fire Insurance Company, on the

issue of fraud alleged by them against the plaintiff, the Court, nevertheless, held that the plaintiff could not succeed in his claim because he had failed to furnish the Company with an account of the loss sustained by him within three months as required by a condition endorsed on the policy. See also *Roper v. Lendon* [1859], 1E.E. 825.

The liability of the assured to fail in his claim, though supported by some particulars, if in fact he could have furnished the insurance company with "a much fuller, more detailed, and better account for the purpose of enabling the insurance company to test the reality and extent of the loss" was illustrated in *Hiddle v National Fire and Marine Insurance Company of New Zealand* [1896] A.C. 372 376, where the Company had made it a condition that they should receive an account "in detail.....as the nature and circumstances of the case will admit."

In *Winicofsy v. Army and Navy General Assurance Association Ltd.* [1919] 88 L.J., K.B. 1111, the assured had stated on the proposal form in answer to a question: "How would you prove a loss?" "By producing receipts from the persons who had sold the goods." He was held entitled to recover upon a burglary policy, although he sought to prove the extent of his loss by adducing evidence other than receipts; for the policy itself did not incorporate a condition that receipts must be produced; nor was there "any provision in it which precluded the assured from proving his loss in any other manner," *per* Bray, J., at p. 1112. The Court was not prepared to go behind, or to ignore, the evidence of loss which had satisfied the arbitrator to whom the claim had been referred.

In *Yorkshire Insurance Company, Ltd. v. Craine* [1922], 2 A C. 541, it was pointed out (*per* Lord Atkinson, at p. 546) that the conduct and attitude of the insurers must not be "oppressive and unbusinesslike"; they must not, for example, avail themselves of rights in such a manner as to make it difficult or impossible for the assured to comply with other terms requiring particulars of the loss to be furnished in a particular mode within a particular time.—"The Law Journal."

ALL-CEYLON CONFERENCE OF PROCTORS.

Laying Foundations For a Law Society.

There was a large gathering of members of the profession at the first All-Island Conference of Proctors which was held in the Victoria Masonic Hall.

Mr. Leslie de Saram presided, and addressing the gathering, said:—

"Gentlemen,—On behalf of the Proctors practising in Colombo, I must heartily thank those of you, who have come here from all parts of the Island, to meet us here to-day. I welcome you. I am sure you will also appreciate the compliment the Attorney General has paid us by sparing the time amidst his manifold duties—duties the burdens of which you will appreciate as readily as I do—to be present here to-day. The **Attorney General's presence here to-day is an indication of goodwill and sympanthy and readiness to help, the significance of which I think you all agree is not lost on us.** It may be that in points of detail, we may not always agree. That is unavoidable, but on questions of principle and on matters on which he can help us I assure you gentlemen you can safely regard him as our "guide, philsopher and friend". On behalf of the whole profession, Sir, I thank you for your presence here to-day.

FIRST TIME IN HISTORY.

This is the first occasion in the history of the profession that a conference of this nature is being held. That so many of you are assembled here today is a circumstance on which we have reason to congratulate ourselves, because it is an encouraging indication that the profession as a body is beginning to realise its responsibilities not only to itself but to the public."

Mr. De Saram then read out a long list of names of Proctors who had sent messages wishing the Conference success.

He continued: "The Honourable Mr. C.W.W. Kannangara of Galle, Messrs George Edward Silva of Kandy, T. Walloopillai of Ratnapura, L S. Fernando of Panadura and P. Tambiraja of Kurunegalle have been good enough to spare the time to have interviews with me.

These letters convey to us the sympathy of the writers with the objects of this conference and some of them have made suggestions, which are most helpful and which have been carefully noted for consideration and further action. In some cases matters have been mentioned, which have been noted for consideration but if they are not introduced as subjects for discussion by us today it is only because our time is limited, and it seems better that we should today rather concern ourselves with the major problem of how best to organise ourselves into a representative association.

GRATIFYING SUPPORT.

That the number present in this hall this morning though gratifying is not larger is due as you will readily understand, to the fact that to-day is a full working day in the Courts throughout the Island. The Judges of the District and other Courts of Colombo have been most helpful and to the fullest extent possible have so adjusted the work of their Courts as to permit of as many as possible of the Proctors in Colombo being free to attend this conference; but necessarily the work of the Courts could not be entirely suspended and therefore I do not see here to-day many of our most enthusiastic supporters in Colombo. The position is the same in the outstations as many of the excuses of absence, which we have received from our outstation brethren show.

I am not quite sure to whom must be recorded the credit of conceiving the idea of arranging for such a conference as the one that is now being held The idea was started last year when I was away from Ceylon and on my return towards the end of last year the matter was brought up for consideration by the Council of the Colombo Proctors Association, of which I have the honour to be President.

NEED FOR A LAW SOCIETY.

As you are all aware, Gentlemen, there is in Ceylon no body, no organisation, of any sort, of the nature of the Law Society of England. There are certain Associations with a creditable record of activity relating to matters of professional interest; but we have nothing which can be said to take the place of the Law Society of England.

In Colombo attempts were made in the past from time to time to organise a voluntary association to consider problems affecting the interests of the profession and to protect its interests; but the success which attended these efforts was not great and attempts made in the past to start and keep alive a Proctors' Association all shared a common fate, an early death. There is no doubt that the underlying reasons for the failure of these attempts were that the necessity for a body to represent our profession was never really grasped by the profession as a whole and that the associations previously started were conceived on wrong lines. But the need for such a repersentative organisation grows more insistent as time passes.

Ordinance No. 8 of 1911 was passed "for the maintenance of correct and uniform practice and discipline amongst the members of the profession of Proctors practising as such or as notaries or in both capacities in this Colony and to establish an Incorporated Society for the promotion of the said object." This Ordinance was proclaimed on 1st September, 1911. It contained provision for a Council consisting of 11 members excepting in the case of the first Council which was constituted by the Ordinance, and that 6 of such members should be nominated by the Attorney-General and the rest elected.

A STILL-BORN ORDINANCE.

Provision was made for the mode of admitting members for a fresh Council to be formed at the end of three years and for making of bye-laws etc. The main provision was that the Council should in all matters be the representatives of the Society and should have the sole and entire management of the Society and should have power if it should be cognizant of any professional or alleged professional misconduct, after due examination into the circumstances to bring the circumstances to the notice of the Supreme Court by application for the striking off the rolls or other punishment of the accused party.

For some reason the procedure provided for in the Ordinance too was considered unsuitable with the result that after a short period of fitful activity the Council ceased to function and nothing more was heard of its activities for many years.

INCREASING NUMBERS.

The present Colombo Proctors' Association was inaugurated at a meeting of 37 Proctors on the 4th of April, 1928. There are 358 Proctors practising in Colombo and it can hardly be said that an attendance of 37 at this inaugural meeting was encouraging but last year our membership was 130 and I hope that this year it will be still greater and that the increase will be progressive as time goes on. The lack of support when we started was readily understandable. The history of the previous abortive efforts seemed to foreshadow a like fate to what appeared to be merely another spasmodic attempt foredoomed to failure

However in the Council of the Association we have a body of men who have not spared themselves. Our Council has never failed to meet regularly. Our agenda has always been interesting and has received ungrudging attention and our attendances have been full.

For this we owe thanks not only to the enthusiasm of the individual members of our Council but to the hard work of our indefatigable Honourary Secretary, Mr. A. L. de Witt.

We have had our disappointment and discouragements. Representations we have made have not always, it has appeared to us, received the consideration they have merited. And I ascribe this partial—and if I may say so, unmerited—lack of success to our being an organisation both weak in numbers and of recent origin. Those are disadvantages which will pass away.

MATTERS ALREADY CONSIDERED.

As an example of the subjects which have engaged the attention of the Colombo Proctors Association I may mention:—

(1) The condition on which Proctors of the Supreme Court should be admitted and enrolled as advocates.

(2) The payment of a commuted warrant fee instead of an annual fee as is now required.

(3) The appointment of an additional District Judge to relieve the congestion in the Colombo Courts.

(4) The appointment of a Proctor as Lecturer to the Law Students on Civil Procedure and Conveyancing.

(5) The appointment of Proctors of the Supreme Court as Commissioners of Oaths.

(6) The appointment of Proctors to the Judiciary.

(7) The provision of adequate accommodation for use as a consulting room by Proctors practising in Colombo.

(8) The suggested revision of the scale of costs.

(9) The amendment of the Stamp Ordinance.

10) Rules in Partition cases.

This is by no means an exhaustive list, but it will serve to give an idea of some at least of the directions in which the existence of such organisations as the Colombo Proctors' Association can function in the interests of the profession.

It may perhaps be said that these activities have been largely confined to the conservation of rights and the enlargement of privileges.

PLENTY OF MATERIAL.

That may appear to be so, but the adhesion to our ranks of greater numbers will not only increase our claims to be a truly representative body; but will give us the funds without which even the ordinary incidental expenses which must necessarily be insurred, cannot be met. There are 458 Proctors of the Supreme Court and about 50 Proctors of the District Court practising in Colombo while the total number of Proctors practising in Ceylon is 984 of whom 787 also practise as Notaries.

It will be seen therefore that there is plenty of material from which membership of Proctors' Associations can be drawn.

The multiplication and growth in numbers and in strength of the Provincial Associations, without the existence of which we shall fail to obtain full representation of our profession, will give us the machinery to achieve the objects we desire to achieve which is the reason for our gathering here to-day.

AIMS OF ASSOCIATION.

They are:

(1) to raise the condition of the profession and to create a standard of professional conduct.

(2) to formulate a scheme for the revision of the system of education of Proctor students.

What are to be our guiding principles I conceive them to be:

1. That the first duty of a Proctor is the discharge of his obligations to his client and that the most effective instruments available for the propagation of this idea are example and persuasion.

2. That any scheme we formulate must be such that it will bear the test of public examination..

3. That we must avoid merely tactical claims.

4. That we must avoid any hint of expediency in our plans. Let us not be either betrayed into formulating schemes which have been imperfectly considered or lightly assume that the interests of the profession as a whole are necessarily identical with our own personal ambitions.

I think we must frankly admit a certain degree of laches on our part. As to the future, the key appears to be a collective effort on our part first to create the necessary conditions therefor and then to create an organisation empowered by the weight of authority which can only be obtained from numbers qualified to lay down standards of professional conduct and by example and persuasion to maintain the traditions of the profession.

An essential preliminary appears to be a programme and policy coupled with an educational campaign.

I have been asked more than once why we should not include in our programme the immediate formation of a Society on the lines of the Law Society of England. I hope the day is not too far distant when there will be such a Society, a worthy guardian of our professional interests and distinguished by the possession of the fullest powers of education, control and discipline.

That would be the ideal, and its attainment should be our ultimate goal.

Mr. De Saram then proceeded to give an account of the formation and functions of the Law Society in England.

He continued:—

SOLICITORS ACTS.

The history of the promotion and passage of the various Acts generally referred to as "The Solicitors Acts" is full of interest and significance but I can do no more to-day than merely refer to them. The Solicitors Act of 1843 was followed by those of 1860, 1870, 1874, 1877, 1881, 1888, 1894, 1899, 1906, 1918, 1919 and 1922.

Section 5 of the Solicitors' Act 1919. runs as follows:—

"An application made after the commencement of this Act to strike the name of a Solicitor off the Roll of Solicitors (whether at the instance of the Solicitor himself or of any other person), or an application made after the commencement of this Act to require a Solicitor to answer allegations contained in an affidavit, shall be made to and shall be heard by the Committee in accordance with rules in that behalf to be made under the authority of this Act, and the Committee shall upon every such application have power, after hearing the case, to make any such order as to striking off the Roll of Solicitors or suspending from practice the Solicitor to whom this application relates, or as to the payment by any party of costs or otherwise in relation to the case, as before the commencement of this Act the Court or the Master of the Rolls (as the case may be) would have had power to make upon a report of the Committee made to the Court or the Master of the Rolls pursuant to the provisions of Section 13 of the principal Act."

It is hardly possible to exaggerate the importance of the principle thus established. It has raised the prestige and standing of the Solicitors' profession. It has placed the control of the profession in the hands of members of its own body, men of great experience, who desire to maintain a high standard of professional conduct and who can be trusted to do so.

DISCIPLINE COMMITTEE.

Since the Act came into force in 1920 a number of cases have been dealt with to the satisfaction of the public and the profession and it was recently decided in the King's Bench Division that the Discipline Committee now has all the powers in dealing with disciplinary cases regarding Solicitors that were formerly vested in the High Court.

I believe there are about 15,000 Solicitors in England of whom over 10,000 are members of the Law Society.

Now gentlemen, I owe my ability to give you this concise though comprehensive account of the origin, powers and activities of the 'Law Society' of England not to any great effort of research on my part but to the official publications of the Law Society of England and my object in extracting as much as I have done from those publications and embodying them in this address is to permit us to gain some degree of insight into the long and laborious process, the untiring efforts and the fixity of purpose of the Law Society of England and its members exercised through a period of 80 years, without which the Solicitors' profession in England could not have attained the rights, powers and privileges conferred on it by the Solicitors Act. 1919.

LAW SOCIETY'S RIGHTS.

One of the rights possessed by the Law Society in England is the right of representation on various Public Bodies:—

(1) Legal Studies Committee of the University of Sheffield.

(2) Senate of the University of London.

(3) Court of the University of Liverpool.

(4) Court of Governors of the University College of North Wales.

(5) Court of Governors of the University of Sheffield.

(6) Court of University of Bristol.

(7) Board of Governors of the University College of the South West of England.

(8) Joint Board of Legal Education for Wales.

(9) Representative Governors of University College, Southampton.

(10) Rule Committee of the Supreme Court.

(11) Rule Committee under Solicitors' Remuneration Act, 1881.

(12) Advisory Committee on Rules under Land Transfer Acts.

(13) Incorporated Council of Law Reporting of England and Wales.

(14) Committee appointed under the Savings Banks Act, 1891.

(15) Yorkshire Board of Legal Studies.

(16) Council of the Selden Society.

(17) Liverpool Board of Legal Studies.

The Solicitors' Act, 1919, was passed only ten years ago, and we in Ceylon have only just started. I have, I hope given you an adequate reply as to why we cannot now, straightaway, have in Ceylon a 'Law Society' with similar powers, including powers of a disciplinary nature, to those of the Law Society of England. What then, you will ask is the objective in view. My reply is that such a Society is our objective in view but it is an ultimate one. In the interval, what shall we do?

VOLUNTARY ASSOCIATIONS.

Let us immediately undertake the task of forming voluntary associations of Proctors with objects similar to those of the Colombo Proctors' Association, which are as follows:—

1. To protect and advance the interests, rights and privileges of Proctors practising in Colombo.
2. To promote good feeling among them.
3. To guard the good name and reputation of this branch of the legal profession.
4. To consider and discuss legislative enactments.
5. To afford relief in times of distress and
6. To consider and discuss any other matter which may commend itself to the Council of the Association.

If it will be any help to those of you, who practise outside Colombo, the Colombo Proctors' Association will gladly supply copies of its rules as a guide (and possibly for suggestions as to their improvement). I have had several applications from Proctors practising outside Colombo for copies of our rules which I have not been able to comply with, as our stock of copies has just now been exhausted; but it will be renewed.

OUTSTATION SOCIETIES.

I would however just like to mention that by the light of the experience gained in the working of the Colombo Proctors' Association during the two years of its existence, I realise that its objects as now expressed and its rules might perhaps with advantage be modified and amplified and this is a matter which will engage the attention of its Council.

The formation of Assocaitions in many outstations presents, it has been pointed out to me, difficulties in certain cases, for various reasons, for example paucity of numbers.

In such cases the suggestion has been made that District Associations should be formed comprising areas defined so as to afford convenient and efficient functioning of the proposed Associations.

These District Associations might deal with matters of local interest, arising from local circumstances or considerations, but co-operate with the Colombo Proctors' Assscation in matters fundamentally affecting the interests of the profession as a body.

PROFESSIONAL MISCONDUCT.

At present in Ceylon the control of the profession so far as cases of misconduct are concerned is under Section 19 of the Courts Ordinance 1889 exercised by a Bench of three Judges of the Supreme Court. It is obvious that this must remain so for some time, but I hope that the Committee which will be appointed at the end of the discussion which will follow my address will include in its deliberations the whole question of 'professional misconduct' and make recommendations as to how it can best be minimised.

The control of our branch of the legal profession in Ceylon on questions of professional conduct and etiquette is non-existent.

I am no advocate gentleman of a policy which would place in the fore-

front and would absorb too much of our energies in claiming the extension or enlargement of our privileges or fancied privileges. I would not have you misunderstand me.

I do not advocate a policy of abject surrender of our legitimate rights. I for one shall resist to the utmost of my power any attempt to encroach on our legitimate rights. But if there be any such attempt made, it will be the more easily resisted if, by some such united action as I have suggested, we indicate that as a body—not as scattered individuals without cohesion and without corporate ideas—we are striving to maintain the dignity and the lofty traditions of a profession—in which there are a sufficient number of individuals possessing character and integrity—to make one proud to be a member.

BLACK SHEEP.

Everyone of you gentlemen must be aware that sometimes in the practice of our profession incidents occur in our own individual experiences, and of which we become aware as having been experienced by other practitioners, incidents indicating the need for some controlling body to foster and guard the best interests of our profession.

There are black sheep in every flock. That is a common and a well worn phrase, but through the absence of a corporate body fitted and empowered, at least to discourage and condemn malpractices, abuses, and misconduct we have presented the appearance of being indifferent to our fair name and from indifference to acquiescence is an easy step.

We would be acting wisely I think if we confer on the suggested Committee the fullest authority in the widest sense to make recommendations and to formulate a scheme for the advancement and control of the profession. The report of that Committee should when prepared be submitted for approval to a second meeting of Proctors which will be convened by the Committee for that purpose.

EXAMINATIONS.

Now as to the second resolution for discussion:—

"That the standard of the qualifying examinations for entrance to the Law College be raised."

The resolution stands in its somewhat restricted form in deference to the views expressed by certain members of the profession that the aspiration of would be members of the profession should not be unduly thwarted. After the issue of the notice convening this conference, with a copy of the agenda, numerous representations have been made to me that the resolution does not go far enough, that the whole system of education of Proctor students should be revised and that the numbers of the profession should be restricted. Now gentlemen, I want to be most emphatic on one point and it is this. Nothing we do must leave room for a justifiable inference to be drawn that we are about to form a 'Trade Union', or that we desire having entered the fold to shut out others less fortunately situated.

We should approach these problems with an open mind. I hope the discussion on this point will be a full one, and that every Proctor present who desires to express his views will not fail to take advantage of our having met together here today and will speak.

The future of the profession rests with its younger members and with those from whom its ranks will be recruited in the future.

I personally object to the idea of restriction if it implies an arbitrary scheme partaking of a 'quota' system. But none of us can disapprove if, as the result of an improvement of the system of legal education, with perhaps the unavoidable raising of the standards of the examinations as one of the means of attaining that object, the inflow of Proctors decreases, accompanied by a corresponding gain in quality and efficiency. I have made it my business to get in touch with the law students and as the result of a number of interviews with groups of students, which I hope they have enjoyed as much as I have, I was surprised to learn that there prevails a feeling of, if I may say so, almost resentment that by reason of the simple test presented in the way of a

preliminary examination as compared with the more searching nature of the subsequent intermediate and final examinations, many students find themselves after a facile entry in a "cul de sac" from which exit is difficult and in some cases impossible.

An examination of the figures of membership of the Law College clearly indicates that the Law College is steadily accumulating a mass of ineffective students who have failed to pass their examinations. In a period of 6 years for which I have examined the figures there were 356 Proctor students and only 249 passed out, leaving a residue of 107. At present there are about 450 Proctor students still in the Law College.

We now come to the resolution.—

"That the standard of the qualifying examinations for entrance to the Law College be raised."

I do not suggest that if the resolution be passed in its present limited form and its terms given effect to, the problem of increasing the efficiency of the Proctor of the future will be solved, but as I have said before, at the time the notices were sent there was a feeling that a more radical resolution might be regarded as an attempt to impose unjustified restrictions on entry into the profession. It has since been suggested that the preliminary examination might be of a comparative nature and that is a fairly widely held opinion that the whole system of legal education requires to be revised and replaced by a more intensive system and one which embraces a wide field of education than that now in force. These are matters of detail which might well be discussed but cannot be decided today.

When one thinks of the masses of Law reports and ordinances which have come into existence within the last 50 years, even allowing for those that are now only of historical interest one can but sympathise with the unfortunate student of today who is supposed to know the law, the whole law and much besides the law.

A PROCTOR'S FUNCTIONS.

But there is no profession which concerns the business of others to anything like the same extent as does the Proctors' profession. And the relationship of Proctor and client is created by the client and its foundation is 'confidence.' To meet such a demand no knowledge or qualities of character can be regarded as superfluous.

But by meeting here today, to consider these problems by discussing them, as I hope you will, and by bringing about the inception of conditions calculated to discourage and restrain our weaker brethren from straying from the straight path we have at all events, even though late, enabled the claim to be made that the inertia which has hitherto retarded our advancement is about to be dispelled.

ABUSES AND MALPRACTICES.

Not one of you can be unaware of the existence of the abuses and malpractices to which I refer, but that they are so prevalent as to justify the presumption that the profession as a body is incapable of putting its own house in order, is a charge which it rests with us to disprove. I say this advisedly, because it has become a regrettable custom in Ceylon to pillory the whole profession and to hold up to scorn the profession as a body, when any individual happens to disgrace himself.

A FAITHFUL LEADER.

As to when I hope that the time will come when we Proctors in Ceylon can exercise as a body the honourable powers conferred on Solicitors in England by the Solicitors' Act of 1919, I do not venture to prophesy; but while on this point I will with your permission, once again quote from the official history of the Law Society of England. The extract is as follows:—

"The Law Society must ever aspire to be a faithful leader and true reflex of enlightened views and a watchful guardian alike of the honour and of the best interests of a learned profession. It can only fulfil the task with effect, and raise its voice with authority if it is heartily supported on all sides by those whose cause it represents and advocates. Much of the

work of the Society enures for the benefit of the profession generally, but many are content to take the benefit and avoid the burden, small though it is. As regards compulsory membership, which has sometimes been suggested, it may be remarked that since its inception the Society has been an entirely voluntary association. During a period of close upon a century a succession of Chairmen. Presidents, and members of the Committee and the Council have been found ready to serve voluntarily, and the Society now comprises a majority of practising Solicitors voluntarily enrolled. There might perhaps be reason to fear that the vital energy of the Society would be impaired if this voluntary element were lost. The great guilds and associations of the past have owed their vigour and their wealth to voluntary action and liberality, and apart from the difficulties inherent to a system of compulsory membership, it is thought by those who have given much attention to the question that the Society will do better to trust to the same spirit of common interest and voluntary effort. It will be a matter for sincere gratification to every member of the Society if this record of the past, and the reflections which these pages may suggest as to the field of useful and honourable work which may lie before the Society in the future, should lead members of the profession who have not yet joined the Society's ranks to realise that there are higher and larger considerations involved in doing so than any question of the mere personal convenience of membership."

Those words are so apt gentlemen that I can find no better expression of my meaning.

No doubt the Proctor's primary function is to give advice and he can at the most refuse to act further for his client if his advice is disregarded, but owing to the deficiencies in the system of legal education there is a growing tendency for a Proctor to content himself with merely acting on the instruction of his client.

A Proctor cannot compel his client to acquiesce in the advice he gives but whilst the transaction is in progress advice wisely but firmly given by a Proctor is of immense benefit to his client and is not often disregarded and there will be less chance of its being disregarded if the Proctor possesses the advantage not only of his professional and technical knowledge but of a wider education than he is likely to possess under present conditions. Should a Proctor fail by reason of a lack of these qualifications he is the last person who can plead inexperience as his excuse, for "ignorantiam non excusat lex."

Moreover the higher the qualifications of a Proctor, both professional and general and in particular as to character and integrity the easier will it be for the profession to surmount the barriers which at present stand in the way of the advancement of its members to appointments of a judicial and a semi-judicial nature.

Perhaps somebody present to-day will by way of amendment of the 2nd resolution move a resolution of a more comprehensive nature to the effect that the whole system of education of Proctor students should be revised and improved with the object of enabling a Proctor to commence his professional career with a better chance of succeeding in the exercise of his profession and the discharge of his obligations to his clients than he now has.

I suggest that this Committee should be representative of both Colombo and the Provinces. May I express the hope that those members of the profession nominated to serve on this Committee who practise outside Colombo will generously agree to make the added contribution at the expense of their time and convenience which will be entailed by them and that those of us who live in Colombo will co-operate in minimising those inconveniences.

As an example of the matters which have of recent years become of importance through the development of commerce and industry in this Island and without adequate education in which a Proctor enters his professional career with a serious handicap is Company Law. Nor does a Proctor as a rule enter his professional career with an adequate knowledge of such essential subjects as accounts. A better knowledge of English and a wider knowledge also appear to be necessary.

Now, gentlemen, at this initial stage, I can do no more than attempt to indicate on broad general lines the present position of the profession, and suggest to you the direction which our efforts to achieve our ideals might take. May I express the hope that the conclusions I have arrived at will appeal to you and that, as the result of this conference, success may attend our search for the foundation of a corporate professional life.

THE ATTORNEY-GENERAL.

Mr. E St. John Jackson, the Attorney-General, addressing the gathering said: "Mr. President and gentlemen, I should like to thank you and the members of your Committee for having been kind enough to invite me to be present on this occasion, which I look upon as an occasion of the first importance not only in the interests of the legal profession, but in the interests of the Colony as well (Applause). When I say that it gives me great pleasure to be present here, I am not merely using a conventional phrase which everybody is accustomed to use on occasions like this, but I am saying something which I very sincerely mean.

"I saw on the programme that I was put down to give an address, but that is far too big a word for the few informal remarks which are all, I think, that you, Mr. President, have left me to make after the address you have just delivered and to which we have all listened with the profoundest interest. I think you have in your address dealt with the objects you have in view with a comprehensiveness, breadth of treatment and fairness which will commend itself to all of us who are here. (Applause).

Mr. President, I should like to say that the objects which you have expressed will have my support in every possible way and every assistance which I can give to further them. I think, too, that the formation of such a Society as you have described will be of very great value to the Government of the Colony as well as to the profession and the members of the public."

The Attorney-General then said that the President in his speech had referred to the lack of sympathy between the Government and the profession of Proctors.

LACK OF CONTACT.

The President interrupted to say that he did not suggest lack of sympathy.

The Attorney-General replied: "It would not be surprising if that was so, since I think that lack of sympathy arises from lack of contact. Only the other day I was asked by the Government to give advice on a question which affected the profession, and I not unnaturally, said I will go and consult the profession. (Applause).

I met Mr. Leslie de Saram and told him what the question was and how much I would value any expression of opinion which he could obtain from the profession on that subject.

He listened to me with interest and said he would go and endeavour to ascertain what was the feeling and opinion on the subject. I shall ascertain that opinion before making any recommendations to the Government. (Applause).

I think if we can manage to work like that no impression of lack of sympathy is likely to arise. The formation of such an organisation as we have in view will enable us to function like that, and I think it will be welcomed by everybody in the Colony. (Applause).

AN APPEAL.

"There is one appeal I would like to make to this meeting at the beginning of the task which they have set themselves, and that is, to stick to it. It is a long road we have started out on today, and I suppose you will allow me to say how long the way is, because we are all members of one profession, although I belong to another branch of it, and I should like to be associated with you as far as you think it useful for me to be.

I said it is a long road upon which we started out. It is comparatively easy to feel full of enthusiasm when we are in a room like this when a number of our brothers in the profession are gathered together with very much similar feelings to ourselves. But our task will not end here. It will not end even with the deliberations of the Committee which will begin to deal with the more practical aspects of the problem when this meeting has dispersed. It will not end here, but will have to be carried on in all parts of the Island through times in which we may feel considerably discouraged. That is

the time when I appeal to members to stick to it and not to give up. It is not of the slightest use putting an ordinance on the statute book, an exact copy of the Law Society of England, having substituted Ceylon for England.

The reforms which we have in view must come from within. (Applause.) An ordinance of that sort has no chance of operating unless it is expressed with the determination of the legal profession to give it full success. Reform, if it is to come from within, must be expressed in the united spirit of the profession as a whole. I am too new to the Colony to know to what extent the spirit has already been created, but I must say that the presence of this gathering today seems to me to be a valuable indication of its life and force. (Applause.)

LOYALTY TO ENGLISH TRADITIONS.

There is one thing I have been struck by in the short time I have been in the Island, and I think it must strike nearly all new-comers here, and that is the loyalty to and regard for the best English traditions. I know when one is trying to persuade any body of people to follow certain courses of action and we consider them in Canada, Australia or India, one finds one has not advanced the argument very far. One may even have put it back several stages and created obstacles which one has to surmount. But I have always found that if you can say, this is done in England, you have gone a long way to persuade the people of this Island to adopt it here.

In the formation of such a Society as you have sketched we are adopting very valuable English traditions, and by adopting very fine English traditions we are creating a bond which will grow closer."

The Attorney-General then pointed out that in the Bar Council of Ceylon they had done the same as was done in the establishment of the Bar Council of England.

"That is a most valuable link of Empire and a most invaluable means, of preserving the high traditions of the profession in England, and that is what you will be doing if you establish a Law Society here which will work in the same touch with the Society in England as the Bar Council here does with the Bar Council in England. If I may repeat a common saying: the chain strengthen the links. We all feel ourselves one of a vast organisation determined to preserve the high traditions of the profession and in our detached efforts receive the great strength which the feeling of unity gives to it."

As regards the relations between Proctors and their clients, the Attorney-General said that was a subject which was connected with the question of education, and he personally felt that that was one of the most vital problems which they would have to consider.

A REMINISCENCE.

Mr. Jackson here related a reminiscence of his "call."

"When I was called to the Bar in London," said the Attorney-General, "the ceremony was a very informal one. I dined with the members of the Bar and afterwards we were invited to a room where the Benchers, who had dined in a different part of the hall, were gathered at table for desert.

"They had decanters of port in front of them, and we stood round the table and were each provided with a glass of port. The senior Bencher then gave us an address. He began by saying that the custom in the past was that each Bencher should drink a glass of port with each student, and since the number of students had increased the capacity of the Benchers for port had diminished (laughter). and it had been found necessary to curtail the ceremony and restrict the port to one single glass which a Bencher drank. It is a great thing to be called to the Bar. It is a great thing, he said, because the outside world thinks it is a very great thing to be a Barrister. But if you are to be a Barrister, it depends not on the efforts you have made already, but which you will be called upon to make in the future."

BARRISTERS AND SOLICITORS.

Coming to the respective relations between a Barrister and Solicitor with the public, the Attorney-General said: "The Barrister comes in contact only with the Solicitor, and the Solicitor comes in contact directly with the pub-

lic. It is quite unnecessary to protect the Solicitor from the Barrister because Solicitors are well able to look after themselves." (Laughter). But the lay public had at times to be protected from a Solicitor of inferior character or inferior attainments, and that was where the question of the standard of education arose."

In conclusion, the Attorney-General repeated his willingness to help the Conference and the Society which it intended to form to the best of his ability.

The President thanked the Attorney-General for his address, and Mr. Jackson then left the hall.

FIRST RESOLUTION.

Formation of A Society.

Mr. A C Abeywardene then moved:—

"That it is desirable to establish a Law Society in Ceylon and with a view to attaining this object voluntary associations of Proctors practising in Ceylon be formed."

Mr. Abeywardene said he had little to say as all that need be said had been said in the very able address by the President. (Applause.)

Mr. J Louis Perera seconded and said that when it came to appointing members of the judiciary Proctors were not considered good enough. The same applied to the appointment of examiners and lecturers to the Law College. He believed that organised representations by Proctors of the whole Island would make the Government take another view of the matter.

THE DISCUSSION.

Mr. Anandappa said that before proceeding to consider the grievances of the profession, they should consider what the Society was to be for, its rules, etc. Their chief object should be to form a scheme to make the Society a permanent one, and it was therefore, not fair to pass any resolutions affecting the conditions of the profession.

Mr. Seneviratne said that at the present moment there were Bar Associations which included Proctors and Advocates, but in matters affecting Proctors they should point out that it had been found necessary to have an Association of Proctors alone; but he wished to know how that was going to be worked. With regard to the first part of the resolution he did not think there was any divergence of views, but he only wished to be enlightened as to how the second part of the resolution regarding voluntary associations of Proctors in those places where Advocates were members of the Bar Councils, was going to be worked.

Mr. Wickremasinghe said that they already had an incorporated Law Society in Ceylon. It had been incorporated by an Ordinance, and if they where going to form another incorporated Law Society, they would have to amend that Ordinance. He wanted to know what had happened to that Society, before they went any further.

WHY SOCIETY CEASED TO FUNCTION.

The Chairman having asked the leave of the house to reply to the comments raised by each speaker at the conclusion of his remarks, said that he happened to be nominated to the Council of that Society temporarily in 1911, till his father, the late Mr. F J de Saram, was nominated in his place. He thought that the well meant attempts of the Committee appointed under that Ordinance were to deal with cases of malpractice. The scheme was misunderstood and became unpopular and the Council ceased to function. Technically, he thought, the corporation was still alive, because it was one of the elementary principles that a corporation was never ending, but while it was alive there was no Council. It was really a most interesting position.

At this stage the Chairman announced that he was quite willing not to adhere too strictly to the laws of debate and he was willing to allow the discussion to be continued on informal lines, provided speakers did not abuse that privilege.

Mr. Kadirgamar said that in the first place it would be wise to confine themselves strictly to the ways and means and objects of the Law Society instead of launching into irrelavancies

which would take up valuable time. At the moment there was a Law Society which might not be functioning, but they were not concerned with that. At present they were thinking of forming a society known as the Law Society, and when that came they would then consider the question of incorporating it. With regard to the other point he would like to mention that Advocates had no place in a Law Society. If there were Advocates who were members of Law Associations in the outstations, they would have to consider the question of forming associations in the outstations for Proctors only.

"THE STOUTER BRANCH."

A Voice: And eliminate the Advocates?

Mr Kadirgamar: Yes. Some of us have got into the habit of referring to our profession as the lower branch There is no such thing as the lower branch of the legal profession in Ceylon.

A Voice: We are a stouter branch then. (Laughter.)

Continuing, Mr. Kadirgamar said that he very humbly submitted that the most important branch of the machinery that dealt with disputed matters was their branch of the profession (Applause). The formation of that Society had been very carefully considered by the Colombo Proctors' Association and thty were most anxious to have the co-operation of the outstations. He was aware of the fact that questions of time, expense and various other considerations would make it difficult for their brother Proctors to come to Colombo, but those were matters which they would have to consider later. In every outstation where there were four or five Proctors there should be, he thought, a Proctors' Association. It was necessary for the Proctors in the outstations and in Colombo to do constructive work, so that the Association could quickly grow into its desired proportions, and they could attain their object.

Commenting on the last speaker's remarks the Chairman said that he was very glad that the question of Advocates in outstations being members of the Law Associations had been brought up. His idea was that as a result of their discussion, a very representative Committee, representative not only of Colombo but of the outsations, should be appointed to discuss all such difficulties and to recommend how they could be surmounted, and to formulate a scheme which could be discussed at a second conference. As far as he could see there had been no divergence of opinion expressed regarding the fundamental principles, and if they appointed the Committee he suggested, he hoped that all such difficulties would be sumounted. As regards the forming of a fresh association purely of Proctors, he recognised the inconveniences, but it seemed to him that they were unavoidable. He did not say that any present associations should not continue as they had been doing but for their immediate purposes there was no way out of it, and he was afraid they would have to form a fresh association confined only to members of their profession. His idea with regard to the appointment of a Committee was that such a Committee should be vested with the widest powers to formulate a scheme, and in formulating that scheme it would also be their duty to elicit the opinions of old members of the profession, and to consider then as to how the ultimate goal of a Law Society was to be attained. There was much to be said for and against the scheme and it would be a problem to be dealt with by the sub-Committee.

TWO AMENDMENTS

Mr. Geo. E. de Silva said that the resolution was in two parts, and he suggested that as they were unanimous as regards the first part that of having a Law Society in Ceylon for the special purpose of looking after the interests of the Proctors, he would like to suggest to the mover that the first part of the resolution be put to the house first.

Mr. Abeywardene: Certainly not. I will do nothing of the kind.

Mr. E G Gratiaen suggested as an amendment that the word "establish" in the resolution be deleted and the word "revive" substituted (Cries of "No! No!")

The amendment was not seconded.

Mr. De Silva moved his amendment and Mr. M. H. Jayatilleke seconded.

Mr. C. L. Wickremasinghe and Mr. M. Weeraratne and Mr. Arnold also spoke on the resolution.

Mr. E G Gratiaen proposed another amendment to the effect that the Society should be established on the lines of the Law Society in England.

This amendment also found no seconder.

After some further discussion, Mr. Geo E de Silva withdrew his amendment as he said it had been made under a misconception. He now understood that the object was to form associations outside and after that to consider the formation of a Law Society. It was rather an injudicious action and he did not think it was the proper thing to do but would withdraw his own amendment which was moved under a misconception.

After further discussion the resolution was put to the House and carried unanimously

SECOND RESOLUTION.

Higher Standard For Qualification.

Mr. S Somasunderam then moved the second resolution "That the standard of the qualifying examination for entrance to the Law College be raised." He said that students seeking admission to the Law College were admitted to-day under the same regulations which had been drawn up as far back as 1889. Conditions in 1889 were far different to what they were to-day, and he did not think that statement would be open to much question. In 1889 the standard of education was far below what it was to-day. In those days the Cambridge or Oxford Senior was considered to be quite enough for qualification. The standard of education had changed considerably since then. Ways and means should therefore be found for restricting admission to the Law College for the welfare of the profession itself, and steps had to be taken to raise the qualifying examination for admission. As many of them were aware admission to the Medical College of Ceylon was not allowed because a candidate had passed so many examinations. A candidate had to sit for a pre-medical examination, so that the number of students admitted could be regulated. Those were matters of detail which could be worked out later by a Committee and it was enough for him to recommend that resolution to the House both in the interests of the profession and of the public.

Mr. Mahadeva seconded and said that with the higher standard of education reached by the younger generation today, something should be done to raise the standard of education to the Law College.

Mr. Perumal Pulle in supporting the resolution said that it was a question of raising the status and improving the status of the profession as a whole. The honour of the profession had to be safeguarded.

OPPOSITION.

Mr. Brito strongly opposed the resolution. He said that there was a suspicion that they, having got into the profession on low qualifications, were proposing to debar others from attaining this profession. If they wanted to raise the standard, reformation must come from within and not from without.

Mr. Wickremasinghe said that the standard of the Cambridge Senior to day was higher than it had been in the past, and considering everything he thought that the raisig of the standard would shut out useful men from the profession and it would be a great loss to the country. He would like to submit that history and logic should be included in the Senior Local and in the Matriculation Examination, and that a pass in those subjects should suffice for all purposes for admission into the Law College.

Mr. Geo E de Silva said that after all the Committee appointed by the House to consider that matter would have to lay their recommendations before the Conference again. He personally would like to suggest that that Committee should consider the question of having women admitted into the profession (Hear, hear.)

Mr. E C S Storer proposed as an amendment that the words "be raised" be deleted from the resolution and that the words "be referred to a Select Committee" be substituted.

Mr. Weeraratne suggested that the resolution be amended to read "That it is desirable that the course of studies and training of Proctor students should be revised."

The Chairman suggested that the resolution be amended to read as follows:—

"That it is desirable that the whole system of education for Proctor students should be revised and approved with the object of enabling a Proctor to commence his professional career with better chances of succeeding in his profession and in the discharge of his obligations to his clients, than he now has."

Mr. Jayatilleke said that the question was a very important one and he did not think they should rush it through without full discussion. He suggested that further discussion be deferred.

"THE PUBLIC TRUSTEE."

Address by Dr. Paul E. Pieris.

On resumption in the afternoon the members listened to an interesting address by Dr. Paul E. Pieris, the Public Trustee, on the subject of the Public Trustee Ordinance and the working of the department of which he is the head.

The Chairman, in introducing the lecturer, said that the Ordinance would soon be in operation, and the presence of Dr. Pieris and an address by him on the subject of public trusts were welcome to them all, particularly to Proctors, who would necessarily be in close contact with the Public Trustee.

Dr. Pieris began by correcting the President's statement that the Ordinance had not yet been proclaimed. In fact, he said, it had even been amended and he hoped that on Tuesday next the first reading of the Amending Ordinance would be moved. As they all knew the Legislature never delayed matters, and the Ordinance would presumably be in a workable state a few days afterwards and would then be proclaimed.

Discussing the position of the Public Trustee. Dr. Pieris said that he was looking through the records of the District Court some time ago when he came upon a very interesting testamentary case, a case of intestacy. The deceased passed away in the year 1853. He was a man of great wealth for those days, and a man of high social position, and left a large estate, two young daughters and no debts. Letters of administration were issued the next year to one who was probably the first lawyer amongst the Sinhalese in those days, a man who for his distinction as a lawyer and his skill as a legislator was still remembered by many. He received letters of administration in 1854. He had no death duties to pay but it was not till 1878, twenty-four years later, that he completed the work. Could that have happened if there was a Public Trustee in those days? It was to prevent the possibility of such a state of things occurring that the Public Trustee Ordinance was brought out. That was an isolated case but there were several if one took the trouble to look into the musty records and pore over time worn documents to be found in the records of a District Court. The question that would first arise was, in what way could they make use of the Public Trustee. The majority of those present, said Dr. Pieris, had no doubt read the Ordinance as it existed to-day, and if they had understood it and had a reasonable and coherent idea of it he would congratulate them. One of the amendments proposed was where a man proposed to make a Will. They were all aware of the difficulties that beset one in the choice of executors. Could his best friend be relied on to implicitly and faithfully carry on his wishes. Who could say that an experimenting chauffeur would not run over the body of that friend so that the services of that friend might not be available to that man who made the Will. (Laughter). There was the Public Trustee willing and anxious to be the Executor. In New Zealand there was actually in physical custody of the Public Trustee 58,000 Wills. By entrusting the Public Trustee with the Wills much of the maladministration which was unfortunately not uncommon in this country could be prevented, much trouble, nuisance, expense and delay avoided and business could be got through more quickly than under the existing state of things. There would be no danger of misappropriation or waste.

Mr. A C Abeywardene: Where does the Proctor come in? (Laughter).

Dr. Pieris said that it was distinctly laid down in the Ordinance that nothing which the Law laid down had got to be done by a lawyer may be

done by the Public Trustee. In the case of an estate which had property out of Colombo the Public Trustee could not be expected to go there but he would retain a lawyer who was well known to the family. He would simply act as any rational human being. They might sometimes begin to think that this state of things was too good to be true.

Mr. Abeywardene: Utopian. (Laughter).

Dr. Pieris: Gentlemen, there are some people who are never satisfied. (Laughter.) You talk of this as Utopian. It shows how the most experienced and shrewdest among you have got such very little knowledge of the practical state of things. (Laughter.) The Englishman is not one after Utopian schemes. New Zealand is not a country inhabited by a parcel of fools. I am prepared to take charge of this Utopian Scheme. (Laughter and cheers.) The position of the lawyer will not be prejudiced by reason of his employment by the Public Trustee. The fact that a Proctor has been engaged by the Crown does not disqualify his being employed by the Public Trustee. (Laughter).

In reply to a question as to appeals against the Public Trustee, Dr. Pieris said that anybody who was aggrieved with the decision of the Public Trustee could refer the matter to Court by summary procedure. The Public Trustee was merely the creature of the Court.

Present: Akbar, J.

KING vs MACK and CARRON.

108 D. C. (Criminal) Colombo 9205

Decided March 24, 1930.

Criminal Procedure Code, Section 336—Appeals at the instance of or with the sanction of the Attorney-General in the case of an acquittal—circumstances in which such an appeal would be allowed.

Held:—An appeal from an acquittal on a question of fact should only be allowed to succeed in very exceptional cases and where it is perfectly clear to the appellate tribunal that the finding of the inferior court is erroneous.

L. M. D. de Silva, acting S.G. with *Fonseka* C.C. and *E. V. R. Samarawickrema* for Crown appellant.

Hayley K.C. with *Ferdinands* for 1st accused respondent.

R. L. Pereira K.C. with *Soertsz* and *Gratian* for 2nd accused respondent.

Akbar J:—This is an appeal by the Attorney-General against the acquittal by the Additional District Judge of Colombo of the two accused who were charged on four counts of the indictment, with abetting on May 25, 1929, one Mr. R. Schokman, Inspector, Local Government Board, to agree to accept for himself a gratification for showing favour to one Mr. T. K. Carron in raising the valuation of certain properties. The learned Solicitor-General frankly admitted at the very outset of his argument that he had a heavy burden to discharge in this appeal. He admitted that such an appeal. on a question of fact from an acquittal by a District Judge could only be justified if there had been a palpable misdirection by the District Judge, when considering the facts of the case which—to use the Solicitor-General's words—could be demonstrated to be wrong on the very face of the record. Or in other words, that his appeal could only be justified if the misdirection was obvious and had in effect resulted in a miscarriage of justice.

I think I cannot do better than quote the remarks of Mr Justice Shaw on such appeals. In the case of King vs. Kumarasamy, Mr Justice Shaw states as follows:—"The task that the appellant has undertaken is a difficult one. The provision contained in Section 336 of the Criminal Procedure Code authorizing an appeal at the instance of or with the sanction of the Attorney-General in the case of an acquittal, even on a question of fact, is one unknown to the English Criminal Law and is somewhat opposed to one of its elementary principles namely, that no one should twice be placed in jeopardy for the same offence. It is perhaps a necessary provision here where we sometimes have gentlemen acting as Magistrates and even as District Judges who have not only had no legal training, but have even sometimes had very little experience of local conditions. In my opinion however, an appeal from an acquittal on a question of fact should only be allowed to succeed in very exceptional cases and where it is perfectly clear to the appellate tribunal that the finding of the inferior court is erroneous. Even in civil cases it is a well-established principle that an appeal tribunal should not interfere with the finding of the Judge of the lower Court on a question of fact, depending on the weight to be attached to the evidence given before him unless it is apparent that he has misapprehended the evidence or unless some admitted fact or document shows that the decision he has come to is incorrect. In the case of an appeal from an acquittal on a question of fact it seems to me that the onus on the appellant should be at least as heavy as in a civil suit."

The main facts of this case, as they stood before they were tested by cross-examination, appeared to be simple, clear and all pointing to one conclusion. But it is a common experience in the Law Courts that it is this very simple type of case which is liable, when tested by careful cross-examination, to assume quite a different aspect after this process. The learned District Judge, in his long judgment of nineteen type-written sheets, a carefully considered, moderately-worded and restrained judgment has endeavoured to show that this case was one of this type. The simplicity of the case is due to the fact that the whole case depends on the evidence of two Government officials of high standing, who

said that the two accused came to the house of Mr Schokman in the evening of the 20th May, 1929 and were heard to make the offer. The case is further supported by certain facts of a circumstantial nature, namely that Mr. Schokman had previous to the interview, made attempts to get a high Police officer to overhear the conversation and having failed in his endeavour had at last got Mr. Kirk his superior, the Government Assessor, to come and listen to the conversation. They further produce two written statements said to have been written immediately after the event, by each of them independently giving details of the conversation. The other fact, which was pressed by the Solicitor-General, was the absence of any motive for these two Government officials to prepare a case of this kind for the purpose of implicating two innocent young men in an offence which might result in serious consequences to them. These are the main facts of the case which appear to be clear and simple.

But after all, the whole case must depend on whether these two witnesses are to be believed. If the result of the cross-examination is to cast a doubt on the veracity of these two witnesses and also to cause one to suspect the existence of the other facts, which are put forward as corroborative of the happening of the events of the day in question, then the case must necessarily assume quite a different complexion. The main grounds on which the District Judge thought that he must acquit the accused which stand out prominently in his judgment are the two facts that he did not believe Schokman and that Mr Kirk's evidence contains certain features for which Mr Kirk "had only himself to blame, if I come to the conclusion that I do not rely on his evidence, so far as to say that I have no doubt that the case for the prosecution was true." As regards Mr Schokman, the District Judge has no doubt at all and he states as follows:—

"With regard to Mr. Schokman, his evidence in Court was so unsatisfactory that I would have had no hesitation in rejecting the case for the prosecution if his evidence had stood alone. He would not answer any question put to him in cross-examination. He was always trying to hedge. If he made a statement in answer to a question in cross-examination he immediately proceeded to qualify it, or even to negative it and frequently said that he could not remember. He admitted that he was in debt to his step-sister, to his step-brother, to Mrs Deutrom and various other people, and that most of these he paid in small instalments. It was obvious that he found it difficult to meet all his expenses out of his salary that he received. In spite of that he has been for some time a partner of Messrs Schokman and Co. and it would appear that under the newly-formed partnership the business of the old firm has been considerably enlarged. He eventually did admit that he had signed a mortgage bond in connection with the partnership, but in his usual manner he at first said that he had signed the document but he did not know what it was.

He also admitted that in an outstation Court he had given evidence against a man who was charged with negligent driving of a motor-car, that his evidence was inconsistent with that of his peon, who was with him at the time, and that he subsequently stated to the Magistrate that he had made a mistake with regard to the date, and that the incidents spoken to by him took place not on the day in respect of which the charge had been laid, but on another date. In these circumstances it was obvious that the Magistrate had no other alternative but to acquit the accused, but Schokman volunteered the statement that he was convinced that the Magistrate acquitted the accused and commented on his evidence because he was prejudiced and he traced that prejudice to the fact that the Magistrate was in some way connected with the 1st accused. I do not think it necessary to recite at greater detail the unsatisfactory features of Schokman's evidence, and it will be sufficient if I say that I would not accept any statement made by him if it was not corroborated by other and more reliable evidence."

It will be seen that the District Judge came to this conclusion with regard to these witnesses not only by considering the evidence which each gave but also by applying the test of the eye. He had an opportunity, which I have not in this appeal, namely, the

opportunity of seeing the witnesses in the witness-box, and their demeanour during their examination and cross-examination.

In this connexion I should like to refer to a civil case which went up before Privy Council. In the case of Fradd vs. Brown & Co., (2), the Supreme Court reversed the findings of fact by the District Judge, because the District Judge had on the face of his judgment drawn certain inferences on wrong facts. Wood Renton, C.J., stated as follows.—"If a Judge in England, in charging a jury, had fallen into an error of this kind, the misdirection would have formed a good ground for a new trial," and yet when the case went up before the Privy Council, the judgment of the District Judge was restored and the appeal allowed.

The remarks of Earl Loreburn are of importance in this case:—

"This appeal is upon questions of fact and nothing but questions of fact.....In reality the case which was voluminous in point of evidence largely depended upon the truth or falsity of statements that were made by the witnesses for the plaintiffs and defendants respectively....Now, the learned Judge of first instance took, as well as did the Court of Appeal in Ceylon, a very serious view in regard to this controversy about veracity; they thought it was a case of deliberate falsity on one side or the other; that there was not room for misapprehension, or for the sort of error that leads to erroneous statements. Accordingly, in those circumstances immense importance attaches, not only to the demeanour of the witnesses, but also in the course of the trial and the general impression left on the mind of the Judge present who saw and noted everything that took place in regard to what was said by one or other witness. It is rare that a decision of a Judge so express, so explicit, upon a point of fact purely, is over-ruled by a Court of Appeal, because Courts of Appeal recognize the priceless advantage which a Judge of first instance has in matters of that kind as contrasted with any Judge of a court of appeal, who can only learn from papers or from the narrative of those who were present. It is very rare that in questions of veracity so direct and so specific as these, a court of appeal will over-rule a Judge of first instance. Was this such a case? The court of appeal in Ceylon thought that it was. That is not the opinion which their Lordships have arrived at. The grounds on which the court of appeal reversed the learned Judge have been scrutinized here and examined. Their Lordships are not able to agree with the conclusion of the court of appeal. On the contrary, there is a great deal of material, to which attention has been drawn, which decidedly tends to corroborate the learned Judge's opinion. That opinion is decided, strong and unequivocal. It throws, as has been said before, a light upon the whole case, and affects every branch of the issues that were tried.

"Their Lordship will, therefore, humbly advise His Majesty that the appeal ought to be allowed, with costs, and that the decree of the learned Judge of first instance ought to be restored."

In this case too, now, before me the findings of the learned District Judge on the question of the veracity of the two witnesses are express and explicit. In the words of Lord Loreburn: "Is this one of those rare cases in which a court of appeal will be justified in overruling the decision of the Judge of first instance?" In the first place, was the learned District Judge right in his estimate of the evidence of the principal witness? Any one has to read the record to see that every word of the District Judge's opinion is justified by the evidence recorded. Schokman repeatedly contradicts himself, sometimes in the same breath, and he is often contradicted by Kirk, sometimes on very material points some of which I shall endeavour to set forth here, even at the risk of prolixity. As regards the registration of his new car, Schokman says as follows:—"Rowlands at first registered it in my father-in-law's name—I mean the insurance. The old car had been registered and insured in his name. I am not sure if the new car has also been registered in my father-in-law's name. I went to the Insurance Co., and had it altered." The significance of the registration of his car in the name of his father-in-law, becomes apparent when we read Schokman's own account of his financial embarrassments.

At page 21 of the record Schokman stated that he did not value the "Emms" himself, but at page 31 he said that he was offered a bribe of Rs. 5,000 with regard to the "Emms," which he admitted to have valued himself. He further admitted that he had gone into the valuation of the "Emms" himself for the purpose of reporting against his immediate superior, Mr. Seneviratne, the Assistant Government Assessor, for having valued this very "Emms" property excessively.

As the part played by Mr. Seneviratne is of vital importance in this case from the point of view of the defence, it will be convenient to refer here to what emerges from the evidence of Schokman and Mr. Kirk. Mr. Seneviratne appears to have been appointed Assistant Assessor in preference to Schokman before the arrival of Mr. Kirk in the Island in December 1928 and there was bitter feeling between the two. As one would expect Schokman made a bold bid to get into the affections of Mr. Kirk, and apparently succeeded in supplanting Mr. Seneviratne completely, for Mr. Kirk admitted that he always trusted Schokman and it was Schokman who was selected in preference to Mr. Seneviratne to help the newly arrived Mr. Kirk to undertake his first work for the Government in valuing properties for acquisition in connection with the Galle Road Widening scheme. Not only was Schokman entrusted with the education of Mr. Kirk in local conditions and local values, but it was Schokman who helped Mr. Kirk to secure his house. Mr. Kirk, stated as follows: "I know Schokman was truthful. I paid him a courtesy call and I went to his child's christening. He and I have been riding in each other's cars. When I first arrived I went out with Mr. Seneviratne on several occasions. Schokman helped me to secure my present house." But this serene friendship between Schokman, the Inspector and Kirk, the Assessor was marred by the ill-feeling of the disappointed Mr. Seneviratne. It will be best to quote Mr. Kirk: "Mr. Seneviratne is my assistant and the only staff appointment besides myself Schokman himself was one of the applicants out of whom Mr. Seneviratne was selected,. In April. Mr. Seneviratne sent a memo with reference to these valuations and other matters. Then he sent, I believe, a report to the Acting Chairman of the Local Government Board. I believe be drew attention to the difference between the original valuations and those eventually paid.

In his memo to me he called Schokman a dangerous rogue. Mr. Seneviratne's report is still in the hands of the President." And yet at page 18 Schokman says as follows :—"I do not know of any report made against me to Mr. Kirk by Mr. Seneviratne. I know a report was made by him against Mr. Kirk's valuations I have not heard of a report against me I heard that he recently reported that the valuations of the Colpetty Ward were excessive. I did not hear that he complained that no office copies were kept and that although I was paying decrees by instalments I was having a Saloon car. I do not know that a report on these lines had gone—on the 25th April. Nor have I heard of a memorandum against me by Mr. Seneviratne. I do not know that Mr. Seneviratne told Mr. Kirk that I was "a dangerous cut-throat." But in his characteristic manner at page 30 he says: "I have reported against Mr. Seneviratne and my complaint is yet under consideration..... Mr. Seneviratne made a complaint against me. I do not remember the details. Mr. Seneviratne also placed his car at the disposal of Kirk and also tried to find a house for him."

I need only give one other instance from Schokman's evidence: "I have not doubled any valuations. I do not remember a single instance. I know lot No. 26. The original valuation was Rs. 5,962. No it was Rs. 3,920. Before it was tendered to the Chairman I raised it to Rs. 5,962 on 18th February. I raised it to Rs. 7,920 on the same day I raised it to Rs. 8,360 on the 28th March. I raised it to Rs. 11,004. I raised the amount to be paid because of the injurious affect on the property which I did not admit before. and on 16th February for the same reason Rs. 2,416 on the 18th February I raised it to Rs. 5,356 for injurious affection. On the 18th March I raised it to Rs. 8,000 for injurious affection. In this case I had occasion nearly to treble my

valuation. When I gave my first answer I did not think of injurious affection. The valuation of land is constant except for a few rupees I know lots Nos. 2 and 4. My first valuation was Rs. 68,750 for both lots i.e. excluding the 10 per cent. I hereafter raised it to Rs. 86,600. On the 28th February I raised it to Rs. 98,041. i.e. including 10 per cent.

"Lot No. 19. On 14th February I valued it at Rs. 8,770 tentatively. On 15th February I raised it to Rs. 17,000 I can't say on what date that figure was raised. There was a date when it was valued at Rs. 16,770 or in round numbers Rs. 17,000 here too the increase was mostly due to injurious affection.

"Lots 2 and 5 in plan 19,336:—My first valuation of lots 3 and 5 was Rs. 22,973 tentative and that was raised to Rs. 25,270 and raised again to Rs. 37,500, on 28th February on 10th April I raised it to Rs. 45,000. Rs. 19,113 was for injurious affection. If I take the tentative valuation the value has been doubled."

I think these extracts are sufficient to show that the District Judge was right when he stated that he would not accept any statement made by Schokman, if it was not corroborated by other and more reliable evidence. Is there such other and more reliable evidence in that of Mr Kirk? The first point that strikes one when considering Mr. Kirk's evidence is that he had come to the Island just a few months before these events occurred and that he had to take charge of an office in which there was bitter feeling between his assistant and the Inspector, Mr. Schokman. Mr. Kirk had elected to trust Mr. Schokman in preference to Mr. Seneviratne in the first bit of work he had undertaken. The evidence indicates that there was public dissatisfaction at the way these assessments were made, which was reflected in newspaper articles and that as the last straw Seneviratne himself had sent a report against Mr. Kirk and his valuations in April 1929, which was being considered by the President of the Local Government Board.

How far Mr. Kirk trusted the judgment of Inspector Schokman in the matter of these valuations is shown in the following extract from Mr. Kirk's evidence:—Out of 63 valuations, 40 are in Schokman's handwriting. In 22 cases the valuations are in my handwriting. In 22 cases in which Schokman made valuations I disagreed with him, that is 22 out of 63. In all Schokman made 40 out of 63 valuations. I disagreed with 10 out of these. The other 22 I made the original valuations. In 7 out of 22 I revised."

Mr. Kirk and Mr. Schokman sought to strengthen their oral evidence by the production of two written statements P 10 and P 13 said to have been written by them independently just after the offer of the bribe. The value of such memoranda as corroborative evidence is of course incalculable, but it is just these two documents that which create all the difficulty. These two documents were not taken down from notes made by Mr. Kirk and Mr. Schokman or either of them during the conversation, but they are reproductions from memory and there are certain features in them which to say the least are remarkable. In justice to the arguments of Counsel I must proceed to indicate what these features are. Both Mr. Kirk and Mr. Schokman are agreed that the events culminating in the offer of the bribe and the ignominious departure of the accused ended at 6.30 p.m. on the evening of the 25th May, 1929. Mr. Schokman says, "After the two accused had left I went to Mr. Kirk's house with him. He telephoned to the Chairman's house, but he was not there. He asked me to call again about 7 p.m. with my statement of what happened. I wrote my statement in my bungalow without any connection with Mr. Kirk and took it to him at 7 p.m. He then told me he would call for me and asked me to be ready to go to the Chairman at 9 a.m. the next day. I brought my statement back with me, and took it the next morning to Mr. Newnham's house with Mr. Kirk. We saw the Chairman Mr. Kirk read his statement first and I read mine afterwards to the Chairman. The Chairman asked us to come to the Town Hall at 9 a.m. the following morning to have the statements typed. On the following day the Chairman read my statement and

made certain corrections in my manuscript. My statement was then typed. My original statement is P 10 and the corrections appear on it. The typed statement is P 11 and bears my signature."

Mr. Kirk in his evidence at pages 37 and 40 corroborated Mr. Schokman that he had asked Mr. Schokman to prepare his statement and come to him and that Mr. Schokman did come to him with his statement. He was not sure of the time when Mr. Schokman came with his statement, but it was about 8 p.m. Mrs. Schokman, however, had no doubts about the time taken by her husband to compile P 10 which was three-quarters of an hour. P 10 is in Mr. Schokman's handwriting in ink with hardly an erasure and is written in six and a half sheets of office paper, foolscap size and describes almost all the incidents connected with this case. All that I can say is to repeat Mr. Hayley's words that Schokman must be a literary genius to have turned out this faultless document in an hour or three-quarters of an hour or according to him in half an hour.

This achievement becomes all the more remarkable when we contrast it with Mr. Kirk's efforts. It took him over three hours to produce a document of four and a quarter pages of manuscript full of interlineations and erasures. Even then the last quarter page of the four and a quarter pages was completed the next day Although Mr. Kirk had asked Schokman to come to him with his statement Mr. Kirk was so conscientious that he did not even glance at Mr. Schokman's statement although his own literary production was giving him a great deal of difficulty at the time and he asked Mr. Schokman to take it home. Mr. Kirk gave his reasons as follows:—"Then Schokman came with his statement. I asked him if he had his statement. I did not read it as I did not want to read it. I thought it was improper to read it as it might be like colluding." Now to come to a comparison of these too documents. Mr. Kirk admitted that the language in the two was similar but he accounted for the similarity in the phrasing to Mr. Schokman's familiarity with his reports. It is not so much the similarity in language as is the exact correspondence in P 10 and P 13 of the various topics that were discussed when the accused made the offer that astounds me.

The Judge then proceeds to set forth in parallel columns that part of the two reports dealing with the topics discussed at the interview with the accused.

"In these two extracts twelve different topics are mentioned as having been discussed by three persons one of them being Schokman himself and all the time Mr. Kirk was listening to the conversation behind closed doors in Schokman's dressing room or office. Says Mr. Kirk, 'I had seen the second accused before and spoken a few words. I did not know his voice as well as Mack's. Their voices are very different. I can tell Mack's voice anywhere. He talks fast.' He was standing up and listening, and for the first time at the trial when the powers of his hearing were challenged, and it was pointed out to him that it was not possible to hear Schokman if he spoke low, he suddenly developed a crack in the panel of the door. "The panel was there and there was a crack in it, I had my ear against the door."

Remembering all these difficulties under which Kirk was labouring, contrast the two statements. Not one topic is displaced in the two statements out of its proper order, and only one (K) is omitted in P13. Even the identity of the three speakers is correctly set out at every stage of the conversation. But the most surprising thing occurs in B. According to Mr. Schokman (page 25) B refers to at least a ten minutes' conversation. He discussed all the bungalows. . . After Mack left I went there . . . The conversation was a mere juggle of figures. . . . ' And yet by a wonderful coincidence both Mr. Kirk and Schokman without any preconcert or agreement have referred to this part of the conversation at B in a few words and in almost identical words. So that P10 and P13 are remarkable not only in what items are mentioned in them but, also in what they omit. There is another remarkable concidence. The expression 'In the Police' is not English and even if it is a reproduction of an expression peculiar to Mr. Carron, it is strange that Mr. Kirk listening through the crack did not think it was due to a mistake in his hearing and that he did not

probably hear the word 'Station' or 'Court' after the word 'Police' and that he did not correct the expression in his version.

It will be noticed that in P10 and P13 there is no reference to Mr. Schokman repeating any answer of the accused loudly for the benfit of Mr. Kirk. But both Mr. Schokman and Mr. Kirk admitted in evidence that Schokman repeated a very significant answer of Carron for the benfit of Mr. Kirk. Says Schokman: 'I did not shout out: 'If I get you 71 you will get me 2' I repeated what he said loud for Mr. Kirk to hear. I was not out to induce them to offer me a bribe.' And again, 'I repeated what second accused said not because Kirk could not hear what he said. I did not polish his language or unconsciouly put in what he said in my own language.' Mr. Kirk said, 'Schokman repeated some of the conversation. I believe he did repeat, 'If I get you Rs. 71,000, then I am to get Rs. 2,000.' Mr. Kirk then added, 'If he (i.e., Schokman) said it in a low voice, 'What about me. I would not have heard.'

In view of the defence and the law on the subject which I shall dicuss later, this repetition of the alleged incriminating words by Schokman for the edification of Mr. Kirk assumes a very ugly aspect. It was admitted by Schokman that he offered drinks to the accused and that he offered cigarettes. "Then I asked my wife to bring drinks for all three. After the drinks I offered the cigarette case. The drink was lemonade. And yet Mr. Kirk with all his wits alert behind the closed doors listening with rapt attention omits to notice all this. Says Mr. Kirk, 'I do not recall the fact that Schokman offered drinks. I do not remember his offering cigarettes. I did not notice the smell.'

Immediately before the final denouement when the locked door were flung open and listening Mr. Kirk was exposed to the gazed of the two accused, the following incident occured. Let me quote from Mr. Schokman: 'After this I went inside with the glasses and I kept them and I came and thereafter I opened the door. I did not go in to see if Kirk was there. I was certain he was there. I heard the creaking of the door which indicated to me Kirk was there. I presumed that Kirk locked the door. I walked in for Kirk to see me and to know that I was now ready to open the door. I just thought I might go in and come. I had no reason for doing it.'

The length of the table is a bit more than the door. There is enough room between the door and the table and when I opened the door he was between the door and table. I told him when I went in that I was opening the door now. I spoke from the door from the drawing room to the bedroom. I went a little beyond the door into the dressing room. He was standing between the door and table. I can't say if he had rubber shoes. He said nothing or made any signal. I also pointed out with my finger that I was going to open the door. The door opens outwards. I can't remember if accused had to shift their chairs to open the door. I can't remember whether the door came into contact with the chairs. The accused did not get up when I opened the door. They got up when Kirk came.'

This is what Mr. Kirk says about this matter: 'As soon as Schokman finished the sentence: "They might find themselves in the criminal dock,' he opened the door and confronted them with me. From the time the accused came in and I heard the shuffling of feet till he opened the door Schokman never left the verandah. He did not come round to where I was and did not whisper anything to me or signal to me with his hand or his finger. If Schokman did come in and whisper and signal to me I have forgotten the incident. I am absolutely certain the incident did not happen. I cannot be clear about it. I did not hear the doors bang against the chairs. The chairs could not have been up against the door.'

In the Police Court and at the trial both Mr. Kirk and Schokman repeated the incidents of the 25th May exactly as they appear in P10 and P13 almost in the same words. I am not surprised at it because Mr. Kirk admitted that he could not remember how many times he had read P13, 'a dozen times.' more or less—not as nearly as 50 times. From the two examples I have quoted above it will be seen that when Mr. Kirk and Schokman are examined

about incidents not recorded in P10 and P13 they contradict themselves hopelessly.

"I now come to the incidents connected with Mr. Schokman's efforts to secure a Police Officer to over-hear the conversation, incidents which were stressed by the learned Solicitor-General as pointing conclusively to the guilt of the accused. In P13 and in the evidence Mr. Kirk gave in the Police Court, Mr. Kirk stated that on May 25th Schokman came and told him that Mack had seen him and that Carron would come later to make certain proposals to Schokman. Mr. Kirk 'then instructed Mr. Schokman to get a Senior Police Station Officer or C.I.D. Officer to return with him to his bungalow with a view to overhearing Mr. Carron's conversation with him. Mr. Schokman returned shortly afterwards and reported that he had been unable to secure a senior police officer and as there was no time to secure any other responsible person I decided to go myself.

In P13 Mr. Kirk fixed the time at which Mr. Schokman first reported the proposal of Mack as being about 5 p.m.' In the Police Court Mr. Kirk fixed the time at which Schokman came and reported his failure to secure a police officer at 5.30—6 p.m. The police officer living nearest to Mr. Schokman is Mr. Altendroff, the D.I.G.P., on the other side of Sumner Place. Mr. Schokman in his evidence at the trial said as follows: 'After Mr. Mack left I went to Mr. Kirk's house and reported everything that had happened. He instructed me to get a police official to overhear the conversation. I went to Mr. Altendorff who lives quite close to me but he was not at home. I reported that to Mr. Kirk who asked me to go to the police headquarters. I went there in my car and on my way, as I passed my bungalow, I saw 1st and 2nd accused at my gate in a car. I told 1st accused that I was going to the Fort on urgent business and would we back in half an hour's time."

Now, if it is true that Mr. Schokman did go to Mr. Altendorff's house and that finding him absent he reported his failure to Mr. Kirk, this would go some way to support the Solicitor-General's arguments. But there is a very grave doubt about the truth of this incident. Nowhere in P 13 nor in Mr. Kirk's evidence in the Police Court did he refer to Mr. Schokman's mission to secure Mr. Altendorff. On the other hand P13 and the Police Court record are specific that Mr. Schokman first came at about 5 p.m. and then returned at 5.30—6 p.m. to report his failure. And yet Mr. Kirk at the trial stated as follows in examination in chief: 'I instructed him to try and secure a senior police or C. I. D. officer and bring him back to his bungalow with a view to overhearing the conversation between Schokman and Carron. Schokman went away. I think he said that he was going for a police officer who was living close by. I cannnot be sure if he came by car or on foot. I was on the verandah. He came back and said the police officer was not at home. I told him to try and get somebody else and Schokman went. He was absent about half an hour, I think, and came back and said he could get no one.'

This is a serious addition to Mr. Kirk's Police Court evidence and his statement P13. But let us test it further. No one has been called from Mr. Altendorff's house to corroborate Schokman, nor even to prove that Mr. Altendorff was absent from home, though various other police officers have been called. Further it will be seen from the extract of Schokman's evidence given above that if he did go to Mr. Altendorff's house, he did not know at that time the exact hour at which Mr. Carron was comming to see him. If Schokman did go to Mr. Altendorff he must have followed as he says the route marked red in the plan produced and he must have noticed the hedge at X barring his way to Sumner Place. But Schokman is positive (page 22) that there was no hedge blocking the road, although Mr. Kirk who certainly went along this route once that evening says: "At the end of it is a hedge and a portion of a way. We climbed over the wall," and again 'the hedge was too high and too awkward.'

This denial of the existence of the hedge at X is remarable because, if Mr. Schokman is to be believed he must have gone past it three times and must have avoided it by climbing a wall on the side. In P13, as I have already pointed out, Mr. Kirk gives the

time of Mr. Schokman's first visit to him as 'about 5 p.m.' and in the Police Court he said that Schokman returned from his visit to the police headquarters and the racecourse at 5.30—6 p.m. This time 'about 5 p.m.' has been deliberately interpolated in P13 by Mr. Kirk, so there can be doubt about the correctness of the time. If so, how can one account for the times given by the various police officers who were called to give evidence? According to Mr. J. G. de Saram, it was about 4 p.m. when Mr. Schokman telephoned to him. According to Police Sergeant Jayawardene on duty at headquarters, it was about 3 p.m. that Mr. Schokman came there and according to Mr. Dickman, the last police officer to whom Mr. Schokman went, when he was on duty at the racecourse it was about 3.30 p.m. or 4 p.m. that Mr. Schokman came and that it must have been about the 3rd., 4th or 5th race. And according to the evidence of the police sergeant Mr. Schokman wanted an A.S.P. or a higher officer; the message the telephone operator transmitted to the C.I.D. and the Crime Office was for the services of a Sperintendent.

Why Mr. Schokman was not satisfied with an Inspector I cannot understand, especially in view of Mr. Kirk's statement that he only needed a senior police station officer or C.I.D. officer. Mr. Schokman had only to go to the Borella police station within whose division he was living to get the assistance of the Inspector or sub-Inspector. It must have been due to the anxiety which Mr. Schokman had displayed to get an A.S.P. or a Superintendent that induced the Chairman, I think to alter the words 'responsible police officer' in P10 to 'commissioned public officer.' Then again why did Mr. Schokman ring up Mr. J. G. de Saram, A.S.P., of Colombo North, who, he must have known would never come out of his division to do police work at the mere request of Mr. Schokman?

Why did he go all the way to the racecourse to drag Mr. Dickman when he was on duty? Did he except Mr. Dickman to desert his post and accompany him to his bungalow? That Mr. Kirk had realised the importance of the time given by him in P13 before he came to give evidence at the trial is proved by his evidence given in examination in chief at the trial. "On the 25th May, Schokman came to see me at my bungalow. He came, I believe, by motor car. I cannot state what time it was—my impression is it was between 4 and 5 p.m. It might have been a few imnutes before 4 p.m." In view of all these strange features is it surprising that the District Judge believed the defence suggestion that Mr. Schokman's efforts to get a police officer were not genuine and that Mr. Schokman had first made a pretence of trying to secure a police officer for purposes of evidence and then gone to Mr. Kirk, and that, after seeing Mr. Kirk he again pretended to go in search of a police officer and so probably deceived Mr. Kirk?

That is the whole defence, that Mr. Kirk was made a cats-paw of by Mr. Schokman and blindly lent himself to further Schokman's plan, and later, at the trial, went out of his way to corroborate Schokman even at the risk of constradicting his own statement in P13. I need only refer to one other incident to illustrate Mr. Kirk's proneness to help Schokman out of a difficulty. The facts implicating the first accused stand on a different footing to those against the 2nd accused. For it is admitted by Kirk and Schokman that it was Carron alone who offered the bribe, if it was offered at all. But the Crown seeks to implicate the first accused, not only, because he was present with the second accused on the 25th May, but also because Mack had twice previously offered a bribe, namely an offer of Rs. 2,000 on 18th March and a later offer of Rs. 1,000 on 25th May. How Mack came to think Schokman would accept Rs. 1,000 when he had previously refuse Rs. 2,000 I cannot explain. These previous offers depend on the veracity to be attached to Schokman; but the Crown sought to strengthen Schokman by means of corroborative evidence from Mr. Kirk. This I think has ended in a dismal failure and I will endeavour to indicate shortly why this effort has failed.

In P13 Mr. Kirk refers to the incident of March 18th as follows:—"In March last Mr. Schokman informed me that Mr. Fritz Mack had made several visits to his bungalow and that on one of these visits he had hinted that if he would be prepared to use his influence in advising me to recommend the Chair-

man to increase the offer of compensation Mr. Mack would arrange for Mr. Schokman to receive a share of any increase." In P10 Schokman states definitely that Mack said if the compensation could be increased from Rs. 65,000 to Rs. 72,000, the difference of Rs. 7,000 could be divided between Mack ,Carron and Schokman. In their evidence in the Police Court, both Schokman and Kirk fixed the incident as having taken place in April, and indeed, according to Kirk, it was 'about the 1st April.'

Mr. Schokman reported the affair the next morning. Later, at the trial, the date of Mack's visit was fixed definitely as 18th March; Mack of course denied that he had ever made any improper suggestion and admitted that he had visited Mr. Schokman as he lawfully may because he was retained by Mr. Carron. Both Schokman and Kirk admitted at the trial that 18th March was the correct date. If so, I cannot understand why Mr. Kirk, who says in P13 that he was incensed at this audacious offer and forbade Mr. Schokman to have any discussion with Mack and in fact instructed Schokman to inform him at once if Mack called at his bungalow to enable him to take action in the matter, did not report the incident to the Chairman or even make a note of it in his papers at the time.

What is still more unaccountable is that Kirk met Mack on the same morning, 19th March, after presumably Schokman had reported to him, before the Chairman and he made no mention of the occurence. He even allowed Mack to come into his bedroom on the 23rd May when he was ill and had a friendly discussion with Mack. I cannot imagine a head of a department having any dealings with Mack when a serious complaint had been made against him by his subordinate officer. Again, there is a remarkable contradiction in the terms of the alleged offer as contained in P10 and as they occur in P13. These inconsistencies in Mr. Kirk's conduct and his evidence are very perplexing.

Similary there is an unaccountable contradiction in the terms of the offer Mack is said to have made on 25th May, in P13 and P10. In P13 Mack had merely 'broached the subject' and Carron's son was to see Schokman later to make certain proposels. In P10 the offer is specific namely, Rs. 1,000 to Mr. Schokman. This discrepancy cannot be got over, as the learned Solicitor-General attempted to do, by saying that P13 was a mere precis, because Kirk's evidence in the Police Court and the District Court are confined to the bald terms in P13.

It will thus be seen that the District Judge had ample ground for acquitting the 1st accused, Mack, because the offer was made, if at all, on the 25th May evening by Carron and not by Mack, and the two previous offers by Mack on 18th March and 25th May early afternoon are clouded by doubts. Indeed Mack's very presence at the interview with Carron was due to an accident.

I am now left only with the case against Carron and a few words on the law should be stated by me. Carron's defence was that the suggestion had come from Schokman and that he merely said 'if my father agrees.'

The Ceylon Penal Code is based on the Indian Penal Code and so far as the offences charged against the accused are concerned the law is identical. The substantive offence in the Code is for a public officer to accept an illegal gratification for showing favour. A person who offers bribe to a public servent can only be .charged as an abettor. A person is said to abet the doing of any thing under Section 100 if he only does one of the following things, namely: (a) instigates any perso to do the thing or (b) engages in any conspiracy for the doing of that thing or (c) intentionally aids, by doing any act, the doing of that thing. So that if money is actually offered to a public servant and he accepts it the public servant is guilty under Chapter IX and the abettor under Section 102.

If he does not accept the money and refuses the bribe, only the abettor is guilty under Section 109. If no money is offered and the act is left only with the bare offer of the payment of a sum of money in the future, it is of vital importance to find out whether the offer originated with the public servant or the so-called abbetor. If it originated with the public servent, and the abettor merely acquiesced for the time being, the abettor can in no sense of the term be said to have instigated the public servent to agree to accept a

bribe nor can the abettor be said to have conspired with the public servent.

"It would be of course different if the abettor follows up his mental act of agreement by the actual offer of money, for then his act will come within (c) above. This seems to me to be the effect of the sections dealing with these offences. Although a report of the draftsman or Committee on an Ordinance can in no sense of the term affect the plain meaning of the Ordinance, yet the following extract from Gour giving a portion of the report of the Law Commissioner's on the Indian Penal Code will show that the intention of the draftsman was the same as the one which I thought probable by looking at the sections. (His Lordship here quotes the Sections.)

It was owing to the necessity created by the law and the defence in this case that I have been forced to discuss the facts so closely. It was important to find out exactly what actually took place at the interview, namely, whether the offer came really from Schokman in the first instance followed by a qualified acquiescence on the part of the second accused or whether Carron came there determined to offer the bribe. To my mind the fact that Schokman repeated the terms of the so-called offer, presumably to enable Mr. Kirk to overhear it, has a very important bearing in this case. It has an ugly look, and all the other inconsistencies which I have enumerated above simply enhance the doubts in which the whole case is shrouded.

I need mention only one other matter pressed by the Solicitor-General as proving the guilt of the accused, and that is the expression of regret on the part of the accused before their final departure. Even this point must ultimately depend on the veracity of the two witnesses, Kirk and Schokman."

His Lordship gives in parallel columns the rest of the narrative in P10 and P13 and continues:—

Mr. Kirk's evidence in the Police Court was to the same effect. But what happened in the District Court? Let me quote from Mr. Kirk: 'Schokman thereupon opened the office door and introduced me to Carron as the Govenment Assessor. I saw Schokman and the two accused. The two accused stood up and walked round looking very shamefaced. I said: I have over-heard your illuminating conversatoin, and all I can say is that if that is the way you conduct business in Ceylon, then God help Ceylon.' I also said I was ashamed and disgusted at their conduct in attempting to corrupt my subordinate officer, and that I should consider what legal action should be taken in the matter. Mr. Mack admitted that the part he had taken in the matter was improper and apologised to me," and later in cross-examination.

I did not refer to 'God help Ceylon' in my statement, or in my evidence I have since recalled my exact words. It is a very emphatic way of expressing oneself something one will not readily forget. My statement was not intended to be a verbatim report of what occurred. I did not intentionally omit it. I am not trying to make the case as black as possible against the accused. I did not think of it and therefore did not put it down.

What is one to say about these little touches in Mr. Kirk's evidence? It almost makes one suspect that Mr. Kirk was himself blest with the same exuberant resourcefulness as Mr Schokman.

As regard to motive for this charge, it is not the duty of the accused to indicate what the true motive was but a reason can be given for the charge. Mack was strenuously pressing Carron's case and urging that the treatment given to Carron could not be justified when compared with the treatment extended to what is known as Negris' bungalow. In the latter case compensation was given on the basis of a 23 year purchase and the reduction was 20 per cent. for rates and repairs whereas in the case of Carron's bungalow the compensation was based on 21 years purchase and the deduction 25 per cent. The matter of the compensation had been referred to Court, and Mack had pointed out to Kirk and Schokman that they were simply courting trouble. That Mr. Mack's threat was not an empty one is proved if one looks at P15. On 4th March the Chairman offered Rs. 61.759.50 arrived at by capitalizing the rent at Rs. 325 a month at 21 years purchase and the deduction was at 20 per cent.

The Council was to have the right to sell the materials of the home. This

offer was not accepted. On 19th March when the first accused appeared for Mr. Carron for the first time before the Chairman, the offer was raised to Rs. 62,452.50. This sum was reached, let it be noted, by capitalizing the rent at Rs. 350 a month at 21 years' purchase, but the deduction was at 25 per cent.

And now let me allude to a circumstance which almost makes this prosecution a tragedy. The acquisition proceeding show that the Chairman ordered that "the claimant was to have the right to sell and demolish all the materials" within 60 days of the Council obtaining vacant possession. The tragic circumstance is that this order about the materials was not communicated to Mr. Mack. Whether it was known to Mr. Schokman and Mr. Kirk I cannot say, but Mr. Schokman denied that he knew about it. Later on the 26th April the offer was raised to Rs. 63,000 by the Chairman; even then the order as regards the materials was not communicated to Mr. Mack who refused the offer. And when Mack refused this offer in ignorance of the order regarding the materials, the Chairman withdrew, presumably after this case began, the order regarding the materials, and the materials were sold and fetched Rs. 8,200. If the order regarding the materials had been communicated to Mr. Mack, he would obviously not have pressed the matter for a moment. If he was offered Rs. 63,000 and the materials that would mean an offer of Rs. 71,000. The gravamen of the charge against the second accused is that he offered Rs. 2,000 to Mr. Schokman to induce Mr. Kirk to raise the offer to Rs. 71,000, when as a matter of fact on the 26th April the Chairman had already in effect made an offer of over Rs. 71,000.

I thing I have said enough to show how these assessment proceedings have been conducted. It is incredible to me that both Mr. Kirk and Schokman were ignorant of the Chairman's order regarding the materials made on the 19th March, 1929. The Chairman's letters to the Government show that he was reluctant to go on with these acquisitions till he had the help of Mr. Kirk. It was therefore Mr. Kirk who was responsible for these assessments and he must have known of the order made in P15 on 19th March, 1929, by the Chairman regarding the materials. In April, 1929, Seneviratne, the Assistant Assessor, had begun to use pressure against Kirk and Schokman and had complained about these excessive valuations and an inquiry was pending. Is it too much to imagine that Schokman was anxiously waiting for an opportunity to rehabilitate himself and that the success of such an enterprise would be assured if he could rope in Mr. Kirk also into the venture?

The conclusion to which I have come is that I agree with the District Judge that it will be highly dangerous to convict the two accused on the evidence recorded. The appeal is dismissed."