REMINISCENCES
OF
THE RIOTS OF 1915

By

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COLOMBO
THE UNITED PRESS LTD.
1941

PREFACE

The idea of writing my reminiscences of the Riots of 1915 often crossed my mind, but so far I did not carry it out because there did not appear to be any special call for it. The Riots seemed an episode which we had better forget. But now I am rather sorry I did not place my testimony on record earlier, for our countrymen are beginning to show that they are in great need of learning the lessons which the Riots taught. Fortunately, it is not yet too late to record my testimony, as there are many people still happily alive to corroborate my story.

Moreover, in the course of the recent discussion on the Education Bill, when the Buddhist public was being stirred to hostility towards the Christians, a Buddhist newspaper made a direct reference to my activities during the Riots (1). Neither that newspaper nor the reference is worthy of notice, but even a straw can indicate the direction of the wind. At any rate, the connection of my name with the Riots gave me the stimulus that was so far lacking, to put my reminiscences on paper.

Albert A. Wickramasinghe.

Kegalle,
1939.

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(1) "Mr. Wickramasinghe laments that while after 1915 the Buddhists called the Catholics brothers, they are forgetting fraternal obligations. Those who know the inside incidents of 1915 have no reasons to glory in claiming relationship with Mr. Wickramasinghe at any rate", *The Sarasavisandaresa, English Supplement*, Friday 11th November, 1938.

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THE GAMPOLA PERAHERA CASE

For some time previous to the Wesak of 1915 there was a rumour afloat that there was going to be trouble between the Buddhists and the Muslims. The cause for it was what is known as the Gampola Perahera case. In 1912 the Government Agent of Kandy, Mr. G.S. Saxton, ordered the trustees of the Buddhist temple not to play any instrumental music within a hundred yards of the mosque. The trustees thereupon stopped all preparations for the *perahera* and sought the decision of the Courts, as they believed that a *perahera* in the Kandyan Kingdom was a privileged right by virtue of the fifth article of the Kandyan Convention (1). The District Judge of Kandy, Dr. P. E. Peiris, delivered Judgment on 4th June, 1914, upholding the contention of the trustees. The Government appealed against this decision and the Supreme Court (Shaw and Sampayo J J.) reversed the decision on 2nd February, 1915. There was an appeal to the Privy Council and before the Wesak of that year, agitators went about the country stating that it would help the Buddhist cause if they showed their resentment against the Muslims in some tangible form.

This agitation was conducted mostly by street preachers in a new 'national' attire. No one took the agitation seriously and certainly no Buddhist leaders supported it. But the agitation stirred the ignorant people and bore bitter fruit.

RIOTING IN KEGALLE DISTRICT

It was from the newspapers that I first learned of the riots that took place in Kandy. After I read the paper, I remember, in the Courts, on Monday, 31st May 1915, hearing some Kachcheri officials relate stories of riots at Kadugannawa on the previous night. It was stated that rioting would take place at Rambukkana that afternoon

(1). "The religion of Boodho, professed by the Chiefs and Inhabitants of these Provinces, is declared inviolable and its Rites Ministers and Places of worship are to be maintained and protected," Article 5 of the Kandyan Convention.

This action coming on for final disposal before H. E. Beven Esq., District Judge of Kegalla, on the 13th day of June, 1917, in the presence of Mr. Advocate R. L. Pereira with Mr. Wijeratne, Proctor, on the part of the plaintiffs, Mr. Advocate Drieberg with Proctor Mr. Ondatji on the part of the 1st defendant, Mr. Advocate Brooke Elliot with Mr. W. O. Herat, Proctor, on the part of the 2nd defendant, and of Mr. Advocate Molamure with Proctor Mr. Samarasinghe on the part of the 3rd defendant, it is ordered and decreed that the plaintiffs be and they are hereby declared entitled to the lands mentioned in the schedule hereto annexed and that the defendants be ejected therefrom and the plaintiffs be put and placed in the quiet possession thereof; that the defendants do pay to the plaintiffs damages at the rate of Rs. 550/- per annum from the 21st June, 1915, up to the date hereof and costs of suit.

It is further ordered that the deeds of transfer Nos. 4664 and 21600 dated the 21st June and 27th July, 1915, and attested by H. S. Manchanayake and G. J. Abeysekera, Notaries, respectively, be and the same are hereby declared null and void.

(Sgd.) H. E. BEVEN,
District Judge.

The 13th June, 1916.

Schedule referred to.

1. An undivided 95/108 shares out of Boraluwehena in extent 15 amunams paddy sowing situated at Diyagama in Deyala Dabamuna Pattu in Kinigoda Korale in the District of Kegalla and bounded on the east by the village limit of Keulpona, south by the village limit between Keulpona and Kalugalla, west by the Galenda and on the north by the limitary stone of the hena belonging to Selathi.

2. All that land called Diulgahamulahena six lahas paddy sowing in extent situated at Diyagama aforesaid bounded on the east by Karadetta and Nugawela south and north by endaru fence and on the west by ditch.

Journal entry of 14-3-18. * * *

Mr. Wijeratne for plaintiffs certifies payment to Court of the sum of Rs. 1,670/- by the 1st defendant of all costs due to the plaintiffs in full satisfaction.

Payment is hereby certified.

(Sgd.) H. E. BEVEN,
District Judge.

This last piece of information reached me about 11 a.m. I thereupon immediately informed the Magistrate, Mr. A. P. Boone, who was already on the bench, and suggested going there to prevent rioting. The Magistrate did not heed my suggestion, but smiled and continued his work.

By 3 p.m. he received a telegram from the Assistant Government Agent that the town of Rambukkana was in flames. Upon this the Magistrate left the Court.

By evening I saw agitators coming to Kegalle on bicycles, and by 7 p.m. rioting began in Kegalle also. I tried my best to dissuade the young men of Kegalle from joining the rioters, but failed. Many Muslims, men and women, fleeing for their lives, sought protection from me. I did all I could under the circumstances, even taking them into my property.

Then I was told that the officials of the town were acting in a cowardly manner, taking no steps to prevent the rioting and even actually allowing it in their presence. Some even said to the rioters: "What you have taken from one house is enough now; pass on to the next." The Police, it appears, fired their rifles in the air. In the meantime it was stated that the whole of Rambukkana was burnt down and that some people were burned to death or injured.

On the next day, about 9 a.m., I received a letter from the Assistant Government Agent, Mr. Burden, asking me to go to Polgahawela to bring the Inspector General of Police, Mr. Dowbiggin. I went there accordingly and brought him and some others to the Kegalle Kachcheri and took them afterwards to the Polgahawela Resthouse. While there, the Inspector General received information that rioting had broken out in Alauwa. He thereupon ordered a special *posse* of constables to come by train. I suggested going there instead with the constables who were available, as there were, in addition, twenty European planters; but the I. G. P. did not take up my suggestion.

By the time the special train arrived at Alauwa the rioters had made themselves scarce. When this information reached us, I was asked to come to Kegalle and take instructions from the Assistant Government Agent. It was 4·30 when I arrived. I was sworn in as a Special Constable and asked to take charge of Warakapola area and protect the Muslims. I was told to take with me some Kegalle lawyers, Mr. Nugawela R. M., and Mr. Sinclair, Superintendent of Gasnawa Estate, to protect the Muslims and if possible to stop rioting.

We went to Nelundeniya and on the way I spoke to the influential Buddhists and persuaded them to try their best to prevent hooligns from attacking the Muslims. With the R. M. and Mr. Sinclair I drove as far as Niyandurupola. Wherever we saw rioting, we succeeded in stopping it. I even arrested several men who were looting the boutiques of the Muslims. At Niyandurupola there was a large crowd of rioters looting. I seized a man by his hair-knot as he was in the very act. He whisked out a knife and turned on me. He was one of my own coolies, and recognizing me he flung the knife away but escaped from my grasp.

That evening and the next day, I arrested over 40 rioters and took them to Nelundeniya. When I was on the point of sending them to Kegalle, Mr. A. P. Boone arrived and told me that there was a plan to rescue them on the way at Galigamuwa, and asked me not to send them to Kegalle but to take them to the Railway Station at Ambepussa. Two planters were told off to escort us. At Ambepussa we learnt that there was going to be an effort to rescue the prisoners. Upon this the planters refused to go beyond the Resthouse and asked me to leave the men with them and go and inform the authorities. I left the men in their charge and went to the Railway Station to give information. The road was blocked and I could not get to the station because of the rioters. Meanwhile the prisoners were rescued by the crowd.

The Headman of the place, thereupon, persuaded me not to go any further but to stay in my estate as there was a great deal of ill-feeling against me. The people, it appears, were indignant that while no less a person than the A.G.A. asked them "to have done with one boutique and pass on to the next", I, on the contrary, was preventing them from wreaking their vengeance on the Muslims "who were enemies of the Buddhists and of the British Government".

Angry crowds were gathering on all sides and I considered it wise to accept the proferred advice, and went to my estate for the night. From there I despatched letters to the Officials at Kegalle, but the men whom I sent with the letters came back through fear.

I must say the attitude of the officials was mystifying in the extreme. There was no attempt to stop rioting, though, whenever an attempt was made, it did succeed. This gave colour to the statement that "the Muslims were enemies of the British Government". The people who were accustomed to see Government officials stand up for law and justice, could scarcely help concluding that the officials' non-intervention was a tacit encouragement to them. Educated and reflecting people who were aware that such was not the case, could not help thinking that the officials were either cowardly

and did not dare to face the situation or wished the people to implicate themselves more and more, so as to justify severe measures afterwards.

PROCLAMATION OF MARTIAL LAW

When I returned next day to Kegalle, Martial Law had already been proclaimed and the Riots had reached their most momentous stage. I was appointed censor at the Post Office and soon became aware of a most portentious state of affairs. Hitherto, before the proclamation of Martial Law, the cry was "Muslims are coming to attack the Buddhists" by which false rumour, ignorant people were instigated to attack local Muslims. Now the cry was "The Buddhists are coming to rescue the prisoners"—another false rumour by which people, who cannot be described as ignorant men, were instigated to attack innocent men.

Up to now, in the whole course of rioting, there was, as far as the Kegalle District was concerned, no case of murder or serious violence against persons, though it was said that when the bazaar of Rambukkana was burnt down some people lost their lives. But now when the rioting was over and Martial Law was declared, I learnt that the Sinhalese people were being shot down, in different places by the Punjabis, without any trial, on the orders of certain Military units going about the District. When rioting was going on, the Officials took no steps whatsoever to stop rioting; but when the rioting was over, alleged 'rioters' were being shot riotously 'without inquiry.

This was brought home to me gradually. I was called upon by the A.G.A. to prosecute the prisoners that escaped from custody, and those against whom imformation was supplied by Special Constables. I filed cases against those whom I knew to be rioters and those who were reported to be such.

Those whom I actually knew to be rioters I charged. But no list had been kept of the arrested persons that escaped. Four or five of those charged received sentences varying from three to six months. As I was inquiring into these cases for the purpose of prosecution, I discovered that two men whom I knew by sight, but whose names I did not know, and who were among those that accompanied me, were being charged, on information supplied by Muslims. At the very time they were supposed to have been looting, these men were with me, at an entirely different place and on quite a different errand. I promptly declared the facts to the Magistrate, withdrew the charges and carefully abstained from charging any person, except two or three men, whom I had arrested myself and who had escaped custody.

It was bad enough that innocent men should be charged on the flimsy evidence of some Muslims. I soon became aware of a far uglier feature. Certain officials were permitted to release anyone in the course of their private inquiries. This opened the door to most heinous crimes in the name of justice and good government. Rich men, men with money or property, were arrested and kept in custody, till money was paid to certain officials who were able to get them released. Of many such cases I will give three instances, of which all the facts are within my personal knowledge.

1. A certain rich man was arrested but released after payment. The amount paid was not very large. Thereupon others went to arrest him again. The man hid himself. His wife came to me with a tray full of sovereigns, and begged me to save him. I knew that blackmail was being attempted. I was at this particular time out of favour with the authorities. For, though I had been a Special Constable and had arrested rioters and earned the disfavour of the people, I would not countenance false charges. I thus earned the disfavour of the authorities. The situation was rather perilous to me. I was trying to save men from false charges by the officials who were running riot, just as I had tried to save innocent men, when there was rioting by the people and when the officials would not intervene.

I therefore told the woman to keep her money, but if she wanted to save her husband, to let the public believe that her husband was severely ill of dysentery. Dysentery had actually broken out in the jail in which her husband was for some time. The story was therefore believed and the man escaped further blackmail.

2. A Sinhalese Kangany of Atale Estate was arrested as a rioter and was in jail pending Court Martial. His relatives came to me with the story that a certain official wanted Rs. 500/- to set him free. Another Proctor received a letter from the Superintendent of the estate inquiring whether it was true that the man's life could be saved by the payment of Rs. 500/-. The Proctor gave the same reply as myself, namely, "Dont pay".

The man was duly Court-martialled, sentenced to 20 years imprisonment, and died in Jaffna jail in six months. He was absolutely innocent of the charge and Rs. 500/- would have saved him. I knew that it was on our advice that the sum was not paid. The only compensation that I

could make for the unfortunate death resulting from my honest and sincere advice] was to administer the dead man's estate free of all charges and thus secure the man's property to his wife and children without the expenditure even of the costs of law.

3. The 3rd case is that of two men who were arrested and, while in custody, made to transfer their lands in order to escape Court-martial with its inevitable consequences. This instance was the subject matter of a case *(D.C. Kegalle Case No. 4173)*, which will be referred to in the sequel.

These are only three instances of acts of blackmail of the worst type brought about by the enforcement of Martial Law.

I was successful in saving at least three men who were hunted for their lives by the supposed guardians of the people, the officers acting under Martial Law. I despatched two secretly to Batticaloa and Trincomalee, by little known jungle paths, by way of Galagedera. The third was Punchirala Aratchi of Nilwakkana, who had been acquitted in the Police case. Mr. Sly threatened to shoot him the moment he returned to his village. I overheard this threat and warned the man. He was hiding in the forest when Mr. Sly actually went with dogs and Punjabis to shoot him.

Some people were Court-martialled, not because they were rioters, but because they were well-to-do men, from whom money could be extorted. If money were not forthcoming, they would be shot, and no one left to tell the tale. One innocent man, wickedly accused in this way, was Abilinu *alias* Saiya of Rambukkana. Some covetous officials thought that if the man were convicted of treason his estate would be confiscated and that they could divide the booty; but fortunately for him the false evidence concocted against him broke down at the trial.

Other cases of men I had helped to escape, I do not mention here. Many of them are known to the Senanayake brothers, F.R. and D.S. I would wish, at this stage, to place on record my very deep appreciation of the most valuable services rendered by the Senanayake brothers to this country in general and to the Kegalle District in particular, to redress the grievances which arose under Martial Law. Were it not for their wholehearted encouragement and support, my own efforts would not have borne fruit.

My situation underwent a change. I was first a warm supporter of the Government in maintaining law and order during the riots. Then I became a supporter of justice and innocence and defender of the

Buddhist Sinhalese when false charges were brought against them by officials, or when they were subjected to exactions and vexations without trial. I then became a marked man and was exposed to the bullying of officials in high quarters. When it became known that I was exposing the wrongs inflicted on the people during the reign of terror, I was set upon by Mr. A. G. Forrest and threatened with dire penalties if I did not desist from agitating. He even declared he would report me to the Attorney General and the Supreme Court. That did not prevent me from the cause I had espoused, and it was in defiance of all the official threats that I began the activities which resulted in the appointment of the Kegalle Shooting Commission.

The bungling and mismanagement of the riots can be expressed in a very few words. At the outset the officials did not take serious notice of the riots and were almost guilty of criminal negligence. When the riots spread and assumed alarming proportions in Colombo, there was a panic, and the officials and the military went about executing innocent people and permitting dishonest subordinates to blackmail the rich Buddhists. Those who did not pay up were accused and Court-martialled.

RIOT COMPENSATION

The next phase of the affair was the collection of riot compensation from the Sinhalese to pay the Muslims. It was in a way the worst phase, for those responsible for it were high officials who had lost every sense of proportion, of justice and honesty. The compensation was exacted by force while Martial Law was prevailing, and those who did not pay were lashed and threatened with jail. All that was done before the 31st August, which was the date on which Martial Law was to be withdrawn after passing an act of indemnity to protect the high-handed acts of the officials!

I received an order from the Assistant Government Agent calling upon me to pay riot compensation. I was a Catholic; I had taken no part in the riots to the personal knowledge of the Assistant Government Agent. I therefore not only positively refused to obey his order, but declared my determination not to pay under any circumstance. Thereupon I received a communication from the Chief Commissioner, J. G. Fraser, threatening me with jail, if I persisted in my refusal. I replied to the Assistant Government Agent, through whom the communication was sent to me, that I was not going to pay and would rather go to jail. The demand was not repeated. I did not allow any member of my family in Kegalla to pay compensation.

Under Martial Law my car was commandeered by the Military. I received an order to send the car for their use. I replied that they could come and take the car if they were able to manipulate a steam car, as I had no driver at the time. The demand was not repeated.

So far for myself. But I must say frankly and with a full sense of the responsibility of the statement, that during the period of Martial Law the authorities behaved towards the Buddhist Sinhalese in a manner absolutely unworthy of civilized men. Many leading Buddhists, rich men, educated men, men who had been in the public eye, men of exemplary character and blameless life in the past, were arrested, kept in jail under charges of treason and treated with the utmost ignominy. The methods adopted to suborn evidence against them were of the most shameful kind. One shudders at the thought that in the twentieth century rational men could have recourse to such despicable methods.

DEMAND FOR COMMISSION OF INQUIRY

The atrocious deeds of which the minions of government were guilty, made men's minds boil with indignation. Accordingly when Martial Law was about to be over, namely towards the end of August, a Public Meeting was held in the Public Hall of Colombo to take steps to inform the Government of England, through the Secretary of State for the Colonies, of the terrible wrongs inflicted on the Buddhist Sinhalese during the three months of Martial Law, and to demand a Commission of Inquiry.

I was elected to the Committee appointed to gather material for the Memorial. Much material was collected, mainly through the efforts of Mr. D. S. Senanayaka. I was one of the signatories to the first Memorial. More than half the signatories were Christians and one-fifth were Catholics. Mr., now Sir, D. B. Jayatilleka and Mr. E. W. Perera, a Buddhist and a Christian, were sent to England to agitate for a Commission of Inquiry.

Meanwhile every effort was being made in the island itself to secure an inquiry. Sir Ponnambalam Ramanathan stood up for it in the Legislative Council in a manner without parallel in the history of Ceylon or perhaps of any colonial legislature. He presented over 300 petitions praying for an inquiry, and made on that occasion a speech accusing the government of atrocities committed in the name of Law and Justice, a speech the like of which has never been heard in a Council presided over by the Governor himself. His fearless exposure of the officials and of the

military and the boldness with which he castigated them (1) at a time when people were in terror for their lives, made that eminent man a worthy object of admiration, whose memory should be handed down to future generations for all time. Not satisfied with fighting in Ceylon for the appointment of a Commission of Inquiry, he went to England to press for it there. Though all efforts failed it was ultimately through him that we succeeded in obtaining at least the Kegalla Shooting Commission (2).

THE KEGALLA SHOOTING COMMISSION.

As no redress was given by the Secretary of State, who persistently refused to send a Commission, five other Memorials were despatched. Of these the two last, namely the fourth and the fifth Memorials, were based mainly on material supplied by me about people shot without trial in the Kegalla District after the riots had ceased. I read in a newspaper that the Secretary of State, Mr. Bonar Law, had denied the truth of the allegations made in our Memorial. In answer to Mr. Gimmel, an Irish member of the House of Commons, the Secretary of State denied that Ampe Romanis and others were shot without trial. At this very time a most fortunate circumstance enabled me to vindicate the truth of our allegations. It was this:

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(1) See "Riots and Martial Law in Ceylon" by P. Ramanathan, K.C., C.M.G., London, 1916.

(2) I cannot forbear saying that it is a matter wholly inexplicable to me how the Sinhalese Buddhists who were very loud in praise of Sir Ponnambalam at the time, should so soon forget him because he disagreed with them in the matter of political reforms. I can scarcely trust myself to express my indignation at the way in which that great man, who did so much for this country and for the Buddhist Sinhalese in particular, should be subjected to the humiliation of having it proclaimed that a statue was going to be set up in his honour and, after a good deal of fuss, of having the project discarded altogether. The Sinhalese people are said to be a very grateful race, but this shameful neglect of a man to whom the Sinhalese Buddhists owed so much will stand as an eternal disgrace. Those who appreciate greatness and magnanimity and admire Sir Ponnambalam's fearless endeavours to right a great wrong done, not to him or to his race, but to a large section of the Sinhalese people, cannot help feeling that his Riot Speech alone deserved that his statue should be enshrined in the heart and home of every true Ceylonese.

Medduma Kumarihamy, widow of Uduwa Aratchy, who had been shot by the soldiers on the order of a planter, came to me to complain that she was a poor widow who had received no redress from Government in spite of repeated representations. I looked into the case and examined the Inquest Proceedings. These Inquests Proceedings existed only in the Kegalle District and were due to a most providential act of my own. When some headmen came to the Assistant Government Agent in my presence and asked what they were to do with the dead bodies of those shot by the soldiers, the Assistant Government Agent did not know what to tell them. I suggested that they should hold an inquest and bury the bodies. Thus it happened that in Kegalle District alone there were Inquest Proceedings made at the time. Looking into these Inquests I found that the case of Uduwa Aratchy was one in which the truth of our allegations could be established without a shadow of doubt from documentary proof. This proved the turning point of our agitation

I immediately drafted a petition to the Governor and the Legislative Council, and took the widow to Colombo to hand the petition in person to Sir Ponnambalam. Other people came to hear of this and Abilina Fonseka and others came to me for the same purpose. I drafted petitions for them also and in these petitions I was able to refer to the Inquest Proceedings in which the actual evidence of the shooting and the circumstances under which it was carried out, were all carefully and officially recorded at the very time of the shooting. This documentary evidence was irrefutable and there was no getting behind it, and it completely destroyed the official disclaimer.

I went once again to Sir Ponnambalam with two or three of the widows and handed the petitions. Other material which I had collected I gave to Mr. D. S. Senanayaka who had himself secured valuable evidence of other cases of shooting in the Three Korales. These were handed by Mr. D. S. Senanayaka to Sir Ponnambalam. Another petition I had drafted for the widow of an innocent victim of ruthless and coldblooded shooting of which documentary proof was available in the Inquest Proceedings, I handed to the Burgher Member, Mr. Vanderwall.

It was these petitions that led Sir John Anderson, who had recently come to Ceylon as Governor, to appoint the Kegalle Shooting Commission. So far, in spite of every effort, an inquiry had been denied us Everyone knew that if an inquiry were held many things would come to light. But the difficulty was to impress on the government the need for an inquiry. The documentary proof found in the Inquest Proceedings supplied this, for there was no getting behind the proof adduced

in the petitions, namely, the shooting of L. Romanis Perera, Telenis Appu, Podi Sinno, James Bass, Juwanis Fernando, W. G. Serahamy, Pugoda Peter, Uduwa Aratchy, Juwanis Appu and of Arnolis which was subsequently added to the list after the appointment of the Commission.

The Shooting Commission was concerned with the atrocities of Martial Law in the Kegalle District only, not because there were no similar atrocities elsewhere, but because it was only in the Kegalle District and through a happy inspiration of my own that the *prima facie* proof was forthcoming.

The Commission was appointed on 26th October, 1916, and consisted of Sir Alexander Wood Renton, the Chief Justice, and Mr., (later, Sir,) Gaulterus Stewart Schneider, Barrister-at-law. They were "to inquire into and report upon the circumstances connected with the shooting of" the persons mentioned above.

On 3rd November several lawyers of Colombo brought me a memorial to be signed by at least two of the widows, protesting against the personnel of the Commission. I got two widows, the widow of Uduwa Aratchy and the widow of Juwanis Fernando, who had come to see me, to sign the protest. But none of the lawyers who brought the petition would take the responsibility of signing it as the drawer. I had, therefore, to sign it myself, an action which was in a way most providential for me and afterwards saved me from very serious consequences.

On the following morning, the Attorney-General sent for me, as the Proctor instructing in the several cases, and for our counsel, to ascertain what evidence was available and who were the witnesses for the charge. I prepared a list of witnesses, from names supplied by the parties as well as from what I had found in the Inquest Proceedings. I also called for copies of orders that were issued for shooting people without trial (1). I mention this list of witnesses because it afterwards formed the basis of a serious charge against me.

The Attorney General questioned Meedeniya Adigar about certain things that took place in his presence. I instructed one of our senior counsel, Mr. E. W. Jayawardena, to ask the Adigar whether a certain European (2) called together the Moors, at the time of the shooting of Ampe Romanis, and told them in a general address that they could now have the Sinhalese women to them-

(1). See Report of Commission, Productions.

(2). See Minutes of Proceedings of the Kegalle Shooting Commission.

selves. The Adigar admitted that such a statement was made. This upset the Attorney-General who told me that such evidence should not go in as it would be a disgrace to the Empire, and wished that this piece of evidence should be suppressed at the trial. There was much discussion and argument, and in the end even Mr. Jayawardena was inclined to give in. I then took up the argument with the support of Mr. F. R. Senanayaka and declared that as I was the Proctor instructing in the case, and as counsel would not agree with my views, the matter should be deferred till Mr. H. J. C. Pereira arrived. The Attorney-General then turned to me and said: "I can understand that attitude in Mr. Senanayaka who is one of those that suffered at the hands of the officials. But why should you, who worked for the Government at the start, be so adamant"? I then told him very frankly that we had sent memorials to the Secretary of State based on facts supplied by me: the Secretary of State had stated in Parliament that our allegations were not true: this statement of the Secretary of State was made on the authority of the Ceylon officials: I was, therefore, determined to establish the whole truth for our future safety The Attorny-General did not reply.

The regular sittings of the Commission commenced on Saturday, 4th November, 1916. The counsel representing the parties were:

The Attorney General, Sir, (then Mr.) Anton Bertram, *amicus curiae.*

B. W. Bava, K.C.
F. A. Hayley, K.C.
Instructed by E. R. Williams and O'Tonks for the "gentlemen concerned" (namely Major L. Bayly, F. N. Sudlow, W. L. H. Cantlay, A. D. Sly, J. C. Mitchel, A. L. Bains and W. Atkin Smith)

H. J. C. Pereira
R. L. Pereira
E. W. Jayawardena
F. R. Senanayaka
C. Batuwantudawa and
A. Mahadeva
Instructed by myself on behalf of the relatives of the deceased persons.

At the close of the first day's proceedings our senior counsel informed the Commission that we were retiring from the case as no useful purpose could be served by continuing to remain. The reason for this withdrawal was that the Commission permitted, nay even invited (1) the "gentlemen concerned" to be represented by counsel, but the counsel on behalf of the relatives of the deceased persons were only to be permitted to hold watching briefs without the right of cross-examination. On the very first day when the Attorney-General had called a number of witnesses from the list given to him on behalf of the aggrieved parties, he proceeded to call a witness who was clearly a witness for the parties complained against, and who was himself closely identified with the offences complained of. Our counsel was not allowed to cross-examine him and therefore we decided to withdraw from the case

As I was leaving, the Attorney-General asked me for the list of witnesses in the other cases. I gave him the list I had prepared and sent him the same day by the parties the other lists I had prepared. In one case—the shooting of Uduwa Aratchy—I had put down my own name as a witness to prove *mala fides* on the part of those who shot that unfortunate man, as one of those who took part in the shooting had in my presence threatened to shoot Punchirala Aratchy of Nilwakkana. After the man was acquitted in the Police case at Kegalla I had warned the man to be on his guard, and he went and hid himself in the forest and the planter who came to get at him with dogs and Punjabis could not find him.

Accordingly on 9th November, when I received a summons from the Commission, I thought it was to give evidence. When my name was called I took my seat in the place assigned to witnesses, but the Chief Justice himself asked me not to sit there but where

(1) Minutes of Proceedings of the Commission:—"Wednesday, November 1, 1916. A meeting of the Commission was held in the Legislative Council Chamber, Colombo, at 1 a. m. on November 1, 1916.

Present:—Sir Alexander Wood Renton, Chief Justice, Chairman, G. S. Schneider Esquire, Advocate.

There were also present by request Major L. Bayly, F. N. Sudlow, W. L. H. Cantlay, A. D. Sly, J. C. Mitchel and A. L. Baines.

(Dr. Atkins Smith who had been requested to appear, was unable to be present). The above mentioned gentlemen were *invited* to consider whether they wished their interests in the matters referred to the Commission to be represented by counsel, and the Secretary was instructed to write to Dr. Atkins Smith in the same sense.

It is decided to permit counsel holding watching briefs to appear on behalf of the relatives of the deceased persons referred to in the Commission."

the lawyers of the accused planters were, and asked me to listen carefully to the evidence that would be given against me.

I was dumbfounded. The summons which reached me at 9 a.m. that very morning, gave not the slightest indication of any charge against me. It was the form of summons used for citing witnesses. And yet I was to be charged, and charged before a Commission that was sitting to inquire into atrocious actions done in the sacred name of Law and Justice! Apparently those who were responsible for this action thought it best to take me unawares and by surprise. I was to be an Accused, and yet to be denied the right of knowing what the accusation was! A Commission that was eager to "invite the gentlemen concerned" in shooting innocent men, to retain counsel, did not even think of informing me what the charge against me was. I was to be denied the elementary right of all accused persons in courts of British Justice. The irony of it all was that the Attorney-General and the Commission were adopting towards me in principle exactly the same kind of action as the "gentlemen concerned" were now answering for. The Commission itself said regarding the case of Uduwa Aratchy, "This case presents the greatest difficulty of any of those with which we have to deal." A red herring was, therefore, sought to be drawn across the trail by charging me with "professional misconduct."

These, however, are my reflections now. At the time I must say I was astonishingly undisturbed. Conscious that I had not done any wrong, I awaited the evidence with an equanimity that surprises me to this day. The evidence led against me was of a most subtle kind. I had signed as its drawer the petition protesting against the personnel of the Commission, and to my intense mystification it was now brought up before the very persons against whom I had drawn a protest in the name of my clients!

Medduma Kumarihamy, widow of Uduwa Aratchy who was shot, was called and deposed, in answer to the leading questions of the Attorney-General, that she had not retained me; that three or four days previously I had sent for her; that in my office she was given a paper to sign: she did not know the contents—she identified production D (namely the petition protesting against the personnel of the Commission) and the list of witnesses. She signed them at my request and knew nothing of the contents.

I was asked to put any questions I liked. I asked her: Did you not come to me three months ago to tell me that your husband was shot for no fault of his, after the riots had ceased, and that you had petitioned the Assistant Government Agent without

effect? She replied it was so. 'Did you not beg me with tears in your eyes for some relief as you had six children?' 'Yes.' 'Did you not come again with your brother, Higgode Korale, and your mother, for help?' She replied she did. 'Did I tell you that I would inquire and prepare a petition to be presented to the Legislative Council?' All this she admitted; and she acknowledged, moreover, that she and her mother went with me to Sir Ponnambalam Ramanathan to hand the petition: she admitted that she never paid me any fee and that I defrayed all the expenses involved, as she begged me to do everything possible for her as she was a poor widow unable to help herself.

Other witnesses were called, and I questioned them on similar lines and elicited the real truth. Then came a certain Podihamy who said she was a stranger to Kegalla; she was taken to my office and given a paper to sign of which she did not know the contents. Upon this I explained to the Commission that what she deposed was literally true. She came to me with her father-in-law, who explained the case to me while this woman stood outside my office with a child. I then insisted on that man being called immediately into the witness-box, as he would otherwise be got at by those who instigated this action against me. The Commission agreed in justice to me, and the man, Abaran Appu, was called and taken unawares, came out with the whole truth, that he came to my office with his daughter- in-law, the widow of his adopted son who was shot, and he came to me because I was a Proctor who helped people. He himself supplied the names of the witnesses etc.

Upon this the Chief Justice turned to the Attorney-General and declared that I had acted quite properly and within my rights and that there could be no question of a charge of misconduct, which, it seems, was the crime that was so cleverly engineered to be laid at my door. The Chief Justice was good enough to express to me his regret for having brought me up before the Commission on a matter which, as far as I can see, did not come within the terms of the Commission. When the Commission adjourned I wrote to the Attorney-General pointing out that I was charged with supplying the very list of witnesses that I had made at his express desire; that the matter about the petition made to the Governor against the personnel of the Commission was dragged in to prejudice the Court: and therefore I demanded to be informed at whose instance all this was done; who was responsible for manipulating the witnesses against me, and on what *prima facie* evidence the charge of professional misconduct was rushed in such a mysterious fashion. The Attorney-General then wrote to me inviting me to appear again

before the Commission in the afternoon. When I did so he called up all the parties and witnesses, explained to them what had taken place and publicly expressed his regret.

This incident is summarily recorded in the Minutes of the Commission as follows:—

"Thursday, November 9, 1916:

The Hon. the Attorney-General mentioned to the Court that he had received certain information which appeared to reflect on the conduct in connection with this inquiry of Mr. A. A. Wickramasinghe, Proctor of Kegalla. Several witnesses were examined in this connection, including Mr. Wickramasinghe himself, and the Commissioners thereupon expressed themselves satisfied with the explanations of Mr. Wickramasinghe and the Hon. the Attorney-General withdrew all reflections which he had made upon Mr. Wickramasinghe's action in the matter."

The widows concerned were given by way of compensation grants of Crown land to be possessed by them and their heirs in perpetuity.

The result of this Commission is well-known and it is not necessary for me to comment on it The Report of the Commission, dated 18th January, and the correspondence between the Governor and the Secretary of State, are reprinted here as Appendix A.

The findings of the Kegalla Shooting Commission had a most far reaching effect, and though the anxiety and stress thrown on me were intense, I look back with pride and satisfaction on my share in agitating for it and striving every nerve to collect evidence, for it is this evidence recorded by the Commission and the Governor's despatch dealing with the report of the Commission, that formed the principal inducement to the authorities in England to grant satisfaction to the people of Ceylon.

The satisfaction granted to us was a gradual change in the constitution of the Government of Ceylon, so that the people of this country might not henceforth be subjected to the treatment meted out to them during and after the Riots. This was secured by giving the people a share in the administration of their country. It is indeed a most valuable concession and the Kegalla Shooting Commission marks the beginning of the change of heart of the authorities in England.

A certain number of people had been arrested and their landed property confiscated under a threat of Martial Law. As soon as Martial Law was withdrawn a number of aggrieved persons came to me for redress. As I was personally aware of the circumstances

of these cases and intended to appear as a witness in any inquiry, I tried to get another Proctor to file action in court. I could not prevail upon anyone in Kegalla to do so and had to go to Kandy for a Proctor. But after Mr. E. A. P. Wijeratne came to practise in Kegalla, he consented to file proxy, and thereafter assisted me in every way. One of the cases instituted in this way is D. C. Kegalla 4173 arising from the facts already narrated on page 6. I retained Mr. H. J. C. Pereira and Mr. R. L. Pereira. After two days trial Mr. H. J. C. Pereira sent for me and Mr. Wijeratne. We met him at the Orient Club where he was then residing. He told us that the Solicitor-General wished him to prevail on me to withdraw the case, promising that if this were done the Colonial Secretary would see, first, that the lands were restored to the plaintiffs, secondly, that their costs were paid, and thirdly that the officer concerned would be dismissed from the Public Service. He said that if I refused to withdraw the case, the defendant would consent to judgment with costs but the officer concerned would be kept in Government Service.

I positively refused to hush up matters in such a way and become a party to an infamous bargain. It was a sample of what had been going on under Martial Law, and just as the Kegalla Shooting Commission had vindicated the rights of the people against the high-handedness of officials run amock, I was determined to secure by this case a judicial condemnation of the connivance of the authorities at the glaring injustices inflicted by the underlings of Government.

Mr. Pereira communicated my refusal to the Solicitor-General by telephone in my presence. The issue in the case was extortion of land by a Government Official under threat of Martial Law penalties. The defendants were represented by Advocates Allan Drieberg, Rajaratnam, Molamure and Brooke Elliot, instructed by Messrs. Ondaatje, Herat and Suraweera. On the next day of trial, they consented to judgment for the plaintiffs. They got back their lands, damages and costs, but the officer concerned was retained in the Public Service till his retirement. I do not know who paid the damages. I hope it was not the tax-payer. A copy of the relevant parts of this case is annexed in appendix B together with the 1st Plaintiff's evidence.

Having narrated what the Government did, I think I ought to place on record my sense of admiration of what Sir Ponnambalam Ramanathan did, for it was through his endeavours that I was able

to obtain some relief for the widows of the men shot under Martial Law. In the name of those widows, I presented Sir Ponnambalam with a silver bowl on which was inscribed a record of his services to them in securing the appointment of the Kegalla Shooting Commission, to be preserved as a memorial by his descendants. Others too expressed their admiration of the services of that great man, but I fear it was only lip admiration. At least it was once announced that the Sinhalese Buddhists, whom Sir Ponnambalam befriended and protected at a time of great peril, were going to set up a statue to his memory. But when differences arose regarding the distribution of the political powers that had been secured for this country as a result of the agitation that followed the report of the Kegalla Shooting Commission, the admiration for Sir Ponnambalam evaporated and the statue still remains to be set up.

After Sir John Aderson's despatch on the Kegalla Shooting Commission was published in 1917, there began a movement on the part of the Sinhalese and the Tamils, under the leadership of Sir James Peiris and Sir Ponnambalam Arunachalam, to work for the reform of the constitution of Ceylon. A Reform League was founded. I took part in this movement from the very beginning. The Reform League developed into the National Congress. The fight for reform was conducted with great perseverance and persistence till a measure of representation was granted. Then the Congress fell to dividing the spoils and keeping it within certain families. This led to disunion and many an unseemly squabble. Mr. Advocate Duraiswamy (now Sir Waithilingam, the Speaker of the State Council), member for Jaffna, uttered these prophetic words in reply to some observations of mine at a committee meeting of the National Congress. He said "Mr. Wickramasinghe speaks of truth and justice, but justice and truth are Utopean ideas and vanish into thin air in practical politics". So indeed it has come to pass in sober truth.

THE NEW SINHALESE NATIONALISM

One very interesting and instructive experience fell to my lot. When the reformed Legislative Council was established, I was persuaded by Messrs. F. R. and D. S. Senanayake to stand for the Kegalle District seat. About a fortnight before polling day a large number of voters came to me and informed me that the other candidate on the field, who was till then a Christian, had declared himself a Buddhist and that the constituency was supporting him on that account. They asked me, therefore, at least to pretend to be a Buddhist, that otherwise I should most certainly be defeated at

the polls They did not realize, I suppose, what that request meant; or what a Christan instinctively feels at such a proposal. I knew that what they said was true, namely, that I was very likely to be defeated under the circumstances. But there arose also before my mind's eye the real greatness of being defeated at the polls for being a Christian. Our Lord once said: "Blessed are ye when men shall revile you and persecute you for my name's sake." I had never even dreamt that such a blessing would ever be mine. I replied very sincerely that far from wishing to pretend to be prepared to give up my religion for a Council seat, I should consider it the greatest distinction I could hope to receive in this world, if I should be rejected by voters on the sole ground of being a Christian. I therefore told them to go on with the election campaign, which they did. I was defeated, of course, but the people of Kegalle alone will be able to answer the question whether my defeat at the polls and the election of my opponent was a political advantage to the District. As for myself, I can say truthfully that, in losing the election, I have at least secured peace to my own mind and freedom from all the burdens and responsibilities of a political life.

My defeat is a most trifling matter and the only reason why I mention it here is that it was the most striking indication I received of the direction in which the breeze of popular favour was blowing. The breeze is now a steady and fierce blast and threatens to destroy the progress of this country. What the Sinhalese Christians did in the agitation for reform has one special significance. At the time when the Sinhalese Buddhists were being treated as rebels, their Christian kinsmen stood by them whole-heartedly. It was that participation of the Christians, which enabled the agitation to be called a national movement (1). The Christian participation gave the movement a force without which it could never have achieved what it did.

If now the Buddhist Sinhalese look upon themselves as representing the whole of the Sinhalese nation and put forward such a claim, it will rightly be ridiculed in this country. Outsiders might perhaps be taken in for a time, but not even they will accept it for any length of time. That a large number of Sinhalese are Christians

(1). The memorial to the Right Honourable Andrew Bonar Law, His Majesty's Principal Secretary of State for the Colonies, states in the first paragraph: "That at the aforesaid public meeting of the Sinhalese (25 Sept. 1915) which was very largely attended by both Buddhists and Christians, representing all Sinhalese Districts in the Island, and belonging to all classes of the community, the following resolutions were unanimously adopted....."

is a fact, and facts are stubborn things. No doubt there were, and perhaps there still are, Christians of a sort who changed their religion for some wordly or political advantage. At least within the last ten years, there have been quite a number; but no honest Sinhalese, Christian or Buddhist, can think that such men are an acquisition to any party. Such men may be hailed as an acquisition, they may even be of use for some time, but such contemptible persons cannot possibly do any good to the country. They can, however, do a great deal of harm.

Nor will it in any way promote the progress of the country if Buddhist leaders cry out against Christians as enemies of progress as they are crying out now, because they are not and cannot possibly be. One Minister may accuse Christians of "Sharpening their swords against Buddhism", another may declare that "no Christian can be a true Sinhalese". Not only ignorant and despicable men utter such falsehoods, but even men who claim to be educated. It is not only Christians that know the falsehood of such statements, but all honest men, be they Christians or Buddhists. By such statements they cannot prevent the spread of Christianity. They might possibly win to themselves some people whose Christianity is only skin deep and who can be no gain to them nor a loss to us, but only a curse to any party The only danger of such reprehensible propaganda is that some ignorant Buddhists are taken in and believe this wicked propaganda.

THE NEW EDUCATION BILL.

Just as ignorant people were misled into the belief that a demonstration of resentment against the Muslims might help the Buddhist cause in 1915, so also in 1938 political agitators thought that by stirring the hostility of the Buddhists against Christians they might succeed in passing the new Education Bill. The Christians opposed the bill on the ground that it tended to destroy the existing system of Assisted Denominational Schools. These schools were not only Christian Schools, but schools of all religious persuasions. At first a number of influential Buddhist Educationalists joined the Christians in opposing the bill. Thereupon the Minister of Education and some of the supporters of the Bill created a Buddhist movement of antagonism to Christianity. The Denominational System was declared to be a Christian System for converting Buddhist children to Christianity.

The Educational Code for Assisted Schools lays adequate provision to deal with any abuses of the 'conscience clause' and Christian

Schools were not convicted of any such abuse. But the agitators began a campaign of calumny. The Christians were accused of having aspirations alien to the people of this country. It was said that our ideas and our lives were foreign to the ancient culture of the Sinhalese. Educated men know, of course, that this is a false accusation. They know that the characteristic culture of nations differs even if they profess the same faith. They know that it is so with Buddhists as with Christians. But the uneducated and the ignorant people are easily misled by such statements, as they were misled by the agitation that preceded and produced the Riots of 1915.

To make Christianity unpopular with the ignorant masses, it was alleged that the Portugese were cruel. What, if they were? Their cruelty had nothing to do with Christianity any more than the cruelty of individual Buddhists has to do with Buddhism. Christianity is not a religion professed by one race or nation. It is professed by almost all the nations inhabiting the globe. It is a religion that teaches men to love their neighbour as themselves, nay to love even their enemies; Christianity teaches that men are responsible to their Maker for their thoughts, words and deeds. It teaches that this life of ours is a probation; and that it is the only life of probation, and that therefore in this life men must conform their conduct to the laws of God. It is true, of course, that all professed Christians do not always obey the law of Christ. If they do not, it is in spite of their being Christians, in spite of the grace of the Christian Sacraments and against the example of Christ.

But no one can deny that Christianity, not only holds a lofty ideal but even gives the means to carry it out. It gives the greatest opportunity to the repentant sinner, and the greatest consolation to men who have led wicked lives but wish to amend. We have the noted example of Sardiel of Utuwankanda, the notorious highwayman, who, when lying in jail condemned to death, embraced the Catholic faith, most eagerly and died a repentant sinner.

Whether a man is a Christian or a Buddhist makes no difference to his nationality. The progress of a nation must be judged from its moral sense. Whatever promotes the moral standard of a nation is valuable. Has education in Christian schools raised or lowered the moral standard in Ceylon? The Minister of Education who was once a Christian and educated in a Christian school and who has now publicly declared himself a Buddhist, and is now sufficiently familiar with the working of schools, is perhaps best qualified to answer the question.

No Buddhist will deny that Christian Sinhalese have rendered national service to the country. They cannot deny that it is the participation of Christians in the National Congress that enabled this country to achieve the political progress it has made. To turn round now on the Christians who had rendered yeoman service to the cause of national progress is to destroy the very base of national progress. The vile campaign against Christianity during the discussion of the Education Bill is perhaps the greatest disservice that Buddhist leaders ever did to the cause of this country's progress. It shows that they have not learnt the lesson of the Riots of 1915. And as one who laboured wholeheartedly to redress the wrongs inflicted on the Buddhist Sinhalese during the period of Martial Law that followed the Riots, I cannot help deploring that the national unity that the event tended to form is being sacrificed at the altar of political ambition and covetousness.

APPENDIX A.

SHOOTING INQUIRY COMMISSION

No. 1.

Governor Sir John Anderson, G.C.M.G., K.C.B.
to the Right Hon. Walter H. Long, M.P.

CEYLON, MAY 26, 1917.

SIR,—In my despatch of the 27th February, 1917, I forwarded to you an advance copy of the report of the Commission appointed by me to inquire into certain incidents which took place in June, 1915, in connection with the supression of the riots, and informed you that my remarks on the report would follow.

2. At that time I had not had time to peruse the report, and owing to my illness I have only just been able to do so.

3. The incidents in question, and certain others of a somewhat similar character, were cited in the Sinhalese memorial enclosed in the despatch from the Officer Administering the Government of the 15th December. On these other incidents I have already reported that, after careful inquiry, I was satisfied that those who were responsible had acted substantially in pursuance of orders and in good faith.

4. In regard to those which formed the subject of the inquiry, I had obtained through the Military statements from the persons concerned, and consideration of these statements left me by no means convinced that either the orders given to them or the special circumstances, so far as they were known to me, could be held to justify the action taken, or bring it within the protection of the Indemnity Order in Council.

5. It was quite impossible for me to conduct personally such a complete examination of the facts as was necessary to enable me to reach a decision on the question, and as the persons concerned had all given their services voluntarily to the Government, to aid in the restoration of law and order, it did not appear to me fair to subject them, without such an examination, to the stigma of being placed on their trial for murder. As the main question for decision was whether the facts as revealed by the inquiry were such as to exclude the presumption of good faith established by the Indemnity Order in Council, it appeared to me essential that the inquiry should be conducted by some one who was personally familiar with the general condition of the country and the feelings of the law-abiding part of the population during the period when the acts in question were done.

6. No one appeared to me more eminently fitted for the task than the Chief Justice, not only from his well-known high character, ability, and independence, but from his intimate personal knowledge of the conditions existing at the time, derived from his having presided at many appeals in the case of rioters convicted by the ordinary magistracy. Sir Alexander Wood Renton readily placed his services at my disposal, and suggested that Mr. G. S. Schneider, a well-known and highly respected member of the local Bar, who had recently acted as a Puisne Judge, should be associated with him in the inquiry, a suggestion which I at once accepted

7. On examination of the papers which were placed at their disposal, the Commissioners came to the conclusion that it would facilitate their proceedings if, instead of, as usual in the case of Commissions, having to conduct the whole of the examination of witnesses themselves, they had the assistance of the Attorney-General, as *amicus curiae*, to prepare and present the case for the relatives of the deceased persons, nearly all of whom were in poor circumstances. With my approval the Attorney-General readily undertook the task, and you will see that the Commissioners, in paragraph 3 of their report, gratefully acknowledged the assistance which he rendered them.

8. Some idea of the thoroughness with which the Commissioners performed their task may be gathered from the brief statement in paragraph 2 of the report, and from the record of their proceedings it is clear that they availed themselves of every opportunity of hearing both sides, and of verifying doubtful points by visiting the scenes of the different incidents and of examining witnesses in public on the spot.

9. With regard to the question of the position of counsel for the relatives of the deceased persons, dealt with in paragraphs 3 to 6 of the report, the business of the Commission was to collect and examine the facts, and in view of the ability and experience of the members, it would have been superfluous for me to have given them any directions as to their procedure, and, as already stated, I confined myself to placing at their disposal such assistance as they desired. The matter appears to be dealt with adequately in the report, and I have nothing to add.

10. The evidence in each case is carefully summarized in the report, and I do not propose to examine it in detail. The primary responsibility for these deplorable incidents rests on Mr. F. N. Sudlow, a member of the Colombo Town Guard Artillery, who was selected by the Military authorities to command a small body of military to patrol part of the area in which disturbances had taken place, and where there was reason to fear that further trouble might occur.

11. He received from the Inspector-General of Police instructions to deal vigorously with actual disturbances, and seems to have construed them into a commission to administer "lynch law" throughout the area prescribed for his patrol, and to have considered that their effect was to make him the leader of a "posse of vigilantes" sent out to deal with desperadoes in the manner depicted in cinema shows and dime novels of the "Wild West." It may seem incomprehensible that an Englishman in an English Colony could have entertained such an idea; but the solemnity of his proceedings, if nothing else, shows that Mr. Sudlow acted, as the Commissioners find, in good faith. After communicating what he conceived to be his orders to Major Bayly, who was in command of the whole district, and being assigned his sphere of operations, Mr. Sudlow started the campaign of illegality by the shooting, at Ampe, on the 8th of June, of Romanis Perera, who was accused of leading the rioters there on 6th June, and of being in possession of a gun barrel. On the following day he was responsible for the execution of Juwanis Fonseka, *alias* Fernando, and Arnolis, at Bulatkohupitiya; following this up on the 10th by executing, at Algoda, Telenis Appu, Podi Sinno and James Baas. In the report the reponsibility for the execution at Algoda is attributed to Mr. Cantlay; but it is clear both from Mr. Sudlow's evidence (page 97) and Mr. Cantlay's (page 108), that Mr. Cantlay regarded himself as under the orders of Mr. Sudlow.

12. Major Bayly not only accepted Mr. Sudlow's version of his instructions, but immediately proceeded to act upon them himself in the case of Juwan Appu, whom he had publicly shot on the 9th of June, at Yatiyantota, and communicated them to his patrol officers, Mr. Baines and Mr. Sly for their guidance. It may seem incredible that a man of Major Bayly's position and experience not only as a Volunteer Officer, but as a Justice of the Peace and Unofficial Police Magistrate, should have so unhesitatingly accepted Mr. Sudlow's interpretation of his orders. But Major Bayly was living in an atmosphere of alarms and excursions, and by temperament was only too ready to accept any tale, however wild and unfounded. It is only necessary to look at page 13, column 2, of the evidence taken by the "Police Commission" (please see my despatch No. 360 of the 29th June, 1916) for the proof of this. Mr. Sudlow had come direct from headquarters after an interview with the Inspector-General of Police, and it is not to be wondered at that Major Bayly, who no doubt knew that he was suspected of inaction and supineness, should lend a ready ear to Mr. Sudlow's version of his instructions, and proceed to vindicate himself by more energetic action, both personally in the execution of Juan Appu on 9th June, and by the instructions he gave to Mr. Baines and Mr. Sly.

13. Mr. Baines exercised the discretion confided to him by shooting Serahamy and Pugoda Peter, the former on the 13th and the latter on 15th June. He had before him, besides his instructions from Major Bayly, the example shown him at Bulatkohupitiya; but even with that he appears, from his own statement (page 105) just prior to the shooting of Serahamy to have made some prisoners and despatched to the Dissawa, and why he did not follow the same course with the two men whom he executed is not quite clear.

14. The most difficult case of all is the execution of the Udawa Arachchi by Mr. Sly on the 15th of June. It is dealt with very fully in the report of the Commission, and I do not propose to discuss it in detail. But it is distinguished from the other cases by several important features. In all the other cases there was evidence before the lynching party that the persons shot had been actively engaged in the preceding riots; but in this case, though it was suggested to some of the witnesses by counsel for Mr. Sly that the Arachchi had himself been engaged in the rioting at Dedugala, no evidence to that effect was forthcoming, and that was no part of the charge upon which he was shot. As a matter of fact, the evidence of the Kachcheri Muhandiram of Kegalla (page 52) and the evidence taken at the trial of Punchirala Arachchi before the Magistrate, Mr. Boone, which I have examined, show that the rioting and looting at Dedugala had been rather a farce, and that the Moors had actually deposited most of their goods for safe custody with the villagers, from whom they were afterwards recovered. Mr. Sly found these goods in the possession of the villagers, and at once concluded their guilt. Punchirala he arrested, and sent for trial on the 12th June, and the same day he warned the Uduwa Arachchi that he must keep the other persons named on the Moors' list, and produce them when he came again, at the same time telling him that if he was unable to detain them he should apply to him for assistance. No date was mentioned for the return visit, so the task assigned the Arachchi was not an easy one, but he undertook it, and, according to the evidence, warned those concerned to remain ready for Mr. Sly's return. They did remain, but when they heard the noise of Mr. Sly's motor on his return journey, before it ascended the hill on which the village stands, they, knowing as they did what had been done elsewhere in the district, bolted into the jungle and left the Arachchi to his fate. Mr. Villiers and the Dissawa, both of whom knew the Arachchi personally, in their evidence (page 72 and 58) described him as a weak and foolish man. When asked by Mr. Sly to produce the men, he replied that they had gone when they heard the approach of the car. Mr. Sly then told him that if he did not produce them in fifteen minutes he would be shot. On this the Arachchi, according to the Korala's evidence (page 45), told a woman

to go and fetch the men. Whether she went or not, the men were not forthcoming, and Mr. Sly proceeded to carry his threat into execution. The Korala and other witnesses say that when he was tied up he begged for a day's respite, when he would produce the men, but no notice was taken of his request, and he was shot by the Punjabis of Mr. Sly's command. It is significant that against none of the men, for failing to produce whom the Arachchi was shot, were any steps subsequently taken by the authorities.

15. Mr. Sly bases his justification for his action on a Proclamation issued by Mr. Burden, the Assistant Government Agent, Kegalla, on the 10th June, which appears to have been one which all Government Agents and Assistant Government Agents in the area under martial law were directed to issue. It is badly drawn, and technically covers Mr. Sly's action; but it is almost incredible that any one, unless one who had been schooled by the Germans in Belgium, could have honestly acted on Mr. Sly's interpretation of it. As the Commission have found that he acted in good faith, they were evidently satisfied that he is such a man. I propose that his appointment as Justice of the Peace and Unofficial Police Magistrate should be cancelled, and I can scarcely consider it desirable that such a man should remain in charge of a large labour force in the Island. But the power entrusted to me under the Order in Council to deport is scarcely applicable to such a case, and I fear that, much as his conduct deserves the loathing and disgust of every decent Englishman, I can do nothing to give tangible expression to that feeling.

16. With regard to the other principals in these incidents, Mr. Sudlow, Major Bayly, and Mr. Baines, I propose in the case of Mr. Sudlow, who is a member of the Town Guard Artillery—and so long as he continues as such is liable to have his services made use of by the Military, in the same manner as they were utilized in June, 1915,—to dispense with his services. Major Bayly alone of the principals of these proceedings has proceeded to England, and has already received a Commission in His Majesty's Forces. He is a man who is deservedly popular amongst all classes and all races in the Island, and is a man of kindly and generous, if impulsive, nature. I am reluctant to inflict any stigma on such a man, but I cannot think that with his experience, and in the face of his written orders, he was justified in accepting so readily as he did the verbal instructions of a junior like Mr. Sudlow, and I propose to cancel his appointment as a Justice of the Peace and Unofficial Police Magistrate.

17. In the case of Mr. Baines, who exercised the "discretion" entrusted to him by Major Bayly by shooting Serahamy and Pugoda Peter, I propose to take similar action.

18. It is fortunate for all those implicated in these proceedings that their action was entirely unknown to any responsible member of the Government and to my predecessor. If they had been brought either to his notice or to the notice of the Colonial Office, the Indemnity Order in Council would have been differently drawn, and they would probably have had to face a tribunal on a serious charge. The Inspector General of Police, to whom Mr. Sudlow reported that he had dealt with certain ring-leaders in the riots and left the area of his patrol all quiet, had no idea of the actual facts, and in view of his manifold anxieties at the time, it is not surprising that he did not ask for details, which he no doubt assumed would be forwarded through the Military authorities in due course.

19. While I take a serious view of the action of those concerned in these incidents, it is necessary in judging them to bear in mind that they were all Volunteers, who are not, like Officers of the regular Army, familiar with the King's Regulations, giving their services to the Government at a great crisis, at considerable personal inconvenience, and even loss; that also the widespread nature of the disturbances, the loss of life in many places, and the enormous damage to property had created something like a panic, which in the district where the incidents took place had led to the European women and children being sent to Colombo for safety. These circumstances, if they do not justify the measures taken, help in some measure to explain them, and to palliate the conduct of those who felt it necessary to take such extraordinary steps.

20. Before I had decided on the appointment of the Commission, I had been in communication with the Government Agent, Province of Sabaragamuwa, on the subject of compensation to the wives and families of the persons shot, but suspended action pending the report of the Commission, as I thought it possible that they might desire to make some specific recommendations on the subject. I have now awarded compensation to all those affected, mainly in the form of small grants of Crown land. This was done on the advice of the Dissawa, who urged that it was the most suitable and acceptable form of compensation, and I am glad to place on record my opinion of the inestimable value of that Officer's services to the Government in connection with the whole affair, and of the readiness with which he placed them at the disposal of the Government and the Commission.

21. I should be glad to learn by telegraph whether you approve my proposals in regard to the persons implicated in these deplorable proceedings. On receipt of your reply I propose to publish the report and this despatch.

I have, &c.,
JOHN ANDERSON.

No. 2.

Telegram from the Right Hon. Walter H. Long, M.P., to Governor Sir John Anderson, G.C.M.G., K.C.B., dated July 14, 1917.

Your despatch 26th May, report of Commission on suppression of riots: proposals approved; despatch follows by mail.

No. 3.

The Right Hon. Walter H. Long, M.P., to Governor Sir John Anderson, G.C.M.G., K.C.B.,

Ceylon.—No. 380.

Downing St., July 19, 1917.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 26th May, submitting your observations on the report of the Commission appointed by you to inquire into certain incidents in connection with the suppression of the riots of June, 1915.

2. I have already conveyed to you by telegraph my approval of the proposals contained in your despatch.

3. I fully concur in your reprobation of those implicated in those proceedings, but I am compelled reluctantly to share your conclusion that in the circumtances an action more drastic than you propose is impossible. It is hardly necessary for me to insist that the Ceylon Government shall not avail itself again of the service of any of those concerned, in any civil or military capacity. If it is possible for you to give effect to your views, which I share, as to Mr. Sly's unfitness for charge of a labour force, either by withdrawing any facilities now given by the Government for the supply of labour to the estate of which he is in charge or otherwise, I suggest that this should be done.

4. While I recognize that the undoubted violence of the outbreak of disorder and the limitations of the force at his disposal had thrown a very heavy burden on the Inspector-General of Police, I cannot fail to remark on the ambiguity of the instructions which he appears to have given to Mr. Sudlow, and on the danger of sending out wholly inexperienced and ignorant men without such brief but definite explanation of the limitation of their powers as would have prevented their holding extravagant views as to the summary punishment of offenders, after order had been restored. Further, it is surprising that, so far from full and prompt reports of their activities being demanded from men in this position, no responsible officer appears to have had at the time any indication of the nature of their activities. There is reason to hope that the carefully considered instructions which have since been drawn up for the guidance of the Police in case of disorder and which

will be available for the guidance of any civilians temporarily enrolled, will make the recurrence of such incidents impossible.

5. I request that you will cause this despatch to be published.

I have, &c.,
WALTER H. LONG.

COMMISSION.

In the Name of His Majesty GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith.

By His Excellency Sir John Anderson, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief in and over the Island of Ceylon, with the Dependencies thereof.

To the Hon. Sir Alexander Wood Renton, Kt., Chief Justice of the Supreme Court of the Island of Ceylon, and Gualterus Stewart Schneider, Esq., Barrister-at-Law.

GREETING.

WHEREAS We deem it expedient that a Commission should issue to inquire into and report upon the circumstances connected with the shooting of (1) L. Romanis Perera; (2) Telenis Appu; (3) Podi Sinno; (4) James Baas; (5) Juwanis Fernando; (6) W. G. Serahamy; (7) Pugoda Peter; (8) the Uduwa Arachchi and (9) Juwan Appu.

Now know Ye that We, the said Governor, reposing great trust and confidence in your prudence, ability and fidelity, have, with the advice of Our Executive Council, in pursuance of the powers in Us vested by the Ordinance No. 9 of 1872, nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint you, the Hon. Sir Alexander Wood Renton, Kt., Chief Justice of the Supreme Court of the Island of Ceylon, and Gualterus Stewart Schneider, Esq., Barrister-in-Law, to be our Commissioners for the purposes aforesaid, with authority to exercise all the powers which Commissioners appointed under the said Ordinance may lawfully use and exercise.

And We do hereby nominate, constitute, and appoint you, the Hon. Sir Alexander Wood Renton, Kt., Chief Justice of the Supreme Court of the Island of Ceylon, to be the Chairman of the said Commission.

And We do further hereby authorize and empower you, Our said Commissioners, to make all necessary inquiries in the said matter, and to report to Us under your hands as early as may be possible upon the matter referred to you as aforesaid.

Given at Colombo, under the Seal of this Island, this Twentysixth day of October, in the year of our Lord One Thousand Nine Hundred and Sixteen.

By His Excellency's command,

R. E. STUBBS,
Colonial Secretary.

SHOOTING INQUIRY COMMISSION.

MINUTES OF PROCEEDINGS

Saturday, October 28, 1916.

The first meeting of the Commission of Inquiry was held in the Chief Justice's Chambers, Colombo, on October 28, 1916.

Present: Sir Alexander Wood Renton, Chief Justice (Chairman); G. S. Schneider, Esq., Advocate.

The Commission was read.

Resolved:—That the Commission will hold its sittings in private.

Resolved:—That the second meeting of the Commission be held in the Legislative Council Chamber, Colombo, on Wednesday, November 1, 1916, at 8 a.m. for the purpose of ascertaining whether the defendants, or any of them, whom the Secretary was requested to summon to be in attendance, desire to appear by counsel.

The meeting was adjourned.

Wednesday, November 1, 1916.

A meeting of the Commission was held in the Legislative Council Chamber, Colombo, at 8 a.m. on November 1, 1916,

Present: Sir Alexander Wood Renton, Chief Justice (Chairman) G. S. Schneider Esq., Advocate.

There were also present by request Major L. Bayly, Mr. F. N. Sudlow, Mr. W. L. H. Cantlay, Mr. A. D. Sly, Mr. J. C. Mitchell and Mr. A. L. Baines.

(Dr. W. Atkins Smith who had been requested to appear, was unable to be present).

The above-mentioned gentlemen were invited to consider whether they wished their interest in the matters referred to the Commission to be represented by counsel, and the Secretary was instructed to write to Dr. Atkins Smith in the same sense.

It was decided to permit counsel holding watching briefs to appear on behalf of the relatives of the deceased persons referred to in the Commission.

SATURDAY AND SUNDAY, NOVEMBER 4 AND 5, 1916.

Saturday, November 4, 1916.

A meeting of the Commission was held at the Town Hall, Kegalla, on November 4 and 5, 1916.

Present: Sir Alexander Wood Renton, Chief Justice (Chairman); G. Schneider Esq., Advocate.

The Hon. the Attorney-General appeared as *amicus curiae*.

The relatives of the deceased persons (1) Juwanis Fernando or Fonseka, (2) Telenis Appu, (3) James Baas, (4) Podi Sinno and (5) Romanis Perera were represented by Mr. Advocate H J. C. Pereira, Mr. Advocate R. L. Pereira, Mr. Advocate E. W. Jayawardene, Mr. Advocate F. R. Senanayake, Mr. Advocate C. Batuwantudawe and Mr. Advocate A. Mahadeva, instructed by Mr. A. A. Wickremasinghe, Proctor.

The gentlemen concerned were represented by Mr. Advocate B. W. Bawa, K.C. and Mr. Advocate F. A. Hayley, instructed by Mr. E. R. Williams and Mr. O. Tonks.

The Chairman explained the procedure which the Commission proposed to adopt: the Attorney-General would lead the evidence for the purpose of the inquiry, with the assistance of any counsel holding watching briefs on behalf of the relations of the deceased persons. The Chairman explained that the inquiry was a judicial one, held for the purpose of informing Government as to the result of the inquiries into the allegations contained in the petitions referred to them, with reference to the death of nine persons mentioned in the Commission. The Commission had decided that it would be desirable to follow a practice that was well recognized in the Assize Courts, according to which counsel holding watching briefs on behalf of the aggrieved parties assisted with their suggestions counsel for the prosecution.

Mr. H. J. C. Pereira, addressing the Commission, stated that he did not even wish to suggest that the Attorney-General would not be fair in putting all the evidence before the Commission, but that he would be glad to know whether, in the possible contingency of a conflict of opinion between the Attorney-General and himself as to whether

any particular evidence should be called, the decision would rest with the Attorney-General or with the Commission.

The Chairman replied that the decision would rest with the Commission, and that they would be happy to hear him at any time. The Chairman added that the preliminary ruling of the Commission, that counsel on behalf of the deceased relatives should hold watching briefs, was not a final one, and could be reconsidered, if necessary, in the course of the proceedings.

Mr. H. J. C. Pereira expressed himself as satisfied with this statement by the Chairman.

The case of Juwanis Fonseka or Fernando was then taken, and the following witnesses examined:—Abilina Fernando, Cornelis Fernando, Arnolis Fernando, A Pelis Appuhamy, Meedeniya Dissawa, Mr. R. H. Villiers, and Cassie Lebbe Ibrahim Lebbe (Town Arachchi of Bulatkohupitiya).

The case of James Bass and others was then taken, and the following witnesses examined:—L. Sopihamy, Jayasinghe Eamine, G. Podi Nona, and D. Davith Sinno. At the close of the sitting Mr. H. J. C. Pereira announced that he and the other counsel with him felt that the position was such that they were not able to be of any assistance to the Commission, and that they had decided to withdraw (*vide* Appendix F).

Sunday, November 5, 1916.

Case of James Bass, &c., continued.

Witnesses:- The Assistant Government Agent, Kegalla (Mr. H. A. Burden), G. Samel Appu, H. Charles Appu, P. Aron Appu, D. Punchi Banda, U. Siriwardene (Town Arachchi of Dehiowita), Cader Tamby and Meedeniya Dissawa.

Productions A. B. and C. put in.

Thursday and Friday, November 9 and 10, 1916.

Thursday, November 9, 1916.

A meeting of the Commission was held in the Town Hall, Kegalla, on Thursday and Friday, November 9 and 10, 1916.

The Hon. the Attorney-General mentioned to the court that he had received certain information which appeared to reflect on the conduct, in connection with this inquiry, of Mr. A. A. Wickramasinghe, Proctor, of Kegalla. Several witnesses were examined in this connection, including Mr. Wickramasinghe, and the Commissioners thereupon expressed themselves satisfied with the explanations of Mr. Wickramasinghe, and the

Hon. the Attorney-General withdrew all reflections which he had made upon Mr. Wickramasinghe's action in the matter.

In this connection productions D, E, F, and G (not printed) were put in.

The case of Romanis Perera was taken up, and the following witnesses examined :- L. Peris Perera, L. William Perera, G. Hendrick Sinno, M. Juwan Appu, P. Podihamy, Meedeniya Dissawa (recalled), Peer Tamby, Mohamadu Sheriff and Meedeniya Dissawa (recalled).

Production H was put in.

The case of Juwan Appu was then taken up, and the following witnesses examined :- G. Podihamy, M. Alensu Appu, M. Elisahamy, Meedeniya Dissawa (recalled), and J. Simon de Silva.

Friday, November 10, 1916.

Case of Juwan Appu continued.

Witnesses :- G. Siddappu (1) and Mohamadu Ali Marikar.

The cases of Serahamy and Pugoda Peter were then taken up, and the following witnesses examined :- K. Punchi Menika, G. Siddappu (2), M. Punchi Appuhamy, Garuthara Hamy (Korala), G. Ukkuhamy, Mohideen Saibo, Omeru Lebbe, N. Podihamy, K. S. Mathes Silva, H. Carolis Appu, I. M. Appuhamy, Mohideen Saibo, (recalled), and Omeru Lebbe (recalled).

Productions I to L put in.

Friday, November 17, 1916.

A meeting of the Commission was held in the Town Hall, Kegalla, on Friday, November 17, 1916.

The Secretary read a telegram from the Private Secretary to His Excellency the Governor requesting the Commission to add the name of Arnolis to the list included in the reference to the Commission.

The case of the Uduwa Arachi was then taken up, and the following witnesses were examined :- V. Meddumа Kumurihamy, R. M. Banda, H. M. Tikiri Banda (Korala), Mr. Marshall de Costa, J. A. Kiri Banda, Mr. D. M. Seneviratne (Muhandiram), H. B. Punchirala, K. Salman Appu, Abdul Rahiman, Segu Mohamadu, S. K. Abdul Cader, Abdul Rahiman (recalled), Segu Mohamadu (recalled), H. M. Tikiri Banda (Korala) (recalled) and Meedeniya Dissawa (recalled).

Productions M to O put in.

Saturday, November 18, 1916.

On Saturday, November 18, 1916, the Commission visited Ampe, Bulatkohupitiya Yatiyantota and Dedugala, the scenes of the shooting of Romanis Perera, Juwanis Appu, and the Uduwa Arachchi, respectively.

The following witnesses were examined at Ampe:—L. Peris Perera (recalled), Peer Tamby (recalled), and S. L. Junoos Lebbe.

The following witnesses were examined at Bulatkohupitiya:—P. Noiya, W. Cornelis Fernando (recalled), K. D. Saibo Dorai, and Cassie Lebbe Ibrahim Lebbe (Town Arachchi of Bulatkohupitiya) (recalled).

The following witnesses were examined at Yatiyantota:—Mr. A. V. S. Jayawickreme, C. K. Abdul Hamid, and P. M. Mohamadu Lebbe.

The following witnesses were examined at Dedugala:—Segu Mohamadu (recalled) H. B. Punchirala (recalled), J. A. Kiri Banda (recalled), and S. K. Abdul Cader (recalled).

The following witness was examined at Bulatkohupitiya on the return journey:—Iyena Meyideen.

Friday and Saturday, November 24 and 25, 1916.

Friday, November 24, 1916.

A meeting of the Commission was held at the Supreme Court, Hultsdorf, Colombo, on Friday, November 24, 1916.

The following witnesses were examined:- Mr. D. J. B. Ferdinando, Mr. H. L. Dowbiggin, Mr. R. H. Villiers (recalled), Ameer Batcha, Mohamado Ibrahim, K. Punchi Menika (recalled), N. Podihamy (recalled), G. Babahamy, Mr. G. F. Forrest, I. S. Ameer Deen Saibo, I. L. M. Abdul Caffoor and Meedeniya Dissawa (recalled).

Productions P to Y put in.

Saturday, November 25, 1916.

On Saturday, November 25, 1916, the Commission proceeded to Deraniyagala and Algoda, the former being the scene of the shooting of Serahamy, the latter of Telenis Appu, James Baas, and Podi Sinno. Evidence was also recorded at Dehiowita.

At Deraniyagala the following witnesses were examined:—Mr. B. M. Selwyn, M. Punchi Appuhamy (recalled), Mohideen Saibo (recalled), Ameer Batcha (recalled), and K. Punchi Menika (recalled).

At Algoda the following witness was examined:—U. Siriwardene (recalled). Other witnesses were briefly questioned.

At Dehiowita the following witnesses were examined:—W. Cornelis Fernando (recalled), Mapala Marikar, G. Punchirala, M. A. Sanmugam and Mr. D. Williamson.

Monday, November 27, 1916.

A meeting of the Commission was held at the Supreme Court, Hulftsdorp, Colombo, at 11 a.m. on Monday 27, November, 1916.

The following witnesses were examined:- Mr. H. L. Dowbiggin (recalled), Mr. H. A. F. Simpson, Mr. A. H. Irving, Major L. Bayly, Mr. F. N. Sudlow, Mr. A. D. Sly, Mr. A. L. Baines and Mr. W. L. H. Cantlay.

Productions Z (collectively), L B. 1, F.N.S 1, A.D.S. 1 to A.D.S. 4, A L.B. 1, A.L.B. 2 and L.H C. 1 put in.

Tuesday, November 28, 1916.

The last meeting was held at the Supreme Court, Hulftsdorp, Colombo, at 11 a.m. on Tuesday, November 28, 1916.

The following witnesses were examined:—Meedeniya Dissawa (recalled), Mr. H. E. Candy, Mr. J. C. Mitchell, Dr. W. Atkins Smith, Mr. C. C. B. Lover, the Assistant Government Agent, Kegalla (Mr. H. A. Burden) (recalled) and Mr. H. L. Dowbiggin (recalled).

Productions W.A.S. 1, C.C.B.L. 1 and C C.B.L. 2 put in.

REPORT

May it please Your Excellency,

We were originally appointed by your Commission dated the 26th day of October, 1916, to inquire into the circumstances of the deaths of nine men:—(1) L. Romanis Perera, (2) Telenis Appu, (3) Podi Sinno, (4) James Baas, (5) Juwanis Fonseka, (6) W. G. Serahamy, (7) Pugoda Peter, (8) Uduwa Arachchi, and (9) Juwan Appu, who were shot in connection with the riots in this Colony in the month of June, 1915. The case of a tenth man—(10) Arnolis—who was similarly shot, was subsequently included in our Commission.

2. We have held seventeen sittings, examined eighty-four witnesses, and visited and inspected the scenes of each of the executions in question, except Digalla estate, where Pugoda Peter was shot. In that case there was no dispute as to the facts, and an inspection of the "locus" was considered unnecessary.

APPEARANCE OF COUNSEL

3. There is a preliminary matter to which reference must be made in passing. The Attorney-General, at our request, kindly undertook to prepare and present to us, as *amicus curiæ*, the case for the relatives of the deceased persons—a task that he subsequently discharged with a patience and thoroughness which we desire most gratefully to acknowledge. We decided, however, that as the officers responsible for the shooting of the various deceased persons would probably be, as they in fact were, represented by counsel, it would be reasonable, following the analogy of a course that is frequently adopted in the Assize Courts, to allow members of the Unofficial Bar to hold "watching briefs" on behalf of the relatives of the deceased persons, and to assist the Attorney-General with suggestions in the conduct of their case. Our decision on this point was at once conveyed by the Secretary of our Commission to Mr. Burden, the Assistant Government Agent of the Kegalla District, within which all the relatives of the deceased persons were resident, and they received a special and immediate notice of this decision from Mr. Meedeniya, the Dissawa, acting under directions from Mr. Burden himself.

4. On the opening of the inquiry at Kegalla, Mr. H. J. C. Pereira, Advocate, appeared with other members of the Bar instructed by a local Proctor. The Chairman, at Mr. Pereira's request, explained to him the procedure which the Commission proposed to adopt. Mr. Pereira then asked who would decide, in the event of a conflict of opinion between the Attorney General and himself, for example, as to whether certain evidence should be called or not. The Chairman replied that the decision would rest with the Commissioners, and that, before determining any such point, they would be prepared to hear him independently of the Attorney-General. The Chairman added that even the original ruling of the Commissioners that counsel for the relatives of the deceased persons should hold only watching briefs was not necessarily a final one, and that it would be revised, if they found it desirable to do so, during the progress of the case. But, from what transpired subsequently Mr. Pereira unfortunately does not appear to have understood the statement of the Chairman on this last point. He and his colleagues acquiesced, however, for the time being in the position assigned to them, and assisted the Attorney-General with their suggestions during the whole of the first day's proceedings, which lasted for seven hours, and in the course of which seven witnesses were examined.

5. Before the adjournment of the inquiry for the day, Mr. Pereira, addressing the Commission, stated that he, and the other members of the Bar associated with

him, desired to withdraw from the case, as they felt that they could not render any further assistance to their clients. The Chairman then said that the matter was one entirely for themselves, but that the Commission would be sorry to lose their help, and would be glad to hear anything they had to say. We had no reason at this stage to suppose that the withdrawal of counsel for the relatives of the deceased persons from the case was due to anything but the fact that they had reconsidered their original acceptance of the "locus standi" indicated by the Chairman at the commencement of the inquiry. Mr. Pereira subsequently, however, addressed to the Commission a letter, in which he referred to the evidence of a certain Headman, the Town Arachchi of Bulatkohupitiya, who had been called as a witness for the relatives of the deceased persons, but who could have been shown on cross-examination to have been really adverse to their interests. The Secretary, in reply, directed attention to the Chairman's statement at the beginning of the inquiry, and added that, if the terms of that statement had been in any respect misunderstood, the facilities embodied in it were open to Mr. Pereira and his colleagues still. Mr. Pereira declined to take any further part in the proceedings unless as unrestricted rights of advocacy were conceded to him as if the case for the relatives of the deceased persons were exclusively in his hands. The Secretary replied that the only conditions on which counsel could be associated with the Attorney-General in the inquiry were those already mentioned. It is unnecessary to deal with this correspondence here in greater detail. It is printed as Appendix F. to this report.

6. We cannot but regret that Mr. Pereira, in addressing us at the close of the first day's proceedings, did not take advantage of the right, which both he and the other advocates who were with him knew that they possessed, of bringing directly to our notice any such difficulty as was supposed to be presented by the Headman's evidence. Had he done so, he would at once have been heard fully in support of this contention, and whatever order was necessary in the interests of justice would have been made. As already stated, however, we have had the benefit of the assistance of the Attorney-General throughout the inquiry. The relatives of the deceased persons in each case had themselves the opportunity of being present, while the witnesses were being examined; the evidence was, when necessary, translated to them, and they were invited by us and by the Attorney-General to suggest any further questions that they might wish to be put, or the names of any additional witnesses, and in many instances they took advantage of this facility.

THE SUPPRESSION OF RIOTS AND MARTIAL LAW

7. It may be convenient, before entering upon a consideration of the strict subject-matter of this inquiry, to attempt a general statement of the legal principles applicable to the suppression of riots, and of the scope and effects of what is known as martial law. The Common law of Ceylon has no provision on this point. The law of Ceylon in regard to the former of these questions is to be found partly in the Penal Code and partly in the Code of Criminal Procedure. The Penal Code supplies the law as to the right of private defence of persons and property. The Criminal Procedure Code prescribes the manner in which unlawful assemblies are to be dispersed, but without abrogating the rights of every citizen, whatever may be his vocation, under the Penal Code. We will call attention later on to points in which, in our opinion, the existing law is defective, and might well be amended. Our present object is merely to ascertain what that law is. Every citizen, whether he be a soldier, a police officer, or merely a private individual, has a right to defend (1) his own body and the body of any other person against any offence affecting the human body; (2) the property, whether movable, immovable, of himself or of any other person against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal tres-

pass, or an attempt to commit any of these offences. The right of private defence of the body extends to the voluntarily causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be (1) such an assault as may reasonably cause an apprehension that death or grievous hurt will otherwise be its result; (2) an assault with the intention of committing rape or of gratifying unnatural lust, or of kidnapping or of abducting, or of wrongfully confining anyone under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release. Where the offence does not fall under any of the above classes, the right of private defence does not extend to the voluntary causing of death, but it does extend to the voluntary causing of any harm other than death to the assailant. The right commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, although the offence may not have been committed, and continues so long as such apprehension has not been removed. The right of private defence of property extends to the voluntary causing of death or of any other harm to the wrongdoer, if the offence be (1) robbery, (2) house-breaking by night, (3) arson committed on any building used as a human dwelling or on a place for the custody of property, (4) theft, mischief, or house-trespass under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence if the right of private defence is not exercised. Where the offence does not fall under any of the above categories, the right of private defence does not extend to the voluntary causing of death, but does extend to the voluntary causing of any harm other than death to the wrongdoer. The right of private defence of property commences whenever a reasonable apprehension of danger to the property arises. The period for which it continues depends on the nature of the offence that has rendered its exercise necessary. It continues in the case of "theft" till the thief has effected his retreat with the property, or the assistance of the public authorities has been obtained or the property itself has been recovered; if the offence is "robbery", so long as the offender cause or attempts to cause to any person death or hurt or wrongful restraint, or so long as the fear of instant death or hurt or personal restraint continues; if the offence is "criminal trespass" or "mischief", as long as the offender continues in its commission; if the offence is "house-breaking by night", so long as the house-trespass which the house-breaking began lasts. If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, he is entitled to run the risk. For example, A is attacked by a mob who attempt to murder him; he cannot effectually defend himself without firing upon the mob, and cannot fire without the risk of harming young children who are mixed up in it. He commits no offence if by so firing he harms any of these children.

8. The rights which the law has thus conferred on citizens are, of course, subject to certain restrictions. There is no right of private defence (1) against an act which does not reasonably cause the apprehension of death or grievous hurt, if done or attempted to be done by, or by the direction of, a public servant acting in good faith under cover of his office, although the act or the order to commit it may not be strictly justifiable in law; (2) in cases in which there is time to have recourse to the public authorities; and in no case does the right of private defence extend to the infliction of more harm than is reasonably necessary in its exercise.

9. Special provision is made by the Criminal Procedure Code as to the manner in which "unlawful assemblies" may be dealt with. An assembly of five or more persons is an unlawful assembly, if the common object of the persons composing it is—

(1) To overawe by criminal force or show of criminal force the Executive Government or the Legislative Council or any public servant in the exercise of his lawful powers;

(2) To resist the execution of any law or legal process;

(3) To commit any mischief or criminal trespass, or other offence* punishable under the Penal Code or under any other law with imprisonment for six months or more, whether with or without a fine;

(4) By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person or the public of the enjoyment of a right of way, or of the use of water, or of any other incorporeal right of which such person or public is in possession or enjoyment, or to enforce any right or supposed right;

(5) By means of criminal force or show of criminal force to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do;

(6) That the persons assembled, or any of them,may train or drill themselves or be trained or drilled to the use of arms or practise military movements or evolutions without the sanction of the Governor.

Any Police Magistrate and any peace officer not below the rank of Inspector, Korala, Muhandiram, or Udaiyar may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse. If any such assembly upon being so commanded does not disperse, or, if without being so commanded, behave itself in such a manner as to show a determination not to disperse, any police officer or any such peace officer as above mentioned may proceed to disperse it by force, and may require the assistance of any male person, not being an officer or soldier or a volunteer, for the purpose of dispersing it, and, if necessary, may arrest and confine the persons who form part of it. This procedure is known as the use of "civil force". If civil force should prove insufficient, and it is necessary for the public security that the unlawful assembly should be dispersed, the Government Agent of the Province or any Police Magistrate having jurisdiction, who is present, may cause it to be dispersed by "military force". When the use of military force has been determined upon, any commissioned or non-commissioned officer in command of any soldiers, or, if the Governor so directs in writing, any volunteer, may be required by the Government Agent, Police Magistrate, or Inspector-General of Police to carry out his orders in that behalf. The requisition so made must be complied with by the officer to whom it is addressed, but in doing so as little force is to be used, and as little injury to person and property is to be done, as may be necessary for the attainment of the object in view. Where the public security is manifestly endangered by any unlawful assembly, and the Government Agent, Police Magistrate, or Inspector-General of Police cannot be communicated with, any commissioned officer of the army may disperse it by military force, and may arrest and confine any persons forming part of it in order that they may be dealt with according to law. But if, while the commissioned officer is acting under this power, it becomes practicable for him to communicate with the Government Agent, Police Magistrate or Inspector-General of Police, he must do so, and must thenceforward act under the orders of the Government Agent, Police Magistrate, or Inspector-General of Police, as the case may be. No prosecution against any Government Agent, Police Magistrate, or the Inspector-General of Police, or any military officer, peace officer, or volunteer for any act purported to

* *Rex* v. *Peiris*, (1914) 18 N.L.R. 321; *Rex* v. *Suppar*, (1915) 18 N.L.R. 322

be done under the provisions summarized above can be instituted in any criminal court, except with the sanction of the Governor in Executive Council and—

(a) No Government Agent, Police Magistrate, or peace officer or officer so acting in good faith;

(b) No person doing any act in good faith, in complying with any of the requirements above mentioned; and

(c) No inferior officer, soldier, or volunteer doing any act in obedience to orders which under military law he was bound to obey—can be deemed to have thereby committed an offence.

The rules laid down by the Code of Criminal Procedure do not, however, in any way interfere with the right of private defence of the body or of property under the Penal Code. Every citizen is empowered to exercise that right in the cases to which it extends, if necessary on his own initiative, and he falls short of his duty as a citizen if he fails to do so. The assumed necessity for the presence of a Magistrate on such an occasion has from time to time, both in England and in Ceylon, led to inaction and unwillingness to assume responsibility, which have been productive of almost as much harm as excess of zeal. It must be noted, however, that the Penal Code confers upon an ordinary citizen as such no power to deal with unlawful assemblies or mobs apart from the commission or attempted commission by them of offences of the classes which it specially enumerates.

10 "Mutatis mutandis" and, in particular, allowance being made for the limitations indicated above in Ceylon of the rights of the subject under the common law of the United Kingdom, the law of England is clear upon this point in the same sense. It was expounded by Chief Justice Tindal in his charge to the grand jury in the Bristol riots case* in language that has become classical :—

"By the common law every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the Magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled; he may stay those who are engaged in it from executing their purpose; he may stop and prevent others whom he shall see coming up from joining the rest; and not only has he the authority, but it is 'his bounden duty' as a good subject of the King to perform this to the 'utmost of his ability'. If the riot be general and dangerous, he may arm himself against the evildoers to keep the peace. It would undoubtedly be more prudent to attend, and be assistant to the justices, sheriffs, or other ministers of the King in doing this; for the presence and authority of the Magistrate would restrain the proceedings to such extremities until the danger were sufficiently immediate; or until such felony was either committed, or could not be prevented without recourse to arms; and at all events the assistance given by men who act in subordination and concert with the Civil Magistrate will be more effectual to attain the object proposed than any efforts, however well intended, of separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the Magistrate, it is the duty of every subject to act for himself, and upon his own responsibility, in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common law. The law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation, and invested with the same authority to preserve the peace of the King as any other subject. If the one is bound to attend

* *Rex* v. *Pinny*, (1832) 5 C & P 261.

the call of the Civil Magistrate, so is the other; if the one may interfere for that purpose when the occasion demands it, without the requisition of the Magistrate, so may the other too; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same. Undoubtedly the same exercise of discretion which requires the private subject to act in subordination to and in aid of the Magistrate rather than upon his own authority before recourse is had to arms, ought to operate in a stronger degree with a military force. But where the danger is pressing and immediate, where a felony had actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the King not only may, but are bound to do their utmost, of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people. Still further, by the common law, not only is each private subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer is called upon to do all that in them lies for the suppression of riot, and each has authority to command all other subjects of the King to assist him in that undertaking. By an early statute (13 Hen. 4, C. 7) any two justices, with the sheriff or under-sheriff of the county, may come with the power of the country, if need be, to arrest any rioters, and shall arrest them; and they have power to record that which they see done in their presence against the law, by which record the offenders shall be convicted, and may afterwards be brought to punishment. And here I must distinctly observe that "it is not left to the choice or will of the subject", as some have erroneously supposed, to "attend or not to the call of the Magistrate as they think proper", but "every man is bound, when called upon", under pain of fine and imprisonment, "to yield a ready and implicit obedience to the call of the Magistrate, and to do his utmost in assisting him to suppress any tumultuous assembly."

11. An equally authoritative statement of the rules of English law on the subject is contained in the Report of Lord Bowen, Sir Albert Rollit, and Viscount (then Mr.) Haldane on the Featherstone riots during the colliers' strike at Action Hall in 1893:—

"We pass next", say these Commissioners, "to the consideration of the all-important question whether the conduct of the troops in firing on the crowd was justifiable; and it becomes essential, for the sake of clearness, to state succinctly what the law is which bears upon the subject. By the law of this country every one is bound to aid in the suppression of riotous assemblages. The degree of force, however, which may lawfully be used in their suppression depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained. The taking of the life can only be justified by the necessity for protecting persons or property against various forms of violent crimes, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed, or in the case of persons whose conduct has become felonious through disobedience to the provisions of the Riot Act, and who resist the attempt to disperse or apprehend them. The riotous crowd at the Action Hall Colliery was one whose danger consisted in the manifest design violently to set fire and do serious damage to the colliery property, and in pursuit of that object to assault those upon the colliery premises. It was a crowd, accordingly, which threatened serious outrage, amounting to felony, to property and persons, and it became the duty of all peaceable subjects to assist in preventing this. The necessary prevention of such outrage on person and property justifies the guardians of the peace in the employment against the riotous crowd of even deadly weapons.

"Officers and soldiers are under no special privileges, and subject to no special responsibilities, as regards this principle of the law. A soldier, for the purpose of establishing civil order, is only a citizen armed in a particular manner. He cannot, because he is a soldier, excuse himself, if without necessity he takes human life. The duty of Magistrates and peace officers to summon, or to abstain from summoning, the assistance of the military depends in like manner on the necessities of the case. A soldier can only act by using his arms. The weapons he carries are deadly. They cannot be employed at all without danger to life and limb, and in these days of improved rifles and perfected ammunition, without some risk of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose under such grave conditions ought, of course, to be the last expedient of the Civil Authorities. But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is in law a misdemeanour.

"The whole action of the military when once called in ought, from first to last, to be based on the principle of doing, and doing without fear, that which is absolutely necessary to prevent serious crime, and of exercising all care and skill with regard to what is done. No set of rules exists which governs every instance, or defines beforehand every contingency that may arise. One salutary practice is that a Magistrate should accompany the troops. The presence of a Magistrate on such occasions, although not a legal obligation, is a matter of the highest importance. The military come, it may be, from a distance. They know nothing probably of the locality, or of the special circumstances. They find themselves introduced suddenly on a field of action, and they need the counsel of the local justice, who is presumably familiar with the details of the case. But although the Magistrate's presence is of the highest value and moment, his absence does not alter the duty of the soldier, nor ought it to paralyze his conduct, but only to render him doubly careful as to the proper steps to be taken. No officer is justified by English law in standing by and allowing felonious outrage to be committed, merely because of a Magistrate's absence.

"The question whether, on any occasion, the moment has come for firing upon a mob of rioters depends, as we have said, on the necessities of the case. Such firing, to be lawful, must in the case of a riot like the present, be necessary to stop or prevent such serious and violent crime as we have alluded to; and it must be conducted without recklessness or negligence. When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person and property. An order from the Magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the Magistrate has at law no legal effect. Its presence does not justify the firing if the Magistrate is wrong*. Its absence does not excuse the officer from declining to fire when the necessity exists.

"With the above doctrines of English law the Riot Act does not interfere. Its effect is only to make the failure of a crowd to disperse for a whole hour after the proclamation has been read a felony; and on this ground to afford a statutory justification for dispersing a felonious assembly even at the risk of taking life. In the case of the Action Hall Colliery, an hour had not elapsed after what is popularly called the reading of the Riot Act before the military fired. No justification of their firing can, therefore, be rested on the provisions of the Riot Act itself, a further consideration of which may, indeed, be here dismissed from the case. But the fact that an hour had

* This proposition must be regarded as subject, in Ceylon, to the provisions of the Criminal Procedure Code cited in paragraph 9 of this report.

not expired since its reading did not incapacitate the troops from acting when outrage had to be prevented. All their common law duty as citizens and soldiers remained in full force..... Was what they did necessary, and no more than necessary, to put a stop to or prevent felonious crime? In doing it, did they exercise all ordinary skill and caution, so as to do no more harm than could be reasonably avoided?

"If these two conditions are made out, the fact that innocent people have suffered does not involve the troops in legal responsibility. A guilty ringleader who under such conditions is shot dead dies by justifiable homicide. An innocent person killed under such conditions, where no negligence has occurred, dies by an accidental death. The legal reason is not that the innocent person has to thank himself for what has happened, for it is conceivable (though not often likely) that he may have been unconscious of any danger and innocent of all imprudence. The reason is that a soldier who fired has done nothing except what was his strict legal duty."

12. We would venture, however, to raise the question whether the existing law of Ceylon on the whole subject might not with advantage be simplified and extended. The refined legal distinctions drawn by the Penal Code as to the circumstances in which the right of private defence of the body and of property arises, as to the cases in which it does not authorize the voluntary causing of death, and as to the time for which it continues, cannot easily be remembered by, even if they are actually known to, soldiers, police, or peace officers, or ordinary citizens, who are called upon suddenly to deal with civil disturbances or unlawful assemblies. Moreover, there are points on which neither the Penal Code nor the Code of Criminal Procedure throws any clear light. The provisions of the former enactment relate primarily to the right of private defence of the person and of property against individuals. Those of the latter deal with the dispersal of unlawful assemblies. The Penal Code does not take any clear or exhaustive account of situations which constantly arise in the course of civil disturbances. It is not permissible, for instance, to fire upon a mob breaking into a house or shop in the daytime. The question might well arise whether the destruction of a house or shop by explosives could be said to be mischief by fire within the meaning of the relevant provisions in the Penal Code. Armed pickets of Police in charge of prisoners are not entitled to use their firearms for the purpose of preventing release of their prisoners, but only in order to protect themselves against the danger of death or grievous hurt which they may have to incur in resisting that release. It appears to us that the question of the amendment of the Penal Code on such points as these is well worthy of consideration by Government.

13. The most useful exposition of the scope and effects of martial law is to be found in an opinion prepared by Sir James Fitzjames Stephen, and assented to by Mr. Edwin James, in connection with the famous Jamaica insurrection in 1865. This opinion is published in Forsyth's "Cases and Opinions on Constitutional Law." It was followed almost precisely by Sir Alexander Cockburn, C.J., in his charge—a report of which, unfortunately, is not available in this colony—to the grand jury at the Central Criminal Court in one of the proceedings connected with the Jamaica case, and Sir James Stephen has reproduced it in his "History of the Criminal Law of England" (Vol. I., p. 207.)

14. In very early times various systems of law co-existed in England. One of these was the law martial exercised by the constable and marshal over troops on actual, and especially on foreign service. Its existence in these cases led to attempts on the part of various sovereigns to introduce the same system in times of peace on emergencies, and especially, for the punishment of breaches of the peace. This was declared to be illegal by the Petition of Right in 1624. The distinctive feature of all these commissions of martial law was that they authorized, not merely the suppression

of revolts by military force, which was undoubtedly legal, but the subsequent punishment of offenders by illegal tribunals, which is the practice forbidden by the Petition of Right. When standing armies were introduced, the powers of the constable and marshal fell into disuse, and the discipline of the army was provided for by the annual Mutiny Acts, which contain express regulations for that purpose. These regulations form a code, which is sometimes called martial, but is more properly military law. Martial law in its original sense, therefore, became obsolete, being superseded by military law, and, in its derivative sense, was declared by the Petition of Right to be illegal. The expression, however, has survived, and has been applied to a very different thing, namely, to the common law right of the Crown and its representatives to repel force by force in the case of invasion or insurrection. Martial law in this connection is merely the assumption by the officers of the Crown of absolute power, exercised by military force for the suppression of an insurrection and the restoration of order and lawful authority. The officers of the Crown are justified in any exertion of physical force, extending to the destruction of life and property, to any degree and in any manner that may be required for this purpose. They are not justified in the use of excessive or cruel means, but are liable civilly or criminally for such excess or cruelty. They are not justified in inflicting punishment after resistance has been suppressed and the ordinary courts of justice can be reopened. The Courts Martial, as they are called, by which martial law in this sense of the word is administered, are not properly speaking, Courts Martial or courts at all. They are mere committees formed for the purpose of carrying into execution the discretionary power assumed by the Government. They are justified in doing, with any forms and in any manner, whatever is necessary to suppress insurrection and to restore peace and the authority of the law. They are personally liable for any acts which they may commit in excess of that power, except in so far as they may be protected by an Act of Indemnity.

15. In an earlier opinion by Sir John Campbell, Attorney-General, and Sir R. M. Rolfe, Solicitor-General, as to the power of the Governor of Canada to proclaim martial law, the following language is used on the same subject.* The proclamation of martial law

"confers no power on the Governor which he would not have possessed without it. The object of it can only be to give notice to the inhabitants of the course which the Government is obliged to adopt for the purpose of restoring tranquility. In any District in which, by reason of armed bodies of the inhabitants being engaged in insurrection, the ordinary course of law cannot be maintained, we are of opinion that the Governor may, even without any proclamation proceed to put down the rebellion by force of arms, as in case of foreign invasion, and for that purpose may lawfully put to death all persons engaged in the work of resistance; and this, as we conceive, is all that is meant by the language of the statutes referred to in the report of the Attorney and Solicitor General for Lower Canada, when they allude to the "undoubted prerogative of His Majesty for the public safety to resort to the exercise of martial law against open enemies or traitors.

"The right of resorting to such an extremity is a right arising from and limited by the necessity of the case—'quod necessitas cogit, defendit.' For this reason we are of opinion that the prerogative does not extend beyond the case of persons taken in open resistance, and with whom, by reason of the suspension of the ordinary tribunals, it is impossible to deal according to the regular course of justice. When the regular courts are open, so that criminals might be delivered over to them to be dealt with according to law, there is not, as we conceive, any right in the Crown to adopt

* Forsyth's Cases and Opinions on Constitutional Law, pp. 198 and 199.

any other course of proceeding.....

"It is hardly necessary for us to add that, in our view of the case, martial law can never be enforced for the ordinary purposes of civil or even criminal justice, except, in the latter, so far as the necessity arising from actual resistance compels its adoption."

16. The statement in the opinion set out in the last preceding paragraph that, when the regular courts are open so that criminals may be delivered over to them according to law, the Crown has no right to adopt any other course of proceeding, is subject, however, to an important qualification. The fact that for certain purposes the legal tribunals have been permitted to pursue their ordinary course in a district in which martial law has been proclaimed is not conclusive that an actual state of war or of insurrection does not exist.†

ACTS OF INDEMNITY

17. The object and the scope of Acts of Indemnity were exhaustively explained by Mr. Justice Willes in delivering the judgment of the Court of Exchequer Chamber,* affirming the decision of the Court of Queen's Bench, in *Phillips* v. *Eyre* (the Jamaica insurrection case,) although the immediate point for determination there was the question whether the passing of such an enactment duly sanctioned by the Crown is within the competence of a Colonial Legislature. To that question the Courts of Queen's Bench and Exchequer Chamber returned an answer in the affirmative, and held also that such an act of indemnity will take away any right of action even in the English, and "a fortiori" in the Colonial, courts in respect of any injury coming within the scope of the indemnity, whether the act causing that injury was protected by prior or by "ex post facto" legislation. After quoting the passage from the charge of Chief Justice Tindal in the Bristol riots case cited above, in which the right and the duty of every subject to act for himself and upon his own responsibility in certain circumstances in suppressing a riotous and tumultuous assembly was expounded, the learned Judge proceeded as follows:—

This perilous duty, shared by the Governor with all the Queen's subjects, whether civil or military, is in an especial degree incumbent upon him as being entrusted with the powers of Government for preserving the lives and property of the people and the authority of the Crown. And if such duty exist as to tumultuous assemblies of a dangerous character, the duty and responsibility in case of open rebellion are heightened by the consideration that the existence of law itself is threatened by force of arms and a state of war against the Crown established for the time. To act under such circumstances within the precise limits of the law of ordinary peace is a difficult, and may be an impossible, task; and to hesitate or temporize may entail disastrous consequences. Whether the proper as distinguished from the legal course has been pursued by the Governor in so great a crisis it is not within the province of a court of law to pronounce; nor are we called upon to offer any judicial opinion as to lawfulness or propriety of what was done in the present case, apart from the validity and legalizing effect of the Colonial Act. It is manifest, however, that there may be occasions, in which the necessity of the case demands prompt and speedy action for the maintenance of law and order at whatever risk, and where the Governor may be compelled, unless he shrinks from the discharge of paramount duty, to exercise "de facto" powers which the Legislature would assuredly have confided to him if the emergency could have been foreseen, trusting that whatever he has honestly done

† *Elphinstone* v. *Bedreechund*, (1830) 1 Knapp, P.C. 316; *Ex parte Marais*, (1902) A.C. 109; and cf. *In re de Silva*, (1915) 18 N.L.R. 277.

* (1870) 40 L.J.Q.B. 28, at pp. 33, 34; (1868-1869) 38 L.J.Q.B. 113.

for the safety of the State will be ratified by an act of indemnity and oblivion. There may not be time to appeal to the Legislature for special powers. The Governor may have, upon his own responsibility, acting upon the best advice and information he can procure at the moment, to arm loyal subjects, to seize or secure arms, to intercept munitions of war, to cut off communications between the disaffected, to detain suspected persons, and even to meet armed force by armed force in the open field. If he hesitates, the opportunity may be lost of checking the first outbreak of insurrection, whilst by vigorous action the consequences of allowing the insurgents to take the field in force may be averted. In resorting to strong measures he may have saved life and property out of all proportion to the mistakes he may honestly commit under information which turns out to have been erroneous or treacherous. The very efficiency of his measures may diminish the estimate of the danger with which he had to cope, and the danger once past every measure he has adopted may be challenged as violent and oppressive, and every one who advised him or acted under his authority may be called upon, in actions at the suit of individuals dissatisfied with his conduct, to establish the necessity or regularity of every act in detail by evidence which it may be against public policy to disclose. (See the recitals of the Indemnity Act, 41 Geo. 3 c. 66.) The bare litigation to which he and those who acted under his authority may be exposed, even if defeated by proving the lawfulness of what was done, may be harassing and ruinous. Under these and like circumstances, it seems to be plainly within the competence of the Legislature, which could have authorized by antecedent legislation the acts done as necessary or proper for preserving the public peace, upon a due consideration of the circumstances, to adopt and ratify like acts when done, or in the language of the law under consideration, to enact that they shall be 'made and declared lawful and confirmed.' Such is the effect of the Act of Indemnity in question, which follows the example of similar legislation in the mother country and in other dominions and colonies of the Crown. In England upon numerous occasions, from the fourteenth century downwards, similar laws have been passed, after great troubles, with the view of indemnifying those who took arms to maintain the authority of the Crown, and of putting an end to occasions of discord even by way of a general act of oblivion, prohibiting civil suits and criminal prosecutions in respect of the acts done in the course of a rebellion, and reciting as the gist of the matter that it was 'reasonable that acts done for the public service, though not justifiable by the strict forms of law, should be justified by Acts of Parliament.' The principle of these enactments is indemnity for what was done in zeal for the public service, and a politic oblivion of the troubles and dissensions of the past, so that, to use the language of the Act of 'grace and general pardon, indemnity, and oblivion' passed at the Restoration, 'no mention be made thereof in time to come in judgment or judicial proceeding.'

"In like manner an Act of Indemnity was passed by the Irish Parliament after the rebellion of 1798, 39 Geo. 3, c. 3, amended by 39 Geo. 3, c. 50, and further enforced by 40 Geo. 3, c. 89. The earlier Act of the Irish Parliament 3 Geo. 3, c. 19, is an instance, though but slight, of the same kind. And similar legislation appears to have taken place in the colonies, for instance, at the Cape in 1836, 1847, and 1853; in Canada in 1838; in Ceylon in 1848; in St. Vincent in 1862; and in New Zealand in 1865; 1866 and 1867. In 1866 the New Zealand Act was disallowed by the Crown, and all such legislation is subject to the same control."

18. In the above citation Mr. Justice Willes emphasizes the necessity for legislation of this character in order to safeguard the freedom of the subject to discharge his common law duties with respect to the suppression of riots. In the following passage from the judgment of the Court of Queen's Bench in *Phillips* v. *Eyre*, Sir Alexander Cockburn C.J. considers the matter from the opposite standpoint:—

"There can be no doubt that every so called Indemnity Act involves a manifest violation of justice, inasmuch as it deprives those who have suffered wrongs of their vested right to the redress which the law would otherwise afford them, and gives immunity to those who have inflicted those wrongs, not at the expense of the community for whose alleged advantage the illegal acts were done, but at the expense of individuals who, innocent, possibly, of all offence, have been subjected to injury and outrage often of the most aggravated character. It is equally true, as was forcibly urged on us, that such legislation may be used to cover acts of the most tyrannical, arbitrary, and merciless character—acts not capable of being justified or palliated, even by the plea of necessity, but prompted by local passions, prejudices, or fears—acts not done with the temper and judgment which those in authority are bound to bring to the exercise of so fearful a power, but characterized by reckless indifference to human suffering and an utter disregard of the dictates of common humanity. On the other hand, however, it must not be forgotten that, against any abuse of the local legislative authority in such a case, protection is provided by the necessity of the assent of the Sovereign, acting under the advice of ministers themselves responsible to Parliament. We may rest assured that no such enactment would receive the Royal assent, unless it were confined to acts honestly done in the suppression of existing rebellion and under the pressure of the most urgent necessity."

19. From the observations of Mr. Justice Willes and Sir Alexander Cockburn in *Phillips* v. *Eyre*, it results that an Act of Indemnity is intended to protect the subject, not merely as against the consequences of illegal acts, but from being harassed in respect of acts of doubtful legality, done in good faith in the suppression of riots, and to interfere with the application of the general law to no other or further extent.

20. The construction of such enactments has, therefore, to be approached from two different standpoints, each of which is equally important. On the one hand, they must not be allowed to furnish a safe shelter for malice, caprice or arbitrary punishment for past offences, actual or assumed, without there being any real occasion, based on the public welfare, for its infliction. On the other hand, it must be remembered that any undue carefulness in marking what has been honestly done amiss in the public interest, not only would defeat the object of these enactments themselves, but would re-act most seriously on the willingness of ordinary citizens to assume any responsibility in dealing with civil disturbances.

21. In this connection reference may be made to the charge of Mr. Justice Chamberlain in the case of *Wright* v. *Fitzgerald* (27 St. Tr. 65). M. Wright, who was a French master of Clonmel, after the suppression of the Irish rebellion in 1798, brought an action against Mr. Fitzgerald, the Sheriff of Tipperary, for having flogged him without due inquiry. Martial law was in full force at the time, and an Act of Indemnity had been passed to excuse all breaches of the law committed in the suppression of the rebellion. Mr. Justice Chamberlain said:—

"The jury were not to imagine that the Legislature, by enabling Magistrates to justify under the Indemnity Bill, had released them from the feelings of humanity, or permitted them wantonly to exercise power, even though it were to put down rebellion. They expected that in all cases there should be a grave and serious examination into the conduct of the supposed criminal,..... .....
By examination or trial, they did not mean that sort of examination and trial which they were now engaged in, but such examination and trial—the best the nature of the case and existing circumstances should allow of. That this must have been the intention of the Legislature was manifest from the expression 'Magistrate and all other persons,' which provided that as every man, whether Magistrate or not, was authorized to

suppress rebellion, and was to be justified by that law for his acts, it is required that he should not exceed the necessity which gave him that power, and that he should show in his justification that he had used every possible means to ascertain the guilt which he had punished; and, above all, no deviation from the common principles of humanity should appear in his conduct."

M. Wright recovered £500 damages, and when Mr. Fitzgerald applied to the Irish Parliament for an indemnity he could not get one.

CEYLON INDEMNITY ORDER IN COUNCIL, 1915.

22. The Act of Indemnity in the Jamaica insurrection case provided that—

"In order to prevent any doubt which might arise whether any act alleged to be done under the authority of the Governor, or to have been done 'bona fide' in order to suppress and put an end to the said rebellion was so done, it shall be lawful for the Governor for the time being to declare such acts to have been done under such authority, or 'bona fide' for the purposes aforesaid, and such declaration by any writing under the hand of the Governor for the time being shall in all cases be conclusive evidence that such acts were so done respectively."

23. The Ordinance (No. 11 of 1848) passed in Ceylon in connection with the insurrection in this Colony in 1848 contained a similar provision. The Ceylon Indemnity Order in Council, 1915, is of a somewhat different character. Its material provisions are these:—

1. No action, prosecution, or legal proceeding whatsoever shall be brought, instituted, or maintained against the Governor of Ceylon, or the person for the time being or at any time commanding the troops in the Colony, or against any person or persons acting under them or any of them respectively in any command or capacity, civil or military, or in pursuance of any orders, general or special, given by them or any of them in that behalf, for or on account of or in respect of any acts, matters, or things whatsoever in good faith advised, commanded, ordered, directed, or done for the maintenance of good order and government or for the public safety of the Colony between the date of the commencement of martial law and the date of the taking effect of this order.

2. Every such person aforesaid by whom any such act, matter, or thing shall have been advised, commanded, ordered, directed, or done for the purposes aforesaid shall be freed, acquitted, discharged, released, and indemnified against all and every person and persons whomsoever in respect thereof.

3. Every such act, matter, or thing referred to in the preceding articles shall be presumed to have been advised, commanded, ordered, directed, or done, as the case may be, in good faith, until the contrary shall have been proved by the party complaining.

24. The effect of these provisions is to indemnify against legal proceedings of every description—

(a) The Governor; or

(b) The person for the time being commanding the troops; or

(c) Any person acting under (a) and (or) (b) in any capacity; civil or military; or

(d) Any person acting in pursuance of general or special orders by (a) and (or) (b) in respect of any act whatever done while martial law was in force for the maintenance of good order, or for the public safety of the Colony, unless proved by the party complaining of such act not to have been done in good faith.

25. In each of the cases under consideration the act complained of was done during the subsistence of martial law, and was done, therefore, in circumstances to which the Order in Council is applicable. In each the person authorizing it was at the time acting in a military capacity under the General Officer Commanding the Troops. It will be observed, from the analysis given above of the relevant provisions of the Order in Council, that a person acting in such capacity need not have received either general or special orders with regard to the act in question. The presence or absence of such orders may afford valuable evidence of good faith or the reverse. But that is all. The indemnity will extend to any act done with a view to the maintenance of good order or the public safety, unless the party aggrieved by it proves that it was not done in good faith. When the Order in Council speaks of an act being done for the maintenance of good order or for the public safety, we understand it to mean that the act was honestly intended to effect either of those purposes. Whether it was or was not calculated to do so is, here again, only a matter of evidence bearing on the issue of "bona" or "mala fides". The existence of good or bad faith is in each case a question of fact, to be decided in the light of all the attendant circumstances. Good faith will be excluded, of course, by proof of malice, and may be excluded by evidence that the act complained of was not, and could not have been, regarded by the person doing it as being conducive to the maintenance of good order or the public safety, or was dictated by mere tyranny or caprice. The burden of proof may shift from one side to the other in the progress of such an inquiry as the present. But the ultimate "onus probandi" rests on the complaining party. Where an act has once been shown to have been done during the existence of martial law by a person serving in any civil or military capacity under the Governor or the General Officer Commanding the Troops, that act is protected by the Order in Council, unless the party aggrieved by it proves that it was not done in good faith for one of the purposes above mentioned.

26. The Attorney-General, whilst admitting that the language of clauses 2 and 3 of the Order in Council is open to this construction, suggested that the burden of proving that an act was done for the maintenance of good order or for the public safety should be held to rest on the person claiming the benefit of the indemnity in respect of it, and asked whether it was conceivable that a rape committed in the course of a riot during the subsistence of martial law by a person acting, in a civil or military capacity, under the Governor or the Officer Commanding the Troops could have been intended to enjoy, "prima facie", the protection conferred by the Order in Council. It would not be difficult, however, in such a case for the aggrieved party to show that the act complained of was incapable of falling within the purview of the indemnity. We venture to think that there are two difficulties in the way of the Attorney-General's contention in this matter. It involves a modification of the language of the Order in Council itself. In order to give effect to it, we must add in clause 2 to the words "any act whatsoever" some such qualification as this: "of a class capable of being regarded as conducing to the maintenance of good order or the public safety of the Colony." Moreover, to throw upon the person claiming indemnifacation the burden of producing "prima facie" evidence of the character of the act in question might cast upon him to some extent the duty of showing the honesty of his own belief and intention in the matter, and thereby tend to deprive him of the benefit of the presumption of good faith created by clause 3 of the Order in Council.

27. We proceed now to consider the facts in each of the cases referred to us, and, as a matter of convenience, to do so in the order of date, although it was different from that in which they are enumerated in the Commission, and to some extent also from that in which they were presented by the Attorney-General. As has

been already mentioned, the act of shooting was in each case done, while martial law was in force, by the authority of a person or of persons serving for the time being in a military capacity under the General Officer Commanding the Troops, respectively, and is, therefore, "prima facie" within the scope of the indemnity.

28. We propose to deal first with the question whether the evidence adduced by the Attorney-General on behalf the relatives of the deceased persons has displaced the presumption of good faith created by clause 3 of the Order in Council, and then with the effect of the evidence led on the other side and of any other evidence which, although adduced by the Attorney-General, should properly be regarded as evidence of the same character. In this latter connection the question will in each case be considered whether the act of shooting is, apart from the Order in Council, capable of legal justification.

STATE OF THE COUNTRY: THE PATROL SYSTEM.

29. It may be desirable at the outset to record the effect of evidence which the Inspector-General of Police, Mr. H. L. Dowbiggin, put before us as to the condition of the country in general, and of the Kegalle District in particular, at the critical period. We do not propose to discuss in this connection any opinions expressed by Mr. Dowbiggin. We will confine ourselves to facts stated by him. The riots began on 28th and continued on 29th May, 1915, in Kandy. On 30th May they had spread to the districts near Kandy. On 31st May, the Kegalle District was affected, and rioting had commenced in the Western and North-Western Provinces. On 1st June rioting was in progress in four different Provinces and in 86 centres, over an area covering 112 miles in a direct line from north to south. On 2nd June five provinces were affected, and rioting was going on at 116 centres over an area of 136 miles from north to south. On 3rd and 4th June five provinces were still involved in the rioting, on the earlier date at 83 centres over an area of 44 miles, and on the latter at 54 centres, over an area of 160 miles. On 5th June there was rioting in four Provinces at 38 centres, over an area from north to south of 165 miles.

30. The rioting gradually decreased till 11th June. On that day the last actual rioting was reported to the Inspector-General of Police. There were, however, disturbances on 7th June at Polpitigama in the Kurunegala, and Badahelgama in the Puttalam Districts, on 8th June at Uhumiya in the Kurunegala District, and on the 11th June at Ilappadeniya in the Chilaw District.

31. Apart from this belt of country, in which rioting had been prolonged, the actual riots had ceased generally throughout the country on 6th June. The authorities were still, however, apprehensive that there might be further serious trouble. The troops engaged in maintaining order were at work till the end of August, when the proclamation of martial law was recalled. The normal condition of things was not, however, restored till the end of September, and complaints were received by the Inspector-General of Police as late as the end of October. For example, on 14th September, elephants were found tied up in the jungle near Tihariya, in the Western Province, with a view, as the Police believed, to an attack being made on the mosque in the vicinity, and in October the Moors were still being harassed to such an extent at Hanwella, in the Colombo District, that a punitive police force had to be established in the village. Mr. Dowbiggin has had prepared for the Commission a map* which is annexed to this report, showing the distribution of the rioting in the various districts.

32. Mr. Dowbiggin has also supplied us with the following figures showing the number of cases, arising out of the riots, that were dealt with by the Criminal

* Not reproduced.

Courts of the Colony and by Courts-Martial. He was unable to give the proportion of convictions and acquittals :—

Charges of murder	52
Charges of grievous hurt	16
Charges of ordinary knife injuries	12
Charges of rape	14
Charges of robbery	54
Charges of arson	63
Charges of burglary	116
Charges from theft of praedial produce ...	17
Charges of treason	141
Charges of culpable homicide not amounting to murder ...	19
Charges of unlawful assembly and rioting ...	162

One hundred and seven boutiques and 285 other buildings were destroyed.

33. In the Province of Sabaragamuwa, of which Kegalle District forms a part, the crime connected with, and the damage caused by, the riots exceeded such crime and damage in every other Province of the Colony, except the Western, which, of course, includes the Colombo District. There was evidence that the rioters had been able to secure supplies of dynamite from some of the plumbago pits in the Kegalle District. The Police Force in Kegalle town itself consisted of one Sub-Inspector, one sergeant and eight constables. On 31st May, Captain Nugent, with a hundred men belonging to his regiment (the 28th Punjabis) was sent up to Kandy. The Inspector-General of Police was there. They found that the scheme of operations in which the rioters were acting was to loot and burn boutiques and other buildings and then to move on as quickly as possible. When the Inspector-General of Police reached the town of Rambukkana it was still in flames, and not a rioter was to be seen in the place.

34. The only method by which the plan of action adopted by the rioters could be coped with was the patrol system. The Inspector-General of Police and Mr. Forest, one of the Deputy Inspectors-General of Police, applied it in the first instance at Polgahawela, a large and central town in the North-Western Province. On 1st June with Polgahawela as base, a number of patrol parties were sent out in various directions with instructions to move rapidly from place to place in the track of the rioters, and to deal with disorder as it arose, without waiting to report what was about to be done to headquarters.

35. By means of this system results were obtained which would otherwise have been impossible of achievement, and accordingly Mr. Dowbiggin suggested to the General Officer Commanding the Troops, Brigadier-General Malcolm, its extension to other places. There were difficulties in the way of the adoption of this course. Owing to the claims of the war the regular forces in the Colony had been reduced, and the small body of them that remained was required for military purposes, such as the guarding of the interned German prisoners and the defence of Colombo. The Punjabi troops were available. But there were no officers to command them. The Police Magistrates were overwhelmed with cases arising out of the riots, and the only member of the Civil Service who could be spared was Mr. H. M. M. Moore.

36. General Malcolm and Mr. Dowbiggin arrived, however, at a solution of the problem. It was arranged that the officers of the Town Guard, which General Malcolm had himself established in Colombo, and Officers of the Volunteer Forces elsewhere should select capable men who could be trusted to deal with disturbances and restore order. In pursuance of this arrangement, numerous bodies were constituted and

stationed at different bases, each under a Base Officer, with whom were associated several other gentlemen, either volunteers or civilians sworn in as special constables, and twenty Punjabis. At least forty patrol parties were sent out into different parts of the country. Each Base Officer was furnished with five motor cars, and was directed to split his force up into small patrol parties, and work each base area on the lines on which the Polgahawela district had been dealt with. The system was put into operation generally on the 4th June. General Malcolm appointed Mr. Dowbiggin Director of Bases. Each Base Officer was supplied with copies of the Orders issued by General Malcolm for troops acting under martial law (Production J) and also with printed special instructions (Production K) as to the measures to be adopted in the Provinces for the repression of riots prepared by Mr. Dowbiggin, with General Malcolm's approval. It is unnecessary to examine these documents, which are printed in Appendix B, here in detail. They contain a clear and admirable statement of the steps to be taken by the troops and by patrol parties in dealing with disturbances.

37. Mr. Dowbiggin verbally impressed upon the Base and Patrol Officers the importance of rapid movement from one centre of disorder to another. He told them that arrests were not to be made, and that their function was to find out and deal with ringleaders, and not to have recourse to any general punishment of ordinary villagers. There was nothing either in the printed or in the verbal instructions to authorize the execution, after a summary inquiry, of persons who were merely alleged to have taken an active part in the riots, nor are any such executions known to have taken place in the Colony, except in the ten cases included in our Commission. Mr. Dowbiggin stated that whatever verbal instructions he gave to the Base or Patrol Officers were intended by him to be subsidiary to the printed orders. He added, however, that he had told these officers that they must use their discretion as to the best means of coping with any situation that might present itself. The sense in which Mr. Dowbiggin's verbal instructions were interpreted by some of the officers to whom they were given will appear later on.

CASE OF ROMANIS PERERA (NO. 1. IN COMMISSION)

38. Romanis Perera, a Sinhalese Buddhist of about twenty years of age, was publicly shot in the village of Ampe on 8th June by a patrol party of Punjabis under the command of Mr. Sudlow, who was accompanied by Mr. Lover and Dr. Atkins Smith. At the request of Major Bayly, Meedeniya Dissawa, the Ratemahatmaya or Chief Native Headman of the Three Korales, where all the executions took place, went with this party from Ruanwella resthouse in his own motor car to secure accommodation for them at Kottikakumbura, which is a portion of Ampe. Mr. Sudlow is a broker in the Fort of Colombo, and was at this time a member of a mobilized unit of the Town Guard there. He was sent by Mr. Dowbiggin as Base Officer in charge of the Bulatkohupitiya district, and received both the written and verbal instructions mentioned in paragraph 36 of this report. Mr. Lover also was a member of the Town Guard. Dr .Atkins Smith is an American dentist practising in Colombo. He was sworn in as Special Constable on the 30th May, was a Justice of the Peace for all the disturbed districts, and placed himself and his motor car at the disposal of the authorities at the very commencement of the riots.

There had been serious rioting in Ampe on the 4th June. Mr. Sudlow's patrol arrived on the morning of the 8th. They arrested and shut up in the office of a rice store, known as the Punchi Bogala Store, all the Sinhalese male inhabitants they found in the village, including Romanis Perera and his father Peris Perera, numbering, according to one village witness, some twenty-seven persons, but according to Mr. Sudlow only twelve or thirteen. Shortly afterwards the door of this office was

opened, and Peer Tamby, a leading local Moorman, pointed out Romanis Perera, who was thereupon taken out of the office and placed with his back to the planks, which form the front door of part of the store. Then two other villagers—William Perera and Hendrick Sinno—were brought from a boutique opposite and made to stand on either side of Romanis Perera. An investigation followed. Mr. Sudlow's patrol was informed by Peer Tamby (1) that on the 3rd June Romanis Perera, while passing Peer Tamby's boutique, said: "We have received permission from the Assistant Government Agent of Kegalla, and also from the Magistrate at Avissawella, to loot the Moorish boutiques and to kill the Moors"; (2) that on the same day two Europeans had come to Ampe on patrol duty, and when one of them was standing by himself near Romanis Perera's house, a man called Reetha had offered him a bottle of tonic, which he did not accept; as these two Europeans were leaving the spot on their motor bicycles, Romanis Perera took the bottle of tonic and dashed it on the ground before they were two fathoms away, saying: "This is not the drink to be served to these white pariahs, but the rice pounder"; (3) that on the 6th June a store of Peer Tamby's, and also a building which had been leased to a Moorman, had been broken down by a riotous mob, and that Romanis Perera was one of its leaders; (4) that there was but one Moorish boutique left, and that Romanis Perera had collected some men and gone in the direction of that boutique. A Moorman called Mohamadu Sheriff also gave evidence supporting Peer Tamby in certain particulars. The barrel of a gun with the stock had been found in the house occupied by Romanis Perera and his father, and some empty cartridge cases in that occupied by William Perera and Hendrick Sinno.

Mr. Sudlow announced that all three men—Romanis Perera, William Perera and Hendrick Sinno—would be shot within ten minutes. William Perera and Hendrick Sinno pleaded their innocence and appealed to the Moors. Peer Tamby and Ali Marikar stated that they had not seen these two men among the rioters. Mr. Lover pointed out that the cartridge cases were empty. William Perera and Hendrick Sinno were then put into the office where the other villagers were. Mr. Sudlow then announced that Romanis Perera would be shot. This decision was translated to him by the Dissawa. Mr. Lover asked him if he had anything to say. He remained silent. Peris Perera in the course of his evidence stated that one of the Punjabis had struck him with the butt end of his rifle and pushed him when he was arrested at his house. Peris was not, however, as we shall show in a little while, a reliable witness. In any event he received no other punishment.

39. At this juncture an incident of some importance is said to have occurred. Mr. Lover has a fluent knowledge of Sinhalese. Before the execution of Romanis Perera he is alleged to have addressed the bystanders in that language, and told them in substance that a hundred years ago they had been only "dogs" or "Veddas" or in a very miserable condition, that they owed their civilization to the British, and that if they rebelled "their women would be given to the Moors." There were discrepancies in the evidence of the various village witnesses as to the terms of the first portion of this statement, but none as to the concluding expression, and its use by Mr. Lover was corroborated by the Dissawa, who was present at the time. The Dissawa is a perfectly reliable witness, to whom we are indebted for most valuable assistance throughout our inquiry, and we have no doubt but that he honestly believed what he said on the subject to be true. Mr. Lover's evidence on the point will be referred to later on. Romanis Perera was then taken from the verandah of the rice store, tied to a tree in a garden behind it, and shot by the Punjabis by Mr. Sudlow's direction. Peris, the father of Romanis Perera, who could see, and in fact saw, the shooting from the window of the office adjoining the rice store in which he was

detained, stated that one of the European members of the party either joined in the firing or levelled a gun or a pistol at Romanis Perera. This evidence was untrue. The Dissawa proved that the shooting was the act of the Punjabis alone.

40. Peris Perera was one of the comparatively few Sinhalese village witnesses whose evidence was untrusworthy. He stated that Mr. Lover had made use of the threat as to Sinhalese women being given over to the Moors on the morning after the shooting of Romanis Perera; whereas the Dissawa and every other Sinhalese witness stated that Mr. Lover had incorporated this observation in his address to the bystanders before Romanis Perera was shot. The village witnesses were unanimous in saying that on the morning of the 9th June, Mr. Lover merely advised the crowd to discourage any further rioting, and that he said nothing on that occasion to offend the feelings of his audience.

41. Peris Perera was duly impressed with the importance of corroborating the other evidence as to Mr. Lover's language, but he had forgotten to acquaint himself with the real point of time at which Mr. Lover's statement was said to have been made.

42. Considerable time was spent in this case in inquiring into the question whether on 4th June Romanis Perera was in Ampe at all. His father Peris Perera stated that he had gone to Avissawella on that day to give evidence in a case (P. C. Avissawella, No. 19,891), a certified copy (Production H.) and the original of which were produced. The Dissawa said that he had himself met Romais Perera at 6-30 p.m. on 4th June at Ruanwella, a town about 16 miles distant from Ampe, to which he told the Dissawa that he wished to go. The Dissawa replied that he could not do so owing to the presence of the patrol in Ruanwella. The record of the proceedings in P. C. Avissawella, No. 19,891, does not, in fact, show either that the hearing of the case was fixed for 4th June, or that any summons had been issued to Romanis Perera to attend as a witness on that or any other day, and, in spite of the Dissawa's warning, it was physically possible for him to have evaded the patrol and to have reached Ampe the same night. But the point is of little practical importance, as the acts attributed by the witnesses to Romanis Perera were done not on the 4th, but on the 3rd and 6th June.

43. The Dissawa stated that Ampe was one of the worst villages in the district. The wooden bridge at Pindeniya, a few miles away, was torn up by the rioters to prevent the approach of the Police and Military authorities, and at Kottikakumbura bullock carts had been upset on the road with the same object.

44. Here, again, as in the other cases, no actual rioting was in progress when the public execution of Romanis Perera took place, and there was no judicial inquiry as to his guilt. But an inquiry, real although informal, was held. Mr. Sudlow was in possession of direct testimony as to Romanis Perera's active and prominent participation in the riots. That evidence was given in Romanis Perera's hearing, and he made no reply to it. Other men arrested along with him were, as the result of the inquiry, discharged. No previous arrests had been made or punishments inflicted in Ampe, and the example made of Romanis Perera was believed to have had, in fact, salutary results.

45. We have carefully considered the question whether a sinister light should be deemed to be thrown on the shooting of Romanis Perera, because of Mr. Lover's alleged allusion to the giving over of Sinhalese women to the Moors in his speech to the bystanders before that shooting took place. The expression is coarse and highly improper, and the fact would be extremely regrettable, if a gentleman in Mr. Lover's position had stooped to make use of it. But, even then, there are considerations that would have to be kept in view. The Dissawa, who was closely examined on the point both by the Attorney-General and by Mr. Bawa, the leading counsel on the other side,

stated that it reproduced the substance of a common form of abuse, that he himself regarded it as having been directed against the rioters alone, and that, however insulting in the abstract it might seem, it would not really hurt the feelings of the villagers to whom it was addressed.

46. Its origin may, perhaps, be traced to an ancient custom among the Kandyan Kings*:-

"Many times," says Knox, "when the King cuts off Great and Noble Men, against whom he is highly incensed, he will deliver their Daughters and Wives unto this sort of People (the Rodiyas), reckoning it, as they also account it, to be far worse Punishment than any kind of Death. This kind of punishment being accounted such horrible Cruelty, that the King usually of his Clemency shows them some kind of Mercy, and, pitying their Distress, Commands to carry them to a River side, and there to deliver them into the hands of those who are far worse than the Executioners of Death; from whom, it these Ladies please to free themselves, they are permitted to leap into the River and be drowned; the which they sometimes chose to do, rather than to consort with them."

47. In this connection it would also have to be remembered that Mr. Lover, shortly before his address to the onlookers, had interposed to save the lives of William Perera and Hendrick Sinno.

48. We do not think that the evidence so far discussed makes out a "prima facie" case under clause 3 of the Order in Council against any of the officers concerned. There was, of course, no suggestion that any of them had acted in bad faith in the sense of personal malice or ill-feeling.

49. It is now necessary to turn to the evidence on the other side. It seems desirable, in the first place, to make certain general observations applicable to all the cases referred to the Commission, and then to consider each of them separately from the point of view of the officers concerned in this inquiry. Each of them gave evidence on oath. In order to save time the evidence in chief took in each case the form of a written statement read to the Commission and then put in. But cross-examination by the Attorney-General, re-examination, and, if necessary, examination by the Commissioners followed in the usual way.

50. These officers have been called upon to give an account of their conduct after the lapse of a period of nearly eighteen months since the occurrences in question. General Malcolm, the General Officer then Commanding the Troops, has left the Island in the meantime, and his view of the situation and of the measures that it called for is no longer available. Moreover, it is not surprising if, after such an interval, the details of the incidents themselves—painful as they were—should not, in some instances, be very accurately or clearly remembered.

51. With the exception of Major Bayly, each of these gentlemen is a civilian. They came forward in answer to the call of the authorities, and gave up their time in order to assist in the suppression of the disturbances. Dr. Atkins Smith, as has been already mentioned, put himself and his private motor car at the disposal of the Government, and he stated that he had lost a month's professional income by his absence from Colombo and Nuwara Eliya on the duty for which he had thus volunteered.

52. The whole Colony had been subject to military law since the commencement of the present war. The confusion and uncertainty as to the meaning of martial law and the rights and duties that it is supposed to create, which are almost invariably

*Denham's "Ceylon at the Census of 1911," p. 214.

attendant on its proclamation in a community for the first time within recent memory, at once manifested itself, when in the early days of June, 1915, martial law was established in Ceylon. The fact that the proclamation of martial law is merely a public announcement of the assumption for the time being by the Executive Government of absolute power in dealing with civil disturbances, and does not enlarge the rights of ordinary citizens as such, was either not known or lost sight of.

53. The situation that had to be confronted was unprecedented in the modern history of the Colony. The so-called riots were not mere civil disturbances arising in the course of a strike, or, as in the Ambalangoda case, in consequence of the enforcement of an unpopular tax. They partook far more truly of the character of a dangerous armed insurrection by a large portion of the Sinhalese Buddhist Community. This insurrection was, no doubt, primarily directed against the Moors, but the evidence adduced before the Commission shows that not merely the officers concerned in this inquiry, but the heads of the Police Force themselves considered that it was in some measure organized and pre-determined, and that if it was not promptly and effectively checked, it would rapidly assume the form of an attack upon other communities and upon the authority of the Executive Government. It is impossible, in view of such evidence as that of Mr. Dowbiggin and Mr. Forrest, to say that these apprehensions were fanciful.

54. The condition of the District of Kegalla itself has been already indicated. It is only necessary to notice here, in passing, the facts that the local authorities had been powerless to prevent the burning and the looting of the village of Rambukkana; that the Kegalla District contains numerous plumbago pits, which are notoriously the refuge of the worst characters; that its European population was small and scattered and that so strongly did many of the European residents feel the danger of their position that they sent their wives and families to Colombo. According to the opinion of Sir James Stephen himself in the Jamaica insurrection case, circumstances of this description may fairly be borne in mind in considering charges of alleged abuse of power. "Where the loyal part of the population", he says,* " were, as in the Indian Mutiny, greatly outnumbered by a rebellious population, measures of excessive severity might be absolutely essential to the restoration of the power of the law, but this would be a case, not of punishment, but of self-preservation." Sir James Stephen is speaking here, of course, of acts done by, or with the authority of, the Executive Government.

55. It cannot be too clearly understood that the proclamation of martial law confers on citizens "as such" no new or enhanced rights of dealing with civil disturbances. Every such proclamation marks the assumption of absolute power in that behalf by the Executive Government alone. It is needless to dwell on the dangerous consequences that might ensue if the right of private individuals to convert themselves, without any other authority than the existence of martial law, into tribunals for the punishment of past, and the prevention of future, offences in connection with riots, were recognized.

56. But the conduct of the officers concerned in this inquiry must be regarded in another light. They did not, relying on the proclamation of martial law, arrogate to themselves powers which they knew that but for that proclamation they would not have possessed. The evidence demonstrates that each of them believed, and believed, although mistakenly, on reasonable grounds, that he had the authority of Government to do whatever acts were necessary in order to stamp out the riots.

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*Forsyth's Cases 563.

57. The evidence of Major Bayly corroborates that of Mr. Dowbiggin as to the character of the Kegalla District generally, and its condition in June, 1915. The entries in his diary show that looting was at once started whereever no patrol was on guard. On 5th and 6th June there were dynamite explosions in the direction of the Ambepussa road and of Kottikakumbura. On the 7th there was firing at Yogama, and on the same day a bungalow actually occupied by a European 6 miles from Dehiowita, in which certain Moors were supposed to have obtained shelter, was dynamited. The situation was regarded as dangerous up to the end of July.

58. Major Bayly had had no previous experience of active service, riots, or martial law. He had no special instructions from the General Officer Commanding. But he had, of course, the general and patrol instructions (J and K) mentioned in paragraph 36, and he believed that the shooting of ringleaders in the rioting, even if they were not actually taken red-handed, was justifiable, if it were necessary for the prevention of further disturbances. Moreover, Major Bayly was informed by Mr. Sudlow of the verbal instructions referred to in the next paragraph.

59. Mr. Sudlow received his instructions from Mr. Dowbiggin, the Inspector-General of Police, at Echelon Barracks, Colombo. The Inspector-General of Police was speaking in one sense. Mr. Sudlow was interpreting his language in another. Mr. Dowbiggin was thinking, on the one hand, of the failure of the policy pursued at Kandy, Galle, Ruanwella and Colombo of waiting at Headquarters; and, on the other, of the success of the patrol system which he had himself introduced at Polgahawela, and which was then in course of extension into other parts of the country. His aim was to impress upon Mr. Sudlow's mind the necessity for rapidity of movement in dealing, of course, with actual disturbances. Mr. Sudlow was not, however, expressly told that Mr. Dowbiggin's instructions were subject to this last qualification. He thought that he was receiving a "carte blanche" to put down the riots and that he was entitled to adopt whatever measures were necessary for that purpose.

60. In these circumstances, it is not difficult to understand how the Inspector-General of Police unconsciously misled Mr. Sudlow. The language used by the former, with no other object than to render the working of the new patrol system effective, was construed by the latter as conferring upon him plenary power of the widest character to deal with ringleaders, whether actual rioting was in progress or not. Mr. Dowbiggin's stimulating counsels "to do something," "to make no arrests," "to deal with ringleaders and not with ordinary villagers" and "to use his discretion" according to the situation with which he was confronted, were taken to heart by Mr. Sudlow, and were carried into operation in the light of his own misconception of the object that Mr. Dowbiggin had in view. Similar observations apply to Dr. Atkins Smith. He also understood that he was being sent out to "stamp out the riots," and he put upon Mr. Dowbiggin's language the same interpretation as it had received from Mr. Sudlow. Moreover, it must be borne in mind that Mr. Dowbiggin frankly told us that, while he had not authorized their action or intended that that action should be taken, he approved, in fact, of what Mr. Sudlow and Dr. Atkins Smith had done. Mr. Sudlow had been resident in Colombo during the riots there, and had had their dangerous character strongly impressed upon his mind by what he had seen and heard before he went out on patrol duty.

61. Mr. Sudlow went first to Ruanwella, and from there he proceeded on 8th June to Ampe. He told us that, in spite of the instructions which he understood he had received from Mr. Dowbiggin, he had no settled plan in his mind, except that he would deal with the circumstances as they disclosed themselves. Major Bayly had informed

him that the district was a dangerous one, and when he reached Ampe the Moors came to him for protection. Peer Tamby was their chief spokesman. At first a few men were locked up in the rice store, then houses were searched, and after that the patrol party rounded up the other males. As formal an inquiry as the circumstances admitted of was held. Several Moormen gave evidence. Mr. Lover told Mr. Sudlow that a firearm had been found in Romanis Perera's house. Discrimination was exercised in favour of Peris Perera, William Perera, and Hendrick Sinno. The whole of the evidence was given in Romanis Perera's hearing, and was understood by him. He had the opportunity of asking any questions that he wished to put, and he was asked what he had to say before the sentence on him was carried into effect. Although the place of Romanis Perera's execution was in full view of the men who were confined in the rice store, and was purposely selected because it was so, in the hope that a good moral effect would be produced, Mr. Sudlow said that he was unaware at the time that one of the men in the rice store was Romanis Perera's father. Dr. Atkins Smith corroborated, without making any material additions to, Mr. Sudlow's evidence in this case.

62. Mr. Lover stated that Romanis Perera was arrested by himself, and that in his own presence the Punjabis brought out a firearm from Romanis Perera's house. There had already been two attacks on the Moors in Ampe. A third was feared. The patrol party could not remain there, as their instructions from Mr. Dowbiggin were to move rapidly on from one scene of disturbance to another. Mr. Lover has spent the greater part of his life in Ceylon. He has a thorough knowledge of the Sinhalese language and character. He told us that he was himself apprehensive of fresh and more dangerous riots. The Moormen were leaving for India, and he was afraid that they would convey to their Mohammedan fellow subjects there the information that the Government was unable, or, by reason of the present war between Great Britain and Turkey, unwilling to protect them. Mr. Lover, besides discovering a firearm in what he took to be Romanis Perera's possession, was informed of the incident said by the Moorman Peer Tamby to have taken place on 3rd June at Romanis Perera's boutique.

63. Mr. Lover strenuously denied that he had, in addressing the crowd before Romanis Perera's execution, referred to the handing over of Sinhalese women to the Moors. He said that, inspite of his knowledge of the Sinhalese language, the expression was, in fact, unknown to him, and suggested that the Dissawa might have misinterpreted his meaning. This explanation may, in view of the confusion and excitement that must have prevailed at the moment, be correct. Neither of the Moorish witnesses, Peer Tamby and Mohamadu Sheriff, heard the expression used.

64. The execution of Romanis Perera, carried out as it was in the absence of active rioting, was illegal. But it was an act done in good faith for the maintenance of good order and the public safety of the Colony.

CASES OF JUWANIS FONSEKA *alias* JUWANIS FERNANDO AND ARNOLIS (Nos. 5 AND 10 IN COMMISSION).

(Vide Minutes of November, 17, 1916.)

65. Juwanis Fonseka *alias* Juwanis Fernando, a Sinhalese Buddhist of some local influence, and a trader in the same kinds of goods as the Moors, in the village of Bulatkohupitiya, and Arnolis, another Sinhalese Buddhist, resident in the neighbouring village of Wegalla, were publicly shot on 9th June, 1915, at a junction near the Bulatkohupitiya rest house by a party of Punjabis under the command of Mr. Sudlow, with whom Mr. Lover and Dr. Atkins Smith were associated.

66. In the earlier stages of this inquiry the evidence forthcoming as to these cases was incomplete and somewhat confused. But the exertions of the Dissawa eventually secured the presence of witnesses, by whom these difficulties have been entirely removed, namely, Mr. Williamson, Superintendent of Sunnycroft Estate; two Moorish traders, Abdul Caffoor and Mapala Marikar; and the Gan-Arachchi of Punahela Wasama, within which the village of Wegalla is contained.

67. The circumstances of the two cases under consideration, as they are disclosed by the whole body of evidence adduced by the Attorney-General, are these. The only rioting in the village of Bulatkohupitiya occurred on the 2nd and 3rd June, and resulted in extensive damage to property. A whole row of boutiques was looted. Some twenty-three Moorish boutiques were damaged. Three boutiques and a small mosque were burnt. The village was in a disturbed condition on 4th June. As late as 7th June crowds were still assembling here and there in the streets. Men from outside villages and also from the plumbago pits in the vicinity had taken part in the rioting, and were seen in Bulatkohupitiya after the rioting had ceased, although the worst of the ring-leaders a man named Richard Denawaka, had absconded. The Moors had taken refuge for the most part in the neighbouring village of Undugoda. They were still afraid to return, and had been sending telegrams to the authorities asking for help. On the afternoon of 7th June a patrol party under the command of Mr. Baines, who was accompanied by several other Europeans, Mr. Williamson, Mr. Heligan, Mr. Payne, and Mr. Nicol, but who had with them no Punjabis, escorted a number of the Moors, including Abdul Caffoor, back from Undugoda to Bulatkohupitiya. The Moors were still afraid of violence at the hands of the Sinhalese, and Mr. Baines's party persuaded them to take refuge in an empty bakery in Bulatkohupitiya only by a promise, which they duly fulfilled, to keep watch over their safety there.

68. Juwanis Fonseka and Arnolis were arrested by Ibrahim Lebbe, the Town Arachchi of Bulatkohupitiya, himself a Moorman, about 9 or 10 o'clock on the morning of the 9th June: Juwanis as he lay on a cot in his verandah; Arnolis, according to Abdul Caffoor, near the house of Juwanis, out of which he was supposed to have just come at the time. So were Pelis Appuhamy and another old man, said to be the father of Denawaka, both of whom had been also arrested in the morning.

69. Abilina, the widow of Juwanis Fonseka, said that the Town Arachchi treated her husband roughly, and struck him several blows with his hand as he was removing him. This allegation was corroborated by three other Sinhalese witnesses, Cornelis Fernando, Arnolis Fernando, and Pelis Appuhamy, who were arrested shortly afterwards. The Town Arachchi denied it. Whether it is true or not, it is difficult to say. But the Town Arachchi, besides being a Moorman, had himself had a boutique belonging to him damaged in the riots, and if he believed that Juwanis Fonseka had been one of the ring-leaders, it is by no means improbable that he acted in the way that the Sinhalese witnesses described.

70. At the time of arrest of Juwanis and Arnolis and of their being tied up at the resthouse, Mr. Sudlow's patrol had not arrived at Bulatkohupitiya. We have not been able positively to ascertain by whose orders these arrests were made. The Town Arachchi stated that he had arrested Juwanis Fonseka on the instructions of one of the European gentlemen, and Abdul Caffoor gave evidence to the same effect. Mr. Williamson, on the other hand, was unaware of any such instructions having been given. The Town Arachchi further said that Arnolis was already in the hands of the

Moors when he took him formally into his custody. But no corroboration of this statement by any of the Moorish witnesses was forthcoming. On the contrary, Iyena Meydeen, a Moorman whom we examined in the village itself, said that, immediately prior to the arrest of Arnolis, he, in company with several other Moors, had seen the man, who was a stranger to him, in the village, and had asked him what he was doing there. Arnolis replied that he was returning to his own village. The Town Arachchi then interposed and arrested him. We are disposed to think that Iyena Meydeen knew a good deal more about the matter than he was prepared to tell us. The fact that we were about to inquire into the cases of shooting at Bulatkohupitiya had been well-known in the village for some days, and Iyena Meydeen may have desired to dissociate himself from all responsibility for the arrest of Arnolis as completely as possible. It was the intention of Mr. Bain's party to hand the four men in due course over to a patrol. Mr. Sudlow on his arrival took the case into his own hands. Mr. Baines stated that it was impossible for him to send any of the men who had been arrested in Bulatkohupitiya away, because his party was a detached post. He added that Mr. Sudlow's patrol informed him that they had orders to take no prisoners, and either to shoot the ring-leaders or to let them go.

71. Mr. Sudlow at once proceeded to search some of the Sinhalese boutiques in Bulatkohupitiya bazaar itself. During this search five Sinhalese villagers were arrested, among them being Cornelis Fernando and his son-in-law Arnolis Fernando. After these arrests had been made, and while the search of the houses was in progress, Mr. Villiers and the Dissawa happened to be passing through Bulatkohupitiya on their way to Dedugala, where the case of the shooting of the Uduwa Arachchi occurred at a later date. Their attention was attracted by the presence of motor cars, Punjabis, and Europeans. As they approached, they saw Mr. Sudlow entering one of the boutiques, while the men who had been arrested were ranged by the roadside.

Mr. Villiers asked Mr. Sudlow what he was going to do with them. Mr. Sudlow replied that they would probably be shot, as they had been ringleaders of the rioting. Mr. Villiers understood Mr. Sudlow to make this statement on the strength of information he had received from the Arachchi, and he therefore told Mr. Sudlow that the evidence of the Arachchi, whom he had known for some years, and whom he regarded as a drunken sort of man, would be unsatisfactory if it stood alone, and thought it well to remark that it was a "big thing" and to suggest that the Dissawa, who would probably know about the men, should be consulted. Mr. Sudlow readily agreed to this suggestion. At the bazaar the Dissawa told him that he knew nothing against Cornelis, and that two of the others were "nephews" or sons-in-law of Cornelis. He and Mr. Villiers then went up to the resthouse, where he told Mr. Sudlow that there was nothing against Pelis and the other old man (Danawaka), that he did not know Arnolis, and that Juwanis Fonseka was addicted to drink. Neither Juwanis nor Arnolis made any complaint or protestation of innocence to the Dissawa. Mr. Villiers and the Dissawa left for Dedugala. It should be mentioned here that the resthouse stands on an eminence above the road, and is about 50 yards from the bazaar, which stands at the junction of four roads. Mr. Sudlow and the European members of both patrols held a formal inquiry at the resthouse after the departure of Mr. Villiers. A table was placed in the verandah and the Moormen who were with the crowd on the road below were called up one by one and their evidence taken. Finally, the Arachchi was himself examined. The men who were tied up were questioned, and asked what they had to say. They replied that they had nothing to say. The evidence against Juwanis was to the effect that he was with the rioters with a torch in his hands pointing out the boutiques, and against Arnolis that he had come with a gang of rioters. This is the evidence of the Town Arachchi.

72. The Town Arachchi was not a very satisfactory witness, and we would not have been prepared to attach much weight to his evidence on the point had it stood alone. The contradiction between his story and that of Iyena Meyideen as to the circumstances in which Arnolis came to be arrested—a matter, however, on which it may be that Iyena Meydeen himself is suppressing the truth—has already been noticed. But the Town Arachchi in his first examination at Kegalla said that he had not seen Arnolis taking any part in the riots; whereas in his later examination in the village of Bulatkohupitiya he stated that he had witnessed Arnolis looting one boutique and throwing dynamite into another, and approaching the mosque with a bucket, supposed to contain oil, in his hands. It would have been difficult to hold—had the evidence gone no further—that these latter statements were untrue, inasmuch as at the time when the Town Arachchi was examined before us in Kegalla the case of Arnolis had not been submitted to us for inquiry, and came up only as an incident in the case of Juwanis Fonseka. Moreover, it appeared from the record of the inquest proceedings on the death of Arnolis (Appendix E) as far back as the 21st day of August, 1915, that the Town Arachchi had told the Coroner that he had seen Arnolis setting fire to the mosque. Even that statement was, of course, different from either of the two later ones. But the man's evidence at the inquest, so far as could be judged from the record, was brief and general in its terms, and it shows, at any rate, that what the Town Arachchi said at Bulatkohupitiya about Arnolis having taken an active part in the riots was not mentioned then for the first time. Moreover, it is only fair to the Town Arachchi to say that no one suggested that he had any personal ill-will towards either of the deceased men or any of the other men who were arrested along with them. The evidence, indeed, was to the contrary effect. The difficulties presented by his evidence, had it stood alone, were, however, formidable, and it may be added that they were not altogether removed by his demeanour as a witness. It should be here mentioned that Major Bayly did not associate himself with the opinion expressed by Mr. Villiers as to the character of the Town Arachchi of Bulatkohupitiya. He said he had known the man for nineteen years, and that he had done his work very well.

73. But the Town Arachchi's statements as to the nature of the inquiry held by Mr. Sudlow into the conduct of Juwanis Fonseka and Arnolis were corroborated by other witnesses. Abilina, the widow of Juwanis, was too far away from the resthouse verandah to see or hear what was going on there; and Kunudiyage Noiya, the widow of Arnolis, was not in Bulatkohupitiya at the time, and only discovered that her husband had been shot on a subsequent day. But Abilina, Cornelis, the witness Arnolis, and Pelis agreed that, while the two deceased men had been arrested about 9 a.m., they had not been shot till 2-30 or 3 p.m. Each of the other witnesses denied, in the first instance, that there had been any charge against either of the deceased men. But Cornelis could only say that no charge had been made in his hearing, and admitted that he did not know what had passed in the resthouse itself. Arnolis made a similar admission, and stated further that the Dissawa had spoken to one of the European gentlemen. Pelis also said that one of the European gentlemen had talked to Juwanis at the resthouse.

74. Further important evidence against Arnolis in particular was furnished by the three witnesses mentioned in paragraph 66, Abdul Caffoor, Mapala Marikar, and the Gan-Arachchi of Punahela Wasama. Abdul Caffoor stated that Arnolis had been a customer of his, and had been in the habit of coming to his boutique twice a week, and that he had men under him at the plumbago pit at which he worked. Arnolis appeared on three occasions at Abdul Caffoor's boutique on the eve of the riots, and made use of such expressions as "We are going to start something; I'll see what I can do."

"Riots will take place here, but the boutiques of the Ceylon Moors" (Abdul Caffoor was a Ceylon Moor) "are not to be attacked." In spite of this promise, Abdul Caffoor's boutique was, in fact, broken into on the night of 2nd June. On each of these visits Arnolis was accompanied by a crowd of men, some of them from the plumbago pits. Abdul Caffoor gave this evidence at each of the two inquiries that preceded the executions.

75. Mapala Marikar, also a Ceylon Moor, stated that on the 2nd and again on the 3rd June Arnolis was going about the streets in Bulatkohupitiya with large crowds from the pits. These crowds were calling out "Sadhu," one of the favourite cries of rioters during the disturbances of 1915. This witness's house was burnt down, and a large ebony chair, taken from it then, was proved by the Gan-Arachchi to have been subsequently found in a house close to that in which Arnolis was living.

76. Pulihinge Noiya, the widow of Arnolis, gave an unconvincing explanation of her husband's movements about this time. For a month before and during the whole period of the riots he had, she said, lived at home attending to her father, whose leg had been broken by a fall from a coconut tree. She accounted for the presence of Arnolis in Bulatkohupitiya on the day of his execution by stating that he had gone to the plumbago pit to procure a medicament—"ehela" leaves—for her father's injured leg. The Gan-Arachchi said that the story of the broken leg was true, but that the accident had occurred several months before Arnolis was executed, and that "ehela" leaves were obtainable at Punahela, at a distance of 2 miles, while the plumbago pit was 6 miles distant, from Arnolis's house in Wegalla. There is some evidence pointing to the conclusion that the father of Pulihinge Noiya was able to accompany her to Bulatkohupitiya shortly after Arnolis's execution for the purpose of finding out what had become of him. But there is no need to dwell on points of this description, or on the inherent improbability of the woman's story. It is disposed of by the positive evidence, which we see no reason to disbelieve, showing that Arnolis was, in fact, one of the rioters at Bulatkohupitiya. Mr. Baines said, that Arnolis, when he was questioned, stated that he was a cooly on an estate of which none of Mr. Sudlow's patrol party had ever heard.

77. Finally, there is, in regard to both cases, the evidence of Mr. Williamson that he and the other European members of the patrol were each consulted separately before a decision was arrived at, and that Mr. Sudlow impressed upon them the gravity of the situation by asking them to remember that they would have to account for what they did to a Higher Power. Mr. Williamson also stated that Mr. Baines had held an inquiry before the arrival of Mr. Sudlow's party, and that witnesses were examined by Mr. Sudlow too.

78. After the inquiry at the resthouse Juwanis and Arnolis were tied together, Pelis and Denawaka also were tied together, and were taken from the resthouse compound to the bazaar, where the five men were under arrest. These latter were then told that they would be flogged, the two old men that they would be exempted from that punishment because of their age, while Juwanis and Arnolis were informed that they would be shot within ten minutes. The five men had each his hands held by a Punjabi and received through his cloth several cuts with a cane. All nine men were then marched across the bridge on the road from Bulatkohupitiya to Yatiyantota, and close to some of the boutiques that had been looted, and to a small mosque that had been destroyed during the riots. Juwanis and Arnolis were tied each to a low branch of a tree overhanging the roadside and were shot by some of the Punjabis in Mr. Sudlow's patrol in the sight of the other seven men.

79. Mr. Sudlow was out with his patrol party for some days. He reported the execution of Juwanis and Arnolis to Mr. Dowbiggin on his return. Mr. Dowbiggin made no special report on the incident. He assigned as his reasons for not doing so the facts that he knew the serious state of things in the Kegalla district at the time; that in that district, unlike other districts, the Police Force was wholly inadequate for the purpose of grappling with disorder; that very many of the native headmen were either afraid of, or in league with, the rioters; and that he was not then aware of the legal distinction between killing men during riots and their formal execution either before a riot or after the rioting was over. No subsequent warning to other patrols not to follow the example set by Mr. Sudlow's patrol was given.

80. Mr. Burden, the Assistant Government Agent, Mr. Villiers and the Dissawa were themselves anxious as to the state of the district, and thought that fresh disturbances might at any time break out. Up to the time when Mr. Sudlow's patrol arrived in Bulatkohupitiya no rioter had been arrested or punished. Mr. Villiers and the Dissawa expressed the opinion that the shooting of Juwanis Fonseka and Arnolis had a good effect. There was, in fact, no rioting in the village afterwards, and Mr. Burden informed us that the riot compensation in Bulatkohupitiya was readily paid.

81. Does this body of evidence show that the shooting of Juwanis and Arnolis was not carried out "bona fide" for the maintenance of good order or the public safety? In our opinion it does not. Rioting in Bulatkohupitiya had ceased at the critical period. There was no judicial inquiry into the circumstances. On the other hand, the district was still in a highly disturbed condition. There were reasonable apprehensions of a recrudescence of the rioting. The damage already done to property was serious. There was an interval of several hours between the arrests and the shooting. Mr. Sudlow held a more or less formal inquiry both before and after the arrests of the deceased men, and accepted Mr. Villier's suggestion that that inquiry should be supplemented by the evidence of the Dissawa. On that evidence Cornelis, the four other men arrested by Mr. Sudlow's party at the bazaar, and the two men Pelis and Denewaka were discharged. Juwanis and the deceased Arnolis had an opportunity, of which they did not take advantage, of protesting their innocence. There is no reason to think that either of them was innocent. The execution of these men was the first assertion of authority in the district since the rioting had occurred, and its effect was good.

82. Mr. Sudlow's evidence added little to the evidence put before the Commission by the Attorney General in this case. He stated that the arrests in the village were preceded by a search of the houses of the men arrested; that, in order to gain access to these houses, he had to break open the doors; and that, as far as he could remember, loot was found inside.

83. Dr. Atkins Smith corroborated Mr. Sudlow's evidence generally. Mr. Lover stated that the Town Arachchi had told him that the men arrested in the village were inside their houses "ready for fresh disturbances," and that he did, in fact, find inside these houses, not only the men themselves, but heaps of stones and clubs. It was because of the discovery of these weapons that Cornelis and the other four men were caned. Mr. Lover added that from his knowledge of the country he had no doubt that on the day in question the attitude of the Sinhalese villagers in Bulatkohupitiya was defiant and dangerous. He also said that, while Mr. Sudlow, Dr. Atkins Smith, and he had acted with care at Ampe, they had been so impressed there by the seriousness of the step which they had thought it necessary to take that they proceeded with still greater deliberation at Bulatkohupitiya.

84. For reasons similar to those mentioned in paragraph 64, the executions of Juwanis Fonseka and Arnolis were illegal. But they were carried out "bona fide" for the maintenance of good order and the public safety of the Colony.

CASE OF JUWAN APPU (No. 9 IN COMMISSION.)

85. The facts of this case are simple and practically uncontested. Juwan Appu, a Sinhalese Roman Catholic, was publicly shot at Yatiyantota on 9th June by several Punjabis belonging to a patrol under the command of Major Bayly. Mr. Forrest, a Deputy Inspector General of Police, who had been sent by Mr. Dowbiggin to Ruanwella, appears to have been under the impression that Major Bayly was working under him. But Mr. Dowbiggin informed us that Major Bayly had been appointed by, and was responsible to, the General Officer Commanding the Troops himself. Juwan Appu was arrested in the boutique of his cousin Elishamy on the morning of the day in question, and was taken to the Hill Hotel, Yatiyantota, where a formal inquiry into his conduct was held by Mr. Villiers, who said that he had been sent to Yatiyantota by Major Bayly to find out if the stories he had heard about him were true, and if so, to shoot him.

86. Mr. Villiers, who was assisted by the Dissawa, arrested the man in the village, told him what the allegations against him were, and said that he was going to inquire into them at Yatiyantota, where he could call his own evidence. Several other European Gentlemen, Mr. Hyatt, Mr. Murray, Mr. Mitchell, and Mr. Mayow, were with Mr. Villiers. Mr. Mitchell and Mr. Mayow gave evidence. The inquiry lasted for several hours.

87. Major Bayly had not at that stage arrived at Yatiyantota, but he came later. Mr. Villiers reported the results of his investigation to him; and then Major Bayly held an equally formal inquiry of his own, going over the whole ground again. On each occasion the inquiry took place on the verandah of the hotel. The witnesses were standing on the road at the foot of a considerable flight of steps leading up to the hotel. Each was called up in turn and told his story, and was then sent back to the road. Juwan Appu had the opportunity, of which he did not avail himself, of putting questions to the witnesses, and of making any observations that he desired to make on their evidence. At the close of the inquiry, which lasted about twenty minutes, he was asked whether he had anything to say. He made no reply. He was then told by the Dissawa that he would be shot, and this sentence was, in fact, carried out on some open ground in front of the mosque. Major Bayly explained to the onlookers why the act had been done, and they appeared to Mr. Villiers to be "quite content" at the time.

88. We ourselves examined, in the presence of the relatives of Juwan Appu, viz., his widow Podihamy, his adoptive father Alensu Appu, and his cousin Elisahamy partly at Kegalla and partly in the Hill Hotel, Yatiyantota, most of the witnesses called at the inquiries before Mr. Villiers and Major Bayly.

89. The evidence against Juwan Appu was to the following effect. He was an habitual criminal, and a notorious village rowdy and loafer. Mr. Forrest furnished us with particulars as to his record, which will be found in his evidence on page 75. Yatiyantota is a large and prosperous place and the centre of a flourishing planting district, the terminus of the Kelani Valley Railway. It contains numerous Moorish boutiques. No rioting, in fact, occurred there either before, or after the events of 9th June. But serious disturbances were threatened on the 2nd, 3rd, 4th and 6th June. Crowds, including residents of the Colombo District, in which there had been most dangerous riots, were assembling in the streets. Juwan Appu was one of the organizers and leaders of these crowds. He made a hostile demonstration one morning, and again,

in the afternoon of the same day at the shop of Ali Marikar, a local Moorish trader, Abdul Hamid, another Moorman, spoke to his having been engaged for several days in the collection of gangs, and heard him say "Wait and you will see what will come." He lifted up the side curtain of a carriage in which Mohamadu Lebbe, a third Moorman, was removing his wife and family from Yatiyantota, and, peering in, said, "Even if you escape now, you won't survive." On another occasion he was heard to say, "We will set fire to their houses. Their day has come." This witness told the Dissawa that, in his opinion, Juwan Appu was "distributing the work of destruction" among the crowds. Abdul Hamid was directed to appear before Mr. Bayley by the Dissawa himself. Mr. Jayawickreme, a local Sanitary Inspector, gave similar evidence as to Juwan Appu's conduct and character. We see no reason to doubt the credibility of any of these witnesses, either Moorish or Sinhalese. The whole of this body of evidence had beed adduced before the decision in Juwan Appu's case was arrived at. The official and village witnesses were unanimously of opinion that the execution of Juwan Appu not only had a good effect, but had actually saved Yatiyantota from rioting. Two other men, Aron and Podi Sinno, had been arrested along with Juwan Appu but they were subsequently allowed to go. We asked his widow, Podihamy, whether she desired that they should be examined as witnesses. She replied that she did not.

90. The "prima facie" evidence adduced by the Attorney-General in this case not only discloses no evidence of bad faith on the part of Major Bayly, but demonstrates that he was acting in good faith in the matter.

91. It is scarcely necessary, therefore, to deal with the evidence of Major Bayly himself. He stated that he had made fruitless efforts to find several other men of the same character as Juwan Appu, namely, Julis, Aron Perera, and Robo Sinno. They were all in hiding. He was apprehensive that serious rioting would ensue if Juwan Appu were left at liberty, and while it was no doubt possible to have had the man arrested and sent for trial elsewhere, he considered it necessary to make an example of him in Yatiyantota itself, and believed that he was legally justified in doing so. It may be added that Major Bayly's recollection differed from that of Mr. Villiers in regard to the statement made by the latter, that his instructions from Major Bayly were to find out if the stories about Juwan Appu were true, and, if so, to shoot him at sight.

92. The evidence showed that Major Bayly in discharging his duties at Ruanwella had displayed conspicuous moderation. He abstained from ordering a dangerous crowd, which was endeavouring to make its way through Ruanwella to Yatiyantota, to be fired upon, and there seems, indeed, to have been some feeling at Headquarters that he had erred, if at all, on the side of leniency. The Dissawa stated that Major Bayly was most highly respected by all the people in the district, and particularly by the Sinhalese.

93. For the reasons stated in paragraph 64, the execution of Juwan Appu was illegal, but it is clearly covered by clause 3 of the Order-in-Council, and the impression left upon our minds by the evidence is that in all probability it saved Yatiyantota from sharing the fate of so many other villages.

CASES OF (1) TELENIS APPU, (2) PODI SINNO AND (3) JAMES BASS (Nos. 2, 3 and 4 IN COMMISSION.

94. These three men—Sinhalese Buddhists—were publicly shot at Algoda on the 10th June, 1915, by a patrol party under the command of Mr. Cantlay, who was himself working under Major Bayly.

95. Algoda is a little village about 1½ miles from Dehiowita, a large town on the Kelani Valley Railway line. There had been no riots in Algoda itself. But serious disturbances had taken place in Dehiowita, and a gang of about fifty or sixty men from Algoda had joined the rioters.

96. The evidence recorded by us in this case at Kegalla disclosed numerous discrepancies and difficulties. But there is no longer any need to consider most of these in detail. For on Saturday, 25th November, we visited Algoda and examined all the witnesses again at the spot, and there is now no doubt as to what happened.

97. The Principal witness was Siriwardene, the Town Arachchi of Algoda. He impressed us favourably on his original examination, and the Dissawa gave him a high character. The other witnesses were Sophihamy, the widow of James Baas; Jayasinghe Hamine, the widow of Podi Sinno; Podi Nona, the widow of Telenis Appu; and a number of other Sinhalese villagers, viz., Davith Sinno, Samel Appu, Charles Appu, Aron Perera and Punchi Banda.

98. James Baas, a man of about fifty years of age, was arrested in the compound of his house about 6.30 on the morning of 10th June. His widow Sopihamy alleged that the Punjabis, who broke open the boxes in his house, had removed her jewellery. No complaint of this alleged theft was, however, made to Mr. Burden when he visited the village on 23rd June. A box containing about thirty dynamite detonating caps was found in James Baas's house. The box had been opened, and it was capable of holding more caps than were actually in it at the time of its discovery. James Baas lived on the far side of a river, which separates Algoda from the district on the other side of the Kelany Valley. He was brought across this river by the Punjabis to a sand bank on the Algoda side. His wife Sophihamy watched what happened from the opposite bank. She was within a clear view of the scene of the shooting, but too far away to hear anything that was said. Podi Sinno and Telenis Appu lived in the village of Algoda itself. They were both arrested about the same time as James Baas, and with other Sinhalese villagers referred to in paragraph 97, were brought to the sand bank above mentioned. Their widows were not present at, and knew nothing about the circumstances attending, the executions of their husbands.

99. It was at this juncture that divergences in the evidence arose in the early part of the inquiry at Kegalla. But on inspecting the "locus" at Algoda we examined the Town Arachchi, Siriwardene, in the presence of all other witnesses, who, in answer to express questions, each stated that the Town Arachchi's narrative was correct.

100. The Town Arachchi was sent to James Baas's house to bring, obtained from his wife, and brought, the box of detonators. He had previously, in reply to questions by Mr. Cantlay, who had in his hand a paper signed by Cader Tamby and who asked him to pick out "the most dangerous men in the village," selected James Baas, Podi Sinno and Telenis Appu. These men were then placed aside, in front of the roots of certain trees overhanging the sand bank.

101. The Town Arachchi was examined by Mr. Cantlay as to his knowledge of them. He said that James Baas had been at the head of a crowd in Dehiowita, although not on the day of the looting and that the other two men had taken part in the rioting. Each of them was asked by Mr. Lover whether the Town Arachchi had any enmity against him. The answer was in the negative. Each of them said that he had nothing to say and no request was, in fact, made by any of them, save for a glass of water, which was at once provided. The three men were then shot, in the position in which they had been placed when they were set aside from the other villagers.

102. James Baas not only was not arrested while rioting was going on, but was proved not to have taken any active part in the rioting itself. The evidence against him was to the effect that he had been seen at the head of a crowd only on the day before the rioting.

103. On the other hand, a box of dynamite detonators, partly used, but still containing a sufficient number of caps to do mischief, was found in his house, and the Town Arachchi had picked him out as one of the three most dangerous men in the village. Podi Sinno and Telenis Appu, equally with James Baas, were selected by the Town Arachchi as the principal rowdies in Algoda and they were proved to have been active participants in the rioting at Dehiowita itself.

104. We should not have been prepared upon his evidence, even if it had stood alone, to hold that the presumption of good faith created by clause 3 of the Ceylon Indemnity Order in Council, 1915, had been in any way rebutted. But we had the evidence of Mr. Cantlay on the other side. His statement (L. H. C. I.) is set out at length in the body of his evidence. It is unnecessary here to do more than to direct attention to the salient points contained in it. Mr. Cantlay is the Superintendent of Pambagama estate. He was a Trooper in the Ceylon Mounted Rifles at the time of this occurrence. He is thirty-five years of age and has been living for seventeen years in Ceylon. He corroborates the evidence of the Town Arachchi of Dehiowita, whose statement was ultimately accepted, as has been seen, by all the other witnesses called by the Attorney-General, as to what took place. He states that Mr. Lover asked each of the three men in turn if he had anything to say in regard to the evidence and that each refused to answer; that the inquiry lasted for one and a half hours; and that, before the execution, each man was again afforded an opportunity of saying anything that he desired. Mr. Lover, to whom reference has already been made in dealing with the case of Romanis Perera, and Mr. Sudlow, whose position has been described in connection with the facts in the cases of Juwanis Fonseka and Arnolis, gave evidence to the same effect.

105. The executions of Poddi Sinno, Telenis Appu and James Baas were illegal. But they were acts done in good faith "for the maintenance of good order" and "for the public safety of the Colony" and are, therefore, covered by the Ceylon Indemnity Order in Council, 1915.

CASES OF SERAHAMY AND PUGODA PETER (Nos. 6 and 7 IN COMMISSION.)

106. Serahamy and Pugoda Peter, two Sinhalese Buddhists, were publicly shot, the former on 13th June, 1915, at Deraniyagala and the latter on the following day at Digalla estate, in the District of Kegalla, by a patrol party under the command of Mr. Baines, a Corporal in the Ceylon Mounted Rifles, who was acting at the time under the orders of Major Bayly.

107. The witnesses called by the Attorney-General in these cases were Punchi Menika, the widow of Serahamy; Podihamy, the widow and Babahamy, the mother, of Pugoda Peter; Siddappu, Serahamy's brother; Punchi Appuhamy, the Korala of Deraniyagala; Ukkuhamy, the ex-Arachchi of the village; several Moormen, Mohideen Saibo, the owner of the principal boutique in Deraniyagala, his manager, Omeru Lebbe and his two salesmen, Amee Batcha and Ibrahim, who were summoned from India for the purpose of giving evidence before the Commission; and two other Sinhalese witnesses, Mathes Silva and Carolis Appu.

108. Deraniyagala was looted on 4th June. Mohideen Saibo's boutique and straw shed were burned. Mr. Baines and his patrol arrived in the village on 13th

June. He had with him a list of names with which he had been furnished by Major Bayly.

109. By this time Pugoda Peter and another man Charles, whose name also was on the list, had disappeared. His widow, Punchi Menika, stated that Omeru Lebbe, and, in spite of his denial of the fact, we have little difficulty in accepting her evidence on the point, had come to her house and advised Serahamy not to go away, as his name had not been put on the list of persons accused of rioting. On the strength of this promise Serahamy remained at home and was easily arrested. Punchi Menika and his brother Siddappu stated that no inquiry was held into the question of his innocence or guilt. But the ex-Arachchi Ukkuhamy said that two Moormen were examined as to his conduct, although Serahamy was not asked whether or not he he desired to call witnesses in his defence, and the Moorman Omeru Lebbe, whose uncorroborated evidence might be of little value, also alleged that an inquiry had been held. Mohideen Saibo stated that he had furnished Major Bayly with a list of names containing those of Serahamy, Peter and Charles and two other men, Punchi Appu and William.

110. The evidence against Serahamy was that he had set fire to a straw shed on a slight elevation above the Deraniyagala bazaar. Peter was to have been responsible for the burning of Mohideen Saibo's boutique. The witnesses to these facts were Mohideen Saibo's two salesmen, Ameer Batcha, a boy of about sixteen years of age, and Ibrahim. They stated that on the day in question the Korala had warned them of the approach of the rioters, and told them to make good their escape. They shut themselves in the boutique and saw something of the removal of the goods through the chinks of the planks and a larger aperture at one end. Then the witnesses ran into the back compound, climbed the elevated ground behind it, and, hiding among the trees, watched the proceedings from there. Charles, Serahamy, and Peter each took part in the looting. Charles and Peter then set fire to the boutique, the latter climbing on the roof for this purpose, while Serahamy set light to the shed. About fifty rubber boxes belonging, as was afterwards proved by Mr. Selwyn, to Udapolla estate, of which he is Superintendent, and in Mohideen Saibo's possession as the forwarding contractor of that estate, were removed from the reach of fire to a neighbouring boutique. Ameer Batcha and Ibrahim fled to Mahawela and gave information to their employer Mohideen Saibo. They both gave evidence in Tamil, which he heard and understood, in Serahamy's presence at the inquiry held by Mr. Baines into his case and that of Peter who had then already disappeared. This inquiry took place in the verandah of a boutique in the bazaar. Ameer Batcha and Ibrahim said that Serahamy denied his guilt. The former knew nothing against his character. The latter said that village opinion about him was divided. Both he and Peter were low-country men. Punchi Menika, Serahamy's widow, and Babahamy said that they knew of no ill-feeling between Serahamy and the two principal Moorish witnesses against him. Podihamy made a similar statement with regard to her husband Peter. Ameer Batcha and Ibrahim gave their evidence well. They placed themselves naturally and without hesitation at Deraniyagala in the position from which, according to them, they saw the looting and burning. We believe their evidence. Mr. Forrest stated that the Police had no record against Serahamy. Two warrants in connection with charges of dynamiting fish were out against Peter. Mr. Selwyn said, however, that he knew both men, Serahamy personally and Peter by reputation, as village bullies.

111. Further evidence as to what happened in the inquiry in Serahamy's case was given by Mr. Selwyn and Mr. Simpson, the latter of whom had acted as Mr. Baines's interpreter in the matter. Mr. Selwyn came to the spot while the proceedings were still going on. Serahamy appealed to him, and Mr. Selwyn, on the impulse of the

moment, thereupon, asked Mr. Baines if he thought that the evidence of the Moors was reliable. He did not recollect Mr. Baines's reply. Mr. Selwyn was not, however, himself in any way connected with the inquiry, nor he had any authority to interfere with Mr. Baines's proceedings. He added that several Moormen were examined in his presence; that evidence was given of Serahamy having taken a leading part in the riots; that similar evidence was given as regards certain other Sinhalese villagers, who were merely caned; and that Mr. Baines consulted the other Europeans who were along with him before a decision was arrived at. Mr. Simpson corroborated Mr. Selwyn's evidence generally on these points, and added that he had translated the evidence of the witnesses, wherever it was necessary to do so, into Sinhalese, which he knows well, for Serahamy's benefit. Mr. Simpson acted merely as interpreter. He was not consulted by Mr. Baines as to what was to be done with Serahamy.

112. At the close of the inquiry Serahamy was told that he would be shot, and was asked if he had anything to say. He begged that he might be imprisoned for life instead of being killed. When the Punjabis attempted to blindfold him, he pushed aside the bandage and rolled on the ground and was shot as he lay there.

113. Peter was arrested later on the same day at Digalla estate, which is 5 or 6 miles distant from Deraniyagala. There was a Malay watcher on that estate, and the Superintendent, Mr. Irving; fearing that he might suffer violence, had given instructions at the factory that the movements of suspicious-looking Sinhalese villagers were to be noted. On 13th June, the conductor, Sanmugam, saw a man who appeared to answer to that description approaching the factory and then turning back. He went up to him and asked him what he was doing there. The man replied that he had "simply come". The conductor pointed to something in his cloth and seized it as he attempted to draw it out. It proved to be a long knife. The stranger at once made off leaving the knife in the conductor's hand. He was pursued by the coolies, arrested, but not before he had struck one of them with a stone which he had thrown at him, and tied up. The conductor reported these facts to Mr. Irving. Mr. Irving mentioned them on the morning of 14th June to Mr. Baines, who arrived with a patrol party a few hours later. Mr. Baines said that his instructions were to shoot the man at sight. There was no further inquiry in Peter's case. He was told what the charge against him was, and was asked if he had anything to say. He admitted his identity, did not deny that he had set fire to the building, and merely said that he had helped to remove the rubber boxes from the flames. He was then at once shot by the Punjabis in Mr. Baines's patrol.

114. The inquiry that preceded Serahamy's execution was, of course, irregular. He is not shown to have belonged definitely to the criminal classes. On the other hand, a considerable degree of formality marked the proceedings. There was evidence which Mr. Baines believed, and which we see no grounds for discrediting, that he was one of the ringleaders of the rioting in Deraniyagala. He was also well-known as a village bully,

115. In the case of Pugoda Peter, the inquiry, owing to his flight, was held in his absence. It consisted of the same body of evidence as that which was adduced against Serahamy, but none of the witnesses were examined at Digalla estate prior to the execution.

116. Nothing against Peter was known at Police Headquarters, except that charges of having dynamited fish were pending against him. But he, too, like Serahamy, was a notorious village bully. The evidence, such as it was, showed that he had been one of the ringleaders in the rioting. He was told by Mr. Baines what he was

charged with, and asked if he had anything to say. In his reply he was silent as to the serious part of the charge, and merely stated that he had saved some of the rubber boxes from burning. In the last place, there is the fact that Mr. Baines informed Mr. Selwyn that he had instructions to shoot the man at sight, whenever his identity was established.

117. In our opinion there is nothing in the evidence so far examined to rebut the statutory presumption that Mr. Baines was acting in good faith.

118. Major Bayly stated that he had given Mr. Baines instructions to use his own discretion. On receiving Mohideen Saibo's list Major Bayly made inquiries, and as the result of these put a mark against Serahamy's name. Charles and Peter he already knew as rowdies. He considered that under the instructions (Production J) of the General Officer Commanding he was vested with full authority to do whatever was necessary to prevent any recrudescence of the riots.

119. Mr. Baines was acting under Major Bayly's general orders, and believed that he had, besides, special orders from him to shoot Charles and Peter at sight. In the case of Serahamy, an inquiry was to be held before he was dealt with. Mr. Baines stated that at Deraniyagala, as soon as Serahamy was seen, a cry arose: "Catch him, he set fire to the 'gala' (shed)." In reply to the charge, Serahamy simply said: "Was I the only one?" The Korala gave Serahamy a bad character. Early on the morning after his execution a quantity of loot was brought back by the villagers, and a sudden subsidence of disturbances in the district followed. Mr. Baines explained that the reason why he had ordered Serahamy to be shot while he was lying on the ground was that the man was hysterical and almost in a fainting condition, and that it appeared to him to be more human to execute him without any further delay. Mr. Baines also stated that he had relieved the Punjabis of the task of caning the other villagers, because he thought that they were carrying it out with too great severity. It may appropriately be mentioned here that Major Bayly said that he had known Mr. Baines for some years, and that he was a level-headed man, incapable of wanton or capricious conduct.

120. It may be desirable in this connection to refer once and for all to the position of Mr. Mitchell, the Superintendent of Panawatta estate and a Trooper in the Ceylon Mounted Rifles. Mr. Mitchell informed us that his name had been improperly associated with the Ampe and Deraniyagala cases. He stated that in the former he had taken no part in the arrest of Juwan Appu, and was not present at Major Bayly's inquiry, and that , as regards the latter, he had merely made an unsuccessful attempt to arrest Charles, and had heard Mr. Baines's decision as regards Serahamy announced.

121. The position of Major Bayly has already been discussed. As regards Mr. Baines, the executions of Serahamy and Peter were illegal. But he was merely carrying out what he understood to be the instructions of his superior officer in the matter, and all that he did was done "bona fide" for the maintenance of good order and for the public safety of the Colony.

CASE OF THE UDUWA ARACHCHI (No. 8 IN COMMISSION)

122. This case presents the greatest difficulty of any of those with which we have had to deal. Dingiri Banda, Arachchi of the Uduwepalata, was publicly shot at Dedugala, a village about 9 miles from Bulatkohupitiya on the 15th June, by a patrol under the command of Mr. Sly, a Sergeant in the Ceylon Planters' Rifle Corps, who had been placed in charge of the Bulatkohupitiya district by Major Bayly.

123. There was looting at Dedugala on 6th June. It was the work not of outsiders but of the villagers themselves. The Moors anticipating disturbances had sent a good deal of their property to neighbouring estates. The Sinhalese and Tamil coolies in the village had disposed of the rest. The Kachcheri Muhandiram, Kegalla, proved that, as against claims by two Moors of Rs. 5,940-50 and Rs. 3,500 for boutiques looted, only sums of Rs. 500 and Rs. 250, respectively, were awarded. But property alleged to have been looted was admitted by some of the Sinhalese witnesses to have been found in nearly every house in the village, and much of it was restored to the Moors through the action of Mr. Sly himself.

124. Mr. Villiers and the Dissawa came to Dedugala on their way to Bulatkohupitiya on 9th June. Mr. Sly did not take over the charge of the village till 11th June. The Moors on the 9th June furnished the Dissawa with the names of eight or nine men whom they alleged to have taken part in the rioting. Two of these, Podi Sinno and Mudiyanse, Mr. Villiers personally knew to be rowdies. The Uduwa Arachchi was himself one of the persons named. The Dissawa in turn gave these names to Mr. Villiers, and they ultimately reached Mr. Sly. The Dissawa also spoke to the Uduwa Arachchi about the men, who were absent from the village at the time, and told him to keep them if they came back, and, should they not return voluntarily, to find them and have them ready for production if they were called for. The Arachchi said that he would produce them if they were wanted. Mr. Villiers and the Dissawa questioned the Moors and the Sinhalese. The latter admitted that they had taken the loot found in their houses.

125. Mr. Sly paid his first visit to Dedugala on 12th June. He was accompanied by Mr. Villiers and three Punjabis, and he had with him the list of names. Mr. Sly had information that there was looted property in the house of Punchirala Arachchi, whose name also was on the Dissawa's list. The party went to Punchirala Arachchi's house, which stands on a high hill above the Dedugala bazaar, and on searching it found a large copper vessel and a jak-wood box, which were claimed by the Moors. Mr. Sly spoke to the Uduwa Arachchi on the subject of the maintenance of order in the village, explained to him that martial law was in force—a fact of which the Arachchi said that he was already aware—put up the Proclamation (M. *vide* also C) as to the shooting of persons who disobeyed the orders of the authorities, read or gave to him the list of names, and asked him where the men were. The Arachchi replied that they had disappeared on hearing the sound of the cars. Mr. Sly then said: "Next time see that you have them ready," and added that if the Arachchi found difficulty in carrying out these orders, he was to telegraph or report to him on the subject and help would be forthcoming, but that if he disobeyed them, he would be shot. It did not occur to Mr. Villiers that Mr. Sly was exceeding his powers in holding out this threat. He thought that he was merely acting in pursuance of the Proclamation (M. *vide* also C). The evidence of the Arachchi's widow, Medduma Kumarihamy, and his father, Banda, indicated that he was fully alive to the seriousness of the situation.

126. Mr. Sly paid his next visit to Dedugala on 15th June. Another European gentleman, Mr. Murray, accompanied him, and there were two or three Punjabis in his patrol. On his arrival at Dedugala he sent for the Uduwa Arachchi and asked him about the men whose names were on the list. Three of them, Kiri Banda, Salman Appu, and Punchirala, were brought. The rest were absent. The Arachchi said that they had run into the jungle on hearing the sound of the patrol party approaching. Only four or thereabouts out of the fifteen Sinhalese ordinarily resident in the village were present at the time. According to Tikiri Banda, the Korala of Uduwa

palata; Mr. Sly asked the Arachchi why he had not telegraphed or reported to him any difficulty that he had in detaining the suspects, and added that if he did not get them back in fifteen minutes he would be shot.

127. The evidence as to what followed is rather confused. The Korala in examination-in-chief said that the Arachchi's hands were tied immediately after Mr. Sly told him that he would be shot, unless he found the missing men within fifteen minutes. But in cross-examination he stated that the Arachchi told someone to go in search of the men, that his hands were then free, and that it was only after an interval that they were tied. Mr. Marshall de Costa, who was surveying the boutiques in Dedugala, both on 12th June, when Mr. Sly visited the village for the first time, and on the day of the execution, saw what happened on the latter occasion from the Public Works Department bungalow on a hill opposite the boutiques. He was unable, however, to say anything more than that only a few minutes elapsed between the tying of the Arachch's hands and the shooting. According to Tikiri Banda, Salman Appu and Punchirala, time was given to the Arachchi to find the absent men only after his hands were tied. The Arachchi said that he could produce the men within a day. Only five or ten minutes' grace, however, was allowed to him.

128. Each of the three witnesses just mentioned was, it should be noted, himself accused of having participated in the riots, and received one cut with a cane. Salman Appu had left the village on the 12th without the Arachchi's leave, and Punchirala had done so on the same day after informing the Arachchi of his intention to go away, in spite of the orders given by the Dissawa on the 9th. These circumstances have, of course, to be looked at in considering the weight due to their testimony where it contradicts that of other witnesses. Reference has already been made to the evidence of the Korala on the point. Segu Mohamadu stated that he had seen the missing suspects running into the jungle as the patrol party approached, and pointed out to us the route that they took. He further said that the Arachchi had gone from the road where Mr. Sly had been questioning him to the verandah of one of the boutiques, that he had asked the women where the men had gone, and that the women had replied that they were far away from the village. On the expiry of the time allowed to him the Arachchi was tied to a tree in the vicinity and shot by the Punjabis. It may be mentioned here that both Mr. Villiers and the Dissawa described the Uduwa Arachchi as being a very "weak" and "foolish" character.

129. The one aspect in which this case has to be looked at may be presented thus. The Uduwa Arachchi did, in fact, produce several of the men whose names were on Mr. Sly's list. There is evidence that the others actually made good their escape as the patrol party approached. The village lies on an elevation in the middle of a deep ravine, sloping down to a stream which runs through Dedugala. There is an abundance of rocks and jungle, in which concealment would be easy and detection difficult, all round. On the balance even of the evidence adduced by the Attorney-General, it must be taken that the Arachchi's hands were not tied, when Mr. Sly gave him a quarter of an hour in which to find the missing men, and that he was at liberty to take whatever steps he chose for that purpose. But the period was short, in view of the number of men and the physical characteristics of the surrounding country.

130. The points on the other side are these. The country is wild, somewhat remote, and difficult of access. Looting on a considerable scale had taken place in the village. The villagers were believed by Mr. Villiers and Mr. Sly to have had, one and all, a hand in that looting. The Uduwa Arachchi was himself accused of complicity with them. The Dissawa had, on representations made to him by the Moors, prepared a list of men who are wanted, and had told the Arachchi as far back as the 9th June to have them ready if the patrol party came and asked for them. The men were not

forthcoming when Mr. Villiers and Mr. Sly visited Dedugala on 12th June. The Arachchi said that they had made off on hearing the cars. He was then expressly warned that he would be dealt with under the Proclamation which Mr. Sly had posted up, and the contents of which were explained to him, if he did not produce the men on the next occasion, and was told to apply by telegram or other message for assistance should difficulty arise in obeying his order. On 15th June the alleged ringleaders, Podi Sinno and Mudiyanse, were still absent. The same explanation of their escape as before was given. No application to Mr. Sly for assistance had been made in the interval. The Arachchi was shot, not only because he had failed to find the missing men within fifteen minutes on 15th June but because he had not by that time complied with orders, which could have been obeyed, given to him on the 12th.

131. Whatever strictures might be passed on Mr. Sly's conduct on the strength of the evidence so far discussed, we should not have been prepared to hold that it was sufficient to displace the presumption of good faith which arises under clause 3 of the Order-in-Council.

132. The evidence on the other side must now be considered. Mr. Sly has lived for 19½ years in Ceylon. He was associated with Major Bayly from the time that he went to Ruanwella to the end of July, and was regarded by him as a careful and efficient officer. He was with Major Bayly at the time when the mob endeavoured to pass Ruanwella, and did his best by talking to the crowd to bring about its voluntary dispersal or retirement. Mr. Sly reported his movements verbally to Major Bayly, who approved of his action generally, and in regard to the execution of the Uduwa Arachchi in particular. Major Bayly had, in fact, told Mr. Sly to use his own discretion in dealing with the situation as he found it at Dedugala, and, like Mr. Villiers, did not think that in threatening the Uduwa Arachchi with shooting he had in any way exceeded his powers. The Dissawa spoke of Mr. Sly in high terms from the Sinhalese standpoint.

133. The extracts from Mr. Sly's diary, which were put in evidence, show that he was working energetically, deliberately, and carefully, with a view to the pacification of the district of which he had been put in charge. The Attorney-General, indeed suggested that Mr. Sly's activities were, perhaps, too multifarious, and directed our attention in this connection to an order alleged by the Korala to have been given to him by Mr. Sly that all official correspondence between the Dissawa and himself should pass through his hands. Mr. Sly explained that he had not intended to interfere in any way with the action of the Dissawa, and that he was only anxious to keep in touch with the Korala, who, in common with very many of the other headmen in the district, was not really assisting him in his work.

134. Moreover, Mr. Sly was acting under a Proclamation (C. in English, M. in Sinhalese) dated 10th June, 1915, the terms of which are, to say the least, ambiguous. In that Proclamation Mr. Burden, as Special Commissioner appointed under the hand of the General Officer Commanding "for the purpose of inquiring into the recent riots, assessing damage, and levying compensation for such damage," gives notice "in the name of the Mililary authorities, to all persons whomsoever, that they are required to give every assistance, information, etc., to the Military and Civil authorities; that persons not obeying orders or carrying firearms will be liable to be shot at sight; and that any persons harbouring rioters, or suppressing evidence with regard to the offenders in the recent disturbances, or spreading false reports, will be treated as aiders and abettors, and will be liable to similar penalties as those who have committed such acts."

"All persons are further warned that they are 'required to remain in their respective villages' throughout the month of June or during such further period as the

Special Commissioners may direct. Persons found in possession of looted property, and persons proved to have destroyed looted property, will be dealt with as rioters."

"All looted property is to be forthwith restored to the village headmen. 'All headmen will answer for the good behaviour of their villagers,' and shall assist in obtaining the conviction of guilty persons."

"All persons are required to remain in their houses between the hours of 7 p.m. and 5 a.m. The beating of tomtoms and the holding of meetings is rigorously forbidden. All persons other than Europeans in the possession of firearms or other dangerous weapons or explosives shall surrender them forthwith to the village headmen, who shall produce them without delay before the Special Commissioners, or Revenue, Judicial, or Police officers. All such persons found in possession of firearms, dangerous weapons, or explosives after 10th June will be liable to severe penalties."

"All Moormen are placed under the special protection of the headmen, who will be regarded as personal hostages for their maintenance and security."

135. It may well be that this notice contemplated action of a very different kind, and the reference to the shooting of offenders "at sight" is no doubt suggestive of the conclusion that its application was intended to be restricted to actual disturbances. But in view of its language as a whole, and in particular of the other clauses italicized by us, there was nothing unreasonable in Mr. Sly's belief that he was himself empowered to cause any person who disobeyed his orders to be shot at sight. That he honestly interpreted the Proclamation in that sense admits of no question.

136. The evidence of Mr. Sly supplements that of the other witnesses in the Uduwa Arachchi's case in certain particulars. He was informed by Major Bayly, on the day on which he took over the charge of the district, that he had been appointed a Justice of the Peace and Unofficial Police Magistrate. This information would appear to have been erroneous at the time. Mr. Sly's appointment as a Justice of the Peace and Unofficial Police Magistrate was not gazetted till a later date. But he acted on the assumption that what Major Bayly said was correct, and his appointment, when gazetted, was directed to take effect as from the 11th June, 1915.

137. Mr. Sly was under the impression that he had visited Dedugala on 9th June, as well as on 12th and 15th June, but, in any event, he does not appear on the first of these dates to have come into contact with Mr. Villiers or the Dissawa. He stated that a dynamite fuse had been found in the house of Punchirala Arachchi; that he had told the Uduwa Arachchi to "arrest" the men whose names were in Mr. Cantlay's list and to keep the other people in the village; that when he offered the Uduwa Arachchi help, if necessary, the latter said that he did not need it; and that on the day of the shooting the Arachchi said that he had himself allowed Mudiyanse, who is alleged to have been one of the ringleaders in the riots, to go to Kegalla. Mr. Sly added that when he told the Uduwa Arachchi that he would be shot within fifteen minutes if he did not find the absent men, the Arachchi merely smiled in an insulting or defiant manner and made no real effort of any kind to get them back. Mr. Candy, who accompanied Mr. Sly as interpreter to the Punjabis, and was with him at Dedugala both on the 12th and on the 15th June, corroborated this evidence. He stated that when Mr. Sly warned the Uduwa Arachchi on the first of these visits, the Arachchi said that the absent villagers returned to the "kaddais" (boutiques) every night. Mr. Sly then told him to catch them on their return, and to use his own discretion as to the best means of detaining them. He agreed with Mr. Sly as to the Uduwa Arachchi's demeanour, and said that he seemed to treat the threat to shoot him as a joke. The Attorney-General suggested to these witnesses that the Uduwa Arachchi's smile was one of weakness and fear. They interpreted it, however, in a different sense.

138. The execution of the Uduwa Arachchi was illegal. It was carried out, however, under the assumed authority of the Proclamation of the 10th June, 1915, *bona fide* and is covered by Clause 3 of the Order in Council.

139. It is no doubt an easy matter to criticise adversely acts of this character committed during a period of great stress and anxiety when that period has passed away. But we feel that, even if the Proclamation had conferred on Mr. Sly power to execute summarily any person who should fail to comply with his orders, he would still have been left with a discretion as to the circumstances in which that power should be exercised, and that the conduct of the Uduwa Arachchi, assuming it to have deserved severe punishment, ought to have been visited with some penalty other than death. In this connection, however, it is only fair to say that Mr. Sly indicated in his evidence that if the Uduwa Arachchi had even made an effort to find one or more of the missing men he would not have been shot.

CONCLUSIONS

140. The conclusions at which we have arrived may be summarized as follows :—

(1) In each of the cases that have been under investigation the act of shooting cannot be justified on the ground of the existence of martial law ; in short, it had no legal justification.

(2) In each case the execution was decided upon after deliberation, and whether or not it produced, it was in fact followed by, the intended effects, viz., the avoidance of any recrudescence of riotous conduct and the overawing of perons likely to cause rioting.

(3) In each case the execution was the act of a person or persons acting in a military capacity under the General Officer Commanding the Troops in the Colony for the time being.

(4) In each case the officer by whose orders the execution was carried into effect had reasonable grounds for believing that he had authority to issue those orders.

(5) In each case the execution was ordered, directed, or done *bona fide* for the maintenance of good order and government and for the public safety of the Colony, and is, therefore, protected by the Ceylon Indemnity Order in Council 1915.

COMPENSATION

141. We would venture to raise the question whether compensation should not be paid by Government to the widows of the ten men whose deaths have formed the subject of this inquiry. We were most favourably impressed with the demeanour, and, after making due allowance for natural misapprehensions of the facts, with the evidence also, of the majority of these women. There can be little doubt that in some instances, at least, they are now in want of pecuniary help. The Attorney-General elicited from each of them some particulars of her position. We do not consider it necessary to examine this evidence in detail. We merely call attention to it. The Dissawa would doubtless be able to give valuable assistance to Government in this matter if he were requested to do so.

142. We desire, in conclusion, to express our appreciation of the very great help that we have received from the Secretary to the Commission, Mr. R. H. Whitehorn, of the Ceylon Civil Service, in connection both with the arrangements for the inquiry and with the inquiry itself.

143. It was at first decided that the evidence should be taken down, as is the practice in our courts, in narrative form. But at an early stage in the proceedings we felt it to be desirable that it should be recorded in the form of question and answer, and the evidence has been so recorded, fully and accurately, by Mr. Struys, the Senior Shorthand Writer of the Supreme Court.

We have the honour to be,

Sir,

Your most obedient servants,

A. WOOD-RENTON,

Chairman.

Colombo, January 18, 1917.

G. S. SCHNEIDER.

APPENDIX B.

D. C. KEGALLA CASE No. 4173.

IN THE DISTRICT COURT OF KEGALLA.

No. 4173.

1. Pahala Korallegedera Pinchi Appu,
2. Senanayake Mohotti Mudiyanselage Appuhamy both of Keuplona in the District of Kegalla.

Plaintiffs

vs.

1. D. M. Seneviratne, Kachcheri Muhandiram of Kegalla
2. G. C. H. Molligoda of Kegalla and
3. B. J. Peiris of Pondape Estate in Aranayake,
4. Mrs. D. M. Seneviratne (Added 5-10-16)

Defendants.

On this 11th day of September, 1915.

The plaint of the plaintiffs abovenamed appearing by their Proctor, Arthur Vincent Perera, states as follows :-

1. The 1st defendant is the Kachcheri Muhandiram of Kegalla and a special J. P. and U. P. M. The 1st and 2nd defendants reside in the Town of Kegalla, and the 3rd defendant resides at Aranayake, within the jurisdiction of this Court.

2. The plaintiffs were the owners and were seized and possessed of the lands called and known as "Boraluwehena" and "Dewulgahamulahena," situated at Diyagama within the jurisdiction of this Court, and more fully described in the schedule hereto annexed and the 1st defendant and his wife are seized and possessed of a large extent of land adjoining the said lands.

3. On the 4th June, 1915, the 1st defendant acting in bad faith and in collusion with the 2nd and 3rd defendants caused the wrongful arrest of the plaintiffs under an alleged Martial Law, and detained them in custody at the Rambukkana Resthouse, and the Kegalla Police Station till 20th June, 1915.

4. During the said incarceration, the 1st defendant in collusion with the 2nd and 3rd defendants coerced the plaintiffs, under threats of being Court Martialled and shot, to execute a transfer of the plaintiffs' said lands.

5. The plaintiffs induced by fear and threats agreed to execute a transfer of the said lands; and that the plaintiffs may get their title deeds the 1st defendant procured the release of the plaintiffs on the 20th June 1915, on 2nd defendant standing bail; and on the 21st June, 1915, the plaintiffs induced by the said coercion and threats on deed No. 4664, dated 21st June, 1915, without consideration transferred the said lands in favour of the 2nd defendant on the directions of the 1st defendant.

6. That the 2nd defendant fraudulently and in collusion with the 1st and 3rd defendants executed deed No. 21600 of 27th July, 1915 in favour of the 3rd defendant.

7. The said lands are of the value of Rs. 4,500/- and are now being possessed by the 1st defendant as part and parcel of his adjoining estate.

8. The plaintiffs state that on the aforesaid premises a cause of action has arisen to them to have the said deeds declared null and void and to have them cancelled on the grounds of fraud, duress, want of consent and consideration.

Wherefore the plaintiffs pray :-

(1) That the Court do declare the said deeds null and void and cancel the same,

(2) The plaintiffs be declared entitled to the said lands and that they be put, placed and quieted in possession thereof,

(3) For Rs. 500/- damages and further damages at Rs. 1,500/- per annum, *pendente lite*.

(4) For costs in this behalf incurred and

(5) For such other and further relief in the premises as to this Court shall seem meet.

Sgd. ARTHUR V. PERERA,
Proctor for plaintiffs.

THE SCHEDULE ABOVE REFERRED TO:—

1. An undivided ninety five shares out of one hundred and eight shares (95/108) out of Boraluwehena in extent five amunams paddy sowing situate at Diyagama in Deyala Dahamuna Pattu in Kinigoda Korale in the District of Kegalla, and bounded on the east by the village limit of Keulpona, south by the village limit between Keulpona and Kalugalla, west by the Galenda and on the north by the limitary stones of the hena belonging to Selathi.

2. All that land called Diulgahamulahena of six lahas paddy sowing extent situated at Diyagama aforesaid bounded on the east by Karadetta and Nugawela, south and north by endaru fence and on the west by ditch.

Sgd. ARTHUR V. PERERA,
Proctor for plaintiffs.

Answer of 1st defendant

ON THIS 9th DAY OF NOVEMBER, 1915.

The answer of the 1st defendant abovenamed appearing by his proctor, Aelian Ondatji, states as follows :-

1. This defendant admits the allegations contained in the first para of the plaint, but is unaware of those contained in the 2nd, save that he owns some landed property at Diyagama in Deyala Dahamuna Pattu in Kinigoda Korale.

2. This defendant denies the allegations contained in the 3, 4, 5, 6, 7 and 8 paras of the plaint.

3. For further answer the defendant states that the plaintiffs were arrested and detained in custody for alleged participation in the recent Anti-Muslim riots on the orders of the Special Commissioner for Kegalla and were shortly thereafter released on bail.

4. This defendant specially denies that he acted in fraud or collusion with the 2nd and 3rd defendants or committed any act of bad faith with regard to any of the matters mentioned in the plaint or that the plaintiffs have any cause of action whatsoever against this defendant.

Wherefore this defendant prays :—

i. That plaintiffs' action against him may be dismissed,
ii. For costs of suit and
iii. For such other and further relief as to this Court shall seem meet.

Sgd. AELIAN ONDATJI,
Proctor for 1st defendant.

AMENDED ON 24-8-16 BY ADDING PARAS :—

5. That this action is not maintainable against 1st defendant inasmuch as the plaintiffs have not given the notice required by section 461 of the Civil Procedure Code.

6. That the plaintiffs' action against the 1st defendant is barred by the order of His Majesty the King in Council of 12th day of August, 1915, and proclaimed on 30th August, 1915, the benefit of which the 1st defendant claims.

Sgd. AELIAN ONDATJI,
Proctor for 1st defendant.

Answer of the 2nd defendant.

ON THIS 9th DAY OF NOVEMBER, 1915.

The answer of the abovenamed 2nd defendant appearing by Walter Osmund Herat, his Proctor states as follows :-

1. This defendant admits the allegations contained in the 1st and 2nd paras of the plaint.

2. Answering to the paras 3 and 4 of the plaint this defendant denies the allegations contained therein and states that he is unaware of the circumstances that led to the arrest of or detention in custody of the plaintiffs and he specially denies that he at any time held out any threats whatsoever to the plaintiffs.

3. This defendant denies the allegations contained in paras 5, 7 and 8 of the plaint.

4. Answering to the 6th para of the plaint, this defendant admits that he executed the deed therein mentioned but denies that such execution was in fraud or in collusion with the 1st and 3rd defendants or any other person whomsoever.

5. For further answer this defendant states that when the plaintiffs were in custody at Kegalla at the request of some of their relatives he gave bail for their release. The plaintiffs thereafter requested this defendant to find the amount of money required of them as compensation for damages done to the Muslims during the recent riots and voluntarily agreed to sell and convey to this defendant the lands in question. Voluntarily and of free choice the plaintiffs executed deed No. 4664 dated the 21st June, 1915 in favour of this defendant for and in consideration of the sum of Rs. 800/- which this defendant says is fair and reasonable.

Wherefore this defendant prays that plaintiffs' action may be dismissed with costs and for such other and further relief as to this Court shall seem meet.

Sgd. WALTER O. HERAT,
Proctor for 2nd defendant.

Answer of the 3rd defendant.

ON THIS 9th DAY OF NOVEMBER, 1915.

The answer of the 3rd defendant abovenamed appearing by James Pagnani Samarasinghe, his Proctor, states as follows :-

1. This defendant admits the allegations in paragraphs 1 and 2 of the plaint.

2. This defendant being unaware of the allegations contained in paragraphs 3, 4 and 5 of the plaint denies them.

3. This defendant denies the allegations contained in paragraphs 6, 7 and 8 except as hereinafter admitted.

4. Upon deed No. 21600 of 27th July, 1915, the 2nd defendant sold and conveyed for valuable consideration of the sum of Rs. 1000/- the lands and premises mentioned and described in the schedule to the plaint.

Wherefore this defendant prays :-

(1) That plaintiffs' action be dismissed.
(2) That he be declared entitled to the said lands.
(3) For costs of suit and
(4) For such other and further relief as to this Court shall seem meet.

Answer of Added defendant.

ON THIS 19th DAY OF OCTOBER, 1916.

The answer of the abovenamed added defendant appearing by Alfred F. Herat, her proctor, states as follows :-

1. The added defendant admits the allegations contained in the 1st para of the plaint.

2. The added defendant is unaware of and therefore denies allegations in the 2nd para of the plaint.

3. The added defendant is not aware of and therefore denies allegations in the 3, 4, 5, 6, 7 and 8 paras of the plaint.

4. For a further answer the added defendant states that one Dewatapedige Sabiny and—do—Wattuwa were by right of paternal inheritance seized and possessed of and well entitled to the land mentioned in the schedule hereto situated at Diyagama within the jurisdiction of this Court which land is included within the plaint filed.

5. Upon deed No. 2161 dated 14th November, 1912, the said Sabiny sold and conveyed an undivided half of the said land to one James Robert Molligoda Bandaramahathmaya of Kegalla who became entitled to and entered into possession of an undivided half of the said land.

6. In Guardianship Case No. 81 of the District Court of Kegalla, one Nekatdurayalage Sirimala of Kegalla was appointed Guardian and Curator over the person and property of the said Wattuwa who was a minor and with the authority of the Court granted under the hand of I. G. Willet, Esquire, District Judge of Kegalla on the 25 day of August, 1913, an undivided half of the said land belonging to the said minor Wattuwa was sold by the said Sirimala as Guardian and Curator and purchased by James Robert Molligoda Bandaramahatmaya upon deed No. 11592 dated 25th September, 1913, who thereupon became entitled to an undivided ½ of the said land and entered into possession of the same.

7. By virtue of the premises the said James Robert Molligoda Bandaramahathmaya became entitled to the entirety of the said land and upon deed No. 1419 dated 17th February, 1915, he sold and conveyed the said land to the added defendant herein who thereupon became entitled to the said land and entered into possession of the same.

8. The added defendant and her predecessors in title have been in the undisturbed and uninterrupted possession of the said land for a period of more than 10 years preceding institution of this action by a title adverse to and independent of that of the plaintiffs, defendants and all others, in support whereof the added defendant pleads the benefit of the 3rd clause of Ordinance No. 22 of 1871.

Wherefore the added defendant prays :—

That she be declared entitled to the said land and that the plaintiffs' action against her be dismissed with costs and for such other and further relief as to this Court may seem meet.

Sgd. ALFRED F. HERAT,
Proctor for added defendant.

Proceedings.

26th MARCH, 1917.

Parties present.

Mr. Advocate H. J. C. Pereira with Mr. F. W. Silva instructed by Mr. Wijeratne, for plaintiffs.

Mr. Drieberg instructed by Mr. Ondatji for 1st defendant and Mr. A. F. Herat for added defendant.

Mr. Advocate Rajaratnam instructed by Mr. W. O. Herat for 2nd defendant.
Mr. Advocate Molamure instructed by Mr. Samarasinghe for 3rd defendant.

ISSUES AGREED TO :

1. Did 1st, 2nd and 3rd defendants acting in bad faith and collusively, wrongfully cause the arrest on 14th June, 1915, of the plaintiffs and detain them in custody until 20th June.

2. Did 1st, 2nd and 3rd defendants acting in collusion and in bad faith coerce the plaintiffs during the said incarceration by threats of being Court-martialled and shot to execute a transfer of the lands mentioned in the plaint.

3. Did 1st defendant procure the release of the plaintiffs on the 28th June on the 2nd defendant standing bail.

4. Was deed No. 4664 of 21st June, 1915, executed without consideration and was the execution of it induced by coercion and threat.

5. Did 1st defendant direct the plaintiffs to execute the transfer 4664 in favour of the 2nd defendant.

6. Did the 2nd defendant fraudulently and in collusion with 1st and 2nd defendants execute deed No. 21660 of 27th July, 1915, in favour of 3rd defendant.

7. Damages.

6 A. [*Suggested by Mr. R. L. Pereira on 11-5-1917 and adopted by Court.*]

If the execution of deed 4664 of 21st June, 1915, was procured by coercion and threats and without consideration, is the deed No. 21660 of 27th July, 1915, in favour of 3rd defendant void or liable to be cancelled.

11-5-1917.

P' A. PUNCHI APPUHAMY, AFFD.—

I am 1st plaintiff. I live at Keulpona. 2nd plaintiff is my nephew. We own lands in the village. I am worth Rs. 8,000/- or so. 2nd defendant is worth the same. I live some distance from the high road. I deny I took any part in the riots or came near Rambukkana during the riots. I received a notification or rather a verbal order to appear at the Rambukkana Resthouse on 11th June, 1915. All the adult males were so ordered to appear. Two or three thousand people assembled. The A.G.A., Mr. Forrest, the Kachcheri Mudaliyar and the R.M. were there. Each headman was ordered to collect compensation from the villages of his wasama. The Kalugala Aratchchi was ordered to collect Rs. 3,000/-. The Aratchchi had not previously asked me to bring money to the R.M.

I was asked by the Aratchchi later in the village on my return to contribute Rs. 70/- and my nephew to pay Rs. 60/-, on the same day, viz., 11th June, 1915. I paid Rs. 70/- to the Aratchchi and my nephew paid Rs. 60/.

He gave us receipts. I produce them P10 and P11. Besides these two sums we two were never at any time called upon to pay further sums.

On the 12th June the villagers were ordered by the same Aratchchi and two constables to appear at Rambukkana on the same day with our title deeds. That day no investigation took place.

The next day the R.M. enquired of us generally why compensation had not been paid. I said we had paid. Then those who paid were asked to stand on one side. I showed my receipts to the R.M. That evening I returned to the village.

On the 14th June I started to Kurunegala. When I reached Rambukkana town, the Town Aratchchi came to me and said I was wanted by the R.M. and he took me to the Resthouse. There I met the R.M. I bowed down to him and asked him why I was wanted. Then he showed me two telegrams and said that he had been ordered to send me and 2nd plaintiff to Kegalla. He asked me to remain there.

After an hour or ½ hour had elapsed, 2nd plaintiff came there. He was told the same thing by the R.M. We were both detained by the R.M. till the 15th June at the Resthouse.

On the 15th June the R.M. said he was going to Kegalla—that he would ascertain why we were wanted and let us know.

He returned from Kegalla and ordered us to get ready to go to Kegalla next day. The next day the Kalugala Aratchchi took us to Kegalla. He gave us breakfast and took us to the Kachcheri.

We wished to see the A.G.A. but were not allowed by the Aratchchi to do so. The Aratchchi took us to the Mudaliyar 1st defendant's room at the Kachcheri. The 1st defendant told nothing to us but he told the Aratchchi to give us over to the Police at the Police Station. The Aratchchi took us to the Police Station. This was in the afternoon.

At the Police Station, the Sergeant refused to take us into custody and enquired what was the charge against us. The Aratchchi could not say what the complaint was. The Sergeant asked that the Kachcheri Mudaliyar should come. The Aratchchi left to fetch him. But later the Aratchchi came back with another gentleman whom I had seen previously at the Kachcheri.

I produce a certified copy of the Information Book relating to our custody there, P12.

The gentleman spoke to the Sergeant and we were taken into custody.

We were detained in the lock-up till 20th June, 1915.

On the 19th June the 1st defendant, Muduliyar, came to see us in the lock-up. A policeman was then present. We were taken out of the lock-up and taken out of ear shot of the other prisoners. Then the Kachcheri Mudaliyar said that there were five cases against us and added that we could not escape from those cases but he could save us. He then said "To save you you must give me 'Boraluwa Idama' and 'Diulgahamulahena' otherwise you will be shot by Government." He added that he himself had power to have people shot. At that time I had heard of people having been shot. I was alarmed by the Mudaliyar's threats. In consequence I agreed to transfer the lands. The 2nd plaintiff told me: "Uncle, let us give up these lands. As for lands, we can earn them if we live." So I thought that it was best to agree to the 1st defendant's terms and transfer the lands. The 2nd plaintiff was more alarmed than I.

Than the 1st defendant asked about our deeds. I said I must go home and bring them. The 1st defendant then said "I will get them down." After this we were again locked-up at the Police Station.

On the next day 20th June at 5 or 5-30 p.m., Mr. Molligoda, the 2nd defendant, came to the Station. He spoke to a Police Officer. We were then taken out. 2nd defendant said that he came to stand bail for us. We said that would be good. Then 2nd defendant signed a paper. We too signed a paper. I cannot say if it was the same. Then 2nd defendant came away with us to the gate, we being released. At the gate he said: "Havent you given a promise to the Mudaliyar? Come for that purpose tomorrow."

The next day was a Sunday.

Prior to that we had never approached the 2nd defendant to stand bail for us. Nor did any of our relations approach him. I made enquiries, and so ascertained. On the 20th June, evening, we went to our village. Next morning 21st June we returned to Kegalla.

We met 2nd defendant and went towards his Walauwa with him. First I and my nephew came near the Courts. Then my nephew went towards the Kachcheri and returned with Mr. Molligoda 2nd defendant. 2nd plaintiff told me that the Mudaliyar wanted the deed drawn in favour of the 2nd defendant. The 2nd plaintiff had gone to the Kachcheri to see the Mudaliyar. 2nd plaintiff also said that the Mudaliyar wanted the consideration to be stated in the deed as Rs. 800/- which had been previously paid. I asked 2nd plaintiff if he had enquired if we would be freed from our troubles. The 2nd plaintiff said that the Mudaliyar gave an assurance that we would have no further trouble. Then we went to the Notary's Office. 2nd plaintiff and I went first.

We handed our title deeds to the Notary and said that a transfer should be written in favour of Bandara Mahatmaya, viz., Mr. Molligoda. The Notary said Mr. Molligoda must be present. So I went and fetched him from his Walauwa. All of us gave instructions to the Notary. We returned at 2 or 2-30 p.m. Mr. Molligoda was not present. We fetched him. Then the deed was signed. The Notary asked who would pay the fees. I replied: "Although the deed is in favour of Bandara Mahatmaya, it is really in favour of the Mudaliyar and so the latter would pay the fees if asked—not the Bandara Mahatmaya."

After the deed was executed we gave up possession of the land. We had purchased 95/108 shares. Both the lands were chena at the time of our purchase

Boraluehena" is about 19 acres in extent and adjoins the Kachcheri Mudaliyar's estate or nearly so, save for a small portion.

The Kachcheri Mudaliyar had previously asked us to sell him the land. He also asked the R.M. to induce us to sell to him. The Mudaliyar asked the R.M. to do so in our presence. Three or four times the Mudaliyar asked us to sell the lands to him. We had refused.

Even had I been called to pay Rs. 1,000/- as riot compensation I would not have sold these lands.

After we had purchased the lands we cleared them and planted them. I see the survey plan. Lots B and A belong to me. A is the old plantation. We planted it in coconut, rubber and plantains. This was in 1913-1914. Lot B was planted in plantains about a month prior to the riots. I had also holed it for coconuts. I planted 2,500 plantain bushes on A and 1,500 on B. The usual income from 1,000 bushes is Rs. 1,000/- for the period of its bearing, *i.e.*, Re. 1/- a bush. The land has since been abandoned, *i.e.*, since the transfer. The rubber and coconut are overgrown with jungle. It will cost us Rs. 500/- to clear. Sometime after this transfer my nephew Kapuruhamy was prosecuted for cutting plantains on the land, *i.e.*, for theft from Boraluehena. One S. A. Karunaratne was the complainant, Karunaratne of Iriyagallewatta, which is the Mudaliyar's estate of which Karunaratne is the Superintendent. I produce a V.T. case No. 8694 dated 18th October, 1915—P13.

I petitioned the Attorney-General for the transfer of this case to the Police Court saying I had this case pending against the Mudaliyar. My request was refused—*see* P14. But the case was withdrawn.

I say the lands were after the transfer in the possession and care of Karunaratne, the 1st defendant's Superintendent. Karunaratne has since left the 1st defendant's employ.

I know Kirinaide. He is in the Kachcheri Mudaliyar's employ, I believe, as Kangany. I produce copy of V.T. case No. 11430 Rambukkana in which Kirinaide states he is in charge of the Mudaliyar's estate in November, 1916—P15.

A fortnight after I executed P5 I applied to the Notary for a copy and got one later. I instituted this case on 15th September, 1915. I and 2nd plaintiff swore an affidavit before the D.J. setting out all the facts of the case—P16.

At the time I transferred the lands to the 2nd defendant I valued them at Rs. 4,500/.

I also produce deed 2116 of 27th July, 1917, by 2nd defendant in favour of 3rd defendant—P17. The 3rd defendant to my knowledge has never been to the lands. I produce the bail bonds signed by 2nd plaintiff and me—P18.

CROSS-EXAMINED BY MR. DRIEBERG,

My first visit to the Rambukkana R.H. was the 11th June, 1915. On that day I am unaware that the A.G.A. held a public enquiry as to who were responsible for the Rambukkana riots. I arrived at Rambukkana R.H. at 10 a.m. and left at 3 p.m. I was not in the R.H. premises but by the road outside.

I am aware that the Moorish quarters at Rambukkana were destoyed and that some Moormen were killed. I am unaware that anyone from my *wasama* were killed in Rambukkana in connection with the riots.

I heard that Ausadahamy of Kalugala was baynotted, some three days after the riots, but this was before compensation was demanded. Some villagers of Kalugala were involved in the Randeniya riots—not at Rambukkana. Hetuhamy, Fiscal's officer, was shot and injured. He was Court Martialled, sentenced to five years R.I. and fined. Hetuhamy is a close relative of mine. I do not know that any one from my *wasama* was deported to Trincomalee. I know Abraham Silva. He may be the leader of a Temperance Society and a school. I am not interested in these directions. My village is 4 or 5 miles from Rambukkana and I am unaware of any inquiry as to the part played by men of my locality in the riots. I am unaware that as the result of the A.G.A.'s enquiry my name figured as a ring leader in the riots.

On the 11th June, the A.G.A. did not announce what each man would have to pay as compensation. Only the sum recoverable from each village was named as to be recovered by each Aratchchi. I have not ascertained if the full Rs. 3,000/- was raised. I casually learnt what some of the villagers paid. Some may have paid more than I did. No more than Rs. 70/- was ever demanded from me. I had about Rs. 500/- cash with me at the time. I cannot say what cash 2nd plaintiff had. Apart from the lands now in dispute I own coconut land 20 acres in extent and rubber in common with others, about 5 acres. One of the other co-owners was Hetuhamy, Fiscal's Officer, and another my nephew.

The Aratchchi knew of my possessions. My nephew and I are considered well-to-do.

None of my lands were then under mortgage, neither 2nd plaintiff's. I have since mortgaged my lands for the purposes of this case. I mortgaged one for Rs. 250/-, *i.e.*, the coconut land, it is the coconut land, and one for Rs. 100/-. This was two months ago. These are the only loans I raised. I heard 2nd plaintiff raised about Rs. 250/-. These bonds are with a Chetty of Hingula. I believe 2nd plaintiff mortgaged with the same Chetty. I can get the numbers of the bonds if given time. Manchanayake Notary executed one. The money I raised for this litigation I have already expended.

After the 11th June the Aratchchi next saw me on the 12th June, on which day he and two constables took us again to Rambukkana. The Aratchchi said he had been unable to collect the full amount Rs. 3,000/-. He made no attempt to recover more from me than originally asked. The Aratchchi did not tell me that because the full sum had not been paid he had been ordered to bring five of the influential men of the village to Rambukkana. I and my nephew alone were brought up. I do not know if other men gave bonds.

On the 14th June I was going to Kurunegala to consult the Ibbagala Priest over my eye trouble, from which I had been suffering four years. I did not get any permit to leave my village. I deny that at that time I was looking out for more money.

The R.M. on the 14th June showed me two papers and said they were telegrams. I could not identify them. I have never received a telegram in my life though I sent some. The R.M. said the telegrams were from the Kachcheri. I deny that R.M. told me his instructions were to detain some of the leading villagers until the compensation had been paid. People of Walgam Pattu were present when the telegrams were shown to me. There were only one or two men I knew present. I regard my detention as dating from the 14th June. I had no reason then to infer that I had been arrested at the instance of the R.M. But subsequent events such as my

lock-up, the Mudaliyar's threat we would be shot and the transfer of my loans followed by the fact that the Mudaliyar began to possess the lands lead me now to believe that the Mudaliyar was at the bottom of my arrest. I got no opportunity to inquire from the A.G.A. whether I was ordered to be arrested by him. I made no such inquiries up till now. If the A.G.A. now states he ordered my arrest because I was a notorious character and also because the full compensation had not been paid, then I would have nothing to say.

I did not subsequently inquire from the A.G.A. why I was arrested because there was no necessity for me to do so. There was also no case against me. So I made no subsequent inquiries from the A.G.A. as to whether all this was done at his instance. I also felt I would get no reply. In connection with the V.T. case against my nephew for theft, I sent a petition not to the A.G.A. but to the G.A. and the Attorney-General. I consulted Mr. Wickramasinghe and he advised me to memorialize the Governor. I petitioned the G.A. on Wickramasinghe's advice. I did not petition the G.A. about the Mudaliyar's exactions because Mr. Wickramasinghe advised me to consult counsel and institute a case after Martial Law was removed.

I and another were charged with arson. I stated that the Mudaliyar was assisting in that case against me. I petitioned the G.A. and Attorney-General on Mr. Wickramasinghe's advice. An inquiry followed by the G.A. in the A.G.A.'s presence. At the G.A.'s enquiry I mentioned the extortion which is the subject of this case and asked him to inquire into this also. I did not petition the G.A. about the fraudulent extortion of land because it was the subject of this case.

From the very day that I was compelled to transfer this land to the Mudaliyar, I determined to bring this case. I thought to execute the deed and then later have it set aside. I did not consult 2nd plaintiff about this or any one else did not tell 2nd plaintiff of my intentions to repudiate the sale.

After Martial Law was withdrawn and after the copy of the deed was obtained and after we had arranged to go to Kandy to bring a case, then I told the 2nd plaintiff of my intentions.

The 2nd plaintiff was the more nervous man and wished to part with his lands to save his life. When 2nd plaintiff and I left the Notary's office then it appeared that our sale was a final transaction. I did not then consider it necessary to inform the 2nd plaintiff that we could subsequently get the deeds set aside.

I did not talk to the 2nd plaintiff about this since the deeds were executed and prior to the removal of Martial Law. Outsiders asked me how I escaped after being locked up. Then I told them how I managed to get my release. I cannot remember the names of any such outsiders but I did not tell these outsiders that I intended to get the deeds set aside. I did not tell the 2nd plaintiff of my visit to the Notary to get copies of the deed. I wished to keep the matter secret till I brought my case. I also kept it secret because I did not want the Mudaliyar to know of my intentions as Martial Law was still in force and I was afraid I might be shot. So I kept my intentions secret.

Manchanayake Notary executed 4 or 5 deeds previously for me. The 2nd plaintiff after his visit to the Kachcheri to see the Mudaliyar said we must go to Manchanayake Notary. I did not select him. I cannot say if the Notary looked to the Mudaliyar for payment of his fees. I heard no one say so. I only heard the Notary ask who was to pay his fees and then I said as the lands were for the Mudaliyar he must pay the fees.

12 or 14 days later I told the Notary, I wanted a copy of the deed. He issued me a copy after Martial Law was removed. I did not go to see Mr. Wickramasinghe until after the removal of Martial Law—31st August.

I did not tell the Notary why I wanted copies of the deed as I was afraid it would reach the Mudaliyar's ears. Martial Law was suspended on 31st August 1915. I think I waited 4 or 5 days after that to go and see Mr. Wickremasinghe. I obtained the copy 2 or 3 days after, I think. Before the plaint was filed, I must have seen Mr. Wickremasinghe three or four times. Mr. Wickremasinghe wished first to see the deed before action was taken. Then I obtained a copy and saw Mr. Wickremasinghe, as far as I remember. Then I must have seen him on 4 or 8 occasions probably before the plaint was filed. But Mr. Wickramasinghe was not my proctor but a Proctor of Kandy, whose name I do not know. He is a lean fair gentleman. I must have seen him about 8 times. I had not seen him previous to my seeing him about this case. I had not gone to Kandy before this plaint was filed—nor did the Proctor come to Kegalle.

Mr. Wickramasinghe retained the Kandy Proctor for me and I signed the proxy in Kandy. I saw the Proctor in Kandy, told him what my case was and I then signed a proxy in Kandy. He said he would send on the papers. The day I signed the proxy in Kandy I travelled up by car to Kandy, I paid Mr. Wickramasinghe money to pay for the car. I paid Rs. 30/-. I did not return the same day. I had told Mr. Wickramasinghe all about the case but even before I told him he knew everything about it. I stated facts to my Kandy Proctor and he took down what I said in pencil. Mr. Wickramasinghe was not then present. Mr. Wickramasinghe and I travelled to Kandy in the same car and he pointed out the Proctor to me. I did not pay Mr. Wickramasinghe anything—save only for that car. I returned from Kandy by train. Mr. Wickramasinghe returned the same day by the same car.

I have seen my Kandy Proctor since that day. His proxy has been cancelled. I had asked Mr. Wickramasinghe to take up the case himself but he said he might probably be required to give evidence in the case—so he would not take up the case. Mr. Wickramasinghe is still helping me in the case and is assisting my Proctor.

I do not know Mr. Long Price. I did not know he was giving evidence. I did not myself pay Mr. Price but whenever money is required I give money to the Proctor. My Proctor said a gentleman had to appraise the land and a fee was demanded – Rs. 300/-. I paid the Rs. 300/-. I have been 8 times to Kandy in connection with this case alone.

I did not hear the Mudaliyar fix a figure for the consideration in my presence. I have no recollection. I am aware a brother of the 2nd plaintiff transferred a land to the Mudaliyar in 1914 or so. The full purchase money was at once paid. A portion of the consideration was refunded to the Mudaliyar as the price was excessive.

CROSS-EXAMINED BY MR. ELLIOT.

My village is five miles from Kegalle. The 2nd defendant now lives in Kegalle. At the time of this deed being written, he lived in his father's Walauwa. He is a native of Kegalle. The Mudaliyar is a native of Ratnapura. I cannot say if the two are related. 2nd defendant is the nephew of Mr. Molligoda, Crown Proctor—a most respectable family. 2nd defendant owns no lands at Diyagama nor does his father. He had a land then which he took on lease—a temple land which he planted with rubber—he or his father planted it. I know 2nd defendant's family well.

Between me and that family there has never been any ill-feeling. When I instructed my Proctor I told him no consideration at all for the sale of my land to 2nd defendant had reached my hands. I do not know that 2nd defendant had paid Rs. 300/- on behalf of me and 2nd plaintiff on the 22nd June, 1915—*see* 2D1, to the A.G.A. at the Kachcheri. Only very recently I heard that such a thing had been done. I forget from whom I heard this. I heard about this on the last date of this case—not previously. I informed Mr. Wickramasinghe of the fact I did not ask him to get a copy of the entry. I am commonly called Kudarala.

I know Kapuruhamy, my nephew. I gave his name to the Proctor as a witness to prove that he was ordered by the Mudaliyar to go home and fetch my title deeds. His full name is Pahalakoralage Kapuruhamy of Kiulpona. I cannot say when his name was put on the list.

While I was in custody in Kegalle I did not see Kapuruhamy. I saw him as soon as I was released.

I was brought to Kegalle on the 16th June. I do not know if my people knew of my arrest and confinement in Kegalle. They knew I was under arrest in Rambukkana. Some of the villagers must have known of my being brought to Kegalle in custody. I was released on the 20th June. The Police Station is near the Police Court.

I am not aware that my nephew Kapuruhamy saw 2nd defendant on my behalf in order to have me released. Alutwattegedera Kapuruhamy was here today—but he is not my nephew, he is my cousin. (This Kapuruhamy is now sent for).

This man is my cousin. I am unaware that he saw Mr. Molligoda, 2nd defendant on my behalf. The Bail Bond we signed was for Rs. 300/- each. 2nd defendant signed as our bailsman. We signed the bond to get released. Had 2nd defendant not signed we would not have been able to get released. 2nd defendant did not tell us he had seen the A.G.A. at Mawanela and arranged to get us out on bail. He said he had got an order for our release on bail from the A.G.A. He brought a writing in English and said that was such an order. Before the bond was signed I did not arrange to transfer the lands to Molligoda, 2nd defendant, for Rs. 800/- in consideration of his bailing us out. I cannot say why 2nd defendant suddenly stood bail for us. I did not ask him why he stood bail for us.

On my release from the Police Station on 20th June I met my cousin, Kapuruhamy, outside. I was released about 5-30 p.m. I was glad to be at large again and was grateful to Mr. Molligoda. I did not return the next day with the deeds. My deeds were already here—Kapuruhamy having brought them to Kegalle previously.

Since I left Rambukkana under arrest, until my release from Kegalle, I had not seen Kapuruhamy my cousin, nor I had written to him. He must have got the deeds from my wife. The Mudaliyar had said he would get down the deeds and probably the Mudaliyar sent him. Subsequently he told me that the Mudaliyar had sent him for them on the morning of the 20th June. After my release it was 2nd defendant, Mr. Molligoda, who handed me the deeds. No. I saw the deeds for the first time on the 21st June in Mr. Molligoda's hands at the turn-off to his Walauwa.

I deny 2nd defendant asked me to come to the Kachcheri to settle about the consideration. Nor did I go and find the A.G.A. had gone out. I cannot explain why on the 22nd June, 2nd defendant paid Rs. 300/- to the Kachcheri. He owed me no money on any other account. I deny he paid me Rs. 500/- subsequently in cash.

I suggest that I was locked up in the Police Station solely to extort this land from me. When 1st defendant came and made the threat that we would be shot unless we gave the lands, it was 7 a.m. Besides 2nd plaintiff, 4 unknown people were locked up in our cell up till the 20th June. I did dot enquire why they were locked-up. I cannot say who the Policeman in charge of the lock-up was. They were changed from day to day. I cannot say who the Policeman was who unlocked us to see the Mudaliyar. He is no longer here. I did not try to find out who he was. He did not speak when he opened the door. As soon as we came out the Mudaliyar spoke to us. He called us away. The constable followed us to the verandah. He did not threaten us that we would be shot in the hearing of the constable. The constable was about 8 fathoms away. He went away to the compound. The Mudaliyar spoke to us about 10 minutes. He was the first person whom I informed of my conversation with the Mudaliyar, I am unable now to recall. Yes, I informed my cousin Kapuruhamy on my way home. 2nd plaintiff was in my company then.

CROSS-EXAMINED BY MR. MOLAMURE.

I do not know 3rd defendant. I never saw him before this case and do not know who he is. I and the 2nd plaintiff purchased these lands from some Duraya people. I believe we paid Rs. 530/- for these lands. At that time, in 1912, that was a fair price. The lands are some distance from the high road. They are subject to Rajakariya. There is another co-owner called Siyatu. The price of Chena land per acre varies. In 1912 I would not pay more than Rs. 30/- for an acre of land which is in chena. Now the value per acre would be Rs. 50/-. I have no other lands than this. I know the Kachcheri Mudaliyar's estate. One block of our land adjoins it. No. One portion intervenes. This portion belongs to my brother-in-law Mudiyanse. Mudiyanse was not locked-up nor compelled by the Mudaliyar to sell his lands. No other person was treated as we were. Nothing was done by the 2nd defendant to the land purchased.

I cannot say on whose behalf Karunaratne was in charge of these lands. He used to pay visits to the land. I live a mile away. I paid the Kandy Proctor the stamp fees for the case. I paid Rs. 50,- in all. I cannot say how my Proctor came to file a list of 20 to 30 witnesses. Nor can I say what each will say. The President will speak to my arrest. I presented several petitions against the Mudaliyar. All these were prepared upon the advice of Mr. Wickramasinghe. I cannot say whose car I travelled in to Kandy. Mr. Wickramasinghe got the car for me. It was not his car.

RE-EXAMINED.

Abraham Silva who was deported was a low-country Sinhalese. I am a Kandyan. Hethuhamy lived at Neuwaaa about quarter-mile from my village. I took no part in the Rambukkana riots. Hetuhamy was charged for participation in the riots. I have already spent Rs. 2,000/- for this case. I had lent Rs. 800/- on mortgages in 1910. I recalled this and with interest got Rs. 1,200/-. I had Rs. 500/- in cash with me. Mr. Wickramasinghe told me he knew about Mr. Molligoda the 2nd defendant's connection with this matter. Mr. Wickramasinghe has helped my Proctor throughout this case. My Kandy Proctor sent the plaint by post. I took a copy of the deed to Kandy.

The Arson case I referred to was after I filed this case. So was the theft of plantain case. I merely asked for a transfer of the case to the Police Court.

I presented one petition against the Mudaliyar. The R.M. and the Mudaliyar pressed me to sell the land. I declined but asked my brother-in-law Mudiyanse to sell his land to the Mudaliyar as a sop.

The portion between my land and the Mudaliyar's was an extent of 12 lahas or 1½ acres only. Mine is the only large block near the Mudaliyar's estate. I had much trouble in buying my lands from the scattered co-owners. As a block. it is valuable. I never had transactions with 2nd defendant prior to 21st June, 1915.

To COURT.

Before the R.M. sent us to Kegalle he did not order us to pay any enhanced compensation. Had I been called upon to pay Rs. 300/, I should have paid it in cash, or else I would have readily signed a bond. No one asked me to do any of these things.

(Sgd.) H. E. BEVEN,
District Judge.

13th June, 1916

Parties and counsel as before. (Mr. H. J. C. Pereira absent, Mr. Advocate R. L. Pereira in his stead).

Mr. Advocate Molamure on behalf of the 3rd defendant states that at this stage, as he finds that issues are being fought out which do not affect his client, and proceedings are being protracted and costs incurred against him, he has advised his client to consent to judgment being entered for plaintiff as against his client for the cancellation of the deeds. His client will pay costs. As to damages, he asks that he may address Court after evidence has been called. He is ready to pay damages as well.

Mr. Brooke Elliot too on behalf of his client, the 2nd defendant, consents to judgment being entered for plaintiff for the cancellation of the deeds so far as his client is concerned and to an order *pro forma* for costs.

The 2nd and 3rd defendants accordingly fall out of the case.

Mr. Advocate Drieberg states that in view of the 2nd and 3rd defendants having now consented to judgment there is now no subject of contest between plaintiffs and 1st defendant, save as to costs. These 2nd and 3rd defendant have undertaken to pay and in their default, 1st defendant is ready to pay.

As to damages, plaintiffs and defendants now agree to damages at Rs. 550/- per annum from the date of the execution of the deed up-to-date. Damages to be paid within two weeks, otherwise writ to issue against all the defendants. As to costs too, the decree is to be as against all the defendants but writ not to issue for two weeks.

On the above settlement, let judgment be entered for plaintiffs as prayed for with damages at Rs. 550/- per annum from the 21st June, 1915, up to this date, *i.e.*, for two years and costs of suit. The 3rd defendant to pay the costs and damages as stated above within two weeks. In default writ to issue against all the defendants.

Deeds tendered to be cancelled.

(Sgd.) H. E. BEVEN,
District Judge.

DECREE.

No. 4173. In the District Court of Kegalla.

1. Pahale Koralelagedera Pinchi Appu.
2. Senanayake Mohotti Mudiyanselage Appuhamy, both of Keulpone in the District of Kegalla. Plaintiffs.

vs.

1. D. M. Seneviratne, Kachcheri Muhandiram of Kegalla.
2. G. C. H. Molligoda of Kegalla.
3. B. J. Peiris of Pondape Estate, Aranayake.

Defendants.