

In the Privy Council.

-3 OCT 1956

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.
INSTITUTION OF JURISTS
LONDON

44223

BETWEEN—

DR. M. G. PERERA (Plaintiff) *Appellant*

10

— AND —

1. ANDREW VINCENT PIERIS
2. THE ASSOCIATED NEWSPAPERS OF CEYLON LTD.
(Defendants) *Respondents*

CASE FOR THE RESPONDENTS.

RECORD.

1. This is an appeal against a decree of the Supreme Court of the Island of Ceylon (hereinafter called "the Supreme Court") dated the 12th February, 1946, dismissing with costs an appeal against a decree of the District Court of Colombo, dated the 19th June, 1944, which had dismissed with costs an action for damages for defamation brought by the Appellant as plaintiff against the Respondents as defendants. The action was brought in respect of a statement alleged to be defamatory of the Appellant which was published in a newspaper called the *Ceylon Daily News*, whereof the first Respondent was the printer and publisher and the second Respondent was the proprietor.

2. The Respondents published in the said newspaper, on various dates in May, 1943, a number of true extracts from the

pp. 64-5

p. 49

Exs. D4 to D7,
pp. 166-204;
Ex. P1, p. 202

Ex. D2,
pp. 83-165
pp. 107-108

Official Report of the Bribery Commission (Ex. D2)—a Commission which had been issued by the Governor of Ceylon in August, 1941, to enquire into questions relating to allegations that gratifications had been offered, given, or paid, to certain members of the then existing State Council of Ceylon for the purpose of influencing their judgment, conduct, etc., in transactions in which they, as members of the said Council, were concerned.

p. 83

The said Report was issued by the Government of Ceylon as a Sessional Paper, and, as such, was on sale to the public at the price of 90 cents. Copies of the said Sessional Paper were sent by the Government Printer to all the newspapers in Ceylon, including the said newspaper, *gratis*, presumably, for purposes of publication. 10

p. 31, ll. 20-21

3. These proceedings are concerned with one of the several extracts from the said Sessional Paper which were published as aforesaid in the said newspaper, without any comment and, as found by the Courts below, without any malice express or implied. The extract complained of contained, *inter alia*, the following short comment by the Bribery Commissioner on the manner in which the Appellant—a distiller of *arrack* (a spiritous liquor) on a large scale and also a doctor—had given evidence before him:—

Ex. D2, p. 133,
ll. 12-14

Ex. P1, p. 203,
ll. 43-45

“Dr. M. G. Perera who gave evidence was completely “lacking in frankness and pretended that he knew very much “less about the transaction than he actually did.” 20

Ex. D2,
pp. 131-132

The said “transaction” related to an allegation that certain members of the State Council had received a gratification from contractors to the Government for the supply of *arrack*, in connection with negotiations for the extension of their contracts.

4. The main question for determination on this appeal is whether or not, under Roman-Dutch law, which, admittedly, is the law applicable to these proceedings, an action against a newspaper for damages for defamation lies in the circumstances generally outlined above and hereinafter referred to in greater detail. 30

pp. 52-64

5. Before setting out the facts, it is convenient to state the Roman-Dutch law bearing on certain aspects of the subject-matter of this appeal, as referred to by the learned Chief Justice of the Supreme Court (Howard C.J., with whom De Silva J. agreed) in his Judgment, dated the 12th February, 1946, dismissing the Plaintiff-Appellant’s appeal:—

p. 55, ll. 3-6

“The law to be applied is the Roman-Dutch law of defamation which differs in some aspects from the English law. The “law of defamation is discussed in Nathan’s Common Law of “South Africa (1906 Edition) in Vol. III, p. 1598, *et seq.* 40

“Defamation is there classed as an *actio injuriarum* which
 “is the generic name for the remedy which applied to torts in
 “which *injuria* was a constituent element. It is requisite to
 “every *injuria* that the element of malice should be present, or,
 “as it is generally called, the *animus injuriandi*. Such malice
 “may be expressly shown to exist or it may be inferred from the
 “language used. If malice is expressly shown to exist, or is
 “inferred from the nature of the language used, it lies upon the
 “defendant to show that the act was not done maliciously, that
 10 “is, to prove that it was committed in circumstances which
 “rebut the presumption or inference of malice. Thus in an
 “action for libel the falsehood of the statements injurious to the
 “character of the plaintiff which have been published by the
 “defendant is sufficient to prove an *animus injuriandi* as is
 “required to render the defendant liable in damages, unless he
 “shall be able to prove some special circumstance sufficient to
 “negative the presumption of the existence of such *animus*
 “*injuriandi*, and to prove that in publishing injurious state-
 20 “ments, not consistent with truth, he was actuated by some
 “motive which is in law held sufficient to excuse the error into
 “which the defendant has fallen. . . .

“The presumption of malice is rebutted where the truth
 “of the words used is pleaded and proved, if it is proved that the
 “publication was for the public benefit. . . .”

6. Continuing, on the subject of the Roman-Dutch law, the
 learned Chief Justice said:—

“The same principles are formulated in other text books
 “on Roman-Dutch law. Thus in the (1909) Edition of
 “Maasdorp’s Institutes of Cape Law, Vol. IV, pp. 99-100, the
 “following passage occurs:—

30 “*Prima facie* evidence of malice being implied from the
 “mere publication of words which are in themselves defama-
 “tory, and general damage being regarded as the natural
 “consequence of such publication, it will be for the defen-
 “dant, if he wishes to escape liability, to plead circumstances
 “which negative the presumption of malice, or which may,
 “in some few cases, justify their publication, even where
 “there has been actual malice present. With this object in
 “view, he may set up one or other of the following defences:

- 40 (1) That the words complained of are privileged, or
 “were uttered or published on a privileged occasion.
 (2) That the words were true in substance and in fact,
 “and that it was for the public benefit that they
 “should be published.

p. 55, ll. 6-22

p. 55, ll. 38-40

p. 55, l. 41 to
p. 56, l. 14

- (3) That the words were a *bona fide* comment upon the public acts of a public man.
- (4) That the publication took place under other circumstances which negatived the *animus injuriandi* . . .

p. 57, ll. 1-7

“From the principles elaborated by me it is manifest that the question as to whether a statement defamatory *per se* is true does not, in Roman-Dutch law, assume the importance that it does in English law. In Roman-Dutch law the burden is on the defendant, whether the statement is true or false, to prove that he had no *animus injuriandi*. It is necessary to consider the circumstances in which the statement was published.”

p. 59, ll. 30-32

Later, having considered the circumstances, the learned Chief Justice found, as will hereinafter appear, that any presumption of an *animus injuriandi* in the present case had been completely rebutted.

7. The facts of this case may now be stated as follows:—

Ex. D2, p. 108,
ll. 36-39

On the 15th May, 1941, the State Council of Ceylon unanimously passed a Resolution to the effect that a Commission should be appointed to enquire into charges of bribery and corruption which had been made against its members.

Ex. D2,
pp. 107-108,
p. 109, ll. 1-4

Giving effect to the said Resolution, the Governor of Ceylon, acting under the Commissions of Inquiry Ordinance, No. 9 of 1872, (C.276), issued a Special Commission under the Seal of the Island, dated the 13th August, 1941, and appointed Mr. L. M. D. De Silva, K.C., as Commissioner, the Terms of Reference being as follows:—

p. 107, l. 40 to
p. 108, l. 19

“(a) Whether gratifications by way of gift, loan, fee, reward, or otherwise, are or have been offered, promised, given or paid to members of the existing State Council, with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction for which they, in their capacity as members of that Council or of any Executive or other Committee thereof, are, have been, may be, or may claim to be, concerned, whether as of right or otherwise; and

“(b) Whether such gratifications are or have been solicited, demanded, received or accepted by members of the existing State Council as a reward or recompense for any services rendered to any person or cause, or for any action taken for the advantage or disadvantage of any person or

“cause, or in consideration of any promise or agreement to
 “render any such services or to take any such action, whether
 “as of right or otherwise, in their capacity as members of that
 “Council or of any Executive or other Committee thereof.”

8. On the 11th July, 1942, there were enacted: (1) the Special
 Commission (Auxiliary Provisions) Ordinance, No. 25 of 1942, and
 (2) the Special Commission (Auxiliary Provisions) (Amendment)
 Ordinance, No. 26 of 1942. Both of these Ordinances are printed,
 as part of Exhibit P2, on pages 75 to 80 of the Record, and, also,
 10 as part of Exhibit D2 (True Copy of the Report of the Bribery
 Commissioner), on pages 110 to 115 thereof.

pp. 75-80

pp. 110-115

p. 110, ll. 9-12

The object of Ordinance No. 25 of 1942 was to supplement the
 provisions of the said Commissions of Inquiry Ordinance (C. 276),
 under which the Special Commission had issued, for the purposes
 of the said enquiry into the allegations of bribery and corruption
 to be held in pursuance of the Special Commission. The Ordinance
 provided, *inter alia*, for the protection and immunity of witnesses
 (Sections 3 and 10), the inadmissibility in any civil or criminal
 proceedings of evidence given before the Commissioner (Section 4),
 20 and the power of the Commissioner to order payment of costs by a
 person who failed to substantiate any charge preferred by him at
 the inquiry in respect of any Councillor (Section 12). As to the
 amendment of this last provision as to costs, see paragraph 10 hereof,
infra.

p. 110, l. 36 to
p. 111, l. 3;
p. 112, ll. 8-19
p. 111, ll. 4-8

p. 112, ll. 26-35

9. As to evidence *in camera*, the said Ordinance (No. 25 of 1942)
 provided as follows:—

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

p. 111, ll. 9-21

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

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

40 10. The said Ordinance No. 26 of 1942 amended Ordinance
 No. 25 of 1942 by substituting a new Section 12 therein. The effect
 of the substitution was that the payment of any sum awarded by

pp. 114-115

the Commissioner as costs to a member of the State Council against whom a charge or allegation had been made or preferred but had not been established and who had been represented by Counsel was now to be made out of public revenue and to be a charge thereon; whereas, formerly, under the replaced Section 12, a person who failed to substantiate a charge preferred by him against any Councillor might thereby have rendered himself liable for the payment of costs incurred.

p. 111, ll. 9-12
p. 87, ll. 27-39

11. Exercising his discretion under Section 5 of the said Ordinance No. 25 of 1942 (see paragraph 9 hereof) the Commissioner 10 heard the evidence of the witnesses who gave evidence before him *in camera*. He examined in all 124 witnesses, 12 of whom had volunteered to give evidence, the remainder being summoned by him on information derived from various sources.

Ex. P2, p. 74

One such summons or request (Ex. P2) was sent to the Appellant and was as follows:—

“Colombo, 20th November, 1942.

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

20

“Bribery Commission.

p. 74

“Dear Sir,

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

“Yours faithfully,

“(Signed)

30

“*Asst. Secretary, Bribery Commission.*

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

p. 7, ll. 32-38;
p. 8, ll. 4-16

12. In consequence of the said summons or request, the Appellant appeared before the Commissioner and gave evidence, *in camera*, the subject-matter of the inquiry then being the alleged payment of a gratification to four named members of the State

Council for the purpose of securing their services in the Executive Committee of Home Affairs in connection with the extension of certain contracts held by distillers for the supply of *arrack* to the Government. Evidence on the subject was also given by five other persons.

13. The Commissioner's findings, covering the whole of the subject-matter of the inquiry, were submitted to the Governor, by his Report (Ex. D2) dated the 3rd April, 1943, and consisting of 44 paragraphs and 33 Appendices.

Ex. D2,
pp. 83-165

10 In paragraph 40 of his Report the Commissioner observed that "the question whether the Report is to be published or not is not a "matter for me"; but, for reasons which he gave, he expressed the opinion that it would be undesirable to publish Appendices H, HH, HI, and P to his Report. This opinion was, later, acted upon by the Governor. These proceedings have not been and are not concerned with any of the said unpublished Appendices.

p. 100

14 In May, 1943, on the Orders of the Government of Ceylon, the whole of the Bribery Commissioner's Report, excepting only the said Appendices H, HH, HI, and P, was printed and published as Sessional Paper XII of 1943 (Ex. D2) and, as already stated, was on sale to the public at the price of 90 cents. Copies of the Sessional Paper were sent free of charge by the Government Printer to five newspapers in Ceylon, including the newspaper—the *Ceylon Daily News*—here concerned.

Ex. D2,
pp. 83-165
p. 28, ll. 29-31

Authority to the Government Printer to print the Report as a Sessional Paper had, of course, been previously given, as will be apparent from the following letter (Ex. D3) from the Acting Secretary to the Governor to the Government Printer:—

Ex. D3,
pp. 80-81

"Urgent.

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"Governor's Office,

"Colombo, 18th May, 1943.

"The Government Printer,

"I return the proof received from you this morning and "should be grateful if you would print it as a Sessional Paper, "not to appear however before the Government Gazette "Extraordinary which is to contain the text of a bill to be intro- "duced into the State Council connected with the Bribery "Commission Report, and which also is to be published "tomorrow. The two should be published simultaneously."

40 The instructions as to the date and manner of publication were duly followed by the Government Printer.

p. 28, ll. 22-25

15. From its copy of the said Sessional Paper, the *Ceylon Daily News*—a daily newspaper, in English, with a large circulation—printed lengthy and true extracts on the 18th, 20th, 22nd, 24th and 25th May, 1943, (Exs. D4 to D7 and P1), and did so in the belief that such publications were authorised and in the public interest.

Exs. D4 to D7,
pp. 166-201
Ex. P1, p. 202

16. The extract published by the said newspaper on the 20th May, 1943, (Ex. D4), contained among numerous other subjects on which the Commissioner had reported, the following paragraph exactly as it had appeared in the official document (Ex. D2) omitting only the paragraph number “(18)” and the word “gratification” from the official heading “Arrack contract gratification incident” :—

Ex. D4,
pp. 166-183

Ex. D4,
p. 172, ll. 26-36;
Ex. D2,
p. 91, ll. 20-30

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

Ex. P1,
pp. 202-203

Ex. D2,
pp. 131-133

17. On the 25th May, 1943, the said newspaper published (Ex. P1), without any comments of its own, a large part of the Commissioner’s findings and comments on the said “Arrack contract gratification incident” as contained in the said Appendix C to his Report.

p. 203, ll. 43-45
p. 133, ll. 12-14

Included in such extract was the Commissioner’s brief comment relating to the Appellant which, printed in ordinary type and in its proper place, was accurately reproduced from the official document, and was as set out in paragraph 3 hereof.

The publication of this extract has given rise to the present proceedings.

p. 1

18. Instituting an action for damages for defamation against the present Respondents (hereinafter sometimes referred to as “the Defendants”) in the District Court of Colombo, the Appellant (hereinafter also referred to as “the Plaintiff” or “the Plaintiff-Appellant”), by his plaint, dated the 6th September, 1943, after describing himself as a member of the medical profession and a distiller of *arrack*, and after setting out the words complained of, as quoted in paragraph 3 of this Case, said as follows :—

“4. The Plaintiff states that words aforesaid impute “dishonesty to him and imply that he gave false evidence before “the Bribery Commission which evidence was taken *in camera* “and that they are therefore defamatory of him.

p. 1, l. 27 to
p. 2, l. 3.

“5. By reason of the publication by the Defendants as “aforesaid of the words reproduced in paragraph 3 hereof” [see paragraph 3 of this Case], “the Plaintiff has suffered in “his reputation as a professional man and as a man of business. “He estimates the damage suffered by him at Rs. 50,000/-.

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

19. By their Answer, dated the 26th November, 1943, the Defendants, after pointing out that they had merely published concerning the Plaintiff “a true extract from Appendix C to the Report of the said Bribery Commissioner” and denying that the words complained of bore the meaning attributed to them by the Plaintiff, or that he had suffered any damage to his reputation by reason of their publication, referred briefly to the said circumstances in which the extract came to be published as hereinbefore narrated and concluded as follows :—

pp. 2-4

p. 2, ll. 28-37

p. 3, ll. 1-5

20 “7.
“(d) That the statement referred to in paragraph 3 of “the plaint forms part of the said Appendix C. That the “Defendants *bona fide* published in the said issue of the “*Ceylon Daily News* the finding of the Commissioner, a “judicial tribunal empowered to enquire into the matters “referred to

p. 3, ll. 25-33

30 “(e) That the Defendants published an accurate report “of the said Appendix C which is part of the said finding “and that the said publication was therefore a privileged “publication.”

40 In their said Answer the Defendants further said, in paragraph 8 thereof that “the said Report was issued by the Government of “Ceylon as a Sessional Paper and was available for purchase at the “Government Record Office, and the said publication was therefore “a privileged publication”; in paragraph 9 (a) thereof that “part of “the said extract consists of comment on a matter of public interest”; and in paragraph 9 (b) that “so far as the words complained of consist of statements of fact, they are, in their natural and ordinary “meaning, true in substance and in fact, and that in so far as they

p. 3, ll. 35-37

p. 3, l. 39 to
p. 4, l. 7

“consist of expressions of opinion they are fair and *bona fide* comments on matters of public interest and the said statements were published *bona fide* for the benefit of the public and without malice.”

pp. 4-6

pp. 33-49

20. Thirteen issues were framed in the suit on the 5th June, 1944, and were answered by the learned District Judge in his Judgment, dated the 19th June, 1944, after a consideration of all the oral and documentary evidence in the case (the whole of which is hereinafter referred to).

The first seven issues, and the answers thereto, were as follows:— 10

p. 4, ll. 35-36

“(1) Do the words referred to in paragraph 3 of the plaint” [“Dr. M. G. Perera who gave evidence was completely lacking in frankness and pretended that he knew very much less about the transaction than he actually did”] “impute dishonesty to the Plaintiff?”

p. 36, ll. 11-15

Answer: Yes.

p. 5, ll. 1-2

“(2) Do the said words imply that the Plaintiff gave false evidence before the Bribery Commission?”

p. 36, ll. 12-15

Answer: Yes.

p. 5, ll. 3-4

“(3) If the Answers to 1 and/or 2 are in the affirmative are 20 the said words defamatory of the Plaintiff?”

p. 36, l. 23

Answer: Yes.

p. 5, ll. 11-12

“(4) What damages, if any, has Plaintiff suffered in his reputation as a professional man and as a man of business?”

p. 48, ll. 3, 4,
40-42

Answer: “In view of these findings” [i.e. on later Issues, see *infra*] “Issue 4 does not arise. I think however that it is desirable that I should deal with it If necessary to do so I would assess his damages at Rs. 5/- but on my findings he is not entitled to any damages at all.”

p. 5, ll. 13-15

p. 5, ll. 29-32

Issue (5), as suggested by the Defendants' Counsel, was as 30 follows:—“Are the words complained of a part of the Report of the Commissioner?” The Plaintiff's Counsel objected to this Issue as one that did not arise on the pleadings but admitted that the publication in question was an accurate reproduction from Appendix C to the Commissioner's Report. The Issue therefore was abandoned as being unnecessary.

p. 5, l. 34

p. 5, ll. 16-17

“(6) Did Defendants *bona fide* publish an accurate report of the Commissioner's Report?”

p. 47, ll. 36-37

Answer: Yes.

“(7) Was the publication a privileged one?”

p. 5, l. 18

Answer: Yes.

p. 47, ll. 36-37

21. Issues 8 to 11 and the answers of the learned District Judge thereto were as follows:—

“8 (a) Was the Report issued as a Sessional Paper?”

p. 5, l. 19

Answer: Yes.

p. 41, l. 41

“(8) (b) Could any person purchase a copy of the said ‘Report?’”

p. 5, l. 20

10 Answer: “The document D2” [see page 83 of the Record] “says so.”

p. 41, l. 42

“(8) (c) Was the publication a privileged one?”

p. 5, l. 21

Answer: “The words complained of were not published ‘on a privileged occasion.’”

p. 41, ll. 43-44

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

p. 5, ll. 22-24

Answer: “The Defendants made no comments, and the ‘matter is not a matter of public interest.’”

p. 39, ll. 13-15

20 “(9) (b) Was the statement published *bona fide* for the ‘benefit of the public and without malice?’”

p. 5, ll. 25-26

Answer: Yes.

p. 39, l. 16

“(10) Has a cause of action accrued to the Plaintiff to sue ‘the Defendants for damages?’”

p. 5, ll. 27, 28

Note: No specific Answer appears to have been given to this Issue. The Answer is plainly to be deduced from the Answers to the other Issues, and from the reasoning of the learned Judge.

“(11) (a) Which of the words complained of consist of ‘statements of fact?’”

p. 5, ll. 36-37

30 Answer: “The words ‘Dr. M. G. Perera who gave evidence ‘ ‘ ’ is a statement of fact.’”

p. 38, ll. 25-26

“(11) (b) Are such words true in substance and in fact?”

p. 5, l. 38

Answer: “Those words are true in substance and in fact, ‘but it was not for the public benefit that that fact should be ‘published.’”

p. 38, ll. 27, 28

“(11) (c) Which of the words complained of consist of ‘expressions of opinion?’”

p. 6, ll. 1-2

Answer: “The words ‘Dr. M. G. Perera was ‘ ‘ completely lacking in frankness and pretended that he knew

p. 38, ll. 29-32

“ ‘very much less about the transaction than he actually did’
 “are expressions of opinion by the learned Commissioner.”

p. 6, l. 3

“(11) (d) Are such words true in substance and in fact?”

p. 38, ll. 33-34

Answer: “Those words are true in substance and in fact
 “but it was not for the public benefit that they should be
 “published.”

22. The remaining Issues, as to the taking of evidence *in camera* and the effect thereof on the privilege claimed by the Defendants, with the answers thereto of the learned District Judge were as follows:—

10

p. 6, ll. 4-5

“(12) Was the evidence of the Plaintiff before the Bribery
 “Commission taken *in camera*?”

p. 47, ll. 39, 40

Answer: Yes.

p. 6, ll. 6-7

“(13) If so is the said publication privileged even if the
 “Answers to (7) and (8) (c)” [see the preceding paragraphs
 hereof] “are in the affirmative?”

p. 48, ll. 1-2

Answer: Yes.

p. 6, ll. 10-14

23. It is convenient to state here that on the occasion of the framing of the said Issues, the learned District Judge enquired of the Plaintiff’s Counsel, “whether the issue of malice is raised at all
 “in this case,” and received the answer that “if the Court holds that
 “a qualified privilege arises in this case the Plaintiff is not raising
 “an issue to destroy that qualified privilege, but his case is that the
 “qualified privilege does not arise at all.”

20

24. Before arriving at the findings stated in paragraphs 20 to 22 of this Case the learned District Judge considered all the documentary and oral evidence in the case, which was as follows:—

Ex. P1, p. 202

(1) Documentary evidence. This consisted of the issue of the *Ceylon Daily News* of the 25th May, 1943, in which the words complained of had been published, other issues of the said newspaper of the 18th, 20th, 21st, 22nd, 24th and 28th May, 1943, (Exs. D4 to D7, and D9), in which other extracts from the said Report had been published or which contained references thereto, a true copy of the said Report published as Sessional Paper XII of 1943 (Ex. D2), a letter from the Governor’s Secretary to the Government Printer authorising publication of the said Report as a Sessional Paper, a letter from the Assistant Secretary to the Bribery Commission to the Plaintiff requesting his attendance before the Commission, and an anonymous postcard addressed to the Plaintiff’s wife and said to have been received by her subsequent to the publication of

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Exs. D4 to D7,
 pp. 166, 184,
 195, 201

Ex. D9, p. 204

Ex. D2,
 pp. 83-165

Ex. D3, p. 80

Ex. P2, p. 74

Ex. P3, p. 165

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the words complained of, which bore upon it the following words:—

“Mrs. M. G. Perera,
“171, New Buller’s Road,
“Colombo.

“So this M. G.’s work
“that crook!

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

“Gas Bag.”

(2) Oral evidence. This consisted of: (a) on behalf of the Plaintiff, the evidence of the Plaintiff himself and of one Bernard Jayasuriya, a member of the State Council; (b) on behalf of the Defendants, the evidence of the Government Printer (A. C. Richards) and that of the Associate Editor of the said newspaper (Orion de Silva). The evidence of all these witnesses is referred to in the succeeding paragraphs.

20 25. In examination-in-chief, the Plaintiff gave particulars of his practice as a doctor and also of his businesses of a rubber planter and a distiller of *arrack*, Government contracts for the supply of which spirit he had held and was then holding. He said that: he “knew there was a lot of agitation in the country about State “Councillors taking bribes,” he knew the Commissioner (Mr. L. M. D. de Silva K.C.) personally, he had given evidence before the Commissioner in confidence, the proceedings were *in camera*, and that he did not know whether, or how, his evidence was recorded. Referring to the anonymous postcard which his wife had received (see the preceding paragraph hereof), he said: “On the back of it is a cutting
30 “from Appendix C. When I read this I understood the significance “of it. I grasped the allusion.” Continuing, he said that when he first read the postcard he did not know it was a quotation from the Commissioner’s Report, that his office had informed him of the publication in the *Ceylon Daily News*, and that the postcard had “upset” him. The meaning he gave to the words complained of was that the Commissioner had called him a “liar.” He said that he had a grievance both against the Commissioner and the said newspaper, that as a result of the publication he had gone down in the estimation of his friends, and that the purpose of his action was to
40 vindicate his good name.

26. Cross-examined, the Plaintiff said that he had reason to think that the Defendants had been actuated by personal ill-will against him; but in support of this statement he could do no more

p. 6, l. 19 to
p. 7, l. 22

p. 7, ll. 26-31

p. 8, ll. 7, 8
p. 8, ll. 11-16

p. 8, ll. 22-23

p. 8, ll. 24-29

p. 8, ll. 31-33

p. 8, ll. 35-36

p. 9, ll. 1-6

p. 9, ll. 11-12

p. 9, ll. 14-18

than point to the fact that the *Ceylon Daily News* had not thought fit to publish any of the letters he had sent to it for publication, whereas the *Times of Ceylon* had published all his letters.

p. 9, ll. 25-27

He said that he was not in agreement with other people as to the said appointment of Mr. De Silva as Commissioner being a suitable one, and had expressed this opinion in an unpublished letter to the *Ceylon Daily News*. He made charges of dishonesty, mental incapacity and bias against the Commissioner.

p. 10, ll. 8, 9

p. 9, l. 31 to

p. 10, l. 36

p. 10, ll. 37-40

p. 11, ll. 16, 17

p. 12, ll. 1-8

As to his evidence before the said Commissioner, he said that he had not testified willingly, that so far as he could remember he had testified on oath, and that his testimony had been frankly given. He then returned to his attack on the Commissioner whom he accused of "suggesting leading questions" so that the answers he received would confirm views he had already formed.

p. 12, ll. 12-32

p. 14, ll. 28-37

p. 14, l. 38 to

p. 15, l. 16

27. Further, in cross-examination, the Plaintiff said that he was bringing the action to "defend" his character; but he admitted that, up to the time of giving evidence, he had not been asked to resign from any one of the several clubs of which he was a member and that his contracts with the Government for the supply of *arrack* had not been—as in his opinion they could not have been—affected.

Asked in what way his reputation had been affected, the Plaintiff could only answer, with reference to his distilling activities:

p. 15, ll. 17-18

"My contractors may get disheartened."

p. 15, ll. 25-32

p. 16, ll. 1-5

He admitted that, so far, he had had no trouble with his contractors, that as an owner of estates his position had not been prejudiced by the said publication, and that he did not know whether his reputation as a business man had suffered any loss thereby.

p. 16, ll. 20-37

As to his practice as a doctor, he said that this had been "reduced" or "restricted" before the said publication and that subsequent thereto it had "not dwindled" but that "work was getting less". He could not say whether, as a consequence of the said publication, he had suffered any loss of practice or whether any particular patient had ceased to consult him. He admitted that the people who formerly regarded him as their family doctor still continued to do so.

p. 17, ll. 1-2,
35-38

The Plaintiff's answers (in further cross-examination, on the issue of damages) to questions relating to the numerous suits which had been instituted against him by his creditors, in which it was suggested that, in the said suits, he had entered dilatory pleas in order to gain time, will be found on pages 18 to 21 of the Record.

pp. 18-21

28. The only other witness supporting the Plaintiff's case, Bernard Jayasuriya, member of the Council of State, said, in examination-in-chief:—

“After reading this, I thought Dr. had deliberately lied. I
 “knew Dr. Perera to be an honourable man. I would believe him
 “on oath. I would believe him without an oath. I am a member
 “of the Sinhalese Sports Club. So is Dr. Perera. There was
 “discussion about Dr. Perera there. Dr. Perera's conduct in
 “this matter had been the subject of unfavourable comment.
 10 “On reading this Dr. Perera went down in my estimation.

“It did not hold him up to contempt, ridicule and hatred
 “but I lost regard for him.” p. 27, ll. 15-16

Cross-examined, the witness said:—

“He is never a practising doctor. I did not know he was a
 “practising doctor. I thought of him as a business man. He is
 “still a very prosperous *arrack* distiller.” p. 27, ll. 22-24

Of the Commissioner (Mr. L. M. D. de Silva K.C.), the witness
 said that he had “a great regard for him” and that he was a “suitable
 “person.” p. 27, ll. 33-36

20 He agreed that the Council of State had whole-heartedly accepted
 the Commissioner's findings of fact and had given effect to them
 by appropriate legislation. p. 27, l. 37 to
 p. 28, l. 1

29. In support of the Defendant's case, the Government Printer
 (A. C. Richards) said:—

“My department is responsible for printing all Government
 “publications such as Sessional Papers. p. 28, ll. 15-16

“Sessional Papers are normally issued under the authority
 “of the Financial Secretary but in this case it was issued under
 “the authority of His Excellency the Governor. p. 28, ll. 18-20

30 “I produce the letter dated 18—5—43 from the Secretary
 “to His Excellency the Governor, D3.” [See paragraph 14 hereof
 and page 80 of the Record.] “In accordance with those instruc-
 “tions I printed the Report of the Bribery Commissioner as
 “Sessional Paper 12 of 1943. The final proof was returned on
 “the 18th May, 1943, and was published on the 19th May, 1943,
 “simultaneously with the Gazette Extraordinary. p. 28, ll. 21-25
 pp. 80-81

40 “212 copies were published for circulation and 250 for sale
 “and 10 for the Commissioner. The 250 were sold in the Record
 “Office. We sent them for sale on the 19th and an additional
 “225 reprints were asked for immediately and they were sent
 “on the 24th. p. 28, ll. 25-29

p. 28, ll. 29-30

“The Government Sessional Papers are issued free of charge
“to the press.

p. 28, ll. 30-31

“Sessional Paper 12 of 1943 was sent by me to the *Ceylon
“Daily News, Ceylon Observer and Times of Ceylon, the
“Dinamina and the Virakeswari.*

p. 28, l. 32

“722 copies were printed altogether.”

30. The only other witness for the Defendants was the Associate Editor of the *Ceylon Daily News* (Orion de Silva) who said, in examination-in-chief:—

p. 29, ll. 9-14

“When I received Sessional Paper 13” (*sic.*, 12) “of 1943 we
“published a large number of extracts—practically the whole
“Report. It began on the 20th May and we published up to the
“28th May. All the portions of public interest were published.
“We quoted the Commissioner *verbatim*. I selected the extracts
“for publication. I was not actuated by personal animosity. The
“Plaintiff is a stranger to me.”

p. 29, ll. 25-29
p. 31, ll. 15-26

Cross-examined, the witness said that, for reasons of space, the whole Report could not be published, but he had published everything which he had thought was of public interest, omitting only those portions of the Report which, in his judgment, were either not of public interest or the subject-matter of which had been sufficiently covered by other portions of the Report which had been published. He gave instances of such omissions. He admitted omitting certain Appendices included in the Report but explained that, in his opinion, their subject matter had been dealt with sufficiently in the published portions of the main Report.

p. 30, ll. 10-13,
32-37
p. 31, ll. 1-25

Re-examined, he answered thus:—

p. 31, ll. 28-31

“Q. Whatever you omitted did you omit by exercising
“your judgment as a journalist what would serve the public
“having regard to the amount of space available?”

“A. Entirely on my own judgment and having that con-
“sideration.”

“Q. Where a matter was fully dealt with in the main
“report you would leave” [out] “the revelant Appendix?”

“A. Yes.”

pp. 33-49

31. By his Judgment, dated the 19th June, 1944, incorporating the said findings (see paragraphs 20 to 22 of this Case), the learned District Judge dismissed the action with costs.

32. The learned District Judge’s opinions can fairly be summarised thus:—

(1) The words complained of were defamatory of the Plaintiff, and a *prima facie* presumption of implied malice (or as it is known in Roman-Dutch law, *animus injuriandi*), arose by their publication.

p. 36, ll. 22-31

(2) Under Roman-Dutch law, which applied to the case, the Defendants had to prove, under their plea of justification, that: (a) the words in question were true in substance and in fact; *and* (b) their publication was for the public benefit. They had proved (a)—the Commissioner's findings must, in the absence of evidence to the contrary be presumed to have been correct—but had failed to prove (b), public interest in the matter being confined to the question whether the State Councillors had accepted bribes and not extending to the manner in which the Plaintiff had given evidence before the Commissioner.

p. 37, ll. 7-10

10

p. 38, ll. 12-23

(3) As to fair comment: the newspaper in question had made no comments and the privilege which attached to the Commissioner's comments did not extend to their reproduction by a newspaper.

p. 38, l. 35 to
p. 39, l. 12

(4) As to publication on a privileged occasion: (a) the proceedings before the Commissioner and his Report were not open to public inspection; (b) the contents of the Sessional Paper (which, admittedly, was on sale to the public and had been sent by the Government Printer *gratis* to the newspaper in question) were not open to the public by right; (c) "everything which the Defendants published relating to the State Councillor who received the bribe of Rs. 2,000/- is privileged as it was published in pursuance of a duty which the newspaper owed the public. But what the Defendants published regarding the Plaintiff is foreign or irrelevant to the duty and is not therefore within the privilege"; and (d) it was not necessary to decide the question whether a Sessional Paper is privileged.

p. 40, ll. 15-28

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p. 41, ll. 21-25

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p. 41, ll. 38-40

33. Further opinions of the learned District Judge—including now those on which he based his Judgment in favour of the Defendants—can fairly be summarised as follows:—

(5) As to the publication being privileged on the ground that it was a fair and accurate report of a judicial proceeding by a newspaper; the words published constituted a fair and accurate report of a judicial proceeding—the whole scheme of the said Commissions of Inquiry Ordinance (C. 276) and Ordinance No. 25 of 1942 show that the Commissioner had to act judicially which, judging from his Report, he, in fact, did—and the Defendants' claim to privilege therefore under this

pp. 42-47

p. 47, ll. 1-3
p. 45, ll. 9-10

40

p. 46, ll. 33-35

p. 43, ll. 6-26

p. 47, ll. 33-36

head was sound. It was clear that the Defendants, in publishing the said words, did not intend deliberately to humiliate the Plaintiff.

p. 47, ll. 4-27

(6) There was no evidence of express malice.

p. 46, ll. 33-41

(7) The fact that the proceedings were held *in camera* did not destroy the privilege referred to in (5) *supra*. The Defendants had merely given further publicity to a Report which had already been made public by the Government, and, in effect, had been invited by the Government to do so.

p. 48, ll. 6-32

(8) There was no real evidence that the Plaintiff had 10 suffered any damage to his reputation as a doctor, or to the businesses he carried on.

p. 48, ll. 32-36

(9) On the question of damages: "The manner in which "the Plaintiff conducted himself in the witness-box does not "enable me to hold that he is deserving of much sympathy. He "has been lacking in frankness in certain portions of his "testimony and on one point at least he has stated what is "untrue, when he stated that no writ was issued against him "when the evidence shows the contrary."

p. 49

34. A decree in accordance with the Judgment of the learned 20 District Judge was drawn up on the 19th June, 1944, and against the said decree the Plaintiff preferred an appeal to the Supreme Court.

pp. 50-52

35. The appeal came up for hearing before a Bench of the Supreme Court consisting of Howard C.J. and De Silva J. who, by their Judgments, dated the 12th February, 1946, affirmed the decree of the Court below and dismissed the appeal, with costs.

pp. 52-64

36. The Judgment of the Supreme Court was delivered by the Chief Justice, De Silva J. merely expressing his concurrence. Howard C.J. first referred to the plea of justification. He pointed out 30 that the Plaintiff-Appellant's Counsel had not questioned the finding of the Court below that the words complained of (which, in his opinion, were defamatory in themselves) were true in substance and in fact—a finding which was based upon the presumption that the Commissioner's findings were accurate. He then referred to the question whether the learned District Judge was right in holding that publication of the said words was not for the public benefit, and on this and other questions which arose in the proceedings, he referred to the Roman-Dutch law which, as the Court below had done, he applied to the case. The more important of these refer- 40

p. 64, l. 15

p. 54, ll. 58-64

p. 54, l. 64 to
p. 55, l. 4

The learned Chief Justice next considered the circumstances in which the said words came to be published and, in doing so, referred to the issue of the Commission, to the appointment of the Commissioner, to the terms of reference, and to relevant sections of the said Ordinance No. 25 of 1942.

p. 57, l. 6 to
p. 58, l. 9

Coming to the Commissioner's Report, he drew attention to paragraphs 2 and 40 thereof, from which it was manifest that the Commissioner had regarded himself merely as a fact-finding Commission, with no authority to suggest what action should be taken on his findings and with none to decide on the publication of the Report.

p. 58, ll. 12-34
pp. 84, 100

37. The learned Chief Justice then referred to the evidence of the Government Printer that the Report was published as a Sessional Paper on the Governor's directions, and to the evidence of the Associate Editor of the newspaper in question.

p. 58, l. 34 to
p. 59, l. 13

Continuing, he commented on the Plaintiff's evidence and set out his conclusions on this aspect of the case, in these words:—

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

p. 59, ll. 14-32

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

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

p. 59, l. 33

p. 59, ll. 33-38

p. 59, l. 39 to
p. 60, l. 10
p. 62, ll. 3, 4

38. The learned Chief Justice pointed out that the defence could prevail on other grounds as well. Among such grounds, he dealt with the plea, under Roman-Dutch law, of the truth of the publication *and* publication for the public benefit, referring to the fact that the first part of the plea—as to the truth of the publication—did not appear to have been contested in the Court below and had not been questioned on appeal. As to the second part of the plea, he was of the clear opinion that the publication of the words complained of was for the public benefit and that the decision of the Court below to the contrary was wrong. He said on this point:— 10

p. 59, l. 39 to
p. 60, l. 10

“The learned Judge, however, has found that the
“Respondents fail in their proof that what was published was
“for the public benefit. The learned Judge also states that what
“the public was interested in was not the manner in which this
“Plaintiff gave evidence but as to whether their representatives
“in the State Council had accepted bribes. I find it a matter
“of some difficulty to understand this finding of the learned
“Judge. It is true of course that the interest of the public was
“in the question as to whether their representatives had
“accepted bribes. But, as ancillary and complementary to that 20
“question, the public are interested in knowing what evidence
“or proof establishes the fact that a representative has accepted
“a bribe, or on what evidence he has been exonerated on such
“a charge. Or, in other words, on what evidence the Commis-
“sioner has founded his Report. In my opinion that evidence
“is manifestly a matter in which the public is interested and
“its publication was for the public benefit. It brought home to
“the public the care with which the Commissioner has investi-
“gated each particular charge.”

p. 60, l. 15 to
p. 62, l. 4

p. 61, ll. 29-35

On the question as to whether it was open to the Supreme Court 30
(sitting as an Appellate Court) to disturb the finding of the Court
below, the learned Chief Justice (having referred to relevant
authorities on the matter and being of opinion that the question was
not one of pure fact to be decided by the Court below on evidence
adduced by witnesses whose credibility was a matter peculiarly its
concern) held that it was open to him to reverse the said finding
and he did so reverse it.

p. 62, ll. 5-6

p. 62, l. 7 to
p. 63, l. 2

39. The learned Chief Justice reversed also the finding of the
Court below “that the publication was not privileged by reason of
its issue by the Government of Ceylon as a Sessional Paper.” After 40
referring to the inapplicability in Ceylon of the Parliamentary
Papers Act, 1840, Section 1 (under which reports, papers, votes and
proceedings published by or under the authority of either House of

Parliament are absolutely privileged) and the Law of Libel Amendment Act, 1888, Section 4 (under which the publication, at the request of any Government Department, of any report issued for the information of the public is, in the absence of proof of malice, privileged) he applied the relevant Roman-Dutch law as set out in *Pickard v. South Africa Trade Protection Society and Others*, 22 S.C. 94, in *Smith & Co. v. South African Newspaper Co.*, 23 S.C. 310, and in Maasdorp's Institutes of Cape Law, Vol. IV, pp. 104-108, and held that, express malice having been negatived, the publication
 10 in this case—being a fair and impartial report of a matter of considerable public interest on which the newspapers could fairly be expected to report in due course—was privileged.

p. 63, ll. 3-7

p. 62, l. 43 to
p. 63, l. 1

40. The learned Chief Justice said that, in view of his finding that the publication of the Report was privileged—a privilege which could only be destroyed by proof of express malice, which in this case had been negatived—it was not necessary to consider whether the Court below was right in holding that the proceedings of the Bribery Commission were those of a judicial tribunal, a finding which, if correct, would make an additional case for privilege. He
 20 was of opinion, however, that the said finding was incorrect, and that the proceedings in question could not be regarded as those of a Court so as to make their publication by a newspaper absolutely privileged.

p. 63, ll. 7-11

p. 63, ll. 5-6,
28-30

p. 63, ll. 23-27

41. The learned Chief Justice next considered the question whether there had been any breach of the provisions relating to the evidence being taken *in camera* as enacted in Sections 5 and 6 of the said Ordinance No. 25 of 1942 (see paragraph 9 of this Case); and, if so, whether such breach affected the defence of privilege. He was of opinion that there had been no contravention of the said Section 6
 30 by publication of the Plaintiff-Appellant's name—it is to be noted that no part of his evidence was published—the publication having been authorised by the Commissioner who, by inference, had invited the Governor to publish the whole of his Report apart from certain Appendices which he had named and which, accordingly—as stated in paragraph 13 of this Case—had not been published.

p. 63, ll. 31-45

42. Finally, on the subject of damages, the learned Chief Justice said:—

40 “In view of the decision at which I have arrived, the “question as to whether the learned Judge was right in his “assessment of damages” [at Rs. 5/- if it was necessary to assess damages at all—see the Answer to Issue 4, in paragraph 20 hereof] “does not call for consideration.

p. 64, ll. 7-11

“But in view of the truth of the publication and the absence
“of any *animus injuriandi* on the part of the Respondents I
“would not be prepared to say that his assessment was wrong.”

pp. 61-65

43. A decree in accordance with the Judgments of the learned Judges of the Supreme Court was drawn up on the 12th February, 1946, and against the said decree the Appellant now prefers this appeal to His Majesty in Council, leave to appeal having been granted to him by decrees of the Supreme Court, dated the 11th March and 20th May, 1946.

pp. 66, 68

The Respondents humbly submit that the appeal should be 10
dismissed, with costs, for the following among other

REASONS.

1. BECAUSE the Respondents have proved facts which negative the existence of any *animus injuriandi* in the publication by them of the words complained of and this affords a complete defence to the action under Roman-Dutch law.
2. BECAUSE the conclusion of fact by the Judge of the District Court that the words were true in substance and in fact was not challenged in and was confirmed 20
by the Supreme Court, and the publication was for the public benefit as was held by the Supreme Court.
3. BECAUSE the publication of the words being part of a fair and accurate report of a Sessional Paper containing the Report of a Commission appointed by the Governor of Ceylon acting under statutory powers pursuant to a resolution of the State Council of Ceylon and printed and published by the Orders of Government and supplied by Government to the Respondents for republication by them was privileged and malice 30
was negatived.
4. BECAUSE the words formed part of a fair and accurate report in a newspaper of the proceedings of a judicial tribunal and the publication was therefore privileged.
5. BECAUSE the words were fair comment made in good faith and without malice on a matter of public interest.

6. BECAUSE the decisions of both Courts below are correct.

D. N. PRITT.

VALENTINE HOLMES.

R. K. HANDOO.

C. E. L. WICKREMESINGHE.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE
ISLAND OF CEYLON.

—
BETWEEN—

Dr. M. G. PERERA (Plaintiff) *Appellant*

— AND —

1. **ANDREW VINCENT PIERIS**
2. **THE ASSOCIATED NEWSPAPERS
OF CEYLON LIMITED**
(Defendants) *Respondents*

Case for the Respondents.

DARLEY CUMBERLAND & Co.,
36 John Street,
Bedford Row, W.C.1,
Solicitors for the Respondents.