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1962

IN THE PRIVY COUNCIL

No. 6 of 1961

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
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LONDON, W.C.1.

B E T W E E N:

THE ATTORNEY GENERAL OF CEYLON Appellant

- and -

68213

- 1. MIHINDUKULASURIYA GURUGE
JOSEPH MICHAEL DE LIVERA
- 2. CYRIL STANLEY FERNANDO Respondents

RECORD OF PROCEEDINGS

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London, S.W.1.

Solicitors for the Appellant.

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London, W.C.2.

Solicitors for the First Respondent.

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

THE ATTORNEY GENERAL OF CEYLON

Appellant

- and -

1. MIHINDUKULASURIYA GURUGE
JOSEPH MICHAEL DE LIVERA
2. CYRIL STANLEY FERNANDO

Respondents

RECORD OF PROCEEDINGS
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1.

IN THE PRIVY COUNCIL

No. 6 of 1961

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

THE ATTORNEY GENERAL OF CEYLON

Appellant

- and -

1. MIHINDUKULASURIYA GURUGE

JOSEPH MICHAEL DE LIVERA

2. CYRIL STANLEY FERNANDO

Respondents

RECORD OF PROCEEDINGS

10

No. 1.

INDICTMENT

In the District
Court, Colombo.

In the District Court of Colombo

Criminal Jurisdiction No. 1939/BA/X/7/59

THE QUEEN

Vs.

1. Mihindukulasuriya Guruge Joseph Michael

de Livera

2. Cyril Stanley Fernando.

No.1.

Indictment.

6th February,
1959.

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You are indicted at my instance and the charges against you are that you did commit the following offences in the course of the same transaction:-

1. That on or about the 19th day of December 1958 at Dalugama Kelaniya within the jurisdiction of this Court, you Mihindukulasuriya Guruge Joseph Michael de Livera the first accused above named did offer a gratification to wit a sum of Rs.5,000/- to Welikala James Charles Munasinghe Member for Chilaw in the House of Representatives as an inducement or a reward for his doing an act in his capacity as such Member to wit: addressing a letter to the Hon'ble C.P. de Silva Minister of Lands and Land Development, requesting him to abandon the proposal for the acquisition of Vincent Estate, Chilaw, and that you are thereby guilty

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In the District
Court, Colombo.

—
No. 1.

Indictment.

6th February,
1959

- continued.

- of an offence punishable under Section 14(a) of the Bribery Act No.11 of 1954.
2. That at the time and place aforesaid you Cyril Stanley Fernando the second accused abovenamed, did abet the offence set out in count one and that you are thereby guilty of an offence punishable under Section 14(a) read with Section 25(2) of the Bribery Act No.11 of 1954.
 3. That on or about the 22nd day of December 1958 at Dalugama Kelaniya within the jurisdiction of this Court, you Mihindikulasuriya Guruge Joseph Michael de Livera, the first accused abovenamed did offer a gratification to wit: Rs.5,000/- to Welikade James Charles Munasinghe Member for Chilaw in the House of Representatives, as an inducement or a reward for his doing an act in his capacity as such member to wit: addressing a letter to the Hon'ble C.P. de Silva Minister of Lands and Land Development requesting him to abandon the proposal for the acquisition of Vincent estate, Chilaw and that you are thereby guilty of an offence punishable under Section 14(a) of the Bribery Act No.11 of 1954. 10 20
 4. That at the time and place set out in count three you Cyril Stanley Fernando the second accused abovenamed did abet the offence set out in count three and that you are thereby guilty of an offence punishable under Section 14(a) read with Section 25(2) of the Bribery Act, No.11 of 1954. 30
 5. That at the time and place set out in count three you Mihindikulasuriya Guruge Joseph Michael de Livera the first accused abovenamed did abet the acceptance of a gratification to wit, Rs.5,000/- by Welikala James Charles Munasinghe Member for Chilaw in the House of Representatives as an inducement or a reward for his doing an act in his capacity as such member to wit, addressing a letter to the Hon. C.P. de Silva Minister of Lands and Land Development requesting him to abandon the proposal for the acquisition of Vincent estate, Chilaw and that you are thereby guilty of an offence punishable under Section 14(b) read with Section 25(2) of the Bribery Act, No.11 of 1954. 40
 6. That at the time and place set out in count

three you Cyril Stanley Fernando the second accused abovenamed did abet the acceptance of a gratification to wit:- Rs.5,000/- by Weligala James Charles Munasinghe, Member for Chilaw in the House of Representatives, as an inducement or a reward for his doing an act in his capacity as such member to wit, addressing a letter to the Hon'ble C.P. de Silva Minister of Lands and Land Development requesting him to abandon the proposal for the acquisition of Vincent estate Chilaw and that you are thereby guilty of an offence punishable under Section 14(b) read with Section 25(2) of the Bribery Act No.11 of 1954.

This 6th day of February 1959

Sgd: D. Jansze

Acting Attorney General.

LIST OF WITNESSES:

1. W.J.C.Munasinghe Dalugama Kelaniya.
- 20 2. A.J.Rajasuriya Assistant Superintendent of Police, Criminal Investigation Department, Colombo.
3. V.N.Ingram Inspector of Police Criminal Investigation Department, Colombo.
4. S.Kuruppu Sub Inspector of Police Criminal Investigation Department, Colombo.
5. F.E.R.Fraser, Sub-Inspector of Police, Criminal Investigation Department, Colombo.
- 30 6. C.B.P.Perera Permanent Secretary to the Ministry of Lands and Land Development, Colombo.
7. S.L.M.D.C.Samaratunge Divisional Revenue Officer, Chilaw.
8. B.P.R.Abeykroon Rural Development Officer, Pitigal Korale North Chilaw.
9. M.E.A.Fernando Village Headman No.580, Itcham-pitiya Chilaw.
- 10.A.S.Navaratnarajah Government Agent, Puttalam.
- 11.J.P.Fernando, Chairman Urban Council Chilaw.
- 12.Dawood Marikar Vice Chairman Town Council Madampe.
- 40 13.A.P.L.D.Joseph, Teacher St.Sebastian's College, Madampe.

LIST OF PRODUCTIONS:

1. Letter dated 28th October, 1958 addressed to the Hon'ble C.P.de Silva by Mr.J.C.Munasinghe Pl.
2. Minute dated 28.10.58 by the Hon'ble C.P. de Silva Minister of Lands and Land Development

In the District Court, Colombo.

No. 1.

Indictment.

6th February, 1959

- continued.

In the District
Court, Colombo.

No. 1.

Indictment.

6th February,
1959

- continued.

- to the Permanent Secretary Ministry of Lands and Land Development.
3. Letter No.DA 7239 addressed to the Government Agent, Puttalam by the Land Commissioner.
 4. Letter No.IDN 720 addressed by the Government Agent, Puttalam dated 4.12.58 to the Divisional Revenue Officer Pitigal Korale North.
 5. Report of the Village Headman of Itchampitiya dated 15.12.58.
 6. Letter dated 22nd December 1958 addressed to the Hon'ble C.P.de Silva Minister of Lands and Land Development Colombo by Mr.J.C.W.Munasinghe M.P. for Chilaw P3. 10
 7. Letter dated 22nd December 1958 addressed to Mr. Livera Mr.J.C.W.Munasinghe M.P. for Chilaw P4.
 8. Envelope containing letter dated 22nd December 1958 addressed to the Hon'ble C.P. de Silva Minister of Lands and Land Development Colombo by the M.P. for Chilaw. 20
 9. Cash Rs.5,000/- P6 (Handed over to Fiscal W.P. on 14/5/59 personally in sealed packet)
 10. Spool of the tape recorded conversation in Mr. W.J.C.Munasinghe's bungalow on 22.12.58 P7. (Handed over to Fiscal W.P. on 14/5/59)
 11. Booklet containing 5 photographs - P2.
 12. Sketch marked SK1.

A summary of the facts proposed to be relied on at trial is attached hereto.

The 6th day of February 1959 30

Sgd: D. Jansze

Acting Attorney General.

SUMMARY OF FACTS:

On 28.10.58, Mr.W.J.C.Munasinghe Member for Chilaw in the House of Representatives addressed a letter to Mr.C.P.de Silva Minister of Lands and Land Development Colombo recommending the acquisition of the estate known as Vincent Estate belonging to the 1st accused. The letter was in due course forwarded to the Land Commissioner who forwarded it to the Government Agent, Puttalam, for necessary action. The 1st accused did not want the estate to be acquired and he had in fact interviewed the Government Agent, Puttalam, along with Mr. J.P. Fernando the Chairman of the Urban Council, Chilaw with a view to persuading the Government Agent not to acquire Vincent estate. The 1st 40

accused sent the 2nd accused who was well known to Mr. Munasinghe to meet Mr. Munasinghe and inform the latter that Mr. Livera was willing to give a gratification if the proposal for the acquisition of Vincent estate was dropped. On the 19th of December 1958, the 2nd accused met Mr. Munasinghe at his bungalow at about 8 o'clock in the morning and informed him about the predicament in which the 1st accused was and asked Mr. Munasinghe whether he could see him with the 1st accused on that date. Mr. W.J.C. Munasinghe gave an appointment for that date at about 7 or 7.30 p.m. Thereafter the 2nd accused left Mr. Munasinghe's bungalow. On the same date Mr. Munasinghe made a statement to the Assistant Superintendent of Police of the "X" Branch and two officers of the "X" Branch of the Criminal Investigation Department were sent to the bungalow of Mr. Munasinghe at Dalugama, Kelaniya to listen to the conversation between Mr. Munasinghe and the 1st and 2nd accused if and when they arrived at the appointed time. At about 7.30 in the night the 1st and 2nd accused came to the house of Mr. W.J.C. Munasinghe and a conversation took place between the parties and Mr. Livera acquainted Mr. Munasinghe of the position in regard to the acquisition of Vincent Estate and told him that he would give Rs. 5,000/-. Mr. Munasinghe agreed to give a letter addressed to the Minister requesting him that this land should not be acquired for the reason given by Mr. Livera and another appointment was fixed for the 22nd of December, 1958 between 9.30 p.m. and 10 p.m. in the bungalow of Mr. Munasinghe when the letter to the Minister of Lands and Land Development was to be handed to the 1st accused and the latter would give Mr. Munasinghe the Rs.5,000/- promised by him. On the 22nd December 1958 the Assistant Superintendent of Police of the "X" Branch Criminal Investigation Department and some officers went to the bungalow of Mr. Munasinghe where they installed a tape recording machine and concealed themselves in the bungalow. At about 10 p.m. the 1st and 2nd accused arrived in a car. They were met by Mr. Munasinghe and a conversation took place between Mr. Munasinghe and the 1st and 2nd accused which was tape recorded. In the course of the conversation Mr. Munasinghe handed over to the 1st accused a letter addressed to the Minister of Lands and Land Development requesting him to drop the proposal for the acquisition of Vincent Estate. At the request of the 1st accused Mr. Munasinghe gave

In the District Court, Colombo.

No. 1.

Indictment.

6th February,
1959

- continued.

In the District
Court, Colombo.

No. 1.

Indictment.

6th February,
1959

- continued.

him a letter addressed to the 1st accused and dictated by the 1st accused and the 1st accused thereafter handed over a parcel containing Rs.5,000/- to Mr. Munasinghe which he accepted and when they were about to leave Mr. Munasinghe's bungalow Mr. Rajasuriya Assistant Superintendent of Police "X" Branch was hiding in the bungalow came forward disclosed his identity and questioned the 1st and 2nd accused.

No. 2.

Court Notes.

28th April,
1959.

No. 2.

COURT NOTES

28.4.59.

D.C.Colombo 1939/BA/X/7/59 (Cr)

Both accused are present.

Mr. L.B.T. Premaratne Crown Counsel with Mr. E.H.C. Jaytilleke Crown Counsel for the prosecution.

Mr. Adv. S. Nadesan Q.C. with Mr. Adv. Gatyendra instructed by Mr. S. Somasunderam for the 1st accused.

Mr. Adv. Neville Samarakoon instructed by Mr. D.E. Abeykoon for the 2nd accused.

The accused are charged from the Indictment and they severally plead "I am not guilty".

Intld. J.E.A.A. A.D.J.

28.4.59.

Crown Counsel brings to my notice that C. de Silva Maintenance Engineer, Radio Ceylon, is absent. He moves for a summons on him. Issue summons on him forthwith.

Intld. J.E.A.A. A.D.J.

28.4.59.

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CROWN EVIDENCE

No. 3.

A. S. NAVARATNARAJAH

Crown Counsel calls :-

A.S.NAVARATNARAJAH - Affirmed - 35 years - Deputy Director of Public Works, Colombo.

10 On 12.1.59 I became the Deputy Director of Public Works and before that I was the Government Agent Puttalam from 3.5.56 to 12.1.59. Sometime in December 1958 I was directed to take steps to acquire an estate called the Vincent Estate. I wrote to the D.R.O. on 4.12.58 asking him to report on the acquisition. That is the usual step that is taken. Thereafter the 1st accused came and saw me. I cannot remember the date, but it was after I wrote to the D.R.O. He came to see me in the company of the Chairman, Urban Council, Chilaw, Mr.J. P.Fernando. I had known Mr. Fernando before that. I had not known the 1st accused before that. The 20 1st accused was introduced to me by Mr. Fernando.

30 It was some time in December that they saw me. After the 1st accused was introduced to me the 1st accused inquired whether there was a proposal to acquire his land. When he said that I understood that he referred to the Vincent Estate. I told him that there was such a proposal and that I had referred the matter to the D.R.O. for his report. He inquired what the procedure was with regard to the acquisition of this land. I told him that when the D.R.O.'s report came I would send my recommendation to the Land Commissioner. From the conversation I gathered that the 1st accused was not in favour of the acquisition. This land was to be acquired for the purpose of giving relief to the flood victims. The 1st accused talked to me about the suitability of the land. He said that a portion of this land goes under water and therefore it was not suitable for a housing scheme. During this conversation I told him that it was the Member of Parliament for Chilaw who had initiated the proposal to acquire this land. I also told him that the Minister of Lands and Land Development was the final authority in deciding this matter. At that time I was aware that the Minister had made an endorsement to take acquisition proceedings immediately. I had seen a copy of the letter. I told the 1st accused that he would be given a full opportunity to present his 40

In the District Court, Colombo.

Crown Evidence.

No. 3.

A.S.
Navaratnarajah.28th April,
1959.

Examination.

In the District
Court, Colombo.

Crown Evidence.

No. 3.

A.S.
Navaratnarajah.
28th April,
1959.

Examination
- continued.

case before the acquisition. By that I meant a full opportunity in the acquisition proceedings. There is nothing else I can remember. I might have even asked him to discuss the matter with Mr. Munasinghe but I cannot remember. At the time the 1st accused saw me I had not received the report from the D.R.O. Chilaw. Till I received the report I could not take any further action. What I intended to convey to the 1st accused was that whatever action I took the ultimate decision would be with the Minister himself. It was always understood that the estate about which we were talking was Vincent Estate of which Mr. Livera was the owner. 10

Cross-Examined by Mr. Nadesan:-

Cross-
Examination.

Q. Are you now aware that there is no such estate called Vincent Estate?

A. This estate had 3 different names, i.e. Vincent Estate, Millicent Estate, and Livera Estate.

Cross-Examined by Mr. Samarakoon - Nil. 20

Re-Examined - Nil. Intld. J.E.A.A. A.D.J.
28.4.59.

No. 4.

J.C.W.
Munasinghe.

Examination.

No. 4.

J.C.W.MUNASINGHE

J.C.W.MUNASINGHE - Sworn - 48 years - Residing at Dalugama Kelaniya, M.P. for Chilaw.

I am also the Chief Whip. I was elected as the Member of Parliament for Chilaw at the last general elections in 1956. My native place is Madampe in Chilaw District. I am also known as Welikala James Charles Munasinghe. I came to know the 2nd accused in this case about 10 years ago. I came to know him as the Secretary of the Town Council, Madampe when I was the Chairman. I first came to know him as a person of Chilaw. He was in the Kachcheri and then came to the Town Council, Madampe. In January 1947 I became Chairman of Town Council, Madampe. I was the Chairman from January 1947 till last years with a short break of about 3 months when I resigned and re-contested for the Chairmanship again. During that period of 10 years I have met the 2nd accused very often. He used to come and see me in my bungalow. I was not in the habit of going to see him. When I was Chairman the 30 40

2nd accused was working under me as Secretary. Practically from the inception he was the Secretary of the Town Council, Madampe until he was transferred as the Secretary of the Urban Council, Rambukkana in about 1956. He worked under me for about 8 years as Secretary. From Rambukkana he was transferred to the Urban Council, Puttalam, about one year ago. At the time of the concurrence of the subject matter of this case I knew the 2nd accused very well. I had not known the 1st accused at all before the incidents in this case. The first time I came to know him was on the night of 19.12.58. Though I did not know him personally I knew him by his name and as proprietor of Titus Stores, Colombo and as the owner of Martin Estates Co., Ltd., Chilaw. Vincent Estate is a part of Martin Estates Co., Ltd. Representations were made by the Rural Development Society of Sangathatana in Etchampitiya V.H's Division at their meeting to acquire this particular land called Vincent Estate owned by Mr. Livera. I too was present at their meeting. The resolution passed at the meeting was that this Vincent Estate consisting of about 175 acres and which is a part of Martin Estates Co., Ltd., be acquired for flood relief. I cannot remember when this meeting was held, but it was somewhere in the latter half of October 1958. After that meeting in consequence of the representations made to me I formed the opinion that this estate was suitable for acquisition. I therefore decided to write to the Minister regarding this matter. I wrote to the Minister of Lands and Land Development Mr. C.P. de Silva in this connection on 28.10.58 (shown letter P1). P1 is the letter I wrote to Mr. C.P. de Silva. It is dated 28.10.58. The Rural Development Society meeting must have been held before 28.10.58 (Counsel reads P1). On this letter I see an endorsement made by Mr. C.P. de Silva I am acquainted with his handwriting. The endorsement in P1 is in Mr. C.P. de Silva's handwriting and it bears his signature. That endorsement is dated 28.10.58, which is also the date of this letter. I took P1 by hand to Mr. C.P. de Silva at his office and suggested to him that alienation might be in $\frac{1}{2}$ acre blocks and asked him to acquire this land under the special provisions of the Acquisition Act so that immediate

In the District Court, Colombo.

—
Crown Evidence.
—

No. 4.

J.C.W.
Munasinghe.

28th April, 1959.

Examination
- continued.

In the District
Court, Colombo.

—————
Crown Evidence.
—————

No. 4.

J.C.W.
Munasinghe.
28th April, 1959.
Examination
- continued.

possession of the land may be taken. From 28.10.58 up to the time the 2nd accused saw me on the morning of 19.12.58 I had not taken any steps in regard to this acquisition Mr. C.P. de Silva made the endorsement on Pl in my presence. I usually reside at Dalugama, Kelaniya. The 2nd accused was not in the habit of seeing me in that house. It was on the 19th of December that he came for the first time to that house. He came there early morning. He came alone. He told me that he had come to see me in connection with the acquisition of Mr. Livera's estate. He said that Mr. Livera was pestering his life asking him to give an introduction to me. Mr. Livera had known that Mr. Fernando had served under me and he knew me well. When he spoke of the acquisition of the estate I understood that he referred to the estate called Vincent Estate. The 2nd accused said that he wanted to see me to point out to me certain matters and to prevent the acquisition of his land. The 2nd accused said that the 1st accused had singled me out because it was I or Mr.C.P. de Silva who could save the land being acquired. The 2nd accused said that the 1st accused was with the intention of giving me a present, or to the party or to any person I nominate, if this was done. When he mentioned the party he must have meant the Sri Lanka Freedom Party I then said that it almost amounts to a bribe. Then the 2nd accused said that with regard to that he had nothing more to add and that he had merely conveyed what the 1st accused had wanted him to convey, and asked me to give Mr. Livera an opportunity of seeing me. So far as I was concerned I was appraised of the fact that Mr. Livera was willing to give me some money if this was done. When the offer of money was put to me I thought I could inform the Police. The 2nd accused came to see me on the 19th morning. I told him to come with Mr. Livera at 7.30 in the evening. The 2nd accused promised to come with him at 7.30 p.m. I said that I was busy during the day and asked them to come at that time. The 2nd accused then went away. The 2nd accused must have been in my house for about 45 minutes. I rang up the A.S.P. Rajasuriya at about the lunch interval. Mr. Rajasuriya was not there and I rang him up again at about 3.30 or 4 p.m. and contacted him. He came to see me in the House of Representatives on the same day at about 5.30 p.m. I made a statement to A.S.P. Mr. Rajasuriya. After my statement was recorded it was arranged that some Police Officers should be present

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on the 19th evening when the 1st and 2nd accused would come to see me. Mr. Rajasooriya told me that he would be making those arrangements. Mr. Rajasuriya left behind two Police Officers with me. They were Mr. Ingram and Mr. Kuruppu. Mr. Rajasuriya after recording my statement left the place leaving the two Police Officers behind. When I left the House of Representatives that day it must have been after 6 p.m. I went with the two Police Officers in my car, as I did not want their cars to go with me. In about 20 minutes time I got to my house. It was getting dark at that time. (Shown SK1). This is a sketch of my house. There is a portico in front and there is a long verandah to the house. The house is on the main Kandy road on the right hand side when going towards Kandy. The house is inside a garden. From the gate of the house to the portico it must be about 80 yards. From the portico I get to the verandah which is a long verandah and from the verandah I get into my office room. It is a hall a portion of which I have separated off as my office. Beyond the office there is another room on the right hand side. I have to pass the sideboard and get into the dining room and on either side of the dining room there are two rooms. (Shown a booklet containing photographs P2). The first photograph P2a shows my office. The photograph is taken from the front of the house. The second photograph P2b shows the verandah. On the left hand side of the verandah there are 3 chairs and a table. The third photograph P2c shows the left hand side of the verandah when one looks at it from the front of the house. The photograph P2d shows the room on the left hand side of the house and the door leading from the left hand side of the verandah into that room. P2e is the same room as shown in P2d. P2f is also the same room. Adjoining the verandah there is only one bedroom. That is the bedroom in which the Police Officers were on the 19th and on the night of 22nd. When I refer in these proceedings to the bedroom I refer to that room. Having come to my house with the Police Officers on the evening of the 19th I decided along with them where I was to have my conversation with the 1st and 2nd accused. We arranged the left hand portion of the verandah. 3 chairs were kept there for the two accused and myself and a table was kept in between. There is a door leading to that bedroom and it was arranged to keep that door ajar so that the officers may

In the District Court, Colombo.

—————
Crown Evidence.
—————

No. 4.

J.C.W.
Munasinghe.

28th April, 1959.

Examination
- continued.

In the District
Court, Colombo.

—
Crown Evidence.
—

No. 4.

J.C.W.

Munasinghe.

28th April, 1959.

Examination

- continued.

hear the conversation. The 1st and 2nd accused came to my house shortly after 7.30 p.m. They came by car. I cannot remember whether it was the same car that brought the 2nd accused in the morning. I met them and took them to the left hand corner of the verandah as arranged. Mr. Fernando introduced Mr. Livera to me before we took our seats and then we took our seats round that table. Mr. Livera spoke to me about the land, i.e. how he came to own it and the amount of sentimental value he attached to it. He said that he valued that particular portion more than the other blocks of his estate. That is the Vincent estate which were going to acquire. He also said that he goes and stays there and he has taken a great liking to it. He said that he would be very grateful to me if I could help him to prevent the acquisition of this land. He also told me that he will do anything to save the land. Then I told him that he had made some suggestion to Mr. Fernando. Then he said that he will give me anything I wanted if I could prevent the acquisition of this land. Then my telephone bell rang and I went inside, when I came back the 1st accused told me that he would give me Rs.5,000/-. Then I told him that if he gives me a cheque I will get caught. Then 1st accused told me "I am one of the leading businessmen. Don't worry. I know how to do it". He promised to give it in cash. I told him that the Minister had ordered the acquisition of the land and that I will have to give a letter withdrawing the application for the acquisition of this land. I said that I will give a letter addressed to Mr. C.P. de Silva withdrawing my application. I asked him when he wanted that and he said the next day. I told him that I was not free the next day as I had to go to Chilaw and also to Madampe and that I was free only on Monday the 22nd. I asked him to come between 9.30 and 10 p.m. on the 22nd. He agreed to come at that time on that date and I promised to give him a letter when he gave the money. It was arranged that this letter which I promised to give addressed to Mr. de Silva be kept ready by the time they came. Those were the main features of the conversation I had with them on the night of the 19th. Whilst all this conversation was going on the two police officers who had come earlier with me were in the bedroom and the bedroom door was kept ajar. I made an effort to talk loud to be heard by the Police officers. The two accused were in my house while they

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engaged in a conversation for about 40 minutes or 1 hour. Then they left. The Police officers were there when the accused left. After they left the Police Officers made their notes in regard to what happened that day. Thereafter the Police Officers were sent in my car. The Police Officers who were there obviously were aware of the fact that the next meeting was to be on the 22nd. It was arranged that certain police officers should be at my bungalow in Kalaniya on the night of the 22nd sometimes before 9.30 in order they may be present to see and hear what was going on. On the 20th and 21st I was busy because I go on Saturday to Chilaw and on Sunday to Madampe and that is why I avoided those two days. 22nd being a Monday I attended my office at the House of Representatives. I believe the Police met me at the House of Representatives. On that day the Police Officers went in their car. The Police Officers must have come about 7.30 or 8 p.m. I came from the House of Representatives alone in my car and the Police Officers came sometime after I arrived. On that day Mr. Rajasuriya A.S.P. Mr. Kuruppa Mr. Ingram and Mr. Fraser who brought a tape recording machine came there. The car dropped these gentlemen and went away. I had a discussion with them as to where I was going to converse with the accused when they came. We decided to have it at the same place where I had the conversation on the 19th. The arrangement was the same, i.e. 3 chairs kept round a table on the left hand side of the verandah. I was instructed to take the seat indicated on the sketch by the letter M and to see that Mr. Fernando takes the seat indicated by the letter F and Mr. Livera takes the seat indicated by the letter L. We were to sit in this manner on the night of the 22nd. The Police Officers were to be in the bedroom except one who was to be in the hall. Before the arrival of the two accused the Police had made the necessary arrangement for the recording of the conversation with the aid of the tape recorder. The machine itself was in the bedroom and the mike was at the door. (Shown photograph P2c) Besides the 3 chairs and the table there was a small stool by the side of the door leading to the bedroom and the mike was left under that stool and the door was kept slightly ajar. As arranged the accused came to my house that night shortly after 9.30 p.m. They came by car. It is about 80 yards from the portico to the gate of my house. The car was parked on the drive just outside

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Crown Evidence.

No. 4.

J.C.W.
Munasinghe.

28th April, 1959.

Examination
- continued.

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Crown Evidence.

No. 4.

J.C.W. Munasinghe.

28th April, 1959.

Examination - continued.

the portico facing the road. The 1st and 2nd accused both came into my house. At that time the portico light was on. I do not remember whether there was any light burning in the verandah. The portico light was sufficient to reflect light to the place where we were seated. There was no light burning at the place where I had arranged to have the conversation. There is a light fixed at the place where we were seated. There was no light burning in the verandah and there was a light burning in the portico. The bedroom light was put off and there was no light in the office section too. They were deliberately put off. When a car is approaching my portico from the gate before the car arrives at the portico I have a few seconds. I noticed the accused's car approaching. I presumed that that was the car bringing the two accused. The accused got down and came to the verandah. By that time the Police Officers had positioned themselves at the places they had arranged earlier. I met the accused and took them to the portion of the verandah that had been prepared earlier. I took the seat indicated in the sketch by the letter M, the 1st accused took the seat indicated by the letter L and the 2nd accused took the seat indicated by the letter F. At the time the tape recorder had been set and the mike was at the stool which was at the door which was kept ajar. The arrangement was that I was to have a letter ready to be given to the 1st accused addressed to Mr.C.P.de Silva. I had got that letter ready before the accused arrived. (Shown P3 a letter dated 22.12.58). This is the letter which I had got ready. This letter is signed by me. It is not in my handwriting. I dictated this letter to a boy who is in my house and he wrote it (P3 is read). I had not inspected this land and found that a stream was running across this land. I merely put down the suggestions the 1st accused had given me. As I had promised to have a letter on the lines indicated by him I had this letter ready for him. After the 1st and 2nd accused came to my house on the 22nd the first matter in the conversation was about this letter. I read out the letter to the accused with difficulty as the light was very faint. The 1st accused said that the letter was all right but as he had to give that letter to the Minister he would like to have a letter addressed to him written by me, agreeing that the land was unsuitable for acquisition purposes. He suggested to me to presume that

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he had sent me a letter and to give him a letter in reply to that letter. I told him that in that case I had to write another letter. I had no paper with me and I left the place to get some paper to write this letter which I had not anticipated. I went in and brought the paper. I went to my office table which is in the section adjoining the verandah on the right-hand side. After I brought the pen and paper I told the 1st accused to dictate the letter so that I would write it. At the 1st accused's dictation I wrote the letter. P4 is that letter I wrote at the dictation of the 1st accused. It is in my handwriting and it is dated 22.12.58. (P4 is read). There is a reference here to a letter of the 20th received from the 1st accused. In fact there was no such letter. The 1st accused suggested to me to assume that he had sent a letter and said that when he went home he would send a letter to me. The 1st accused told me that some portions of the land gets under water. He said something about the bungalow getting under floods. Then we went on to other matters like the strikes and indulged in some general conversation about the political situation. At that time there was a petrol strike and we discussed about that also. We also discussed about Mrs. Singleton Salmon's funeral as I was a pall bearer at that funeral. We spoke about matters which are extraneous to this issue. After this extraneous conversation the 1st accused took the two letters and said "I think this is all right" and then he took a bundle of notes wrapped - what I saw was a bundle and I presumed that to be money - and gave it to me. I think he took it out from his trouser pocket.

(To Court:- I gave the letters first and then he gave me the bundle of notes).

When I gave him the letter he said it is all right now and he gave me the bundle of notes. I put the two letters I wrote in the envelope marked P5 which is addressed to the Hon. Mr. C.P.de Silva Minister of Lands and Land Development. The parcel the 1st accused handed to me was a parcel similar to P6. The letters I gave the 1st accused were the letters P3 and P4 which were put into the envelope P5. The 1st accused gave me the bundle of notes P6 which I presumed to be the Rs.5,000/- which he promised to give me. At that time I neither counted the money nor even open the parcel. I took the money into my hand and then the 1st accused started some other conversation which has nothing to do with this

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matter. Then I showed the money to him and said "Mr. Livera you are giving me this money for my giving you a letter withdrawing my request for the acquisition of your land". Then the 1st accused said "That is correct". Up to this time we were still seated on the 3 chairs. It was discussed that the letter I had given to the 1st accused addressed to Mr. C.P. de Silva was to be given to Mr. C.P. de Silva on the next day. The 1st accused said that if there was any difficulty about seeing Mr. C.P. de Silva he would come and see me again at my office. This entire conversation that day took about 45 minutes. The 2nd accused was present right throughout this conversation. The 2nd accused did not utter a word until all this transaction was over, not even in extraneous matters. Thereafter we got up from our chairs. The 1st accused wished me a happy Christmas. I returned the good wishes. That was at the verandah. The accused had to walk out. I had still the parcel in my hand and the 1st accused had the envelope containing the two letters. They were proceeding towards the portico. Then Mr. Rajasingham came up and said "Mr. Livera" and he introduced himself and asked for the letters. The 1st accused gave the letters to Mr. Rajasuriya and turned to me and said "What is this Mr. Munasinghe?" Then I said "This is what happens to people who try to bribe the members of this Government". I handed the parcel P6 which I had to Mr. Rajasuriya. Mr. Rajasuriya took that parcel P6 and then he took the 1st accused to the verandah. The 2nd accused was asked to wait at the portico. The 1st accused was taken to the table. I presume Mr. Rajasuriya recorded the 1st accused's statement. I was not there. I was away while Mr. Rajasuriya took each person and went to that table. Thereafter he recorded my statement. At the time he was recording my statement he counted the money. That parcel contained Rs. 5,000/- in 100/- notes. Thereafter the 1st accused at first went up to his car and Mr. Rajasuriya reminded him about the 2nd accused. Then the 1st accused took the 2nd accused and went away. Between 10.30 and 11 p.m. the 1st and 2nd accused left. The Police Officers remained in my house after they went away. I asked them to play back the tape record and I listened to what had been recorded. It was a truthful record of what had transpired. It may be about 10.45 p.m. or so when the Police Officers left my house. That

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concluded the incidents of the 22nd.

After the 22nd of December 1958 the 2nd accused came to see me. He came to see me a few days after the 22nd of December. He came with Mr. Davood Mariker the present Chairman of Madampe Town Council, and Mr. A. D. Joseph a member of the Town Council, Madampe and some others. Four persons including the 2nd accused came to my bungalow which is at Kelaniya at about 7 or 7.30 p.m. I think they came after Christmas and before the New Year i.e. between 25th December and 1st January 1959. At that time there was one M. D. Benedict of Marawila and some others who had come to wish me. The 2nd accused and the others came by car. Then I sent the visitors who had come earlier to the verandah to talk to my wife and I called the 2nd accused and others who came with him into the office room section. The others who came along with the 2nd accused were members of the Town Council and whom I had known for a considerable time. Then the 2nd accused said "Aiye"! Why have you done this to me Sir! Why didn't you give me a slap and turn me out when I first came to you with this suggestion". He said that he was taken by Mr. Livera to his house that day and kept in a room Mr. Livera's consulting lawyers came and dictated an affidavit to him and he was made to write it in his own handwriting, and the next morning he was taken to Hultsdorf to a lawyer who was a J.P. and he was asked to sign the Affidavit before him, and he said that he would have fallen into serious trouble if he did not do that. He said now if he tells the truth he will be charged for swearing a false affidavit. He said "Why didn't you give me a slap and send me away". Then I told him "Mr. Fernando this is a serious matter. Let us assume that I was tempted to receive Mr. Livera's money and if Mr. Livera had brought the C.I.D. and caught me in the way I caught Mr. Livera then that would have been the other way about and I would be in Mr. Livera's position. He told me that he could not remember what he had stated in the Affidavit but he had said there that he went back to Negombo after meeting me on the morning of the 19th. He said that though he had spent the day of the 22nd December 1958 in the 1st accused's house he was asked to say in the Affidavit that he had gone to Negombo and come back to the 1st accused's house. He was telling me that he stated in his Affidavit something about his movements on the 22nd, but I cannot say whether it was

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movements before the raid or after the raid.

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28.4.59.

Crown Evidence.

Trial adjourned for lunch.
28.4.59.

No. 4.

After adjournment for lunch.

J.C.W. Munasinghe.

Same appearances.

28th April, 1959.

Examination-in-chief - Contd.

Examination - continued.

J.C.W.M.MUNASINGHE - Affirmed - recalled.

The 2nd accused was present during the entirety of the proceedings on the 22nd of December. He did not at any time take part in the conversation. He was absolutely silent right through. Till the 19th I have never met the 2nd accused in the company of the 1st accused. The first time I set eyes on the 1st accused was in the evening of the 19th. 10

On the 22nd evening I asked the 2nd accused how he came to know Mr. Livera the 1st accused. Then Mr. Livera replied that the 2nd accused was known to his son in law. My question was addressed to the 2nd accused. I got the answer from 1st accused. I met the 2nd accused on the 19th. It was after sometime that I met the 2nd accused that day in the morning. 20

Cross-Examined by Mr. Nadesan:-

Cross-Examination.

Q. What is your occupation?

A. At present I am a merchant. I do business. I do cinema business.

Q. What else?

A. I also own lorries but now I do not own lorries. 30

Q. Any other business?

A. I am a partner of a business known as "Sri Commodities Ltd".

The nature of that business is the importing of various products. We just started it about 3 months ago. We import milk foods, fountain pens and a number of things. It is a limited liability company. I am the Chairman of the Board of Directors. I import milk from Holland. We have German fountain pens. It is about three months since we started it. 40

Q. Apart from these businesses you are engaged in

have you any other business?

A. No.

I am also possessed of property. That is some coconut and paddy lands.

I became a Member of Parliament in April 1956 for the first time. Prior to that I had no Parliamentary experience at any time. This is the first occasion I am in Parliament. Immediately prior to my entering Parliament I was doing cinema business. I was also a general merchant. I was doing some transport business. I was never doing any contract business.

I never drafted petitions for other people, but as a public worker I have been writing to Members of Parliament and so on.

Q. Have you been drafting petitions for various people to assist them?

A. I must have written letters on behalf of others.

I have never been a petition drawer.

Prior to my entering Parliament I was the Chairman of the Madampe Town Council. I am the Chief Whip of the Government Parliamentary party. I was appointed Chief Whip since this Council was elected. Thereafter I did not read about the duties of a Chief Whip in books to familiarise myself with such duties. Without reading any books I am able to manage my work as Chief Whip. I have not made a study of that question. I don't say that I am an authority on parliamentary procedure, because I am the Chief Whip. I have also been the Parliamentary Secretary to the Ministry of Industries and Fisheries. At present I am the Secretary of the S.L.F.P. In 1956 I was the Secretary. I was appointed General Secretary about 3 months ago. I think I was appointed Secretary of the S.L.F.P. in January 1959. The President of the S.L.F.P. is Mr. S.W.R.D. Bandaranaike. The Vice Presidents are -

Mr. W. Dahanayake
Mr. R.G. Senanayake
Mr. M.W.H. de Silva
Mr. C.P. de Silva and
Mr. Bahurdeen

Just after the elections in 1956 I was the Secretary of the S.L.F.P. I was Secretary on that occasion for one year. As Secretary I have not been collecting moneys or funds for the party. That is not part of the Secretary's work. I did not organise a lottery for the S.L.F.P. but I organised a

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Cross-
Examination
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Cross-
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- continued.

lottery for the Chilaw District, Electoral Branch of the S.L.F.P. All these activities took a lot of my time.

Shown letter Pl.

I wrote this letter on the 20th after a meeting. That was held in October 1958. That was the first time the matter of the acquisition of the Vincent Estate was brought to my notice. I say in this letter that the land is free from floods. I go on to say "Can you help me by having Vincent Estate acquired". I was not one of those affected by the floods. By "helping me" I meant helping my constituents. If I get the land for the constituents they will be pleased with me. I considered that this would be an addition to the rest of my record of service to my constituents. This Vincent Estate is within the Chilaw electorate. I know the estate in and out.

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Q. Did you canvass the votes of the people living on Vincent Estate?

A. No.

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I cannot say whether all the people residing on Vincent estate supported my opponent Mr. Shirley Corea. I can say that all the labourers in that estate would have supported me.

Q. What was the voting strength in the Vincent Estate?

A. I can't say.

In coconut estates the labour population is very small, therefore the voting strength must have been very small.

Q. Do you know that Mr. Livera was an active supporter of Mr. Shirley Corea your opponent?

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A. During the last election I did not count Mr. Livera as one of my supporters.

I presumed that the 1st accused was a supporter of Mr. Shirley Corea. I understood that Mr. Corea had gone to Mr. Livera's house very often. I knew that Mr. Shirley Corea had visited Mr. Livera on several occasions during that period. I cannot say whether the vans of Titus stores were carrying Mr. Corea's voters during the election. The 2nd accused has been working as the Secretary of the Madampe Town Council for several years.

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Q. When the 2nd accused approached you and asked you to meet Mr. Livera to discuss the question of the acquisition of this estate, did you not flare up and drive him away?

A. It was then that it dawned on me that the 1st accused should be exposed.

That had nothing to do with any animosity towards him because he worked against me in the last election.

Q. Was it the first time that anybody approached you with a suggestion of accepting a bribe?

10 A. Many people bring me pineapples and other small presents like that and I tell them not to bring such things if they wanted me to help them and that they must first take those things away.

Previous to this day no one approached me with a suggestion of bribery by way of money. I was very hurt when the 2nd Defendant came and told me that the 1st accused was prepared to meet me and offer me a bribe. Then I decided to lay a trap on him.

Q. Is there an estate called Vincent Estate.

A. I remember this land as Vincent Estate.

20 During one of his visits to me I remember Mr. Livera correcting me saying that this estate is known as "Millicent Estate". I have not seen the title deeds or anything to find out the actual name of the estate. On the 19th of December 1958 when the police officers came to my house they did not bring a tape recording machine.

Q. Did you tell the 1st accused that the conversation that took place on the 19th had been tape recorded?

30 A. I did not say so to the first accused. On the 22nd the police were in my place from about 7.00 to 7.30 p.m. to about 11.00 p.m. on the night of the 22nd. I did not offer them any refreshments for there wasn't sufficient time. Even after the raid I did not celebrate the victory by offering a drink. I was happy that my endeavours to trap the 1st accused was successful.

Q. Before the raid when Mr. Livera wished you a "Merry Christmas" did you not offer him a drink?

40 A. I did not offer him anything.

I told the 1st accused that this is what happens when people try to bribe the M.E.P. Government.

Cross-Examined by Mr. Samarakone -

The 2nd accused worked under me for nearly 8 years as secretary of the Town Council. As chairman of that Council he had much work to do with me.

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Cross-

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- continued.

I had to rely on him for all official duties. The office of the Town Council and my house are almost on the same Compound.

Q. The 2nd accused is a man of few words?

A. He speaks when he is required to speak.

On the 19th morning he came and told me that Mr. Livera was pestering his life to give an introduction to me in connection with the acquisition of the Vincent Estate. He further said that Mr. Livera had an intention of giving me a present or to the party fund or to any person whom I indicated. My reaction to that was that this almost amounted to a bribe and I told the 2nd accused so. I told the 2nd accused that it almost amounted to a bribe. This came as a shock to me and promptly I decided that this man must be exposed. Then I told the 2nd accused to bring the 1st accused. By then I had decided to expose him. On the 19th evening the 2nd accused came with Mr. Livera. My entire conversation on the 19th was with Mr. Livera. I was concentrating only on Mr. Livera on that day. The 2nd accused did nothing beyond introducing Mr. Livera to me and I fixed the date on the 22nd and asked them to come on that day. On the 22nd also the 2nd accused did not utter a word. I do not know whether the 2nd accused knew what the 1st accused intended to do.

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Re-Examined -

Re-Examination.

I had nothing to do with party funds. It is the treasurer who is in charge of party funds. If a person offers me money for party funds I will direct him to the Prime Minister as President of the Party or to the treasurer.

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Intld. J.E.A.A. A.D.J.

No. 5.

M. Ingram.

Examination.

No. 5.

M. INGRAM

M. INGRAM - Sworn - 42 - Inspector C.I.D. Colombo.

In December 1958 also I was attached to the "X" Branch of the C.I.D. That is the branch that investigates into cases of bribes.

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On 19.12.58 I was given directions by Mr. Rajasuriya A.S.P. in that Branch of the C.I.D. to listen to a conversation that was expected to take

place in the bungalow of Mr. Munasinghe. The officers who were instructed to go and listen to the conversation was myself and Inspector Kuruppa. After that instruction was given I was asked to wait in the house of Mr. Munasinghe till 3 in the office and go along with Mr. Munasinghe himself to the bungalow. That day I went to Mr. Munasinghe's bungalow in his car. I arrived at his bungalow at about 6.45 p.m. Having come to his bungalow I decided where Mr. Munasinghe should have his conversation with the accused I suggested that he should have the conversation at the left hand end on the verandah of his house. I made the sketches in connection with this case.

Shown SK1.

This is a sketch prepared by me. I have indicated in this sketch the portico of Mr. Munasinghe's house and from the portico one gets to the verandah which is a fairly long one. From the verandah one goes straight into the room which he uses as his office and to his dining room which is beyond the side road which is indicated in this sketch. On either side of the dining room are two rooms. Coming back to the verandah I have indicated on the left hand corner of it a table and three chairs marked "M" "L" and "F". At the end of the verandah there is a door that leads to a bedroom. The width of the doorway is 4'10". The width of the verandah is 9ft.6ins. and the length of the verandah is between 40 and 50 feet.

On the 19th I arranged that Mr. Munasinghe should have this conversation at the end of this verandah and the place of the conversation I have indicated in the sketch where the table and the three chairs are. Mr. Kuruppu and myself were to be in the bedroom opposite the verandah from where we were to listen to the conversation that took place on the verandah. At the time the conversation was to take place I arranged to have the office light and the verandah light on the right hand side of the verandah. I did not want the light in the bedroom to be on because both myself and Mr. Kuruppu were there. Shortly after 7 o'clock in the evening I had arranged the spot where the conversation was to take place. At 7.35 p.m. a car entered the porch of Mr. Munasinghe. I presumed that that was the car in which the two accused were coming. Mr. Kuruppu and myself entered the bedroom as arranged and Mr. Munasinghe was in the verandah. From

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the position I took inside the bedroom I was able to see a portion of the verandah. I was able to see the two accused getting on to the verandah and meeting Mr. Munasinghe. Mr. Munasinghe finally arranged to bring the two accused to the spot. The persons who came along with Mr. Munasinghe were I assumed to be the 1st and 2nd accused. They came and sat at that table.

On the 19th the 1st accused sat on the chair marked "L" and the 2nd accused sat on the chair marked "F". Mr. Munasinghe sat on the chair marked "M". The door of the bedroom where we were was slightly ajar. The conversation started almost immediately after these accused came there. I heard their conversation. Soon as they entered and took their seats, Mr. Munasinghe talked first. He said "Hello! Mr. Fernando". Then Mr. Fernando replied "Sir, this is Mr. Livera". Then Mr. Munasinghe said "I am glad to know you. Strange that I have not known you before". Then he started talking the main purpose for which they came. Then Mr. Livera spoke about the estate - how he happened to get it and how he sold some portions of it like that. Then Mr. Munasinghe interrupted and said that Mr. Fernando mentioned something to him in the morning. After that they spoke a little more and then Mr. Livera said "I am willing to give something towards the funds". Then there was a telephone call and Mr. Munasinghe got off and went into his office. The other two remained where they were while Mr. Munasinghe was away at the telephone. The other two were talking in whispers which I could not hear. About 3 minutes later Mr. Munasinghe returned and told them the conversation he had over the 'phone. That was something about the Marawila sanitary inspector. Then Mr. Livera said "I am willing to give Rs.5000/- towards the party funds or whatever you suggest". Then Mr. Munasinghe said "If you give me by cheque I will get caught". Then Mr. Fernando the 2nd accused replied by saying "It won't be by cheque but it would be in cash". After that they spoke a little further over other matters and they arranged to meet on Monday the 22nd at about 9.30 or 10.00 p.m. Then they left the place. They spoke something about a letter also. The 1st and 2nd accused left that day at about 8.10 p.m.

Right through till that conversation was over we were in the bedroom that day. I recorded what they spoke in the course of the conversation that day after they left. We left Mr. Munasinghe's house at about 11.30 p.m. or 12.00 midnight. We

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came in Mr. Munasinghe's car and went back in his car. I went back to my quarters at Kelaniya that night. Mr. Karuppu continued in his car.

We reported to Mr. Rajasuriya on the 20th what happened at Mr. Munasinghe's house on the night of the 19th. It was then arranged to detect the 1st and 2nd accused when they came to Mr. Munasinghe's house on the 22nd. Mr. Rajasuriya was in charge of all arrangements on the 22nd. On the 10 22nd the police party was to consist of Mr. Rajasuriya himself, Mr. Kuruppu, Mr. Frazer and myself. Mr. Kuruppu is a sub-inspector. Mr. Fraser is also a sub-inspector who was in charge of the tape recording machine. On the 22nd we left office in Colombo at about 4.50 p.m. in a police car. SI Kuruppu and myself went in one car and Mr. Rajasuriya went in his private car. I am sorry, Sir. That day we went to Mr. Munasinghe's place in one car. That is on the 22nd we all went in one car. That 20 was the police car. The tape recorder was in that car. We reached Mr. Munasinghe's house at about 7 o'clock. Mr. Munasinghe was at home. It was decided that the same spot should be selected for the conversation by Mr. Munasinghe with the accused. The tape recorder we took that day belongs to our Department but not to our section of the Department. I know how it operates. On the night in question this tape recorder was placed in that bedroom and the microphone connecting that tape recorder was 30 placed at a point near this door leading to that room. That door was slightly ajar and the microphone was kept under a stool so that the person sitting on the verandah could not see the mike. The tape recorder was in fact set for the reception of the conversation by Mr. Frazer. I also know how tape recorders are set and I know it was set correctly on this occasion. To make it operate we have to put the main switch and after the tape recorder is set one has to press a button for the 40 purpose of recording the speech of conversation of the party. I was to be in charge of pressing the button at the appropriate time. Mr. Frazer told me that it was set for it to operate. The recorder was set about one hour before the accused came in.

Shown photograph D2F.

This is the photograph of the bedroom in which the recording machine was kept. The machine was placed somewhere near the single suitcase on the ground. It was kept by the side of the suitcase on

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Examination
- continued.

the ground. The door ajar is the door near which the microphone was kept. The stool appearing in the photograph D2c is the stool under which the mike was kept. After that the 1st and 2nd accused came to Mr. Munasinghe's house. As they came the police officers including myself took our positions as arranged. Mr. Rajasuriya, Mr. Frazer and myself were to be in the bedroom adjoining the verandah. Mr. Kuruppu was to be in the office section of Mr. Munasinghe's house. Mr. Kuruppu was dressed in a sarong and a shirt. I was dressed in white longs and a shirt. The others were dressed in European costume. Only Mr. Kuruppu was dressed in sarong and shirt.

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Mr. Rajasuriya was in charge of what was happening that day. I was asked by Mr. Rajasuriya to press the button at about the time the conversation was to start. I was asked to set the record in motion. I was not asked to listen to the conversation. Someone had to watch whether the tape recorder was working. Consequent to the task that was given to me I concentrated on it and did not listen to the conversation that day.

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When the conversation was over the accused and Mr. Munasinghe left the place and went towards the portico I then stopped the recorder. When Mr. Rajasuriya left the room I stopped the recorder from working. The stopping is done by pressing another button. Mr. Rajasuriya went out of the room but Mr. Frazer continued to stay in the room. I removed the spool of the tape recorder and kept it with me. I kept it with me till Mr. Rajasuriya came back. I do not know what happened in the verandah. I cannot remember whether Mr. Rajasuriya came back to the room. I saw Mr. Rajasuriya recording the statements of these accused. The office room is also a part of the hall. He recorded the statements of the two accused and of Mr. Munasinghe. He also recorded my statement as well as the statement of Mr. Kuruppu. I handed over the spool to Mr. Rajasuriya just before he commenced recording the statements.

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After the recording of the notes and the statements we played back the spool because Mr. Munasinghe wanted to hear it. What is recorded in the tape can be played back almost immediately. The only time taken is for re-winding the spool.

I did not take these photographs.

Cross-Examined by Mr. Nadesan -

In the course of the conversation on the 19th Mr. Livera did not offer any money to Mr. Munasinghe he said that he would make a payment to the party funds.

Cross-Examined by Mr. Samarakone -

10 Mr. Munasinghe said that "if you give by cheque I would be caught". The 2nd accused said that it would be in cash. I did not hear Mr. Livera stating "I am one of the leading business men in Colombo. I know what to do".

I did not take down the whole conversation that took place. I only took down what I thought was important. Whatever that I thought was not necessary I did not record. I would not have considered that statement of Mr. Livera as necessary. When the 2nd accused mentioned about "cash" I thought that it was necessary.

20 I was seated just in front of Mr. Livera inside the room. I could have seen only Mr. Livera from where I sat. I did not see the other two. I heard somebody saying "it will be by cash". I can say that it was Mr. Fernando who said it. I know Mr. Munasinghe's voice and therefore I know that it was not his voice. I have not seen the 2nd accused before. I have not heard his voice before. I am certain that it was not Mr. Livera who mentioned about cash.

30 I don't say that Mr. Livera did not say that he was one of the leading business men in Colombo and that he knew what to do. I only say that I did not record everything that I heard. I have given evidence according to what I have heard and what I have noted down.

Re-Examined -

40 On the night of the 19th when I was with Mr. Kuruppu in the bedroom, there were only 3 persons on the verandah. The three persons were these two accused and Mr. Munasinghe. I am quite familiar with Mr. Munasinghe's voice and I could recognise it at any time. I have not met Mr. Livera before but he was the person whom I could clearly see from the position I had taken in the bedroom. The only other person was the 2nd accused, so that if the 1st accused said anything I could both see and hear him, I was familiar with Mr. Munasinghe's voice.

In the District Court, Colombo.

Crown Evidence.

No. 5.

M. Ingram.

28th April, 1959
- continued.

Cross-Examination.

Re-Examination.

In the District
Court, Colombo.

Crown Evidence.

No. 5.

M. Ingram.
28th April, 1959.

Re-Examination
- continued.

The only person who could have then said it would be the 2nd accused.

I said that I was taking notes as the conversation was going on. I do not know shorthand. I took down as much of the conversation as possible that I felt was important.

Q. You said that the 1st accused said on the 19th night "I will give Rs.5,000/- to the party fund or any other fund?"

A. First he said "towards the fund". That was before the telephone call. 1C

I said that he was willing to give Rs.5,000/- towards the fund. The 1st accused came back to that conversation when Mr. Munasinghe came back from the telephones. Then he said that he was willing to give Rs.5,000/- towards the party fund or to "whatever you may suggest". It was after that that Mr. Munasinghe said that if a cheque was given he would be caught.

Sgd: J.E.A.A. A.D.J.

2C

No. 6.

B.R.R.Abeykone.
Examination.

No. 6.

B.R.R.ABEYKONE

B.R.R.ABEYKONE - Sworn - 37 - R.D.C.

Presently of Elpitiya. I was the rural development officer in this area in question for about 5½ years. I was in Chilaw in that capacity until the end of 1958. There is a village headman's division called Ichampitiya. I was working in Chilaw Pitigal Korale North.

In 1958 a number of people within my area were rendered homeless as a result of flooding. There were a number of people who had no houses to live in. 3C

There is a rural development society functioning in the Ichampitiya Village Headman's division. As a rural development officer it is one of my duties to attend the meetings of this society. On 27.10.59 there was a meeting of this particular rural development society. I myself was present at that meeting. Mr. Munasinghe M.P. for Chilaw was one of those present at that meeting. A discussion took place as to how the problem of the 4C

landless in that area could be solved. A resolution was also passed that Government should acquire an estate to settle the flood refugees in that estate. The estate suggested to be acquired was one Martin estate belonging to Mr. Livera and Mr. Munasinghe was asked to take steps for the Government to acquire that land.

Cross-Examined by Mr. Nadesan -

10 There are other lands available beyond that of Mr. Livera

Q. Why was this particular estate picked for acquisition?

A. The rural development society chose this estate because the people who were landless lived round about this area.

20 I understand that certain portions of Mr. Livera's land also go under water during floods. As far as I can remember these people wanted the Government to acquire an estate and then there was a discussion on this.

Q. Was any formal resolution of any kind passed by the rural development society to acquire a certain land?

A. I think a resolution was passed that Mr. Munasinghe should take steps to acquire Mr. Livera's land.

In the course of the discussion at the meeting this Martin Estate was mentioned by the people and not by Mr. Munasinghe.

30 Cross-Examined by Mr. Samarakone - Nil.

Re-Examined - Nil.

Sgd: J.E.A.Allen, A.D.J.

Trial adjourned for 29.4.59.

Sgd: J.E.A.Allen, A.D.J.
28.4.59.

29.4.59.

Both accused are present.

Same appearances as on last date.

Crown Counsel calls :-

In the District Court, Colombo.

Crown Evidence.

No. 6.

B.R.R. Abeykone.

28th April, 1959.

Examination
- continued.

Cross-
Examination.

In the District
Court, Colombo.

No. 7.

J.C.W.MUNASINGHE (Recalled)

Crown Evidence.

J.C.W.MUNASINGHE - Sworn - Recalled.

No. 7.

J.C.W.
Munasinghe
(Recalled)

29th April, 1959.

Examination.

I am the M.P. for Chilaw and as such I am a member of the House of Representatives. At the time I wrote the letter Pl to Mr.C.P.de Silva requesting him to acquire this estate. Mr. C.P. de Silva was the Minister of Lands and Land Development and therefore he was in charge of acquisition matters. That is why I wrote to him. I wrote that letter in my capacity as member of Parliament for Chilaw. I attended the Rural Development Society meeting which I referred to yesterday. I came to attend that meeting as I was invited as Member of Parliament for Chilaw. The meeting was held in my constituency. The land intended to be acquired is also in my constituency. A part of my duties as a Member of Parliament is to interest myself in my constituency and matters affecting my constituency. I was personally aware that people were affected by the floods. As M.P. for Chilaw I was interested in getting the land acquired to relieve them. It was for that purpose that I wrote to Mr.C.P.de Silva who was the Minister in charge of the subject. In both letters addressed to Mr.C.P.de Silva one on the 28th October and the other on the 22nd December I wrote them in my capacity as Member of Parliament for Chilaw and I signed them in such capacity. I was taking action in this matter as the representative of the people of Chilaw who elected me to the House of Representatives. I am not a member of this particular Rural Development Society.

Cross-Examined by Mr. Nadesan -

Cross-
Examination.

I have been interested in the Chilaw constituency for a number of years. Even before I became a member of Parliament I have been interested in the work of Rural development societies. I have been attending the rural development society meetings before this.

Q. Whenever any representations had to be made to authorities in respect of any requirements in your electorate even before you became a Member of Parliament you did that?

A. I did that as President of the Sinhala Maha Sabha and thereafter as Member of Parliament for Chilaw.

Q. Whenever people made any requests in respect of Chilaw you have been making representations to authorities and also to Ministers and you have been taking an interest in those matters?

A. Yes as the head of a political party.

Q. And also as a public man interest in the area and you were trying to nurse that constituency?

A. Yes.

10 Q. You were right along nursing that constituency in attending to their requirements?

A. Yes, whatever I could I did.

When there were rural development society meetings and when I was invited I attended them. When resolutions were passed at those meetings and if I could do anything with regard to those matters I wrote to the authorities.

20 I was not familiar with the conventions and traditions of Parliament when I came into the Parliament. Before I came into the Parliament with regard to the duties of a Member of Parliament I have read the book titled May's Parliamentary Procedure. I have read no other books with regard to the duties of a member of Parliament. In Constitutional Law I have read Jennings on Local Government.

Q. Do you know the limits the duties, power and functions of a Member of Parliament?

A. I have read the Constitution of Ceylon.

30 Q. Apart from what is given in the Constitution of Ceylon and May's Parliamentary Practice and Procedure do you know anything else about the duties, powers and functions of a Member of Parliament?

A. Whatever arises in Parliament as far as my duties are concerned I know how to act.

I may have gone to a police station to bail out people before I became a Member of Parliament. I have been invited for weddings after I became a Member of Parliament.

40 Q. Did you attend those weddings in your capacity of a Member of Parliament?

A. I have attended weddings which I thought I should attend. Whatever weddings I have attended I attended because they were constituents of mine and because I thought I should attend because I know the parties and because they had helped me during my elections. I attended the weddings of my

In the District Court, Colombo.

Crown Evidence.

No. 7.

J.C.W.
Munasinghe
(Recalled)

29th April, 1959.

Cross-
Examination
- continued.

In the District Court, Colombo.

Crown Evidence.

No. 7.

J.C.W. Munasinghe (Recalled).

29th April, 1959.

Cross-Examination - continued.

constituents. Whatever function I thought I should attend I attended, it may be a social function or a wedding.

Q. After you became a Member of Parliament have you been attending social functions in your capacity as a Member of Parliament?

A. I may have attended some social functions in my capacity as a Member of Parliament.

Q. Have you in your capacity as a Member of Parliament gone and inspected any Government Public buildings? 10

A. No.

Q. Have you in your capacity as a Member of Parliament inspected any private buildings?

A. The flood affected buildings. In this instance I inspected the buildings.

Q. Do you know whether there are any limitations with regard to your capacity as a Member of Parliament?

A. Yes.

Q. How did you discover these limitations?

How did you find them out? 20

A. Common sense.

I wrote the letter Pl to Mr.C.P.de Silva, in my capacity as a Member of Parliament. One of my functions is to work for the welfare of my constituents and I wanted this land to be acquired to be given to them.

Q. You say that one of the functions of a Member of Parliament is to work for the welfare of your constituents, from where did you get that knowledge?

A. I had to represent my people and to put forward their needs. 30

Q. In other words you are not an expert on constitutional law?

A. Yes.

Q. You are not an expert with regard to Parliamentary conventions?

A. Yes.

Q. You are not an expert with regard to Parliamentary Practice?

A. Yes.

Q. You have not made a specialised study of Parliamentary law or Parliamentary practice or Constitutional law or Constitutional Parliamentary conventions? 40

A. Yes.

Q. Neither have you made any study of those points?

A. Yes.

I told the Court earlier that I wrote the letter Pl in my capacity as a Member of Parliament. I

took the view that I was entitled to write it in my capacity as a Member of Parliament. I have attended the rural development society meetings in my capacity as Member of Parliament. I could not have gone to the rural development society meeting if I were not invited. I was invited by the members of this particular Rural Development Society for the meeting because I was a member of Parliament. When I went there they told me of their needs. I thought that in my capacity as a Member of Parliament there was a duty or function entrusted to me to write to the Minister in respect of that matter. I think what I thought was correct. I have opened a number of buildings. The latest building I opened was a school building. That was the Thambagalla Government School. I was invited to open that building because I was a Member of Parliament. I opened it in my capacity as a Member of Parliament.

In the District Court, Colombo.

Crown Evidence.

No. 7.

J.C.W.
Munasinghe
(Recalled)

29th April, 1959.

Cross-
Examination
- continued.

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Q. In other words, according to you one of the duties that is entrusted to you is to open school buildings as a Member of Parliament.

A. As a Member of Parliament I was invited to open that building.

Q. Is it in your capacity as a Member of Parliament?

A. Yes.

Q. Do you consider your duties as a Member of Parliament is to open school buildings?

A. If I am called upon to perform any public act I consider that as a duty of mine.

(To Court -

Q. Do you consider it an obligation or as a duty in your capacity as a Member of Parliament?

A. If I am not a member they would not ask me to do so)

Q. Because you are a Member of Parliament various people come to you with various grievances of theirs and you try to satisfy them in their matters?

A. Yes.

Q. No one can charge you for not doing that?

A. Yes.

Q. In your view what are the other things you have opened in your capacity as a Member of Parliament?

A. Rural Development Society textile centres and a number of things like that.

Q. So far as you are concerned you consider that

In the District Court, Colombo.

Crown Evidence.

No. 7.

J.C.W. Munasinghe (Recalled)

29th April, 1959.

Cross-Examination - continued.

opening of school buildings and opening of rural development society buildings etc. you have to do in your capacity as a Member of Parliament?

A. Yes.

I have made a representation to heads of departments in my capacity as a Member of Parliament. I have made representations in such capacity to the Minister of Health. I have made representations in such capacity to Superintendents of Police and Inspectors of Police. I have written to them in my capacity as Member of Parliament.

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(To Court -

Q. You are under no duty bound to write a letter to the Minister of Lands and Land Development?

A. Yes.

Q. You thought in the interests of your constituents you should write?

A. I admit that it is not a duty of mine to write to the Minister of Lands and Land Development or to attend the Rural Development Society meeting, but in the interests of my constituents I did both)

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Re-Examined - Nil.

Sgd: J.E.A.Alles, A.D.J. 29.4.59.

No. 8.

H.C.Gunawardene.

Examination.

No. 8.

H.C. GUNAWARDENE

H.C.GUNAWARDENE - Sworn - 46 years - Land Commissioner, Colombo.

In October 1958 I was acting as Permanent Secretary to the Ministry of Lands and Land Development when Mr.C.P.Perera was away from the Island (Shown Pl). This is a letter written by Mr. Munasinghe to Mr.C.P.de Silva. Pl is dated 28.10.58. On the same day Mr.C.P.de Silva had sent that letter to the Permanent Secretary to the Ministry of Lands and Land Development. On that day I was acting for the Permanent Secretary. Pl came to me with an endorsement by Mr.C.P.de Silva on that day. On 29.10.58 I made a minute to the effect "Send copy to Land Commissioner in duplicate for necessary action". By L.C. I meant Land Commissioner. When steps are taken in connection with the acquisition of land the Permanent Secretary will always

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take the step of asking the Land Commissioner for his report and recommendation. His report and recommendation must be available before a final decision is taken. I am the permanent holder of office of the Land Commissioner now. As Land Commissioner, as soon as I receive the G.A's report stating that the land could be acquired I write to the M.P. of the area where the land is situated to find out his views and that is a matter of routine. We write to the M.P. of the area because generally as the representative of the people of the area he might be able to advise us.

Cross-Examined - Nil.

Sgd: J.E.A.Alles, A.D.J.
29.4.59.

In the District Court, Colombo.

Crown Evidence.

No. 8.

H.C.Gunawardene.

29th April, 1959.

Examination
- continued.

No. 9.

S. KADIRAVELU

S.KADIRAVELU - Affirmed - P.S. Badulla Police Station.

No. 9.

S.Kadiravelu.

Examination.

I am also a police photographer. In connection with this case I went along with Mr.Rajasuriya A.S.P. to the house of Mr.Munasinghe on 24.12.58 and I took certain photographs of the premises of Mr.Munasinghe on the directions of Mr.Rajasuriya (Shown the booklet P2) 6 photographs that I took are in this booklet. I took these photographs and I myself printed and developed them. The photographs P2a is the front view of Mr.Munasinghe's house P2b shows the verandah, P2c shows a section of the verandah, P2d shows the room in which Mr.Rajasuriya was said to have been at the time of the incident on 22.12.58. The person who is seen crouching in that photograph is Mr.Ingram. It was Mr.Rajasuriya who placed Mr. Ingram in that position and asked me to take the photograph. P2e is a photograph of the inside of that room with an officer lying flat on the ground. That officer shown there is Mr.Ingram. Mr.Rajasuriya placed that officer in that position and asked me to take that photograph. P2f is a photograph of the same bedroom taken on the directions of Mr.Rajasuriya.

Cross-Examined - Nil.

Sgd: J.E.A.Alles, A.D.J.
29.4.59.

In the District Court, Colombo.

No. 10.

C. DE SILVA.

Crown Evidence.

C.DE SILVA - Affirmed - Technical Assistant - Radio Ceylon Colombo - 37 years.

No.10.

C. de Silva.

29th April, 1959.

Examination.

I have been working in the Radio Ceylon for 12 years. I have had experience in wire recorders and tape recorders. I own wire recorders and also tape recorders. I am fully acquainted with the mechanism of both these machines. In connection with this case Mr. Rajasuriya A.S.F. consulted me with regard to tape recorders and he showed me a certain tape recording machine which was to be used on 22.12.58 for the purpose of recording a certain conversation. I am acquainted with the mechanism of that tape recorder and how the tape recorder works. That tape recorder is made up of an amplifier and a mechanism for driving the tape on which the recording is made. Any speech or conversation is picked up by the microphone connected to the machine. The sound picked up by the microphone is amplified by the amplifier and his amplifier is connected to the recording head. The tape passes through this head. By this means any sound made is recorded on that tape. These recorders can truthfully record any sound that is picked up by the microphone. The tapes in these tape recorders are coiled in spools and the spool is fitted on to the machine and the machine is set to work. When the machine is working the tape passes through to the other side of the machine and recording is made at head. As soon as the recording is complete it is possible to play back what has been recorded, and the only delay is the time taken to rewind the spool. I have worked other tape recording machines of similar type and this machine in question is an identical model.

Cross-Examined - Nil.

Intld. J.E.A.A. A.D.J.
29.4.59.



No. 11.

A.J. RAJASURIYA.

A.J.RAJASURIYA - Affirmed -- A.S.P.C.I.D. Colombo.

I have been in the C.I.D. from 1954. In December 1958 I was attached to the X branch of the C.I.D. which is the branch that deals with complaints and investigations in regard to bribery. In December 1958 I was in charge of that section. Mr. Ingram who has given evidence Mr. Frazer and Mr. Kuruppu were members of the same branch working under me. At that time Mr. Frazer was not working under me but he was working in that branch from 1955.

On 19.12.58 in consequence of a telephone message I received from Mr. Munasinghe I went to the House of Representatives at 5.30 p.m. I recorded a statement that was made to me by Mr. Munasinghe. In consequence of the statement made to me by Mr. Munasinghe I decided to send two police officers to his bungalow that night to listen to any conversation that might take place in Mr. Munasinghe's house. The conversation that I wanted to be watched and heard by the two police officers was the conversation between the 1st and 2nd accused and Mr. Munasinghe. The two police officers whom I detailed to go to Mr. Munasinghe's house that night, were Inspector Ingram and Sub-Inspector Kuruppu. These two police officers met me at the House of Representatives and they were present at the time I recorded Mr. Munasinghe's statement. After the statement was recorded I left those two officers in the House of Representatives so that they may go with Mr. Munasinghe to his house. There was no arrangement made that day for the purpose of tape recording the conversation. These two officers were instructed to listen to any conversation that took place, to make such notes as they could and then come and report to me what they had seen and heard. I did not go to Mr. Munasinghe's house on the 19th. The two officers came to me on the 20th the following day and made a report to me. After they reported to me I decided to detect the giving of the bribe to Mr. Munasinghe on the 22nd of December and I obtained the necessary authority from the Attorney General. I read the notes that had been made Messrs. Ingram and Kuruppu, I was acquainted with the conversation that took place on the night of the 19th between the two accused and Mr. Munasinghe. The arrangement arrived at between them

In the District Court, Colombo.

Crown Evidence.

No.11.

A.J.Rajasuriya.

29th April, 1959.

Examination.

In the District
Court, Colombo.

Crown Evidence.

No.11.

A.J.Rajasuriya.

29th April, 1959

Examination

- continued.

was that the two accused should come to Mr. Munasinghe's house on the 22nd December round about 9.30 or 10 p.m. A part of my plan was to see that any conversation that was to take place that night was tape recorded. For that purpose I arranged to take to Mr. Munasinghe's house that night a tape recorder which is produced in court. I also took with me two officers who knew how to manipulate that machine, set it and play it back. I took with me Mr. Ingram and Mr. Frazer both of whom were acquainted with the working of that machine. I took a spool for the purpose of recording the conversation. I took that spool with me that day. I produce that spool marked P7. P7 is the spool I used in the recording machine on the night of the 22nd December in Mr. Munasinghe's house. From that date this spool was in my custody and I have kept it in my safe, in my office and it has never come out of the safe except with me. Whenever this spool has been used for the purpose of replaying the conversation that was recorded I have always been present and I have taken the spool into my custody immediately after it had been played. The machine that I used in this connection on the 22nd December is also in court. I have brought it with me to Court. I showed this machine to Mr. C. de Silva the previous witness some days prior to this incident and he examined this machine. Apart from my making arrangements to record the conversation I also decided to listen to the conversation while the conversation was going on. I was present when Mr. Ingram took the measurements to prepare a sketch in this case on 24.12.58. He prepared the sketch on the directions given by me. I took P.S. Kadiravelu along with me to Mr. Munasinghe's house on 24.12.58. I directed him to take certain photographs in connection with this case P2a-P2f are photographs taken on my directions. All that he did was to take the photographs as directed by me and I was present when they were taken.

On 22.12.58 at about 7.40 p.m. I arrived at Mr. Munasinghe's house in a police car along with Inspector Ingram and Sub-Inspector Frazer and Kuruppu and with this tape recording machine and spool. Mr. Munasinghe had already arrived at the house. I knew that the earlier conversation between the 1st and 2nd accused and Mr. Munasinghe had taken place on the left hand side of the verandah. I thought that it was a suitable place for me to arrange to have the conversation that night

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too. I placed a table on the left hand side of the verandah and kept 3 chairs round that table and told Mr. Munasinghe that he should occupy the seat which is indicated by the letter M on the sketch that the 1st accused should be given the seat marked L and that the 2nd accused should be given the seat marked F. I was to stay in the adjoining bedroom with the door slightly ajar so that I could see and hear the conversation. I did not want to have much light so that the accused may not see us. Therefore although there was a light on the left hand side of the verandah I did not have it lighted. I had the light burning in the portico and the light on the other side of the verandah opposite the office section burning. They were 60 c.p. lights. There were no lights burning in the bedroom, the office and the hall. Kuruppu was instructed by me to be in the hall of the house and the three of us Ingram Frazer and myself were in the bedroom adjoining the verandah. I directed I.P.Ingram and S.I.Frazer to get the machine ready for the purpose of recording the conversation and that was done in my presence by Frazer and Ingram. I gave instructions to Ingram that as soon as the two accused came and took their seats, to set the tape recording machine to work so that the machine would be working while the conversation was going on.

(Shown photograph P2f) There is a suitcase on the ground shown in this photograph. The tape recording machine was kept by the side of this suitcase on the ground and the microphone which was connected to the machine by means of a wire had been taken up to the door of the bedroom which was slightly ajar and kept behind or under the stool which appears in the photograph P2c. That stool was placed there so that the person seated on the verandah will not notice the microphone. (Shown photograph P2d). The person seen in that photograph is Ingram whom I placed there when the photograph was taken. At the time the conversation was going on I was in that position in which Ingram is shown on the photograph. The position in which I left the door open is also shown in that photograph (Shown photograph P2c). In P2c I placed Ingram in that position as shown in the photograph when it was taken. The position occupied by the person is the same but they are two views of the photographs taken at two different angles. The persons shown in P2d and P2e is myself and I was right throughout

In the District Court, Colombo.

Crown Evidence.

No.11.

A.J.Rajasuriya.

29th April, 1959.

Examination
- continued.

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In the District
Court, Colombo.

Crown Evidence.

No.11.

A.J.Rajasuriya.

29th April, 1959.

Examination

- continued.

in that position. It took about 30 minutes. We had decided upon the positions we should take. The two accused arrived at about 10 p.m. by car. When I saw a car entering the premises I thought the accused were coming and we took up the positions that we had decided upon earlier. Shortly afterwards the two accused and Mr. Munasinghe came to the portion of the verandah opposite the bedroom in which we were and from my position I could see the seats they took. Mr. Munasinghe sat on the chair indicated as M in the sketch the 1st accused took the chair marked as L, and the 2nd accused occupied the chair marked as F. From the position which I took inside the bedroom I could see the 1st accused. I had not known the 1st accused or the 2nd accused before that date. I had known Mr. Munasinghe before this date. I had spoken to Mr. Munasinghe before on the 19th I knew Mr. Munasinghe's voice on the 22nd. I could see the 1st accused. I could not see the 2nd accused from where I was. The conversation between these people started and it went on for about $\frac{1}{2}$ an hour and right through that period the tape recorder was working and the conversation was being recorded and also I was listening to the conversation. During the discussion they had I saw the 1st accused handing Mr. Munasinghe the parcel P6 which I produce before court yesterday. Then Mr. Munasinghe handed to the 1st accused an envelope in which I subsequently found to contain two letters P3 and P4 and the envelope is P5. I saw the 1st accused handing the parcel P6 to Mr. Munasinghe and Mr. Munasinghe giving the envelope to the 1st accused from the bedroom. Shortly after that transaction took place the two accused and Mr. Munasinghe got up from their seats and walked towards the portico. They wished each other a Happy Christmas. Then I got up from where I was and I went towards the portico. When I got to the verandah the 1st accused was just stepping on to the portico and the 2nd accused was just behind him and Mr. Munasinghe was to the left of the 1st accused. I said "Mr. Livera" and stopped him. I disclosed my identity saying that I am Rajasuriya A.S.P. C.I.D. I asked for the envelope from the 1st accused which Mr. Munasinghe gave him and the 1st accused gave the envelope to me. I took the parcel which Mr. Munasinghe was having in his hand. I took all three of them into the office section of the hall. It was about 10.30 p.m. when I took charge of these

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documents. I signed my name on the documents, dated them and put down the time as 10.30 p.m. The 1st accused did not want to make any statement nor initial the documents. The 2nd accused initialled the documents. I counted the money in the parcel P6 and found that there was Rs.5,000/- in Rs.100/- notes. The 2nd accused Mr. Munasinghe's statement. I then recorded the statement of the person who was the driver of the car in which the accused came. Thereafter the two accused were allowed to go away with the other person who was the driver of the car. The two accused left at about 11.15 p.m. Then I made my notes and recorded the statements of the other police officers who were present there in the house of Mr. Munasinghe. I left Mr. Munasinghe's house at about 12.30 that night. After the accused left I took charge from Inspector Ingram the spool P7 which I produced in court today and from that time onwards that spool had been in my custody.

I was listening throughout to the conversation between the two accused and Mr. Munasinghe on the night of the 22nd of December in Mr. Munasinghe's house. That night before I left Mr. Munasinghe's house that tape record was played at the request of Mr. Munasinghe. I was present when it was played and I listened to the conversation as recorded and having regard to what I had heard I found that it was an accurate record of the conversation that took place between the two accused and Mr. Munasinghe. Even subsequent to that I have got this tape record played on several occasions for the purpose of making a record of the conversation as so recorded, so that my knowledge of the discussion that took place that day between the two accused and Mr. Munasinghe was obtained firstly by my presence at the time it took place and secondly by the replaying of the tape record a number of times. The conversation commenced shortly after the accused arrived at Mr. Munasinghe's house at about 10 p.m. One of the first things that happened during the conversation was the reading of the letter P3 that Mr. Munasinghe has already prepared before the arrival of the two accused. Mr. Munasinghe asked the 1st accused whether he was satisfied with the document. After some discussion the 1st accused stated that he would like to have some document which he could keep with him. According to the conversation the document P3 was a document that was to be given to Mr. C. P. de Silva by the 1st accused. The 1st accused expressed anxiety to have

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Crown Evidence.

No. 11.

A. J. Rajasuriya.
29th April, 1959.

Examination
- continued.

In the District
Court, Colombo.

Crown Evidence.

No.11.

A.J.Rajasuriya.

29th April, 1959.

Examination
- continued.

a document to keep with him. No such document was ready when the 1st and 2nd accused came there. In order to prepare such a document Mr. Munasinghe had to leave the chair on which he was seated to get a paper to write another letter as requested by the 1st accused. I only saw him leaving the chair on which he was seated and coming back again. I did not see the paper I know that Mr. Munasinghe said that he had to leave the place to take a paper. Then I heard the 1st accused dictating a letter and Mr. Munasinghe was writing down what the 1st accused was dictating. I have subsequently read the letter P4 and what is written in P4 is what was dictated to Mr. Munasinghe by the 1st accused that night. The 1st accused appeared to be satisfied with the letter P4. I heard that while dictating the letter the 1st accused said to write "with reference to your letter of the 20th instant". The 1st accused went on to explain that though there was no such letter received by Mr. Munasinghe the 1st accused would send a letter dated the 20th so that it could fall in line with P4. Thereafter the conversation drifted on to the land that was intended to be acquired actually getting under water when there were floods in the Deduru Oya. Then the conversation drifted on the various other matters during which there was a reference to the Shell Company strike, to Mrs. Salmon's funeral, and certain other matters, unconnected with the subject matter of this case. The arrangement arrived at between the two accused and Mr. Munasinghe that night was that the 1st accused was to go and see Mr. C.P. de Silva with the letter P3 that is written by Mr. Munasinghe addressed to Mr. C.P. de Silva and Mr. Munasinghe's position was that once this document was given to Mr. C.P. de Silva acquisition proceedings would be stopped in respect of this estate in question owned by Mr. Livera. An envelope was handed over by Mr. Munasinghe to the 1st accused. The 1st accused handed over the parcel P6 to Mr. Munasinghe. Before the parcel was handed over to Mr. Munasinghe by the 1st accused Mr. Munasinghe said "What about the other matter we discussed". I understood that it referred to the money. Then Mr. Livera said "I can take your word for it". Then after a pause he put his hand into his left pocket and took a parcel and handed it to Mr. Munasinghe. After Mr. Munasinghe got that parcel into his hands he said "Now Mr. Livera I want to ask you something else. Now this money I received is what you said

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you will give for consideration of what you
 ah! for consideration of this case ah! to
 which Mr. Livera said "yes" Then Mr. Munasinghe
 said "That is the main thing" Mr. Livera then said
 "So let it be between the three of us, not a word
 anywhere to be talked even" to which Mr. Munasinghe
 said "yes naturally". Thereafter Mr. Livera want-
 ed to know whether he could see Mr. Munasinghe after
 seeing Mr. C.P. de Silva. Then Mr. Munasinghe said,
 "You can see Mr. C.P. de Silva and if there is any
 difficulty you can come and see me later". The
 last words on record are Mr. Munasinghe saying
 "Thank you. So good night. Happy Christmas". The
 wishing of a happy Christmas took place at the left
 hand side of the verandah. The portico is some
 distance from that place, between 15-20 feet. The
 conversation that took place between me and the
 accused and Mr. Munasinghe is not recorded.

Cross-Examined - Nil.

Sgd: J.E.A. Alles, A.D.J.
 29.4.59.

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 Court, Colombo.

Crown Evidence.

No. 11.

A.J. Rajasuriya.
 29th April, 1959.
 Examination
 - continued.

No. 12.

COURT NOTES

Crown Counsel closes the case for the prosecution
 reading in evidence the Productions P1 to P7.

Mr. Nadesan calls no evidence and he closes the
 case of the 1st accused.

Mr. Samarakoon calls no evidence and he closes the
 case of the 2nd accused.

Sgd: J.E.A. Alles, A.D.J.

Trial adjourned for lunch.

29.4.59.

Prosecution closes the case.

Messrs. Nadesan and Samarkone state that they
 are not calling any evidence for the defence.

Mr. Pramaratne Crown Counsel addresses Court.

He refers to Sec. 14(a) and (b) See also sec-
 tion 89 defining the word "offer".

Re 2nd accused he refers to Section 23(2) Sec-
 tion 100 of the Penal Code referred to.

No. 12.

Court Notes.

29th April, 1959.

In the District Court, Colombo.

No.12.
Court Notes.
29th April, 1959
- continued.

The Parliament's powers and privileges - Act No.21 of 1953. See part A to the Schedule.

Mr. Nadesan addresses Court:-

Political power in a State is generally divided into 3 broad categories -

- (1) Legislative power which enacts laws that govern society.
- (2) Executive power which applies the laws to particular situations.
- (3) Judicial power which determines whether the Executive authority conforms to the rules laid down by the Legislature. 10

He refers to the Constitution of Ceylon. Sessional paper 3 of 1948 Sections 29 to 39 which deals with the legislature power to and procedure.

Further hearing on 30.4.59.

Intld. J.E.A. A.D.J.
29.4.59.

30th April, 1959. 30.4.59.

Appearances as before. 20

Mr. Nadesan addresses Court.

He cites - 42 N.L.R. page 357.

Dr. Herman Finer - "Constitutional Law" Chapter 4, page 9 - 7th Edition.

Wade and Philips - Constitutional Law page 95 at page 98.

Harold Laski's "Parliamentary Government" page 147.

Privileges of Parliament Act 21 of 1953.

Section 4 of the Land Acquisition Ordinance No.9 of 1950. 30

May - "Parliamentary Practice" 14th Edition Chapter 4, pages 41, 125, also pp.61 and 65.

Intld. J.E.A.A., A.D.J.

Court adjourned for lunch

Intld. J.E.A.A., A.D.J.

30.4.59.

Trial resumes after lunch.

Both accused are present.

Same appearance.

Mr. Nadesan continues his address, and refers to Sections 14, 24 and 16 of the Bribery Act. He cites Law Journal Queen's Bench (1862) Vol.31 page 236 (1863 2H & C page 509: also refers to page 514 1872 Law Reports 4 (Privy Council) page 191 1873 Law Reports Common Pleas page 7.

1898 1 Queen's Bench page 109.

10 1852 3 House of Lords Cases page 639. Also at 686, 673 and 663. English Reports 10th Vol. page 252. Section 52 of Courts Ordinance.

Mr. Samarakoon for the 2nd accused addresses court and cites 1953 Vol.II Weekly Law Reports page 281 1947 2 All England Reports page 837

Mr. Premaratne Crown Counsel replies and cites Craies Statute Law 5th Edition page 504 bottom Maxwell's Interpretation of Statutes 10th Edition page 275

20 Intld. J.E.A.A., A.D.J.
30.4.59.

Various legal arguments have been submitted to me and these have to be considered by me before I deliver my verdict. As tomorrow is a public holiday, I postpone this case for the day after tomorrow i.e. 2.5.59.

Intld. J.E.A.A., A.D.J.
30.4.59.

No. 13.

2.5.59.

JUDGMENT.

30 The facts in this case are not seriously contested and I might say at the very outset that the facts simply cannot be contested. Anyway it is necessary to give a short summary of the facts to appreciate the legal arguments adduced in the case.

40 In April 1956 Mr.J.C.W.Munasinghe had been elected as Member of Parliament to represent the Chilaw Electoral District in the House of Representatives. In the year 1958 there were serious floods in the Chilaw electorate area and in October 1958 there was a meeting of the Rural Development Society to which Mr.Munasinghe had been invited as Member of Parliament for the area. Mr. Munasinghe attended

In the District Court, Colombo.

No.12.

Court Notes.

30th April, 1959
- continued.

No.13.

Judgment.

2nd May, 1959.

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Court, Colombo.

No.13.

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- continued.

the meeting and at the meeting it was decided that Mr. Munasinghe as Member of Parliament for the area should make representations to the Minister of Lands & Land Development to get the land known as Vincent Estate belonging to the 1st accused acquired to give relief to flood victims in that area. Accordingly on the 28th of October 1958 Mr. Munasinghe wrote the letter Pl. This letter is written on note paper headed "House of Representatives" and signed by "J.C.Munasinghe M.P. Chilaw". It is addressed to the Honourable C.P.de Silva Minister of Lands and Land Development. It proceeds to state "My dear C.P. The people of Echchampi-
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tiya Sangathketana and other villages bordering the Chilaw area have suffered heavy flood damage and purchase of land under village expansion for the Chilaw area has become a matter of public urgency. They have no houses to live in and are going through great hardship. Can you please help me by having Vincent Estate in extent 175 acres
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situated within the Headman's division of Echchampi-
tiya, Chilaw acquired for village expansion particularly for alienation to the flood affected people. The land is free from floods and ideally suited for alienation purposes as it is within close proximity to the Chilaw C. area. This land belongs to Mr. Livera proprietor of Titus Stores, Colombo. I strongly recommend the acquisition of this land for alienation to the flood affected people of the area". Though in this letter
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he asks the Minister to help him, it is clear that the object of this letter was to get the Minister to take steps to acquire Vincent estate for alienation to the flood affected people of the area. This letter is signed by Mr. Munasinghe as M.P. for Chilaw. I shall discuss later the question of whether he had the "capacity" to write this letter as M.P. for Chilaw. For the present it is sufficient to state that Mr. Munasinghe took this letter
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personally to the Hon.Mr.C.P. de Silva and on the very same date Mr.C.P.de Silva has written the following endorsement at the bottom of the letter: "Land Commission for early action. M.P. Chilaw asks this land be alienated in $\frac{1}{2}$ acre lots for people who got ruined by the floods and those people of Chilaw town who have employment but no houses to live in. Please take acquisition proceedings immediately". The Acting Permanent Secretary to the Ministry has then made a further endorsement below Mr.C.P.de Silva's endorsement which
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reads "Send copy to Land Commissioner in duplicate for necessary action". Thereafter in December 1958 the Government agent was directed by the Land Commissioner to take steps to acquire Vincent estate, and the Government agent called upon the D.R.C. to report on the land sought to be acquired. After that the 1st accused came with Mr. J.P. Fernando the Chairman of the Urban Council Chilaw, to interview the Government agent. The evidence of the Government agent is that he got the impression that the 1st accused was not agreeable to the acquisition as he stated that the land gets submerged by the floods and was not suitable for a housing scheme. The Government agent told him that it was Mr. J.C.W. Munasinghe M.P. for Chilaw who initiated the proposal to acquire the land and he should make his representations to the Minister of Lands and Land Development who was the final authority.

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I now come to the facts directly bearing on the present case. The 2nd accused is both at the present moment and also at the time relevant to this case the Secretary of the Urban Council Puttalam. Prior to that from about 1947 up to about the year 1956 he was the Secretary of the Town Council Madampe. During this period Mr. J.C.W. Munasinghe was the Chairman of the Town Council Madampe. There can be no doubt that during this period of nearly eight years Mr. Munasinghe and the 2nd accused worked in close association and became well known to each other. It is also in evidence that the 2nd accused was a friend of a son in law of the 1st accused. I have already referred to the 1st accused's interview with the Government agent, Puttalam and the latter's statement to the 1st accused that it was Mr. Munasinghe who had initiated the proposal to acquire the 1st accused's land but that the final authority was the Hon. Minister of Lands and Land Development. After this interview the 1st accused appears to have contacted the 2nd accused and during the morning hours of the 19th of December 1958 the 2nd accused called on his old friend and master Mr. Munasinghe at his house at Dalugama Kelaniya. He told Mr. Munasinghe that the 1st accused was pestering his life to get an introduction to Mr. Munasinghe to discuss the question of the acquisition of his land and to prevent the land being acquired as only Mr. Munasinghe or C.P. de Silva could save the land. He further told him that the 1st accused had an intention of giving Mr. Munasinghe a present either for himself or for his

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party or to some person nominated by him if the acquisition could be stopped. Mr. Munasinghe says that he was taken aback by this suggestion and told him that this amounted to giving a bribe. Thereupon the 2nd accused told him that he had only conveyed what the 1st accused wanted him to convey. At this stage Mr. Munasinghe states that he decided to inform the police and lay a trap for the 1st accused. It is suggested that Mr. Munasinghe decided to inform the police because the 1st accused was a supporter of the candidate who opposed him at the elections in 1956. It is irrelevant to this case to consider what was the motive of Mr. Munasinghe. The fact remains that having decided to inform the police he asked the 2nd accused to bring the 1st accused along to his bungalow at about 7.30 p.m. that day to discuss the matter of the acquisition. After the departure of the 2nd accused with this message Mr. Munasinghe went to the House of Representatives and rang up Mr. Rajasuriya the A.S.P. in charge of the bribery section of the C.I.D. Mr. Rajasuriya met him and after recording Mr. Munasinghe's statement he detailed Inspector Ingram and Sub-Inspector Kuruppu to accompany Mr. Munasinghe to his bungalow to await the arrival of the two accused. The two inspectors gave instructions to Mr. Munasinghe as to how he ought to carry on his conversation with the accused. The sketch marked SK1 shows an outline of Mr. Munasinghe's premises. Mr. Munasinghe was instructed to sit on the chair marked M, the 1st accused was to be given the seat marked L and the 2nd accused was to be given the seat marked F. The two Inspectors took up positions in the room just behind these chairs with the door leading to the room slightly ajar, and Mr. Munasinghe was asked to talk loud enough to be heard by the Inspectors. Shortly after 7.30 p.m. the two accused arrived by car and the 2nd accused introduced the 1st accused to Mr. Munasinghe. Mr. Munasinghe had not known or met the 1st accused previously though he had known him as the proprietor of the lands belonging to the Martin Estates Co., Ltd., of which Vincent estate formed a part. Then the two accused were escorted by Mr. Munasinghe to the respective chairs assigned to them and then started a conversation. The 1st accused told him how he came to own the land and the sentimental value attached to the land because that was the land where he goes and stays during his visits to his

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estates at Chilaw, and told that he would be grateful to him if he could avoid the acquisition. Then Mr. Munasinghe told him about the suggestion which had been conveyed to him earlier that morning by the 2nd accused. The 1st accused said that he would give him anything to prevent the acquisition of the land. At this stage the conversation was interrupted by the ringing of Mr. Munasinghe's telephone. Mr. Munasinghe attended to the telephone and came back to resume the conversation. Then the 1st accused told him that he would give Rs.5,000/- if he helped him to prevent the acquisition. Mr. Munasinghe told him that if he accepted a cheque he would get caught and the 1st accused then told him that he was a leading business man in Colombo and he knew how to do these things and would pay him the Rs.5,000/- in cash. Mr. Munasinghe then said that the Minister had already ordered the acquisition and that he would have to give a letter to the Minister withdrawing his application for the acquisition of this estate, and asked him when he wanted this done as he would be only free to attend to this matter on Monday the 22nd of December. It was then agreed that the accused should come with the money on Monday the 22nd December between 9.50 and 10 p.m. and Mr. Munasinghe promised to give him the letter when he received the cash. Thereafter both accused left by the same car. In the meantime the two police officers were listening to the conversation from the adjoining room, and Inspector Ingram has given evidence for the prosecution in this case. He entirely corroborates the evidence given by Mr. Munasinghe except for one particular which affects the case against the 2nd accused. Inspector Ingram states that it was the 2nd accused who said the Rs.5,000/- would be paid by cash, whereas Mr. Munasinghe says it was the 1st accused who made this statement. I prefer to accept the evidence of Mr. Munasinghe because Mr. Munasinghe saw and heard the accused, whereas the 2nd accused was not visible to Inspector Ingram when he was lurking behind the door of the room. However even if this piece of evidence is entirely eliminated there is a surfeit of other evidence to convict the 2nd accused on the facts, as I shall mention later. Anyway after the departure of the two accused on the evening of the 19th of December the stage was set for the next meeting that was to take place on the evening of the 22nd of December.

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On the 22nd of December Mr. Munasinghe went as

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usual to the House of Representatives and returned home about 6 p.m. about 7.30 or 8 p.m. this time four police officers came in a police car. They were A.S.P. Mr. Rajasuriya, Inspector Ingram, Inspector Frazer and Sub-Inspector Kuruppu. This time they brought with them a tape recording machine which Inspectors Ingram and Frazer knew how to manipulate. A.S.P. Rajasuriya inspected the layout and decided that the arrangements made on the evening of the 19th should remain. The tape recording machine was installed in the room adjoining the door which again was left slightly ajar. The microphone that was connected to the tape recording machine was left under a small table near this door, and the A.S.P. and the two Inspectors were to take up positions inside the room while Sub-Inspector Kuruppu who was in a sarong was to take up his position in the office section of the hall behind the verandah. Shortly after 9.30 p.m. the two accused came by car. They alighted from the car and walked into the verandah. This time there was no necessity for introductions. Mr. Munasinghe escorted the accused to their respective chairs, and this keen and leading business tycoon never seemed to suspect. After the accused had taken their respective seats Mr. Munasinghe read out the letter P3 dated the 22nd of December which had been drafted for him for the occasion. This letter is written on notepaper headed "Chief Government Whip House of Representatives Building" and is dated the 22nd of December 1958. The subject of the letter is written at the top of the letters as "Withdrawal of Application for Acquisition of Wilson estate alias Vincent estate, part of Martin estate, Chilaw". It is addressed to the "Hon.C.F.de Silva Minister of Lands and Land Development Colombo". It is signed by "J.C.W. Munasinghe M.P. Chilaw. It reads "My dear C.P. Objections have been raised against the acquisition of Wilson estate, Chilaw owned by Mr. Livera of Titus Stores, Colombo on the grounds that the land in question gets, submerged during the Deduru Oya floods and is not suitable for housing purposes. I have inspected the land and I find a stream leading from Deduru Oya running across the land and during floods it overflows its banks and inundates the land on either side. Under the circumstances I hereby withdraw the application I made to you for alienation of this land. There is plenty of land available in the area north of Aluthwatte where we

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10 have already acquired four acres of land. I suggest that the Government agent be directed to acquire available highland North of Aluthwatte beyond the railway line and the proposed acquisition of Mr. Livera's estate be dropped. Trusting this will meet your immediate attention, Yours sincerely, J.C.W. Munasinghe M.P. Chilaw". The 1st accused was satisfied with this letter but being a keen business man and knowing that if P3 was handed
20 to Mr.C.P.de Silva he had no document in his own hand he suggested that Mr. Munasinghe should write a letter to him as if in reply to an earlier letter written by him to Mr. Munasinghe which he promised to give to him later. Thereupon at the 1st accused's dictation Mr. Munasinghe sat down and wrote the letter P4 also dated the 22nd of December. In this letter Mr. Munasinghe purports to write "Dear Mr. Livera with reference to your letter of the
30 20th instant regarding the acquisition of your land I have made inquiries at the spot with regard to the objections you raise in your letter and find them to be correct. I enclose herewith a letter to Mr. C.P. de Silva to drop the matter and request the G.A. to find alternate sites in areas that do not get affected by floods". Thereafter the 1st accused took out a bundle from his trouser pocket and gave the bundle to Mr. Munasinghe on his handing over the letters P3 and P4 in the "On Her Majesty's Service" envelope P5 addressed to the Hon. C.P. de Silva Minister of Lands, Colombo. Thereafter the accused prepared to leave and Mr. Munasinghe shook hands with the 1st accused wishing him a merry Christmas when the A.S.P. Rajasuriya rushed out of the room. He disclosed his identity to the accused as being from the C.I.D. and asked the 1st accused for the letters in his hand. The first accused handed him the letters P3 and P4 in the envelope P5, and Mr.Munasinghe handed over to the A.S.P. the bundle P6 which contained Rs. 5,000/- in one
40 hundred rupee notes. Thereupon Mr.Rajasuriya took the accused to the office room section of the Hall to record their statements. The 1st accused refused to make a statement or even to initial the documents. The 2nd accused signed all these documents and made his statement and Mr.Munasinghe also made a statement. To satisfy himself that the tape recording machine had faithfully recorded all the conversation that took place, Mr. Munasinghe got the A.S.P. to play back the record after the
50 accused had departed. This was done, and the record of this conversation has been produced marked

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P7 but the record itself has not been played before me. The evidence of Mr. Munasinghe is corroborated in all particulars by the evidence given by the A.S.P. Mr. Rajasuriya and Inspector Ingram.

In the face of all this testimony it is not surprising that neither of the accused chose to give evidence or even to seriously contest the evidence given by the prosecution witnesses. Only it is argued on behalf of the 2nd accused that the 2nd accused not having indulged in any conversation regarding the transaction of this land acquisition on the evening of the 19th of December and on the 22nd of December there is not sufficient evidence to convict him of the charges of aiding and abetting against him. Abetment has been defined by Section 100 of Ceylon Penal Code which states that a person abets the doing of a thing who

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- (1) instigates any person to do that thing, or 20
- (2) engages in any conspiracy for the doing of that thing or
- (3) intentionally aids, by any act or illegal omission the doing of that thing.

There is no evidence that the 2nd accused instigated the 1st accused, but there is a surfeit of evidence that he complied with Clauses (2) and (3) of this definition. Before I refer to such evidence however I might refer to explanation (3) appearing in the Penal Code after this definition.

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This explanation sets out that whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof is said to aid the doing of that act. In this case obviously before the 2nd accused went to meet his old master on the morning of the 19th of December the two accused must have met and conversed with each other and the 1st accused must have told him about the proposal to acquire his property and the Government agent's talk with him that it was Mr. Munasinghe who had initiated the proposal to acquire his land and the Minister being the final authority who could stop the acquisition at the request of the person who initiated the proposal to acquire the land. It is after this conversation that the 2nd accused meets Mr. Munasinghe and tells him that the 1st accused

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had an intention of giving a present either to him or to his party or to any person nominated by him if the acquisition could be stopped. Thereafter after Mr. Munasinghe agreed to meet the 1st accused, the 2nd accused comes along to Mr. Munasinghe in the company of the 1st accused and introduces the 1st accused to Mr. Munasinghe and he was present right through the conversation when Mr. Munasinghe agreed to give the 1st accused a letter to the Minister withdrawing his application to acquire the 1st accused's land and the 1st accused in turn agreed to give Mr. Munasinghe a sum of Rs.5,000/- in return for such letter. Thereafter again he accompanies the 1st accused on the evening of the 22nd of December when this transaction is concluded to the entire satisfaction of the 1st accused until interrupted by the A.S.P. and the other police officers. Finally there is the further evidence of Mr. Munasinghe that a few days after the 22nd of December the 2nd accused turned up again at his bungalow with two members of the town Council Madampe bewailing in lamentation "Aiyo! Why have you done this to me Sir! Why didn't you give me a slap and turn me out when I first came to you with this suggestion". As I stated earlier, the evidence on the facts is overwhelming against both accused in respect of the charges laid against them. I shall now deal with the legal issue on which the accused mainly rely for a verdict in their favour.

The charges against the accused are based on Section 14 of the Bribery Act No.11 of 1954. Section 14 reads as follows:- "A Person

(a) who offers any gratification to a judicial officer or to a member of the House of Representatives as an inducement or a reward for such officer's or member's doing or forbearing to do any act in his judicial capacity or in his capacity as such member or

(b) being a judicial officer or a member of the House of Representatives solicits or accepts any gratification as an inducement or a reward for his doing or forbearing to do any act in his judicial capacity or in his as such member, shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years or fine not exceeding five thousand rupees or both".

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2nd May, 1959

- continued.

In the District
Court, Colombo.

No.13.

Judgment.

2nd May, 1959

- continued.

At the very outset I might mention that I agree with learned Counsel for the accused that the gratification must be given or accepted for doing an act or forbearing to do an act in his judicial capacity as a judge and in his capacity as a member of the House of Representatives. For instance if a judge had no legal capacity to act or forbear from doing an act as a judge in a particular case, the giving of a gratification in such a case would not be caught up by Section 14 of the Bribery act. Similarly if a member of the House of Representatives had no legal capacity to do a certain act as such member the giving of a gratification to do such act would not be caught by Section 14. It may seem paradoxical, after a heavy and lengthy argument going on for nearly two days, to say that the short and straightforward issue to be decided in this case is whether Mr.J. C.W.Munasinghe had the legal capacity to write the letter P1 as M.P. for Chilaw to the Minister of Lands and Land Development suggesting that the 1st accused's land should be acquired or to write the letter P3 suggesting on receipt of a gratification that the land should not be acquired. It is on the answer to this question that the verdict in this case depends. If Mr.J.C.W.Munasinghe M.P. for Chilaw had the legal capacity to write either the letter P1 or P3 the accused must be convicted of the charges laid against them. If Mr. J.C.W. Munasinghe M.P. for Chilaw had no legal capacity to write either of these letters the accused must be acquitted. As Member of Parliament Mr. Munasinghe constitutes a member of the Legislative Assembly of this Island. According to our own Constitution as well as according to the various texts on Constitutional Law and Procedure the Legislature has certain distinct functions to perform just as the Executive and the Judicature have their own specific functions to perform. It would be presumptuous on my part even to attempt to disagree with the various eminent Constitutional authorities cited by Counsel but the question to be decided in this case is whether Mr.J.C.W.Munasinghe is legally incompetent or legally "incapacitated" from doing the act which he did when as a Member of Parliament he wrote the letter P1 and P3 to the Hon. Minister of Lands. Just as a Judge, who has not taken his oaths as a Judge or who has no jurisdiction to try a particular case has no legal capacity to try such a case, can it be said that Mr.Munasinghe had

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no legal capacity as Member of Parliament to write the above letters to the Minister? The accused would certainly be entitled to an acquittal at the hands of this Court if Mr. Munasinghe as Member of Parliament usurped to himself the executive powers of the Minister of Lands and chose to write to the Land Commissioner directing him to take steps to acquire the 1st accused's land or if he chose to write to the Land Commissioner directing him to take steps to acquire the 1st accused's land or if he chose to write to the Land Commissioner directing him not to take steps to acquire this land. In such an event Mr. Munasinghe the Member of Parliament would certainly not have the legal capacity to act in that manner. The position here is entirely different. Mr. Munasinghe M.P. has not usurped the functions of the executive. All he has done is to suggest to the executive authority as M.P. for Chilaw that a certain land in his electoral area be acquired to give relief to flood victims also in his electoral area. It is left entirely to the executive authority to act or not on this request made by the Member of Parliament. This is the sort of request even a private citizen can make to an executive authority. Seeing the distress suffered by flood victims in the residential area where I live I as a private citizen can suggest to the Minister of Lands to acquire a particular vacant premises for their occupation. If a private citizen can do exactly what Mr. Munasinghe M.P. has done, can it be said that Mr. Munasinghe has no legal capacity to do this act as Member of Parliament for the area? It is true that Mr. Munasinghe M.P. can make the same suggestion that has been made in the letters P1 and P3 to the Minister in Parliament and this is a right which a private citizen who is not an M.P. does not have but merely because as M.P. has the right to make this suggestion to a Minister in Parliament is he thereby legally "incapacitated" as M.P. from making the same suggestion to the Minister outside the House of Representatives. I have carefully perused the various constitutional authorities submitted to me by Learned Counsel the various functions of a Member of Parliament as a constituent of the Legislature have been set out, but nowhere is it stated that his capacity as a Member of Parliament to make a suggestion of this nature ceases once he leave the floor of the House. In my opinion Mr. Munasinghe was not legally competent or legally "incapacitated" as Member of

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No.13.

Judgment.

2nd May, 1959

- continued.

In the District
Court, Colombo.

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2nd May, 1959
- continued.

Parliament from writing the documents P1 and P3 to the Hon. Minister of Lands and Land Development. In the result I have no alternative but to find the accused guilty of the charges laid against them.

Intld. J.E.A.A., A.D.J.
2.5.59.

Sentence -

The passing of sentence is one of the most difficult duties a judge is called upon to perform I have considered the submissions made by Counsel for both accused very carefully. However I must say ~~this~~ that the giving of a bribe to a Public Officer or to any Member of Parliament is always a reprehensible act whether the person who receives such a bribe is a person whose reputation is above reproach or not and even if such person had no "capacity" to do the act for which he was bribed. I must also take into consideration another factor viz; that a dangerous impression is now fast gaining ground in the country that a person can get away with anything even with murder, provided he has sufficient political or financial backing. In my opinion only a term of imprisonment will meet the ends of justice and serve as a deterrent both to other bribe takers as well as other bribe givers.

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I convict the 1st accused on counts 1, 3 and 5 of the Indictment and sentence him to three months R.I. on count 1, three months R.I. on count 3, and three months R.I. on count 5. These sentences will run consecutively that is to say the 1st accused will undergo nine months R.I. in all.

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With regard to the 2nd accused though it may be urged that he was only a tool in the hands of the 1st accused, the 2nd accused is no chicken himself. He is holding a responsible position in the Public Service as Secretary of the Urban Council Puttalam. He appears to have known Mr.J.C.W. Munasinghe very well and had worked in close association with him for a period of nearly 8 years. There is no excuse for his conduct in allowing his knowledge of Mr. Munasinghe to be exploited in the manner he has done. I convict the 2nd accused on counts 2, 4 and 6 and sentence him to two months R.I. on count 2, two months R.I. on count 4, and two months R.I. on count 6. The sentence will run consecutively that is to say the 2nd accused will undergo a term of six months R.I. in all.

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In the event of appeal the 1st accused will stand out on bail in Rs.1000/1000 and the 2nd accused will stand out on bail in Rs.100/100.

Sgd: J.E.A.Alles, A.D.J.
2.5.59.

In the District Court, Colombo.

No.13.

Judgment.

2nd May, 1959
- continued.

No. 14.

PETITION OF M.G.J.M. DE LIVERA

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

10 1. Mihindukulasuriya Guruge Joseph
Michael de Livera of 165, Stafford
Place, Maradana Colombo-10.
First Accused Appellant

Vs.

The Queen
Complainant-Respondent

In the Supreme Court.

No.14.

Petition of
M.G.J.M. de
Livera.

2nd May, 1959.

To the Honourable the Chief Justice and the other Judges of the Supreme Court of the Island of Ceylon.

This Second day of May 1959

20 The Petition of Appeal of the above-named first accused Appellant showeth as follows :-

1. Your Lordships' Petitioner, the above-named first accused appellant, was indicted in the District Court of Colombo in case No.N 1939/BA/X/7/59 with :-

- 30
- (a) having offered a gratification on or about the 19th day of December 1958 to the witness W.J.C.Munasinghe, as an inducement for his doing an act in his capacity as a Member of the House of Representatives to wit: addressing the letter P3 to the Honourable C.P. de Silva Minister of Lands and Land Development and having thereby committed an offence punishable under section 14(a) of the Bribery Act No. 11 of 1954.
 - (b) having offered a gratification on or about the 22nd day of December 1958 to

In the
Supreme Court.

No.14.

Petition of
M.G.J.M. de
Livera.

2nd May, 1959

- continued.

the witness W.J.C.Munasinghe as an inducement for his doing an act in his capacity as a Member of the House of Representatives to wit: addressing the letter P3 to the Honourable C.P.de Silva Minister of Lands and Land Development and having thereby committed an offence punishable under Section 14(a) of the Bribery Act No.11 of 1954.

- (c) having abetted the acceptance of a gratification on or about the 22nd December, 1958, by the witness W.J.C.Munasinghe as an inducement for his doing an act in his capacity as a member of the House of Representatives to wit: addressing the letter P3 to the Honourable C.P.de Silva Minister of Lands and Land Development and having thereby committed an offence punishable under Section 14(b) read with Section 25(2) of the Bribery Act No.11 of 1954. 10 20

2. Your Lordships' Petitioner was tried by the Learned Additional District Judge of Colombo and was convicted of the offences charged and sentenced to 9 months rigorous imprisonment on the second day of May 1959.

3. Your Lordships' Petitioner is dissatisfied with the said Judgment and sentence for the following and other grounds that may be urged by Counsel at the hearing of this appeal: 30

(a) the said Judgment is contrary to law and against the weight of evidence in the case.

(b) there is no evidence in the case to prove that the first accused appellant offered a gratification to the witness W.J.C.Munasinghe for his doing any act in his capacity as a member of the House of Representatives.

(c) there is no evidence in the case to prove that the first accused appellant abetted the acceptance of a gratification by the witness W.J.C. Munasinghe as an inducement for his doing any act in his capacity as a member of the House of Representatives. 40

(d) the act of the witness W.J.C.Munasinghe in addressing the letter P3 to the Honourable C.P. de Silva Minister of Lands and Land Development is not in law an act done by the witness W.J.C.Munasinghe in his capacity as a member of the House of

Representatives within the meaning of Sections 14(a) and 14(b) of the Bribery Act No.11 of 1954.

(e) the aforesaid sentence is harsh and excessive.

WHEREFORE Your Lordships' Petitioner humbly prays:-

- a. that the said conviction and sentence of the learned District Judge be set aside and that Your Lordships' Petitioner be acquitted
- b. for such other or further relief as to Your Lordships' Court shall seem meet.

Sgd: J.M.de Livera
First Accused Appellant

Witness to the signature and identity of the first Accused Appellant

Sgd: S. Somasunderam
Proctor.

Drafted and settled by
Sgd: N. Satyendra
Advocates.

In the
Supreme Court.

No.14.

Petition of
M.G.J.M. de
Livera.

2nd May, 1959
- continued.

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No. 15.

PETITION OF C.S.FERNANDO

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE QUEEN Complainant

Vs.

- 1. Mihindukulasuriya Guruge Joseph
Michael de Livera
- 2. Cyril Stanley Fernando Accused

Cyril Stanley Fernando
Second Accused Appellant

Vs:

The Queen
Complainant-Respondent

S.C.No.

D.C. Colombo)
Criminal) No.N 1919/BA/X/7/59
Jurisdiction)

To the Honourable the Chief Justice and the other
Judges of the Supreme Court of Ceylon.

On this 2nd day of May 1959.

No.15.

Petition of
C.S.Fernando.

2nd May, 1959.

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In the
Supreme Court.

No.15.

Petition of
C.S.Fernando.

2nd May, 1959
- continued.

The Petition of the Second Accused Appellant
Sheweth as follows :-

1. The Second accused Appellant was charged upon indictment in the District Court of Colombo with the offences of having aided and abetted the 1st accused to commit the offence of bribery viz: offering a gratification of Rs.5,000/- to one Welikala James Charles Munasinghe as an inducement or a reward for doing an act in his capacity as a member of the House of Representatives to wit: addressing a letter to the Honourable C.P. de Silva Minister of Lands and Land Development requesting him to abandon the proposal for the acquisition of Vincent Estate Chilaw and thereby commit offences punishable under Section 14(a) read with Section 25(2) of the Bribery Act No.11 of 1954. The said offences were stated to have been committed on the 19th December 1958, and the 22nd December 1958. The Appellant was further charged with having aided and abetted the acceptance of the said gratification by the said Munasinghe. 10
2. After trial the learned Additional District Judge found the accused guilty and convicted the accused appellant and sentenced the appellant to an aggregate term of six months rigorous imprisonment on counts 2, 4 and 6 of the indictment. 20
3. Being aggrieved by the said conviction and sentence the accused appellant begs leave to appeal to Your Lordships' Court upon the following grounds:- 30
 - (a) the said finding is contrary to law and the weight of evidence led in the case.
 - (b) the prosecution failed to establish that the writing of the letter Pl was done by the said Munasinghe in his capacity as such Member of the House of Representatives. The appellant submits that the evidence led in the case fails to establish that either in law or in established Parliamentary Practice and Convention that the said letter was written in the said capacity. 40
 - (c) the prosecution failed to establish that the appellant aided and abetted the offence of offering the said gratification. The evidence adduced proves that the appellant merely introduced the 1st accused to the said Munasinghe on first day viz: the 19th December 1958 and was thereafter present on the

22nd December 1958 at the express request of the said Munasinghe. Furthermore the Appellant submits that he merely conveyed a message on the 19th December 1958 and did not do so with the intention of facilitating the offer of a gratification. The appellant submits that the evidence does not prove the offence of aiding or abetting.

WHEREFORE THE APPELLANT PRAYS :-

- 10 (a) that Your Lordships' Court be pleased to set aside the conviction and order that the Appellant be acquitted.
- (b) for such other and further relief as to this Court seem meet.

Sgd: C.S. Fernando
2nd Accused-Appellant.

Witness to the identity and signature
of Cyril Stanley Fernando.

Sgd: D.E.Abhayaratne
Proctor, S.C.

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In the
Supreme Court.

No.15.

Petition of
C.S.Fernando.

2nd May, 1959
- continued.

No. 16.

JUDGMENT.

S.C.No.31 A-B

Serial No.8/60

No.16.

Judgment.

4th April, 1960.

D.C. Criminal Colombo Case No. N.1939.

Before:- Weerasooriya, J., and Sinnetamby, J.

Counsel:- H.V.Perera, Q.C., with S.Nadesan, Q.C.,
E.J.Cooray, J.A.L.Cooray and N.Satyendra
for the 1st accused - Appellant.

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Dr.Colvin R.de Silva with M.M.Kumaraku-
lasingham for the 2nd accused -
Appellant

D.St.C.S.Jansze, Q.C., Attorney-General,
with L.B.T.Premaratne, Crown Counsel
and

V.S.A.Pullenayagam, Crown Counsel, for
the Crown - Respondent.

Argued on: January 21, 22, 25, 26, 27 and 29 and
February 1 and 2 1960.

Delivered on: 4th April, 1960.

Weerasooriya, J.

In the
Supreme Court.

No.16.

Judgment.

4th April, 1960
- continued.

The two accused appellants were tried before the District Court of Colombo on an indictment framed under the special provisions of the Bribery Act, No.11 of 1954 (hereinafter referred to as "the Act"). The 1st accused appellant was charged on counts 1 and 3 with having on the 19th and 22nd December, 1958, respectively, committed an offence punishable under Section 14(a) of the Act in that he offered a gratification of Rs.5,000/- to one Welikala James Charles Munasinghe, a member of the House of Representatives, as an inducement or reward for his doing an act in his capacity as such member, to wit, addressing a letter to the Minister of Lands and Land Development requesting him to abandon the proposal for the acquisition of Vincent Estate, Chilaw. The 2nd accused appellant was charged on counts 2 and 4 with abetment of those offences. In addition, the 1st accused was charged on count 5, and the 2nd accused on count 6, with having, on the 22nd December, 1958, abetted the acceptance by Welikala James Charles Munasinghe of a gratification of Rs.5,000/- as an inducement or reward for his doing the aforesaid act, and with having thereby committed an offence punishable under Section 14(b) read with Section 25(2) of the Act. They were convicted on all counts and sentenced to terms of imprisonment, and have filed these appeals from their convictions and sentences.

At the material time Mr. Munasinghe was the Member for Chilaw in the House of Representatives. He was also the Chief Government Whip and General Secretary of the Sri Lanka Freedom Party. Vincent Estate is situated within his constituency and was owned by the 1st accused. On the 28th October, 1958, Mr. Munasinghe addressed to the Minister of Lands and Land Development the letter P1 strongly recommending as a matter of urgency the acquisition of the Vincent Estate for alienation to the inhabitants of certain villages in the Chilaw District who had been displaced from their homes as a result of floods. P1 bears the printed heading "House of Representatives" and is signed by Mr. Munasinghe as "M.P. Chilaw". At the time the Minister of Lands and Land Development, Mr. C.P. de Silva, was the authority empowered under the Land Acquisition Act, No.9 of 1950, to initiate acquisition proceedings and to give the necessary directions in that behalf. The question whether Vincent Estate should be acquired or not was, therefore, primarily a matter for him.

On the representations contained in Pl the Minister decided that Vincent Estate should be acquired, and he gave the following directions, to the Land Commissioner: "For early action. M.P. Chilaw asks this land for alienation in $\frac{1}{2}$ acre lots for people who got ruined by the floods and those people of Chilaw town who have employment but no houses to live in. Please take acquisition proceedings immediately". Soon afterwards, the Government Agent, Puttalam, called for a report from the Divisional Revenue Officer regarding the proposed acquisition. Before that report was received, the 1st accused who, presumably, had learnt of the steps that were being taken, saw the Government Agent. The object of the visit was clearly to dissuade the authorities from proceeding with the acquisition. The 1st accused told the Government Agent that the estate, in part, was itself liable to floods and therefore not suitable for a housing scheme. The Government Agent referred the 1st accused to Mr. Munasinghe as the Member of Parliament for Chilaw and the person who put forward the proposal to acquire the estate, and he also informed the 1st accused that the final authority on the question whether it should be acquired or not was the Minister of Lands and Land Development.

It is the evidence of Mr. Munasinghe that prior to the 19th December, 1958, the 1st accused was a stranger to him, but he had known the 2nd accused well from about 1947, when Mr. Munasinghe became the Chairman of the Madampe Town Council, in which office he continued till 1956 except for a short break of about three months. During that period the 2nd accused was the Secretary of the Madampe Town Council and closely associated with Mr. Munasinghe, whom he often visited in his bungalow. At the time of the alleged offences, however, the 2nd accused was the Secretary of the Puttalam Urban Council while Mr. Munasinghe was residing in Kelaniya. It may be inferred that the 1st accused knew the 2nd accused and also the latter's previous association with Mr. Munasinghe. According to Mr. Munasinghe, the 2nd accused came to his house in Kelaniya on the morning of the 19th December, 1958. The 2nd accused said that he came at the instance of the 1st accused, who was "pestering" him for an introduction to Mr. Munasinghe, that the 1st accused was anxious that his estate should not be acquired and was prepared to give Mr. Munasinghe or his party or any person

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nominated by Mr. Munasinghe a present of money if the acquisition was stopped. Mr. Munasinghe stated that he requested the 2nd accused to come with the 1st accused at 7.30 p.m. on the same day and the 2nd accused went away promising to do so. In the meantime Mr. Munasinghe got in touch with the Police and it was arranged for some Police officers to be present in concealment at the house of Mr. Munasinghe within hearing distance of any conversation that would take place between him and the accused when they met in the evening. Mr. Munasinghe has stated in evidence that at that meeting the 1st accused offered him Rs.5,000/- in cash to stop the acquisition, that he undertook to give the 1st accused on the 22nd December, at about 9.30 or 10 p.m., being the date and time fixed for their next meeting, a letter addressed to the Minister of Lands and Land Development withdrawing his earlier application for the acquisition of the estate, in return for which the 1st accused was to hand him the sum of Rs.5,000/-.

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On the 22nd December the Police were again present, unknown to the accused, when the latter came to see Mr. Munasinghe as arranged. On that occasion Mr. Munasinghe gave the 1st accused the letter P3 addressed to the Minister in which he withdrew his application for the acquisition of the estate, stating that it was not suitable for housing purposes as a part of it gets submerged during seasonal floods. P3 is written on note-paper bearing the printed heading "Chief Government Whip" and is signed by Mr. Munasinghe as "M.P. Chilaw". The 1st accused took the letter and handed to Mr. Munasinghe a wrapped parcel, P6, containing the Rs.5,000/-. As for the 2nd accused, apart from being present, he neither did nor said anything. When the accused were about to depart the Police Officers came forward, disclosed their identity and took into custody, among other things, the letter P3 and the parcel P6.

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The facts as set out above have been accepted by the trial Judge and were not challenged in appeal. It is, therefore, with reference to these facts that the questions of law which were argued before us need to be considered. But conceding these facts learned Counsel for both the accused contended that the Crown had failed to prove the charges against their clients. On behalf of the 2nd accused it was contended further, that on the

same facts no offence of abetment as alleged against him has been made out even if the 1st accused be held to have committed the offences with which he is charged.

In the
Supreme Court.

No.16.

Judgment.

4th April, 1960

- continued.

Section 14 of the Act is as follows :-

"A person -

10 (a) who offers any gratification to a judicial officer, or to a member of either the Senate or the House of Representatives, as an inducement or a reward for such officer's or member's doing or forbearing to do any act in his judicial capacity or in his capacity as such member, or

(b) who, being a judicial officer or a member of either the Senate or the House of Representatives, solicits or accepts any gratification as an inducement or a reward for his doing or forbearing to do any act in his judicial capacity or in his capacity as such member,

20 shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years or a fine not exceeding five thousand rupees or both:

30 Provided, however, that it shall not be an offence under the preceding provisions of this section for any trade union or other organisation to offer to a member of either the Senate or the House of Representatives or for any member to accept from any trade union or other organisation, any allowance or other payment solely for the purposes of his maintenance".

The proviso it may be stated, was not a part of the section as originally enacted, but was subsequently added by the Bribery (Amendment) Act, No.17 of 1956.

Section 15 of the Act reads:

"A member of either the Senate or the House of Representatives who solicits or accepts any gratification as an inducement or a reward for -

40 (a) his interviewing a public servant on behalf of any person, or

(b) his appearing on behalf of any person before a public servant exercising judicial or quasi-judicial functions,

shall be guilty of an offence punishable with

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rigorous imprisonment for a term not exceeding seven years or a fine not exceeding five thousand rupees or both:

Provided, however, that it shall not be an offence under the preceding provisions of this section for a member of either the Senate or the House of Representatives to appear as an advocate or a proctor before a Court or before a statutory tribunal of which a public servant is not a member".

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It is to be observed, by way of contrast with Section 14, that under Section 15 a member of the Senate or the House of Representatives who solicits or accepts a gratification as an inducement or a reward for the doing of any act specified therein commits an offence irrespective of whether in the doing of it the offender acts in his capacity as such member or not.

Since the Rs.5,000/- offered to Mr.Munasinghe is undeniably a gratification within the definition of that term in Section 91 of the Act, the substantial issue in this case is whether the gratification was offered to him for his doing an act in his "capacity" as a member of the House of Representatives within the meaning of Section 14. The District Judge, in dealing with the matter with particular reference to the letters P1 and P3 stated as follows :-

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"..... the question to be decided in this case is whether Mr.J.C.W.Munasinghe is legally competent or legally 'incapacitated' from doing the act which he did when as a member of Parliament he wrote the letters P1 and P3 to the Hon. Minister of Lands The accused would certainly be entitled to an acquittal at the hands of this Court if Mr. Munasinghe as a member of Parliament usurped to himself the executive powers of the Minister of Lands and chose to write to the Land Commissioner directing him to take steps to acquire the 1st accused's land or if he chose to write to the Land Commissioner directing him not to take steps to acquire this land. In such an event Mr. Munasinghe the member of Parliament would certainly not have the legal capacity to act in that manner. The position here is entirely different. Mr. Munasinghe M.P. has not usurped the functions of the executive. All that

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he has done is to suggest to the executive authority as M.P. for Chilaw that a certain land in his electoral area be acquired to give relief to flood victims also in his electoral area This is the sort of request even a private citizen can make to an executive authority If a private citizen can do exactly what Mr. Munasinghe, M.P. has done, can it be said that Mr. Munasinghe has no legal capacity to do this act as member of Parliament for the area? It is true that Mr. Munasinghe, M.P. can make the same suggestion that has been made in the letters P1 and P3 to the Minister in Parliament and this is a right which a private citizen who is not an M.P. does not have but merely because an M.P. has the right to make this suggestion to a Minister in Parliament is he thereby legally 'incapacitated' as M.P. from making the same suggestion to the same Minister outside the House of Representatives? ... In my opinion Mr. Munasinghe was not legally incompetent or legally 'incapacitated' as Member of Parliament from writing the documents P1 and P3 to the Hon. Minister of Lands and Land Development. In the result I have no alternative but to find the accused guilty of the charges laid against them".

From the foregoing passage in his judgment it would seem that the learned Judge took the view that Mr. Munasinghe's "capacity" to write the letters P1 and P3 as a Member of Parliament stood established from the fact that he was not prevented by any legal incapacity, either as a Member of Parliament or as a private citizen, from communicating with the Minister in terms of those letters. With respect, I do not think that the test applied by him is correct. The Attorney-General, while maintaining that the convictions entered against the accused are right, stated that he was unable to support the reasons given by the Judge for holding that P1 and P3 were written by Mr. Munasinghe in his "capacity" as a member of Parliament.

It is necessary, therefore, to consider whether there is any other basis on which it could be said that the gratification offered to Mr. Munasinghe was for his doing an act in his "capacity" as a member of the House of Representatives.

As regard the expression "in his judicial

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capacity" in Section 14, the Attorney-General as well as Counsel for the accused were agreed that while a judge may have administrative or ministerial functions to perform in addition to his judicial or quasi-judicial functions, he can be said to act in a judicial capacity only in the performance of his judicial or quasi-judicial functions. The immunity attaching to a judge in respect of an act done in his judicial capacity does not extend to acts which are of a purely administrative or ministerial character - McKerron on the Law of Delict (4th Edition) 114.

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The Attorney-General contended, however, that the expression "in his judicial capacity" in section 14 is not the equivalent of "in his capacity as a judge", which latter expression (according to him) is of wider import, and would even include acts done by a judge in a purely administrative or ministerial character. By parity of reasoning he contended, further, that the expression "in his capacity as such member" in Section 14 was advisedly used by the draftsman so as to bring within its ambit the acts of a member which do not strictly fall within the scope of his legal functions as a member of the Senate or the House of Representatives.

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It is common ground that when a member of the Senate or the House of Representatives does an act which is exclusively within his power to do as such member, he does it in his "capacity" as such member. The Attorney-General conceded, however, that the act of Mr. Munasinghe in writing P1 and P3 does not fall into the category of acts which were exclusively within his power to do as a member of the House of Representatives. But according to him, there are other acts, falling outside that category, which a member of the Senate or the House of Representatives may do in his "capacity" as such member even though the same acts may be done by him in some other "capacity" as well. He was constrained to admit that in respect of such an equivocal act it may be difficult, and sometimes impossible, to establish the particular "capacity" in which it was done.

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Assuming (without deciding) that the Attorney-General is right in his contentions, I think it will be convenient to consider at this stage what evidence is relied on by the prosecution to establish that the gratification offered to Mr.

Munasinghe on the 19th and 22nd December 1958 was for his doing an act in his "capacity" as a member of the House of Representatives. I shall first discuss the evidence regarding the gratification offered on the 22nd December, 1958. Mr. Munasinghe stated (somewhat belatedly) on being recalled by the prosecution after his evidence as a witness had been concluded, that he wrote P1 and P3 in his "capacity" as a Member of Parliament. There is also the circumstance that in signing P1 and P3 he described himself as "M.P. Chilaw". In regard to P1 he had stated earlier that it was written as a result of a resolution passed by the Sangathatana Rural Development Society at a meeting at which he was present by invitation. He admitted that even before he became a Member of Parliament he, as a politician and a "public man", and also as a prospective candidate for parliamentary office, used to make representations to the authorities on various matters. I do not think that on his election as member for Chilaw he could be regarded as having ceased to be a politician and a "public man". On the contrary, his character as a politician and a "public man" may well have become more pronounced after his election. If P1 could have been written by him in his "capacity" as a Member of the House of Representatives (in the sense contended for by the Attorney-General) the prosecution would have to concede that it could also have been written by him in his "capacity" as a politician or a "public man", or, as the trial Judge stated, even as a private citizen. It follows that P3 could also have been written by Mr. Munasinghe in one or other of these several "capacities". The burden on the prosecution is to establish that P1 and P3 were written by Mr. Munasinghe in his "capacity" as a member of the House of Representatives and not in any other "capacity". It seems to me that in order to establish this the prosecution has to rely entirely on the evidence of Mr. Munasinghe. The Attorney-General submitted that in considering the question of the "capacity" in which Mr. Munasinghe wrote P1 or P3 the evidence of Mr. Munasinghe on the point should be accepted as he is in the best position to say in what "capacity" he acted or purported to act.

The prosecution contends that the evidence of Mr. Munasinghe is supported by the circumstance that in signing P1 and P3 he described himself as "M.P. Chilaw". There might have been force in this

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contention if the evidence showed that Mr. Munasinghe adopted such a description only when he purported to act in his "capacity" as a Member of Parliament. The contrary is, however, indicated by the fact that the letter P4, which is addressed to the 1st accused and bears the same date as P3, is also signed by Mr. Munasinghe as "M.P.Chilaw". Even on the construction which the learned Attorney-General sought to put on the expression "in his capacity as such member" in Section 14 of the Act, I do not think it could seriously be contended that P4 was written by Mr. Munasinghe in that "capacity". There seems to be no other circumstance which supports Mr. Munasinghe when he says that he wrote P1 and P3 in his "capacity" as a Member of Parliament.

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On being cross-examined as to why he claims to have written P1 and P3 in his "capacity" as a member of Parliament, Mr. Munasinghe stated as follows :-

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"I told the Court earlier that I wrote the letter P1 in my capacity as a Member of Parliament. I took the view that I was entitled to write it in my capacity as a Member of Parliament... I thought that in my capacity as a Member of Parliament there was a duty or function entrusted to me to write to the Minister in respect of that matter. I think what I thought was correct. I have opened a number of buildings. The latest building I opened was a school building. That was the Thambagalla Government School. I was invited to open that building because I was a Member of Parliament. I opened it in my capacity as a Member of Parliament

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Q. In your view what are other things you have opened in your capacity as a Member of Parliament?

A. Rural Development Society textile centres and a number of things like that.

Q. So far as you are concerned you consider that opening of school buildings and opening of rural development society building etc., you have to do in your capacity as a Member of Parliament?

40

A. Yes".

He also added that he had inspected certain flood affected private buildings and even attended "some social functions" in his capacity as a Member of Parliament.

In regard to his evidence that he thought that in his capacity as a Member of Parliament there was a duty or function entrusted to him to write to the Minister in terms of P1, he did not indicate whence such a duty or function was derived. The fact that he thought that there was such a duty or function would not, of course, establish the existence of such a duty or function in a member of the House of Representatives. There is not a scintilla of evidence that when P1 or P3 was written the acquisition of Vincent Estate or any other land for the relief of flood victims was the subject of any action taken or contemplated to be taken in the House of Representatives.

Even more unacceptable are Mr. Munasinghe's views that in attending social functions, opening school buildings, textile and rural development society centres, which he is invited to do because he is a Member of Parliament, he thereby acts in his capacity as such member. No attempt was made by the learned Attorney-General to justify these views. While the good faith of Mr. Munasinghe in holding these views may be conceded, in my opinion they are entirely misconceived, and I do not see how they can avail the prosecution in establishing that he acted in his "capacity" as a Member of the House of Representatives when he wrote P1 or P3. Whether he acted in that "capacity" or not is essentially a matter for the Courts to decide.

The prosecution is in an even less favourable position in regard to the gratification offered on the 19th, December, 1958, because on that date the letter P3 had not yet been written. The only arrangement arrived at on that occasion for any action to be taken by Mr. Munasinghe in order that the acquisition of Vincent Estate should not be proceeded with was to address a letter to the Minister withdrawing his earlier application for its acquisition, stating as the ground for the withdrawal that a portion of the estate gets inundated periodically. It was not envisaged by the parties to the arrangement that the letter should be written in Mr. Munasinghe's "capacity" as a Member of Parliament or in any other "capacity". There was no discussion at all on the subject for the simple reason, I think, that neither Mr. Munasinghe nor the 1st accused gave his mind to it. As far as the 1st accused was concerned, it was quite immaterial to him in what "capacity" Mr. Munasinghe wrote that letter

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The question whether the gratification offered to Mr. Munasinghe on the 19th December, 1958, was for his doing an act in his "capacity" as a member of the House of Representatives has to be decided in the light of the circumstances existing as at that date, and without reference to the subsequent letter, P3, or the evidence of Mr. Munasinghe as to the "capacity" in which he wrote it.

It seems to me, therefore, that even if the expression "in his capacity as such member" in Section 14 of the Act is given the wide construction contended for by the Attorney-General, the prosecution has failed to establish that the gratification offered to Mr. Munasinghe, whether on the 19th or the 22nd December, 1958, was for his doing an act in his "capacity" as a member of the House of Representatives. 10

I shall now deal briefly with the submissions of learned Counsel for the accused as regards the proper construction of the same expression. According to Mr.H.V.Perera and his submissions were adopted by Dr. Colvin R. de Silva that expression bears a meaning corresponding to the expression "in his judicial capacity" in Section 14 of the Act. Therefore, he submitted, a member of the Senate or the House of Representatives acts in his "capacity" as such member only in the exercise of the functions of his office as such member, and this he does when he participates in proceedings in the Senate or the House of Representatives, as the case may be, and not otherwise. 20 30

In this connection Mr. Perera referred to certain proceedings in the English House of Commons as showing how the expressions "capacity", when used in relation to a member of Parliament, and "Proceedings in Parliament, are understood in English Parliamentary practice. No objection was taken by the learned Attorney-General to these citations. One of the citations was from the debate which took place on the 30th October 1947 (Hansard, House of Commons Debates, Fifth Series Vol.443, Columns 1094 et seq). when a report of the Committee of Privileges in regard to an alleged breach of privilege was discussed. The Committee had taken the view in their report that the attendance of members of the House of Commons at a private party meeting within the precincts of the Palace of Westminster during the current parliamentary session in order to discuss matters connected 40

with the proceedings of Parliament was attendance in their capacity as members of Parliament. But this view was not accepted by the Government, and in moving a Government motion arising on the report, Mr. Herbert Morrison, who was then Leader of the House, stated as follows :-

10 "With great respect to the Committee, this seems to be going too far. Their opinion is based on the conclusion that Members attending such meetings attend in their capacity as Members of Parliament. According to the precedents, however, Members are only regarded as acting 'in the capacity of Members' when they take part in Parliamentary proceedings. Indeed, even in transactions with constituents, Members have never been regarded, for purposes of privilege, as acting in their capacity as Members". But he did not proceed to state what these precedents were, nor were we referred to any in the course of the argument in appeal. It would appear, however, that the view expressed by the Committee of Privileges on that occasion did not find favour with the majority of the Members of the House of Commons.

30 The notion of including within the expression "proceedings of Parliament" a private party meeting appears to have been derived from an earlier report (in 1939) of the Select Committee on the Official Secrets Acts arising out of a complaint by a Member relating to the privilege of freedom of speech. What was assimilated in that report to proceedings in Parliament was the sending to a Minister by a Member of Parliament of the draft of a question which the Member proposed to put to the Minister in Parliament, or the showing of such a draft to another Member with a view to obtaining advice as to the propriety of putting the question or the manner in which it should be framed.

40 The more recent trend has been, however for the House of Commons not to countenance attempts at any extension of the expression "proceedings of Parliament" This would appear from the proceedings of the 30th October 1947, to which I have already referred, and also from the proceedings in the House on the 8th July, 1958 (Hansard House of Commons Debates, Fifth Series, Vol.591, Columns 208 et seq.) relating to the report of the Committee of Privileges on an alleged breach of privilege the facts of which are briefly as follows: On the 8th February, 1957 a Member of Parliament made representations to the Minister of Power in a letter

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regarding the disposal of scrap by the London Electricity Board. The letter was referred to the Chairman of the Board by direction of the Minister. In that letter various allegations of improper conduct had been made against the Board. The Chairman of the Board thereupon wrote to the member concerned stating that the aspersions contained in the member's letter were completely unjustified and requesting their unqualified withdrawal. On the member refusing to do this the Board's Solicitors wrote to the member that proceedings would be taken against him for libel if he did not tender a suitable apology. The member then brought the matter up in the House of Commons, and it was referred to the Committee of Privileges. It is necessary to state only two of the conclusions of the Committee in their report, which were - (a) that in writing the letter dated the 8th February, 1957 the member was engaged in a "proceeding in Parliament" within the meaning of the Bill of Rights, 1688, and (b) that the London Electricity Board and their solicitors, in threatening to commence proceedings for libel against the member, had acted in breach of the Privilege of Parliament. If I may say so with respect, it is to the credit of the House of Commons that these conclusions were rejected, though only after a somewhat acrimonious debate. 10

There appears to be no judicial definition of the expressions "proceedings in Parliament" or "capacity" as a Member of Parliament. But the Courts have from time to time stated what various specific matters connected with Parliament do or do not fall within the ambit of its "proceedings". These cases are referred to in Erskine May's Parliamentary Practice (14th edition) 61. They afford no precedent for holding that in writing the letters P1 or P3 Mr. Munasinghe was acting in his "capacity" as a member of the House of Representatives. I see no reason to give to "capacity" in the expression "in his capacity as such member" in Section 14 of the Act a wider meaning than that which the word bears in the expression "in his judicial capacity" in the same section. I agree with the submission of Mr.H.V.Perera that a Member of the House of Representatives cannot be regarded as acting "in his capacity as such member" within the meaning of Section 14 except in the exercise of the functions of his office as such member. The prosecution has failed to prove that in writing P1 or P3 Mr. Munasinghe was acting in the exercise of any such function. 20 30 40 50

Before I conclude this judgment I wish to refer to an argument of the Attorney-General based on the proviso to Section 14. By virtue of the proviso it would not be an offence under the preceding provisions of the section for any trade union or other organisation to offer to a member of the Senate or the House of Representatives, or for any such member to accept from any trade union or other organisation, any allowance or other payment solely for the purpose of his maintenance.

10 While an allowance is a "gratification" within the definition of that term in Section 91 of the Act, neither the offer nor the acceptance of such gratification would per se be punishable as it is also necessary for the constitution of an offence under Section 14 that the gratification is offered or accepted as an inducement or reward for the member's doing or forbearing to do any act in his "capacity" as such member. The Attorney-General

20 submitted that in the case contemplated in the proviso all the elements of an offence under the preceding provisions of the section are present in that the member concerned, in utilising the allowance towards his maintenance as a member, would thereby be doing an "act" in his "capacity" as such member. On the strength of this submission the Attorney-General invited us to regard the proviso as indicating that there may be the doing of an

30 "act" by a member of the House of Representatives in his "capacity" as such member within the meaning of Section 14 even though the "act" be not done in the course of proceedings in the House. I am unable, however, to agree that a Member of the House of Representatives who maintains himself is doing an "act" within the meaning of Section 14, or that such member who maintains himself on an allowance which is paid to him for no other reason than that he is a member of the House of Representatives is doing an "act" in his "capacity" as such member.

40 If the learned Attorney-General's argument is to prevail, it could be said of a member of the House of Representatives that in eating his lunch or dinner (being part of the process of maintaining himself) the cost of which is met from the allowance paid to him, he is doing an "act" in his "capacity" as such member.

50 It is possible, as Mr.H.V.Perera suggested that the genesis of the proviso to Section 14 is in the findings of the Bribery Commission in its report published as Sessional Paper No.XII of 1943,

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that certain nominated European members of the former State Council had accepted a "gratification" within the Commission's terms of reference in that they were in receipt of a regular allowance paid to them by the Chamber of Commerce and certain other organisations. In view of these findings the legislature may have intended, in enacting the proviso to Section 14, that the offer of an allowance by a trade union or other organisation solely for the purposes of maintenance of a member of the Senate or the House of Representatives, or the acceptance of the allowance by such member, should be taken out of the operation of the preceding provisions of the Section even if the understanding on which the allowance is paid is that the member would conduct himself in a particular way in proceedings in the Senate or the House of Representatives, as the case may be.

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In considering whether this particular proviso throws any light on the construction of the preceding provisions of Section 14, it is well to bear in mind, however, that while the effect of an excepting or qualifying proviso is, ordinarily, to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it, often a proviso is inserted to allay fears and to protect persons who are unreasonably apprehensive of the effect of an enactment although there is really no question of its application to their case.

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In my opinion, the prosecution has failed to prove that the gratification offered to Mr. Munasinghe on the 19th or the 22nd December, 1958, was for his doing an act in his "capacity" as a member of the House of Representatives. This failure goes to the root of all the charges. In the circumstances, however reprehensible the conduct of the accused may have been, they are entitled to an acquittal on those charges. I set aside their convictions and the sentences passed on them and acquit them.

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Sgd: H.W.R.Weerasooriya,
Puisne Justice.

Sinnetamby, J.

I agree with the views expressed by my brother Weerasooriya in the judgment prepared by him, which

I have had the advantage of reading, and would like to add a few reasons of my own in support of the conclusions he has reached.

10 The Bribery Act of 1954 was enacted with the object of cleansing the public life of this country by introducing provisions to cope with "modern methods of corruption", some of which were not contemplated and many of which were not provided for in the somewhat antiquated provisions of the Penal Code. It makes provisions for the prevention, detection and punishment for bribery. Part 2 deals with the offence of bribery in its various forms and enacts provisions detailing the circumstances in which a person would be guilty of the offence.

20 Section 14 had special reference to bribery of judicial officers, Senators, and Members of Parliament. Sub-section (a) of Section 14 penalised the offer of any gratification to a judicial officer, as an inducement or a reward for such officer doing or forbearing to do any act in his judicial capacity, or to a member of the Senate, or the House of Representatives, as an inducement or a reward to act or forbear to do any act in his capacity as such member. In order to understand and appreciate the significance of the term "in his capacity as such member" it would be useful to examine a few of the other provisions of this part of the Act.

30 In contrast to Section 14, Section 15 penalised a Member of Parliament - for the purpose of this case I shall confine myself to members of Parliament - who accepts a gratification for interviewing a public servant or appearing before a judicial tribunal of which a public servant is a member: it does not postulate that the member should appear "in his capacity as a member" in order to render himself or the person who offers the gratification liable to incur the penalty. Here
40 the mere fact that he is a member places a restriction on the rights he otherwise had.

Section 22 penalises a person who offers gratification to a member of a local body or of a scheduled institution. I shall confine myself to members of a local body for the purpose of this case as they bear a closer resemblance to members of Parliament. Sub-section (a)(i) deals with the exercise by such a member of his rights to vote or

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abstain from voting at a meeting where the gratification offered is to induce him to do one or the other of these things. This sub-section penalises the person offering the bribe. Clearly in that case a member is influenced in respect of proceedings in the Council, where he acts in his capacity as a member. Sub-section (a)(ii) deals with the gratification given for the purpose of such member performing or omitting to perform an official act and penalises the offering of a bribe for such a purpose. The expression "official act" has not been defined but its ordinary dictionary meaning is an act pertaining to the office which such member holds; it must, furthermore, in the context be in respect of an office in the local body or institution. It must necessarily relate to an activity the member would not be able to indulge in but for the fact that he is a member. One may, therefore, with justification, infer that it relates to an act which a member performs in his capacity as a member; that is to say, something which he would not have been able to do or abstain from doing but for the fact that he is a member. There is a penalisation in this sub-section of yet another kind of activity. This sub-section also penalises gratification given as an inducement or reward to a member for his aid in procuring, expediting, delaying, hindering or preventing the performance of an official act. It seems to me that, in regard to this kind of activity, it can be done, not only by a member, but also by a person who is not a member. It follows, therefore, that where a member does an act to achieve this object, though he does not do something by virtue of his membership, the giver of the gratification would nevertheless be guilty under that sub-section from the mere fact of the recipient's membership: the latter would then not be acting in his capacity as a member. Likewise, in sub-section (a)(iii) the offer of a gratification, as an inducement or reward for a member's aid in procuring or preventing the passage of a vote or the granting of any contract or advantage in favour of a person, is penalised; but a member's aid may be given either because no one but a member by virtue of his membership is in a position to give it, or because the aid is of a kind capable of being given by anyone quite irrespective of whether he is a member or not, but it so happens that he is a member. In the former case he would, it seems to me, be acting in his

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capacity as a member but in the latter case he would not. It may be an act which even a non-member can perform by influencing those entitled to vote or grant a contract but if he happens to be a member, that mere fact makes both the giver of the gratification and the recipient liable under subsections (a)(iii) and (c) respectively. It will thus be seen that in Section 22 what is penalised is the giving of a gratification not only for acts to be done by a member by virtue of the rights, powers, privileges etc. which he is entitled to enjoy by virtue of his membership, but also for similar acts which he in common with non-members is in a position to do. In the latter event the giver is penalised only if the recipient happens to be a member. If my view of Section 22 is correct, it would lend support to the view that Section 14(a) is confined to those cases in which a member does an act which he is able to do only by virtue of the legal powers vested in him as a member and which act he would not be able to perform but for the fact that he is a member.

A person may act in various capacities: he may act in his official capacity when he performs functions pertaining to the office he holds; but, although he cannot divest himself of the office he holds, he may still act in a private or personal capacity, i.e. when he does something which he in common with other people who are not holders of that office are able to do. In interpreting Section 14, therefore, it seems to me, one must first ask oneself whether the act for the doing of which a gratification is offered, is one which the member of Parliament can do only because he is a member of Parliament. If so, it is something which he does in his capacity as such member. If it is something which he could have done even though he were not a member, the mere fact that he is a member does not bring the act within the purview of the section. In the result, in order to decide whether a person is acting in his capacity as a member of Parliament, one has first to ascertain what exclusive legal rights, powers, duties, privileges, and so on attach to membership of Parliament. If the act falls outside the exclusive rights, powers, etc., of a member of Parliament then one cannot say that he is acting in his capacity as such member.

The learned Attorney-General contended that

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the words "in his capacity as such member" occurring in Section 14 is used in the popular sense to cover even cases in which a member performs an act which is not strictly referable to his exclusive legal powers. If this is so the acts penalised by Section 15, namely, the receipt of a reward or fee to appear before a public servant, etc., would be covered by Section 14. Why then was there any necessity to enact Section 15? The existence of Section 15 in the Act favours the view that the words "in his capacity as such member" are used in the strictly legal sense which I have endeavoured to explain; otherwise, it seems to me, it would have been more appropriate to use the words "in any capacity" in place of the words "in his capacity as such member" in Section 14. In this connection it will also be useful to refer to certain decided cases where the same or similar expressions have been judicially considered.

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In the case of Tarttelin vs. Bowen (1) a member of the armed forces was charged with having in his possession a firearm without a certificate from the proper licencing authorities. Section 5 of the Firearms Act of 1937 provided that a certain provision of the Act, in so far as it relates to the possession of firearms and ammunition, does not apply to "persons in the services of His Majesty in their capacity as such". The Justices were of the opinion that the Act permitted the possession of a firearm and ammunition by a Flight Lieutenant in the Royal Air Force though they had not been issued to him as a member of His Majesty's Forces. In point of fact, they had been purchased by him privately without a certificate from the proper authority. The King's Bench Division consisting of Lord Goddard, Lord Humphrey and Lord Atkinson set aside the order of the Justices. The Chief Justice, Lord Goddard said, "this seems entirely to overlook the words "in their capacity as such", and held that the possession of a firearm by a member of the armed forces is an offence unless it had been issued to him or acquired by him in his capacity as a member of the armed forces. The exemption they held did not apply to private purchases made by members of the armed forces. It seems to me that, likewise, the offer of a gratification under Section 14 to a member of Parliament to do something in his private capacity would not be an offence. In Stephenson vs. Higginson (2) the question that arose was whether the Registrar of an

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10 Ecclesiastical Court who had prepared documents
and done acts necessary for obtaining letters of
administration had committed an offence in breach
of Sections 9 and 10 of Act No.54 Geo.3, c.68,
which prohibited the doing of an act "appertaining
or belonging to the office, function, or practice
of a proctor, for or in consideration of any gain
fee or reward" without being enrolled as a proctor.
The evidence in this case showed that it was cus-
tomary for the Registrar, where there was no con-
test, to prepare these documents. The House of
Lords held that, in construing the provisions of
the Act of Parliament, the acts intended to be
prohibited were those which were legally incident
to the office of a proctor, not those which though
usually performed by him were not of right incident
to his office. Therefore, the Registrar who had
prepared the documents had not subjected himself to
the penalty imposed by the Act. The Lord Chancellor
20 in the course of his judgment said "it seems to me,
therefore, that the words 'appertaining or belong-
ing' are words used in their proper sense and mean-
ing, i.e., in the sense of rightly and exclusively
belonging to the office of a proctor". Further,
the opinion was expressed that in construing an
Act of Parliament, "every word must be understood
according to its legal meaning, unless it shall
appear from the context that the Legislature has
used it in a popular or more enlarged sense; that
30 is the general rule; but in a penal enactment where
you depart from the ordinary meaning of the word
used, the intention of the Legislature that those
words should be understood in a more large or popu-
lar sense must plainly appear".

40 Having regard to the provisions of Sections
14, 15 and 22, it cannot in this case be said that
the intention of the Legislature was that the words
"in his capacity" should be used or understood in a
larger and more popular sense. Furthermore, it is
a penal enactment and, therefore, if two views are
possible in regard to the interpretation to be
placed upon the words, the benefit of any doubt
should be given to the accused.

50 In this connection, the learned Attorney-Gen-
eral contended that it is the duty of a Court to
consider a statute in such a way as to "suppress
the mischief and advance the remedy". He referred
to a passage in Maxwell (10th edition page 68)
where it is stated that "even where the usual mean-
ing of the language falls short of the whole object

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of the Legislature, a more extended meaning may be attributed to words, if they are fairly susceptible of it. The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words". He also relied on another passage in Maxwell (10th edition page 7) to the effect that one "should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result".

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In the case of the Bribery Act I do not think the words used in Section 14, having regard to the other provisions in this part of the Act are fairly susceptible of the meaning which the learned Attorney-General sought to put upon it; nor do I think that in placing the construction we have placed upon it, we would be reducing the legislation to futility or make it ineffectual.

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With regard to the proviso to Section 14 and the argument based upon it, I agree entirely with the views expressed by my brother.

I would respectfully endorse the opinion of Lord Watson in West Darley Union vs. Metropolitan Life Assurance Society (3) "if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive the provisions by implication from the proviso". In the same case Lord Herchell explained how meaningless provisos sometimes come to be enacted merely to allay the unreasonable fears of apprehensive persons who think that some Court may possibly apply the main provision of the enactment to their case though in point of fact they are not applicable.

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The first accused, therefore, in offering the gratification to Mr. Munasinghe did not induce Mr. Munasinghe to do an act in his capacity as a member of the House. However reprehensible the conduct of the first accused may be, and whatever other offence he may have been guilty of, he certainly was not guilty of the offence contemplated by Section 14(a) of the Bribery Act.

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I agree that the convictions should be set aside and both the accused acquitted.

Sgd: N. Sinnetamby
PUISNE JUSTICE.

(1) 1947 (2) A.E.R.p.837.

(2) 1852 (10) English Reports -House of Lords p.638

(3) 1897 Appeal Cases. p.647 at p.652.

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ORDER.

No.S.C. 31/'59 (A-B) (Criminal)

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE QUEEN Complainant and
Respondent

Versus

- 10 1. Mihindukulasuriya Guruge Joseph
Michael de Livera of No.165,
Stafford Place, Colombo
- 2. Cyril Stanley Fernando of Urban
Council Secretary's Quarters,
Puttalam Appellants

Case No.N.1939/BA/X/7/59 In the District Court of
Colombo

20 Counsel for 1st Accused-Appellant: Mr. Advocate
H.V. Perera, Q.C., with Mr. Advocate S. Nada-
san, Q.C., Mr. Advocate E.J. Cooray, Mr. Advoca-
cate J.A.L.Cooray and Mr. Advocate N. Satyen-
dra.

Counsel for Respondent: Mr. Advocate D. St. C.B.
Jansze, Q.C., Attorney-General with Mr. Advoca-
cate L.B.T. Premaratne and Mr. Advocate V.S.A.
Pullenayagum, Crown Counsel.

30 This case having come before the Hon. Henry
Winfred Robert Weerassoriya and the Hon. Nadaraja
Sinnetamby, Puisne Justices of this Court for
hearing and determining on 21st, 22nd, 25th, 26th,
27th and 29th January and 1st and 2nd February and
4th April, 1960.

It is considered and adjudged that the convic-
tions and sentences imposed on the 1st and 2nd
Accused-Appellants by the District Judge be and the
same are hereby set aside and they are acquitted

x x x x

(Vide copy of judgment attached)

40 Witness the Hon. Hema Henry Basnayake, Q.C.,
Chief Justice, at Colombo the 12th day of April in

In the
Supreme Court.

No.17.

Order.

12th April, 1960.

In the
Supreme Court.

the year One thousand nine hundred and sixty, and
of Our Reign the Ninth.

No.17.

Sgd: P. Kadiravelupillai

Order.

Deputy Registrar,

12th April, 1960
- continued.

Supreme Court.

In the
Privy Council.

No. 18.

ORDER GRANTING SPECIAL LEAVE TO APPEAL

AT THE COURT AT BUCKINGHAM PALACE

The 30th day of November, 1960

PRESENT

10

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. MARPLES

MR. VOSPER

MR. ERROLL

No.18.
Order granting
Special Leave
to Appeal.
30th November,
1960.

WHEREAS there was this day read at the Board a
Report from the Judicial Committee of the Privy
Council dated the 21st day of November, 1960 in
the words following viz:-

"Whereas by virtue of His late Majesty King
Edward the Seventh's Order in Council of the 18th
day of October 1909 there was referred unto this
Committee a humble Petition of the Attorney-Gener-
al of Ceylon in the matter of an Appeal from the
Supreme Court of Ceylon between the Petitioner and
(1) M.G.J.M.de Livera and (2) Cyril Stanley Fer-
nando Respondents setting forth that the Petitioner
prays for special leave to appeal against the
Judgment and Order of the Supreme Court of Ceylon
dated the 4th April 1960 whereby that Court upon
an Appeal by the Respondents against the Judgment
and Order of the District Court of Colombo dated
the 2nd May 1959 acquitted the Respondents setting
aside the said Judgment and Order of the District
Court by which the first and second Respondents
had been found guilty of several offences punish-
able under Section 14 of the Bribery Act 1954 as
amended by the Bribery (Amendment) Act 1956: And
humbly praying Your Majesty in Council may grant
him special leave to appeal from the Judgment and
Order of the Supreme Court of Ceylon dated the 4th
day of April 1960 or for further or other relief:

20

30

40

10 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel for the Petitioner and the First Respondent no one appearing at the Bar on behalf of the Second Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment and Order of the Supreme Court of Ceylon dated the 4th day of April 1960:

In the
Privy Council.

No.18.

Order granting
Special Leave
to Appeal.

30th November,
1960

- continued.

"And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same".

20 HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

30

Sgd: W.G. Agnew.

ExhibitsE X H I B I T S

Pl.
Letter,
J.C.Munasinghe
to Hon'ble
C.P. de Silva.
28th October,
1958.

Pl. - LETTER, J.C.MUNASINGHE TO HON'BLE.
C.P. de SILVA

HOUSE OF REPRESENTATIVES,

28th October, 1958.

My Dear C.P.

The People of Echchampitiya Sandathketana and other villages bordering the Chilaw area have suffered heavy floods damage and purchase of land under village expansion for the Chilaw area has become a matter of Public urgency. They have no houses to live in and are going through great hardship. 10

Can you please help me by having Vincent Estate in extent 175 acres situated within the Headman's Division of Echchampitiya Chilaw acquired for village expansion particularly for alienation to the flood affected people. The land is free from floods and ideally suited for alienation purposes as it is within close proximity to the Chilaw U.C. area. This land belonged to Mr.Livera proprietor of Titus Stores, Colombo. 20

I strongly recommend the acquisition of this land for alienation to the flood affected people of the area.

Trusting you will help me in this matter,

I remain,

Yours sincerely,

Sgd. J.C.Munasinghe.

M.P. Chilaw. 30

The Hon'ble C.P.de Silva,
Minister of Lands & Land Development Colombo.

Submitted.

L.C. for early action. M.P. Chilaw asks this land for alienation in $\frac{1}{2}$ acre lot for people who got ruined by the floods and those people of Chilaw town who have employment but no house to live in. Please take acquisition proceedings immediately.

Sgd: C.P. de Silva,

28/10/58

Endorsement:

Send copy to L.C. in duplicate for necessary action.

Intld. Illegibly, 29/10. 40

P3. - LETTER, J.C.W.MUNASINGHE to HON'BLE.
C.P. de SILVA.

CHIEF GOVERNMENT WHIP
HOUSE OF REPRESENTATIVES BUILDING,
COLOMBO

22nd December, 1958.

The Hon'ble C.P. de Silva,
Minister of Land & Land Development,
Colombo.

10 Withdrawal of application for acquisition
 of Milson Estate alias Vincent Estate part
 of Martin Estate, Chilaw.

My dear C.P.

20 Objections have been raised against the acqui-
 sition of Milson Estate Chilaw owned by Mr. Livera
 of Titus stores, Colombo, on the grounds that the
 land in question gets submerged during Deduru Oya
 floods and is not suitable for housing purposes. I
 have inspected the land and I find a stream leading
30 from Deduru Oya side running across the land and
 during floods it overflows banks and inundates the
 land on either side. Under these circumstances I
 hereby withdraw the application I made to you for
 alienation of this land. There is plenty of land
 available on the area North of Alutwatte where we
 have already acquired four acres of land. I suggest
 that the Govt. agent be directed to acquire avail-
 able highland north of Alutwatte beyond the Railway
 line and the proposed acquisition of Mr. Livera's
 estate dropped.

Trusting this will meet with your immediate
attention.

Sgd: J.C.W.Munasinghe,
M.P. Chilaw.

Exhibits

P3.

Letter,
J.C.W.Munasinghe
to Hon'ble C.P.
de Silva.

22nd December,
1958.

Exhibits

P4. - LETTER, J.C.W. MUNASINGHE TO
M.G.J.M. de LIVERA

P4.

Letter,
J.C.W. Munasinghe
to M.G.J.M. de
Livera.

22nd December,
1958.

House of Representatives,
Colombo.

22.12.58.

From CHIEF GOVERNMENT WHIP.

Dear Mr. Livera,

With reference to your letter the 20th instant regarding the acquisition of your land I have made inquiries on the spot about the objections you raise in your letter and find them to be correct. I am enclosing herewith a letter herewith to Mr. C.P. de Silva to drop this matter and request the G.A. to find alternative sights in areas that do not get affected by floods.

10

Yours sincerely,

Sgd: J.C.W. Munasinghe,
M.P. Chilaw.
