

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
W.C.1.
24 FEB 1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

EDWARD LIONEL SENANAYAKE *Appellant*

AND

1. HERATH MUDIYANSELAGE NAVARATNE

2. HERBERT SYDNEY MOLAGODA *Respondents.*

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Case for the Appellant

RECORD.

1. This is an appeal, by Special Leave, from a Judgment of the Supreme Court of Ceylon, dated the 18th December, 1953, affirming in part and by a majority (Nagalingam A.C.J. and Pulle J., Gratiaen S.P.J. dissenting), an Order of the Election Judge (H. A. de Silva J.) dated the 13th February, 1953, made upon an election petition, declaring the Appellant's election to the House of Representatives, Ceylon, as Member for the Kandy Electoral District, to be void on the ground that he had committed corrupt practices. III, pp. 16, 65.
II, pp. 267-314.

2. The corrupt practices which the Appellant was held by the Election Judge to have committed were:—

(A) the publication of handbills, posters, etc., relating to the election which did not bear upon their face the name and address of the publisher (who was in fact the Appellant) as well as that of the printer; and

(B) knowingly making a false declaration of his election expenses.

3. Upon appeal from the Election Judge's determination to the Supreme Court of Ceylon (such appeals, under the relevant legislation, are limited to questions of law) the Appellant contended: (1) as respects the alleged corrupt practices referred to in both (A) and (B) of the preceding paragraph, that the Election Judge had misdirected himself on matters of law and that the necessary ingredients in law of either of the said corrupt practices had not been established; and (2) as respects the corrupt practice referred to in (B) of the preceding paragraph (*viz.* that relating to Ceylon
(Parliamentary
Elections) Order
in Council, 1946,
s. 82A.
I, pp. 33, 34.
III, pp. 35, 37,
38, 56.

election expenses) that neither the Election Judge nor the Supreme Court had any jurisdiction to entertain and adjudicate upon an election petition based upon the said corrupt practice or to declare the election void on the said ground because :—

(A) although the commission of a corrupt practice within the meaning of Section 58 (1) (f) can properly be the subject of prosecution in a District Court with the sanction of the Attorney-General, it does not afford a ground for directly setting aside an election under Section 77 ; and

III, pp. 37, 38.

(B) Section 83 (1) proviso (a) applies only to a corrupt practice previously committed but implemented subsequently by a payment of money or by the doing of some similar act ; and the proviso has no application to corrupt practices committed exclusively after the closing of the poll.

4. The Supreme Court held by a majority (Gratiaen S.P.J, and Palle J., Nagalingam A.C.J. dissenting) that the Appellant had not committed the said corrupt practice relating to election handbills, posters, etc. and by a majority (Nagalingam A.C.J. and Palle J., Gratiaen S.P.J. dissenting) that jurisdiction existed to entertain and adjudicate upon the election petition in so far as it was based upon the said corrupt practice relating to election expenses and to declare the election void on the ground of such corrupt practice. The same majority held that the Appellant was guilty of the said corrupt practice—Gratiaen S.P.J., in the view that he took on the question of jurisdiction, did not find it necessary to express any opinion as to this. 20

III, pp. 57, 59, 60.
III, pp. 16, 65 ;
p. 57.

5. The main question for determination on this appeal (assuming it to be competent) is whether or not, on any reasonable interpretation of the relevant legislation in Ceylon, the Courts below had, in the circumstances of this case, any jurisdiction to declare the Appellant's election void on the ground that he had made a false declaration of his election expenses. 30

6. The law relating to elections in Ceylon is contained in the Ceylon (Parliamentary Elections) Order in Council, 1946, as amended (hereinafter referred to as " the Order in Council ").

The provisions of the Order in Council—so far as they deal with corrupt and illegal practices, election expenses, grounds for avoiding elections and election petitions—follow in general, although with significant differences, the corresponding provisions (now repealed) of the United Kingdom Parliamentary Elections Act, 1868, and the Corrupt and Illegal Practices Prevention Act, 1883. They constitute a complete code of election law in Ceylon and no power to extend any time limits specified therein is vested in the Courts. The provisions most directly relevant to this appeal are summarised briefly in the succeeding paragraphs *infra*. 40

7. Section 50 of the Order in Council requires the Commissioner of Parliamentary Elections, when the result of an election has been returned to him by the Returning Officer, to cause the name or names of the member or members so elected to be published in the *Government Gazette*.

8. The grounds for avoiding elections are set out in Sections 76 and 77 of the Order in Council.

Section 76 provides for the avoidance of the election of a candidate as a Member upon his conviction for any corrupt or illegal practice. This relates to criminal proceedings in respect of corrupt practices which, under Section 58 of the Order, are instituted in the District Court with—and only with—the sanction of the Attorney-General.

Section 77 deals with the avoidance of elections by election petitions, as distinct from the criminal proceedings referred to above. Its relevant 10 portions are as follows :—

“ 77. The election of a candidate as a Member shall be declared to be void on any election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely—

(a) . . .

(b) . . .

(c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate.

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(d) . . .

(e) . . .”

9. “ Corrupt practices ” are defined in Section 58 of the Order in Council which purports to deal with “ Punishment and incapacities for corrupt practices.”

On conviction by a District Court, a person guilty of a corrupt practice is liable to a fine, or imprisonment, or both, and is incapacitated for seven years from the date of his conviction from being registered as an elector or voting at any election under the Order or being elected or appointed as a Senator or Member of Parliament.

30 With one exception, the corrupt practices defined by the said Section 58 are practices which, by their nature or definition, can only be committed or initiated during the course of the election, and are of a kind calculated to influence its result.

Relevant to this appeal is the said exception which is the offence committed by a person who—

“ (f) being a candidate or election agent, knowingly makes the declaration as to election expenses required by Section 70 falsely.”

40 10. Section 70 (1) of the Order in Council (which follows a fasciculus of sections dealing with election expenses imposing a maximum sum which may be spent and prohibiting certain classes of payment, breach of which provisions are declared to be illegal practices) requires a return of election expenses to be made within thirty-one days after the date of publication of an election in the *Government Gazette*.

Section 70 (2) provides that the return of election expenses must be accompanied by declarations by the candidate and his election agent in the form set out in the Schedule. By such declaration the candidate is required to affirm (or swear) that the return of his election expenses is true to the best of his knowledge and belief and that, except the expenses therein set forth, no other expenses have, to his knowledge or belief, been incurred in or for the purpose of his candidature.

11. Section 83 of the Order in Council, upon the true construction of which the question of jurisdiction of the Courts below turns—the main question for determination on this appeal—is, so far as is most directly relevant, as follows :—

“ 83.—(1) Every election Petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Government Gazette* :

Provided that—

(a) an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the member whose election is questioned or by an agent of the member or with the privity of the member or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act ;

(b) . . .

(2) An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt . . . practice be amended with the leave of a judge of the Supreme Court within the time within which an election petition questioning the return or the election upon that ground may be presented.

(3) . . .”

12. In the Appellant's submission, Proviso (a) to Section 83 (1), *supra*, does not authorise the presentation of an election petition on the ground of a false declaration as to election expenses made more than twenty-one days after the date of the publication of the result in the *Government Gazette* when the making of such declaration is itself the only act relied upon as a corrupt practice.

13. The facts, briefly stated, are as follows :—

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At an election held in the Kandy Electoral District on the 24th May, 1952, the Appellant, a supporter of the Government and the United National Party candidate, polled a majority of the votes cast and was duly declared by the Returning Officer to be elected.

The Appellant—new to parliamentary politics—was then (as he is now) the Mayor of Kandy. He preferred to act as his own election agent and, under Section 59 (2) of the Order in Council, he named himself as such. II, p. 278.
III, p. 37.

14. The result of the election was published in the *Government Gazette* on the 28th May, 1952. Twenty-one days from this date accordingly expired on the 18th June, 1952. III, p. 36.

15. On the 16th June, 1952 (i.e., within the prescribed period for presenting election petitions—twenty-one days from the date of the publication of the result of the election) the present Respondents Nos. 1 and 2, stating that they had a right to vote, and had voted, at the said election, filed an election petition under the Order in Council praying for a declaration that the Appellant was not duly elected or returned as Member for the Kandy Electoral District. III, p. 36.
I, p. 1.
I, p. 3.

The petition originally contained allegations of four offences (3 (A) (B) (C) (D)) which the Appellant was alleged to have committed but of these three (3 (A) (B) and (D)) were abandoned before trial. I, p. 2.
II, pp. 268–269.

The remaining allegation (3 (C)) was that of which the Appellant, on his appeal to the Supreme Court, was held not to be guilty, *viz.*, that he had printed, published, etc., or caused to be printed, published, etc., election posters, handbills, etc., which did not bear upon their face the names and addresses of the printers and publishers. I, p. 2.

16. On the 27th June, 1952 (i.e., within thirty days of the publication of the result of the election in the *Government Gazette* and so within the prescribed period of thirty-one days for transmitting a return respecting election expenses) the Appellant transmitted to the Returning Officer a return respecting his election expenses, accompanied by a declaration, in terms of Section 70 of the Order in Council. III, pp. 36, 37.

Under Sections 65 and 66 of the Order in Council, the Appellant was entitled to incur expenditure in connection with the election up to the extent of Rs.10,310 (inclusive of Rs.2,000 for personal expenses). But, he did not find it necessary to reach the said maximum and his return accordingly showed an expenditure of Rs.5308/69. II, pp. 276, 277.

17. On the 24th July, 1952 (approximately two months after the date of the publication of the result, and five weeks after the said prescribed period of twenty-one days had elapsed), the present Respondents applied to the Supreme Court for leave to amend their election petition under Section 83 (2) of the Order in Council, which permits the amendment of an election petition presented in due time for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, with the leave of a Judge of the Supreme Court, within the time within which an election petition questioning the return or the election upon that ground may be presented. The present Respondents thus sought to introduce into their election petition a further allegation to the effect that the Appellant had made a false declaration of his election expenses. I, p. 8.
III, p. 37.

III, p. 37.
I, p. 10.

The application to amend came before Gratiaen S.P.J. who granted it with liberty to the Appellant, if so advised, to move to have the order permitting the amendment vacated at a later date.

As already stated, Gratiaen S.P.J. was one of the three Supreme Court Judges who subsequently heard the appeal in this case against the determination of the Election Judge. In his dissenting Judgment allowing the appeal he made clear his view that he had been in error in granting the said leave to amend. He expressed his considered conclusion on this subject as follows :—

III, p. 56.

“ In the result the amendment dated the 25th July, 1952 10
of the Respondents’ original petition dated the 16th June, 1952, was made out of time and I am therefore compelled to admit that I had no jurisdiction, even provisionally, to allow the amendment.

“ Accordingly, the learned Election Judge had himself no jurisdiction to unseat the Appellant upon the basis of that allegation.”

II, p. 269.

18. Three of the original four allegations against the Appellant having, as already indicated, been abandoned, the amended election petition came on for trial before the Election Judge (H. A. de Silva J.) and was concerned only with : (1) the original allegation (3 (C)) relating 20
to election posters, handbills, etc. ; and (2) the new allegation (3 (E)) under Section 58 (1) (f) of the Order in Council, relating to the declaration of election expenses, which had been introduced by the said amendment.

II, pp. 267-315.

19. By his Judgment, dated the 13th February, 1953, the learned Election Judge declared that the Appellant’s election was void on the ground that he had committed both the corrupt practices investigated at the trial.

II, pp. 313-314.

20. The learned Election Judge’s views on the charge relating to election posters, handbills, etc., were, as already stated, reversed by a majority of the Bench which heard the appeal in the Supreme Court and 30
it is not necessary to refer to them further here.

II, p. 313.

On the new charge relating to election expenses, the learned Election Judge held that as the Appellant had omitted to include in his return of expenses certain small expenditures of three of his supporters (whom the learned Judge found were the Appellant’s “ agents ” in election law) he had knowingly made a false declaration as to his election expenses and had therefore committed a corrupt practice within Section 58 (1) (f) of the Order in Council.

II, p. 306.

II, pp. 276, 313.

It may be relevant to say here that even if the Appellant had in his said return of election expenses included the specific sums found to have 40
been spent by the said three persons and a further reasonable sum alleged to have been spent in the purchase of cloth for purposes of flags used during the election, the total amount of his election expenses (inclusive of such additional items) would still have been well within the prescribed maximum.

21. Against the said determination of the Election Judge the Appellant appealed to the Supreme Court of Ceylon (under Section 82A of the Order in Council) on several questions of law which will be found stated in his Petition of Appeal dated the 18th February, 1953.

I, pp. 33-35.

22. The appeal was heard in the Supreme Court by a Bench of three Judges (Nagalingam A.C.J., Gratiaen S.P.J. and Pulle J.) whose findings resulted, as stated in paragraph 4 hereof, in the dismissal of the appeal on the sole ground that the Appellant had knowingly made a false declaration of his election expenses.

III

10 The references to the separate Judgments of the learned Supreme Court Judges which follow are limited to the issue, whether or not the Courts below had, in the circumstances of this case, any jurisdiction to declare the Appellant's election void which is, as already indicated, the main question for determination on this appeal.

23. Nagalingam A.C.J. did not accept the argument advanced on the Appellant's behalf that a true interpretation of the said Section 83 (1) proviso (a), read with the said Section 58 (1) (f), leads one to the conclusion that the Order in Council does not contemplate the presentation of an election petition after the expiry of the prescribed period of twenty-one
20 days from the date of the publication of the result in the *Government Gazette* if the petition be founded upon the allegation that a candidate returned as member has made a false declaration of his election expenses after the expiry of such period and has thereby (but not otherwise) been guilty of a corrupt practice.

III, pp. 1-2.

As to the words "a payment of money or other act . . . made or done since the date aforesaid . . . in pursuance or in furtherance of such corrupt practice" in the said Section 83 (1) proviso (a), upon the true interpretation of which the question of jurisdiction turns, the view of the learned Judge (Nagalingam A.C.J.) was that :—

30 "The true construction is that the phrase 'in pursuance or in furtherance of such corrupt practice' merely refers to the carrying out of the act which constitutes the corrupt practice and not that there should be a link or connection between the corrupt practice, an isolated act, and the payment of money or other act, another isolated act."

III, p. 13.

The learned Judge accordingly held that the Election Judge had jurisdiction although the only act which would be relied upon was the corrupt practice itself which was committed after the prescribed period and in respect of which an election petition *ex necessitate* could not be brought
40 within the prescribed period.

III, p. 16 ; p. 11.

24. Gratiaen S.P.J. dissented from the findings of the learned Acting Chief Justice on the issue of jurisdiction. He was clear that the learned Election Judge had no jurisdiction to set aside the election on the additional ground which, by his (Gratiaen S.P.J.) own error in permitting the amendment, had been inserted in the election petition.

III, p. 56. The learned Supreme Court Judge (Gratiaen S.P.J.) did not accept the argument advanced on the Appellant's behalf that a corrupt practice exclusively conceived and consummated after the date of an election can never form the basis of an election petition. But he held that "Section 77 (e) by itself does not in my opinion preclude statutory corrupt practices . . . —such as offences under Section 58 (1) (f)—from forming the basis of an election petition if committed after the election. The right to include such charges in election petitions ultimately depends, however, on whether the procedural provisions of the enactment are wide enough to catch up the particular case. It is at this point that the scheme of the Order in Council seems to have broken down and we are not vested with jurisdiction to invent a procedure in order to deal with a *casus omissus*." 10

III, p. 55. The learned Supreme Court Judge also held that—

"(A) . . . , the proviso applies only to some payment or act which is alleged to have subsequently implemented a corrupt practice committed before the election with a view to influencing improperly the mind of the voter," and

"(B) an allegation that a corrupt practice has been committed in contravention of Section 58 (1) (f) is not under any circumstances covered by Section 83 (1) (a)." 20

25. Earlier in his Judgment the learned Supreme Court Judge (Gratiaen S.P.J.) observed :—

III, p. 46. "The substitution of the word 'act' for 'reward' in proviso (a) of Section 83 (1) of the Order in Council certainly enlarges the ambit of the proviso which thus becomes equally applicable for instance to subsequent acts done in furtherance of pre-election threats constituting the corrupt practice of undue influence. But the substitution cannot alter the meaning of the unamended phrase 'in pursuance or furtherance of'. Indeed the proviso is essentially procedural in character, it does not purport to influence the substantive law relating to corrupt election practices." 30

26. Referring to, and comparing, English legislation on the offence of "knowingly making a declaration of expenses falsely," the learned Supreme Court Judge (Gratiaen S.P.J.) said :—

III, pp. 47, 48. "The commission of this new offence has undoubtedly been a ground for setting aside an election in England ever since the Act of 1883 was passed and there is good reason why this should be so ; because the dishonesty involved in its commission affords most powerful evidence of undetected offences difficult to particularise which had previously contaminated the electorate. Accordingly a special procedure, which did not exist in the earlier framework, was introduced so as to enable such charges to be investigated at election trials. Candidates seldom, if ever, forwarded their 'returns of expenses' within the period of twenty-one days normally prescribed for the filing of election petitions and the extension of time granted in cases falling within the later portion of Section 6 (2) of the Act of 1866 had no application to such a case. Accordingly 40

Section 40 of the Act of 1883 which also introduced for the first time the category of election offences designated 'illegal practices,' provides that petitions based on such charges may be filed—

(1) (a) "At any time before the expiration of fourteen days after the day on which the returning officer receives the return and declaration respecting election expenses by the member to whose election the petition relates and his election agent."

10 (b) "If the election petition specifically alleges a payment of money or some other act to have been made or done since the said day by the member or an agent of the member or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days after the date of such payment or other act."

(3) "This section shall apply in the case of an offence relating to the return and declarations respecting election expenses in like manner as if it were an illegal practice and also shall apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice."

20 One immediately observes the manner in which special provision is made for challenging an election, within an extended period of time, on the ground of this new post-election 'corrupt practice'; it was equated for procedural purposes to an illegal practice. By virtue of Section 40 (3) the entire scheme becomes demonstrably complete. As far as I had been able to trace the English authorities, every election petition challenging an election upon an allegation of this offence has been presented under Section 40 (3) read with Section 40 (1) (a).

30 Let us examine by way of contrast the corresponding procedural provisions of the Ceylon Order in Council :—

A. Section 83 (1) (b) (i) corresponds precisely to Section 40 (1) (a) of the English Act.

B. Section 83 (1) (b) (ii) corresponds precisely to Section 40 (1) (b) of the English Act.

C. Section 40 (3) of the English Act has no counterpart in the Order in Council.

40 We are thus confronted with a clear illustration of 'scissors and paste legislation' in which designedly or otherwise, a special provision for the inclusion of charges relating to an exclusively post-election 'corrupt practice' has been left out."

27. At the end of his survey of all the relevant law, the learned Supreme Court Judge (Gratiaen S.P.J.) expressed his conclusions as follows :—

"An act may be done 'in pursuance of' an executory contract III, p. 50. or agreement; it may also be done 'in furtherance of' a scheme or

plan which (though it involves even in its inchoate form the commission of an election offence) nevertheless requires, as a scheme, further implementation to achieve complete fulfilment.

“ But, with respect, I do not see how one act can further something which, regarded as an offence already committed, needs nothing more to further its execution . . .

III, pp. 50-51.

“ I would say that the language of Section 83 (1) (a) presupposes the prior commission of a corrupt practice which was intended to be advanced or further implemented by a later ‘ payment ’ or ‘ act.’ In any event it is manifest to my mind that the words cannot be applied to an ‘ act ’ which is identifiable with the offence itself (whether already committed or not) . . . 10

III, p. 51.

“ The complicated concept of an act which is done in pursuance or in furtherance of itself (or of something that at least includes itself) introduces problems to which I have tried in vain to accommodate my mind.”

28. Finally, the learned Supreme Court Judge (Gratiaen S.P.J.) expressed his view, which, on the question of jurisdiction, was a dissenting one as follows :—

III, p. 57.

“ I would reverse the determination of the learned Election 20 Judge, because in my opinion (1) the decision against the Appellant under Section 58 (1) (c) was contrary to law, and (2) there was no jurisdiction to adjudicate upon the allegation that the Appellant had committed a corrupt practice under Section 58 (1) (f) on the 27th June, 1952, i.e., after the last date for presenting petitions under Section 83 (1) had expired.”

III, pp. 59, 65.

29. Palle J. was in agreement with Nagalingam A.C.J. on the question of jurisdiction.

III, p. 64.

In the learned Judge’s view one of the simplest meanings of the expressions “ in pursuance of ” or “ in furtherance of ” would be “ the prosecution ” or “ the promotion ” of “ the thing.” 30

“ It is true,” he said, “ that in England in cases falling under Section 6 (2) of the Act of 1868 the phrases have been held to describe the implementation after the election of a corrupt pre-election promise to treat or a promise to give a voter a money reward or its equivalent. Such cases are obvious examples of acts done ‘ in pursuance or in furtherance of ’ corrupt practices. Does it follow however by logical necessity that there is no scope for the application of either phrase to the corrupt practice of making a false return ? I am constrained to say ‘ No ’ . . . I see . . . no compelling reason why the idea of a nexus between a pre-election promise and its implementation should affect the approach to what is an independent problem, namely, whether the act of making a declaration for the purposes of Section 70 of the Order in Council is an act done in pursuance or in furtherance of the corrupt practices prescribed by Section 58 (1) (f).” 40

30. Against the Judgment of the said majority of Judges of the Supreme Court (Nagalingam A.C.J. and Pulle J.) on the issue as to election expenses and the related issue as to the jurisdiction to entertain and adjudicate on the election petition on the said ground, the Appellant applied for Special Leave to Appeal to Her Majesty in Council which, by Order in Council, dated the 4th February, 1954, was granted to him, subject to the right of the Respondents hereto, or of the Attorney-General of Ceylon, to raise, at the hearing of the appeal, the question of the jurisdiction of the Judicial Committee of the Privy Council to entertain
 10 the appeal.

The Appellant humbly submits that this appeal is competent and ought to be allowed, with costs throughout, for the following among other

REASONS

- (1) BECAUSE whether the matters arise in an election case or otherwise Her Majesty in Council has jurisdiction to investigate and rectify any serious and grave injustice which flows from an unwarranted assumption of jurisdiction by the Courts below.
- 20 (2) BECAUSE in the circumstances of this case neither the Election Judge nor the Supreme Court had any jurisdiction to adjudicate upon the issue as to whether or not the Appellant had committed the corrupt practice of knowingly making a false declaration of his election expenses.
- 30 (3) BECAUSE on a true interpretation of Section 83 (1) proviso (a) of the Order in Council an election petition can be presented after twenty-one days of the publication of the result of the election in the *Government Gazette* only where a corrupt practice has already been committed and an act "in pursuance or in furtherance" thereof follows in which case the petition may be presented within twenty-eight days of the latter act.
- (4) BECAUSE the Appellant's return of his election expenses and the accompanying declaration were made more than twenty-one days after the date of the publication of the result of his election and this, if at all a corrupt practice, could not properly be made the subject of an election petition.
- 40 (5) BECAUSE the Judgments of Nagalingam A.C.J. and Pulle J. on the issue as to jurisdiction to entertain and adjudicate on the election petition in this case are wrong and ought to be set aside.
- (6) BECAUSE, for reasons stated therein, the Judgment of Gratiaen S.P.J. was right in law.

HARTLEY SHAWCROSS.

R. K. HANDOO.

In the Privy Council.

ON APPEAL

from the Supreme Court of Ceylon.

BETWEEN

EDWARD LIONEL SENANAYAKE

Appellant

AND

**1. HERATH MUDIYANSELAGE
NAVARATNE**

2. HERBERT SYDNEY MOLAGODA

Respondents

Case for the Appellant

DE SILVA & MENDIS,

7 New Court,

Lincoln's Inn, W.C.2,

Solicitors for the Appellant.