P.C.
W.C.2.

21, 1954

No. 17 of 1954

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE SUPREME COURT OF CEYLON

B E T W E E N :-

EDWARD LIONEL SENANAYAKE Appellant

- and -

1. HERATH MUDIYANSELAGE NAVARATNE
2. HERBERT SYDNEY MOLAGODA Respondents

R E C O R D

V O L U M E I

DE SILVA & MENDIS,
7, New Court,
Lincoln's Inn, London, W.C.2.
Solicitors for the Appellant.

SMILES & CO.,
15, Bedford Row,
London, W.C.1.
Solicitors for the Respondents.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Attorney General.

SENANAYAKE v. NARATNE and MOLAGODA

I N D E X

TO VOLUME I OF THE RECORD

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections) Order in Council 1946.

Election for the Kandy Electoral District No. 24 held on 24th day of May 1952.

1. Herath Mudiyanselage Navaratne of 251/7 Trincomalee Street, Kandy.
2. Herbert Sydney Molagoda of 6 Lady Torrington's Road, Kandy.

Petitioners.

VS.

Edward Lionel Senanayake of 34 Gregory Road, Kendy.

Respondent.

On this 16th day of June 1952.

The petition of Herath Mudiyanselage Navaratne of 251/7 Trincomalee Street, Kandy and of Herbert Sydney Molagoda of 6 Lady Torrington's Road, Kandy whose names are subscribed hereunder.

1. Your Petitioners abovementioned had the right to vote and voted at the above Election.

2. Your Petitioners state that that the said election was held on the 24th day of May 1952 when Tamara Kumari Illangaratne, E.L. Senanayake and T. Somasunderam were candidates and the Returning Officer has returned E.L. Senanayake the Respondent as being duly elected.

3. Your Petitioners state that the said election was void and the respondent was not duly elected for the following reasons.

(a) that the corrupt practice of undue influence was committed in connection with the said election by the said respondent and/or with his knowledge or consent and/or by agents of the said respondent.

(b) that the corrupt practice of bribery was committed in connection with the said election by the said respondent and/or with his knowledge or consent and/or by agents of the said respondent.

(c) that the said Respondent and/or his agents and/or other persons with his knowledge or consent did print publish distribute or post up or cause to be printed, published distributed or posted up advertisements, hand bills, placards and posters which referred to the said election and which did not bear upon their faces the respective names and addresses of their printers and publishers and thereby committed the offence of corrupt practice within the meaning of Section 58 (1) (c) of the Ceylon (Parliamentary Elections) Order in Council 1946.

(d) that before and during the said election the said respondent and/or his agents and/or other persons with his knowledge or consent did make and/or publish false statements of facts in relation to the personal character or conduct of Tammara Kumari Illangaratne one of the candidates referred to above

for the purpose of affecting the return of the said candidate and thereby committed the offence of corrupt practice within the meaning of Section 58 1 (d) of the Ceylon (Parliamentary Elections) Order in Council 1946.

Wherefore Your Petitioners pray:-

(a) that it might be determined that the said E.L. Senanayake the Respondent above mentioned was not duly elected or returned and that the Election was void.

(b) for costs of these proceedings,

(c) and for such other and further relief as to this Court shall seem meet.

Sgd. H.M. Nawaratna

Sgd. H.S. Molagoda

Petitioners.

Witness to the signatures and identity of the Petitioners.

Sgd.

Proctor S.C.

ORIGINAL.

General 172

H No. 75433.

Date: 18th June 1952.

Received from Mr. T. Devarajan, Agent on behalf of Messrs. Herath Mudiyanselage Navaratne and Herbert Sydney Molagoda the sum of Rupees Seven thousand only, being deposit by way of security, for payment of all costs, charges and expenses, that may become payable by the petitioners in connection with Election Petition No. 3 of 1952 filed by the said Messrs. Herath Mudiyanselage Navaratna and Herbert Sydney Molagoda touching the election of Mr. Edward Lionel Senanayake as Member of the House of Representatives for Electoral District No. 24 Kandy.

Sgd.

Commissioner of Parliamentary Elections.

Rs. 7,000/-.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections) Order in Council 1946.

Election for the Kandy Electoral District No. 24 Held on 24th day of May 1952.

1. Herath Mudiyanselage Navaratne of 251/7 Torrington Street, Kandy.

2. Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy.

Petitioners.

No. 3 of 1952. Vs.

Edward Lionel Senanayake of 34 Gregory Road, Kandy.

Respondent.

We file our petition and affidavit and, for the reasons stated therein, move that Your Lordship may be pleased to grant us leave under Section 83 (2) of the Ceylon (Parliamentary Elections) Order in Council, 1946 to amend our petition dated 16th June 1952 in the manner set outin our Petition filed herewith.

Colombo, 24th July 1952.

Sgd. H.M. Nawaratne

Sgd. H.S. Molagoda

Petitioners.

Copies of the Petition affidavit and motion have been left at the office of the Agent of the Respondent.

Sgd. H.M. Navaratne
Sgd. H.S. Molagoda.

I fix this matter for enquiry in Chambers at 4 p.m. today. The Registrar will notify the Respondent's Agent forthwith.

Intd. E.F.N.G.
25/7

(16) IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections) Order in Council 1946.

Election for the Kandy Electoral District No. 24 held on 24th day of May 1952.

1. Herath Mudiyanselage Navaratne of 251/7 Trincomalee Street, Kandy.

2. Herbert Sydney Molagoda of No. 6 Lady Torrington Road, Kandy. 10

Petitioners.

No. 3 of 1952 Vs.

Edward Lionel Senanayake of 34 Gregory Road, Kandy.

Respondent.

We, Herath Mudiyanselage Navaratne of 251/7 Trincomalee Street, Kandy and Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy not being Christians do hereby solemnly sincerely and truly declare and affirm as follows:- 20

1. On or about the 16th day of June 1952 we filed the above styled petition against the respondent abovenamed. The result of the above election for the said Kandy Electoral District had been published in the Government Gazette of 28th May 1952.

2. Thereafter the Respondent abovenamed who was his own Election Agent filed his return and declarations respecting Election expenses on or about 27th June 1952 and notice required by Section 71 (1) 30 of the Ceylon (Parliamentary Elections) Order in Council, 1946 was published in the Government Gazette of 11th July 1952.

3. We desire to amend our said petition by the addition of a charge alleging that a corrupt practice has been committed under Section 58 (1) (f) of the said Order in Council by the Respondent on or about 27th June 1952 in respect of the declaration

filed by him.

4. We have been advised that it is necessary that we should obtain the leave of a Judge of Your Lordships' Court to amend the said Petition filed by us.

5. We accordingly move that Your Lordship may be pleased to give us leave under Section 83(2) of the Ceylon (Parliamentary Elections) Order in Council, 1946 to amend our said petition and that our said petition dated 16th June 1952 be amended in the manner following, that is to say, by the addition immediately after paragraph 3 (d):- thereof of the following new paragraph to be numbered 3(e):-

"3(e) that the respondent above-named was guilty of a corrupt practice under Section 58(1) (f) of the Ceylon (Parliamentary Elections) Order in Council 1946, in that being a candidate and his own Election Agent he knowingly made the declarations as to Election Expenses required by Section 70 of the said Order in Council falsely".

Sgd. and affirmed to at Colombo on this 24th day of July 1952 .....

Sgd. H.M. Nawaratna

Sgd. H.S. Molagoda

Before me,

Sgd. T. NadaRajah

Commissioner for Oaths.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections) Order in Council 1946.

Election for the Kandy Electoral District No. 24 held on 24th day of May 1952

1. Herath Mudiyanselage Navaratne of 251/7 Trincomalee Street, Kandy.
2. Herbert Sydney Molagoda of No. 6, Lady Torrington's Road, Kandy.

Petitioners.

No. 3 of 1952.

Vs.

Edward Lionel Senanayake of 34 Gregory Road, Kandy.

Respondent.

This 24th day of July 1952.

The petition of the petitioners abovenamed whose names are subscribed states as follows:-

1. On or about the 16th day of June 1952, the petitioners filed the above styled petition against the respondent abovenamed. The result of the above election for the said Kandy Electoral District had been published in the Government Gazette of 28th May 1952.

2. Thereafter the Respondent abovenamed who was his own Election Agent filed his return and declarations respecting Election expenses on or about 27th June 1952 and notice required by Section 71(1) of the Ceylon (Parliamentary Elections) Order in Council, 1946, was published in the Government Gazette of 11th July 1952.

3. The petitioners desire to amend their said petition by the addition of a charge alleging that a corrupt practice has been committed under Section 58 (1) (f) of the said Order in Council by the Respondent on or about 27th June 1952 in respect of the declarations filed by him.

4. The petitioners have been advised that it is necessary that the petitioners should obtain the leave of a Judge of Your Lordships' Court to amend the said petition filed by them.

5. The petitioners accordingly move that Your Lordship may be pleased to give them leave under Section 83 (2) of the Ceylon (Parliamentary Elections) Order in Council 1946, to amend their said petition and that their said petition dated 16th June 1952 be amended in the manner following that is to say, by the addition immediately after paragraph 3 (d) thereof of the following new paragraph to be numbered 3(e):-

"3(e) that the respondent abovenamed was guilty of a corrupt practice under Section 58 (1) (f) of the Ceylon (Parliamentary Elections) Order in Council 1946, in that being a candidate and his own Election Agent he knowingly made the declarations to Election expenses required by Section 70 of the said Order in Council falsely."

Sgd. H.M. Nawaratne.

Sgd. H.S. Molagoda

Petitioners

(19) Election Petition No. 30 of 1952 (Kandy.)

Application to amend Petition dated 16th June 1952, in the manner set out in the petition dated 24th July, 1952.

Date: 25th July, 1952.

1. H.M. Navaratne
2. H.S. Molagoda

Vs.

E.L. Senanayake

Gratiaen J. (in Chambers)

Mr. Registrar Navaratnam informs me that notice of this application has been left at the office of Proctor Hewagama who is the respondent's agent.

Mr. Nadesan appears in support of this application. There is no appearance on behalf of the respondent. I have considered the matter and in terms of Section 83 (2) I allow the petition to be amended in terms of the prayer of the petitioner.

Sgd. E.F.N. Gratiaen.

Puisne Justice.

Later: The agent for the respondent saw me in Chambers at 4.20 p.m. today, and states that he had no notice of this application until after 4 p.m. I inform him that he should, if he advised, make a formal application to have my order vacated.

Sgd. E.F.N. Gratiaen.

24/7/52.

(20) IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections) Order in Council 1946.

Election for the Kandy Electoral District No. 24 held on 24th day of May 1952.

1. Herath Mudiyanselage Navaratne of 251/7 Trincomalee Street, Kandy.
2. Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy.

Petitioners.

No. 3 of 1952. Vs.

Edward Lionel Senanayake of 34 Gregory Road, Kandy.

Respondent.

On this 25th day of July 1952.

The amended petition of Herath Mudiyanselage Navaratne of 251/7 Trincomalee Street, Kandy and of Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy whose names are subscribed hereunder.

1. Your Petitioners abovementioned had the right to vote and voted at the above Election.

2. Your Petitioners state that the said election was held on the 24th day of May 1952 when Tamara Kumari Illangaratne, E.L. Senanayake and T. Somadunderam were candidates and the Returning Officer had returned E.L. Senanayake the Respondent as being duly elected.

3. Your Petitioners state that the said election was void and the respondent was not duly elected for the following reasons:-

(a) that the corrupt practice of undue influence was committed in connection with the said election by the said respondent and or with his knowledge or consent and/or by agents of the said respondent.

(b) that the corrupt practice of bribery was committed in connection with the said election by the said respondent and/or with his knowledge or consent and/or by agents of the said respondent.

(c) that the said respondent and/or his agents and/or other persons with his knowledge or consent did print publish distribute or post up or cause to be printed, published and distributed or posted up advertisements, handbills, placards and posters which referred to the said election and which did not bear upon their faces the respective names and addresses of their printers and publishers and thereby committed the offence of corrupt practice within the meaning of section 58 (1) (c) of the Ceylon (Parliamentary Elections) Order in Council 1946.

(d) that before and during the said election the said respondent and/or his agents and/or other persons with his knowledge or consent did make and/or publish false statements of facts in relation to the personal character or conduct of Tamara Kumari Illangaratne one of the candidates referred to above for the purpose of affecting the return of the said 3

candidate and thereby committed the offence of corrupt practice within the meaning of Section 58 (1) (d) of the Ceylon(Parliamentary Elections) Order in Council 1946.

(e) that the respondent abovenamed was guilty of a corrupt practice under Section 58 (1) (f) of the Ceylon (Parliamentary Elections) Order in Council 1946, in that being a candidate and his own Election Agent he knowingly made the declarations as to Election Expenses required by Section 70 of the said Order in Council falsely.

Wherefore Your Petitioners pray:-

(a) that it might be determined that the said E.L. Senanayake the Respondent above mentioned was not duly elected or returned and that the Election was void.

(b) for costs, of these proceedings,

(c) and for such other and further relief as to this Court shall seem meet.

Sgd. H.M. Navaratne

Sgd. H.S. Molagoda.

Petitioners.

Witness to the signatures and identity of the Petitioners.

Sgd.....

Proctor S.C.

(21)

The Registrar,
Supreme Court,
Colombo.

Dear Sir,

Election Petition for the Kandy Electoral District (No. 24) held on 24th May 1952.

1. Herath Mudiyanselage Navaratne and

2. Herbert Sydney Malagoda.

Petitioners.

Election Petition No. 3

Vs.

Edward Lionel Senanayake of 34 Gregory Road, Kandy.

Respondent.

I have to tender herewith Receipt No. 75449 dated 29th July 1952 given by the Commissioner of Parliamentary Elections for a sum of Rs.2000/- being additional security deposited by the abovenamed Petitioners in respect of the Additional charge in the amended Election Petition filed on 25th July 1952 under Rules 12 and 13 of the 3rd Schedule of the Ceylon (Parliamentary Elections) Order in Council 1946.

Yours faithfully,

Sgd.

Agent for the Petitioners.

Colombo, 29th July 1952.

(22) ORIGINAL

General 172

H/7 No. 75449

Dated 29th July 1952.

Received from Mr. T. Dewarajan, Agent on behalf of Messrs. Herath Mudiyanselage Navaratne and Herbert Sydney Molagoda the petitioners in election petition No. 3 of 1952 the sum of Rupees Two thousand only being deposit by way of further security for the payment of all costs charges and expenses that may be become payable by the said petitioners in connection with the amended election petition filed by them touching the election of Mr. Edward Lionel Senanayake as member of the House of Representatives for Electoral District No. 24 Kandy.

Sgd.....

Commissioner of Parliamentary Elections.

Rs.2,000/-.

(27) IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections) Order in Council 1946.

Election for the Kandy Electoral District No. 24 held on 24th day of May 1952.

1. Herath Mudiyanselage Navaratne, of 251/7 Trincomalee Street, Kandy.
2. Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy. 10

Petitioners.

Election Petition No. 3 of 1952.

Vs.

Edward Lionel Senanayake of Gregory Road, Kandy.

Respondent.

I move that your Lordship be pleased to Order the Petitioners abovenamed to deliver to me at No. 161/1 Hultsdorf, Colombo 12, within seven days 20 of the service hereof, full particulars in writing stating:-

1. The names of all persons alleged in paragraph 3 (a) of the amended petition to have been influenced unduly together with the address and number on the electoral register, and occupation of the each of the same; the date and the time or times when, the place or places where, each act

of undue influence is alleged to have been committed, and the manner in which each such act was committed, stating the nature of each act, whether injury, damage, harm or loss, and in what manner such injury harm, damage or loss was caused and the name, occupation and address, together with the number, if any, on the electoral register of each person who was responsible for the exercise of such influence.

(b) the names, addresses and occupations of the persons alleged in paragraph 3(a) of the amended petition to have been agents of the respondent and the names, addresses and occupations of the persons who committed the offence of the undue influence with knowledge or consent of the respondent.

2. (a) The name, address, occupation and the number on the electoral register of each of the person alleged to have been bribed, the nature of each act of bribery,

(b) The date or dates and time or times when, and the place or places where, each act of bribery is alleged to have been committed and the name, address, occupation and the number if any, on the electoral register of each of the persons who are alleged to have committed such act of bribery.

(c) The names, addresses and occupations of the persons alleged in paragraph 3 (b) of the amended petition to be agents of the respondent and

the names, addresses and the occupations of the persons who are alleged in the said paragraph to have committed the offence of bribery with the knowledge and/or consent of the Respondent.

3(a) The title, if any, of each of the advertisements, handbills, placards and posters referred to in paragraph 3(c) of the amended petition the name of its printer, the subject dealt with in it, a summary of its contents and dates, if any appearing on it.

(b) The names, addresses and occupations of the persons who printed or caused to be printed each of the advertisements, handbills, placards and posters referred to in paragraph 3(c) of the amended petition together with a statement as to which of these persons are alleged to have been agents of the respondent and which of them are "other persons" who acted with the knowledge or consent of the respondent, and the date or dates on which it was printed.

(c) The names, addresses and occupations of the persons who published or caused to be published each of the advertisements, handbills, placards and posters referred to in paragraph 3(c) of the amended petition with a statement as to which of these persons are alleged to have been agents of the respondent and which of them are "other persons"

who acted with the knowledge or consent of the respondent and the date, time and place at which each such advertisement, handbill, placard and poster was published.

(d) The names, addresses and occupations of the persons who distributed or caused to be distributed each of the advertisements, handbills, placards and posters referred in the paragraph 3 (c) of the petition with a statement as to which of these persons are alleged to have been agents of the respondent and which of these are "other persons" who acted with the knowledge or consent of the respondent and the date time and place at which each such advertisement, handbill, placard and poster was distributed.

(e) The names, addresses and occupations of the persons who posted up or caused to be posted up each of the advertisements, handbills, placards and posters referred to in paragraph 3(c) of the amended petition with a statement as to which of these persons are alleged to have been agents of the respondent and which of these are "other persons" who acted with the knowledge or consent of the respondent and the date, time and place at which each such advertisement, handbill, placard and poster was posted up.

4(a) The contents of each of the statements alleged in paragraph 3(d) of the amended petition

to be a false statement of fact.

(b) The date or dates, time or times when the place or places where, each such false statement of fact was made or published the names, addresses and occupations of the agents of the respondent and of the "other persons" on respondent's behalf who made and published the false statement of fact alleged in paragraph 3(d) of the amended petition,

(c) the manner or mode in which the false statements of fact alleged in paragraph 3(d) were made and published stating whether they were oral or in writing, and if in writing, the name of the writer or printer, the number of publications with the names of the persons making each separate publication.

5. In what respects the declarations as to Election expenses are alleged to have been made falsely; if omission of items of expenditure in the return of expenses is alleged, the nature and amount of each item of expenses omitted and the circumstances relating to the incurring thereof; and if the item or items appearing in the return are alleged to be false or incorrect, the items or amounts impugned and in what respects they are false or incorrect and what the correct amounts or items should be and the nature, value and details of the

expenses constituting such alleged correct items or amounts and the circumstances relating to the incurring thereof.

Colombo 25/27 October 1952

Received notice with Copy — Sgd. R. Hewagama. Agent for Respondent.

Sgd.....
Agent for Petitioners.
27.10.52.

(29) IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections) Order in Council 1946.

Election for Kandy Electoral District of No. 24 held on 24th day of May 1952.

1. Herath Mudiyanselage Navaratne, of 251/7 Trincomalee Street, Kandy.
2. Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy.

Petitioners.

Election Petition No. 3 of 1952.

Vs.

Edward Lionel Senanayake of Gregory Road, Kandy.

Respondent.

Of consent it is agreed that the Petitioners do deliver to the agent for the respondent at his office at No. 161/1 Hultsdorf on or before the 3rd November 1952 the following particulars in writing:-

1. The names of all persons alleged in paragraph 3 (a) of the amended petition to have been influenced unduly together with the address and number on the electoral register, and in the absence of an electoral number the occupation, of each of the same, the date when, the place or places where, each act of undue influence is alleged to have been committed and the manner in which each such act was committed

stating the nature of each act, whether injury, damage, harm or loss and in what manner such injury harm, damage or loss was caused and the name, and address, together with the number, if any, on the Electoral register and in the absence of an electoral number, the occupation, of each person who was responsible for the exercise of such influence.

(b) The names, addresses and occupations of the persons alleged in paragraph 3 (a) of the amended petition to have been agents of the respondent and the names, addresses and occupations of the persons who committed the offence of "undue influence" with knowledge or consent of the respondent.

2 (a) The name, address, and the number on the electoral register, if any, and in the absence of an electoral number the occupation of each of the persons alleged to have been bribed, the nature of each act of bribery.

(b) The date or dates, and the place or places where, each act of bribery is alleged to have been committed and the name, address, and the number, if any, on the electoral register and in the absence of an electoral number the occupation of each of the persons who are alleged to have committed such act of bribery.

(c) The names, addresses and occupations of the persons alleged in paragraph 3(b) of

the amended petition to be agents of the respondent and the names, addresses and the occupations of the persons who are alleged in the said paragraph to have committed the offence of bribery with the knowledge and/or consent of the respondent.

3 (a) The title, if any, of each of the advertisements, handbills, placards, and posters referred to in paragraph 3 (c) of the amended petition and the name of the printer the subject dealt with in it, and particulars sufficient to identify the document, and dates, if any, appearing on it.

(b) The names, addresses and occupations of the persons who printed or caused to be printed each of the advertisements, handbills, placards and posters referred to in paragraph 3 (c) of the amended petition together with a statement as to which of these persons are alleged to have been agents of the respondent and which of them are "other persons" who acted with the knowledge or consent of the respondent.

(c) The names, addresses and occupations of the persons who published or caused to be published each of the advertisements, handbills placards and posters referred to in paragraph 3 (c) of the amended petition with a statement as to which of these persons are alleged to have been agents

of the respondent, and which of them are "other persons" who acted with the knowledge or consent of the respondent and the place at which each such advertisement, handbill, placard and poster was published.

(d) The names, addresses and occupations of the persons who distributed or caused to be distributed each of the advertisements, handbills, placards and posters referred in the paragraph 3 (c) of the amended petition with a statement as to which of these persons are alleged to have been agents of the respondent and which of these are 'other persons' who acted with the knowledge or consent of the respondent and date, place or places at which each such advertisement, handbill, placard and poster was distributed.

(e) The names, addresses and occupations of the persons who posted up, or caused to be posted up each of the advertisements, handbills, placards and posters referred to in paragraph 3 (c) of the amended petition with a statement as to which of these persons are alleged to have been agents of the respondent and which of these are "other persons" who acted with the knowledge or consent of the respondent and the date and place at which each such advertisement, handbill, placard and poster was posted up.

4 (a) The contents of each of the statements alleged in paragraph 3 (d) of the amended petition to be a false statement of fact.

(b) The date or dates, when, place or places where, each such false statement of fact was made or published, the names, addresses and occupations of the agents of the respondent and of the "other persons" on respondent's behalf who made and published the false statements of fact alleged in paragraph 3 (d) of the amended petition.

(c) The manner or mode in which the false statements of fact alleged in paragraph 3 (d) was made and published, stating whether they are oral or in writing, and if in writing the name of the writer or printer.

5. In what respect the declarations as to election expenses are alleged to have been made falsely, if omission of items of expenditure in the return of expenses is alleged the description of each item of expenses omitted, and if the item or items appearing in the return are alleged to be false or incorrect, the items or amounts impugned and in what respects they are false or incorrect, the correct amounts, if known, of such items.

Colombo, 30th October, 1952.

Sgd.....

Agent for Petitioners.

Sgd. R. Hewagama

Agent for Respondent.

(34) IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections)
Order in Council 1946.

Election for Kandy Electoral District
No. 24 held on the 24th May, 1952.

1. Herath Mudiyanselage Navaratna of 251/7 Trincomalee Street, Kandy.
2. Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy.

Petitioners.

Election Petition No. 3 of 1952

Vs.

Edward Lionel Senanayake of No. 34 Gregory Road, Kandy.

Respondent.

I move to amend the particulars already supplied relating to the charges set out in paragraph 3 (e) of the amended petition and 5 of the Minute of consent by adding :

Under "A" - Items falsely declared. the following.

Items Impugned.	How false or incorrect.
Item 7(1) Registers Rs.80/-	Does not disclose the full expenditure incurred under this head.

and under "B" - items omitted, the following.

Description of Item	Amount omitted
13. Item 7(1) Registers Rs.80/-	Rs.20/- approximately.

Colombo, 6th November, 1952.

Sgd.

Agent for the Petitioners.

Received notice,
Copy left at the office
of the Agent of the Respondent.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Ceylon (Parliamentary Elections)
Order in Council 1946.

Election for Kandy Electoral District
No. 24 held on the 24th May 1952.

1. Herath Mudiyanselage Navaratna of
252/7 Trincomalee Street, Kandy.
2. Herbert Sydney Molagoda of No. 6
Lady Torrington's Road, Kandy.

Petitioners.

Election Petition
No. 3 of 1952

Vs.

Edward Lionel Senanayake of No.34
Gregory Road, Kandy.

Respondent.

We, Herath Mudiyanselage Navaratna of 252/7 Trincomalee Street, Kandy and Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy, both not being Christians do hereby solemnly sincerely and truly declare and affirm as follows:-

1. We are the petitioners abovenamed.

2. In the particulars of charges furnished by us we have not included in the items of expenditure impugned in regard to the charge set out in paragraph 3(e) of the amended petition the following items:

Item No. 7(1) in the respondent's Election expenses return, namely, Registers - Rs.80/-

3. Before the Particulars were given we were unaware of the fact that the respondent has in fact paid Rs.100/- for the registers.

4. Subsequent to the supplying of the particulars we learnt on the 5th November 1952 that the Respondent has purchased altogether seven registers. Accordingly we went to the Kachcheri, Kandy to verify this and found that the respondent has personally paid for and purchased five registers costing Rs.100/-

10 5. Failure to discover this earlier was not due to any lack of diligence on our part.

Sgd. H.M. Navaratne

Sworn to at Colombo on)
this 10th day of)
November 1952)

H.S. Molegoda

Before me,

Sgd.....

Commissioner for Oaths.

Allowed

20 Sgd.....

10.11.52

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an appeal under Section 82A of the Ceylon (Parliamentary Elections) Order in Council, 1946 as amended by Parliamentary Elections (Amendment) Act No.19 of 1948.

The Ceylon (Parliamentary Elections) Order in Council for Kandy Electoral District No. 24 holden on the 24th day of May 1952.

1. Herath Mudiyanselage Navaratne of 251/7 Trincomalie Street, Kandy.
2. Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy.

Petitioners.

vs.

Edward Lionel Senanayake of 34 Gregory Road, Kandy.

Respondent.

Election Petition No. 3 of 1952.

And

Edward Lionel Senanayake of 34 Gregory Road, Kandy.

Appellant.

vs.

1. Herath Mudiyanselage Navaratne of 251/7 Trincomalie Street, Kandy.
2. Herbert Sydney Molagoda of No. 6 Lady Torrington's Road, Kandy.

Respondents.

To:

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

On this 18th day of February 1953.

The petition of appeal of the Appellant above named states as follows:

1. The respondent abovenamed presented Election Petition No. 3 of 1952 against the appellant praying that the election of the appellant as a Member of Parliament for the Kandy Electoral District on 24th May 1952 be declared void on the following grounds:-

"(a) that the corrupt practice of Undue influence was committed in connection with the said election by the said respondent and or with his knowledge or consent and/or by agents of the said respondent.

(b) that the corrupt practice of bribery was committed in connection with the said election by the said respondent and/or with his knowledge or consent and/or by agents of the said respondent.

(c) that the said respondent and/or his agents and/or other persons with his knowledge or consent did print publish distribute or post up or cause to be printed published distributed or posted up advertisements hand bills placards and posters which referred to the said election and which did not bear upon their faces the respective names and addresses of their printers and publishers and thereby committed the offence of corrupt practice within the meaning of section 58 i (c) of the Ceylon (Parliamentary Elections) Order in Council 1946.

(d) that before and during the said election the said respondent and/or his agents and/or other persons with his knowledge or consent did make and/or publish false statements of facts in relation to the personal

character or conduct of Tamara Kumari Illangaratna one of the candidates referred to above for the purpose of affecting the return of the said candidate and thereby committed the offence of corrupt practice within the meaning of section 58 i (d) of the Ceylon (Parliamentary Elections) Order in Council 1946".

2. On the 24th July 1952 the Respondents on application to Your Lordships Court amended the petition filed by them by the addition of the following ground:

" that the respondent abovenamed was guilty of a corrupt practice under section 58 (1) (f) of the Ceylon (Parliamentary Elections) Order in Council, 1946, in that being a candidate and his own Election Agent he knowingly made the declaration as to Election expenses required by section 70 of the said Order in Council falsely."

3. At the commencement of the hearing the respondents moved to withdraw charges (a) and (b) set out in paragraph 1 above and during the inquiry stated that they were not proceeding with charge (d). The inquiry was thus restricted to charges (c) and (e).

4. After trial the learned Election Judge delivered judgment on the 13th day of February 1953 holding that the said charges were proved and determining that the election of the appellant as member of Parliament for the Kandy Electoral District was void.

5. Being aggrieved by the said judgment and determination of the Election Judge, the appellant begs to appeal therefrom to Your Lordships Court on the following grounds:

(a) The learned Judge has failed to apply the standard of proof required to establish charges of corrupt practice.

(b) That an Election cannot in law be declared to be void on an election petition on the ground that the corrupt practice defined in section 58 (1) (f) has been committed.

(c) (i) The learned Judge has misdirected himself in law as to the interpretation of the expression "knowingly" in section 58 (1) (f)

(ii) The learned Judge has misdirected himself in law or failed to direct himself as to the interpretation of the expression 'falsely' in section 58 (1) (f).

(d) The learned Judge has erred in holding the appellant guilty of a corrupt practice under section 59 (i) (f) without due consideration of the question whether knowingly he made the declaration falsely.

(e) There is no evidence to support a finding that in making the declaration the appellant did so knowingly and falsely.

(f) The learned Judge has misdirected himself in law in holding that expenses other than those incurred by the Election Agent and the personal expenses of the Candidate are required to be set forth in the Return of Election expenses.

(g) The appellant submits that in any event without knowledge on his part that the allegedly omitted items of expenditure should be included there can be no question of his making the declaration as to

his election expenses "knowingly and falsely" and the learned Judge erred in law in holding otherwise.

(h) The learned Judge has grossly misdirected himself in that while stating that "to contend that the respondent was unaware that the expenses referred to were incurred in the conduct and management of his election would be to argue that he conducted his election without that meticulous care which the law of the land enjoined him to observe", he thereupon proceeds to hold that charge under section (58) (1) (f) proved. The learned Judge has in particular erred in law in thus effectively excluding from consideration the view arising equally upon the evidence that the omission of the items referred to might well have been occasioned by a lack of care.

(i) That in respect of the handbills, posters and other documents in regard to which charges under Section (58) (1) (c) were made there had been a sufficient compliance in law with the requirements of the provisions of the section.

(j) That the act or acts contemplated by section (58) (1) (c) must be done corruptly for the commission of an offence under that provision.

(k) That the burden of proving all the elements of the offence under that provision inclusive of the acting corruptly lay throughout on the petitioner in the election petition and the learned judge erred in holding that it was otherwise.

(l) That section 58 (1) (c) is only applicable to documents in fact used for the purpose of an

election and in the absence of proof that the documents which were the subject matter of charges under that provision were in fact used for the purposes of election, no offence has been established and the learned Judge has misdirected himself in holding otherwise.

(m) That the learned Judge has misdirected himself in law as to the interpretation of the expressions "published" and "publisher" in section (58) (1) (C) and there is no evidence to support the finding that the appellant published or was the publisher of the documents which are the subject matter of charges under the said provision.

(n) The learned Judge has misdirected himself in law in applying the English Common Law of Elections relating to agency and has imputed to the appellant liability for the acts of persons who were not his agents.

Wherefore the appellant prays that Your Lordships Court be pleased to:-

(a) set aside the said determination of the Election Judge.

(b) declare that the appellant was duly elected and returned.

(c) set aside the order for costs made by the Election Judge and award the appellant the costs of his appeal and the costs of and incidental to the presentation of the above Election Petition and of the proceedings consequent thereto, and

(d) for such other and further relief as to Your Lordships Court may seem meet.

Sgd. E.L. Senanayake

Appellant.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an appeal under Section 6(1) of the Ceylon (Parliamentary Elections) (Amendment) Act NO. 26 of 1953.

The Ceylon (Parliamentary Elections) Order in Council 1946.

Election for the Kandy Electoral District No. 24 holden on the 24th day of May 1952.

Election Patition No. 3 of 1952.

1. Herath Mudiyanselage Navaratne of 251/7 Trincomalie Street Kandy.

2. Herbert Sydney Molegoda of No. 6 Lady Torrington Road, Kandy.

Petitioners

against

Edward Lionel Senanayake of 24 Gregory Road, Kandy

Respondent.

And

Edward Lionel Senanayake of 24 Gregory Road, Kandy.

Appellant.

vs.

1. Herath Mudiyanselage Navaratne of 251/7 Trincomalie Street, Kandy.

2. Herbert Sydney Molegoda of No. 6 Lady Torrington Road, Kandy.

Respondents.

To:

The Honourable the Chief Justice and the other Justices of the Supreme Court.

On this 23rd day of May 1953.

The petition of appeal of the appellant abovenamed states as follows:-

1. The appellant was elected member of the House of Representatives for the Kandy Electoral District at the General Election held under the Ceylon

(Parliamentary Elections) Order in Council 1946 in the year 1952.

2. The respondents abovenamed presented Election Petition No. 3 of 1952 praying that the said election of the appellant as a member of the House of Representatives for the Kandy Electoral District be declared void inter alia on the following ground:

" that the said respondent and/or his agents and/or other persons with his knowledge or consent did print publish distribute or post up or caused to be printed published distributed or posted up advertisements, handbills, placards and posters which referred to the said election and which did not bear upon their face the respective names and addresses of their printers and publishers and thereby committed the offence of corrupt practice within the meaning of section 58 (1) (c) of the Ceylon (Parliamentary Elections) Order in Council 1946".

3. After trial the learned Election Judge delivered judgment on the 13th day of February 1953 determining that the election of the respondent at the said general election was void and holding inter alia that the corrupt practices referred to in section 58 (1) (c) of The Ceylon (Parliamentary Elections) Order in Council, 1946, had been committed by and with the knowledge and consent of the candidate and by his agents The appellant states that the conditions set out in

section 6 (1) a and 6 (1) b have been fulfilled and a right to appeal has thus accrued to him.

4. The appellant filed an appeal against the determination of the said Election Judge under section 82A of the Ceylon (Parliamentary Elections) Order in Council 1946 as amended by the Parliamentary Elections (Amendment) Act No. 19 of 1948 on the 18th day of February 1953.

5. In addition to the grounds already set out by the appellant in the petition of Appeal filed under section 82A in respect of the said charge the appellant desires to avail himself of the provisions of Act 26 of 1953 and in particular of section 73A which has been introduced into the Order in Council by the said amending Act and accordingly prefers this appeal under section 6(1) of the said Act which came into operation on the 26th April 1953.

6. The appellant humbly submits

(a) that the determination of the Election Judge in so far as it is based on the commission of corrupt practices by agents of the appellant should be set aside.

(b) that the ommision of the names and addresses referred to in section 58 (1) (c) arose from inadvertence and other reasonable causes of a like nature and did not arise from any want of good faith and that the appellant should be permitted to lead such evidence in proof thereof as would have been admissable at the trial if section 73A had actually been inserted in the

Order in Council on January 1, 1952.

(c) that therefore no corrupt practice under section 58 (1) (c) was committed in connexion with the election of the appellant.

Wherefore the appellant prays :

(a) that the determination of the said Election Judge be reversed and that Your Lordships Court be pleased to decide that the appellant was duly elected.

(b) for costs and

10 (c) for such other and further relief as to this Court shall seem meet.

Sgd. E.L. Senanayake

Appellant.