

1948

Present: Windham J.

SAIMON SILVA, Petitioner, and R. S. PELPOLA, Respondent

IN THE MATTER OF THE BY-ELECTION FOR THE GAMPOLA
ELECTORAL DISTRICT HOLDEN ON MAY 28, 1948*Election Petition No. 2 of 1948**Election petition—Evidence—Meaning of Sinhalese word—Judicial notice of dictionary—Literature—Evidence Ordinance—Section 57.*

The word "literature" in section 57 of the Evidence Ordinance must be interpreted *ejusdem generis* with history, science and art, namely, in the sense of creative works of poetry or prose. The court cannot therefore under this section take judicial notice of the correctness of the meaning of a word as given in a Sinhalese-English dictionary.

Where the meaning of a Sinhalese word is in issue the proper course is to prove the meaning of the word through expert witnesses.

ELECTION petition to declare void the return of the respondent as member for the Gampola Electoral District.

U. A. Jayasundera, with C. S. Barr Kumarakulasinghe, A. I. Rajasingham and K. C. de Silva, for the petitioner.

S. Nadesan, with B. H. Aluwihare, G. E. Chitty and B. S. C. Ratwatte, for the respondent.

Cur. adv. vult.

November 25, 1948. WINDHAM J.—

This is a petition to declare void the return of the respondent as member for the Gampola Electoral District, at a by-election held on May 28, 1948. Five candidates contested the by-election, which resulted in the return of the respondent by a majority of 775 over his nearest rival, Mr. R. S. S. Gunawardena. It was the unseating of Mr. Gunawardena by this court on March 12, 1948, upon an election petition presented by the present respondent, which necessitated the by-election. The petitioner is a voter in the Gampola electorate.

Three charges were framed in support of the petition, namely, undue influence, bribery, and the publication of false statements. Of these, the bribery charge was dropped by learned counsel for the petitioner at the opening of the case, and that of undue influence was dropped, without evidence being led in support of it, at the close of the petitioner's case on the remaining charge. Those two charges having been accordingly struck out, the case was tried solely on the remaining charge, namely, the publication of false statements of fact in relation to the personal

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character or conduct of the defeated candidate, Mr. Gunawardena. With regard to this charge, the respondent narrowed the field of inquiry still further by admitting in court both personally and through his counsel, during the opening day's hearing, that the two pamphlets which form the subject-matter of this charge, exhibits P1 and P2, were printed on his personal instructions and were distributed among the electorate, during the period of his by-election campaign, not by himself personally but by all the persons alleged in the particulars to have distributed them as his agents, all of whom he admitted to have been in fact his agents. Accordingly the sole question for decision is whether the statements in the pamphlets P1 or P2 set out in the particulars of the charge were false statements in relation to the personal character or conduct of Mr. Gunawardena, and whether they were made or published for the purpose of affecting the latter's return.

Before examining the contents of the pamphlets P1 and P2, it will be convenient to consider briefly the circumstances which brought about this by-election in the Gampola Electoral District. They were as follows:— On September 18, 1947, polling took place in the general election for the Gampola seat and Mr. Gunawardena, the U. N. P. candidate, won the seat from Mr. Pelpola, the present respondent, in a straight fight by 387 votes. The present respondent thereupon brought an election petition to unseat him on the grounds of (a) general intimidation within the electoral area, whereby the majority of electors were or may have been prevented from electing the candidate whom they preferred; (b) undue influence "committed in connection with the said election by the respondent or by his agents". The particulars of these charges made it clear that the acts of undue influence alleged were the same incidents as constituted the acts of general intimidation, but considered as acts committed against individuals by Mr. Gunawardena or by other individuals alleged to be his agents. On Mr. Pelpola's leading overwhelming evidence on the charge of general intimidation, wherein it was not alleged and was not necessary to allege that the intimidators were the agents of Mr. Gunawardena, Mr. Gunawardena intimated in court, through his counsel, his decision not to contest that charge. Counsel for Mr. Pelpola thereupon stated that he did not propose to lead further evidence on the charge of general intimidation, and that he was willing that the other charge, that of undue influence, should be struck out, having examined the evidence. This was done accordingly, and judgment of this court was delivered, declaring the election of Mr. Gunawardena void on the ground of general intimidation. That judgment is reported in 49 N. L. R. 207. The sequel was the by-election of May, 1948, which is the subject of the present petition, wherein the positions were reversed, and Mr. Pelpola, the respondent, won the seat from Mr. Gunawardena by a majority of 775 votes.

The two pamphlets of the respondent, P1 and P2, which contain the alleged false statements of fact in relation to the personal character or conduct of Mr. Gunawardena, were in the Sinhalese language. P1 was printed during the last week of March and distributed in the electorate during the first week of April, 1948; P2 was printed on May 12, and distributed about a week before polling day (May 28). English

translations of these pamphlets have been prepared and produced by "experts" called by the petitioner and the respondent, respectively, and this case has revolved almost exclusively around the question what is the true meaning of the relevant passages in these pamphlets, and whether they constitute the false statements of fact alleged in the particulars of the charge. I will now set out the contents of P1 and P2 in their entirety, as rendered into English in the translations prepared for the petitioner by his witness, Mr. Wickrama Aratchi, a sworn translator concerning whose evidence I shall comment later. He modified these translations in some material respects when he testified from the box, but I here set them out as originally prepared by him. The passages which I have italicized in the following translations are the passages set out in the particulars of the charge as constituting the false statements of fact in relation to the personal character or conduct of Mr. Gunawardena. Mr. Wickrama Aratchi translates P1 and P2 as follows :—

Pamphlet P1

"GAMPOLA SEAT

"The Gampola Parliamentary By-Election

"Ladies/Gentlemen,

"In the general election held in the month of September, 1947, Mr. R. S. S. Gunawardena on behalf of the United National Party and I as an Independent candidate entered the contest.

"It was admitted without dispute by the Supreme Court Judge that I who had the right for the seat was defeated on account of the fact that the people were deprived of the opportunity of exercising in a just and proper manner their free and valuable vote as a result of diverse acts committed by the staff of persons authorised by the opposing candidate.

"The member who had captured the seat, after depriving by a multiplicity of frauds the owner of his rights, on the day the case was taken up for hearing (at the very commencement) realised the unfortunate judgment that he would get, admitted on oath before the judge as true the wrongs committed by his agents, agreed to the cancellation of his election to the seat captured in the unjust manner (as pointed out in the petition presented by me), and to pay Rs. 2,000 as costs of the case (compensation) and stating that he was unwilling to answer the charges mentioned in the petition, prayed for pardon. I also having agreed out of Maitri (Compassion) consented thereto ; extended my sympathy.

"Had I hardened my heart as a stone not to extend my pardon to a humbled opponent who admitted in a great hall of judgment the wrong committed by him, both the staff of judges and the general public would have equally admitted and laughed at me as a man with no kindness and as one who leads an empty and useless life badly disposed towards the public.

“ Voting Gentlemen/Ladies,

While kindly reminding you, the residents of the Gampola electorate, that I shall again come forward to contest the Gampola By-Election fixed to take place somewhere in the month of May or June, 1948, I wish most kindly to request you to extend to me on this occasion also just as on the last occasion your sincere and ungrudging support.

Yours in kindness,

(Sgd.) RICHARD STANLEY PELPOLA,

Justice of the Peace ”.

Gampola, March 22, 1948.

“ Lanka Pradeepa, Kandy ”

Pamphlet P2

“ *By-Election contest for the Gampola Seat*

“ As at the contest during the last general election, the winning of the seat by Mr. Gunawardena, who contested the seat, and the defeat of me the other contestant, did not occur free from such illegal acts as the exercise of undue influence, &c., in obtaining votes, the by-election has come into being as a result of the permission just secured by means of the case filed before the Supreme Court. I shall never forget the confidence reposed in me and the honour done me on that occasion by the voters by casting over ten thousand votes in my favour.

“ It has been brought to my notice that some persons as those who wish to eat the Kabaragoya (the spotted poisonous lizard) call it ‘ an iguana ’, being displeased that the case without being pressed through was interrupted and brought to a conclusion and thereby the opponent was given a further chance, are attempting to mislead the voters who are unaware of the facts as they are. ‘ It is an act of wisdom on the part of the listener to understand intelligently whatever the speaker may say ’. I have no such obstinate intention as to reject the counsel of lawyers appearing in the cases, my only intention being to get the seat or the membership declared void. I have no desire for receiving any other present or honour, nor have I any evil purpose of taking revenge. This is our purpose.

“ *It was by depriving the owner of his rights and through the trickery and thievish devices of his agents that Mr. Gunawardena on that occasion obtained the seat. All that was done not for their benefit but with the firm determination of making the side they took achieve victory. But instead of proving the innocence of oneself and others he shifted all the accusations on his agents, declared that he was unwilling to answer the facts mentioned in the petition and prayed for pardon. Of these two matters I invite you the residents of the Gampola electorate to sift and find out whose is the greater wrong and in the present by-election contest to decide by intelligent inquiry who should be given the vote as well as assistance.*

“ Voting Gentlemen/Ladies,

In this by-election contest fixed for the 28th day of May five gentlemen including myself have come forward. While offering my sincere and kind thanks to you who on the last occasion came forward of your own accord and fully discharged your duty by assisting me and giving me your votes, I most kindly remind you to render me your assistance to enable me on this occasion also, to achieve victory in this five cornered fight.

Yours in kindness,

(Sgd.) RICHARD STANLEY PELPOLA,

Gampola, May 12, 1948.

Justice of the Peace.”

“ Do not forget that this time the Symbol is not the umbrella but House.”

“ Lanka Pradeepa, Kandy ”

Such are the translations prepared by the petitioner's witness Mr. Wickrema Aratchi, who was examined and cross-examined upon them. Now at this stage I would advert to two rulings which I gave during the course of the trial concerning (a) judicial notice of dictionaries and (b) the cross-examination of official interpreters of this court, in connection with the correct translation into English of the pamphlets P1 and P2. In the course of his cross-examination of Mr. Karunatillake, who was called by the respondent to produce his own translations of P1 and P2, Mr. Jayasundera for the petitioner quite properly showed to the witness copies of Carter's Sinhalese-English Dictionary of 1924 and Carter's English-Sinhalese Dictionary of 1936, in an endeavour to make him modify his views with regard to the English equivalent of a certain Sinhalese word appearing in both pamphlets. At the close of the respondent's case, however, Mr. Jayasundera, who had not produced these dictionaries as exhibits, submitted that this court ought to take judicial notice of the correctness of their contents. He relied on the general words at the end of section 57 of the Evidence Ordinance which, following upon the list of particular matters set out in that section of which the court will take judicial notice, provide that “ in all these cases, and also on all matters of public history, literature, science, or art, the court may resort for its aid to appropriate books or documents of reference ”. He contends that the court should take judicial notice of such dictionaries as concerning a “ matter of literature ” within the above provision, arguing that a dictionary is a “ book on literature ”.

But in my view this contention cannot be acceded to. In the first place, the word “ literature ” in its above context must be interpreted *ejusdem generis* with history, science and art, namely in the sense of creative works of poetry or prose. In the second place, it is to be noted that sub-section (9) of section 57 requires the court to take judicial notice of “ the meaning of English words ”. Had the court been required also to take judicial notice of the meaning of Sinhalese words, a similar provision to that effect would be expected to be found in the section, as

no doubt it would be found if the Sinhalese language were not merely the language of the majority of the inhabitants of this island, but were also (as it may yet become) what the English language now is, the official language or one of the official languages of the Island. Thirdly, Mr. Jayasundera argues, rightly, that section 57 is not exhaustive of the matters of which the court may take judicial notice. That is true; but judicial notice will not be taken of anything not falling within the categories set out in section 57 unless it is a matter which is not, on some reasonably arguable ground, in dispute. If the matter is so in issue, then it must be proved by evidence, and no question of judicial notice will arise. For judicial notice is taken only of matters which are too notorious to require proof. So in the present case, a crucial issue is the exact meaning or meanings of certain Sinhalese words (the word "niyogitha" in particular) appearing in the two pamphlets. The language of this court being English, that meaning or those meanings would normally be provided by the translations prepared by the official of this court whose duty it is to prepare them. But since the exact shade of meaning is a vital issue, I have ruled against the respondent (this being the second of the two rulings now being considered) that it would be undesirable in the interests of propriety for a court official to be called by one side or the other to testify on the exact meaning and thereby to subject himself to cross-examination (involving the possibility of allegations of bias) by the other side. That being so, the proper course, and the one which was eventually adopted in this case, is to prove the exact or popularly understood meaning of the Sinhalese phrases through witnesses called to testify as experts on the point, in the sense that they are familiar with the English and Sinhalese languages, either from an academic standpoint or as being familiar with the meanings popularly attached to Sinhalese words by the "man in the street".

So far as concerns Sinhalese-English or English-Sinhalese dictionaries, while there is no objection to the expert witnesses being asked to give their views on the accuracy of their contents, I hold that, for the reasons already given, judicial notice will not be taken of them in respect of a matter in issue; that is to say, this court will not accept their contents as establishing their own truth. In particular it will not on a controversial issue accept as a fact, without sworn evidence on the point, that the English equivalent or equivalents given in a Sinhalese-English dictionary for a Sinhalese word, or the Sinhalese equivalent or equivalents given in an English-Sinhalese dictionary for an English word, are the precise or the only respective equivalents.

I will now turn to consider the evidence of the three witnesses who were called to give their views on the accuracy of Mr. Wickrema Aratchi's English translations of the Sinhalese pamphlets P1 and P2. The respondent's witness Mr. Karunatillake testified in this connection and also produced his own translations of those pamphlets, differing from those of Mr. Wickrema Aratchi in a number of important respects favourable to the respondent. But I will first consider the evidence of the petitioner's own experts, namely Mr. Wickrema Aratchi himself and Dr. G. P. Malalasekera, and that of Mr. Karunatillake for the respondent, upon the translations submitted by Mr. Wickrema Aratchi.

I may say at this stage that I found no reason to doubt the honesty and good faith of any of these three witnesses. With regard to their qualifications to testify on the meaning of the Sinhalese words and expressions used in P1 and P2, I think that each one of them brought to the inquiry his own peculiar contribution of special knowledge. Mr. Wickrema Aratchi is a sworn translator, and a journalist and author, being for ten years the editor of *Dinamina*, the Sinhalese *Daily News*. Dr. Malalasekera's academic qualifications are very high; he has been at one time Dean of the Faculty of Oriental Studies at the University of Ceylon; from 1939 to 1944 he was professor of Sanskrit, Pali and Sinhalese at the University; he is also in the course of editing a Sinhalese dictionary. He agrees, however, that the Sinhalese language is a rapidly developing one, particularly in the field of politics, in which words are constantly being improvised and the precise meaning of others is not yet stabilized, and he admits that he does not concern himself with politics. The qualifications of Mr. Karunatillake, on the other hand, are practical rather than academic. He is a young man aged 25; he was editor of the weekly *Janashaktiya* for some 4 or 5 years, and for the last six months he has been assistant editor of the daily newspaper *Lankadeepa*. In the course of his journalistic work he has attended and reported a number of meetings, and is conversant with the modern Sinhalese language as it is spoken and written. It has been objected by counsel for the petitioner that he cannot be considered as an expert at all, on the ground of his youth and lack of long experience in journalism. But it seems to me that Mr. Karunatillake, in that he is a modern-minded and go-ahead young journalist, in constant touch with the language of the populace, supplies just that element which Dr. Malalasekera lacks. For in arriving at the meaning of the pamphlets P1 and P2 we must ascertain their meaning when read as a whole, and that of the particular expressions contained in them, as they would be understood by the average member of a Sinhalese electorate today.

I turn, then, to the evidence of Mr. Wickrema Aratchi, Dr. Malalasekera and Mr. Karunatilleka, regarding the first-named's translations of P1 and P2, and I will start with P1. The first important phrase in P1 on which they gave their observations occurs in the second paragraph, being the phrase translated as "staff of persons authorized by the opposing candidate", the Sinhalese words being "niyogitha mandalia". I am satisfied from the evidence of Mr. Wickrema Aratchi and Dr. Malalasekera (though my conclusions on the point will be subject to what I shall have to say on the evidence of Mr. Karunatillake) that Mr. Wickrema Aratchi's translation of this phrase is strictly correct, and in particular that the Sinhalese word "niyogitha" strictly means a person authorized, or an agent or deputy or delegate. This same word is the one which has been translated as "agent" in the other parts of the pamphlets P1 and P2 where that word occurs in Mr. Wickrema Aratchi's translations, and my observations apply there too, namely that the word strictly imports the idea of authorization. At the same time it was made clear by Mr. Wickrema Aratchi, nor was his evidence on the point challenged or contradicted, that in the second paragraph of P1 the word translated as "authorized" merely means "appointed", i.e., appointed for some purpose or other, and does not mean or imply that the "staff of persons"

were authorised by the opposing candidate (Mr. Gunawardena) to do "the diverse acts committed" by them, namely the acts of intimidation which resulted in Mr. Gunawardena losing his seat in the earlier petition. Against the evidence of Mr. Wickrema Aratchi and Dr. Malalasekera that "niyogitha" means "agent" or "person appointed", we have the evidence of Mr. Karunatillake. He states that the word "niyogitha" means "enthusiastic supporter" in modern Sinhalese usage, and that it does not necessarily import the idea of agency or authorization. He states that in the course of his journalistic work he himself uses the word "niyogitha" to express the idea of an enthusiastic supporter. Now Dr. Malalasekera, while he stated that the word "niyogitha" imports the idea of agency, admitted frankly, when cross-examined on its meaning, that he "cannot say as to how this is popularly understood among the masses and politicians". And Mr. Wickrema Aratchi, though he made no such admission, did at one point in his evidence (though it is fair to say that his attention was not concentrated at the moment on the word) translate "niyogitha" as "followers". In the light of this conflicting evidence I am unable to say that the word "niyogitha", though in a literary connotation it may mean "agent", would not, to an average Sinhalese voter reading it in an election pamphlet, convey the idea of an enthusiastic supporter without necessarily imputing that such supporter was the agent of the person whose cause he was supporting. There is at least a substantial doubt on the point, and the benefit of that doubt must be given to the respondent, against whom the petitioner is required to prove his case beyond a reasonable doubt, with the result that I will give to the term "niyogitha", wherever it occurs in the pamphlets P1 and P2, the meaning of "enthusiastic supporter", which is the meaning more favourable to the respondent.

The next phrase in Mr. Wickrema Aratchi's translation of P1 which was the subject of any vital difference of opinion among the experts is the phrase in its third paragraph which he has translated as "by a multiplicity of frauds", a phrase which in its context, if the translation is correct, certainly imputes to Mr. Gunawardena personal complicity in the acts of intimidation which resulted in his forfeiting his seat in the earlier election petition. But this translation too must be modified in the light of the evidence upon it. To begin with, Mr. Wickrema Aratchi himself admitted in evidence, what indeed is patent from a perusal of the Sinhalese original, that the phrase has been enclosed in brackets and appears at the very beginning of the paragraph. But, what is more important, both Mr. Wickrema Aratchi and Dr. Malalasekera, the petitioner's own witnesses, state that, while they think this phrase more correctly means "by means of numerous tricks" it could equally well mean "on account of numerous tricks". The difference is vital, for "by means of" would impute the complicity of Mr. Gunawardena in the tricks, while "on account of" would merely imply that the numerous tricks had resulted, as indeed they did result, in his winning the seat, without implying that he was a party to them, and the statement would thus not be a false one at all. Mr. Karunatillake goes further, and translates the words as "tricks being numerous". This is, of course, a clumsy translation because a literal one, but like the Latin ablative

absolute construction to which it seems to be akin, its meaning approximates to "on account of numerous tricks" rather than to "by means of numerous tricks". The evidence of the three witnesses on the implications of the brackets round this phrase was inconclusive. I would again give to the respondent the benefit of the doubt, and translate the phrase as "on account of numerous tricks" or more idiomatically "as a result of numerous tricks", with the consequence that the passage in which it occurs, which will now read "after depriving the owner of his right as a result of numerous tricks", ceases to be a false statement of fact at all, since the acts of intimidation committed by irresponsible supporters of Mr. Gunawardena did in fact result in the latter's depriving Mr. Pelpola of the Gampola seat which Mr. Pelpola would otherwise have won.

Further modifications which I would make in Mr. Wickrema Aratchi's translation of P1 are the following. I am concerned only with those which in my view have a bearing on the question whether P1 contains the false statements of fact alleged in the particulars. First, on Mr. Wickrema Aratchi's own admission in the box, the words "as pointed out in the petition" appearing in the third paragraph of P1 should read "as requested in the petition"; the word "requested" thus becomes a past participle agreeing with the word "cancellation", which cancellation Mr. Gunawardena is stated to have agreed to; with the result that the passage in which these words occur does not constitute a false statement, since Mr. Gunawardena did in fact agree to the cancellation of his election to the Gampola seat. Secondly, the word "humbled" in the fourth paragraph of P1 should read "humble". The alteration is favoured both by Dr. Malalasekera and by Mr. Karunatileka. It is not of great significance, for neither being humbled nor being humble is in itself a fault of character or conduct. But it must be read together with the third alteration, which is of considerable importance. This concerns the words "by him" which in Mr. Wickrema Aratchi's translation are inserted after the words "wrong committed" in the fourth paragraph. Mr. Wickrema Aratchi himself and the other two witnesses all agree that the words "by him" do not appear in the Sinhalese original of P1. The words were inserted by Mr. Wickrema Aratchi because he thought that a person cannot be said to admit a wrong unless that wrong has been committed by himself. But that is not so. A person can properly be said to admit a wrong committed by somebody else, if the admission affects himself adversely in some way, as in the present case did the admission by Mr. Gunawardena of the wrong committed by his misguided supporters. Reading the whole passage as altered, which now becomes "a humble opponent who admitted in a great hall of judgment the wrong committed", I fail to find that it constitutes a false statement of fact at all. For Mr. Gunawardena did in fact admit in court that a wrong had been committed, namely, that his over-enthusiastic supporters had indulged in acts of general intimidation.

Regarding the remaining alterations in the wording of Mr. Wickrema Aratchi's translation of P1 which were suggested on behalf of the respondent in cross-examination and by Mr. Karunatileka in his evidence, I find, on considering all the evidence, no reason for their being made.

Subject, therefore, to the alterations with which I have already dealt, his translation of P1 may stand. In their altered form, however, I cannot find in any of the particularized passages of P1 any false statements of fact in relation to the personal character or conduct of Mr. Gunawardena. I have dealt already with most of the alleged false statements. The only remaining passage which, after the substitution of "enthusiastic supporters" for "agents", could still be argued to be a false statement is the one in the third paragraph, which reads "and stating that he was unwilling to answer the charges mentioned on the petition, prayed for pardon". Now it is true that Mr. Gunawardena did not expressly state that he was unwilling to answer the charges in the petition, that is to say the remaining charge of undue influence by himself or his agents. But even if he did not make such a declaration, and thus even if the statement in P1 is accordingly an inaccurate one, it cannot be said to be a false statement in relation to his conduct; for by deciding not to contest the first charge he was in effect intimating that he was unwilling to answer the remaining charge,—unwilling because it had become unnecessary. Nor does this statement in P1 impute anything against his character. His unwillingness to answer this charge does not imply that he knew himself to be guilty of it; it was at least equally likely to have been actuated by a desire not to waste further time or money; since even if the second charge was decided in his favour, he was bound to lose his seat owing to the overwhelming evidence of general intimidation on the first charge. It was therefore the act of a sensible man to decide not to fight the second charge, and this passage in P1 cannot be said to imply that it was the act of a coward, as has been suggested for the petitioner. With regard to the statement that Mr. Gunawardena "prayed for pardon", this is not a false statement at all, for in his own evidence he states that after the case was concluded he expressed his regrets to Mr. Pelpola for what had happened. The difference between expressing one's regrets and praying for pardon is one of degree only, and is insufficient to make the statement in P1 into a false one; nor does praying for pardon necessarily, or in this particular context, imply admission by Mr. Gunawardena that he himself had done a wrongful act. A man can crave pardon or apologize not only for his own faults, but also for the acts of other persons who have espoused his cause or associated themselves with him,—as when a man out of politeness says—"I must apologize for my friend's behaviour" although he is in no way responsible for that behaviour.

So much for the pamphlet P1. With regard to P2, Dr. Malalasekera suggested certain modifications of Mr. Wickrema Aratchi's translation of it, and these I accept. Substituting again "enthusiastic supporters" for "agents" in the text, the first and third sentences in the third paragraph of P2 will now read:—"It was a consequence of the tricks and dishonest efforts of his enthusiastic supporters that Mr. Gunawardena obtained the seat, having made the owner not the owner But instead of proving his own and their innocence, having placed on the head of his supporters all the charges, and stating that he was unwilling to meet the matters mentioned in the petition, he begged for pardon". With these modifications, the passages from P2 which are set

out in the particulars, namely the entire third paragraph, disclose, in my view, no false statements relating to Mr. Gunawardena's character or conduct. The implications of this paragraph are largely the same as in similar passages in P1, and with these I have already dealt. In so far as the paragraph alleges that Mr. Gunawardena won the seat in consequence of the wrongful acts of his supporters, it is not a false statement. And in so far as it alleges that he declared himself unwilling to answer the matters mentioned in the petition, I have already dealt with this point in discussing P1.

Having arrived at this decision on the amended text of Mr. Wickrema Aratchi's translations of P1 and P2, I find it unnecessary to consider the translations put in on behalf of the respondent, since they are even more favourable to his case than the amended ones with which I have dealt.

Up to now I have considered these passages, in the main, analytically and phrase by phrase. But the general impression conveyed by the pamphlets P1 and P2 when read as a whole does not bring me to any different conclusion. It seems to me that their general effect and intention is not to vilify Mr. Gunawardena or to accuse him of "letting down his side", but rather to justify to the electorate the action of Mr. Pelpola in agreeing not to press the second charge against Mr. Gunawardena. And in so far as any of the statements might be thought to impute anything against Mr. Gunawardena, they are not false statements. With regard to the object of the publication of the pamphlets, although of course the meaning of P1 or P2 is unaffected by any motive or object of its author that is not expressed therein, I would state that I entirely accept the evidence of the respondent when he said that he had issued P1 and P2 in order to present to the electors the reasons why he had agreed not to press the second charge, because there had been rumours against him that he had settled with his opponent by accepting a bribe.

Subject to this, I have refrained from reviewing the evidence which was adduced to show (a) how Mr. Gunawardena himself interpreted and reacted to the pamphlets P1 and P2 when he read them during the election campaign, and (b) what the respondent intended to say or convey in these pamphlets; for these matters are irrelevant to the question what the pamphlets in fact do state, and the meaning that these statements would convey to an average elector, and to the question whether such of their statements as have been particularized comprise any false statements of fact in relation to the character or conduct of Mr. Gunawardena. That is the charge under section 58 (1) (d) of the Ceylon (Parliamentary Elections) Order in Council, 1946. With regard to the remaining requirements of section 58 (1) (d), namely that the statements shall have been made for the purpose of affecting the return of any candidate, although it now becomes unnecessary to decide that point, I do find on the evidence that the statements in both P1 and P2 were made for that purpose. The last sentence in the particularized portion of P2 makes this patently clear, and with regard to P1, I am satisfied that the respondent, when he published it, must have been aware that Mr. Gunawardena was about to contest the seat, although the latter's nomination had not yet been sent in, and that accordingly the

statements in P1 were designed to enhance the popularity of the respondent in the electorate and thereby to affect adversely Mr. Gunawardena's chances of beating him in the by-election. The point, however, becomes as I say of no relevance.

For the reasons I have given I hold that the petitioner has failed to prove his charge under section 58 (1) (d) beyond a reasonable doubt, with the result that I declare that the respondent, Mr. R. S. Pelpola, was duly elected as member for the Gampola Electoral District. The petition is dismissed with costs, which I fix at the sum of Rs. 4,000.

Petition dismissed.

