

G.H.G.2

20/1963

IN THE PRIVY COUNCIL

No. 45 of 1962

UNIVERSITY OF LONDON
 IN SENATE ASSEMBLED
 17 JAN 1964
 REGISTRAR
 UNIVERSITY OF LONDON
 LONDON, W.C.2

O N A P P E A L
 FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

NARAHNPITAGE WALTER DE COSTA

(Plaintiff)
Appellant

74134

- and -

1. THE TIMES OF CEYLON LIMITED
2. D. B. DHANAPALA

(Defendants)
Respondents

C A S E FOR THE RESPONDENTS

10 1. This is an appeal from the Judgment and Decree of the Supreme Court of Ceylon, dated the 23rd October, 1959, dismissing, with costs, an appeal from the Judgment and Decree of the District Court of Colombo, dated the 10th June, 1957, which dismissed, with costs, an action for damages instituted by the Appellant against the Respondents in respect of certain statements alleged to relate to the Appellant, and to be defamatory of him, which had, on various dates, appeared in a Ceylon newspaper printed in Sinhalese and known as "Lankadipa".

Record
 pp. 270-297
 p. 298
 pp. 259-267
 p. 268

20 The said newspaper was at all material times owned by the first Respondent and edited by the second Respondent.

2. The law of defamation which governs the rights of the parties to these proceedings is the relevant Roman-Dutch law as applied in Ceylon. According to that law the existence of animus injuriandi is an essential element of defamation.

30 Where the existence of the animus is presumed the defence may rebut the presumption by a plea of justification for the establishment of which it must prove:-

- (a) the truth of the words complained of; and

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(b) that the said words were published in the public interest and/or for the public good.

The existence of animus injuriandi may also be negatived by a successful plea of fair comment. The "essential conditions" of this defence are thus stated by Nathan in "The Law of Defamation (Libel and Slander) in South Africa" a work of considerable authority in Ceylon:-

- "(1) the matter which is claimed to be fair comment must be comment or criticism and not a statement of fact; 10
- (2) all facts which appear in the statement or passage containing the comment must be truly stated;
- (3) the comment must be fair and bona fide; and
- (4) the comment must have been published on a matter of public interest."

In the present proceedings the Respondents pleaded, and were able to establish to the satisfaction of both Courts below, both of the said defences of justification and fair comment. 20

3. The questions for determination on this appeal, concerned mainly - if not solely - with the findings of fact of the Courts below, appear to be as follows:

- (a) Whether or not, on the evidence before them the said Courts were right to find that the Respondents who had, inter alia pleaded justification and fair comment, had established both defences. 30
- (b) Whether or not, on the said evidence, the Respondents can reasonably be said to have successfully rebutted any presumption of animus injuriandi by the establishment of both of the said defences or one or other of them.
- (c) Whether or not, on the said evidence, the said Courts were right to find that the Respondents had established the truth of the statements complained of.
- (d) Whether or not, on the said evidence, the said 40

Courts were right to find that the statements alleged to be defamatory of the Appellant had been published in the public interest and/or for the public good.

(e) Whether or not, in any event, the said concurrent finding and decisions - all of them negating the presence of animus injuriandi - were so devoid of judicial merit as to call for intervention by the Board.

10 4. The facts are as follows:-

By his Complaint, dated the 29th June, 1956, filed in the District Court of Colombo, the Appellant (hereinafter also referred to as "the Plaintiff") a teacher by profession, prayed for the award to him of the total sum of Rs. 110,000/- in respect of two causes of action (Rs. 50,000/- in respect of the first and Rs. 60,000/- in respect of the second cause of action) which, he alleged, had accrued to him, following the publication of defamatory statements concerning him in the Sinhalese newspaper "Lankadipa" owned by the first Respondent and edited by the second Respondent. Both Respondents are hereinafter also referred to as "the Defendants".

pp. 9-14

p. 13 Ll.31-38

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As to the first cause of action the Plaintiff said that while he was acting as Principal of a Senior Secondary School known as Ananda Sastralaya, in a place called Kotte, "the Defendants falsely and maliciously printed and published of and concerning the Plaintiff and of and concerning him in the way of his profession as a teacher and Principal as aforesaid inter alia the libels herein-after set out, namely:-

p. 9, Ll. 24-34

"(i) In a paragraph headed (Kasu Kusu) written in Sinhalese and published in the issue of the Lankadipa dated the 5th December, 1955, the words following, that is to say:-"

.....

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" The literal English translation of "the said words is as follows:-

"The people of Kotte question as to why "an assistant teacher who carried on a powerful

p.10, Ll. 7-10

Record

"campaign requesting the children
"of a certain Buddhist School
"in Kotte not to pay the facilities fees
"is enforcing the payment (of facilities
"fees) on becoming the Principal."

.

p.10 Ll.12-
29

"(ii) In a letter in Sinhalese headed
"(Ananda Sastralaya) purporting to be
"written and signed by one . . . (C.
"Mahindapala Boteju) and published in the
"issue of the Lankadipa dated 23rd
"December, 1955, the words following,
"that is to say:-"

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.

"The literal English translation of the
"said words is as follows:-

"(a) It was when the present Principal
"was an assistant teacher in the
"same school that the children
"were encouraged not to pay and
"led astray."

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"(b) The fact that black stains are
"sprinkled on the glory that was
"of the school can be seen from
"the talks that go on at the (road)
"junctions here. The staff is
"opposed to the Principal; excepting
"one-third all the rest of the students
"are opposed to him."

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p.10, L.31
to p.11, L.
22

"(iii) In a letter in Sinhalese purporting to
"be written by one (Kitsiri
"Ameratunga) and published in the issue
"of the Lankadipa dated 3rd January 1956
"the words following, that is to say:-

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.

"The literal English translation of
"the said words is as follows:-

".....As a past student I know that
"it was the present Principal who made
"the students disobedient and act as
"rebels."

"Everyone who was at the Sastralaya
"during the time of the Principalship
"of Mr. B. Wickremasinghe knows that
"it was the present Principal who set
"the children against the then Vice
"Principal Mr. Alagiyawanna who is now
"the Principal of Sri Sumangala Vidyalaya,
"Panadura."

10 "To obstruct the work of the school,
"the present Principal, who was then an
"assistant teacher, induced not only
"the students but also their parents not
"to pay facilities fees. It is not a secret
"as to who got the students to write the Anti-
"Alagiyawanna slogans on the school buildings."

It is convenient to state here that "facilities fees" are sometimes levied in Assisted Schools in Ceylon towards the cost of certain school activities, e.g. games, scientific equipment, library books etc.

20 5. The Plaintiff, in his Complaint, stated that by the said statements (relating to his first Cause of Action) as set out in (i), (ii) and (iii) of the preceding paragraph, the Defendants meant and were understood to mean that:-

p.11 Ll.
26 to 38

30 "(i) The Plaintiff, when an assistant teacher
"at the Ananda Sastralaya, Kotte, mis-
"used his position as teacher by inciting
"students and their parents not to pay
"the facilities fees, and that in so
"doing he was actuated by unworthy and
"dishonest motives.

"(ii) The Plaintiff secured his appointment
"as Principal by these unfair and un-
"worthy methods.

"(iii) The Plaintiff was directly responsible
"for the students of the said school
"becoming disobedient and rebellious.

40 "(iv) The Plaintiff by these actions had
"forfeited the confidence of the people
"of Kotte, his own Staff and Pupils,
"and is therefore not a fit and proper
"person to be either a teacher or a
"Principal.

"(v) The Plaintiff by his actions had brought
"dishonour on the name of the school."

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p.12, Ll.1-4

The Plaintiff said that the said statements and innuendos were false, malicious, and calculated to undermine his reputation both as a man and as a teacher and to cause him damage in the exercise of his profession.

p.12, Ll.5-8

6. On his second cause of action the Plaintiff, in his said Plaintiff, referred to the following libels concerning himself which, he said, the Defendants had printed and published falsely and maliciously after he had retired as Principal of the said school:-

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p.12, Ll.9-24

"(i) In a paragraph written in Sinhalese "headed (Resigns as he is unable "to do Sinhalese) in the issue of the "Lankadipa dated 8th May, 1956 the "words following, that is to say:-"

.....

"The literal English translation "of the said words is as follows:-

"Mr. N.W.de Costa, Principal "Ananda Sastralaya, Kotte has retired "from the post of Principal. He who has "a degree in Indo Aryan has retired on "full pension under the regulation for "retirement due to his inability to "teach in Sinhalese. The Sinhalese "book titled 'UDBHIDA VIDYAWA' is a "book written by him. In a very short "time he will be leaving for America "to teach English."

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.....

p.12 L.26
to
p.13, L.17

"(ii) In a letter in Sinhalese headed "(The Principal, Ananda Sastralaya, "Kotte) purporting to be written and "signed by one..... (K. Jayasekera) "and published in the issue of the "Lankadipa dated 11th May 1956 the "words following, that is to say:-"

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.....

"The literal English translation of "the said words is as follows:-

"It was published in the Lankadipa that

"Mr.N.W.de Costa, Principal, Ananda
"Sastralaya, Kotte, retired on the ground
"of inability to teach in Sinhalese.
"He has an external degree in Indo Aryan of
"the University of London. The Book titled
"'"UDBHIDA VIDYAWA'" which is accepted by the
"Educational Publications Board is written
"by him. But it is a wonder to the people of
"Kotte and Horana as to how he retired with
"full pay. Though he did not go to school
"for the whole of last term he worked hard
"at Kotte and at Horana for a certain
"political party. Further, he issued leaflets
"under his name. It is not difficult for the
"Education Minister and the Finance Minister
"of the New Government to know how he could
"retire during the time of the election though
"his previous attempts to retire were
"unsuccessful."

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7. The Plaintiff, in his said Plaint, stated that by the said statements (relating to his second cause of action) as set out in (i) and (ii) of the preceding paragraph, the Defendants meant and were understood to mean that:-

p.13 Ll.19-
20

"The Plaintiff although well qualified
"in Sinhalese had by falsely pretending he
"could not teach in Sinhalese and by employ-
"ing other corrupt means obtained the
"permission of the Government to retire
"from the teaching service".

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p.13, Ll.21-
23

The Plaintiff stated as to the above innuendos that: he obtained permission to retire strictly in accordance with the rules in the Teachers' Pension Regulations; the statements and innuendos were false, malicious and calculated to undermine his credit and reputation as a man and in his profession as a teacher and Principal and had brought him into public scandal, odium and contempt; and that his chances of securing employment befitting his status in life had been thereby greatly diminished.

p.13, Ll.24-
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8. By their Answer, dated the 23rd August, 1956, the Defendants pleaded justification, fair comment, qualified privilege and absence of animus injuriandi. Paragraph 5 of their Answer was as follows:-

pp.14-16

"(1) The Sinhalese Script contained in
"paragraphs 4(i) and 7(i) of the
"Plaint" /for the accepted translations
see paragraphs 4(i) and 6(i) of this
Case/ "were published in the
"'Lankadipa' and were in the nature of
"news items of public interest and
"importance and were true in fact.

"(2) The Sinhalese Scripts contained in
"paragraphs 4(ii) 4(iii) and 7(ii)" 10
/for the accepted translations see
paragraphs 4(ii)(a)(b)(iii) and 6(ii)
of this Case/ "are parts of some of the
"letters addressed to the Editor by various
"members of the public on matters of
"public interest and importance. The
"defendants plead substantial truth and
"justification in respect of these
"letters as well.

"(3) All publications referred to in this 20
"paragraph were made without animus
"injuriandi on occasions of qualified
"privilege on matters of public
"importance and public interest and in
"the course of fair comment and were
"substantially true and correct."

p.15, Ll.3-6 In paragraph 2 of their Answer the Defendants
stated that "The 'Lankadipa' was at all relevant
"times entitled to as also under a duty to the 30
"public to give information about matters of general
"importance and public interest and to allow the
"use of its columns for expression of opinions of the
"public on matters of general importance and public
"interest".

p.15, Ll. 9-37 9. In paragraph 3 of their said Answer the
Defendants referred to: (i) the Plaintiff's
knowledge of Sinhalese; (ii) the levying of
"Facilities Fees" in the school in question which
enjoyed the benefits of the free Education Scheme 40
of the Government; (iii) the fact that the
Plaintiff had "sought appointment and was appointed
"as Principal" of the said school at a time when
the progressive use of Sinhalese in such schools
was the declared policy of the Government;
(iv) the withholding by the Plaintiff, when he was
Principal, of Admission Cards enabling students to
sit for examinations, in those cases where Facilities

Fees were in arrears, until he was ordered by the Department of Education to hand over the Cards so withheld to the students concerned; and (v) the previous occasions when the Plaintiff's applications for retirement were refused and to the ultimate sanction of the application by the Minister of Finance after the Minister had been defeated in the General Election and on the eve of the defeat of his party - the United National Party - for which party the Plaintiff had worked prior to, and during, the said General Election.

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10. Of the several issues framed at the trial, Issues 1 to 8 were, after an examination of all the evidence in the case, answered thus by the learned District Judge (A.L.S.Sirimanne A.D.J.):-

"1. Were the words used in paragraphs 4(1), 4(2) and 4(3) of the Plaint - see paragraph 4 of this Case/ "printed and published by the Defendants of and concerning the Plaintiff and/or of and concerning him in the way of his profession as teacher and Principal of "Ananda Sastralaya?"

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p.17, Ll. 1-3

"1(a) Are the said statements or any of them "defamatory of the Plaintiff?"

p.17, L.4

Answer: to (1): "Yes".

p.267, L.2

(1)(a): "No".

p.267, L.3

"2. Have the said words any or all of the "innuendos, to wit: as stated in paragraphs 5(1), 5(2), 5(3), 5(4) and 5(5) of the "Plaint?" [See paragraph 5 of this Case]

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p.17, Ll. 5-6

Answer: "Yes".

p.267, L.4

"3. If so, are they defamatory of the Plaintiff?"

p.17, L.7

Answer: "No - in view of the reasons set out above"

p.267, Ll. 5-6

[i.e. in the Judgment of the learned District Judge].

"4. If issue 1(a) and/or issue 3 is answered "in the affirmative what damages is the Plaintiff entitled to recover on the "first cause of action?"

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p.17, Ll. 8.9

Answer: "Does not arise".

p.267, L.7

Record
p.17, Ll. 10-12 "5. Were the words in paragraphs 7(1) and 7
"(2)" /of the Plaint - see paragraph 6
of this Case/ "printed and published by
"the Defendants of and concerning the
"Plaintiff and/or of and concerning him
"as Principal of Ananda Sastralaya?".

p.17, L.13 "5(a) Are the said statements or any of them
"defamatory of the Plaintiff?"

p.267, L.8 Answer: to 5: "Yes" 10
p.267 L.10 5(a): "No" -

p.17, L.14 "6. Have the said words the innuendo pleaded
"in paragraph 8 of the Plaint?" /See
paragraph 7 of this Case/

p.267, L.11 Answer: "Yes"

p.17, L.15 "7. If so, are they defamatory of the
"Plaintiff?"

p.267, L.12 Answer: "No - in view of the reason set out
"above"

/i.e. in the Judgment of the learned 20
District Judge/.

p. 17, Ll. "8. If issue 5(a) and/or Issue 7 is answered in the
16-17 "affirmative, what damages is the Plaintiff
"entitled to recover from the Defendant on
"the second cause of action?"

p.267, L.13 Answer: "Does not arise."

11. Issues 9 to 13(b) were, after an examination
of all the evidence in the case, answered thus
by the learned District Judge:-

"9. Is the Plaintiff:- 30

p.18, L.2 "(a) an Indo Aryan Honours Graduate of the
"University of London?"

p.18, L.3 "(b) holding an S.S.C. Certificate of Ceylon
"with Sinhalese as one of his subjects?"

p.18, L.4 "(c) the author of a textbook on Botany in
"Sinhalese entitled Boudhita Vidyawa?"

Record

Answer: to (a): "Yes" p.267, L.14

(b): "Yes" p.267, L.16

(c): "Yes" p.267, L.17

"10. Is Ananda Sastralaya a School run by the p.18, Ll.5-6
"Buddist Theosophical Society and entitled
"to the benefits of the Free Education
"Scheme of the Government of Ceylon?"

Answer: "Yes". p.267, L.18

10 "11. Was a fee called and styled the Facilities
"Fees levied at Ananda Sastralaya at all p.18, Ll.7-8
"dates material to this action?"

Answer: "Yes" p.267, L.19

"12. (a) Were 'Admission Cards' necessary to p.18, Ll.9-10
"enable an approved student of Ananda
"Sastralaya to sit for the S.C.C.
"Examination held on 6th December, 1955?"

20 "(b) Did Plaintiff while Principal of p.18, Ll.11-13
"Ananda Sastralaya withhold the issue of
"Admission Cards to such students of
"Ananda Sastralaya as were in arrears in
"regard to the payment of Facilities
"Fees?"

"(c) Was the Plaintiff eventually ordered p.18, Ll.14-
"by the Department of Education to issue 15
"Admission Cards without insisting on the
"payment of Facilities Fees?"

"(d) Were such Admission Cards ultimately p.18, Ll.16-17
"issued only on the eve of the examination?"

Answer: to (a): "Yes" p.267, L.20

30 (b): "Yes" p.267, L.21

In the Record no specific formal Answers appear to have been returned to Issue 12(c) and (d). Earlier in his Judgment, however, the learned District Judge appears to have answered both Issues in the affirmative; see Record p.263, Ll.2-4.

"13. Did the Plaintiff seek or obtain appoint-
"ment as Principal of Ananda Sastralaya
"in April 1955 at the time when -

Record

p.18, Ll.18-21 "(a) the progressive use of Swabasha in the
 "schools was the declared policy
 "of the Government of Ceylon?"

p.18, Ll.22-23 "(b) Dr. Adikaram a former teacher of the
 "Plaintiff, was Manager of the
 "schools conducted by the Buddhist
 "Theosophical Society?"

p.267, Ll.22 Answer: to (a) "Yes"

p.267, L.23 (b) "Yes"

12. Issues 14 to 19, were, after an examination of all the evidence before him, answered thus by the learned District Judge:- 10

p.18, Ll. 24-25 "14. (i) Did the Plaintiff seek and apply
 "for retirement on the 12th September,
 "1954, for the first time under the School
 "Teachers' Pension Act No.44 of 1953?"

 "(ii) Was the application for retirement
 "made by the Plaintiff on the grounds,
 "inter alia -

p.18, Ll.26-28 "(a) that the turnover to Swabasha was
 "not in the best interests of the
 "Country? 20

p.18, L.29 "(b) that he could not conscientiously
 "do his best as a teacher?"

p.267, L.24 Answer: to (i): "Yes"

p.267, L.25 (ii)(a): "Yes"

p.267, L.26 (ii)(b): "Yes"

p.18, Ll. 30-31 "15. Was such application for retirement refused
 "on or about the 23rd November, 1954?"

p.267, L.27 Answer: "Yes"

p.19, Ll.1-2 "16. (a) Had the Plaintiff again sought retirement
 "for a second time on the 14th March,
 "1955 by applying to the Hon. M.D.
 "H. Jayawardena, the then Minister of
 "Finance? 30

p.19, Ll. 3-4 "(b) Did the Plaintiff on the 21st April 1955
 "move the Hon. Minister of Education to
 "recommend his application for retirement
 "to the then Minister of Finance?"

Record

- Answer: to (a): "Yes" p.267, L.28
(b): "Yes" p.267, L.29
- "17. Did the Minister of Finance refuse
"such application for retirement on
"or about the 11th June 1955?" p.19, Ll.5-6
- Answer: "Yes" p.267, L.2
- "18.(i) Did the Plaintiff for the third
"time apply on 28th September, 1955, for
"retirement? p.19, Ll.7-8
- 10 "(ii) Was such application made on the
"ground, inter alia, that he found it
"difficult to continue in the profession
"under the Government's Swabasha Policy?" p.19, Ll.9-10
- Answer: to 18(i): "Yes" p.267, L.3
(ii): "Yes" p.267, L.4
- "19. Was such application refused for the
"third time on or about the 29th
"November, 1955?" p.19, Ll.11-12
- Answer: "Yes" p.267, L.5
- 20 13. Issues 20 to 26 were, after an examination
of all the evidence before him, answered thus by
the learned District Judge:-
- "20. Did the Plaintiff appeal on the 10th
"February 1956 to the Honourable M.D.H.
"Jayawardena, the then Minister of
"Finance, for retirement on the same
"grounds as were urged by him on earlier
"occasions?" p.19, Ll.13-15
- Answer: "Yes" p.267, L.7
- 30 "21. Did such appeal not meet with the
"recommendations of the Director of
"Education by the 20th February, 1956?" p.19, Ll.16-17
- Answer: "It is not possible to answer this
"issue on the evidence despite P9"
/see p.360 of the Record/. p.267, Ll.8-9

Record

- p.19, Ll.
18-19 "22. Was the Parliament (United National
"Party Government) dissolved on or about
"18th February, 1956?"
- p.267, L.10 Answer: "Yes"
- p.19, Ll.
20-21 "23. Did the Plaintiff during the General
"Elections of 1956 work for the United
"National Party at such General
"Elections?"
- p.267, L.11 Answer: "Yes"
- p.19, Ll.
22-23 "24. (a) Was Mr. M.D.H.Jayawardena, the 10
"then Minister of Finance, a candidate
"seeking Election for the Horana Seat
"as a member of the United National
"Party?"
- p.19, Ll.
24-25 "(b) Was Mr. Jayawardena defeated at such
"General Elections by a candidate of the
"Mahajana Eksath Peramuna?"
- p.267, L.12 Answer: to (a): "Yes"
- p.267, L.13 (b): "Yes"
- p.19, Ll.26-
27 "25. Was the defeat of the then United 20
"National Party Government well known
"prior to the 7th of April 1956?"
- p.267, Ll.
14-15 Answer: "It is not possible to answer this
"issue on the evidence".
- p.19, Ll.
28-30 "26. Was the appeal of the Plaintiff dated
"10th February, 1956 referred to in
"issue 20 allowed on 7th April, 1956
"by the Honourable M.D.H.Jayawardena
"then still Minister of Finance?"
- p.267, L.16 Answer: "Yes" 30
14. Issues 27 to 32, were, after an examination
of all the evidence in the case, answered thus by
the learned District Judge:-
- p.19, Ll.
31-33 "27. Did the Plaintiff, when he was an
"assistant teacher at Ananda Sastralaya
"carry on a campaign to induce the
"children of Ananda Sastralaya not to pay
"facilities fees?"

Record

Answer: "Yes"

p.267, L.17

"28. Did the Plaintiff, while functioning as
"Principal, insist on the payment of such
"facilities fees:"

p.20, Ll.
1-2

Answer: "Yes"

p.267, L.18

"29. Did the Plaintiff secure his retirement
"under the Teachers' Pension Act with full
"pension rights on the ground of inability
"to teach in Sinhalese?"

p.20, Ll.
3-4

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Answer: "Yes"

p.267, L.19

"30. Did the proprietors (the 1st Defendant
"Company) and the Editor (the 2nd Defendant)
"of the Lankadipa have a common interest
"with the public and owe a duty to the
"public -

"(a) to publish information on matters of
"general importance and public
"interest?

p.20, Ll.
5-8

20

"(b) to allow the use of the columns of the
"Lankadipa for the bona fide discussion
"by members of the public on matters of
"general importance in public interest?"

p.20, Ll.
9-10

Answer: to (a) "Yes"

p.267, L.20

(b) "Yes"

p.267, L.21

"31. Did the news items referred to in
"paragraphs 4(i) and 7(i) of the Plaint" -
/see paragraphs 4 and 6 of this Case/

"(a) refer to matters of public
importance?"

p.20, Ll.
11-12

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"(b) were they substantially true?"

p.20, L.13

Answer: to (a): "Yes"

p.267, L.22

(b): "Yes"

p.267, L.23

"32. Were the letters referred to in paragraphs
"4(2) 4(3) and 7(2) of the Plaint" /see
paragraphs 4 and 6 of this Case/ "written
"by correspondents on matters of public

p.20, Ll.
14-16

Record

"importance, and substantially correct?"

p.267, L.24

Answer: "Yes"

15. Issues 33 and 34 were, after a consideration of all the evidence before him, answered thus by the learned District Judge:-

p.20, Ll.
17-18

"33. Were all publications

"(a) in the nature of fair comment?

p.20, L.19

"(b) on occasions of qualified privilege
" (defeasible immunity)?

p.20, L.20

"(c) justifiable in the circumstances?

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p.20, L.21

"(d) made without animus unjuriandi?"

p.267, L.25

Answer: to (a): "Yes"

p.267, L.26

(b): "No"

p.267, L.27

(c): "Yes"

p.267, L.28

(d): "Yes"

p.20, Ll.
24-25

"34. Even if issues 9 to 33 are answered in favour of the Defendants was there express malice in the publication?"

p.267, L.29

Answer: "No"

p.20, L.26

It would seem as if the Plaintiff's Counsel who had suggested issue 34 subsequently withdrew it on the ground that it was covered by issue 33, but the learned Trial Judge nevertheless returned an Answer to it as stated above.

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16. The learned District Judge arrived at his findings after a due examination of all the documentary and oral evidence which was produced by both sides in support of their respective cases.

The oral evidence in support of the Plaintiff's case will be found on pages 21 to 78 and 182 to 256 of the Record. After the close of the Defendants' case the Plaintiff was permitted to lead evidence in rebuttal and it was only then that he chose to support his case with his personal testimony (see pages 207 to 240 of the Record).

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17. By his Judgment, dated the 10th June, 1957, incorporating the said Answers to Issues, the learned District Judge, having found the numerous issues of fact in favour of the Defendants, dismissed the action, with costs.

10 18. The numerous findings of fact at which the learned District Judge arrived are sufficiently stated in his Answers to Issues which appear in paragraphs 10 to 16 hereof. It is convenient however to refer in this paragraph to some of his conclusions and views on certain aspects of the case. He said:-

(a) "Ananda Sastralaya, from small beginnings p.260, Ll.
"had developed into a large and influential school 24-26
"in Kotte, and admittedly its affairs were of the
"utmost importance to the Buddhist public."

(b) "There can be no doubt that the appoint- p.261, Ll.
"ment of Mr. Alagiyawanna" [as Vice-Principal] 7-16
"was deeply resented by the Plaintiff."

20 "After the principal returned Mr. Alagiyawanna
"assumed duties but many things were done to
"make his work there most unpleasant. The two
"main forms of opposition were the writing of
"anti-Alagiyawanna slogans on the walls of the
"school, and a campaign to dissuade parents and
"pupils from paying facilities fees. Here we
"have the evidence of four young men - Kithsiri
"Ameratunge, K. Jayasekera, Wimalaweera Perera
"and S.K. Dharmakirti. According to them it was
30 "the Plaintiff who was responsible for the anti-
"Alagiyawanna slogans, and it was he who instigated
"students to refrain from paying facilities fees
".....I accept their evidence in preference p.261, Ll.
"to that of the Plaintiff..... The evidence 37-38
"of these youths is corroborated by that of Mr.
"Austin Silva a teacher (in my view an p.262, Ll.
"obviously truthful witness) and to some 16-18
"extent by the evidence of Mr. Alagiyawanna."

40 (c) "As principal, the Plaintiff was keen on p.262, Ll.
"collecting facilities fees. But then he had 25-30
"to undo much of what had already been done in
"this matter. In December each year the public
"examinations take place and students cannot sit
"for them unless they obtain Admission Cards
"from the head of their school. This require-
"ment is a powerful weapon in the hands of a
"Principal in order to compel the payment of

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- p.262, Ll.
31-33 "facilities fees - but a weapon which in my opinion
"should never be used It would be a
"very cruel thing indeed to prevent a student
"who has studied for an examination from sitting
"for it merely because he has failed to pay a
p.262, Ll.
34-35 "certain sum of money But the Plaintiff
p.262, L.37 "says that he refused Admission Cards as a
"disciplinary measure.....I am sceptical about
"this..... The Plaintiff's attitude was
p.263, Ll.
2-5 "one of defiance, and it was only after three 10
"officers of the Education Department actually
"came into his school that he reluctantly
"issued the Cards on the eve of the
"examination. It is no wonder that every
"student failed.
- p.263, Ll.
6-8 "However, this question of withholding
"Admission Cards on account of non-payment
"of facilities fees was quite rightly drawing
"public attention and in my view it is for the 20
"public good that such questions should be
p.263, Ll.
8-12 "publicly discussed". The learned Judge
then referred to certain issues of another
newspaper printed in Sinhalese - with which
the Respondents are not connected - in which the
same question had been discussed and to Hansard
which showed that it had been the subject of
heated debate in Parliament.
19. On the subject of the Plaintiff's retirement,
the learned District Judge said:-
- p.263, L.13 "I shall now turn to the applications 30
"made by the Plaintiff to retire..... I do not
"think it necessary to decide whether his
"application should have been allowed or not.
p.263, Ll.
25-27 "It is only necessary to observe the events
"that took place immediately before he
p.263, L.28 "succeeded in retiring". The learned Judge
to referred to the previous unsuccessful appli-
p.264, L.3 cation for retirement made by the Plaintiff,
and then to his application to retire made to
the Minister of Finance (Mr.M.D.H.Jayawardene) 40
on the 10th February, 1956, which was granted
on the 7th April, 1956. He said :-
- p.264, Ll.
8-10 "The elections were held early in April
"and on 5/4/56 Mr. Jayawardene the then Minister
"of Finance was beaten. On 7/4/56 he made an
"order by which the Plaintiff was allowed to
"retire.

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p.264, Ll.
11-20

10 "Now, I accept the evidence of Mr.
"Jayawardene that he did not bring his own
"mind to bear on the question of the
"Plaintiff's retirement. There were some 145
"appeals among other papers which he had to
"attend to before he relinquished office.
"He relied entirely on the minutes made by
"officials of his Ministry and the Ministry
"of Education..... Though I do not for a moment
"believe that Mr. Jayawardene's action was
"prompted by any improper motives, yet it is
"quite clear that those who were responsible
"for advising him in this matter had at this
"point of time completely changed their minds
"or been persuaded to do so - without any
"fresh material being placed before them.

20 "The evidence of the present Minister of
"Education shows that questions were asked in
"Parliament on this subject - it had certainly
"aroused much public interest and curiosity.
"Those then are the facts as I find them." p.264, Ll.
21-23

20. Relating his findings of facts to the state-
ments complained of, the learned District Judge
found that:-

30 (a) the statements in the news item published in the p.264, Ll.
Lankadipa of the 5th December 1955 (to the 31-38
effect that the Principal of a Buddhist School
was now enforcing payment of Facilities Fees
which previously, as an assistant teacher, he
had encouraged the students not to pay) were
true of the Plaintiff and their publication was
in the public interest;

40 (b) the statements in a letter published in the p.264, L.39
said paper on the 23rd December 1955 (to the to
effect that the Plaintiff, when an assistant p.265, L.16
teacher, had encouraged the non-payment of
Facilities Fees and had led the school children
astray, that "black stains are sprinkled on the
"glory that was of the school" as could be seen
from talks at road junctions, and that the staff
and two-thirds of the students were opposed to
him) were substantially true, the reference to
"black stains" etc. being really a comment and
a fair one;

(c) the statements in a letter published in the p.265, Ll.
said paper on the 3rd January, 1956 (to the 17-34
effect that the Plaintiff had made the students

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disobedient and rebellious, had set the children against the Vice-President, Mr. Alagiyawanna, and, in order to obstruct the work of the school, had, when he was an assistant teacher, induced the students and their parents not to pay Facilities Fees, concluding with the words "It is not a secret as to who got the students to write the anti-"Alagiyawanna slogans on the school buildings,") were based on facts which were "true and their publication in the public interest", the last sentence quoted being, in the circumstances, a fair comment, 10

p.265, L.35 to p.266, L.24 As to the two statements concerned with the Plaintiff's retirement (see paragraph 6 of this Case) the learned District Judge found that they were substantially true and that in regard to both of them the plea of justification was entitled to succeed.

p.268 21. A Decree in accordance with the said Judgment of the learned District Judge was drawn up on the 10th June 1957, and against the said Judgment and Decree, the Plaintiff appealed to the Supreme Court of Ceylon, on the grounds stated in his Petition of Appeal which, dated the 22nd June 1957, is printed on pages 268 and 269 of the Record. 20

pp.283-297 22. The appeal was heard by a Bench consisting of Basnayake C.J., Pulle J. and Sinnetamby J. which, by a majority Judgment (Basnayake C.J. dissenting) dated the 23rd October, 1959, affirmed the Judgment of the learned District Judge and dismissed the appeal with costs. 30

23. In their majority Judgment the learned Supreme Court Judges (Pulle and Sinnetamby JJ.) said, in regard to the findings of the Court below:-

p.285, Li. 25-30 "In regard to factual matters in controversy "between the parties the learned Trial Judge has "come to very strong findings against the "Plaintiff and we do not see how we can in any "way disturb them by holding that they were "either unreasonable or not supported by the "evidence. The Plaintiff, however, contended "that some of the findings were wrong and that "in law the Judge had misdirected himself. "No satisfactory grounds, in our opinion, exist "for reversing the findings of the Judge on the "facts." 40

24. On the subject of innuendos, the learned Supreme Court Judges (Pulle and Sinnetamby JJ.) said:-

10 "The learned" (Trial) "Judge held that p.285, L.44
"all the innuendos pleaded by the Plaintiff to
"had been established. We find ourselves p.286, L.2
"in agreement with him except in regard to
"second innuendo pleaded under the first
"cause of action" (that the Plaintiff had
secured his appointment as Principal by
unfair and unworthy methods i.e. by inciting
students and parents not to pay Facilities
Fees) "and the innuendo which is the basis of
"the second cause of action" (that the
Plaintiff by falsely pretending he could not
teach in Sinhalese and by employing other
corrupt means obtained Government permission
to retire).

20 "In regard to the first cause of action, p.286, Ll.
there is nothing in the passages which 3-9
"suggests to the average reader that the
"Plaintiff secured his appointment as Principal
"by inducing students not to pay Facilities
"Fees. In the second cause of action, while
"the passages themselves convey to the minds
"of the reader the suggestions that the
"Plaintiff retired by falsely pretending that
"he could not teach in Sinhalese though well
30 "qualified in that language, it does not
"necessarily suggest that corrupt means were
"employed in obtaining permission to retire."

25. On the relevant Roman-Dutch Law relating to defamation, the majority of the Supreme Court Bench said:-

40 "In order to constitute defamation p.286, Ll.
"under the Roman-Dutch Law it must be 28-33
"established that there existed in the mind
"of the defendant what Roman-Dutch jurists call
"the animus injuriandi; but where the words are
"either per se defamatory or shown to have the
"defamatory meaning attributed to them in the
"innuendo, the animus injuriandi is presumed
"and it is for the defendant in such a case to
"exonerate himself by establishing circumstances
"which rebut the presumption."

On the same subject the learned Judges next referred to Nathan's Law of Defamation in South p.286, L.34
to
p.288, L.32

Record

Africa, pp.87, 97, and to certain authorities inclusive of the decision of the Board in Perera v. Peiris (1948) 50 N.L.R. 145, 158, P.C. Continuing, they said:-

p.288, Ll.
33-39

"The effect of the Privy Council decision, "therefore, is that under the Roman-Dutch Law as "it exists in Ceylon today it is necessary for a "plaintiff to establish animus injuriandi on the "part of the defendant and in cases where it is "shown or presumed to exist it is open to the "defendant to negative it by showing that one of "the clearly established defences to an action for "defamation under the English Common Law is "available to the defendant or that the occasion "was a privileged occasion by reason of the fact "that the publication was for 'common convenience "and welfare of the society'.

10

p.288, L.40
to
p.289, L.11

"Justification as such was recognised even by "the earlier Roman-Dutch jurists as a defence which "negated animus injuriandi, provided also that "the publication was in the public interest..... ".....

20

"The defence of fair and bona fide comment was un- "known to the early Roman-Dutch jurists and is some- "thing which developed with the passage of time. It "has, however, been fully debated in South Africa "and in Ceylon and is now accepted as a defence "on the ground that it negatives the existence of "animus injuriandi To succeed in a "defence of fair and bona fide comment it is "necessary for the defendant in the first instance "to establish the truth of the facts on which the "comment is based and then to show that the comment "based upon those facts is fair and bona fide; it "must also be shown that the comment was on a matter "of public interest".

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Later, in their Judgment, they said:-

p. 297, Ll.
1-3

"In order to succeed in establishing the plea "of justification it is necessary under the Roman- "Dutch Law to prove, in addition to the truth of the "facts contained in the defamatory statement, that "its publication was in the public interest."

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p.289, Ll.14-
18

26. The learned Judges of the Supreme Court (Pulle and Sinnetamby JJ.) said that they proposed "to analyse the libellous publications and to separate the statements of facts from statements which are merely comment" but, before doing so, they pointed

to the fact that:-

"the Plaintiff who argued his own appeal
"submitted that from his point of view it
"was of the utmost importance that findings
"of fact by the Trial Judge which involved
"the rejection of his evidence should be
"reversed."

10 Following a statement of the facts which the Defendants had to establish in regard to both causes of action, and a close analysis of the evidence which the Defendants had produced in support of their case, the learned Judges, for reasons that they gave, arrived at conclusions which were substantially similar to those of the Court below. p.289 Ll. 19-43 pp.290-297

20 27. As to the statement and innuendo which formed the basis of the Plaintiff's second cause of action - that the Plaintiff had obtained Government permission to retire by employing corrupt means - the view of the learned Supreme Court Judges (Pulle and Sinnetamby JJ.) was that the statement was comment directed mainly against the retiring Finance Minister (Mr. M.D.H. Jayawardene). Having referred to the facts upon which the comment was based and to those with which every newspaper reader was familiar, viz., that, following the General Election, a new Government with a new Finance Minister was about to be formed, they continued as follows:- p.295, Ll. 17-24 p.295, Ll. 24-34

30 "In these circumstances is it not a reasonable inference for any fair-minded person to suspect that something improper had taken place which resulted in the same Minister allowing an application which previously he had refused more than once? "The learned"(Trial) "Judge has held that the outgoing Minister was not guilty of any mala fides and that he was guided in this instance solely by the recommendation of his advisers whose action the Minister admits was wrong. The fact that the Minister had been erroneously advised was, however, not known to the writer or the general public. The law as it stands today is that where the facts truly stated warrant an inference of evil motive, even though in fact no evil motive exists, the defence of fair comment is available. In our opinion, the facts of this case as stated in P.5" (see P.5A, p.362 of the Record) "are true and the inference, therefore, having regard to the context p.295, Ll. 34-44

40

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"in which the letter was written, perfectly
"reasonable and fair."

28. Further, on the subject of fair comment and on matters of public interest, the learned Supreme Court Judges (Pulle and Sinnetamby JJ.) said:-

p.297, Ll.
3-8

"The defence of fair comment is
"not available unless it is made in the
"public interest The Plaintiff, who
"appeared in person, rightly, conceded,
"indeed claimed, that he as Principal of a
"school was a public figure and that the
"matters referred to in the defamatory
"articles related to questions of public
"interest....."

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p.297, Ll.
10-28

"Apart from the news item P.1, the
"other letters P.2 and P.3 relating to the
"question of facilities fees were written
"after the Plaintiff himself had invited
"public discussion in a letter to the Press,
"P.26 of 9th December, 1955. When a person
"invites criticism on any subject it becomes
"a matter of public interest (Gatley 3rd Ed.
"p.401). Apart from that, facilities fees
"are recovered under.....the Education
"Amendment Act No.5 of 1951 read with Section
"41A(2) of Ordinance No.26 of 1947 which
"permits the recovery of such fees in Assisted
"Schools..... Ananda Sastralaya was an
"Assisted School recovering facilities fees
"and supported by State funds. The manner in
"which the fees were recovered is thus a
"matter of public interest. It had given
"rise to questions in Parliament and involved
"the question of whether students should be
"allowed to sit for public examinations.
"When we come to consider the right of a
"teacher paid from public funds to retire
"under rules framed by the Government that too
"undoubtedly is a matter which concerns the
"public. The head of a school is a public
"figure and his conduct can be the subject of
"public criticism.

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p.297, L.28

"In our opinion, the pleas of justifi-
"cation and fair comment are entitled to
"succeed."

p.270-283
p.274, Ll.
23-29

29. In his dissenting Judgment, Basnayake C.J. said that the learned District Judge had held that the Defendants owed a duty to the public to publish

information on matters of general importance and public interest and to permit, in the "Lankadips", the bona fide discussion by members of the public of matters of general importance in the public interest, and that, in doing so, he had overlooked the fact that the Press had no greater privileges than the ordinary citizen.

10 The learned Chief Justice then proceeded to summarise the relevant Roman-Dutch Law (which has already been referred to in paragraphs 2 and 25 of this Case and on which there would appear to be no dispute.) Before concluding his summary he said that "a person is not entitled under the "guise of truth and pretence of acting in the "public interest to rake up another's past. In such "a case a heavy burden lies on the defendant to "show how the resurrection of the past serves the "public interest."

p.274 L.40-
p.277 L.4

p.277, Ll.
5-8

20 30. Turning to the defamatory publications themselves, the learned Chief Justice, in his dissenting Judgment, said, as to the publication of the 5th December, 1955 (see paragraph 4(i) of this Case) that there was no evidence that the people of Kotte had raised the question of Facilities Fees. For reasons that he gave he held that the publisher had not only failed to prove the truth of the defamatory statements but had also failed to establish that they were made in the public interest or for the public good.

p.277, Ll.
20-26

p.279, Ll.
4-6

30 As to the publication of the 23rd December, 1955, (see paragraph 4(ii) of this Case) the learned Chief Justice, having referred to part of the relevant evidence, felt himself unable to agree with the finding of the learned District Judge that the Defendants had proved the truth of the facts referred to in the publication. Further, he expressed the view that it was not proved that it was either in the public interest or for the public good that the Plaintiffs past actions should be "raked up". He said that there was no evidence "that black stains are sprinkled "on the glory that was of the school". In regard to the publication in question it was his view that the pleas of justification and fair comment failed.

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p.279, Ll.
11-39

p.279, Ll.
40-43

p.280, Ll.
1-2

p.280, Ll.
5-13

As to the publication of the 3rd January, 1956 (see paragraph 4(iii) of this Case) the learned Chief Justice's view was that even if the statements therein were true (as was held by the

p.280, L.27
to
p.281, L.10

Record

Court below) it was defamation nevertheless as the reference to past events appeared to him to have been made with the sole object of harming the Plaintiff.

p.281, L.19 31. As to the publications referring to the
to Plaintiff's retirement, the learned Chief Justice,
p.283, L.18 in his dissenting Judgment, said, of the publication
of the 8th May, 1956, (see paragraph 6(i) of this
Case) that the statements that (a) the Plaintiff
p.281 L1.25- had retired on full pension and (b) had done so 10
26 because of his inability to teach Sinhalese, were
untrue. He found also that it was not correct that
a book on Botany purporting to have been written
p.281 L1.36- by the Plaintiff had in fact been written by him
44 alone; and that the reference to the Plaintiff's
impending visit to America was sarcastic and designed
to hold him up to ridicule.

p.282, LL. As to the publication of the 11th May, 1956
16-37 (see paragraph 6(ii) of this Case) the learned Chief
Justice said again that it had not been proved that 20
the Plaintiff's said work on Botany had been written
by him in Sinhalese. Further he held that it was
not proved that: (a) the said work was accepted by
the Educational Publications Board; (b) the Plaintiff
had retired with full pay - he had, in the view of
the learned Chief Justice, retired on a pension
payable to him according to the School Teachers'
Pension Rules; and (c) that the Plaintiff had worked
hard for a certain political party.

p.283 Ll. The Plaintiff had claimed a total sum of Rs. 30
23-25 110,000/- as damages but the learned Chief Justice
awarded him only a sum of Rs. 5,000/- together
with the actual expenses incurred by him in these
proceedings.

p.298 32. A Decree in accordance with the Judgment of the
majority of the learned Judges of the Supreme Court
(Pulle and Sinnetamby JJ.) was drawn up on the 23rd
October, 1959, and against the said Judgment and
Decree this appeal to Her Majesty in Council is now
preferred, Leave to Appeal having been granted to the 40
p.300, Appellant by two Decrees of the Supreme Court dated
302 the 18th December, 1959 and the 21st June, 1960.

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

R E A S O N S

- (1) BECAUSE in respect of both causes of action the Appellant was unable to establish any animus injuriandi on the part of either of the Respondents.
- 10 (2) BECAUSE if in these proceedings any such animus was properly presumed the presumption was completely and effectively rebutted by the defences of justification and fair comment which the Respondents were able to establish to the satisfaction of both Courts below.
- (3) BECAUSE the establishment of the said defences was dependent upon findings on issues of fact, such as the truth of the matters contained in the publications complained of and the public interest or good in respect of the furtherance of which the publications purported to have been made, and these were concurrently found in the Respondents' favour by both Courts below.
- 20 (4) BECAUSE on the evidence it was correctly found by both Courts below that the publications complained of contained matter that was either - (a) true and published in the public interest or for the public good and/or (b) was fair and bona fide comment on matters of public interest and based on facts which were truly stated.
- 30 (5) BECAUSE the conclusions at which the learned Chief Justice arrived, in his dissenting Judgment on appeal, were based upon an insufficient or incorrect assessment of all the evidence in the case which the Trial Judge, who had all the witnesses before him, including the Appellant, had correctly considered and assessed.
- (6) BECAUSE, for reasons stated therein, the Judgments of the majority of the Judges of the Supreme Court Bench and of the learned District Judge, are correct and ought to be affirmed.

E. F. N. GRATIAEN

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R. K. HANDOO

S. NONIS

No. 45 of 1962
IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

NARAHENPITAGE WALTER DE COSTA
Appellant

- and -

1. THE TIMES OF CEYLON LIMITED
2. D. B. DHANAPALA

Respondents

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