

PC  
6/11/58  
Judgment  
6, 1958

IN THE PRIVY COUNCIL

No. 17 of 1958

ON AN APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

THE UNIVERSITY OF CEYLON ... (Defendant) Appellant

- and -

E. F. W. FERNANDO ... (Plaintiff) Respondent

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RECORD OF PROCEEDINGS

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STEPHENSON, HARWOOD & TATHAM,  
Saddlers' Hall,  
Gutter Lane,  
Cheapside,  
London, E.C.2.

Appellant's Solicitors.

A.L. BRYDEN & WILLIAMS,  
53, Victoria Street,  
London, S.W.1.

Respondent's Solicitors.

IN THE PRIVY COUNCIL

No. 17 of 1958

ON AN APPEAL  
FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON  
W.C.1.  
- 7 FEB 1961  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

B E T W E E N :-

THE UNIVERSITY OF CEYLON ... (Defendant) Appellant  
- and -  
E. F. W. FERNANDO ... (Plaintiff) Respondent

50393

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No. 17 of 1958

ON AN APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

THE UNIVERSITY OF CEYLON (Defendant) Appellant

- and -

E. F. W. FERNANDO ... (Plaintiff) Respondent

---

RECORD OF PROCEEDINGS

No. 1

JOURNAL ENTRIES

IN THE DISTRICT COURT OF COLOMBO

E.F.W. FERNANDO

Plaintiff

- v -

THE UNIVERSITY OF CEYLON

Defendant

In the District  
Court of  
Colombo

No. 1

Journal Entries  
19th May 1953  
to  
3rd January  
1957

---

NOT REPRODUCED

In the District  
Court of  
Colombo

IN THE DISTRICT COURT OF COLOMBO

E.F.W. FERNANDO

Plaintiff

No. 2

- v -

Amended Plaintiff  
of the  
Plaintiff.

THE UNIVERSITY OF CEYLON

Defendant

24th July 1953

On this 24th day of July 1953.

The amended plaintiff of the Plaintiff above-named appearing by Addison Serasinghe Gunawardena, his Proctor, states, as follows:

1. The cause of action hereinafter set out arose at Colombo, within the jurisdiction of this Court. 10

2. The Defendant abovenamed is a body corporate, liable to be sued according to Section 3, Sub-Section (1)(a) of the Ceylon University Ordinance No. 20 of 1942.

3. The plaintiff at all relevant times was a student in the Faculty of Science of the Defendant University. The plaintiff having duly complied with all the regulations and requirements necessary to entitle him to present himself as an examinee for the Final Examination, did on or about March 1952, present himself as an examinee for the Final Examination in Science, Section B Zoology, for the Degree of Bachelor of Science, and the plaintiff completed the full examination for the said Degree in both theory and practical work. 20

4. After the plaintiff had completed the theory part of the said examination, an allegation was made to the Vice-Chancellor of the defendant University by one S. Balasingham and one T. Sivarparakasapillai against the plaintiff that the latter had acquired knowledge of the content of one of the question papers set at the aforesaid examination. 30

5. In order that he might be satisfied whether or not the plaintiff had acquired such knowledge of the content of the said paper as aforesaid the Vice-Chancellor on or about 16th May 1952 appointed a Commission of Inquiry to inquire into the said allegation. The Members of the said Commission of

Inquiry were the said Vice-Chancellor, A.E.Keuneman Q.C. and Professor A.W. Mailvaganam.

In the District  
Court of  
Colombo

No. 2

Amended Plaintiff  
of the  
Plaintiff.

24th July 1953  
- continued.

10 6. The said Commission of Inquiry heard evidence and inquired into the said allegation and came to a finding adverse to the plaintiff and the said finding was duly reported by the said Vice-Chancellor under Section 8 of Examinations Procedure of the defendant University to the Board of Residence and Discipline, which said Board upon the said finding of the Commission of Inquiry under Section 14 of the said Examinations Procedure suspended the plaintiff indefinitely from all University Examinations such decisions being intimated to the plaintiff by the said Vice-Chancellor on or about 18th July, 1952.

7. The plaintiff states that the decision on the said Commission of Inquiry and all steps resulting therefrom are null and void;

20 (1) on the ground that the said decision of the Commission of Inquiry was contrary to the principles of Natural Justice for one or more of the following reasons :-

(a) One of the Members of the said Commission of Inquiry to wit, Professor A.W. Mailvaganam, was at all relevant times related to S. Balasingham and T. Sivaprakasapillai referred to in paragraph 4 above.

30 (b) The said Professor Mailvaganam was a member of the Board of Examiners for the said examination and of the Scrutinising Committee under Section 5 of the Examinations Procedure and was therefore not qualified to inquire into a matter dealing with the question of leakage of an examination paper as he would be a Judge in his own cause.

(c) For the reasons set out in Sub-paragraph (a) above, the maxim, that justice should not only be done but also appear to be done has been violated.

40 (d) The evidence of the various witnesses who appeared before the Commission of Inquiry, including the evidence of S. Balasingham was taken in the absence of the plaintiff, who was not aware of what evidence was led against him. In the circumstances one of the essential elements of Natural Justice was not observed in as much as the plaintiff was not aware of the case he had to meet.



In the District  
Court of  
Colombo

No. 2

Amended Plaint  
of the  
Plaintiff.

24th July 1953  
- continued.

(e) The evidence of the various witnesses was not taken entirely before all the three Members who constituted the Commission of Inquiry. Certain evidence was taken by the Vice-Chancellor alone in the absence of the other two Members of the Commission of Inquiry, and such evidence was acted on by the Commission. This circumstance is also a violation of the elementary principles of Justice

(2) That there was no evidence upon which the Commission of Inquiry could reasonably find the charge against the plaintiff proved. 10

(3) On the ground that the finding arrived at against the plaintiff is one that has not been arrived at in conformity with the Examinations Procedure as laid down in Chapter Eight (8) of the General Act of the University of Ceylon. The said finding and decision are therefore void and of no effect.

8. A cause of action has thus accrued to the plaintiff to sue the defendant for a declaration that the said finding of the said Commission of Inquiry and all steps resulting therefrom are null and void and that the said finding of the Commission of Inquiry and the decision of the Board of Residence and Discipline should be quashed. 20

9. The plaintiff values his cause of action at Rs. 6,500/-.

Wherefore the plaintiff prays:-

- (a) that the Court be pleased to declare the finding of the said Commission of Inquiry and the decision of the Board of Residence and Discipline null and void, 30
- (b) to quash the said finding and decision,
- (c) to grant the plaintiff the costs of the action, and
- (d) for such other and further relief in the premises as to this Court shall seem meet.

Sgd. A.S. Gunawardena

Settled by,  
Mr. Kingsly Herat.  
Mr. E. G. Wickremanayake, Q.C.  
Mr. N. E. Weerasooriya, Q.C.  
Advocates

Proctor for Plaintiff.

40

ANSWER OF THE DEFENDANT

In the District  
Court of  
Colombo

IN THE DISTRICT COURT OF COLOMBO

E.F.W. FERNANDO

Plaintiff

- v -

THE UNIVERSITY OF CEYLON

Defendant

No. 3

Answer of the  
Defendant.

6th November  
1953.

On this 6th day of November 1953.

10 The answer of the defendant abovenamed appearing by David Ernest Martensz, William Henry Edwin Ludovici, James Frederick Van Langenberg, George Neil Stewart de Saram, Ilex Frederick Malcolm Pullenayegum, Eric Douglas Toussaint, Albert Reginald Tampoe and Victor Gnanaratnam Cooke, practising in partnership under the name, style and firm of F.J. & G. de Saram and their assistants Padma Rajah Sittampalam, Vernon Cumberbatch van Geyzel Kelaart, Rajanathan Devasenapathy, Hector Claude Perera, Abdul Careem Abdul Haseeb, Velupillai Murugesu and Maurice Stanley Wallbeoff, its proctors, states as follows :-

20

1. Answering paragraph 1 of the plaint the defendant denies that any cause of action has arisen against it.

2. The defendant admits the averments in paragraphs 2 and 3 of the plaint.

3. The defendant denies all and singular the other averments in the plaint save as hereinafter admitted.

30 4. (a) This Court has no jurisdiction to entertain, hear or determine this action, nor any jurisdiction to decree any of the reliefs claimed or prayed for by the plaintiff; alternatively,

(b) the averments in the plaint do not disclose any cause of action whatsoever which entitles the plaintiff to any of the reliefs prayed for in the plaint.

In the District  
Court of  
Colombo

No. 3

Answer of the  
Defendant.

6th November  
1953 -  
continued.

5. Answering paragraph 4 of the plaint the defendant admits that an allegation was made to the Vice-Chancellor by T. Sivaprakasapillai who is a lecturer in Civil Engineering at the University of Ceylon upon a statement made by Miss S. Balasingham.

6. Answering paragraphs 5 and 6 of the plaint, the defendant pleads as follows:-

(a) The Vice-Chancellor requested A.E.Keuneman, Q.C. and Professor A.W. Mailvaganam to assist him in his enquiries as to whether or not the plaintiff had acquired, before the date and time of the examination, knowledge of the substance of any question, or of the content of one of the question papers, set at the said examination;

10

(b) The Vice-Chancellor was satisfied that the plaintiff had acquired knowledge of the nature or substance of the German question in Zoology Paper V, before the date and time of the said examination, and he accordingly reported the matter to the Board of Residence and Discipline under the provisions of Rule 8 of the Examinations Procedure of the General Act of the University of Ceylon. The said Board suspended the plaintiff indefinitely from all University Examinations under the provisions of Rule 14 of the said Examinations Procedure;

20

(c) The defendant denies all the averments contained in paragraphs 5 and 6 of the plaint that are inconsistent with the averments in this answer

7. Answering paragraph 7 of the plaint the defendant admits that Professor Mailvaganam was a member of the Board of Examiners and of the Scrutinising Committee but the defendant denies that the action taken by the Vice-Chancellor and by the Board of Residence and Discipline is in any way null and void whether for any of the reasons specified in the said paragraph 7 of the plaint or otherwise.

30

8. The defendant denies the averments contained in paragraphs 8 and 9 of the plaint.

Wherefore the defendant prays that the plaintiff's actions be dismissed with costs and for such further and other relief in the premises as to this Court shall seem meet.

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Settled by  
S.J. Kadirgamar  
E.B. Wikramanayake, Q.C.  
N.K. Choksy, Q.C.  
Advocates.

Sgd. F.J. & G. de Saram.  
Proctors for Defendant

INTERROGATORIES ADMINISTERED BY THE PLAINTIFF

In the District  
Court of  
Colombo

IN THE DISTRICT COURT OF COLOMBO

E.F.W. FERNANDO

Plaintiff

- v -

THE UNIVERSITY OF CEYLON

Defendant

No. 4

Interrogatories  
administered by  
the Plaintiff.

2nd March 1954.

10 Interrogatories on behalf of the abovenamed  
Plaintiff for the examination of the abovenamed  
Defendant's Vice-Chancellor, Sir Ivor Jennings,  
Q.C., who is an officer of the Defendant and its  
principal executive :-

1. Was not the evidence of the various witnesses  
who appeared before the Commission of Inquiry,  
referred to in paragraph 5 of the amended  
Plaint, including the evidence of S.Balasingham,  
taken in the absence of the Plaintiff and not  
in his presence?
- 20 2. Was not the evidence of Dr. Hilary Cruzs taken  
by the Vice-Chancellor alone in the absence of  
the other two Members of the said Commission  
of Inquiry?
3. Was not the evidence of Professor Dr. Wilfred  
Fernando taken by the Vice-Chancellor alone on  
one occasion in the absence of the other two  
Members of the said Commission of Inquiry?

The Vice-Chancellor as an Officer of the defen-  
dant and its principal executive is required to  
answer the Interrogatories numbered 1, 2 and 3.

30 Colombo, 2nd March 1954.  
Sgd. A.S. Gunawardena  
Proctor for Plaintiff.

In the District  
Court of  
Colombo

No. 5

AFFIDAVIT ANSWERING INTERROGATORIES

No. 5

Affidavit  
answering  
Interrogatories.  
18th March 1954.

IN THE DISTRICT COURT OF COLOMBO

E.F.W. FERNANDO

Plaintiff

- v -

THE UNIVERSITY OF CEYLON

Defendant

I, WILLIAM IVOR JENNINGS of Colombo, make oath and say as follows :-

1. I am the Vice-Chancellor of the University of Ceylon, the defendant abovenamed.

10

2. I am making this affidavit on behalf of the defendant, which is a corporation, in response to the interrogatories served on the defendant on the 11th March, 1954.

3. I requested A.E. Keuneman, Q.C. and Professor A.W. Mailvaganam to assist me in my enquiries as to whether or not the plaintiff had acquired before the date and time of the examination (referred to in paragraph 6(a) of the defendant's answer) knowledge of the substance of any question, or of the content of one of the question papers, set at the said examination, and for this purpose I questioned certain persons including S. Balasingham. They were not questioned in the presence of the plaintiff. This is my answer to interrogatory 1.

20

4. In the course of my said enquiries I questioned Dr. Hilary Cruz in the absence of A.E. Keuneman Q.C. and Professor A.W. Mailvaganam. This is my answer to interrogatory 2.

5. In the course of my said enquiries Professor Dr. Wilfred Fernando was questioned in the presence of A.E. Keuneman Q.C. and Professor A.W. Mailvaganam. On one occasion I had a discussion with the said Professor Dr. Wilfred Fernando in

30

the absence of the said A.E. Keuneman Q.C. and Professor A.W. Mailvaganam. This is my answer to interrogatory 3.

Sgd. W. Ivor Jennings.

Sworn to and signed at  
Peradeniya this  
18th day of March, 1954.

Before me

Sgd. (Illegible)

10 A Justice of the Peace

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No. 6

ISSUES FRAMED

22nd March 1954

Plaintiff present

Mr. Advocate N.E. Weerasooriya, Q.C., with  
Mr. Advocate E.G. Wikramanayaka Q.C., with  
Mr. Advocate Kingsley Herat and Mr. Advocate  
Wickramanayaka (jnr.) instructed by Mr. Gunawardena  
for the plaintiff.

20 Mr. Advocate N.K. Choksy, Q.C., with Mr. Advocate  
S.J. Kadirgamar instructed by Messrs. F.J. & G. de  
Saram for the defendant.

Mr. Advocate Wikramanayaka opens his case.  
At this stage Mr. Advocate Weerasooriya appears,  
and suggests the following issues :-

30 1. Was an allegation made to the Vice-Chancel-  
lor of the University of Ceylon by one Miss S.  
Balasingham and Mr. K. Sivaprakasapillai that the  
plaintiff had acquired knowledge of the contents of  
one of the question papers set for the Final Exami-  
nation in Science in March 1952?

In the District  
Court of  
Colombo

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No. 5

Affidavit  
Answering  
Interrogatories.  
18th March 1954  
- continued.

No. 6

Issues framed.  
22nd March 1954.

In the District  
Court of  
Colombo

No. 6

Issues framed.

22nd March 1954  
- continued.

2. Did the Vice-Chancellor appoint a commission of inquiry consisting of himself, Mr. A.E. Keuneman, Q.C., and Professor A.M. Mylvaganam to enquire into the said allegation?

3. (a) Did the said commission hear evidence and enquire into the said allegation?

(b) Did the said commission come to a finding adverse to the plaintiff?

(c) Did the Vice-Chancellor report the finding of the commission to the Board of Residence and Discipline? 10

4. Did the Board of Residence and Discipline, in view of the finding of the commission of inquiry suspend the plaintiff indefinitely from University Examinations?

5. Is the decision of the commission of inquiry and all steps resulting therefrom null and void on all or any of the grounds set out in para. 7(1) a, b, c, d and e; and/or 7(2) and/or 7(3) of the plaint? 20

6. Is the plaintiff entitled to a declaration

(a) that the said finding of the commission of inquiry and all steps resulting therefrom are null and void?

(b) that the said finding of the commission of inquiry and the order of the Board of Residence and Discipline be quashed?

Mr. Advocate Choksy has no objections to Issues 1 to 5.

As regards issue 6 he objects to the presence of the word "order" in issue 6(b). 30

Mr. Advocate Weerasooriya states that he has no objection to the word "decision" being substituted in place of the word "order".

Issue 6(b) will read as follows :-

Is the Plaintiff entitled to a declaration that the said finding of the commission of inquiry and the decision of the Board of Residence and Discipline be quashed?

Whilst not objecting to the phraseology of the issues framed by Mr. Weerasooriya, Mr. Choksy still questions the jurisdiction of this Court. He has no further objections to these issues being accepted, subject to the position taken up in his answer.

In the District  
Court of  
Colombo

                      
No. 6

Mr. Choksy suggests the following further issues.

Issues framed.

22nd March 1954

- continued.

10       7. Has this Court jurisdiction (a) to entertain, hear or determine this action, (b) to decree any of the reliefs claimed or prayed for in the plaint?

8. Does the plaint disclose any cause of action entitling the plaintiff to any of the reliefs prayed for in the plaint?

9. If issues 7 and/or 8 are or is answered in the negative, can plaintiff have or maintain this action?

20       10. (a) Was the Vice-Chancellor of the University satisfied that the plaintiff had acquired knowledge of the nature or substance of the German question in the Zoology Paper 5 before the date and time of the examination in question?

(b) Did he accordingly report the matter to the Board of Residence & Discipline under the relative provisions of the Examinations Procedure?

(c) Did the said Board of Residence and Discipline suspend the plaintiff indefinitely from all University Examinations under the Provisions of Rule 14 of the said Examinations Procedure?

30       11. If all or any of issues 10(a), (b) and (c) are or is answered in the affirmative,

(a) has the plaintiff any cause of action?

(b) is he entitled in this action to any of the reliefs prayed for.

(c) can he have or maintain this action?

Mr. Choksy submits that issues 7, 8 and 9 are issues of law, which go to the root of the action and he requests the Court to try those issues first as preliminary issues. He maintains that these



In the District  
Court of  
Colombo

                      
No. 6

Issues framed.

22nd March 1954

- continued.

issues go to the root of the action.

Mr. Weerasooriya has no objections to the issues framed by Mr. Choksy. He submits that this case involves a number of facts as well as of law. As regards the latter part of Mr. Choksy's application he states that this is a case of mixed law and fact, and that issues of law cannot be tried apart from the facts of the case relied on by the plaintiff. He also states that it is very unsatisfactory to try this case piecemeal. He adds that the issue of jurisdiction will depend on the particular facts of this case.

10

Mr. Choksy states that the relief asked for by the plaintiff in his prayer did not fall within any of the categories of relief that this Court is empowered to grant. The application on the face of the plaint appears to be in the form or nature of a Writ of Certiorari. In that view of the matter, he states that it would be futile at this stage to go into all those facts. He submits that the Court has no jurisdiction to entertain this kind of application. If it is obvious from the face of the plaint itself that the relief claimed is not one that this Court can grant or that the application is in its nature one that this Court has no jurisdiction to entertain then the Court on its own motion will stay its hand.

20

He states that in the pray the plaintiff has not asked for a declaration that the plaintiff has a right to sit for an examination. There is no right known to the law such as one called the right to sit for an examination. Therefore it is not an action to declare a right. Therefore a cause of action as defined by section 5 does not exist here to give this plaintiff any right to any relief. There is no relief asked for of a type which this Court has the right to give. This is a pure question of law on the face of the plaint. He refers to section 5 of the Civil Procedure Code.

30

Mr. Weerasooriya states that there are questions of fact to be determined in this case. What was the procedure laid down by Statute controlling the discipline of the University? There are certain questions of fact on which depend the question of law. Courts have jurisdiction to consider whether a domestic forum has reached a decision adverse to the party complained of or in its favour in a manner

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In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Examination -  
continued.

the University of Ceylon with the minimum qualification of Senior School Certificate. I passed the Senior School Certificate, first class, with distinction in Botony and Zoology. I took up the University Entrance Examination and was admitted to the University. I was awarded an exhibition in the first examination in Science; it did not attach to a particular subject. I was enjoying the exhibition until the time I sat for this examination. I was also a demonstrator in Zoology. I was in the B.Sc. Honours class. When I was in the first year B.Sc. I was paid according to the classes I took; I was paid a salary of about 100/- per month. I did not make use of the exhibition; I have no idea whether it was given to another. I did not ask that to be given to another. Apart from my studies I contributed to the Ceylon Journal of Science. I have made two contributions by submitting some articles on research work. I entered the University in 1948; it was for a four year course. I produce marked P 1 and P 2 reprints of my articles published in the Ceylon Journal of Science. In P 1 I make references to various literature that go to make my article. When I wrote this article I have had access to German articles. In the first year I did my German under one Miss Reich, and thereafter under Dr. Keerthisinghe. When I wrote these articles I made references to German articles. I wrote them in the original. In P 2 my first reference is to an article by Ander. That too I wrote in the original. When I know the subject there is no difficulty in reading them and understanding them. I attended lectures in German; those lectures are on Zoological subjects merely to familiarise ourselves with the scientific German. I presented myself for the Final Examination in 1952. Section B is on Zoology. Section A class is the general class where we have to study 3 subjects. Section B is a specialised course for one subject. There are 5 theory papers and 3 practical papers for this examination. The theory paper is lasting 3 hours each; 1st and 2nd practical papers 2 hours each and the 3rd practical paper lasts for 6 hours at a stretch. In section B in one paper I had to answer a question in German; a passage in some book given and we were expected to translate and comment on it. I sat for that paper. There was only one paper with a question in German; it is the 5th paper. I produce marked P 3 the particular question paper. I have come to understand that 10 marks are allotted for the translation of

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that passage from German into English.

Sometime after I sat for this examination I received a letter dated 16.5.1952, P 4, from the Vice-Chancellor of the University of Ceylon. (To Court: I received P 4 long after I sat for the examination; the practicals were also over then.) When I received this letter P 4 I had no idea as to what it was about. In terms of P 4 I was called upon to give evidence on the 21st of May at 5 p.m. In terms of P 4 I went to the College House. At that time I was living at Barnes Place. When I went there I saw Mr. Block; I spoke to him. Having spoken to him I was asked to sit in his room. While I was seated in his room I did not see anyone. About 5 minutes later Dr. Keerthisinghe came in. Before I called in there was no one in the Board Room. When I went into the Board Room I saw the Commissioners and the Secretary, Mr. Block. I saw Mr. Block and the three gentlemen whom I have named. Before I went in I saw Miss Balasingham coming out of the Board Room; I also saw Dr. Keerthisinghe coming out of the Board Room. The Board Room is downstairs. I saw Mr. Sivaprakasapillai standing outside the Board Room near the staircase. When I went into the Board Room Mr. Keuneman was the one who put me questions. He led evidence. He handed me the paper. I mean the Zoology paper (P 3). He put me questions with regard to P 3, and I told him that I had not seen it before the examination.

(At this stage Mr. Choksy objects to any statement made by Mr. Keuneman being led in evidence unless he is called as a witness. Mr. Wickramanayaka whilst not accepting the objection as sound, yet refrains from referring to anything told by Mr. Keuneman.)

I told Mr. Keuneman that the first time I set eyes on this question paper (P 3) was at the examination hall. This paper was given to me at 9 a.m. at the examination hall. In the course of my statements I said that I have studied German. I have studied the three year course in Zoology German; under Miss Reich I studied during the first year, and in the second year under Dr. Keerthisinghe. I claimed to have had a fair knowledge of Scientific German. In the course of the inquiry that day Professor Mylvaganam handed over that question paper (P 3) to me and asked me to translate it; I translated it. I did not find

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Examination -  
continued.

any difficulty in translating it at that time. I was not allowed to complete the translation; I was not given the opportunity to complete the passage. At a certain stage I was interrupted. Thereafter I was asked how I was able to give the translation of that passage, and I said that I had studied German for 3 years. I also referred to my having contributed articles in German to the Ceylon Journal of Science, and that I was in constant touch with scientific German and that I was able to translate the passage in question. On that day an exercise book was shown to me. That book was shown to me as an exercise book of Miss Balasingham. In that exercise book were written some German words. I was asked to translate those words. I translated them; there was no difficulty in translating those words. I was asked the meaning of the word ZITRONENSAFT. I gave the meaning as CITRONELLA JUICE. I broke that word into two; SAFT means sap or juice, ZITRONEN I translated as citronella. When we go to Adam's Peak we come across leaches; leaches are very common there and we carry citronella oil. Citronella oil is a repugnant to leaches. This particular passage refers to leaches, and in the context I translated that word ZITRONENSAFE as Citronella Juice. 10

Q. Were you told on that day by anybody on that Board that evidence had been led against you?

A. Mr. Keuneman said that Miss Balasingham said that she saw me having these words - about 8 or 10 words. He pointed out those words to me in her exercise book. There were about 10 words in German written in Miss Balasingham's book. 30

(To Court:- Mr. Keuneman told me that there were 10 words.)

Mr. Keuneman told me that Miss Balasingham had told him that she saw these words with me.

Q. Did he also tell you how those words got into her books?

A. No. 40

Q. Was there anything else told you by way of complaint made against you on that day?

A. No.

Q. Were you given any intimation of any evidence being led before you?

A. No.

(To Court: I went into the Board Room on the letter I received. Mr. Block called me in. I did not know what I was going to be confronted with in the Board Room; I knew nothing.)

Q. Did you know that any statements had been recorded against you?

10 A. No.

Q. Were you at least told that certain statements had been recorded against you?

A. No.

Q. Were you shown any statements made against you by anybody?

A. No.

Q. Were you asked whether you have got any statement to make?

A. No.

20 Q. Whilst you were there was any one called in to give evidence against you?

A. No.

In the course of this inquiry no evidence was taken against me in my presence.

Q. In the whole of this inquiry was any question put to you as statement made by witnesses against you?

A. No.

30 I did not know anything that had taken place. When Mr. Keuneman told me that Miss Balasingham had said that she had seen me having these words in my exercise book, I said I did not have any such words in any exercise book of mine.

Q. As a Demonstrator in Zoology are you expected to have any knowledge of German?

A. No. We did not have tutorial classes.

Q. Were you asked about your exercise books on that day?

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E.F.W.Fernando,  
Examination -  
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E.F.W. Fernando,  
Examination -  
continued.

A. Mr. Keuneman asked me whether I had brought my book before the Board. I said I had not brought them, because I was not asked to produce any books and that I did not know what all this was about.

Then Mr. Keuneman asked me to produce all books in which I have written German and hand over them to the Vice-Chancellor the next morning. I promised to do so. After that when I was coming out of the Board Room, I saw Miss Balasingham, Mr. Sivaprakasapillai standing near the staircase. (To Court: I was with the members of the Commission for about half an hour or a bit more.) On the following morning I handed over the books in which I had written down German to the Vice-Chancellor in his room. When I make note I keep them in file form. All my German work were in my files. They were loose sheets; half sheet foolscap paper. Sometimes there were full papers also on which I make my notes and later I file them in my files. I handed over my files in which I had made notes in German to the Vice-Chancellor the next morning in his room.

10

20

Thereafter I received the letter dated 28.5.52 which I produce marked P5. I have not used any exercise book during my Zoology study course, except one use at the end of the term. That exercise book contained some drawings of the dissection of the rat, Dr. Crusz had seen that exercise book. He is a lecturer in Zoology; he was in charge of the first year medical class. Dr. Crusz had made certain correction about my drawings in that book; he had seen that book. That was the only exercise book I used. I was called upon to produce the exercise book.

30

On the 3rd June when I went to the Board Room for the inquiry I saw Miss Y.M. de Silva, Mr. L.C. Moral, Mr. H.H.A. Indrasena and Mr. C.H. Fernando. I had no communication with them. I was outside the Board Room for sometime. While I was there I saw Mr. Sivaprakasapillai coming out of the Board Room and going into the room of Mr. Block. I also saw the legs of Miss Balasingham through the half door of the room of Mr. Block at that time; she was in that room. I was admitted into the Board Room thereafter. Each one of these four persons went into the Board Room and gave evidence separately. When they came out they went away. After all the

40

four persons had been called into the Board Room and their statements were recorded and when they had left, I was called in. When I went into the Board Room I was not told what any of them had stated. I entered the Board Room with my exercise book and all my files in which I had made my lecture notes. I had already handed over the files in which I had made German notes to the Vice-Chancellor. On that day I did not have with me my files in which were written German notes. As I entered the Board Room I left that exercise book on the table at which these gentlemen sat, and Professor Mylvaganam grabbed that exercise book and opened it. There was nothing in German in that exercise book. None of those ten German words was in that book. Professor Mylvaganam examined that exercise book: he held it against the light and examined it. Thereafter he handed over that book to Mr. Keuneman, who examined it himself. Mr. Keuneman asked me why I had used an old exercise book. In that book I had some notes on Citillogy and Botony. I told Mr. Keuneman that I have been having these notes from my first year studies. The drawing of the rat came at the end. The study of the rat was in the final year course. I told him that I had to use that book as there were few diagrams of the dissection of the rat and it was helpful for me to carry it about. Besides that I did not want to get a new book, and as such I used the same book. I said that those diagrams would be useful for purposes of demonstration to first year medical students.

Q. Were you asked by anybody whether any German dictionary was available to you?

A. Yes.

Q. Who?

A. Mr. Keuneman.

Q. What was the reply you gave?

A. I said that I have two dictionaries at home and that I had access to the dictionaries in the Colombo Museum Library and the Zoology department library of the University of Ceylon.

I was asked what the drawings were and I said that they were of Arterial and Venus systems. When

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asked I told them that I got them from a text-book from the Zoological Department library. The Zoological Department seal was affixed to my exercise book. I was questioned about this. There is a seal, round in shape, which is with the Laboratory Assistant. We have access to this seal. Sometimes we seal the drawing books of students and sometimes we use the seal to frank the shirts and coats of the students. My book was franked with that seal. I was asked questions whether the seal was accessible to the students.

10

Besides what I stated now, I may have been asked other questions on the second day.

Q. Did they tell you specifically what anybody had said against you?

A. No.

Q. Did they ask you to explain anything on the basis that evidence had been led against you?

A. No.

20

There were no further inquiries from me. That was all the investigations as far as I was concerned.

(To Court: The three members of the Board were present. The Secretary was also present. No one was taking down any notes of the inquiry. While I was there nobody else made any statement.)

Before anything else had happened, there appeared an article in the Ceylon Daily News of 22nd July 1952. I produce marked P6 a copy of the Ceylon Daily News.

30

(Mr. Choksy objects to the production of this document on the ground (1) that it is not listed and (2) that it is irrelevant.

I uphold the objection on the first ground and rule out the document).

On the 23rd of July I wrote a letter to the Vice-Chancellor of the University. Before that I saw an article about this in the evening Observer too.

(The original of the letter of 23.7.52 is handed over to Mr. Wikramanayake who marks it as P6).

40

As far as I know the Professor of Zoology and the Lecturer who taught me German were the examiners in German. The Professor of Zoology is Mr. Fernando and the Lecturer is Dr. Keerthisinghe.

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E.F.W. Fernando,  
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10 Thereafter I received a letter from the Vice-Chancellor dated 18/22 July 1952 which I produce P7. The next letter I received was P8 of 24.7.52 which is a reply to P6. Then I got another letter from the Vice-Chancellor dated 29.7.52 which I produce P9. Along with P9 was sent to me a copy of the report with certain passage stated with the request that the report be returned to him after reference. I returned this report to the University. I produce P10 a letter written by the Vice-Chancellor on 14th August acknowledging receipt of the report. I produce P11 the report. None of these ten words was ever in any of my books. I did not on any day act in anyway which made Miss Balasingham suspicious. I had at no time copied the words from the dictionaries there in the presence of Miss Balasingham. Miss Balasingham never asked me how I did the German paper.

20

(To Court:- She was also taking the same part B).

30 Three other students were there. I went to the examination hall cycling. As far as I can remember Miss Balasingham came to the examination hall in the car of her brother-in-law, Mr. Sivapragasapillai, Lecturer in Civil Engineering. I did not say I had any references in my exercise books I did not possess any exercise book other than the one I had and that I used to copy the diagrams of the rat. I did not keep back any books, reports or diagrams given to me for reference by the Professor and Lecturers.

I replied to this report by my letter P12 of 7.8.52 and I received P10 in reply. Thereafter I received P13 of 3rd September. Then I sent letter P14 of 24th September.

40 I was sitting for the Final Examination. I had a fairly good University record. I was hoping to get a first class. I did not discuss my chances with Professor Fernando and Dr. Crusz. They were aware of my proficiency.

(To Court: There is no tutorial system in the University.)

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Dr. Cruze was aware of my ability.

There was in the offing at the University the vacancy for Assistant Lecturer in Zoology. Miss Balasingham was taking the same examination as myself. The post of Assistant Lecturer was to be filled from one of those persons successful in the final examination.

(To Court:- The post will be filled by one of those persons who were successful in the Honours examination.)

10

I had a better chance in the examination. If I was out of the examination Miss Balasingham could have had a chance. Mr. Sivapragasapillai was the brother-in-law of Miss Balasingham. He was in the University staff as Assistant Lecturer in Civil Engineering.

Q. In the University was there a secret of the fact that there was a vacancy?

A. There was no secret.

(To Court: There was a temporary Assistant Lecturer who was occupying that post. The fact that there was a vacancy was well known. In all five of us sat for the examination.)

20

Out of the other four students, Mr. C.H.Fernando got a first class. The other three got a third class, pass degree. As far as I know the post of Lectureship in Zoology was not filled; I did not hear it being filled. Mr. C.H. Fernando got a scholarship and has gone to England.

I wrote another letter to the Vice-Chancellor on 27.11.52, the original of which I produce P15. I received the reply P16 of 5th December. I replied by letter P17 of 7th December. I produce P18 another letter from the Vice-Chancellor dated 8th December. I replied by letter P19 of 18th December sending a copy to Professor Mylvaganam.

30

Professor Fernando is my mother's brother.

I produce P20 letter of 28th December 1952 acknowledging receipt of my letter P19. I produce letter P21 of 9th January 1953 written by me to the Vice-Chancellor. I produce P22 letter of 20th

40

January from the Vice-Chancellor saying that the questions will be considered by the Board. I produce P23 letter of 16th March written by the Vice-Chancellor to me. I appealed to the Director of Education. I received a reply stating that he was not in a position to intervene. Thereafter I filed the present action.

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10 My main complaint is that the decision is against the principles of natural justice. Professor Mylvaganam and Mr. Sivapragasapillai are related to Miss Balasingham. I have set out this relationship in one of my letters. Professor Mylvaganam is on the Board of Examiners. He was also a member of the Scrutinising Committee. Evidence of witnesses was recorded in my absence. The evidence of various witnesses was not taken entirely before all three members of the Commission of Inquiry. Certain evidence was taken by the Vice-Chancellor alone in the absence of the other two members of the Board. At that time I was not aware of the evidence that had been led against me. When I answered questions put to me by the Commissioners I was not aware what position I had to meet. I produce P24 the affidavit filed by him. I ask that the findings of the Board against me be declared null and void.

20

Cross-examined

Cross-  
Examination.

30 I remember attending the first meeting of the Board of Inquiry. The three gentlemen who formed the commission were Mr. A.E. Keuneman, the Vice-Chancellor, Professor Mylvagnam and the secretary Mr. Block.

Q. Do you suggest that the secretary, Mr. Block, was also a member of the commission?

40 A. I do not know that. I cannot say that. Mr. Block was the secretary to the commission. It was so stated in the letter which I received. When I went in response to the letter I spoke to Mr. Block. I showed him the letter P<sup>4</sup> but I did not ask him why I had been asked to come. By that letter I was asked to report to Mr. Block and therefore I showed him the letter. Thereafter I went into the Board Room. Before I went into the room, Miss Balasingham and later Dr. Keerthisinghe came out of the room. I then

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continued.

went in. I saw these three gentlemen seated inside. Mr. Keuneman started questioning me. As I went in he took a question paper and gave it to me.

Q. What did he ask you?

A. He asked me whether I had seen the question paper.

Q. What did you say?

A. I said "Yes" and that it was when I sat for the final Examination in Science. 10

Q. On that day he did not make you acquainted with the allegations against you?

A. Not definitely.

He said that they had evidence to make then infer that I had come to know the German text before the examination itself and then he proceeded to ask me questions. The first thing he did was to put the question paper into my hands.

Q. After you gave him the answer that it was on the examination day that you had seen the question paper for the first time what was the next thing that happened? 20

A. Then Mr. Keuneman asked me (now the witness says "no")

Q. You find it difficult to recollect what the next question was?

A. Yes.

Q. I put it to you what Mr. Keuneman said at this stage was "Mr. Fernando we have evidence that you have had knowledge of the text of that question? 30

A. No. He said "We have evidence that you have come to know this question paper before the examination.

Q. Tell us to the best of your recollection, at what stage of his questioning did he make that statement to you?

A. I cannot understand that question.

Q. How long after Mr. Keuneman had put that paper into your hands and started questioning you, did he make that statement to you?

A. After about five minutes.

Q. Then would it be right to say that it was at the early stage of the inquiry that they told you that?

A. Yes.

10 Q. Then would you recollect any other questions that he put to you?

A. He asked me "Did you have these 8 or 10 German words that were in Miss Balasingham's book in any of your books before the examination?"

Q. In other words he made it plain to you that according to information which they had Miss Balasingham is supposed to have had these words in her book?

A. No answer.

20 ('To Court: What did you understand when Mr. Keuneman put that question to you?

A. I could not understand anything in particular).

Q. Did you understand anything in general from that observation of Mr. Keuneman?

A. Yes.

Q. What did you understand in general?

A. I felt that she had reported that I have had these words in one of my books before the examination.

30

Q. So that, Mr. Fernando, within a few minutes of the inquiry starting you were made aware that some allegations had been made against you by Miss Balasingham?

A. Yes.

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continued.

Q. To the effect that you had in some book of yours certain German words?

A. Yes.

Q. And that she is stated to have copied into one of her books?

A. Yes.

Q. These words occur in the German passage in the Zoology Paper P3?

A. Yes.

Q. In other words, the suggestion was that you had got information of this question before the examination?

10

A. Yes.

Q. That is how you understood that?

A. Yes.

Q. And it was on that footing that questions were being put to you?

A. Yes.

Q. And when the questions were being put to you you understood what the questions were and you answered as best as you could?

20

A. Yes.

Q. You were able to answer the questions readily as they were put to you?

A. Yes.

Q. By a recollection of the associated facts you were able to answer the questions right-away?

A. Yes.

Q. Apart from Mr. Keuneman did anyone else put you questions?

30

A. Yes.

- |    |   |  |
|----|---|--|
|    | Q. Who was that?  | In the District<br>Court of<br>Colombo                   |
|    | A. Professor Mylvagnam and the Vice-Chancellor.   | <hr/>  |
|    | Q. All those questions were in regard to this same allegation that you had pre-knowledge of the questions?                                  | Plaintiff's<br>Evidence                                  |
|    | A. Yes.   | <hr/>  |
|    | Q. That was how you understood the inquiry?   | No. 7  |
|    | A. Yes, except towards the end of the first day of the inquiry when Mr. Keuneman asked me how I fared in my practical examination.          | E.F.W.Fernando,<br>Cross-<br>Examination -<br>continued. |
| 10 | Q. What did you say?  |  |
|    | A. I said I had done well.  |  |
|    | Q. But still you know that the inquiry was in regard to the allegation relating to the question paper and not of the practical examination? |  |
|    | A. No. Once that question was asked, I did not know whether that question referred to any other charge.                                     |  |
| 20 | Q. But there was no other allegation made against you at that inquiry on the first day?   |  |
|    | A. No.  |  |
|    | Q. Did Professor Mylvagnam put any questions to you?  |  |
|    | A. Yes.   |  |
|    | Q. What were they?  |  |
|    | A. He asked me to translate German question in the paper.   |  |
|    | Q. Were you able to translate?  |  |
|    | A. Yes.   |  |
| 30 | Q. Unhesitatingly?  |  |
|    | A. Yes, except for a few seconds when I halted here and there.  |  |



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E.F.W.Fernando,  
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continued.

Q. Who did that?

A. I was stopped here and there by Professor Mylvagnam.

Q. Why?

A. I do not know.

Q. But for that stopping?

A. I was answering.

Q. Was he putting any questions to you as you were translating?

A. No, he was not.

10

Q. Apart from interrupting you when translating the passage, did Professor Mylvagnam ask you any other questions?

A. Yes.

Q. About what?

A. He asked me how I knew those words that were in that book.

Q. In which book?

A. Miss Balasingham's book.

Q. That book was there?

20

A. Yes.

Q. What did Professor Mylvagnam ask you?

A. How I came to know those words.

Q. What did you say?

A. I told him that I came to know those words but not particularly before the examination.

Q. That was the first time you knew that Miss Balasingham had those words in her book?

A. Yes.

Q. Have you seen the evidence which you gave in Court last time?

A. Yes.

Q. It is correctly recorded?

A. Yes.

Q. And correctly reflects your position?

A. I cannot follow that.

Q. The evidence which you have given correctly states what your position in the matter is?

10 A. Yes.

Q. At this stage of the inquiry in question there were three gentlemen taking part in it?

A. Yes; those were the Commissioners. I refer to them as Commissioners.

Q. Is there any significance in the word Commissioners?

A. Yes.

Q. What is the significance?

20 A. Because on the letter sent to me by the Vice-Chancellor I have to appear before a commission of inquiry.

Q. Are you aware under the rules what the procedure should be?

A. No. I do not know the procedure.

Q. You know that the Vice-Chancellor has to be satisfied?

A. Yes.

Q. Under the rules it was the Vice-Chancellor who was to be satisfied?

30 A. Yes.

Q. You were aware of that before you came into Court?

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continued.

A. Yes.

Q. Have you said in your letter to the Vice-Chancellor that you were sorry that he was satisfied on the material which was placed before the board of inquiry?

A. I cannot follow that question.

(Shown P12 - paragraph 4) (Paragraph 4 of P12 is put to the witness). This is my letter to the Vice-Chancellor. I have stated that I was sorry that the Vice-Chancellor was satisfied on the material placed before the board of inquiry.

10

Q. At the date of that letter or earlier you knew that it is the Vice-Chancellor who has to be satisfied of your guilt or innocence?

A. Yes.

Q. When did you come to know that first?

A. When I was suspended I stated my case to certain lawyers, who studied it and made me understand that it was the Vice-Chancellor who had to be satisfied.

20

Q. That is how you came to refer to that fact in this letter P12?

A. Yes.

Q. This letter was not drafted by you?

A. No. All these are drafted by my lawyers and I signed them. I appreciated the contents of these letters and understood their effect.

Q. Would it be correct to say that your complaint is that the Vice-Chancellor should not have been satisfied upon the material placed before the board of inquiry; that it was not sufficient material on which he should not have been satisfied?

30

A. I cannot follow that question - (Question repeated).

Q. Your grievance is that Sir Ivor Jennings became

easily satisfied on the material placed before him with regard to this matter?

A. Yes.

Q. Did you understand my question put to you earlier?

A. Yes.

Q. Your position is that Sir Ivor Jennings was too easily satisfied that you were guilty?

A. Yes.

10 Q. What you say is that on the material before him the Vice-Chancellor should not have been satisfied of your guilt; that is your position?

A. Yes.

(Shown P14). I wrote this letter to him on the advice of my lawyers. (Witness is referred to paragraph R(8) in P14). Paragraph 4 refers to paragraphs 11 and 12 of the finding; it is subdivided into 10 paragraphs. (Witness is referred to sub-paragraph 8).

20 Q. In sub-paragraph 8 your position is that there was no direct proof of your guilt?

A. Yes.

Q. In other words you have said in the course of these letters that the evidence was only circumstantial?

A. That is what I got from the Vice-Chancellor's letter.

30 Q. And you yourself then took up the position that the Vice-Chancellor was satisfied on circumstantial evidence and not on direct evidence?

A. Yes.

Q. What do you mean by direct evidence?

A. What I meant was that Miss Balasingham had said that she saw me having in my books or files those 8 or 10 German words. Miss Balasingham

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continued.

should have produced those very words that I had before the Commissioners or the Vice-Chancellor.

Q. You say that Miss Balasingham should have produced the whole list of words, which were supposed to have been in your book?

A. She should have produced my book, in which she says she saw these words. What I meant by direct evidence is that Miss Balasingham should have produced my book in which she stated she found those 8 or 10 German words. 10

Q. That is your position?

A. Yes.

Q. Without your own book having been produced you say that the Vice-Chancellor has dis-believed you?

A. Yes.

Q. Your position is that the Vice-Chancellor should not have disbelieved your evidence and believed Miss Balasingham? 20

A. Yes, because I was not given any chance to explain anything at any stage clearly to the commissioners even whilst answering their own questions.

Q. You say you were not allowed to answer the questions even put to you by the Commissioner?

A. I was not allowed; all were interrupting me.

Q. Even Mr. Keuneman was interrupting you?

A. Yes.

Q. There was no audience to disturb you? 30

A. No.

Q. In what way did Mr. Keuneman disturb you?

A. Mr. Keuneman put one question to me, Vice-Chancellor put another question to me and Professor Mylvagnam gives me the book and asks me to

translate the words. I was simply puzzled by all of them.

Q. What you say is that you were not allowed by any one of the three inquirers to answer a single question properly or fully?

A. Yes; I was not allowed to answer completely.

Q. You were not allowed by the Commissioners to answer a single question completely or fully?

A. Yes.

10 Q. What you say is that you were not given a fair chance of answering even one question fully?

A. I do not say that; too many question were asked of me.

Q. Did you answer them all?

A. I could not answer them; I was puzzled.

Q. Did you say so to these gentlemen?

A. I could not say.

20 Although I was puzzled still I was frightened in my predicament, because of their attitude. I had to face all three of them; one was the Vice-Chancellor, and the other was the Dean of the Faculty of Science and the third was Mr. Keuneman; naturally I was frightened when they were simply jumping at me.

Q. Are you now feeling frightened because you are in the presence of a Judge?

A. No.

Q. The Dean of Faculty Professor Mylvaganam was not a stranger to you?

A. No.

30 Q. You have known him well?

A. Not very well.

I have often seen the Vice-Chancellor, but I have met him very rarely.

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continued.

Q. Have you got anything to say against either the Vice-Chancellor or the Dean of Faculty in regard to their impartiality?

A. I feel that they were not at all fair by me. It looked as if they had been biased against me.

Q. Why?

A. Because the way in which they were behaving towards me.

One person put me one question, another person another and they were making me puzzled. I do not know why they were puzzling me.

10

Q. You cannot give any reason to Court for saying that either the Dean of Faculty or the Vice-Chancellor were inimical to you?

A. I could not say.

Q. Why do you say that Professor Mylvaganam was hostile or inimical towards you?

A. Because he is related to Miss Balasingham. I think that was the chief reason for that state of atmosphere prevailing at that time.

20

Q. Can you remember their relationship?

A. I could make an attempt.

Q. Do you realise that it is a far fetched relationship at all?

A. I do not consider it far fetched.

Q. Can you tell us the reason?

A. One is Mrs. Mylvaganam's sister is married to one Mr. Thuraisingham. Mr. Thuraisingham is the first cousin of Mr. Sivaprakasapillai. They are children of two brothers. Mr. Sivaprakasapillai is married to the sister of Miss Balasingham.

30

Q. What do you call that relationship?

A. I cannot give that relationship a term.

Q. You cannot even think of a term?

A. No.

Q. Would it be correct, if at all, that there is some distant connection by marriage?

A. I do not call it distant.

(To Court: Q. Is that a blood relationship or an accident of marriage?)

A. I am not certain of that.)

10 I cannot even say whether it is an accident of birth or marriage.

Q. Miss Balasingham was the daughter of the second Mrs. Balasingham - her father had married twice?

A. Yes.

Q. This Miss Balasingham with whom we are concerned in this case was the daughter of the second wife of her father?

A. Yes.

Q. You say for that reason Professor Mylvaganam was biased against you?

20 A. Yes.

Q. Is it correct to say that Mrs. Mylvaganam's father's sister married a brother of the first Mrs. Balasingham? (P18 referred to)

A. Mrs. Mylvaganam's father's sister married a brother of the first Mrs. Balasingham.

Mrs. Mylvaganam's paternal aunt married a brother of the first Mrs. Balasingham. This Miss Balasingham with whom we are concerned in this case is the daughter of the second Mrs. Balasingham.

30 Q. You still call that a relationship between Professor Mylvaganam and Miss Balasingham?

A. Yes.

Q. You would not call it a far fetched relationship?

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Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.



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Plaintiff's  
Evidence

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E.F.W.Fernando,  
Cross-  
Examination -  
continued.

A. No.

Q. You call it a close relationship?

A. Yes.

Q. Is it almost as close as that of a first cousin or a second cousin?

A. Not so close.

Q. Is it almost close as between yourself and your uncle?

A. No.

Q. You say that that relationship was sufficient for Professor Mylvaganam to be inimical towards you? 10

A. Yes.

Q. At the time of the inquiry being held you were not aware of that relationship?

A. No.

Q. When did you come to know it?

A. Somewhere later on.

Q. That was after you read the newspaper report about your alleged suspension? 20

A. Not at that time; later.

Q. It is only after you came to know of this relationship that you realised that Professor Mylvaganam was biased against you?

A. It is more or less confirmed in the course of the inquiry.

Q. You felt in the course of the inquiry that Professor Mylvaganam was unfair to you?

A. Yes.

Q. Did you write and say so? 30

A. No.

Q. You did not mention at the inquiry that Professor Mylvaganam was biased against you?

A. No.

Q. Did you tell your uncle about it?

A. No.

Q. Who discovered this relationship between Professor Mylvaganam and Miss Balasingham?

A. An uncle of mine.

Q. Who is that uncle?

10 A. D.M.O., Ingiriya, Dr. S.F. Fernando.

Q. He is a brother of Professor Fernando, your uncle?

A. Yes. I did not make a complaint to my Professor Fernando uncle; at any stage I did not make a complaint to him. I did not complain to him that I was not fairly treated by the board of inquiry, or that I was not allowed to answer questions fully.

20 Q. To whom did you make this complaint first that you were not treated fairly by the Commissioners at the inquiry?

A. To my lawyers. That was at the time the letters were drafted for me.

Before that I did not complain to anyone. I had not made that complaint to anybody else that the members of the commission were biased against me.

Q. Nor that the atmosphere was inimical?

A. No.

30 Q. Were you hurt or disturbed by the so-called treatment which you received?

A. Yes. No.

Q. How then came you to make inquiries about the relationship of Professor Mylvaganam and Miss Balasingham?

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E.F.W.Fernando,  
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E.F.W.Fernando,  
Cross-  
Examination -  
continued.

A. Mr. Keuneman's attitude was not quite hostile; he was also disturbing me.

Q. Would you say that Professor Mylvaganam's attitude was not hostile?

A. It was hostile.

Q. What indicated to you that he was hostile?

A. The way he was getting about; how he was questioning me.

Q. Do you consider my attitude towards you as inimical or hostile?

10

A. I will not characterise Mr. Choksy's attitude towards me as hostile or inimical.

Q. Professor Mylvaganam's attitude?

A. No. That was on a different basis.

Q. How did he show his hostility towards you?

A. The atmosphere was terrible to me.

Q. Did he speak in a loud voice?

A. No.

Q. Did he scold you?

A. No.

20.

Q. Was he cynical?

A. He was sometimes sarcastic.

Q. Did he appear to be in any anger or rage with you?

A. On the second day all of them were in a sort of temper.

(To Court: Q. You mean Mr. Keuneman also?

A. Yes.)

On the first day they were not so bad.

Q. On the first day were they in a sort of a temper?

30

A. In a very mild temper.

Q. The temperature on the second day was very high?

A. They were bullying me.

When I produced the exercise book and my files Professor Mylvaganam grabbed that exercise book, as I left it on the table. He took it from the table. He was holding the pages against the light.

Q. Did that appear to you as a hostile attitude towards you?

10 A. No.

Mr. Keuneman asked me why I used that old exercise book. Professor Mylvaganam was asking me to translate that examination paper over again on the second day; while I was translating it slowly he asked me why I was so slow.

Q. Would it be correct to say Mr. Fernando that your translation was very lame and hesitant and unsatisfactory before them?

A. I must have been fairly alright.

20 Q. Would it be correct to say that you were hesitant?

A. No.

Q. You found it difficult to translate that passage?

A. No.

Q. Why did Professor Mylvaganam say so?

A. I do not know.

30 I do not know if he got the idea that I was delaying it purposely. I was somewhat slow. He asked me why I was slow. Professor Mylvaganam snatched the paper. He wanted to have it before I could have completed the translation. In the course of my translation he interrupted me by inquiring from me why I was hesitant or slow. Then he proceeded to snatch the paper from my hand. He asked me how I knew the meaning of the words found in that

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continued.

passage, and also the way he asked me that.

Q. You say that those instances amounted to bullying you?

A. Those and others also.

Q. Their questions were also of the similar nature?

A. They were also regarding the examination.

Q. He was not asking questions outside the subject matter of the inquiry? He was asking you about the leakage of the questions.

A. I do not know exactly what the leakage was. 10

Q. You told us on the last date that you were made aware of the nature of the inquiry within a few minutes of your entering the Board Room?

A. Not very definitely, but I got a very hazy notion of it.

At the time Professor Mylvaganam questioned me, he questioned me about that matter.

Q. On the second day all three together were inimical or hostile towards you?

A. I can remember some questions asked of me by Mr. Keuneman on the second day. He asked me how I fared in my theory paper, and how I fared in my practicals. 20

He asked me who finished the practicals first; whether it was myself or Miss Balasingham. I told him that I was not in a position to answer that question. Then he asked me why I could not answer that.

Q. Did he raise his voice or shout at you?

A. He did not shout at me. 30

Q. Questions were put to you by either the Vice-Chancellor, or Professor Mylvaganam or Mr. Keuneman as loud as I am?

A. No.

They were seated on the same level as myself; they

were not seated on a pedestal. The inquiry was conducted in an informal manner; not in a formal manner as in a Court.

(Shown paragraph 3 of P15 of 27th November).

Q. Do you remember stating in a letter that you do not challenge the impartiality or the integrity of the Board?

A. (No answer).

10 Q. By the date of this letter you had already known the relationship between Professor Mylvaganam and Miss Balasingham?

A. Yes.

Q. You still say the same thing; namely that in spite of the relationship that you do not challenge Professor Mylvaganam?

A. I do not stand by that statement I made in paragraph 3 of P15. Now I challenge it.

20 I have changed my view after I wrote P15, because I felt that they were unfair. I felt it at the date I signed P15. That is how my lawyers drafted P15 for me and I signed it. I asked my lawyers why are they making me say this when I doubted the integrity and impartiality of Professor Mylvaganam; they asked me to leave it as it was. At the date I wrote P15 I doubted the integrity and impartiality of Professor Mylvaganam, based on the relationship between Professor Mylvaganam and Miss Balasingham.

Q. And nothing else?

A. I could not follow.

30 Q. Do you say that there was any reason apart from this relationship to Miss Balasingham that made you think that Professor Mylvaganam was not an impartial person?

A. The last few words I could not follow.

(Question repeated)

Q. There is no other reason?

A. Yes.

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Q. The only reason is this relationship?

A. Yes.

Q. Have you any additional reason now in this box today?

A. On the same issue.

Q. Yes, on the same issue?

A. (No answer).

Q. Is there any other reason?

A. No. Only on that reason.

Q. As regards Mr. Keuneman had you doubts? Have you at any time doubted his integrity or impartiality? 10

A. No.

Q. You said that he also appeared to be in a sort of a temper on the second day?

A. Yes.

Q. What reason can you attribute for that state of temper?

Mr. Wickramanayaka objects to the question.

Q. Can you give any reason at all for his state of temper? 20

A. His facial expressions; the way he was questioning me.

Q. Was he in any way rude to you?

A. Not exactly rude to me.

(To Court: Q. Did he give you the impression that he was not believing one word you said?

A. Not exactly.)

The way he was behaving there made me think so.

Q. Is this present atmosphere in Court inimical or hostile towards you? 30

A. No.

Q. Can you say that Mr. Keuneman's attitude on that day was more or less the same as the attitude of the Judge in this Court today?

A. No.

Q. How was it different?

A. I find it very difficult to convey in words the atmosphere that existed that day.

10 Q. There is nothing which he definitely said or did for you to convey that impression?

A. I do not understand that question.

The way he was questioning me made me think that he was inimical to me.

Q. Can you say any question that Mr. Keuneman put to you which contributed to any impression that he was in a sort of temper against you.

Q. Why could not you have seen who finished the practicals first; yourself or Miss Balasingham.

Q. You thought it very foolish?

20 A. He asked me that in a sort of a temper. The Vice-Chancellor questioned me on both days.

When Mr. Keuneman put me a particular question the Vice-Chancellor was keeping quiet.

Q. You yourself can give no reason why Mr. Keuneman was angry with you?

A. (No answer).

Q. You did not say anything to the Professor, Vice-Chancellor or Mr. Keuneman?

A. No.

30 Q. You cannot give any reason why Mr. Keuneman appeared in a sort of a temper against you?

A. No.

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E.F.W. Fernando,  
Cross-  
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continued.



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E.F.W.Fernando, Cross-Examination - continued.

Q. Did the Vice-Chancellor appear to you in a sort of a temper?

A. He was in a mild temper; he was also in a temper.

Q. You can give no reason why he was in a mild temper?

A. I remember a sarcastic remark of his. It is very difficult for me to recall at this very distant date the sarcastic remark made to me by the Vice-Chancellor. I mentioned the fact to my lawyers at the time these letters were drafted that the Commissioners were very sarcastic towards me.

10

Q. At that time you may have had a clear recollection of what he said or what he did making you think that they were in a temper?

A. Yes.

Q. Did you not tell them in order to indicate to them that the Commissioners were in a temper against you?

20

A. Yes.

I certainly told them sufficiently to make it quite clear to them that these gentlemen were in a temper against me. I gave them sufficient examples, namely that the atmosphere was inimical and hostile towards me. They took those as correct. I cannot say whether my lawyers drew my inference as correct. I asked them why that point was not made in the letters, and that I felt that I was making a very important point; namely that the atmosphere was inimical and hostile. I considered that a very important point against the fairness of the Commissioners. I wanted that brought out in the correspondence.

30

Q. Can you give any reason why that point has not been made in the correspondence, which you had brought to their notice?

A. It was thought advisable not to refer to that.

Q. Although from your point of view that was the strongest point against the imparliality of the Commissioners?

40

A. One of the points.

Q. What is the other point?

A. Relationship of Professor Mylvaganam to Miss Balasingham.

Q. Did you consider that point very important from their attitude towards you?

A. Both as equally of the same level; I put down both on the same level.

10 Q. Nevertheless only the relationship aspect was brought out in the correspondence, but not the atmosphere that prevailed there?

A. No.

I cannot give any reason why that charge was not put in the letters.

Q. Did you also tell them, If I bring out this relationship of Professor Mylvaganam to Miss Balasingham they might also take revenge on me?

A. No.

20 Q. You did not think that by mentioning about Professor Mylvaganam's relationship these gentlemen would get angry with you?

A. I did not expect them to get angry.

Q. Did you put to your lawyers and say that these gentlemen would not get angry with you for speaking about this relationship, nor would they get angry about the question of hostility?

A. I did not discuss that.

30 Q. Although you thought it was a very important point you wanted to make in the correspondence, namely the hostile attitude, you did not discuss that matter with your lawyers?

A. No.

Q. Can you give any reason why the Vice-Chancellor appeared to you to be hostile?

A. No.

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continued.

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E.F.W.Fernando,  
Cross-  
Examination -  
continued.

Q. Did he really appear to you to be hostile towards you or was that an inference which you drew later?

A. At that time.

Q. What did he say or do?

A. The way how he behaved there.

Q. You say his behaviour on that occasion was different from his behaviour on other occasions?

A. I cannot express that.

Q. Do you suggest that the Vice-Chancellor's normal attitude was always hostile? 10

A. I cannot understand that.

Q. Do you suggest to the Court that the Vice-Chancellor's attitude to you has always been hostile even apart from this inquiry?

A. I have never met him.

I have spoken to him only on one occasion when I asked him for permission to follow the first M.B. Class. Except for that I have had no discussion with the Vice-Chancellor. I had no reason why he should be angry with me or hostile towards me. I mentioned to my lawyers that even Sir Ivor Jennings appeared to be angry with me. 20

Q. Did you feel that?

A. It was so bad as that.

Q. It was so bad as that right from the start of the inquiry and that he was prejudiced and biased against you?

A. Not from the very start.

Q. On the 1st day or second day? 30

A. No, no; on the 2nd day.

I cannot say what made him change on the 2nd day. He put me only a few questions. Of the three persons he put the least number of questions.

Q. Even the few questions which he put you made you think that they were hostile or inimical towards you?

A. His attitude.

Q. Not the questions?

A. The questions were perfectly fair.

I did not know what the inquiry was about; I did not actually know what the inquiry was about.

10 Q. Did you even know partially what the inquiry was about?

A. When they made reference to me about Miss Balasingham I had a hazy notion about what the inquiry was; when Mr. Keuneman told me that he had heard from Miss Balasingham. When they started questioning me about the practical I got confused and I did not know what the questioning was about.

I did not know what it was about.

20 Q. Did you think that it was not connected with the German paper at all?

A. I could not make any conclusion at all.

Q. You told me yesterday that within a few minutes of the inquiry being started Mr. Keuneman put to you the allegation against you.

(At this stage witness interrupts)

Question continued:- that the allegation was that you had acquired a knowledge of the German question paper before the examination?

A. Mr. Keuneman never made that statement to me.

30 Q. Did you not say on the last date that within a few minutes of the inquiry starting you were made aware that some allegations had been made against you by Miss Balasingham?

A. Yes.

Q. To the effect that you had in some book of yours some German words?

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E.F.W.Fernando,  
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E.F.W.Fernando,  
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continued.

- A. Yes.
- Q. And that she is stated to have got some of those in one of her books?
- A. Yes.
- Q. In other words, the suggestion was that you had got information of this question paper before the examination? Was that suggestion put to you?
- A. No.
- Q. Was any suggestion put to you on the first day of the inquiry that you had not information of that German question paper before the examination? 10
- A. No.
- Q. You are definite about that?
- A. Yes.
- Q. At no stage of the 1st day's inquiry was any such suggestion put to you; namely that you had acquired knowledge of this German question before the examination? 20
- A. No; never.
- Q. You are quite certain about that?
- A. Yes.
- Q. Was any such suggestion even put to you on the second day of the inquiry?
- A. No.
- Q. You are quite certain that nothing was said or done either on the 1st day or the 2nd day to convey to you what the inquiry was about; whether or not you had information of the German question before the examination? 30
- A. No.
- Q. Never?
- A. No.

Q. Nothing that was said or done made that clear to your mind?

A. No.

Q. In fact, you were completely at sea and made confused and you were unable to understand at all why this inquiry was being held?

A. Yes; I only knew that there was an allegation about the examination paper on the letter of the Vice-Chancellor sent me.

10 Q. That was only from the letter which the Vice-Chancellor sent you and asked you to attend the inquiry?

A. Yes.

Q. Nothing was said to you at the inquiry except that letter you received from the Vice-Chancellor?

A. No specific charge was made.

(Shown P4) (P4 is read by the witness).

20 Q. Except the statement in P4 an allegation had been made against you that you had acquired knowledge of the contents of one or more of the papers set for the final examination, nothing that was said at the inquiry conveyed that impression to you?

A. Mr. Keuneman said at the inquiry - we have evidence that you have come to know those words before the examination.

Q. Mr. Keuneman did not say anything at all about the German passage, but only about those words?

30 A. The statement was about those words.

Q. All that Mr. Keuneman put to you was that there was some evidence before them that you had come to know those words that were in Miss Bala-singham's note book before the examination?

A. Yes.

Q. Mr. Keuneman did not tell you that the allegation was that you had known the whole of that

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E.F.W.Fernando,  
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German passage before the examination?

- A. I cannot remember that.
- Q. To the best of your recollection did neither Mr. Keuneman nor the Vice-Chancellor nor Professor Mylvaganam tell you that there was such an allegation that you had come to know the whole of that German passage before the examination?
- A. I cannot remember; I cannot recollect now.
- Q. You cannot remember any allegation being made against you for anything more than pre-knowledge of these German words? 10
- A. No specific charge was made against me.
- Q. Was there any allegation made against you that you knew anything more than those 8 or 10 words before the examination?
- A. Please repeat the question.
- Q. Did any one of the three inquirers tell you that the allegation was not only regarding those 8 or 10 words, but about the whole of the German passage in the paper? 20
- A. I cannot recollect.
- Q. Did anything that happened at that inquiry convey the impression to you that these three gentlemen were concerned not only with those 8 or 10 words, but with the whole of that German passage in the examination paper?
- A. The impression that came into my mind was a faint impression that Miss Balasingham had alleged that I was supposed to have had those words in one of her books. 30
- Q. Nothing that was said at that inquiry conveyed even the slightest impression to your mind that the inquiry was about the whole of the passage and not only about those 8 or 10 words?
- A. My faint impression was that it had something to do with German.
- Q. That faint impression was about German words or German passage?

A. About German.

I could not gather a clear impression that the inquiry was not merely about 8 or 10 words, but the whole inquiry was about the whole of the German passage.

Q. What was the impression on your mind?

A. Something to do with German.

10

Q. In other words, the impression on your mind was that the inquiry was only about 8 or 10 words, which Miss Balasingham had in her exercise book?

A. At the early stages it was only that; it was a very faint impression; something to do with German.

Q. Did it convey even a faint impression about those 8 or 10 words, or not even that or some vague question about German?

A. Yes; about German.

20

Q. It was not even clear that the inquiry was about these 8 or 10 words; that was even not made clear?

A. I could not get a clear impression that the inquiry was even about 8 or 10 words.

Q. All that you got was a very vague impression that the inquiry was something about German?

A. Yes.

Q. At what stage was that very blurred impression slightly clarified that the inquiry was about these 8 or 10 words?

30

A. Now I cannot recollect.

Q. At that time did you tell your lawyers that you got some vague impression that the inquiry was something about German?

A. I met my lawyers only after the paragraph in the Observer.

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Q. When you went to your lawyers within two months of this inquiry your impression of what happened at the inquiry was quite clear?

A. Yes.

Q. Did you tell your lawyers then, "When I went to the inquiry that I got a very vague impression that the whole thing was something about German"?

A. I told them at the beginning that the only impression I got was a very vague one that the whole inquiry was something about German.

10

Q. On the whole the inquiry was Greek to you?

A. Yes.

(To Court:- At the end of the 1st day's inquiry I did not gain a clear impression of what this inquiry was about).

At the time I gave my German files to the Vice-Chancellor I did not tell him that I could not understand what the inquiry was.

Q. Did you feel that you had been treated very unfairly.

20

A. Yes.

I was not given an opportunity to answer; I was not informed what the charge was against me. I was not told what the evidence given against me. I was not told who were the witnesses, that were against me. I was not told what evidence was against me. The attitude of these three inquirers was hostile and inimical. I was too frightened to tell that to the Vice-Chancellor. This inquiry was a confidential matter and I did not disclose the matter to any one.

30

Q. Because you received letters under confidential cover, you thought that the inquiry was so confidential and that even if you were maltreated you kept it a secret?

A. Yes.

The Professor of Zoology stays next to my place.

Even at that time he was there. It is at Barnes Place. I was on friendly terms with my uncle.

Q. He was never hostile or inimical towards you?

A. I cannot understand.

(To Court:- Q. Did you tell your mother?

A. I did not. She was ill and I did not want to upset her.)

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10 Professor Fernando was not ill. I did not tell him about this matter because this was under confidential cover. (Shown P4). I cannot remember the date I received this letter P4. This was delivered by hand. I read it twice. As soon as I read it I kept it in my drawer. Because it was so confidential that I did not tell anybody that I had been asked to come for an inquiry. I did not tell my uncle that I was summoned to appear before this inquiry. I did not tell anything to my uncle about the receipt of this letter, or what happened at the inquiry, or what transpired at that inquiry, 20 or who gave evidence at that inquiry. Up to date I have not mentioned one word to my uncle about this inquiry nor has he asked me a single word about this matter. This inquiry was well known amongst the students of the University.

Q. It was common talk among the University staff?

A. That must have been, because I was not at the University at that time.

30 I came to know that this allegation was known to the students and members of the staff of the University only when I was suspended. Now I know as a fact that those people were aware of this inquiry. News about my suspension appeared in the Observer. I meet my uncle daily; almost every day at the University. He was the head of the Zoological Department. My doctor uncle at Ingiriya did not ask me about this matter at the critical period. After it appeared in the papers he asked me about this; I told him. I told him everything; how badly I had been treated. My Professor uncle did 40 not ask me why I was suspended. I do not know if he asked anyone else to ask me about it.

Q. Did anybody else ask you on behalf of your uncle?

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A. I do not know.

Q. Did you even after you got a copy of this decision tell your uncle "Look here what has happened to me?"

A. No.

After this copy of the decision was received by me I used to meet my uncle not very frequently; not almost every day. My mother and grandmother were both ill. Professor uncle came to see them. He does not come often.

Q. Has your uncle - Professor - at any stage of this inquiry asked you, "How is your mother or how is your grandmother"?

During the period of the inquiry or subsequent months?

A. That I cannot remember. He might have asked me. Sometimes he does not talk to me even when I was there.

Q. On the few occasions when he condescended to speak to you did he ask you about the health of your mother or grandmother?

A. I cannot understand.

Q. When he meets you he does not ask you about family matters?

A. He does not speak to me about family matters.

Q. Did your uncle whenever he dropped in at home during these months this inquiry was going on or shortly thereafter, ask you any question about your work?

A. No.

(To Court:- In the University it is understood that 10 marks are given to that passage.)

Q. Are you quite certain that your uncle Professor Fernando never asked you any question at any time about how you were progressing in your work or studies?

A. No.

10

20

30

Q. You are quite certain about that?

A. Yes.

Q. Either before you sat for this examination or thereafter?

A. Yes.

This Examination was in 1952. I joined the University in 1948.

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10

Q. During the course of those 4 years did your uncle take any interest about your progress in the University?

A. I cannot understand about the term interest. He takes our Entomology class.

Q. Did he ask you any question with regard to your studies as a student of the University or your progress about your work?

A. When he comes for the class he used to ask us how we have done those dissections or preparations that had been given to us.

20

Q. He used to ask you questions about the day to day work that he had set the students; about practicals?

A. Yes.

Q. But, no question as between uncle and nephew to find out how the nephew was getting on with his studies?

A. No.

Q. Did he take any interest at all in your studies as a student of the University?

30

A. He never evinced any interest as Professor of Zoology towards me.

Q. It was purely as an official and student?

A. Yes.

Q. The fact that you were a nephew of his did not make any difference?

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continued.

A. I did not feel that.

Q. He said nothing or did nothing that made you feel that he was taking slight interest over you; because you were his nephew?

A. No.

Q. At the time you entered the University?

A. Then he was interested.

Q. How?

A. He was asking me how I was getting on with my work.

10

Q. Was he not your tutor?

A. He did not give me any special help.

Before I joined the Varsity when I had some difficulty in some studies at the St. Joseph's College he did help me. After I joined the Varsity I did not go to him for such help.

Q. When you had little difficulty in your studies at the University did you go to any Lecturer or Professor?

A. Yes; to Dr. Cruze.

20

Q. To the Professor?

A. He had given me no special help.

Q. He did not show the slightest interest in you when it was known that you had been suspended?

A. Not during that time.

Q. Even though you were suspended from sitting for examination your uncle did not take any interest at all?

A. He did not come to me.

Q. Did he go to anyone else?

30

A. I do not know.

He is not on good terms with my mother; he could

have got information from my mother. He was on good terms with me. There was no reason why he should have not asked me about this trouble. There is no reason why he should not have asked me about this matter. He was not angry with me. Although I used to meet my uncle frequently he did not ask me about this matter nor did I tell him, because that was a delicate subject.

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continued.

Q. Was it delicate to you or both?

10 A. To both.

Q. Why?

A. Because he was the Professor of Zoology and I was his nephew.

Q. Was that the only reason or did he have any connection with this question paper?

A. He must have had as the Departmental head.

Q. Was he also not a member of the Board of Examiners?

20 A. As far as I know the heads of Departments are on the Board of Examiners.

Q. Apart from that general knowledge do you tell Court that you do not know that your uncle was a member of the Board of Examiners for the Zoology B paper?

A. As head of the Department of Zoology I know that he was an examiner.

Q. Do you know that in fact he has something to do with the setting of question papers?

A. As Head of the Department he has.

30 Q. Do you know that he was one of the Examiners in the Zoology paper before your examination?

A. That I do not know.

There are 4 examiners on each Board. I do not know that two of those 4 examiners set the Zoology paper. I do not know that 2 members of the Board set the question paper. Professor Mylvaganam was also a member of the Board of Examiners as a Head of the Department.

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continued.

Q. That is this very Board of Examiners who are concerned with the Zoology paper?

A. Yes.

Q. You did not regard that as being a disqualification for his sitting on that commission of inquiry?

A. I do not know that.

Q. You do not say that because he was a member of the Board of Examiners, it was a disqualification for him to be a member of this commission?

10

A. Now I say that after legal advice.

Q. Independently of legal advice would you not have thought that there was anything wrong of his being a member of the commission?

A. I do not know law.

Because I do not know the exact procedure that should be followed for such things I cannot say that. When I saw him I knew that he was a member of the Board of Examiners; at that time I did not think that it was unfair for him to be there.

20

Q. When did you come to know; at what stage you were advised that as the Dean of Faculty that he should not have been one of the commissioners?

A. I was not given that advice.

Q. Because he was the Dean of Faculty he was not to have been in that commission?

A. No.

Q. You were at no stage advised, because he was the Dean of Faculty or a member of the Board of Examiners he should not have been a member of this commission?

30

A. Not on the ground that he was a member of the Board of Examiners of the Dean of Faculty.

Q. Neither did you think that he was disqualified because of either of those reasons?

A. I do not think.

Q. Nor did your lawyers advise you that because he was the Dean of Faculty or because he was a member of the Board of Examiners, that he should not have sat in that commission?

A. Now after I filed this action the lawyers advised me that he should not have been a member of that commission, because he was a member of the Board of Examiners.

10 Q. The question of his being the Dean of Faculty was not regarded as a disqualification for his being a member of the commission?

A. Yes; it was not a disqualification.

Q. In the course of those 4 years that you were in the University, was there any single other case of a student being suspended or disqualified as you had been, on the ground of their being pre-knowledge of a question?

A. I do not know; I have not heard.

20 Q. A matter like that, if it does exist, will soon become common knowledge to the students?

A. I have not heard.

Suspension of a student is being talked by students; as far as I know I have not heard of such a thing. This would be of great concern to the head of that particular Department.

Q. As far as you are aware Professor Fernando took no interest in the matter of your suspension or inquiry?

30 A. No.

Q. Nothing that you had heard since the date of this inquiry suggests that he has taken any interest in the matter?

A. No.

Q. Did the professor attend this inquiry at any stage?

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A. I do not know.

Q. Do you know that the Vice-Chancellor has had a talk with the Professor?

A. The report of the commissioners states so.

Q. Apart from that you do not know at all that the Vice-Chancellor had a talk with the Professor?

A. No.

Q. According to the report the Vice-Chancellor and the Professor had discussed this matter?

10

A. Yes.

Q. Do you accept that as a correct statement?

A. As far as I can remember the report says so.

Q. If the reports says so do you say that it is incorrect?

A. That I cannot say.

Q. Do you think that a false statement had been made in that report?

A. I cannot say.

Q. That was the report of the commission of inquiry?

20

A. I do not know whether it was signed by the three commissioners; it is not purported to have been signed by all the three.

(Shown P11). I got this document.

Q. Whether it is signed or not will you accept it as a correct copy?

A. I have not seen the actual original report; therefore I am not in a position to express any opinion about P11.

30

(Paragraph 2 of P11 put to the witness).

Q. According to paragraph 2, Professor Fernando

had given evidence before the members of the commission?

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A. Yes.

Q. Do you accept that as a correct statement of fact?

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A. I do not know; it is so stated in the report, but I have no grounds to doubt its accuracy or veracity.

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continued.

10 Q. In spite of the fact that according to this report and despite the fact that Professor Fernando has given evidence do you still tell Court that neither Professor Fernando nor you discussed this matter of the allegation against you?

A. No; never.

Q. Were you asked by the members of the commission not to discuss this with anybody?

A. No.

Q. What reason was there for you not to?

20 A. On this matter I treated him as the Professor of Zoology and not as my uncle.

Even as Professor of Zoology I did not go and tell him that this was the way how I was treated in this matter.

Q. As the head of the Department he should have taken interest?

A. As Professor he took no interest.

30 Q. If he had not been your uncle, but had only been the Professor of Zoology, could you have gone and told him how you had been treated by this commission?

A. I would not have told him how I had been treated.

Q. But you would have told him how you were treated?

A. I would have told him only after I got the letter of suspension and not during the course

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of the inquiry.

Nothing was stated during the course of the inquiry that the inquiry was confidential; only the letter was confidential.

Q. Because of the word "confidential" on those letters, even if the Professor had not been your uncle, you would have thought it is not right to tell him anything about it, merely because of the word "confidential"?

A. Yes.

10

I do not know whether he received any letter marked "confidential". I cannot give a reason why he was silent over this matter.

Q. You can give no reason at all why your uncle took no interest in this inquiry as your uncle or Professor of Zoology?

A. Because it was a delicate matter.

Q. What is the delicacy in this matter?

A. Because it was concerning him also.

Q. You knew at the time of the inquiry that it concerned the Professor?

20

A. During the inquiry; about the Zoology paper I knew it was a delicate matter and it had affected him also.

Q. What made you realise that it was delicate as far as he was also concerned?

A. Because the paper was on Zoology.

Q. Why should it be delicate?

A. He was the head of the department. The inquiry was confidential.

30

Q. You realised that because he was the head of the department he also might be in some way involved in the inquiry?

A. I did not know that he was involved in it.

Q. You thought that he might also get involved in it?

A. No.

Because he was the head of the department I did not want to tell him. Even if he was not affected by this inquiry I would not have told him, because it was a confidential matter. I cannot tell that if the word "confidential" was not on that letter whether I would have told the Professor or not.

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10 Miss Balasingham was a student whom I knew from 1948; we were students together attending lectures together and practicals together. I generally kept to myself; I talk with other students.

Q. There was no ill feeling between you and Miss Balasingham?

A. No; we were not good friends.

Q. There was no ill feeling between the two?

A. In the first year it was alright; that was in 1949. In the early part of 1950 we were not on good terms.

20 Somebody had fooled her, and I was friendly with those boys; and she got angry with me. I do not know why she got angry with me.

Q. You assumed that she was angry with you?

A. Yes.

Q. You were not angry with her, but she was angry with you?

30 A. I could gather that other boys were fooling her and that I was friendly with them. Over a trifling affair she misunderstood me and ceased to talk to me; I learnt of it later. She did not snub me. Stopped smiling and talking. There was still a spirit of aloofness on her part. There was no other ground of ill feeling; she thought I was responsible for the mischief done by the other boys.

Q. Do you suggest that that was a reason for her to have made this allegation against you?

A. That can be one.

Q. Anything else?

A. Jealousy.

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Q. Jealousy over what?

A. Jealousy over work.

Q. What was the jealousy?

A. Supposing I had faired well I would have better prospects.

(To Court: Q. Were you expected to get a class?

A. I do not know what the Professor thought about me).

I answered the papers well; after I answered the papers I expected to get a first class. Before I answered the papers I was anxious to get a class. Before I answered the papers I was confident that I would get a first class. I did not go about airing that. I do not know why they were jealous that I would get a first class. I say that all this is an entire fabrication by Miss Balasingham. I say that she falsely made up these German words. I was shown at the inquiry her exercise book containing the German words. I was shown that on the first day of the inquiry being the words which Miss Balasingham got from my book.

10

20

Q. Did you tell the Commissioners at once that this was a fabrication of Miss Balasingham, as she has been angry with you? I deny it?

A. I did not say that Miss Balasingham was angry with me.

Q. Apart from denying did you give an explanation as to how Miss Balasingham could have produced those?

A. I could not have given an explanation.

30

I did not give any explanation how Miss Balasingham could have got those words. I had no opportunity to say to the Commissioners that Miss Balasing was angry with me; I could not speak. They did not allow me to speak on my own. They stopped me when I wanted to speak. The Vice-Chancellor and Professor Mylvaganam asked me to answer their question and did not allow me to speak.

Q. Did you say - I want an opportunity to explain?

40

A. Yes.

Q. Did they say no?

A. They said answer our questions only.

Q. Did you even endeavour to say that Miss Balasingham was angry with you?

A. I had no opportunity to speak.

Q. Or on the second day?

A. Second day was worse.

Q. What transpired on the second day?

10 A. Atmosphere there was such.

On the 2nd day I saw Miss Balasingham's legs through the half door of the room of Mr. Block. Before I went into the Board Room I saw Mr. Sivaprakasapillai, Miss Y.M. de Silva, Mr. L.C. Morral, Mr. C.H. Fernando and Mr. H.H.A. Indrasena coming out of the Board Room; they came one after another at intervals.

Q. Did they come out together or one after another?

20 (Mr. Wickramanayake objects to the question. He submits that the evidence given in chief is clear that each one of these persons was called in one by one. This is distortion of evidence. Question allowed.)

Q. Did they come together or one after the other.

A. As I entered College House I went upstairs; I was seated there. Then I saw Mr. Sivaprakasapillai after some time coming out of the Board Room. He then entered Mr. Block's room.

30 Miss Balasingham was in Mr. Block's room. After that I saw Miss Y.M. de Silva, Mr. Morral, Mr. C.H. Fernando and Mr. Indrasena; they were called in one by one. After one was called in that person was inside, and after some time he came out. Thereafter another one went in. Each person was in the Board Room between 15 to 20 minutes.

Before I was called I was kept waiting for quite a long time. Then I was called in and questioned.

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- Q. Who put questions on that occasion?
- A. As I went in Professor Mylvaganam grabbed at my exercise book.
- Q. Did Mr. Keuneman also put questions to you on the second occasion?
- A. Yes.
- Q. Did he use this expression - I put it to you?
- A. Nothing; he did not use that expression at all.
- Q. He put questions to you indicating to you that certain statements have been made against you? 10
- A. No. Not on the second day.
- Q. Neither on the 1st day nor the 2nd day you were confronted with the serious allegation of having acquired pre-knowledge of the question paper in German?
- A. No specific charge was made.
- Q. Were you told that there was an allegation against you that you had acquired pre-knowledge of a question in German?
- A. I was not told so. The word "allegation" or charge was not used. 20
- Q. Were you told that there was some information that you had acquired some knowledge of the German question paper before the examination?
- A. No.
- Q. Was anything conveyed to you at all either on the 1st day or on the 2nd day that you had acquired knowledge of that German question before the examination?
- A. Nothing definite, except for what was stated to me within a few minutes of my arrival when I was confronted with some questions. I was not told anything definite about the charges. No specific charge was made against me. 30
- Q. Except you were shown this exercise book and told that Miss Balasingham had got these words

from your book nothing has been told you?

A. No.

Q. All what you understood was that she had got some words from a book of yours?

A. Yes.

Q. Nothing concerning the question paper?

A. They did not tell me that those words appeared in the question paper.

10 Q. When the words were read out to you and when the passage was read out to you, you realised that the words were in the passage?

A. Nothing was told me to convey the information that I had knowledge of those words before I saw the paper for the first time at the examination hall.

(Shown P6) Q. Where did you get knowledge that such an allegation had been made?

A. I cannot follow that question.

20 Q. You did not get knowledge of such an allegation at all from anything said to you at the inquiry?

A. The letter stated so.

Q. Nothing was said at the inquiry which made you realise that there was such an allegation against you?

A. Only what was said in the letter conveyed to me that there was such an allegation.

30 Q. But, nothing which was said at the inquiry conveyed to you the idea that an allegation had been made against you that you had got knowledge of the question paper?

A. What question paper?

Q. You do not know what question paper we have been speaking of in this Court?

A. That is now. At that date I did not know what the question paper was.

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continued.

At the inquiry I had no knowledge of which question paper I had prior knowledge.

(To Court:- If the Commissioners gave me some German words, it must refer to only the German paper).

Q. It could not have referred to any other paper?

A. At that time.

Q. How do you explain this statement in P6 paragraph 1?

What was that serious allegation referred to therein?

10

A. My lawyers wrote this letter after the inquiry.

Q. You cannot say what the allegation referred to in P6?

A. It was only after the Observer report that I realised what the allegation was that was put down in this letter.

Q. This says you were confronted for the first time with this serious allegation on 21/5?

A. Yes.

20

I did not mean to say that I knew on 21/5 what the allegation was. I came to know what the allegation was only after I read the Observer report. It was only then I came to know about the specific charge. It was for the first time I realised that the inquiry had been about the German question in the Zoology paper.

Q. Till then you did not realise that the inquiry had any reference to any German question in any Zoology paper?

30

A. Not in particular.

Q. And in particular you did not know what the inquiry was?

A. Yes.

Q. Even generally you did not know what the inquiry was?

A. Yes.  
(Last paragraph of P6 is put to the witness).

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Q. Your complaint was that those who have given untrue evidence were preferred and believed rather than you?

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A. Yes.

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Q. Miss Silva has also said that?  
(Mr. Wickramanayaka objects to the question).

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continued.

10 Q. In the report that was sent to you there was a reference to Miss Silva that she had corroborated Miss Balasingham?

(Witness is referred to paragraph 4).

Q. According to this report the Commission had information that Miss Silva also said that Miss Balasingham had told her about the list of words before the examination?

A. That is according to this report.

20 Q. And the report goes on to say "another student Mr. C.H. Fernando ..... told me about the list before the examination?"

A. Yes.

30 According to this report the Commissioners had that information also. Mr. C.H. Fernando is well known to me. There was ill feeling and animosity between we two. We had differences on religious matters. He is a Roman Catholic and I am a Buddhist. He said he wanted to become a Roman Catholic Priest; his behaviour was such I said I pity the Church. I used to pass the remark, "I pity the Church and incidentally those who come to you." I told that to him in fun and he took that very seriously. He took very serious offence at that. He was very angry with me thereafter. Often and on I used to tell him that. Now and again when he used to speak to me on other subjects I used to tell this to him. We were not bitter enemies; he would talk to me and I would talk to him. In spite of my remark he spoke to me. He would have the same amount of feeling that I had towards Miss Balasingham. I did not tell my lawyers that C.H.Fernando

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was angry with me. I was not angry with him (P6 read out to the witness).

Q. I am not in a position to attribute any other motive ..... except to say that it is possibly due to jealousy or that she had been made use of. You have not made any reference to the fact that Miss Balasingham was angry with you?

A. Although she was angry with me I have not made reference to that fact in this letter. I have told my lawyers that she had strained feelings with me. 10

Q. You told your lawyers that that was one of the reasons why she had made this false allegation against you?

A. Yes.

Q. For any justifiable reason at all?

A. Yes.

Q. Why do you say "or that she had been made use of"?

A. This was put in by my lawyers. 20

Q. Can you explain this?

A. I cannot understand what is meant by the words "or that she had been made use of".

Q. You have not told your lawyers about this making use of?

A. Why this anger; strained feeling.

Q. Did you understand the words, "made use of" at the time this letter (P6) was drafted?

A. I cannot now say.

Q. Did you ask your lawyers what they meant by that expression - "she had been made use of"? 30

A. Yes. I got the explanation; now I cannot remember.

Q. Can you now recall whether you had anything at all in your mind to tell your lawyers that they had referred to the words "made use of"?

- A. I cannot remember.
- Q. You cannot say that these words were used of what particular matter and question?
- A. I cannot.
- Q. You cannot say who was making use of her?
- A. I do not know.
- Q. Did you have anybody in mind who could have made use of her to make these false accusations to you?
- 10 A. A certain member of the staff - Zoology Departments. I do not know whether he is here in Court. He is Dr. Keerthisinshe.
- Q. Why did you look round the Court to see before you gave answer?
- A. I wanted to point him out.
- Q. Mr. C.H. Fernando was apparently in talking terms in spite of this displeasure about your remarks about his becoming a priest in the Catholic Church?
- 20 A. Yes.
- Q. Do not students help each other in drawings, notes or in any difficult passage etc.?
- A. Yes.
- Q. In the meaning of German terms?
- A. No. In class they help each other but not outside class.
- Q. They would help each other in the drawings, notes?
- A. Yes, particularly with lecture notes.
- 30 Q. Drawing notes?
- A. There is no helping in regard to the drawing notes. Each traces with the specimens.

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Q. Have you helped any of your students by making available to students your drawings?

A. Yes, to first year M.B.B.S. students. I was a demonstrator in the class.

Q. Have you at any time helped any of your fellow students by making available to them your notes or your drawings?

A. No, never.

Q. Are you aware that according to this report Mr. Fernando has been making a copy of some drawing from one of your books?

10

A. I am not aware of that.

Q. Is it possible that he has copied it without your being aware of it?

A. Yes, it is possible.

Q. In other words your note books may have been accessible to other students without your being aware of it?

A. Yes.

Q. In the same way it is possible that Miss Bala-singham would have got hold of one of your note books containing the drawings, etc.?

20

A. Yes, it is possible.

Q. Students sometimes take the notes without permission or without the knowledge of other students?

A. Yes.

Q. Indrasena and Morell were your friends?

A. Yes.

Q. There was no ill-feeling between you and them?

30

A. No.

Q. You have kept a copy of the report which was sent to you?

A. Yes.

Q. You have that copy with you now?

A. Yes.

Q. According to paragraph 4(3) of the report, neither the Vice-Chancellor has nor the other Commissioners have believed the evidence of Indrasena or Morell?

A. Yes, that is so.

Q. They have given evidence in your favour?

10 A. Yes.

Q. Your complaint is that the Vice-Chancellor became satisfied that you has acquired a pre-knowledge of the question paper by rejecting the evidence of your witnesses and yourself and accepting the evidence of Miss Balasingham and Miss Silva?

A. No, I did not make any statement like that.

Q. Now is that your position?

20 A. That I cannot say. It depends on what they have to say.

Q. Is it your case that the Vice-Chancellor should have believed your evidence?

A. Yes.

Q. Is it your case that the Vice-Chancellor should not have been satisfied on the evidence of Miss Balasingham?

A. Yes.

Q. That he should not have accepted their evidence in preference to yours?

30 A. Yes.

Q. The report is the report not of the Vice-Chancellor alone but of all the three Commissioners?

A. It is the report of the commission of inquiry consisting of these three persons.

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Q. It is not the report of the Vice-Chancellor alone?

A. No.

Q. It is the report of all three of them?

A. Yes.

Q. The Vice-Chancellor says in this letter P9 that in consequence of the inquiry the Vice-Chancellor is satisfied about your guilt?

A. Yes.

Q. What you want to stress is that he was satisfied as a result of the inquiry held not by him alone but by all three of them? 10

A. Yes.

Q. Of whom he was one?

A. Yes.

Q. According to the wording in the General Act of the University he has to be satisfied?

A. Yes.

Q. He says he was satisfied?

A. He says he was satisfied in consequence of the inquiry by the three of them. 20

Q. You say that the inquiry should have been by him alone?

A. Yes.

Q. That the Vice-Chancellor should not have been satisfied upon the material placed by them before the Commissioners?

A. Yes.

Q. That is because he should not have rejected your evidence or the evidence of your friends Indrasena or Morell? 30

A. That I cannot say.

Q. Is that not your case?

A. I say he should have accepted my evidence.

Q. Then Indrasena and Morell? You did not call them on your behalf?

A. I did not call any of them.

Q. You did not give the names of any of your witnesses?

A. No. I was not asked.

10

Q. You say that you were not asked by the Commissioners as to whether you have any witnesses?

A. When I was shown the exercise book I said that they must have been corrected by Dr. Cruz and I pointed out that Dr. Cruz corrected those papers.

Q. What you meant to say just now was that you indicated to them that Dr. Cruz can support your statement?

A. Yes.

20

Q. In that case you suggested that Dr. Cruz should be a witness for you?

A. Yes.

Q. Did you indicate in any other manner that any other person should be a witness for you?

A. No.

Q. The charge now is that you have got knowledge of the German questions in the Zoology paper?

A. As far as I can remember the allegation made to me in writing was that I had acquired one or more of the questions in the Zoology paper set for the Science examination.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.



In the District  
Court of  
Colombo

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Plaintiff's  
Evidence

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No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

Q. When you went for the inquiry questions were put to you on that matter alone?

A. Yes and about the practical paper also.

Q. That was the basis of the whole inquiry?

A. Yes, and occasionally they touched upon the theory also but not very much.

Q. Apart from your denial were you in a position to call anybody else to prove that you had not seen this paper?

A. How could I have called anybody else. 10

Q. You had only your own denial to rely on?

A. Yes. I did not copy or get these words from anybody else.

Q. Therefore, you had only your own evidence to rely on?

A. I could not have called anybody else to prove that I did not have these words before.

Q. Ultimately the case rested upon whether your evidence was believed or the evidence of Miss Balasingham and those who supported her? 20

A. Yes.

Q. And so it happened that the commission rejected your story?

A. From the letter of suspension I inferred this.

Q. And also from this letter P9 that the Vice-Chancellor was satisfied about your guilt?

A. This says that he was satisfied in consequence of the inquiry by the three commissioners that I did something wrong.

Q. Of course that suggestion of the Vice-Chancellor had to be before you were suspended? 30

A. I do not know the exact regulations about it.

Q. Have you up-to-date not seen or familiarised yourself with the examination procedure?

- A. No.
- Q. You have seen the calendar of the University of Ceylon?
- A. Yes.
- Q. You have seen it from the time you were a student.
- A. Not year to year.
- Q. In the particular year in which you sat for the examination?
- 10 A. No, not in that year.
- Q. Then when?
- A. When I looked into the procedure for the purpose of this case I found that it was the Vice-Chancellor who had to be satisfied.
- (Mr. Choksy marks as D1 the Calendar of the University of Ceylon for the year 1950-1951).
- Q. You found that under this procedure it is the Vice-Chancellor himself who has to be satisfied?
- A. Yes.
- 20 Q. And he had written to you earlier in August stating that he was satisfied?
- A. In consequence of the inquiry.
- Q. Then upon his being satisfied he has got to report the matter to the Board of Residence and Discipline?
- A. I do not know the details of the procedure.
- Q. Do you say that up to now you do not know that it is upon the report of the Vice-Chancellor that he is satisfied that something wrong has happened that the Board of Residence and Discipline has got to act?
- 30 A. I do say and I think now that the Vice-Chancellor had to be satisfied in the first instance, then take appropriate action on his own and thereafter report to the Board of Residence and

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No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

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Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

Discipline to take further action, if necessary.

Q. It is the Board of Residence and Discipline that can suspend you from sitting for future examinations?

A. My impression is that the Vice-Chancellor can suspend me. I do not know whether the Board has power.

Q. Then what does the Board do?

A. I do not know.

Q. You have not read that part of the procedure where the Board of Residence and Discipline can act?

10

A. I have read that.

(page 159 of D1 put to witness)

Q. You see regulation 8?

A. Yes.

Q. You have read that before?

A. Yes.

Q. What do you understand by that regulation?

A. According to this regulation the Vice-Chancellor can suspend me from sitting for future examinations.

20

Q. Did you read section 14 earlier?

A. Yes.

Q. Sections 8 and 14 were considered when you consulted your lawyers?

A. I do not know what the lawyers have read but I have read sections 8 and 14.

(P14 referred to: the paragraph beginning "this situation implies....." read to witness).

30

Q. Did you understand the meaning of this paragraph at the time it was drafted?

- A. Yes.
- Q. Do you stand by that position still?
- A. That I cannot explain. These are all documents drafted by my lawyers.
- Q. Did you read this document at the time you signed it?
- A. Yes.
- Q. You understood it then?
- A. Yes.
- 10 Q. You agree with the sentiments expressed therein?
- A. Yes.
- Q. You did not put any questions to your lawyers and ask them what they meant?
- A. I asked them. They explained and I was satisfied.
- Q. So you were satisfied?
- A. No. I do not know the legal way of writing and so I accepted this.
- 20 Q. This means that the report is fair and without prejudice to the accused person and there is sufficient justification for condemning you? You understood those words?
- A. Yes.
- Q. And they correctly represented what is in the report?
- A. That I cannot say because I cannot exactly say now what they really meant.
- Q. At that time you were satisfied that this paragraph was a correct statement of your lawyers?
- 30 A. I put it to my lawyers, they drafted it and I approved it.
- Q. That means you accepted that as a correct statement of your position?

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Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

In the District  
Court of  
Colombo

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Plaintiff's  
Evidence

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No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

A. Yes.

Q. Did you approve of this paragraph that I have read to you now,

A. Yes.

Q. Did you put any questions on this paragraph?

A. I cannot remember now.

Q. You understand it at that time?

A. Yes.

Q. And you understand it now also?

A. I cannot understand now what I would have meant at that time. 10

Q. What do you mean?

A. At that period.

Q. Complete your sentence.

A. (no answer).

Q. You would have understood it then?

A. (no answer).

Q. Do you say you are incapable of understanding it now?

A. I cannot understand now the exact meaning of that sentence. 20

Q. What do you understand by that sentence now?

A. If the report of the commission of inquiry which was sent to me is correct and fair, the Board would be justified in condemning me.

(Witness is shown P7)

Q. According to P7 it was the Board of Residence and Discipline that found you guilty of the offence and suspended you indefinitely?

A. Yes. 30

Q. That would be on the report of the Vice-Chancellor after he was satisfied?

In the District Court of Colombo

A. The report is of the commission.

Q. But under the rules it has to be after the report of the commission or the Vice-Chancellor?

Plaintiff's Evidence

A. I cannot remember.

No. 7

Q. What is your understanding of the Rules?

E.F.W.Fernando, Cross-Examination - continued.

A. According to my opinion there is nothing in the Statute which empowers the Vice-Chancellor to appoint a commission.

10

Q. So that according to your understanding it is the Vice-Chancellor who has to be satisfied and report to the Board?

A. He has to be satisfied, then suspend the student and report to the Board.

(To Court:- Q. How many members are there on the Board of Residence and Discipline?

A. I have no idea.

Q. Why? Are those not printed in that calendar?

20

A. According to the calendar for 1950-51 there have been nine members.)

(Mr. Choksy marks as D2 the calendar for the year 1952-53. He refers to page 24 wherein is mentioned the list of members of the Board of residence and Discipline as from October 1952).

(Witness is shown P14).

Q. You state in that letter (paragraph R sub-paragraph 1) that the actual passage was of no unusual difficulty?

30

A. Yes.

Q. In sub-paragraph 3 you state that you have attended classes for a period of three years at an hour a week?

A. Yes.

Q. During the term?

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

- A. Yes.
- Q. How many months do the terms extend?
- A. Roughly about three months.
- Q. How many terms are there?
- A. Three.
- Q. So in the course of these three terms you put in an hour of work a week in German?
- A. Yes.
- Q. The person who taught you was Dr. Keerthisinghe?
- A. Yes. 10
- Q. Is that the German classes you refer to in subparagraph 3?
- A. Yes. And also when I was in the first year B.Sc. under one Miss V. Reich.
- Q. That was also one hour periods?
- A. Yes, from 4-5 p.m. in the day.
- Q. How often?
- A. Once a week.
- Q. That was also during the term time?
- A. Yes. 20
- Q. And you say that there was a resemblance between the German terms and English words?
- A. Sometimes in certain words.
- Q. And so you found it quite easy?
- A. Meaning generally.
- Q. You can by the general meaning of the passage say what the passage deals with?
- A. Yes and draw the rest in your imagination.

(To Court: Q. Have you come across this passage in the course of your research?

A. No, never.

Q. Do you know from where your passage was taken?

A. No.

Q. Have you found out since?

A. No.

Q. You still do not know?

A. No.

10 Q. According to the report of the commission it came from a book which Professor Fernando had?

A. It may be.

Q. You read the report of the commission?

A. Yes.

Q. And you kept a number of copies of it?

A. Yes.

Q. According to that report the passage came from a book which Professor Fernando had?

A. I cannot remember.

20 (To Court: Q. Have you ever seen this book in his library?

A. No.

Q. Have you walked into his private library?

A. He has no private library. He has a collection of books in his house.

Q. Is that not a library?

A. (no answer).

Q. Have you had access to that library?

A. Yes.

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Plaintiff's  
Evidence

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No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.



In the District  
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Plaintiff's  
Evidence

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No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

- Q. Have you taken books from that library?
- A. No.
- Q. What do you mean?
- A. I go to the room.
- Q. Do you tell Court that you have not taken a single book from the shelves and looked at them?
- A. Yes, I have had access to them.
- Q. You have referred to them?
- A. Yes.
- Q. Did you make use of them for the purpose of your studies? 10
- A. No.
- Q. Then why did you refer to them at all.
- A. I looked at the diagrams of art and I took books on general topics.
- Q. Do you say that he had no books on Zoology in his library?
- A. I have seen some Zoology books in his library but I do not know whether they belong to his home library or not. 20
- Q. If he has borrowed any books from other libraries they will have the seal?
- A. I have not gone through all the books.
- Q. Have you gone through any Zoology books from his library?
- A. No.
- Q. The only books you have referred to are on works of art?
- A. Yes and on other subjects too.
- Q. Tell us what? 30
- A. The Encyclopaedia of Britannia.

Q. The only thing you avoided was Zoology?

A. I did not read any Zoology books.

Q. Did you read any passage on Zoology in those books you referred to?

A. No, never.

Q. Other books you have taken?

A. Yes.

Q. Why did you avoid taking any books on Zoology from your uncle's library?

10 A. Because I could have taken the books from the University library.

Q. For your research work or for your reference did you not have occasion to take any book on Zoology from your Uncle's library?

A. No, not the books in his library.

Q. Did you refer to any books available in his University office?

A. When we enter his office he gives students books on Entomology.

20 Q. That was the subject he was lecturing on?

A. He was lecturing on other subjects too.

Q. In the Final Year only to you and Miss Bala-singham?

A. Yes, on Entomology.

Q. How many in other years?

A. In the final year there were two students.

Q. Earlier years?

A. In the second year two students.

Q. In the first year, how many students?

30 A. I cannot remember.

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Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

In the District  
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Colombo

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Plaintiff's  
Evidence

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No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

(To Court: Q. In the final year you had no lectures from Professor Fernando on Entomology?

A. No.

Q. But all that he did was to give books to the two of you?

A. Yes.

Q. He used to keep the books in his cupboard under lock and key?

A. I do not know that, but they were from the University library. 10

Q. Did he not have books of his own in the University office?

A. Yes, he had and those too he kept in his office, some on the table, some on the shelves and some on the cupboard.

Q. Has your uncle given you or Miss Balasingham any books on Zoology from his room in the University?

A. Yes, Entomology by Innons.

Q. Did he give any other books dealing on Zoology? 20

A. He used to give us journals.

Q. Do these journals contain any German or Spanish passages?

A. No, they contain only English articles.

Q. In English articles do you find reference to German works?

A. Yes.

Q. For the purpose of your research you have referred to German works?

A. Yes. 30

Q. In the two articles you have published you have referred to German works?

A. Yes.

Q. Have you seen those German works in the original?

A. Yes, in the Colombo Museum library.

Q. In Professor Fernando's library?

A. No.

Q. Where else?

A. In the Zoology Department, library of the University.

10 Q. Professor Fernando at no time either gave you or Miss Balasingham any book on Zoology?

A. He has given.

Q. Any books dealing with leaches?

A. No.

(To Court: Q. In which category do leaches come?

A. They come under Invertabrites).

(Paragraph 10 of P11 put to witness).

Q. Generally two examiners colloborate and set the paper?

20. A. I do not know the procedure adopted in regard to the setting of the paper.

Q. Surely you must know that? There are two internal examiners and one external examiner for each paper?

A. No, I do not know that.

Q. This pointedly repeated the fact that the passage came from a book in Professor Fernando's study?

A. Yes.

30 Q. Did you inquire from your uncle whether this is a correct statement, viz. that the passage in question came from a book which he had?

A. No.

Q. Did you ask him "is it correct that you pointed out the passage to Mr. Keerthisinghe and he approved of the passage."

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Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

A. No.

Q. You made no inquiry at all?

A. No.

Q. Although it was stated here that your uncle suggested this particular passage to Mr. Keerthisinghe for the paper?

A. No.

Q. Do you know what the locked cupboard that is referred to in this paragraph is?

A. No. 10

Q. Have you seen a locked cupboard in Professor Fernando's room?

A. There are so many cupboards in his room.

Q. All under lock and key?

A. I suppose so.

Q. Do you think that this statement in paragraph 10 in any way affects your uncle?

It concerns your uncle.

A. Yes.

Q. In spite of this statement you never troubled to find out whether that was correct or not? 20

A. No.

(To Court: Q. Have you tried to find out whether there are any other copies of this book anywhere in the Island?

A. No.)

Q. Do you now know from what particular book this passage was taken?

A. No.

Q. You did not try to find out? 30

A. No.

- |    |   |  |
|----|---|--|
|    | Q. Was there any ill-feeling between Miss Silva and you?  | In the District Court of Colombo               |
|    | A. No.  | <hr/>  |
|    | Q. No reason at all why she should make any adverse statement or implicate you?                     | Plaintiff's Evidence                           |
|    | A. No.  | <hr/>  |
|    | Q. And C.H. Fernando?   | No. 7  |
|    | A. He and I had strained feelings.  | E.F.W.Fernando, Cross-Examination - continued. |
| 10 | Q. Did your uncle in any way help you in your research work in connection with Zoology?             |  |
|    | A. Yes.   |  |
|    | Q. In what way?   |  |
|    | A. He suggested research problems to us.  |  |
|    | Q. To us, meaning?  |  |
|    | A. To myself, Morell, Miss Balasingham and another student, one Silva.                              |  |
|    | Q. Suggested what?  |  |
|    | A. The research problems.   |  |
|    | Q. That was all he did?   |  |
| 20 | A. Yes.   |  |
|    | Q. Did he give you any particular help in connection with these problems?                           |  |
|    | A. Yes, whenever there are any difficulties we are expected to go to him and ask how we should do.  |  |
|    | Q. Did you avail yourself of whatever help that was given by Professor Fernando in that connection? |  |
|    | A. Yes.   |  |
|    | Q. On what?   |  |
| 30 | A. In Fluke found in the jungle and tiny insects like grasshoppers.                                 |  |

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

Q. What was the nature of the help he gave you there?

A. Whenever I do research work on these insects and find it difficult I go to him and get it explained.

Q. For the purpose of your research work you had gone for his help?

A. Yes.

Q. But in connection with your own studies you did not go to him?

10

A. No.

Q. You had a particular reason not to go to him?

A. No, there was no necessity for me to go to him.

Q. It means you understood everything so well that you did not think it necessary to go to him?

A. Yes and besides he is a very strict man and he jumps down your throat at everything.

Q. In connection with your research work too he jumped down your throat?

A. Yes. But I had to go to him.

20

Q. In connection with the Zoology course did you go to anybody else?

A. Yes.

Q. To whom?

A. Dr. Cruze.

Q. He was not the sort of man who jumped down your throat?

A. No.

Q. On what subject did Dr. Cruze lecture on?

A. Parasitology.

30

Q. Did he lecture on any subject to you specially?

A. No.

Q. Dr. Cruze was never your lecturer?

A. No.

Q. Then what was the reason to go to him for help?

A. He was good in Parasitology and whenever I went to him he showed some interest in helping the students.

Q. Your uncle would not show that interest?

A. No, he was very strict.

Q. Who was milder, your uncle or Mr. Keuneman?

A. That I cannot say.

Q. How did Mr. Keuneman compare with your uncle?

10 A. Mr. Keuneman was better.

Q. Certainly not a man who jumped down your throat?

A. He was not ready to listen to me in everything but he did not jump down my throat.

Q. Nor did Professor Mylvagnam?

A. No.

Q. Nor did the Vice-Chancellor, Sir Ivor Jennings?

A. No.

20 Q. In fact is it correct to say that Sir Ivor did most of the listening and allowed the others to question?

A. Yes.

Q. Occasionally he put a question or two to clear up some question that the other commissioners were putting?

A. Yes, but I was not given a fuller opportunity to explain myself.

Q. Do you say that Sir Ivor also stopped you from answering?

30 A. Yes, before I could answer one question he put another.

Q. The other two gentlemen also did the same thing?

A. Yes.

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Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.



In the District  
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Plaintiff's  
Evidence

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No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

Q. Professor Mylvagnam is also a member of the scrutinishing committee?

A. Yes.

Q. What are the functions of the scrutinishing committee?

A. Only now I have come to know, after the filing of this action, that the scrutinishing committee checks up the question papers or something like that.

Q. What do you mean 'something like that'?

10

A. I do not yet know exactly what they do.

Q. Even now you do not know exactly what they do?

A. When question papers are set they read through the question papers.

Q. All along the question papers go to them?

A. Yes.

Q. Not the answer papers?

A. No.

Q. What do they do with the question papers?

A. They moderate.

20

Q. Do you say that that disqualifies Professor Mylvagnam from having been on the commission?

A. That is what my lawyers say.

Q. Never mind what they say. You knew that he was a member of the scrutitinisig committee?

A. Yes.

Q. You knew that fact when you attended that inquiry?

A. Yes.

Q. And you also had information before you went for the inquiry that he was a member of the Board of Examiners?

30

A. Yes.

Q. And Dean of the Faculty of Science?

A. Yes.

Q. Did you consider that anyone of those three positions would have made him unfit to be a member of the commission?

A. Yes.

Q. Even at that time before your lawyers told you?

A. No, not at the time of the inquiry.

10 Q. Not until the lawyers told you?

A. Yes.

Q. Till then you did not think that Professor Mylvagham was unfit to be a member of the commission?

A. Yes.

Q. It was a very serious matter that they had to investigate, viz. as to whether a student had got pre-knowledge of the question paper or not?

A. Yes.

20 Q. And in those circumstances it would be reasonable for the Vice-Chancellor to get the Dean of the Faculty to assist him?

A. Yes..

Q. And to be present at the inquiry as head of the Faculty?

A. That I cannot say.

Q. Do you think it would be unreasonable to have the head of the Faculty when an important question like that was being inquired into?

30 A. I do not know that.

Q. At that time you did not think that there was anything wrong?

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Plaintiff's  
Evidence

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No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

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Plaintiff's  
Evidence

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E.F.W.Fernando,  
Cross-  
Examination -  
continued.

A. No, I did not know then.

(To Court: Q. Then your grievances have increased with the legal aid you have had?

A. Yes.)

Q. Certainly as far as Mr. Keuneman was concerned there was nothing that you could have said against him as a member of the commission before the start of the inquiry?

A. Yes, nothing at all.

Q. And after the inquiry was there any complaint you had against him?

10

A. No.

Q. After the inquiry did you come to know of any fact which would have disqualified Mr. Keuneman from being a member of the commission?

A. Yes.

Q. What was that?

A. That he should not have been on the commission?

Q. Any reason personally to him?

A. Yes, because he is a member of the University Council.

20

Q. You discovered that after the inquiry was over?

A. Yes, just when I filed this action.

Q. You say that that disqualified him from being a member of the commission?

A. Yes.

Q. Why is that?

A. Because he is not a member of the Board of Examiners and he should not know the marks.

Q. Therefore he would have been disqualified from being a member of the commission?

30

A. Yes.

Q. Then only members of the Board of Examiners should know the marks?

A. Yes.

Q. And therefore only they could be on the Board?

A. Yes.

Q. Not outsiders?

A. No. My position is that an outsider cannot be on the Board of Inquiry.

10 Q. A member of the Board of Examiners would be entitled to know the marks?

A. Yes.

Q. And therefore it would not be a disqualification for him to be on the Board?

A. No.

Q. Mr. Keuneman being an outsider he should not be on the Board?

20 A. Yes because he would come to know the marks and according to the Act, he should not be on the commission. According to the Act anyone who is not a member of the Board of Examiners or the Senate should not know the marks and therefore as Mr. Keuneman was a member of neither he was disqualified from being a member of the commission.

(P9 is read out to witness).

30 Q. P9 states that the Vice-Chancellor had already informed Professor Fernando that the Vice-Chancellor was willing to allow Professor Fernando to read the report in the Vice-Chancellor's office and to pass to you a gist of it?

A. That is what the letter says.

Q. On reading the letter, did you not ask Professor Fernando, "Look here, did the Vice-Chancellor make such an offer to permit you to see the report in his office"?

A. No, I did not ask him.

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E.F.W.Fernando,  
Cross-  
Examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

Q. The Vice-Chancellor also says that since Professor Fernando has not availed himself of the opportunity, he is sending you a copy of the report. Did you ask Professor Fernando why he had not availed himself of the opportunity that the Vice-Chancellor had given him to see the report?

A. I did not ask him anything.

Q. At no stage have you asked Professor Fernando; even long after the inquiry and report was sent to you?

10

A. No.

Q. You have never up-to-date asked him whether the Vice-Chancellor had offered to show him the report?

A. No.

Q. Nor have you asked him why he did not make use of the opportunity to see the report?

A. No.

Q. Up-to-date you have not?

20

A. No.

Q. He has not interested himself in this matter up-to-date?

A. No, I do not know.

Q. Has he been attending consultations between yourselves and your lawyers?

A. Yesterday he was in consultation with my Senior Counsel.

Q. Were you present or not?

A. I was present.

30

Q. Was that the first time that he attended consultation between yourself and your lawyers?

A. Yes.

Q. Is he present in Court today?

A. Yes.

Q. Was he in attendance in Court on the 24th of March?

A. Yes.

Q. Is he giving evidence for you?

A. I do not know. It is left to my lawyers.

Q. Did Professor Fernando interest himself on your behalf on or about the time you were suspended from sitting for further examinations?

10 A. No.

Q. In no shape or form?

A. No.

Q. Never spoke to you or asked you about it or discussed about it?

A. No.

Q. Did you discuss about it with him?

A. No.

Q. Or speak to him about the matter at all?

A. No, never.

20 Q. When you were asked to attend the inquiry which was held by the three gentlemen, did you see Professor Fernando?

A. When the inquiry was held by the three commissioners I did not see Professor Fernando at the inquiry.

Q. Did you tell him that you had been summoned to be present?

A. No.

30 Q. You told Court on the previous trial dates that on one of the occasions when you attended the inquiry, you saw Miss Silva?

A. Yes.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

Q. And Mr. C.H. Fernando?

A. Yes.

Q. And Mr. Morell?

A. Yes.

Q. And Mr. Indrasena?

A. Yes.

Q. You saw them entering the room where the commis-  
sioners were whilst you were outside?

A. I was seated outside the room where the inquiry  
was being held.

10

Q. And you saw whom?

A. I saw the persons whom I have mentioned being  
called one by one and I saw them leaving one by  
one.

Q. Did you see Professor Fernando being called at  
any time?

A. No.

Q. Did you give your lawyers instructions for the  
drafting of the interrogatories which have been  
served in this case for answer by the Vice-  
Chancellor?

20

A. I placed all the facts before my lawyers and  
they took the necessary steps.

Q. Did you tell them that the evidence of Professor  
Fernando had been taken by the Vice-Chancellor  
alone?

A. No.

(Interrogatory No. 3 put to witness. Objected  
to).

Q. Did you see any of these interrogatories?

30

A. After it was drafted I saw them.

(Shown interrogatory No. 3 from the record).

Q. You remember seeing that interrogatory after it was drafted? In the District Court of Colombo

A. Yes.

Q. Did you give instructions for that interrogatory? Plaintiff's Evidence

A. I did not give any particular instructions. I placed all the information before my lawyers and they drafted the interrogatories.

No. 7

E.F.W.Fernando,  
Cross-  
Examination -  
continued.

10

Q. Did you tell them that the evidence of Professor Fernando had been taken by the Vice-Chancellor alone on one occasion?

A. No.

(Report P11 shown to witness).

Q. Did you read through the report that had been sent to you?

A. Yes.

(Paragraph 7 of report P11 shown to witness).

Q. Is there any reference in the report other than what I have read out to you to suggest that Professor Fernando had given evidence alone?

20

A. I do not know. I cannot remember the report fully now.

Q. Certainly you have not given those instructions to your lawyers?

A. I produced all the documents before my lawyers and instructed them.

Q. (Shown a letter marked D.3). Is this in your handwriting?

A. Yes.

Re-examined

Re-  
examination.

30

Q. You sat for an examination?

A. Yes.

Q. You were written to by the Vice-Chancellor and you went before three persons and answered questions?



In the District  
Court of  
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Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Re-examination -  
continued.

A. Yes. Those three persons were the commissioners appointed by the Vice-Chancellor.

Q. You were ultimately informed that the Board of Residence and Discipline had suspended you indefinitely?

A. Yes.

Q. With regard to the incidents concerned in this matter have you placed your facts before your lawyers?

A. No.

10

Q. Have you placed your facts before your lawyers?

A. Between the date of the examination and the date of the suspension I did not place my facts before the lawyers.

Q. No, for the purpose of this case did you place your facts before your lawyers?

A. Yes.

Q. You have testified to certain facts before Court?

A. Yes.

20

Q. You swear that those facts are correct?

A. Yes.

Q. So far as legal rights are concerned, are those matters of which you have an understanding?

A. No.

Q. You said that you became aware that the Vice-Chancellor was the person who had to be satisfied; when did you become aware of that fact?

A. After I mentioned my case to my lawyers.

Q. Thereafter a number of letters have passed between you and the University authorities?

30

A. Yes.

Q. Did you write them yourself or were they drafted for you?

A. They were drafted by my lawyers.

Q. You have been asked a number of questions about Professor Fernando and the relationship between Professor Fernando and yourself and whether you had access to his library, and so forth?

A. Yes.

Q. You draw the Court's attention to paragraph 12 of report P11?

A. Yes.

10 (To Court: Q. For a first division how many marks should you get?

A. I do not know exactly.

Q. How is the marking done; by letters of the alphabet or by numbers?

A. I do not know the system of marking).

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 7

E.F.W.Fernando,  
Re-examination -  
continued.

No. 8

EVIDENCE OF DR. HILARY CRUZE

No. 8

Dr. H. Cruze,  
Examination.

Dr. Hilary Cruze: Sworn.

Lecturer in Zoology in University of Ceylon.

20 Q. You are the lecturer in the subject of Zoology in the University of Ceylon?

A. Yes.

Q. You have been functioning as lecturer since what date?

A. Since 1949 after my return from England.

Q. You were I believe a student of the University of Ceylon?

A. Yes.

Q. And you obtained an Honours degree in Zoology?

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Examination -  
continued.

A. Yes, a London degree while the examination was being held by the London University; I got a second class.

Q. Nobody got a first class in Zoology when the London University was conducting the examination?

A. No.

Q. After you got the degree did you function in any other capacity?

A. Yes, I came on to the staff immediately as Demonstrator and Assistant Lecturer. I obtained a Scholarship while I was Assistant Lecturer and thereafter I came as Lecturer on Zoology. 10

Q. So far as the plaintiff in this case was concerned at the time he was getting ready for the final examination was he doing any work?

A. He was Demonstrator under me for M.B. students.

Q. Prior to that did he work?

A. Under me as a student. 20

Q. When?

A. From 1949 to 1952 he was in the department.

Q. Apart from knowing him you had occasion to be able to notice his abilities?

A. Yes.

Q. What was the opinion you had formed about his abilities?

(Mr. Choksy objects to this question. The opinion of any particular lecturer on the capacity or otherwise of this plaintiff is not relevant at this present inquiry. Secondly, this evidence is not relevant because the only question is whether or not the Vice-Chancellor was satisfied that the plaintiff had prior knowledge of certain questions in the German paper. 30

Mr. Wikramanayake says this Court has to decide whether the principles of natural justice had

been meted out in the case of the plaintiff. Further the plaintiff has been cross-examined on the basis that he was incompetent and therefore tried to be dishonest. This witness has had the opportunity of testing the ability of plaintiff and he is competent to form an opinion. Therefore his opinion is relevant. I allow the question to be put).

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Examination -  
continued.

- A. He was a brilliant student.
- 10 Q. What do you mean by brilliant student.
- A. He was a first class student.
- Q. What could he have got?
- A. As far as the final examination was concerned I cannot say, but so far as the particular paper was concerned he was of the first class.
- Q. He was a Demonstrator in the University?
- A. Yes.
- Q. What were his functions as a Demonstrator?
- A. He had to instruct the students.
- 20 Q. Did you have an opportunity of testing his knowledge?
- A. Yes.
- Q. Those students to whom he gave instructions came to you?
- A. Yes.
- Q. And with those instructions you formed the opinion that the plaintiff was efficient?
- A. Yes.
- 30 Q. You know that the plaintiff was doing research work?
- A. Yes.
- Q. A number of students have gone through your hands in the University?
- A. Yes.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Examination -  
continued.

Q. In relation to the other students, how do you compare this plaintiff with the others?

A. He was the best in the batch of that particular year.

Q. With regard to the other batches, did he compare well with them too?

A. Yes.

Q. What was your special subject?

A. Parasitology.

Q. Has the plaintiff come to you and discussed matters with regard to this subject? 10

A. Yes.

Q. In the course of discussions, were journals referred to?

A. Yes.

Q. What journals?

A. Journals relating to the particular subject.

Q. In what language?

A. In English and German.

Q. Relating to this particular incident, when was it that you first became aware of the fact that an inquiry or investigation was going on? 20

A. I received a telephone call from the Secretary to the Vice-Chancellor asking me to come to the Vice-Chancellor's office in the morning.

Q. Did you go?

A. Yes.

Q. At the time you went did you know that it was relating to any investigations in regard to this plaintiff? 30

A. No.

Q. When you went there, who was present?

A. The Vice-Chancellor.

Q. Was there anybody else present?

A. No.

Q. What did the Vice-Chancellor tell you?

10 A. When I went there I did not know what it was about. I had a certain thing at the back of my mind and I asked him whether it was about that, that he sent for me. He said that it was not about that and he then brought up this matter and said that there had been a leakage of questions in the German paper and he took out a book from the drawer and showed it to me.

Q. What did he ask you about that exercise book?

20 A. It was shown to me and he asked me whether I had seen the book. I looked at the book and said that I had seen it. Then he asked me to turn the pages. I looked at two or three pages and found there were some notes on Psychology, more on Botony than on Zoology. Then he took the book from me, turned to the middle and showed it to me.

Q. What was there in the middle of the book?

A. On the right I saw a drawing and then there was a correction. I identified the correction as one made by me.

Q. Did you tell the Vice-Chancellor that it was one of your corrections?

A. Yes.

Q. What did he tell you then?

30 A. He was taken aback. Then he said, "Oh, you see, we have gone into this matter very carefully and the case is stronger against the plaintiff." I told him that I did not come to decide about that. I told him that that correction was mine and if he had any doubts about it that he could give it to a handwriting expert and settle the matter.

Q. As to his findings you were not concerned?

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Examination -  
continued.

A. No.

Q. What was there that helped you to identify it as your drawing,

A. That was a drawing by this student and I had stated "going on" which is a famous correction of mine.

Q. What was indicated in that drawing was written in pencil?

A. Yes.

Q. Did you also say that apart from the hand-writing you were also able to recognise it?

10

A. Yes.

Q. You made it perfectly clear to the Vice-Chancellor with those words you have mentioned now?

A. Yes, there was no doubt in my mind about it.

Q. Did you have further discussions with the Vice-Chancellor on that day with regard to this student?

A. No.

Q. Did you refer to the student's capabilities on that day?

20

A. Yes. He told me, "Well, you know this student is not a very bright student". I told him that it was not so and I considered him to be a brilliant student.

Q. There was only the Vice-Chancellor present at that time?

A. Yes.

Q. Did he make any reference on that day to his relationship to Professor Fernando?

30

A. Earlier, when he introduced the case to me. I said that plaintiff was related to Professor Fernando and that I knew about it. I said that I was very sorry to hear about this but that the plaintiff was a brilliant student. Then

he asked me why I said that. I told him that it was so much an embarrassment to our Professor but that the plaintiff was also brilliant and that he had had a hard time.

In the District  
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Q. In that Faculty had there been a certain degree of want of harmony amongst the staff?

Plaintiff's  
Evidence

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A. To be very frank it is in a very bad condition.

No. 8

Q. You mean the state of feeling?

Dr. H. Cruze,  
Examination -  
continued.

A. Yes.

10 Q. The Professor is Mr. Fernando?

A. Yes.

Q. The lecturer is Mr. Keerthisinghe?

A. Yes.

Q. Have they been on speaking terms for the last 20 years?

(Question objected to).

Q. Have you associated with them on the same staff?

A. Yes.

20 Q. To your knowledge have they been on speaking terms for the last 20 years?

A. On speaking terms on matters connected with business. But I know their relationship. It is far from desired.

Q. What do you mean "far from desired"?

A. There is enmity between the two.

Q. It was known as a fact that an Assistant Lectureship was possible in the event of a student getting a First Class at the time. Was it known to the students?

30 A. Yes.

(Paragraph 7 of P11 read to witness).



In the District  
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Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Examination -  
continued.

Cross-  
examination.

- Q. Did you say that the words looked like yours?
- A. No, I said that it was definitely mine and I even challenged him to find it out through a handwriting expert.

Cross-examined

- Q. You said that the plaintiff was the best of the particular batch?
- A. Yes.
- Q. Of which batch?
- A. That is the batch that sat for the examination in 1952. 10
- Q. And the paper on Zoology on which an inquiry was held?
- A. Yes.
- Q. Only three sat?
- A. Yes, C.H. Fernando, Miss Balasingham and this plaintiff. I think there was a second year student also.
- Q. Did you lecture to those students in German?
- A. No. 20
- Q. It was Mr. Keerthisinghe who did that?
- A. Yes.
- Q. And he was the person who could teach a class in German?
- A. Yes.
- Q. They consisted of one hour a week?

A. Yes.

Q. You yourself had nothing to do with the teaching of students in German required for Zoology?

A. Not formal teaching, but they used to come to me with their difficulties.

Q. Do you say that they would come to you and not go to the person who taught them German for Zoology?

A. I say that.

10 Q. What reason is there for that?

A. There are times when I had corrected the German passage.

Q. When was that?

A. Sometime long ago.

Q. Like what?

20 A. I mean that I had seen the passage that had been written on the board. I found mistakes in it and corrected them. But not during the particular class. The passage that is put on the board is not wiped off immediately and I have an opportunity of seeing it, and if there is any error I go and correct it.

Q. You referred to the state of feelings that have prevailed amongst the members of the staff in this particular Faculty. Does this observation apply to the feelings between you and Mr. Keerthisinghe?

A. No.

30 Q. Do you say that the two of you have been on very cordial terms?

A. I would not say very cordial but we get on well.

Q. That is to say, as Professor Fernando and Mr. Keerthisinghe got on in regard to their business matters, so do you also with Mr. Keethisinghe in regard to business matters?

In the District  
Court of  
Colombo

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Plaintiff's  
Evidence

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No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued.

A. I would not say that; there was better feeling between us and we had no fights as they used to have.

Q. Who are this 'they'?

A. Professor Fernando and Mr. Keerthisinghe; unfortunately I have to mention this because it happened in my presence.

Q. They exchanged words?

A. Yes.

Q. Would it be correct to say that the feelings between yourself and Mr. Keerthisinghe were not cordial? 10

A. I would not say that.

Q. All that you could say is that you two got on well in regard to business?

A. Yes, of course. We had very little business between ourselves. Professor Fernando being the head of the department had more business with Mr. Keerthisinghe than I had.

Q. Of course the talks between Mr. Keerthisinghe and you were fewer? 20

A. Fewer than between Professor Fernando and Mr. Keerthisinghe.

Q. And the feelings between you and Professor Fernando, were they very much better?

A. Oh yes, they have been very cordial.

Q. As far as actual teaching of German is concerned would it be correct to say that the lectures in German consist entirely of passages written on the blackboard for translation? 30

Q. Is that how it is done?

A. That is not what I would do.

Q. What is it that is done by Mr. Keerthisinghe?

A. I do not sit through any lecture of his, but I used to see the passage on the board.

- Q. Can you say whether the lectures consisted of anything more than German passages written on the blackboard for translation?
- A. It may have formed part of it.
- Q. Do you know what the lectures consist of?
- A. I have not sat through a lecture of his. One thing I am certain of, and that is, there is a passage dealt with at the lecture.
- Q. What other thing is done at the lecture?
- 10 A. I do not know.
- Q. If you see a mistake in the passage on the blackboard, what is it that you do?
- A. I correct it.
- Q. In the presence of the students?
- A. I do it for the students.
- Q. That is not any of your duties?
- A. It is part of the duties to correct passages that students may learn in the course of their studies.
- 20 Q. You go and correct passages that are on the blackboard?
- A. Yes, whenever there is a glaring mistake I point it out to the students.
- Q. Did you point it out in the first instance to Mr. Keerthisinghe?
- A. No.
- Q. Is it not that courtesy requires that you must mentioned it to Mr.Keerthisinghe?
- A. No.
- 30 Q. Is it because of the fact that cordiality does not exist between you and Mr. Keerthisinghe?
- A. No, it is not that fact.

In the District  
Court of  
Colombo

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Plaintiff's  
Evidence

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No. 8

Dr. H. Cruze,  
Cross-  
Examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued.

- Q. Why, is it not that?
- A. I admit that it may have been a fault on my part not to have mentioned it to Mr. Keerthisinghe.
- Q. You admit that it was your duty to draw the attention of Mr. Keerthisinghe to it?
- A. I do, and I would be guided by it in the future.
- Q. Can you say the number of occasions that you have corrected these passages without pointing it out to Mr. Keerthisinghe?
- A. I cannot exactly remember the number but it must have been done on about 2 or 3 occasions during the course of about 2 or 3 years from 1952 backwards. 10
- Q. Mr. Keerthisinghe is not in the Island now?
- A. No, he is not.
- Q. He left since the last date?
- A. Yes.
- Q. It is a German text passage that he had put on the board?
- A. Yes from some text book. 20
- Q. Could it be that the mistake is in the text book itself?
- A. Yes, it is probably that. No, it is more probable that the mistake is by the person who wrote it than the text book. There are times when the text book also has a number of mistakes.
- Q. And it may be a mistake in the transcription of the passage?
- A. Yes, it may well be that.
- Q. Can you tell us what you corrected on the three occasions? 30
- A. I am very sorry, I cannot remember that.
- Q. Would you tell Court the nature of the mistakes?

- A. Sometimes, mis-spelling of the words is very common.
- Q. Do you tell Court that if you found a word misspelt, you called out to the students and told them that this is a mistake and asked them to correct it?
- A. Yes, that is a natural thing and I would have done it. Now I cannot recollect the exact words. For instance he may use the word "k" for "ch".
- Q. Would say that it is a very serious mistake?
- A. I think so.
- Q. Did you at any time verify from the text-book whether any of those words appeared in the text-book?
- A. I had no need to do that because I was confident of the mistakes from the nature of the German.
- Q. Did you take the trouble to verify these mistakes at any time, perhaps from a dictionary?
- A. Yes, but I am very sorry I cannot tell you the words.
- Q. To the best of your recollection you never verified or checked up whether it was a mistake from Mr. Keerthisinghe or from the text-book?
- A. In order to impress on the student I must have done it but I cannot tell you now what actually happened on all those three occasions.
- Q. Did you on any such occasions make an effort to find out whether it was the mistake of Mr. Keerthisinghe or of the text-book and tell the students whose mistake it was?
- A. I told the students what the mistake was and I must have verified from the dictionary but I cannot remember it now.
- Q. Your correcting the mistake would have given the impression that it was a mistake of Mr. Keerthisinghe?
- A. Not necessarily; I would not put it at that.

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Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued.

Q. Correcting the mistake without finding the source of the mistake, you would have given the impression that it was Mr. Keerthisinghe who was wrong?

A. No, I would not say that.

Q. You saw what appeared to be a mistake on the blackboard and you proceeded to correct it?

A. Yes.

Q. Without verifying from the text-book whether it was a mistake or not?

10

A. There are certain things which need not be verified from the text-book. I did not check up from the text book because I was so sure of it.

Q. Did you put it down in your own mind to the ignorance of the person teaching German or a slip?

A. It is difficult to say which it was.

Q. You did not give your mind to that at all?

A. No.

Q. And was that the reason for the students starting to come to you?

20

A. Probably.

Q. Did you know whether they went to Mr. Keerthisinghe or not?

A. That I did not know.

Q. You did not ask them?

A. No.

Q. At the time you were called by the Vice-Chancellor you did not know that the inquiry was relating to this matter?

A. No. But after the discussion he had with me to the effect that there was a German paper and the question of some words being found in a book and that the book was produced by the plaintiff and then he pulled out the book and showed it to me. I cannot remember the actual sequence now.

30

- Q. Was in clear to your mind then that investigations were being conducted with regard to an alleged leakage of the question in Zoology paper?
- A. Yes, I got that impression after the conversation.
- Q. Is it correct that you were questioned only on one occasion?
- A. Yes.
- 10 Q. And in the course of that questioning it became clear to you that investigations were going on?
- A. Yes.
- Q. Before that you did not know anything?
- A. Yes.
- Q. That investigations were going on in regard to an alleged leakage of the question paper in German?
- A. Yes, before I left the Vice-Chancellor.
- 20 Q. And after that you presumed that what was being investigated was in regard to the alleged leakage of this German question from this particular Zoology paper?
- A. Yes.
- Q. And the exercise book was shown to you by the Vice-Chancellor as one produced by the plaintiff?
- A. Yes.
- Q. That was clear to you also?
- A. Yes.
- 30 Q. Before you went to that inquiry you did not know what was going to be asked of you?
- A. No.
- Q. It was at the investigations for the first time that this drawing was put to you and you were questioned whether you had seen that before and

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Colombo

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Plaintiff's  
Evidence

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No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued.



In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued.

whether you had made any corrections on it?

A. Yes.

Q. It is likely that the first moment it was shown to you, you would have not had a recollection of it?

A. Yes, I had to examine it to verify whether I had made the correction or not.

Q. Only then you were certain whether it was yours or not?

A. Yes.

10

Q. Once you examined it carefully you were satisfied that it was a very drawing you had corrected?

A. Yes.

Q. You referred to an assistant lectureship: Was there a vacancy in respect of the assistant lectureship at or about the time that this particular examination was held?

A. Yes.

Q. It had remained vacant for sometime before the examination?

20

A. Yes long before.

Q. About how many months?

A. About a year, because I remember it was offered to every First Class Student but they rejected it.

Q. As far as you were aware the post was still vacant at the time of this examination?

A. Yes.

Q. In fact the post was not filled at all?

30

A. No.

Q. Up to now it has not been filled?

A. No.

Q. You said that when you went to the inquiry you were under the impression that you were being summoned about something which you had at the back of your mind. Could you tell us what it was?

In the District  
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Plaintiff's  
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No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued,

10 A. There was another first year student. He came to me after the first year examination and told me that he had applied for the dental post. Those who come down in the First M.B. could take up the dental course. Then I asked him whether he was the person who had written that funny letter to the Faculty of Science. He had apparently gone to another lecturer and he had told this to him and I came to know about it.

Q. Was it in regard to any leakage?

A. No.

Q. Was it about the conduct of any student?

A. Now I cannot remember it.

20 (To Court: I had something that was really at the back of my mind and I thought he was calling me to ask about it. He never opened the subject at once and he kept me guessing.)

Q. Did the Vice-Chancellor at all broach this matter which you had at the back of your mind?

A. At the end I broached this question. As soon as I went in I told him that I came because I knew for what I was being called and I told him what it was at the back of my mind.

30 Q. You mentioned to him one matter but the Vice-Chancellor did not pursue that matter?

A. Yes, he said that it was not about that and started about this matter.

Q. So that what you had at the back of your mind was not the question put to you?

A. No.

Q. So you knew that you were under a misapprehension as to why you had been called?

A. Yes.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Cross-  
examination -  
continued.

Q. In the course of the first few minutes he made it quite clear to you why he had asked you to come?

A. No, but it was becoming clear as he was progressing.

Q. Have you yourself been a lecturer of the plaintiff?

A. Not a lecturer. But I have been supervising his practical classes in regard to Zoology; they had their discussions under me and I have tested their knowledge.

10

Q. So you were concerned with his progress?

A. Yes.

Q. Did you test his knowledge?

A. Yes.

Q. Apart from that you had nothing to do with Zoology in the First Year Class?

A. He was a Demonstrator under me.

Q. But as regards the Second Year class you were supervising his practical class?

20

A. Yes, they were coming to me right through till the end of their course.

Re-  
examination.

Re-examined

Q. Before you were satisfied about the drawing in the exercise book did you tell anything to the Vice-Chancellor?

A. No.

Q. What is the first thing you told him?

A. I looked at the drawing and told him that that was a correction made by me.

30

Q. Did you express any doubt about the correction at any time?

A. No.

Q. Was there any matter you thought you had been blameworthy?

A. Yes, that is why I had that at the back of my mind.

Q. You told Court that you had asked the student whether it was he who wrote that letter?

A. Yes.

Q. What is the German word for "to live"?

A. Leber.

10 Q. "To love"?

A. Leeber.

Q. What is the German word for "time"?

A. Zeit.

Q. What is "Seit"? It has the same pronunciation?

A. It does not have the same pronunciation. Z is pronounced like TS and S is pronounced like Z.

Q. What is the meaning of the word "Seit"?

A. It means site.

Q. So that spelling does make a difference?

20 A. Yes.

Q. Was it known among the students that you were proficient in German?

A. Yes, the students came to me.

Q. You told us that the plaintiff has had a hard time because he was the Professor's nephew?

A. Yes.

Q. You also told us that enmity was heavier between Professor Fernando and Mr. Keerthisinghe?

A. Yes.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Re-  
examination -  
continued.

In the District  
Court of  
Colombo

Plaintiff's  
Evidence

No. 8

Dr. H. Cruze,  
Re-  
examination -  
continued.

Q. You said that so far as you were concerned there was not so much lack of cordiality with Mr. Keerthisinghe?

A. Yes, he was the lecturer and I was under him.

Q. He being the senior resents when students come to you?

A. Yes.

Q. Professor Fernando obtained his Second Class in Ceylon and then he went to England?

A. Yes. 10

Q. The job that Professor Fernando does, was he holding the post while he was away in England?

A. Yes.

Q. Was he appointed before he went on the scholarship?

A. Yes.

Q. Do you know whether Mr. Keerthisinghe was acting while Professor Fernando was away?

A. I think he did.

Q. Anyway you know for certain that there is ill-feeling between them? 20

A. That is what I find.

Q. Under these circumstances will you explain why the plaintiff came to you with these difficulties in German rather than go to Mr. Keerthisinghe?

A. He had many reasons. One was this enmity. The other was that I was more helpful.

Q. For this German passage how many marks are allotted?

(Question objected to - allowed). 30

A. Ten.

Q. Were the students aware about it?

A. I told the students. As a matter of obligation I did it.

Cross-examined with permission.

In the District  
Court of  
Colombo

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Q. Were you an examiner for this passage in  
Zoology?

A. Yes.

Plaintiff's  
Evidence

---

Q. Do you say it is a correct thing for an examiner  
to tell the students what the marks are? What  
are the marks you mentioned to students?

No. 8

A. In the paper itself we say now that the marks  
allotted are 90 and 10 for German.

Dr. H. Cruze,  
Further Cross-  
examination.

10 Q. You say it is a correct thing to disclose the  
marks?

A. Yes.

Q. They are not marked on the paper?

A. Yes, they are.

(To Court: Q. Do you know the text-book from  
which those words have been taken  
from?

A. Yes I can remember it.)

20 Q. How many such books were available in Ceylon  
at that time?

A. I cannot tell you that.

Q. Was that the only book available.

A. I cannot tell you that.

Q. Does the Museum library have that book?

A. I cannot tell you that.

Q. Have you seen that book from which this parti-  
cular passage has been set?

A. I saw it when I was drafting the paper. I was  
one of the examiners.

30 Q. Is that the first time that you saw that book?

A. Yes.

In the District  
Court of  
Colombo

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Plaintiff's  
Evidence

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No. 8

Dr. H. Cruze,  
Further Cross-  
examination -  
continued.

- Q. As far as your knowledge goes, were there any copies of that book in Ceylon at that time?
- A. I could not say that,
- Q. What kind of an exercise book is it?
- A. It is a normal exercise book: there were no graphs. I think the paper in this book was unruled.
- Q. This page that was opened to you was in the middle of the book?
- A. The drawing was on the right hand middle sheet. 10
- Q. Was it stitched or was it fastened?
- A. It was stitched.
- Q. As far as you can recollect how many such drawings did you see in that book?
- A. I saw that one only.
- Q. Were there any notes in that book?
- A. There were notes in the first three to five pages.
- Q. The cover of it, did it appear to have been handled? 20
- A. It did not strike me anything as extraordinary.
- Q. But for these 5 or 6 pages, the rest were blank?
- A. That is right, it was a blank book.
- Q. Did it appear to you that it had been a book much used?
- A. It had been a used book. The Vice-Chancellor told me that it was a complete book.
- Q. When he first handed the book to you, did he ask you to do anything?
- A. No, he gave the book and asked me whether I had seen it before. 30

Q. Did you see the name of the plaintiff in the cover of the book?

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A. I cannot recollect it.

Q. Your corrections were in pencil?

Plaintiff's Evidence

A. Yes.

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Q. Were the pages numbered?

Dr. H. Cruze, Further Cross-examination - continued.

A. No.

Q. The rest of the page on the right hand side were all blank?

10 A. Yes.

Q. What was written on the earlier pages?

A. Notes on psychology: there were more probably notes on botany lectures.

Re-examined

Further Re-examination.

Q. Did he tell you anything more about this exercise book?

20 A. Yes, he told me that he had investigated from the Co-operative Store of the University where this exercise book had been bought, and he gave me a date saying that the book had been manufactured then.

No. 9

Defendant's Evidence

EVIDENCE OF SIR IVOR JENNINGS

No. 9

Sir Ivor Jennings: Sworn.

Sir Ivor Jennings, Examination.

30 I am a Barrister-at-law and a Queen's Counsel. I am Vice-Chancellor of the University of Ceylon since 1942. I have written a number of books on constitutional law of Ceylon and on various aspects of local government. I am also a member of the Board of Examiners. I am the ex-officio chairman of the board of examiners of the University of



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Defendant's  
Evidence

No. 9

Sir Ivor  
Jennings,  
Examination -  
continued.

Ceylon. I am the ex-officio chairman of the Board of Scrutiny. I am the ex-officio chairman of the Board of Residence and Discipline.

In connection with this particular examination I received certain information.

Q. What action did you take upon the information being received?

A. I consulted the Dean of the Faculty of Science as soon as it was found that that Faculty was involved.

10

Q. In connection with that information received, did that information relate to this plaintiff?

A. Yes.

Q. What was the nature of the information received?

A. To the effect that he had prior knowledge of certain questions relating to the examination in Zoology, section B.

Q. To what particular matter in the paper did that relate?

A. It related at that stage to paper 5, the German questions.

20

Q. That is the paper on Zoology?

A. That is one of them.

Q. You put that matter before the Dean of the Faculty of Science?

A. Yes. He is Professor Mylvagnam.

Q. And what did you do thereafter?

A. It was decided to hold an inquiry and that we should associate ourselves with one of the lawyers of the council at the inquiry.

30

Q. Why was it that an inquiry was considered necessary?

A. Because the allegation was that he was a relation of a member of the University staff. It

was a matter for me as Vice-Chancellor to consider whether an inquiry was necessary or not, but since there was an allegation made by a member of the staff I thought it was absolutely necessary that an inquiry should be held. Further I had to be satisfied that any knowledge or substance of the question had gone to the student.

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Evidence

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Sir Ivor  
Jennings,  
Examination -  
continued.

- 10 (Clause 8 at page 159 of D.1 read out to witness).
- Q. Is that one of your functions under the University Act?
- A. Yes.
- Q. You decided upon holding an investigation under the relevant clause referred to?
- A. Yes.
- Q. Whom did you associate with yourself?
- A. Mr. A.E. Keuneman who is a member of the University Council and the Dean of the Faculty of Science, Professor Mylvagnam.
- 20 Q. What then did you proceed to do?
- A. I had already obtained a formal statement from Mr. Sivapragasapillai as regards the information that he had received.
- Q. Who is Mr. Sivapragasapillai?
- A. He is the lecturer in Civil Engineering.
- Q. So then what did you proceed to do?
- A. I had summoned Miss Balasingham, Mr. Keerthisinghe and the plaintiff.
- 30 Q. What was the object in summoning them?
- A. I did so because Miss Balasingham is said to have made the complaint to Mr. Sivapragasapillai against the plaintiff and the examiner concerned was Mr. Keerthisinghe who had already seen me in connection with this matter.

In the District  
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Defendant's  
Evidence

No. 9

Sir Ivor  
Jennings  
Examination -  
continued.

- Q. Who was it that set that particular paper in which these German questions appeared?
- A. Professor Fernando, Mr. Keerthisinghe and Dr. Cruze.
- Q. Who was it that set the German passage?
- A. Professor Fernando and Mr. Keerthisinghe.
- Q. Who had selected the passage?
- A. Professor Fernando and approved by Mr. Keerthisinghe.
- A. From where had he taken it? 10
- A. From a book supplied by Professor Fernando.
- Q. Who came up first at the inquiry?
- A. Miss Balasingham.
- Q. She was examined?
- A. Yes.
- Q. Questions were put to her? By whom?
- A. Yes, by Mr. Keuneman.
- Q. What were your reasons for associating Mr. Keuneman in these investigations?
- A. There were two reasons. One was, it was an extremely serious allegation which was likely to affect the reputation of the University. It was an allegation made against the University as well as the plaintiff because it was alleged that there was obviously a leakage from the University and I felt that the public must be satisfied and an inquiry must be held, and further if it was shown that there had been a leakage from the University it would have been my duty to make a report on it to the University Council for disciplinary action. 20 30
- Q. What were your reasons for including Professor Mylvaganam?
- A. He is the Dean of that Faculty and he is always

consulted on matters dealing with that faculty and I would have consulted him even if I had inquired into this matter alone because it was his faculty and I considered it my duty.

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Q. Who was next questioned after Miss Balasingham?

Defendant's  
Evidence

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A. I think it was Mr. Keerthisinghe. I cannot remember the order now. I think Mr. Fernando was questioned third.

No. 9

10 Q. What was the manner in which this inquiry was conducted?

Sir Ivor  
Jennings,  
Examination -  
continued.

A. Most of the questions were asked by Mr. Keuneman. I asked him to hold the inquiry. I sat back and listened and watched the witnesses. Occasionally Professor Mylvaganam or I asked questions. Generally speaking I had very little say because I was watching to find out how the witnesses behaved and tried to form my opinion because I was the person that had to be satisfied.

20 Q. So that ultimately the responsibility was yours?

A. Yes.

Q. How was the inquiry conducted?

A. As far as I can remember Mr. Keuneman said that we had received certain information from Miss..

(Evidence objected to as Miss Balasingham is not called).

Q. Were questions put in regard to that allegation?

A. Yes.

30 Q. And questions put to witnesses in regard to matters.....

(Question objected to on the same ground).

Q. What exactly was the procedure followed?

A. Mr. Keuneman put questions to the witnesses and immediately followed the answers with further questions. Wherever the answers were not clear I put questions to clear up the answer. Occasionally Professor Mylvaganam too put questions..

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Sir Ivor  
Jennings,  
Examination -  
continued.

Q. Did the witnesses answer questions put to them?

A. Yes.

Q. Were they made comfortable in the inquiry room?

A. Yes. The plaintiff however was not comfortable because he was being accused. He was given every opportunity at the inquiry. In fact we wanted him to talk but he would not do it. We told him that certain allegations had been made against him by Miss Balasingham. My job was to find out whether this allegation was justified or not and we were anxious for him to place his version.

10

Q. And did he state his story?

A. Yes.

Q. He says that he was not given a chance of answering questions fully. Is that true?

A. That is quite untrue.

Q. And that he was flooded with questions?

A. That is quite untrue because Mr. Keuneman himself was leading at the inquiry and the plaintiff was given every opportunity to answer the questions. Whenever answers given to him were not clear either I or Professor Mylvaganam asked further questions.

20

Q. Was he given an opportunity to think out the answers?

A. Yes, certainly.

(Evidence of plaintiff at page 9 is read out to witness).

Q. Is it correct to say that before he answered the first question he was put another question?

30

A. That is not correct. There were instances when he evaded answering questions put to him and we had to insist on his answering that question over and over again.

Q. Who else was questioned?

A. On the first day nobody else. On the second day Professor Fernando was questioned.

Q. On the second day did Professor Fernando come before the three of you?

10 A. Yes, he was questioned and thereafter we went with him across to his laborarory in order to see the lay-out of his Office, where the book from which the passage was taken was kept and where the research laboratory of the Zoology was, because it was there, according to Miss Balasingham, that the copying from the plaintiff's book had taken place and we wanted to know what had happened so that it may help us. All three of us went there.

Q. That book from where these questions were taken; did he show where it was kept?

A. That was kept in Professor Fernando's drawer.

Q. Did he show the drawer there?

20 A. Yes. I was satisfied that the drawer was locked and he showed me the key.

Q. Why did you three go to the Research laboratory?

A. We went there because, according to Miss Balasingham, it was there that she had copied all the German words from plaintiff's book into her book. The copying was done by her and she admitted it.

Q. You saw the place where it was done?

A. Yes, so that we could ask her further questions when we saw her again.

30 Q. Did you have with you the book into which those words had been copied?

A. Yes, we had it in the first meeting.

Q. Was it shown to the plaintiff?

A. Yes, it was shown to him at the third meeting. No, I am sorry it was shown to him at the first meeting.

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Defendant's  
Evidence

No. 9

Sir Ivor  
Jennings,  
Examination -  
continued.

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Defendant's  
Evidence

No. 9

Sir Ivor  
Jennings,  
Examination -  
continued.

- Q. And was he questioned in regard to those words?
- A. Yes, he was shown a marked copy of the German question paper with the ten words underlined - the nine words which appeared in Miss Balasingham's book plus the other word which Miss Balasingham said she remembered to have seen in the plaintiff's book, namely Zitronensaft.
- Q. According to Miss Balasingham that was the word she omitted?
- A. That was one of the last words she had omitted. 10
- Q. As far as the book was concerned there were 9 words in it?
- A. Yes.
- Q. Those nine words were underlined in the paper?
- A. Yes.
- Q. Was the plaintiff shown that paper and the book?
- A. Yes, his attention was drawn to the fact that the words appearing in the book were the same as those words underlined in the paper. He was asked whether it was true that Miss Balasingham had copied those words into her book from his book and whether in fact this book was his note book. His answer was 'no'. 20
- Q. Then what further steps did you take?
- A. We asked him more questions about the kind of note books he used for his lecture courses. We also asked him why he found those questions so easy. Professor Mylvaganam asked him to translate the passage in German which was in the question paper, and then we followed up to find out from him what explanation he could give, if there was any explanation, with regard to the notes that he had made. 30
- Q. Was he directed to do anything?
- A. He was asked to produce all his note books containing German: he was asked to produce them to me before the next meeting.

- Q. What did he do?
- A. He produced only a file of papers, of foolscap sheets, with notes of his lectures in German.
- Q. Was there any note book?
- A. There was no exercise book.
- Q. What did you do when he produced them?
- A. We had in the meantime seen Miss Balasingham for the second time.
- 10 Q. And what further material did you obtain in the meantime?
- (Question objected to as Miss Balasingham is not being called).
- Q. What did you do next?
- A. Because we found only foolscap papers and no note books, we asked him to produce all his exercise books and he produced only one.
- Q. To whom did he produce it?
- A. If I remember right, he produced it before the three of us at the third meeting.
- 20 Q. When he produced that book what was it that happened?
- A. That book had a lot of notes in it. There were five pages of drawings on Zoology relating to the circulatory system of the rat, one of them as he alleged, corrected by Dr. Cruze. We asked him further questions about the state of the book. While Mr. Keuneman was questioning the plaintiff the book had been examined by Professor Mylvaganam and the Secretary, Mr. Block, and further questions were asked apparently by Professor Mylvaganam and Mr. Keuneman and I think I also questioned him.
- 30 Q. He said in evidence that Professor Mylvaganam grabbed at the exercise book that was produced?
- A. That is physically impossible. We were seated round a semi-circular table and he was seated

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Defendant's  
Evidence

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No. 9

Sir Ivor  
Jennings,  
Examination -  
continued.



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Defendant's  
Evidence

No. 9

Sir Ivor  
Jennings,  
Examination -  
continued.

at the centre opposite us. I cannot remember how we could have got at it but I think we asked him to come across and give it to us.

Q. He also says that the atmosphere was hostile?

A. There is no truth in it at all. At the inquiry we were anxious to get at the truth. We were not anxious to convict him because it would have meant a conviction of the University.

Q. Did you take any action upon that note book with regard to the drawing of the circulatory system of the rat which the plaintiff had said that Dr. Cruze had corrected? 10

A. I agreed to see Dr. Cruze, first of all to find out whether certain other evidence which was brought out was relevant, secondly to find out if he recognised the handwriting of this particular drawing as stated, thirdly for the purpose of finding out roughly the date on which this drawing had probably been made because according to Miss Balasingham..... 20

(This evidence is objected to because Miss Balasingham is not being called).

Q. Then what did you do with regard to that book which showed the drawing of the circulatory system of the rat?

A. I personally made inquiries about it. It was a University book sold by the University Co-operative Store and I ascertained from them when it was sold roughly and generally trying to find out whether it was possible for those pages to have been substituted. 30

Q. Did you also question Dr. Cruze?

A. Yes, he recognised his handwriting.

Q. And were you satisfied as a result of the inquiry that Dr. Cruze had corrected that drawing?

A. No. I was satisfied that he had corrected the drawing but he was not willing to assert when it was corrected.

Q. Why was that?

A. It was just a drawing with a few words and he said that he would prefer our having a handwriting expert to find out whether it was his handwriting or not.

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Q. As far as your investigations of Dr. Cruze was concerned, what did you do?

Defendant's  
Evidence

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10 A. I reported that at the next meeting at which Mr. Balmond was summoned because he was also in charge of the University Press and we wanted to find out whether there was a leakage of this paper from the press. I also had to ask him about the handling of the proof paper, that is the paper that had been signed by Professor Fernando, Mr. Keerthisinghe and Dr. Cruze, in order to find out what had happened to the documents and then how the proof was dealt with and then we followed the whole procedure from the moment when Professor Fernando had seen the paper up to the time when the candidate actually answered the paper.

20

No. 9

Sir Ivor  
Jennings,  
Examination -  
continued.

Q. What was the object of persuing this whole course of procedure?

A. We were trying to find out where it was possible to have occurred and if there was a leakage how it had occurred.

Q. Were any other students called up for this inquiry?

30 A. Yes, at the third meeting we asked four students to come for questioning because Miss Balasingham had spoken to them after the examination. Their business was either to corroborate the statement of Miss Balasingham or not.

Q. And was the plaintiff questioned again?

A. Yes, the plaintiff was questioned again after the four students had been questioned by us.

Q. What was the object of questioning the plaintiff again after those students had been questioned?

40 A. We were simply anxious to ask the plaintiff further questions about the exercise books and in particular about the book which he had been asked to produce and which we examined in front of him and asked him questions.

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Defendant's  
Evidence

No. 9

Sir Ivor  
Jennings,  
Examination -  
continued.

Q. After the inquiry was over what was your position?

A. I was satisfied that the nature or substance of the question in German had been known to the plaintiff before the date of the examination.

Q. And did you reach any conclusion as regards how the leakage could possibly have occurred?

A. No, because it may have occurred as far as we could see at any stage along the history of the paper. We could not find any particular person responsible for the leakage.

10

Q. As regards the first point, namely that there had been a leakage what is it that you did?

A. I drafted a report expressing my views on the subject and sent it to Mr. Keuneman and Professor Mylvaganam to see whether they agreed with me.

Q. And then what happened?

A. They agreed and the report was signed by the three of us.

20

Q. And then what further action did you take?

A. I was under an obligation under the Act to report the matter to the Board of Residence and Discipline, which I did.

Q. What were the documents that you sent there?

A. I did not send. I read out the report drafted in my own handwriting first. What I sent to Professor Mylvaganam and Mr. Keuneman was a typescript and the typescript was signed by all three of us. I produced the typescript and read it out to the Board of Residence and Discipline.

30

Q. And upon that, what action did the Board of Residence and Discipline take?

A. There was a discussion in the Board as to what punishment should be given and they decided to suspend the plaintiff indefinitely from all University examinations.

Q. Was that decision communicated to him?

A. Yes, it was sent to him.

(Shown P.7). The original of this was signed by me. This is dated 18/27th July. I received P.6 of 23.7.52 from the plaintiff. D.3, a short letter, of 23.7.52 also accompanied P.6. I also received a further communication on this subject from the plaintiff. I had already written to him P.8 of 24.7.52 in reply to P.6. I wrote P.9 of 24.7.52 signed by me, and addressed it to plaintiff and I sent it along with that, P.11 a copy of the report. P.11 is not the whole document. I have left out the portion relating to examination procedure which was irrelevant. We did not disclose the manner in which the University conducted the Examination. I received P.12 of 7.8.52 and I replied by P.10 of 14.8.52. P.10 was an interim reply. I also wrote P.13 on 11.9.52 stating that the Board of Residence and Discipline had considered his appeal and that it was decided that their decision must stand. I received P.14 of 24.9.52 and P.15 of 27.11.52. I wrote P.16 of 5.12.52. I received P.17 of 5.12.52 from the plaintiff. I wrote P.18 of 8.12.52 to plaintiff. I received P.19 of 18.12.52 from the plaintiff and I sent an interim acknowledgment by P.20 of 22.12.52. I received P.21 of 9.1.53 from the plaintiff. I wrote P.22 of 21.1.53 and P.23 of 16th March 1953.

Q. Are marks disclosed to students?

A. No.

Q. Is it a correct thing to do?

A. No.

Q. Why?

A. Because it is laid down in the University Act that marks must not be disclosed.

Q. It is not the proper thing to disclose to students the actual marks that they have been able to obtain?

A. No.

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Evidence

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Sir Ivor  
Jennings,  
Examination -  
continued.

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Defendant's  
Evidence

No. 9

Sir Ivor  
Jennings,  
Examination -  
continued.

Q. Is it correct to say what particular marks have been assigned to a particular question?

A. Usually not but there have been discussions in the University as to whether that should be done but where a decision has been made.

Q. Were the students to be made aware of the marks?

A. I think it should not be done without consulting me but I think it has been done.

Q. Were the students aware of the marks allotted to each question? 10

A. I am not sure that it was not known to the students though it was not known to me.

Q. On the last day I asked you what was the manner in which the inquiry was conducted?

A. Yes.

Q. Who asked most of the questions at the inquiry?

A. Mr. Keuneman.

Q. You are recorded as having said that he was asked to hold the inquiry. Is that correct? 20

A. No, that is not correct. He led the inquiry. That is to say, he asked most of the questions. If it is recorded that I asked him to hold the inquiry that would be incorrect.

Q. You are recorded as having said "I asked him to hold the inquiry". Was that what you said on the last day?

A. No, he did not hold the inquiry. I held the inquiry. I have no recollection at all of having said that. 30

Q. On the first occasion on which the plaintiff appeared at the inquiry what book or document did you have?

A. We had then Miss Balasingham's book.

Q. Is that the exercise book that you referred to?

A. Yes.

Q. And the question papers were also there?

A. Yes.

Q. What exactly was shown the plaintiff at the inquiry?

A. He was shown first, I think, the examination paper, and secondly, Miss Balasingham's exercise book.

Q. And what was he asked?

10 A. It was explained to him what Miss Balasingham had said and he was asked whether her statement was correct. He was asked whether those same German words were in an exercise book belonging to him.

(Evidence objected to as Miss Balasingham is not being called).

Q. Was the nature of the allegation made clear to him?

A. Yes.

20 Q. At what stage was it that the plaintiff produced his exercise book?

A. That was when he appeared at our third meeting which was the second meeting at which he appeared.

Q. At page 118 of the record you are supposed to have said that you did not disclose the manner in which the investigations were conducted. What was meant was the procedure relating to the examination?

30 A. Yes.

Q. Is it correct to tell students what particular marks have been assigned to any particular question?

A. I cannot say whether it is correct or incorrect because the practice has been normally not to disclose the marks and I would not know even

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Sir Ivor  
Jennings,  
Examination -  
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examination.

myself about the distribution of the marks in a particular paper. But there has been discussion inside the University as to whether we ought not to tell the candidates if there is an unusual distribution of marks in a particular paper.

Q. Has any decision ever been taken?

A. No, it has not been discussed. It has to be taken up by the Senate.

Cross-examined

10

Q. So far as marking of the paper is concerned, there is a body of examiners who examine the subject?

A. There are two sets of examiners, a whole board of examiners and then there are examiners appointed by the Senate to each particular subject.

Q. There are one or more external examiners?

A. Yes.

Q. Who review the questions put by the local group of examiners?

20

A. Yes.

Q. In this particular paper, there is one question for an essay and one for translation?

A. Yes.

Q. In 1946 the marks allotted was 50 for the essay and 50 for the translation?

A. I am afraid I have not decided on that.

Q. Are you aware that one of the examiners had brought this matter before the Senate and it was agreed that the London University practice of 1910 should be followed?

30

A. I have no recollection of it.

- |    |   |  |
|----|---|--|
|    | Q. You keep the minutes of the Senate?  | In the District<br>Court of<br>Colombo   |
|    | A. No.  |  |
|    | Q. You have no recollection of what happened in 1947?   | Defendant's<br>Evidence                  |
|    | A. No.  |  |
|    | Q. You have no recollection of the London University practice of allotting 90 marks for the essay and 10 marks for the translation?   | No. 9<br>Sir Ivor<br>Jennings,<br>Cross- |
|    | A. No. I do not know. I have never seen it.   | examination -<br>continued.              |
| 10 | Q. You would agree that if the existing system of 50 marks for each question is changed to 90 for essay and 10 for translation, then the students should be informed in fairness to them?             |  |
|    | A. That is a matter for the Senate to decide.   |  |
|    | Q. If the known marks is 50 and 50 for each subject up to 1947, where it is decided that 10 marks should only be given for the translation would it not be fair that the students should be informed? |  |
| 20 | (Question is objected to; it is a hypothetical question: it being put on the presumption that the basis of the marks was 50/50).  |  |
|    | Q. So far as the students are concerned would it not be fair that they should be informed?  |  |
|    | A. That is a matter for the Senate to decide.   |  |
|    | Q. Would it not be fair that they should be told?   |  |
|    | A. It is not my function.   |  |
|    | Q. Not as Vice-Chancellor, but as an examiner?  |  |
|    | A. I havenot been an examiner.  |  |
| 30 | Q. You received certain information or certain allegations were made to you as a result of which you wrote P.4 to the Plaintiff?  |  |
|    | A. Yes.   |  |



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continued.

Q. In that you say that an allegation has been made to you in writing.

A. Yes.

Q. That was the allegation made to you by Mr. Sivapragasapillai?

A. The statement was put into writing at my request and was sent to the Dean of the Faculty.

Q. The statement referred to is the statement written by Mr. Sivapragasapillai?

A. Yes.

10

Q. At the time you wrote P.4 you had no other writing?

A. No.

Q. The writing given to you by Mr. Sivapragasapillai was as you say in the last paragraph sufficiently circumstantial to justify an inquiry?

A. Yes.

Q. The same allegation is referred to in paragraph 1 of the letter?

A. No not entirely.

20

(Paragraph 3 of P.4 read out to witness).

Q. There are three references to allegations: there is no indication of the first allegation as the one in writing?

A. That is correct.

Q. Apart from the allegation made by Mr. Sivapragasapillai in writing was there any other material before you at the time you wrote the letter P.4?

A. Yes.

Q. A statement made by somebody?

30

A. Yes.

Q. By whom?

- A. Mr. Keerthisinghe, an examiner of this paper. The first statement was taken in writing from Mr. Sivapragasapillai.
- Q. Not the first statement! The first statement was from Mr. Keerthisinghe?
- A. That is an oral statement.
- Q. Did you know at the time he made that statement to you that the state of feelings between him (Mr. Keerthisinghe) and Professor Fernando was very bad?
- 10 A. No, not very bad. I knew that there was a conflict.
- Q. That there was professional jealousy from 1930?
- A. I did not know that.
- Q. That there had been a tussle by Mr. Keerthisinghe for the lecturership which was kept vacant while Professor Fernando was away in England?
- A. No, I did not know about it.
- Q. You did not know that there were very strained feelings between the two of them?
- 20 A. I knew about it.
- Q. On the part of Mr. Keerthisinghe?
- A. I do not know that.
- Q. Was there the need for a further lecturer on the staff of the University?
- A. It had been under discussion.
- Q. Is it correct that the matter was being put off because nobody had obtained a First Class?
- A. The matter had been put off because the Head of that Department said that there had been no suitable candidate.
- 30 Q. The Head of the Department reported that he wanted a First Class student?

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Cross-examination - continued.

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continued.

A. Not necessarily.

Q. Who were the persons suitable then?

A. A student with a First Class was necessary but students with other degrees would have been considered.

Q. Has that post been offered?

A. We did not offer it but we advertised it.

(To Court: Q. There was a post of lecturer vacant?

A. There was a post of Assistant Lecturer vacant. It was found unnecessary as a result of this inquiry and had been suppressed). 10

Q. Till this inquiry it was necessary?

A. Formally necessary.

Q. Mr. Keerthisinghe is a person who has been on the staff for quite a long time?

A. Yes.

Q. And naturally you would, without hesitation, accept the bona fides of a statement made to you by Mr. Keerthisinghe? 20

A. Yes.

(To Court: Q. May I know the circumstances under which you came to question Mr. Keerthisinghe?

A. He came to see me after he had marked the paper.

Q. He came and saw you and made a statement to you?

A. Yes. 30

Q. Is that before you had any information from Mr. Sivapragasapillai?

A. Yes.)

Q. Did you have the marks before you at that time?

- A. No.
- Q. Did you show any marks of this student to Mr. Keerthisinghe?
- A. No.
- Q. You never showed the marks in relation to this German passage and the marks he had obtained in the subsidiary subject, Botany?
- 10 A. No. The marks placed before the Committee were marks in the first examination and the subsidiary subject for Section B.
- Q. Not the marks for the rest of the final examination, in the special subject?
- A. The marks had not been returned.
- Q. Had the marks been returned at any time before the investigations had been completed?
- A. No, at least it had not been returned.
- Q. The first examination was Inter Science?
- A. What corresponded to Intermediate Science.
- 20 Q. And the subsidiary marks had been given to you and you knew that the marks were all complete before the investigations were concluded?
- A. No.
- Q. Did you ask them?
- A. No.
- Q. Did you try to find out for the benefit of the other members of the commission what marks the student had obtained for this special subject at the examination?
- A. No.
- 30 Q. The marks for the German passage were shown to you?
- A. Evidence was given about the marks for the German passage by Mr. Keerthisinghe; no marks were shown to me.

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- Q. What do you mean "evidence was given of the German marks"?
- A. Without saying the least, particulars were given and the corresponding particulars of the marks secured by other students.

Q. Only of Miss Balasingham and the plaintiff?

A. Yes.

(Mr. Wikramanayake at this stage brings to my notice that the defendant has been noticed to produce the marks for the section B Zoology. Proctor for defendant hands over to Mr. Wikramanayake the marks register maintained by defendant).

10

(Shown marks register). Plaintiff has obtained for subsidiary botany 63B. B is a class. Plaintiff has secured for paper 1, 71A, for paper 2, 71A, for paper 3, 63B, paper 4, 64B, paper 5, 90A, practical 2, 87A, practical 2, 88A and for practical work note-book 85A.

Q. So far as the practical note-book that he kept for the year, plaintiff is well ahead of the other students?

20

A. Yes.

Q. So far as the practical work is concerned, he is the only A?

A. Yes.

Q. And far ahead of the others?

A. Yes.

Q. In respect of paper 4, the plaintiff has got 64 marks, the only B; is that right?

30

A. Yes.

Q. Paper 3 is the only paper in which he has been beaten in the whole examination by two marks?

A. Yes, that is right.

Q. In paper 2 he gets 71 as against 57 which is the next highest?

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A. Yes.

Q. In paper 1 he has got 71 marks as against 67 which is the next highest?

A. Yes.

Q. The marks obtained by plaintiff in all the papers are very good?

A. Yes.

Q. And of an exceptional standard?

A. Except for the theory.

10 Q. Which theory?

A. That is papers 1 and 4.

(To Court: Q. Did he get the highest aggregate?  
A. Yes.)

Q. The student who got the next highest aggregate got a First Class?

A. Yes.

(To Court: Q. Did Miss Balasingham get a First Class?

A. No, she got a Third Class).

20 Q. These are marks as given by the local examiners on the subjects and reviewed by the external examiners?

A. In the case of the theory, it varies, while in the case of the practical marks they are not scrutinised by the external examiners.

Q. The external examiner in this subject is a recognised professor of Zoology?

A. I do not know. I do not remember.

Q. Did you know at that time?

30 A. Probably.

Q. Somebody recognised to be of a very high standing in the particular subject?

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continued.

A. Yes.

Q. That is in Ceylon or outside?

A. Outside Ceylon.

Q. In the Faculty of Law the person who reviewed is Professor McKerron?

A. Yes in some subjects.

Q. You tell us that the information you had received was that he had received prior information in respect of this paper?

A. No, the allegation was that he also had prior knowledge of the subjects in the practical examination. 10

Q. Was that allegation ever investigated?

A. The evidence produced by Miss Balasingham was quite insufficient to justify the holding of an inquiry.

Q. Miss Balasingham placed before you matters relating to both this subject and the subject in the practical examination?

A. Yes. 20

Q. The matters placed by Miss Balasingham were utterly insufficient to even justify the holding of an inquiry?

A. Yes, in regard to the practical examination.

Q. No questions whatever were put in regard to these matters?

A. I did put all the questions. Mr. Keuneman did put certain question. I must have put about 2 or 3 questions to him so as to enable him to show why he had found the practical examination so easy or something like that in order to gather up something; that was the only means. 30

Q. So that in the course of your inquiry questions were put to the plaintiff relating to some questions on the practical examination?

A. Yes.

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Q. For the purpose of clearing any doubt as to whether the practical papers also reached him?

A. Yes.

Q. And when those questions were put, I take it it was made clear to the plaintiff that that was also something you were trying to clear up?

A. No, we did not put that to him. I simply asked questions on the practical examination whether he found it easy.

10 Q. In the course of investigations the basis of this letter P.4 which refers to the allegations that had been made?

A. Yes.

Q. Mr. Keerthisinghe had made a statement to you before you wrote the letter and of all the witnesses who were examined first, was Miss Balasingham?

A. Yes.

20 Q. And thereafter the witness who was examined before the plaintiff was Mr. Keerthisinghe?

A. Yes.

Q. Did you know at that time that throughout his student's life in the College, he had been taking his difficulties not to Mr. Keerthisinghe but to Dr. Cruze?

A. No.

Q. Mr. Sivapragasapillai is also on the staff of the University in another faculty?

A. Yes.

30 Q. And is a close relation of Miss Balasingham?

A. Yes.

Q. And Miss Balasingham lives with him?

A. No, she lives in Jaffna.



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continued.

- Q. When she attends lectures?
- A. No, I do not know about that.
- Q. No notes were taken at the time of the investigation?
- A. No.
- Q. Dr. Cruze was an examiner in this paper?
- A. Yes but not for the German question.
- Q. How was any distinction drawn? There were three examiners for the subject?
- A. I think there were four for the subject. I am not sure. 10
- Q. You said so earlier?
- A. I did not say three for this paper. I think there were four.
- Q. Of these three examiners all knew German?
- A. Yes but Professor Fernando and Mr. Keerthisinghe were the examiners in German.
- Q. By whom was that decided?
- A. Presumably by the first.
- Q. Three people set the paper including German? 20
- A. Yes.
- Q. The three people were, Professor Fernando, Mr. Keerthisinghe and Dr. Cruze?
- A. Yes.
- Q. You had Mr. Keerthisinghe give his evidence at the early stage before the plaintiff was called?
- A. Yes.
- Q. After the plaintiff was called you had Professor Fernando in to give evidence before the entire commission? 30
- A. Yes.

Q. Because at that stage in some measure Professor Fernando was also on his trial?

A. No, he was one of the examiners.

Q. That is why you called him up?

A. Yes, and as head of the department he was responsible for the examination.

Q. Dr. Cruze was also one of the examiners?

A. Yes.

10 Q. You did not get him up at any time before the commission?

A. No.

Q. You remember the day you got him up?

A. Yes, on the 4th of June.

Q. Can you tell me when the sittings started?

A. 21st of May.

Q. And when was it you heard the plaintiff?

A. Plaintiff was called on the 21st of May.

Q. By that time you had called Miss Balasingham, Professor Fernando and Mr. Keerthisinghe?

20 A. Yes.

Q. Professor Fernando on what date?

A. On the 27th of May.

Q. And it is on the 4th of June that Dr. Cruze was called?

A. No, on the 3rd of June when we had a long session.

Q. On that day who were the others?

30 A. Miss Balasingham, Mr. Sivaprakasapillai, Mr. Y.H. de Silva, Mr. C.H. Fernando, Mr. Indrasena, Mr. Morell, Mr. Olagasekeram and the plaintiff.

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- Q. By that time you had all the material with regard to the practical examination?
- A. At that stage we were only doing with the Zoology section. We had not dealt with the press.
- Q. With the Zoology section you had practically finished the examination?
- A. Yes.
- Q. At that stage it was that you asked Dr. Cruze to come and see you?
- A. Yes. 10
- Q. Dr. Cruze has told Court that up to that point of time he was not even aware that an investigation of this nature was going on?
- A. I did not know that at all.
- Q. You did not certainly inform him?
- A. No.
- Q. He has also told Court that he had in his mind some other matter at that time?
- A. I am sorry I must correct my earlier statement. He knew about the inquiry immediately after I had seen Professor Fernando. 20
- Q. How did he know? You told him?
- A. No. We had evidence of discussions that took place in the Zoology Department.
- Q. That is what was told you by somebody?
- A. Yes.
- Q. Who was that somebody?
- A. Mr. Olagasekeram.
- Q. He is a witness for you?
- A. Yes. 30
- Q. Do you know that the source of your information

should not be disclosed unless that person is being called?

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A. I was asked the question by learned Counsel and I answered it.

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Q. So far as evidence in a Court of Law is concerned when you say you know something you can only testify to things of your own personal knowledge, that is things that you have seen yourself or heard yourself. You have read the Evidence Ordinance?

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10

A. No.

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continued.

(Mr. Choksy objects to these questions; witness has answered questions that have been put to him).

Q. You heard Mr. Olagasekeram's statement?

A. Yes.

(This evidence is objected to as hearsay evidence. Mr. Choksy states that it is left for him to decide whether Mr. Olagasekeram should be called).

20

Q. To your knowledge was Dr. Cruze aware of this investigation prior to your calling him up?

A. How can I answer this question !

Q. You were not present at any of these discussions in which he is alleged to have taken part?

A. No.

Q. That knowledge that you have is from somebody else?

30 A. Yes from a witness in the inquiry.

Q. Did you ask Dr. Cruze yourself whether he was aware of the investigations before he came up there?

A. No.

Q. Dr. Cruze has testified to the fact that at

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continued.

the time you sent for him there was something at the back of his mind and he thought that you sent for him in connection with that?

A. It is possible but I did not know about it.

Q. Did Dr. Cruze tell you that some student had come to him and in the course of conversation he had asked that student whether he was the person who had sent the letter to the Faculty?

A. I do not know about it. It is possible.

Q. Certainly if it had happened it would have been a disclosure unwittingly, a matter which Dr. Cruze ought not to have disclosed? 10

A. I am sorry I did not follow the question.

(The question is repeated).

A. I am afraid I have not got the background of it at all.

Q. A student who had sat for an examination had gone to see Dr. Cruze to find out whether he could be a dental student.....

(Question objected to). 20

Q. It would be improper for any person in the faculty to disclose to a candidate at an examination the knowledge he had gained as a member of the faculty?

A. As an examiner, yes.

Q. And if that had been done unwittingly, it would be still reprehensible though excusable?

A. Yes.

Q. Did Dr. Cruze on that occasion tell you that he thought you sent for him about his having told that student something about that letter? 30

A. I am afraid I cannot remember anything about the letter.

Q. Did you tell Dr. Cruze straightaway why he had been sent for?

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continued.

A. I cannot remember.

Q. In the course of the investigation you showed Dr. Cruze the exercise book produced by the plaintiff?

A. Yes.

Q. And at one stage you drew his attention to the drawing of the venus system of the rat?

A. Yes, to one of the drawings.

10 Q. Dr. Cruze has told Court that he was definite that the correction was made by him?

A. That is not the information he gave me.

Q. He has told Court that when he was definite about it you tried to belittle his statement?

A. That is untrue.

Q. He has also told Court that he told you that if you doubted his statement you could get a handwriting expert to report on it?

20 A. No, Dr. Cruze said that he had corrected a drawing in the exercise book but he was not prepared to swear that it was this correction.

Q. You gave instructions to the lawyers who appear for the defendant?

A. Yes.

Q. And you were questioned about the evidence of witnesses at the trial?

A. I do not remember being asked about Dr. Cruze's evidence.

Q. You remember giving evidence-in-chief in regard to Dr. Cruze's incident?

30 A. Yes.

Q. Were those the instructions you gave the lawyers?

A. I did not discuss about it with the lawyers.

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Q. After Dr. Cruze gave evidence you stepped into the witness box?

A. Yes.

Q. And you gave instructions to the lawyers before you gave evidence?

A. Yes.

Q. Did you know that Dr. Cruze was being called?

A. I presumed he was being called. I saw him outside the Court.

Q. Did you speak to Dr. Cruze before he came down? 10

A. Yes.

Q. You told him that he need not come if the summons was not for that day?

A. Yes.

Q. He was summoned for one day but was not summoned for every day?

A. Yes.

Q. You knew that he was cited by the plaintiff and you asked him on what point he was going to give evidence? 20

A. I did not ask that.

Q. Have you given instructions to the University lawyers at any time with regard to the case?

A. Yes, at various stages.

Q. All of them before you stepped into the witness-box on the last trial date?

A. Yes.

Q. And it was in the middle of that day that Dr. Cruze stepped into the witness box?

A. Yes. 30

Q. So, all the instructions with regard to the case

you had given to the lawyers had been given before Dr. Cruze stepped into the witness-box?

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A. Yes.

Q. Dr. Cruze has also told Court that you told him in the course of the investigations that the plaintiff was an ordinary student?

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A. I do not remember having said that.

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Q. You remember Dr. Cruze telling you that plaintiff is the best of that batch and a brilliant student?

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continued.

10

A. No, I do not remember that.

Q. He also told you in the course of the conversation that it was a pity that he was the nephew of Professor Fernando because he had a hard time?

A. No, I cannot recollect that.

Q. That exercise book that Miss Balasingham showed you was shown subsequent to the sitting and the answering of the paper?

20 A. Yes, it was produced on the first day of the inquiry.

(To Court: Q. What was the date of this German paper?

A. I do not know).

Q. What is the date of the oral complaint made to you by Mr. Keerthisinghe?

A. I cannot remember now.

Q. It must necessarily have been after the paper was answered?

30 A. Yes, after the script was marked.

Q. That interview with Dr. Cruze was only with you?

A. Yes.

Q. Save you, the members of the commission were not there?



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continued.

A. No.

Q. From the conversation which you had, do you agree that it was possible for different people to have got different impressions of what a person says at one and the same time?

A. Yes.

Q. Of what Dr. Cruze said on that day, it is possible that it created a different impression in your mind and in the mind of any others if there had been others?

10

A. Yes in the minds of others.

Q. Dr. Cruze's evidence has been that when he mentioned that it was his correction that you made light of his assertion?

A. No, that is not true.

Q. He also told Court that it was at that stage that you said that after all the plaintiff was an ordinary student?

A. No, I do not remember.

Q. So far as Professor Mylvaganam was concerned, did you get to know at any time that he was related to Miss Balasingham?

20

A. I received a letter from plaintiff making that allegation.

Q. Did you try to verify from Professor Mylvaganam?

A. I questioned him about the allegation in that letter.

Q. Did you try to check up the relationship in any other way?

A. No.

30

Q. And you are aware of the fact that when the plaintiff appealed Professor Mylvaganam did not want to take any part in the discussions?

A. Yes.

Q. In view of the allegations of relationship?

- A. No, he is not a member of that board.
- Q. At what stage did Professor Mylvaganam decline to take part?
- A. I sent copies of the plaintiff's appeal to Mr. Keuneman and Professor Mylvaganam and then he said that he would prefer not to be consulted.
- Q. (Shown P.23). So that Mr. Keuneman's views on the matter were consulted?
- A. Yes.
- 10 Q. The allegations mentioned there are in regard to the relationship with Miss Balasingham?
- A. Yes.
- Q. (Shown P.18). You did not consider it a sufficient relationship to affect the findings in any way at all?
- A. No.
- 20 Q. You have written an article in the University of Ceylon Review in regard to race, relationship and economic opportunity in the University of Ceylon in which you talk about the Jaffna families. That is the view you gathered from your research and from your experience as chairman of the University Boards? And you state that amongst the Jaffanese even though they be more distant, would still hold the parties together?
- A. That I do not know.
- Q. That the bonds of relationship between the Jaffanese are not stronger?
- A. Yes.
- 30 Q. To what extent they would be stronger and hold together, you cannot say?
- A. No.
- Q. Did you not contemplate at the outset of the investigations that it may involve Professor Fernando?

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Evidence

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Sir Ivor  
Jennings,  
Cross-  
examination -  
continued.

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Defendant's  
Evidence

No. 9

Sir Ivor  
Jennings,  
Cross-  
examination -  
continued.

A. Yes. It may have involved 13 or 14 people of whom he was one.

Q. And against whom the suspicions were stronger than the others?

A. I do not know about suspicions, but the number involved was greater.

Q. Did you say this in evidence-in-chief: Q. Why was an inquiry considered necessary?

A. Because the allegation was that he was a relation of a member of the University staff. 10

Q. That is the reason you gave for holding the inquiry?

A. No, that is one of the reasons.

Q. Did it affect the investigations?

A. Yes.

Q. There you say that an allegation is made by a member of the staff and about the allegation of relationship to a member of the staff?

A. That was not what I said.

Q. The allegation was made by a member of the staff? 20

A. Yes.

Q. And the allegation also brought out the fact that the person against whom the allegation was made of obtaining the paper, was a relation of a member of the staff?

A. That is why I think something was left out by the shorthand-writer because no allegation was made by Mr. Sivaprakasapillai but by Mr. Keerthisinghe. 30

Q. Mr. Keerthisinghe who drew attention to the relationship too?

A. Yes.

Q. That was done before P.4 was sent?

A. Yes.

Q. The marks show that the knowledge of the student is very good, for instance he has got 71A for the first paper?

A. 71 marks is moderate.

Q. What does the letter A refer to?

A. The advantage from letters.

Q. He has got 71 marks as against the other. That also you consider moderate?

10 A. Yes.

(To Court: Q. Will that be alpha minus?

A. No, we have not got an alpha minus).

Q. (Shown evidence recorded at page 114). You are recorded as referring in evidence to a "this book". Did you have the plaintiff's book at that stage?

A. No.

20 Q. Did you show Miss Balasingham's book with the drawing of the rat at any stage?

A. No.

Q. The only note-book of the plaintiff that has ever been handed to you was the one that was shown to Dr. Cruze?

A. Yes.

Q. What is the date on which you got that book into your possession?

A. 3rd June.

30 Q. When you took evidence of any of the witnesses, the plaintiff was never present?

A. No.

Q. He was not there to hear anything said against him?

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Sir Ivor  
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Cross-  
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continued.

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No. 9

Sir Ivor  
Jennings,  
Cross-  
examination -  
continued.

- A. No.
- Q. Whether by Miss Balasingham or Mr. Keerthisinghe or by any other person?
- A. No.
- Q. You did not make notes of the statements made by the several witnesses?
- A. No.
- Q. It was all carried in memory?
- A. Yes.
- Q. The plaintiff had no opportunity of putting any questions to anybody who testified against him? 10
- A. No.
- Q. Plaintiff was not given any opportunity to have anybody to assist him in the inquiry?
- A. No.
- Q. You said that you were not out to convict the plaintiff because a conviction meant the conviction of the University as well?
- A. Yes.
- Q. You have convicted him but not the University? 20
- A. We have convicted the University also.
- Q. In what way?
- A. Because there had been a leakage from the University.
- Q. To that extent you have convicted it?
- A. Yes.
- Q. Although you have not found out the place where the leakage occurred?
- A. Yes, quite so.
- Q. Miss Balasingham had taken notes before the examination? 30

- A. Yes.
- Q. And she had knowledge of the same words before the examination?
- A. Yes.
- Q. With regard to the three persons who questioned the student, none of them had knowledge of scientific German?
- A. Professor Mylvaganam had knowledge of scientific German.
- 10 Q. You appreciate the fact that Professor Mylvaganam did not translate the passage?
- A. Yes, now I can translate the passage myself.
- Q. At that time?
- A. No, not at that time.
- Q. You know the word Zitronensaft, that it is really lime juice?
- A. No, it means lemon juice.
- Q. The answer that the student gave when you asked at the inquiry was Citronella Oil?
- 20 A. I cannot remember having asked that question.
- Q. You remember having asked him to translate the passage?
- A. We asked him to translate the first part of the passage.
- Q. And then you get the meaning of the word by a similarity of something in common?
- A. Not in the case of the German because very few of the Latin words are to be found in German.
- 30 Q. A person who knows English is often able to get at the meaning of the German word in any passage by his knowledge of English?
- A. Yes a few words.

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No. 9

Sir Ivor  
Jennings,  
Cross-  
examination -  
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Sir Ivor  
Jennings,  
Cross-  
examination -  
continued.

Q. Because English words are partly from Latin and partly from German?

A. Yes, there are words in German which are very similar to words in Latin.

Q. There are two sources from which the English words are derived?

A. I am afraid I do not know; it is outside my field.

Q. Do you know that the majority of the English words are Anglo-Saxon in derivation or Latin in derivation?

10

A. Certainly Anglo-Saxon but mainly French.

Q. So far as German is concerned it was not difficult for a student knowing the English language to gather the meaning of some word in German?

A. A few words.

Q. An intelligent student when he knows a particular passage would be able to extract the meaning of the German word from the passage?

A. Yes.

20

Q. And a Student who has done a fair amount of German will have an added advantage?

A. Yes.

Q. A student if he has had occasion to look into some German when writing journals, would have had more knowledge of German?

A. Yes.

Q. This plaintiff had a three year course in German?

A. Yes.

30

Q. You also told Court that you also tried to find out the possibility of substituting the 5 pages in that book?

A. Yes.

Q. Did you have it examined by an expert?

A. We had examined the University press and we were satisfied.

Q. You made no point on your part to find out whether the book had been damaged?

A. No.

Q. Because you did not come across any definite evidence?

A. That is so.

10 Q. You were unable to say that it was damaged or not?

A. Yes.

Q. In other words, you say that it had not been damaged?

A. I would not say that. It looked suspicious.

Q. After examination from the University Press you were unable to confirm or deny it?

A. Yes.

(P.4 referred to).

20 Q. Your letters throughout began by saying that you have appointed a commission? You also had a Secretary to the Commission?

A. Yes.

(P.5 referred to).

Q. You say you read the report?

A. Yes.

Q. A report which would be written by the three members of the commission; if the three were unanimous it would be written by one and the others would sign it.

30

A. Yes.

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Sir Ivor  
Jennings,  
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continued.



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Sir Ivor  
Jennings,  
Cross-  
examination -  
continued.

Q. You wrote it out and the others signed?

A. Yes.

Q. And it was read before the Board of Residence and Discipline, of the general findings of the three members?

A. Yes.

Q. Professor Mylvaganam is a member of the Board of Residence and Discipline?

A. Yes.

Q. He is also a member of the Scrutiny Board?

10

A. Yes.

(Mr. Wikramanayake states that the examination concerned started on 31st March 1952, and paper Number 5 was had on the 4th of April).

Re-  
examination

Re-examined

Q. You were questioned about the knowledge of an English student to understand German passage?

A. Yes.

Q. How far would the knowledge of a student assist him in translation of that German passage?

20

A. Very few.

Q. Do you think those words are sufficient to enable a student to get pass marks of that particular passage?

A. Not to get 8 marks.

Q. The general knowledge of the text of the particular passage, would that be of general assistance in translation?

A. It would be of some assistance.

Q. If he knew about nine words, would that be of assistance?

30

A. It would depend on the 9 words.

Q. Did Miss Balasingham copy all the words that appeared in the plaintiff's book?

(Question objected to).

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Q. As far as your investigations went, were those nine words the only words of which the Plaintiff had knowledge?

(Question objected to because witness knows nothing about it except what Miss Balasingham said).

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Sir Ivor  
Jennings,  
Re-  
examination -  
continued.

10

Q. You told us that three persons were responsible for the setting of this paper?

A. Yes.

Q. All three of them got to sign it?

A. Yes.

Q. In the course of your investigations, did you ascertain which of these three persons was responsible for which part of the paper?

A. Yes.

Q. As far as the German passage was concerned, who was responsible for that passage?

20

A. Professor Fernando and Mr. Keerthisinghe.

Q. Who does the selection of the passage?

A. The practice is for the Professor of Zoology to select it and to show it to his fellow examiners.

Q. And was that practice followed?

A. Yes.

Q. The question paper is sent up for printing at the same stage?

A. Yes, the whole paper is sent up in typescript.

30

(Question and answer objected to as it is hearsay evidence).

Q. Did you question to ascertain who had typed the paper?

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Sir Ivor  
Jennings,  
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examination -  
continued.

A. Yes.

Q. Is it the typescript that is sent up?

A. Yes, it is sent to the Assistant Registrar.

Q. In what department is the typescript first typed?

(Question objected to).

(To Court: Q. Did you have any idea of the working of this department?

A. Yes.

Q. Of your own knowledge?

10

A. Yes).

Q. From your knowledge of it as regards the working of this department, who would be typing this Zoology paper?

A. It is typed by the head of the department; that is the practice.

Q. Did you in the course of your investigations make inquiries whether that practice was followed?

A. Yes.

20

Q. Was that part of your investigations?

A. Yes.

Q. You said that Mr. Sivaprakasapillai had put down something in writing?

A. Yes.

Q. At whose request did he do it?

(Question objected to as it is leading the witness).

Q. Was the writing made at anybody's request?

A. It was made at my request.

30

Q. Why did you request him to put it down in writing?

A. Because I had received information about this

allegation and I thought the allegation had to be made formally in writing before an inquiry was conducted.

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Q. In cross-examination you said that the information was first received from Mr. Keerthisinghe?

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A. Yes.

Q. How came it that you asked Mr. Sivaprakasapillai to put it down in writing?

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Sir Ivor  
Jennings,  
Re-  
examination -  
continued.

10 A. I received information that the allegation had started from Mr. Sivaprakasapillai.

Q. Was it because of that you asked him to put it down in writing?

A. Yes.

Q. What was it you asked Mr. Sivaprakasapillai to put down in writing?

A. A formal allegation so that the inquiry might be held.

20 Q. You have been asked a number of questions about your speaking to Dr. Cruze. You said that you were aware that Dr. Cruze was summoned for this case?

A. Yes.

Q. And you were asked about his coming to Court on the last occasion?

A. Yes.

Q. What was the occasion for this question to be discussed?

30 A. In the course of some ordinary conversation, before he was discharged, I asked him whether he was coming to Court in connection with this case and he said 'yes'.

Q. You were told that Dr. Cruze is said to have identified his correction of that drawing of the rat. Is it correct that you tried to belittle it?

A. Not at all; he did not identify it.

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Sir Ivor  
Jennings,  
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examination -  
continued.

Q. Is it correct that he identified straightaway and was quite certain that it was his correction as soon as it was shown to him?

A. No.

Q. You said that the plaintiff appeared before the three of you on two occasions?

A. Yes.

Q. That is on the first and third occasion?

A. Yes.

Q. In between who was examined?

10

A. Professor Fernando.

Q. You gave the names of a number of persons who were examined at the third meeting?

A. Yes.

Q. Was the plaintiff examined immediately after those people at the third meeting?

A. Yes.

Q. What was it that he was asked at the third meeting?

A. He was asked questions in order that we may follow up the questions which we had asked him at the first meeting. We were also having Miss Balasingham at this third meeting. So we wanted to put the plaintiff questions relating to her evidence.

20

Q. Was that why you asked him to be present at the third meeting?

A. Yes, and also to bring his book.

Q. On any of the occasions at which the plaintiff appeared, did he ask for assistance to be allowed of a friend?

30

A. No.

Q. Or of Counsel?

A. No.

Q. Was anything said or done which gave you the impression that he was unable to follow the proceedings?

A. Nothing at all.

Q. As far as your impression goes what was the position of the plaintiff?

A. He was following very closely and very clearly and answering questions cogently.

10 Q. You said that the marks had not been returned at the date of this inquiry. Which marks were you referring to?

A. The marks of the script had been sent to the external examiners, outside Ceylon, and they had not been returned by then.

Q. And in that situation would the marks be available on that day?

A. No, so long as the external examiners had not read the scripts.

20 (To Court: Q. Were any copies of the mark sheets left behind?

A. I do not know.

Q. Please tell me the circumstances under which you came to question Dr. Cruze?

30 A. The plaintiff had produced an exercise book containing several drawings of a rat. One of them he pointed out had been corrected by Dr. Cruze. So it was suggested that I should ascertain from Dr. Cruze whether that was in fact one which was corrected by him.

Q. That was the one to which attention had been drawn by another witness, Miss Balasingham?

A. No, Miss Balasingham had mentioned in her evidence that she had

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examination -  
continued.

(To Court continued:

copied two drawings from the plain-  
tiff's book, one of which was the  
venus system of the rat).

Q. Who was the examiner who corrected paper 5?  
All of them jointly?

A. No. Professor Fernando and Mr. Keerthisinghe  
would correct this question in German in paper  
5.

Q. And Dr. Cruze would correct the essay?

10

A. I do not know who corrected the essay.

Q. Can you give me the date when Mr. Keerthisinghe  
saw you on the first occasion?

A. I do not think I could.

Q. It was well before P.4 was sent?

A. Yes.

Q. He must have seen you when the marks were with  
the external examiners?

A. No. About 2 days after the scripts had been  
marked by him and Professor Fernando.

20

Q. Then before the papers had been sent abroad?

A. Probably I did not inquire about it.

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Addresses to  
Court.

No. 10

ADDRESSES TO COURT

NOT REPRODUCED

No. 11

JUDGMENTIn the District  
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This is rather a unique case.

The plaintiff became in 1948 a student in the Faculty of Science at the University of Ceylon, the defendant-Institution. His speciality was Zoology. Professor Fernando, the maternal uncle of the plaintiff was and still is the head of the Zoology Department of this University. Two of the lecturers in Zoology are Mr. Keerthisinghe and Doctor Cruz. Mr. Keerthisinghe is the senior lecturer.

At the end of March 1952 the plaintiff presented himself as an examinee for the final examination in Science, Section B Zoology for the degree of Bachelor of Science, and completed the full examination for the said degree in both theory and practical work.

There were 5 papers in theory and 2 papers in practical work, set for this final examination. The last theory paper - Zoology Paper V - with which I am concerned in this case was answered by the plaintiff on 4.4.52. This Zoology Paper V (P.3) consisted of two sections; (1) an Essay; (2) a passage in French and another in German, one of which had to be translated into English with comments on it. The first section - Essay - was set by Professor Fernando, Mr. Keerthisinghe and Doctor Cruz. The German passage in the second section of this paper was selected by Professor Fernando from a book in his possession and custody and was approved by Mr. Keerthisinghe. Whether it is a breach of the policy of the University or not, the fact remains that the marks assigned to each of these sections of this paper were known to all the examinees. 10 marks were allotted for the translation and comment, whilst 90 marks were for essay.

The plaintiff, it is the evidence in this case, has done extremely well in all the papers. He has secured in :-

Paper I	71 A
Paper II	71 A
Paper III	68 B
Paper IV	64 B



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Paper V . . . . . 90 A  
1st Practical Paper . . . . . 87 A  
2nd Practical Paper . . . . . 88 A; and

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in the subsidiary subject Botany 63B. The letters  
A and B denote classes.

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continued.

In Paper V for the translation of the German passage and comments on it he had secured 8 out of the 10 maximum marks. He had also obtained the highest aggregate marks, and a candidate who was second to him, it is proved, had been awarded a first class degree.

10

But, this excellent performance of his had proved ultimately useless to him by reason of some information that reached the Vice-Chancellor after the examination was over. Between Mr. Keerthisinghe, the Lecturer and Professor Fernando, the maternal uncle of the plaintiff, there was not much love lost. Mr. Keerthisinghe after he had marked the script of the plaintiff in the Zoology Paper V had seen the Vice-Chancellor, Sir Ivor Jennings. The exact nature of his communication to the Vice-Chancellor concerning the plaintiff's performance is not in evidence before me. But, it may be easily guessed from what has not been stated. Mr. Keerthisinghe was followed soon after by Mr. Sivapirakasapillai; a Lecturer in the Engineering Faculty, who placed before the Vice-Chancellor what he had heard about the German passage in Paper V and the examination in general, from his sister-in-law Miss Balasingham, who was one of the examinees with the plaintiff at the Final Examination. At the request of the Vice-Chancellor, Mr. Sivapirakasapillai tendered to him a written statement of the allegations made to him by his sister-in-law Miss Balasingham. The gist of these allegations was that the plaintiff has had pre-knowledge of one or more of the question papers set for this Final Examination.

20

30

It is the evidence of the Vice-Chancellor that he decided to probe this matter with the assistance of a Board of Inquiry consisting of himself, Professor Mylvaganam Dean of the Faculty of Science, and Keuneman, Q.C., a member of the Council of University; (Vide P11), and that the last named gentleman was to lead in the inquiry. The Vice-Chancellor by his letter P4 of 16.5.52 informed the plaintiff of the allegations against him and invited him to present himself on 21.5.52 before the aforementioned

40

commission or board of inquiry. The board of inquiry or commission decided to confine the inquiry to the leakage of the German passage in Zoology Paper V and to drop the allegations about the practical paper of which it was also alleged that the plaintiff had pre-knowledge.

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continued.

10 The plaintiff went before this board of inquiry or commission of inquiry on 21.5.52 and 3.6.52. On these two occasions he was questioned by Keuneman Q.C., Professor Mylvaganam and less frequently by the Vice-Chancellor about this allegation. In between these two dates the plaintiff had seen the Vice-Chancellor and had handed to him his lecture notes taken down on a foolscap sheets of paper. The board of inquiry or commission of inquiry had questioned many others but none of them in the presence and hearing of the plaintiff. Those questioned among others included students, lecturers and the Professor of the Zoology Department. It is admitted  
20 by the Vice-Chancellor that he alone questioned Doctor Cruzs on one occasion in the absence of the other two gentlemen and that on another occasion he alone has had discussions with Professor Fernando.

30 The commission of inquiry or the board of inquiry reported to the Board of Residence and Discipline under General Act, Chapter VIII, Part I, section 8, its finding that the plaintiff had acquired knowledge of the nature and substance of the German question in Zoology Paper V, before the date and time of the examination. This report was not made available to Court, but P 11 is an expurgated copy of the original report. The Board of Residence and Discipline, one of the University authorities, on that report had found the plaintiff guilty of an examination offence and had further suspended him indefinitely from all University examinations. The plaintiff had been notified by the Vice-Chancellor of the decision of the Board by letter P7 of 18/22 July, 1952.

40 But, actually before the plaintiff received this intimation of the decision of the Board of Residence and Discipline he had seen a news paragraph in the papers about this decision. On seeing this he addressed an appeal P6 of 23.7.52 to the Vice-Chancellor, who promised to circulate it among his colleagues (Vide letter P8) of 24.7.52. The Vice-Chancellor replied to this appeal by his letter P9 dated 29.7.52. Thereafter there was a considerable

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amount of correspondence between the plaintiff and the Vice-Chancellor, who had also sent the plaintiff the expurgated copy of the report (P11), which he had made to the Board of Residence and Discipline. A second appeal (P12) of 7.8.52 was considered by the Board of Residence and Discipline, which was not prepared to interfere with its original decision. Then followed a third appeal (P14) of 24.9.52, which was in fact really a criticism of the report (P11) made to the Board of Residence and Discipline. The plaintiff had also addressed certain other communications like P15 of 27.11.52, P19 of 19.12.52 to the Vice-Chancellor touching the relationship of Professor Mylvaganam to Miss Balasingham. The Board of Residence and Discipline which had all these communications at its meeting held on 12.3.53 was of the opinion that the material placed by the plaintiff before the Board did not justify the reopening of the inquiry asked for by the plaintiff. The plaintiff was informed of this decision of the Board by the letter P23 of 16.3.53. These appeals P6, P12 and P14 and the other letters of the plaintiff P15 and P19 foreshadowed the basis of the present action.

10

20

Frustrated in his attempt to obtain some relief from the University authorities the plaintiff has turned to a Court of Law for relief. The plaintiff in this case impeaches as null and void the decision of the commission or Board of Inquiry and all steps resulting therefrom, and seeks here (1) a declaration to the effect that the finding of the commission and the decision of the Board of Residence and Discipline were null and void; and (2) an order quashing the said finding and decision on the following three grounds:-

30

1. That the said decision of the commission of inquiry was contrary to the principles of natural justice for 5 reasons.

(a) & (c). Professor Mylvaganam, one of the commission was related to Miss Balasingham and Mr. Sivapirakasapillai, and was "interested" and that justice should not only be done but should also appear to be done;

40

(b) Professor Mylvaganam being a member of the Board of Examiners and Scrutinising Committee would be a judge in his own

cause in an inquiry of this sort re: leakage of an examination paper, and was thus disqualified;

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(d) The plaintiff was not aware of the case he had to meet, as the evidence of the various witnesses had been taken in his absence and not in his presence and within his hearing; and

10 (e) The evidence of the various witnesses was not taken entirely before all the three members who constituted the commission or board of inquiry, and certain evidence taken by the Vice-Chancellor alone in the absence of the other two members had been acted on by the commission.

2. That there was no evidence upon which the commission of inquiry could reasonably find the charge against the plaintiff proved.

20 3. That the finding arrived at against the plaintiff was one that had not been arrived at in conformity with Examinations Procedure as laid down in Chapter VIII of the General Act of the University of Ceylon, and as such the said finding and decision were void and of no effect.

30 The defendant-institution opposes this claim of the plaintiff (1) to the declaration sought and (2) to an order by this Court quashing the finding of the commission of inquiry and the decision of the Board of Residence and Discipline, on the ground that this Court had no jurisdiction to entertain, hear or determine this action; nor any jurisdiction to decree any of the reliefs claimed or prayed for, or alternatively the defendant-institution maintains that the averments in the plaint did not disclose any cause of action which entitled the plaintiff to any of the reliefs prayed for in the plaint. By way of further answer the defendant-institution maintains that all that happened was that the Vice-Chancellor requested Keuneman, Q.C. and Professor Mylvaganam, who was the Dean of the Faculty of Science, to which the Zoology Department belonged, to assist him in his inquiry as to whether or not the plaintiff had acquired before the date and time of the examination knowledge of the substance of any question or of the contents of one of the question papers set at the Final Examination and that

40

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the Vice-Chancellor was satisfied that the plaintiff had acquired knowledge of the nature or substance of the German question in Zoology Paper V, before the date and time of the said examination. Satisfied as he was on this matter, the Vice-Chancellor reported his finding to the Board of Residence and Discipline under the provisions of Rule 8 of the Examinations Procedure of the General Act of the University of Ceylon. The Board of Residence and Discipline had suspended the plaintiff indefinitely from all University examinations under the provisions of Rule 14 of the Examinations Procedure. The Defendant Institution has denied that the action taken by the Vice-Chancellor was null and void for the reasons given in the plaint.

10

At the trial Mr. Choksy, who appeared for the Defendant-Institution, raised three issues as regards the competence of this Court to decide the matters raised in the plaint. They are as follows: 20

Issue 7. "Has this Court jurisdiction -

(a) to entertain, hear or determine this action, (b) to decree any of the reliefs claimed or prayed for in the plaint?"

Issue 8. "Does the plaint disclose any cause of action entitling the plaintiff to any of the reliefs prayed for in the plaint?"

Issue 9. "If Issues 7 and or 8 are, or is answered in the negative can plaintiff have and maintain this action?" 30

Mr. Choksy for the defendant-University moved that these three issues be tried first as issues of law. But this was objected to by Mr. Weerasooriya for the plaintiff. After hearing argument I decided to try the case as a whole and not piecemeal. For it was clear from the plaint that any defects of jurisdiction in the commission of inquiry; on the ground of bias or interest on the part of one of the members of the commission, the act or acts that violated any principle of natural justice, or the non-compliance with the procedure, all required proof. The question involved in this case is one of mixed law and fact and hence my decision.

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I heard evidence. The plaintiff gave evidence and called Doctor Crusz as his witness to speak to plaintiff's capabilities as a student, and witness' encounter with the Vice-Chancellor. The plaintiff gave a graphic account of his experiences before the commission of inquiry and the way he was treated by the commission. The Vice-Chancellor explained that he had asked Keuneman Q.C. and Professor Mylvaganam to assist him at the inquiry he had to make to be satisfied. He testified to the fact that he drafted the report with which the two other gentlemen agreed. He swore that he was satisfied when he made the report that plaintiff has had pre-knowledge of the German passage in Zoology Paper V (P3).

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I will for the present assume that this Court has jurisdiction to hear this case and proceed to consider the case of the plaintiff.

Under the Examinations Procedure, Chapter VIII of General Acts (D2 at 190) there are two sections which must be noticed in this connection. One is section 8, which runs thus:-

"Where the Vice-Chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or has attempted or conspired to obtain such knowledge, the Vice-Chancellor may suspend the candidate from the examination or remove his name from any pass list, and shall report the matter to the Board of Residence and Discipline for such further action as the Board may decide to take."

The other is section 14, which states:-

"Where any matter is reported to the Board of Residence and Discipline under this Part, the Board may -

- (1) remove the name of the candidate from any pass list; or
- (2) suspend the candidate from any University examination for such period as the Board may decide, or indefinitely; or
- (3) order that the candidate be suspended from the University for such period as the Board may decide, or indefinitely; or

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(4) do all or any of these acts."

It is in pursuance of a report purporting to be under Section 8 that the Board of Residence and Discipline had made a decision against the plaintiff under Section 14.

It is necessary to ascertain the capacity in which the Vice-Chancellor acts under Section 8; that is when he suspends a candidate or removes his name from a pass list, and reports the matter to the Board of Residence and Discipline, on his being satisfied that a candidate has had pre-knowledge of the contents of a question paper. Is he acting as an executive officer, in his administrative capacity, or in a quasi-judicial capacity? It will be observed that no procedure is laid down in respect of the process of bringing about this state of satisfaction, the pre-requisite condition before he acts. The test to be applied is set out by the Privy Council in the case of *Nakuda Ali Vs. Jayaratne* (51 N.L.R. 457 at 463) whilst dealing with the question of issue of Writs of Certiorari. Their Lordships state, "That principle is most precisely stated in the words of Lord Justice Atkin (as he then was) in *R. Vs. Electricity Commissioners* (1924) 1 K.B. at 204 ..... the operation of the writs has extended to control the proceedings of bodies who do not claim to be and would not be recognised as Courts of Justice. Whenever any body of persons having legal authority to determine questions affecting the rights of Subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs. As was said by Lord Hewart, C.J. in *R. Vs. Legislative Committee of the Church Assembly* when quoting this passage, 'in order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the subjects, there must be super-added to that characteristic the further characteristic that the body has the duty to act judicially'. It is that characteristic that the Controller lacks in acting under Regulation 62. In truth when he cancels a licence he is not determining a question; he is taking executive action to withdraw a privilege because he believes and has reasonable grounds to believe that the holder is unfit to retain it. But that apart, no procedure is laid down by the Regulation for securing that the licence holder is

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to have notice of the Controller's intention to revoke the licence, or that there must be an inquiry, public or private, before the Controller acts..... In brief the power conferred on the Controller by Regulation 62 stands by itself upon the bare words of the Regulation and if the mere requirement that the controller must have reasonable grounds of belief is insufficient to oblige him to act judicially, there is nothing else in the context or conditions of his jurisdiction that suggests that he must regulate his action by analogy to judicial rules". Regulation 62 which their Lordships considered was worded thus:-

"Where the controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer, the controller may cancel the textile license or..... issued to that dealer."

Here also when the Vice-Chancellor reported, he was taking executive action; he was not determining the question. There is no procedure for a notice to the candidate affected, or that there should be an inquiry. There is not that characteristic in the Vice-Chancellor to act judicially when he is taking action under section 8. Judged by the test laid down by the Privy Council, the Vice-Chancellor being under no legal obligation to act judicially, was performing an administrative act. The mere requirement that he be "satisfied" is insufficient to oblige him to act judicially. If he is not under a duty to act judicially or quasi-judicially under section 8 then it would not be according to law that his decision to report should be amenable to review and if necessary to avoidance by the procedure of Certiorari by the Supreme Court, or by any declaration to be made by this Court. If this writ cannot issue from the Supreme Court in these circumstances, I think this Court will also have no jurisdiction to quash the finding of the Vice-Chancellor embodied in his report (P11). The words "is satisfied" are found in Section 1(1) of the Town and Country Planning Act 1944 (Chapter 47) which runs thus:-

"Where the Minister of Town and Country Planning is satisfied that it is requisite.... an order may be made by the Minister."

This section came up for decision in the case of

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Robinson and others Vs. Minister of Town & Country Planning (1947) 1 A.E.R. 851. It was held by the Divisional Court that the executive acts, i.e. the making of the order, is not a judicial or quasi-judicial decision and cannot be controlled by the Courts by reference to the evidence or lack of evidence at the inquiry if one was held. I do not see how Courts of Law could interfere with an administrative act of an Executive and declare the Vice-Chancellor's finding, however it be arrived at, invalid, when that finding is the result of a state of satisfaction, the process of bringing about which is not laid down by any procedure. In this case even if he had held an inquiry before the report, such inquiry is only a process which leads to a state of satisfaction. Lord Greene, M.R. in the last case states, "It is manifest that it (state of satisfaction) may be brought about by e.g., inquiries made on behalf of and advice given to the Minister from within or without his Department". The Board of Residence and Discipline had decided against the Plaintiff presumably on the basis of this report (Pl1). It is in my view not open to question in a Court of Law, this decision taken in an administrative capacity (51 N.L.R. 456).

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But assuming for a moment that the finding of the Vice-Chancellor was judicial or quasi-judicial one, can it be attacked in any Court of Law on the three grounds set out in the plaint, viz: (1) Violation of the principles of natural justice, (2) Absence of evidence justifying the finding, and (3) Non-observance of the Examinations Procedure in arriving at this finding.

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I will deal first with the third ground. This was elaborated at the hearing thus:- Whilst under section 8, the only person to be "satisfied" was the Vice-Chancellor, a finding has been made by a commission of inquiry consisting of himself, Keuneman, Q.C. and Professor Mylvaganam. Neither was the report made by the Vice-Chancellor, but by the commission. The finding and report are not in conformity with the requirements of section 8, and the decision based on such finding and report was bad in law. The answer to this contention is to be found in the judgment of Lord Shaw in the case of Local Government Board Vs. Arlidge (1915 A.C. 120). The tribunal which is not a Court of law in the ordinary sense, 'must do its best to act justly

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and to reach just ends by just means', he said, "If a Statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these, certain ways and methods of judicial procedure may very likely be imitated, and lawyer-like methods may find special favour lawyers. But that the judiciary should presume to impose its own methods on (other tribunals set up by Parliament) is a, usurpation, and the assumption that the methods of natural justice are ex necessitate those of Courts of justice is wholly unfounded." The Privy Council almost voiced the same idea in the case of De. Verteuil Vs. Knaggs (1918) Appeal Cases 557 at 560. Their Lordships said, "The ordinance does not prescribe any special form of procedure, but there is an obvious implication that some form of inquiry must be made, such as will enable the Governor fairly to determine whether a sufficient ground has been shown to his satisfaction for the removal of indentured immigrants. The particular form of inquiry must depend on the conditions under which the discretion is exercised in any particular case; and no general rule applicable to all conditions can be formulated." Our Courts have taken a similar view in the case of de Mel Vs. M.W.H. de Silva (51 M.L.R. 282). Where a tribunal other than a Court of Law is vested with legal authority to determine questions affecting the rights of parties, but the procedure it should adopt is not expressly provided by statute, the tribunal is the master of its procedure, provided however that the essential requirements of justice and fairplay are observed. I have referred to these three cases, because section 8 of the Examinations Procedure in the General Act (D2 page 190) is absolutely silent about the procedure to be adopted by the Vice-Chancellor. In such a case, the Vice-Chancellor has to devise his own procedure and has devised one by asking Keuneman Q.C. and Professor Mylvaganam to assist him at the inquiry into the allegations against the plaintiff. Despite the unhappy choice of words found in the letter P4 or in paragraph 1 of the Report (P11), I fully believe the Vice-Chancellor's words that he asked the other two gentlemen to assist him at the inquiry. One cannot find fault with his choice itself. The report was really written by the Vice-Chancellor himself, with whom the others agreed. I accept the Vice-Chancellor's evidence on that point. The fact that it had also been signed by the other two gentlemen cannot

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in these circumstances render its parentage doubtful or obscure. It is the Vice-Chancellor's report. In my view, the question of non-compliance cannot arise, as there was no procedure prescribed by the Examinations Procedure. It may be mentioned that the Vice-Chancellor could have delegated this task altogether to Professor Mylvaganam, because he was the Dean of a Faculty, (Rule 17).

The first ground is that the principles of natural justice had been violated for 5 reasons. Three of them are concerned with the disqualification of Professor Mylvaganam to sit on this board of inquiry, on the ground of his bias resulting from his relationship to Miss Balasingham, and Mr. Sivapirakasapillai, and the fact of his membership of the Board of Examiners, and of the Scrutinising Committee. There is little substance or nothing at all in the submission that his membership disqualified him from functioning on this Board of Commission. The leakage of the contents of that paper reflected on the University. If Professor Mylvaganam on the score of his membership was disqualified, then the Vice-Chancellor would have been doubly disqualified, because of his Chairmanship of the Board of Examiners and Scrutinising Committee. There is a conflict of testimony between the plaintiff and the Vice-Chancellor over the precise nature of the relationship of Professor Mylvaganam to Miss Balasingham and Mr. Sivapirakasapillai. I am inclined to the belief the Vice-Chancellor was better placed than the plaintiff to ascertain this relationship from Professor Mylvaganam himself. I accept the Vice-Chancellor's statement in letter P18 of 8.12.52 about this relationship. One could hardly describe that as a relationship, which would or could bias Professor Mylvaganam in favour of the two witnesses Miss Balasingham and Sivapirakasapillai, against the plaintiff. I am not prepared to believe that Professor Mylvaganam could have succumbed to the ties of such distant relationship. It is difficult to define 'bias'. Rules taken from decisions as applicable to Courts of Law are hardly applicable to cases of this nature. As Maugham J. said in the case of Maclean Vs. Workers' Union (1929) 98 L.J.R. Chancery 293 at 295, "What ever may be the precise meaning of this phrase, I think that mere personal prejudice, even resulting from a previous dispute or altercation is not comprehended within the term." The Privy Council in a case from

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Trinidad (40 C.L.W. 100) has expressly adopted the view of Maugham J. in Maclean's case and did not think the presence of two prejudiced stewards on the Tribunal injected such an element of bias into the Tribunal, so as to give Rise to a reasonable suspicion that the trial was not a fair one. These two cases are sufficiently authoritative on this matter of alleged bias on Professor Mylvaganam's part as to disqualify him from sitting on the commission of inquiry. In my opinion this alleged bias now imputed to him is really an afterthought. For not till 27th November 1952 was this thought of. Even in that letter (P15) where the plaintiff referred to this relationship, he stated that he never questioned the impartiality or personal integrity of Professor Mylvaganam. It is only in his evidence, he began to doubt these (Vide P15). Concerning the reasons given for the violation of the principles of natural justice. It is admitted by the Vice-Chancellor that the witnesses were not questioned in the presence of the plaintiff and the other members were not present when Doctor Cruz was questioned by him (the Vice-Chancellor. There is hardly any ground for the plaintiff's complaint that by reason of witnesses not being questioned in his presence, he did not know the nature of the case he had to meet. It is a fact that notice of the nature of the allegations was given to him by letter P4. It was admitted on the first day of plaintiff's cross-examination by him that within five minutes of his entering the Vice-Chancellor's office, he knew the nature of the allegations or charges against him and the name of his accuser. Therefore it is futile to urge that he did not know the nature of the case he had to meet and to attribute it to the fact that witnesses were not examined in his presence and within his hearing. "It is useful to bear in mind the very wide differences between the principles applicable to Courts of Justice and those applicable to domestic Tribunals. In the former the accused is entitled to be tried by the Judge according to the evidence legally adduced and has a right to be represented by skilled lawyer.....A domestic Tribunal is in general composed of laymen. It has no power to administer an oath.....no party had the power to compel the attendance of witnesses. It is not bound by the rules of evidence.....It may act, and it sometimes must act on mere hearsay..... The members of the tribunal may have been discussing the matter for weeks with persons not present at the

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inquiry. It is apparent and it is well settled by authority that the decision cannot be attacked on the ground that it is against the weight of evidence, since evidence in the proper sense there is none, and since the decisions of the tribunal are not open to any sort of appeal unless the rules provide for one". Per Maugham, J. at 296 of (1929) 98 Chancery Division. Lord Parmoor referring to the Committee of the Stock Exchange of London, stated, "The Committee are not of course bound to treat such a question as though it were a trial. They can obtain information in any way they think best. I am however not satisfied that they are not subject to the limitation expressed in this House by Lord Loreburn (Board of Education v. Rice [1911] A.C. 179) always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view" - Weinberger v. Inglis [1919] A.C. 606 at 636. I cannot help feeling that when on 21.5.52 the Commission questioned last the plaintiff, it was done in order that the plaintiff might know the statements and allegations of those who had preceded him. When he was called on a second occasion (3.6.52) the Commission was giving him a fair opportunity to explain himself and in doing so the commission was acting in terms of the judgment of the House of Lords in Rice v. Education Board ([1911] A.C. 196).

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There is no room to believe that there has been a violation of the principles of natural justice in this case. In the absence of special provision as to how the tribunal is to proceed the law will imply no more than the substantial requirement of justice shall not be violated. It must give the party who may be affected by its decision an opportunity of being heard and stating his case. It must give him notice when it will proceed with the matter and it must act honestly and impartially and not under the direction of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the Statute if there were anything of that sort done contrary to the essence of justice 51 M.L.R.282..... The plaintiff's complaint that he was not given an opportunity to explain or state his case needs examination. It rests on his evidence alone. That is contradicted by the Vice-Chancellor, who stated

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that plaintiff understood everything asked and started hedging and would not answer questions direct. Having regard to the personal of the commission, one finds it difficult to accept the plaintiff's evidence that he was denied an opportunity of explaining his case. Plaintiff's evidence under cross-examination revealed that he is capable of prevarication. On this point again, I accept the Vice-Chancellor's evidence that plaintiff was given an opportunity and he gave an explanation. In this case the plaintiff has had notice of the inquiry, of the allegations against him, and had been given an opportunity to be heard on two occasions. The plaintiff does not doubt the impartiality or the honesty of the commission. That is revealed by his communications. I cannot say that any essentials of justice had been sacrificed by the commission. This is a case where no Court of Law will interfere; not even on the ground of absence of evidence to support the finding of the commission. For that is not the function of the Courts. Once it is satisfied that an inquiry had been honestly conducted within the terms of the Statute or Rules or without violating the essentials of justice, then and there the Courts jurisdiction ends.

Now I will consider the question whether this Court has jurisdiction to take cognizance of a case of this nature. Let me state that in England the Queen's Bench Division has the right to issue writs of certiorari to extra judicial tribunals. The Supreme Court in its original jurisdiction has the same power conferred on it by section 42 of the Courts Ordinance. As far as the District Court is concerned, though its jurisdiction is unlimited (14 Recorder 24) and is plenary and in some instances it is greater than that of the Queen's Bench Division, yet it is circumscribed by the original jurisdiction of the Supreme Court (Vide section 62 of the Courts Ordinance). Had this matter been before the Supreme Court, it might on a case being made out have given the reliefs sought in this case. But, so far as this Court is concerned, it has to act within the limits prescribed by the Civil Procedure Code, and the Courts Ordinance. An "action" is defined in the Civil Procedure Code as a proceeding for the prevention or redress of a wrong (section 5). This definition is later extended to include every application to a Court for relief or remedy obtainable through the exercise of a Court's power or

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authority or otherwise to invite its interference (Section 6). The term also includes quia timet actions, i.e., actions for the prevention of threatened wrongs 10 N.L.R., 355 1 S.C.C.27 F.B. Every action presupposes a cause of action, which term is also defined as a wrong for the prevention or redress of which an action may be brought and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty and the infliction of an affirmative injury (Section 5). This definition is not exhaustive of the list of wrongs 4 N.L.R.12. No doubt the term "cause of action" ought not to be construed as if it were identical with the transaction out of which the right to relief arises 4B. Notes Cases 89. The right claimed to a declaration that certain finding is bad in law, or a right to have that finding quashed, is not in my humble opinion such a right that this Court has power to grant by its orders. I have not been referred to any case where this Court had been known to have made declarations of this sort, sought in this case. But, cases are known where the orders of domestic tribunals have been executed by this Court, or enforced by the Courts, 55 N.L.R.313. Of course, it is stated in 29 N.L.R. 361 at 365 by Dalton, J. that such orders of domestic tribunals such as Buddhist Ecclesiastical bodies could be impugned on the ground of gross irregularity in these Courts. He pointed out that the defendant had failed to raise an issue impugning the order of the Ecclesiastical Body in that case. If the Courts could be used as a forum where such orders could be attacked by way of defence it stands to reason that they could be impugned in these Courts by any person prejudicially affected by the orders. Perhaps this is the sole judgment, which impliedly recognises this Court as a forum where orders of extra judicial bodies could be questioned. But on the other hand, if one looked at Section 217 (the decrees) it seems futile for a Court to pass or to make a declaration of a right or status which cannot be executed. Quia timet actions in which declarations can be made come within the scope of 217(G). In India despite the existence of the Specific Relief Act, the High Court of Allahabad refused relief, where a student of the Benares University claimed that he had passed an Examination. (1925 A.I.R. Allahabad 253). There the reliefs sought were by way of a declaration and of an injunction. The declaration sought was to the effect that the plaintiff was entitled to have been declared as having passed an examination or alternatively he claimed damages.

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Everything considered, I am not sufficiently convinced that this Court has any jurisdiction in this matter. Even if it has, on the facts and on the law, it is not a case where this Court can interfere.

I answer the issues as follows :-

1. Yes.
2. No. He asked the gentlemen to assist him.
3. (a) They inquired.  
(b) Yes.  
(c) Yes.
4. Yes.
5. Not established.
6. Does not arise in view of my answer to Issue 5.
7. No.
8. Not necessary to answer in view of my answer to Issue 7.
9. Not necessary to answer.
10. (a) Yes.  
(b) Yes.  
(c) Yes.
11. Not necessary to answer in view of my answers to Issues 5 and 7.

It is with a great amount of regret that I dismiss the plaintiff's action with costs.

Sgd. M.M.I. Kariapper.  
Additional District Judge.  
31.8.54.

No. 12

DECREE

IN THE DISTRICT COURT OF COLOMBO

E.F.W. FERNANDO

Plaintiff

against

THE UNIVERSITY OF CEYLON

Defendant

This action coming on for final disposal before M.M.I. Kariapper Esquire, Additional District Judge, Colombo on the 31st day of August, 1954 in the presence of Proctor on the part of the Plaintiff and of Proctor, on the part of the Defendant, it is ordered and decreed that the Plaintiff's action be and the same is hereby dismissed with costs.

Sgd. M.M.I. Kariapper  
Additional District Judge, Colombo

The 31st day of August, 1954.

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Decree

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In the  
Supreme Court  
of Ceylon

No.13

PETITION OF APPEAL

No.13

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

Petition of  
Appeal

E.F.W. Fernando ... .. Plaintiff

- v -

8th September,  
1954.

The University of Ceylon ... .. Defendant

E.F.W. Fernando ... .. Plaintiff-Appellant

- v -

The University of Ceylon Defendant-Respondent

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER  
JUDGES OF THE HONOURABLE THE SUPREME COURT OF  
THE ISLAND OF CEYLON.

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On this 8th day of September, 1954.

The Petition of Appeal of the abovenamed Plain-  
tiff-Appellant appearing by ADDISON SERASINGHE  
GUNAWARDENA his Proctor, states, as follows :-

1. The Plaintiff-Appellant, hereafter referred  
to as the Appellant sued the Defendant-Respondent,  
hereinafter referred to as the Respondent in case  
No. 28909/M of the District Court of Colombo, under  
the following circumstances:-

(a) The Appellant at all relevant times was a  
student in the faculty of Science of the Respondent  
University. Having duly complied with all the  
regulations and requirements necessary to entitle  
him to present himself as an examinee for Final  
Examination in Science, Section B, Zoology, did pre-  
sent himself for the said Examination in or about  
March 1952 in order to obtain the Degree of Bachelor  
of Science of the Respondent University.

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(b) The Appellant completed the full Examina-  
tion for the said Degree in both the theory part and  
the practical part.

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(c) After the Appellant had completed the said Examination, an allegation was made to the Vice-Chancellor of the Respondent University by one S. Balasingham, a student who sat for the same Examination and her brother-in-law, one T. Sivaprakasapillai, a lecturer in the Faculty of Engineering, that the Appellant had acquired prior knowledge of the contents of one of the question papers set at the aforesaid Examination.

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of Ceylon

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Petition of  
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10 (d) In order that he might be satisfied whether or not the Appellant had acquired such knowledge of the contents of the said paper, the said Vice-Chancellor on or about the 16th of May 1952 appointed a Commission consisting of himself, A.E. Keuneman, Q.C. and Professor A.W. Mailvaganam, to inquire into the said allegation.

20 (e) The said Commission of Inquiry heard evidence and inquired into the said allegation and came to a finding adverse to the Appellant, and the said finding was duly reported by the said Vice-Chancellor under the Examinations Procedure of the Respondent University of the Board of Residence and Discipline. The said Board acting upon the said finding of the said Commission of Inquiry suspended the Appellant indefinitely from all Examinations of the Respondent University and the said decision was communicated to the Appellant by the said Vice-Chancellor on or about the 18th of July 1952.

30 2. In this action the Appellant claimed the declaration that the decision of the said Commission of Inquiry and all steps resulting therefrom were null and void on the following grounds:

(I) That the said decision of the said Commission of Inquiry was contrary to the Principles of Natural Justice for one or more of the following reasons:-

40 (a) One of the Members of the said Commission of Inquiry, to wit, Professor A. W. Mailvaganam was at all relevant times a relation of the aforesaid S. Balasingham and T. Sivaprakasapillai.

(b) The said Professor Mailvaganam was a member of the Board of Examiners for the said Examination and of the Scrutinising Committee under the Examinations Procedure

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and vitally interested in the question of leakage of an examination paper. In the circumstances he was acting as a Judge in his own cause by sitting as a member of the said Commission of Inquiry, and also by being related to the persons who made the said allegation and nevertheless officiating as a member of the said Commission, he flouted the maxim that justice should not only be done but also appear to be done.

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(c) The evidence of the various witnesses who appeared before the said Commission of Inquiry, in particular the evidence of the Complainant S. Balasingham, was taken in the absence of the Appellant, who was not even given a statement of what evidence had been led against him, and so was not aware of what case he had to meet.

(d) The evidence of the various witnesses was not taken entirely before all the three members constituting the said Commission of Inquiry. Certain evidence was taken by the Vice-Chancellor alone in the absence of the other two members of the said Commission of Inquiry but that evidence was acted on by all the members of the said Commission of Inquiry.

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(II) That there was no evidence upon which the said Commission of Inquiry could reasonably find the charge against the Appellant proved.

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(III) That the finding arrived at against the Appellant was one that had not been arrived at in conformity with the Examinations Procedure as laid down in Chapter Eight of the General Act of the Respondent University.

3. The case went to trial on the following issues:-

(1) Was an allegation made to the Vice-Chancellor of the University of Ceylon by one Miss S. Balasingham and Mr. T. Sivaprakasapillai that the Plaintiff had acquired knowledge of the contents of one of the question papers set for the Final Examination in Science in March 1952?

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(2) Did the Vice-Chancellor appoint a Commission of Inquiry consisting of himself Mr. A.E. Keuneman, Q.C., and Professor A.W. Mailvaganam to inquire into the said allegation?

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(3)(a) Did the said Commission hear evidence and inquire into the said allegation?

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(b) Did the said Commission come to a finding adverse to the Plaintiff?

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(c) Did the Vice-Chancellor report the finding of the Commission to the Board of Residence and Discipline?

(4) Did the Board of Residence and Discipline, in view of the finding of the Commission of Inquiry suspend the Plaintiff indefinitely from University Examinations?

(5) Is the decision of the Commission of Inquiry and all steps resulting therefrom null and void on all or any of the grounds set out in paragraphs 7(1) a,b,c,d and e; and/or 7(2) and/or 7(3) of the Amended Plaintiff?

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(6) Is the Plaintiff entitled to a declaration

(a) that the said finding of the Commission of Inquiry and all steps resulting therefrom are null and void?

(b) that the said finding of the Commission of Inquiry and the decision of the Board of Residence and Discipline be quashed?

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(7) Has this Court jurisdiction (a) to entertain, hear or determine this action, (b) to decree any other reliefs claimed or prayed for in the Plaintiff?

(8) Does the Plaintiff disclose any cause of action entitling the Plaintiff to any other relief prayed for in the Plaintiff?

(9) If issues 7 and/or 8 are or is answered in the negative, can Plaintiff have or maintain this action?

(10)(a) Was the Vice-Chancellor of the University

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satisfied that the Plaintiff had acquired knowledge of the nature or substance of the German question in the Zoology Paper V before the date and time of the Examination in question?

(b) Did he accordingly report the matter to the Board of Residence and Discipline under the relative Provisions of the Examinations Procedure?

(c) Did the said Board of Residence and Discipline suspend the Plaintiff indefinitely from all University Examinations under the Provisions of Rule 14 of the said Examinations Procedure?

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(11) If all or any of issues 10(a) (b) and (c) are answered in the affirmative

(a) Has the Plaintiff any cause of action?

(b) Is he entitled to this action to any of the reliefs prayed for?

(c) Can he have or maintain this action?

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4. After hearing the evidence in the case and the addresses of Learned Counsel on both sides the Learned Judge in the Original Court reserved his judgment and delivered the same on the 31st of August 1954 dismissing the Appellant's action with costs.

5. Being dissatisfied with the said judgment the Appellant appeals to Your Lordships' Court, on the following among other grounds of appeal:-

(a) The said judgment is contrary to law and against the weight of evidence led in the Case;

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(b) It is respectfully submitted that the learned Judge of the Original Court was wrong in law in taking the view that the said Court had no jurisdiction to entertain this action. It is submitted that the said Court had jurisdiction;

(c) It is respectfully submitted that the relevant correspondence conclusively proves that the Vice-Chancellor had delegated his functions to a Commission of Inquiry and, thereby, contravened the Provisions of the Examinations Procedure Chapter Eight, Section Eight 40

of the General Act of the Respondent University and that the finding of the Commission and the action taken thereunder were bad and void in law. It is also respectfully submitted that the Appellant was entitled to a Degree in terms of the marks that he had obtained in the said Examination;

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10 (d) It is further submitted that on the facts as disclosed in the correspondence and the evidence led in the action, the decision of the Commission of Inquiry was contrary to the Principles of Natural Justice and therefore unsustainable and ought to be quashed.

WHEREFORE the Appellant prays that Your Lordships' Court be pleased:-

- 20 (a) to declare that the finding of the said Commission of Inquiry and the decision of the Board of Residence and Discipline resulting therefrom null and void;
- (b) to quash the said finding and decision;
- 20 (c) to declare that the Appellant is entitled to a Degree in terms of the Marks he had obtained;
- (d) to grant the Appellant the costs of the action and of this Appeal and;
- (e) to grant the Appellant such further and other relief in the premises as to Your Lordships' Court shall seem meet.

Sgd. A.S. GUNAWARDENA.

PROCTOR FOR PLAINTIFF-APPELLANT.

30 Settled by,

Sgd. KINGSLEY HERAT  
Advocate.

Sgd. N.E. WEERASOORIA, Q.C.  
Advocate.

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No.14

JUDGMENT OF THE SUPREME COURT

No.14

FERNANDO v. THE UNIVERSITY OF CEYLON.

Judgment

Present: WEERASOORIYA J. and T.S. FERNANDO J.

28th November,  
1956.

Argued on: 9th and 10th August and 17th, 18th, 20th,  
21st and 24th September, 1956.

Delivered on: 28th November, 1956.

WEERASOORIYA, J.

This is an appeal by the plaintiff from the judgment and decree of the District Court of Colombo dismissing the action instituted by him against the University of Ceylon, as the defendant. The substantial relief claimed in the action is a declaration that the findings of a committee of inquiry that the plaintiff had acquired knowledge of the nature or substance of a passage in German in Zoology Paper V before the date and time of the examination, and the decision of the Board of Residence and Discipline of the University of Ceylon suspending him indefinitely from all examinations of the University, be declared null and void. 10 20

The judgment of the learned District Judge sets out the relevant facts of the case, but it would be necessary to refer to some of them again in this judgment. The final examination for the degree of Bachelor of Science of the University of Ceylon at which the plaintiff was a candidate took place in the months of March and April, 1952. The plaintiff offered himself for examination in Zoology as his special subject and Botany as a subsidiary subject in accordance with the provisions of the General Act No. 1 made under the Ceylon University Ordinance, No.20 of 1942. The examination in Zoology consisted of five papers in theory and three in practical work. There was also one paper in Botany. The examination in the last theory paper in Zoology (Paper V) was held on the 4th April, 1952. P3 is a copy of this paper. It is in two parts, the first consisting of an essay and the second of a passage in French or German one of which had to be translated into English and commented on. The maximum marks for the essay was 90 and for the translation and 30 40

10 comments 10, and this allocation was known to the candidates prior to the examination. There is no evidence that out of the 10 marks assigned for the translation and comments a candidate was required to obtain any specified minimum in order to secure a pass, or become eligible for a first or second class (denoted by the letters A and B respectively) in Paper V. The plaintiff actually obtained an A in that paper, having scored a total of 90 marks which included 8 out of the maximum of 10 marks for his translation of, and comments on, the German passage (which was the passage selected by him). On his marks in this and the other papers the plaintiff came an easy first in order of merit among the candidates offering the same subjects at the examination, and in the normal course he would have been entitled to the degree of Bachelor of Science with First Class Honours. Of the witnesses called at the trial Dr. Hilary Crusz, a lecturer in Zoology at the University, who appears to have had opportunities of forming an estimate of the plaintiff's ability, described him as a brilliant student.

20 One of the candidates at the examination who offered the same subjects as the plaintiff was a Miss Balasingham who is the sister-in-law of Mr. Sivaprakasapillai, a lecturer in the Engineering Faculty of the University. Shortly after the examination in the paper P3 Miss Balasingham appears to have conveyed certain information to Mr. Sivaprakasapillai which he considered it his duty to communicate (though he did not do so immediately) to the Vice-Chancellor of the University, Sir Ivor Jennings. The information related to the possibility of the plaintiff having had prior knowledge of the German passage set for translation and comments in P3. But before that information reached Sir Ivor Jennings he had already received similar information from Mr. Kirtisinghe the senior lecturer in Zoology and also the examiner who had marked that part of the answer script submitted by the plaintiff on the German passage in P3.

40 Under the Ceylon University Ordinance, No. 20 of 1942, the Vice-Chancellor is the principal executive officer of the University and it is his duty to see that the provisions of the Ordinance and of the Statutes, Acts and Regulations made thereunder are duly observed, and he is given such power as he may deem necessary to exercise for that purpose. Section 8 of Part 1 of Chapter VIII of

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the General Act No.1 provides that where the Vice-Chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination he may suspend the candidate from the examination or remove his name from the past list, and shall report the matter to the Board of Residence and Discipline for such further action as the Board may decide to take. Section 14 deals with the powers of the Board on such a report being received. One of them is to suspend the candidate indefinitely from any University examination. It will be noted that the Board is empowered to act on the basis of the report, without making any further inquiry. The Vice-Chancellor is an ex officio member of the Board.

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The Vice-Chancellor, having considered the information which he received, decided to investigate the matter further and for that purpose he appointed a committee of inquiry consisting of himself, Mr. A.E. Keuneman who is a member of the University Council and Professor Mailvaganam, Dean of the Faculty of Science. Besides other claims that the Vice-Chancellor Sir Ivor Jennings has to eminence it may be stated that he is a Queen's Counsel of the English Bar. Mr. Keuneman is a Queen's Counsel of the Ceylon Bar and a retired Judge of this Court. There can be no doubt that all the gentlemen who comprised the committee were exceptionally suited, by reason of their qualifications and experience, to conduct an inquiry of this nature. That Professor Mailvaganam was a member of the committee was criticised by learned counsel who appeared for the plaintiff at the hearing of the appeal on the ground of his somewhat distant relationship to Miss Balasingham and Mr. Sivaprakasapillai and also that he was a member of the Board of Examiners, as well as of the Scutinising Committee for functions of which were to modify the questions set for the examinations and if necessary refer them back to the examiners for re-consideration. I am unable to say that there is any substance whatever in this criticism.

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On the 16th May, 1952, that is to say, several weeks after the examination in paper P3 had been held (being the last of the papers which the plaintiff was called upon to answer) the Vice-Chancellor

wrote to him the letter P4 informing him of an allegation against him that he had acquired prior knowledge of the content of one or more of the papers set for the examination at which the plaintiff had presented himself as a candidate and requesting him to attend at a specified time and place before the committee of inquiry on the 21st May, 1952. The plaintiff has stated in evidence at the trial that when he received this letter he had no idea at all as to the nature of the allegation against him except for what was in the letter, namely, that he had acquired prior knowledge of the content of one or more of the examination papers. According to the Vice-Chancellor the letter was so worded because the information coming to him from Miss Balasingham (who, apparently, had been questioned at that stage) suggested the possibility of the plaintiff having acquired prior knowledge of the content of some of the papers in practical work too in addition to knowledge of the German passage in P3. It would seem however, that between the date of the despatch of the letter and the 21st May the committee of inquiry had decided that the evidence which Miss Balasingham was in a position to adduce was quite insufficient to justify an investigation into that part of her allegation which related to the plaintiff having acquired prior knowledge of the content of any paper in practical work. It may be assumed that the members of the committee did not consider that this decision reflected in any appreciable degree on the credibility of Miss Balasingham in regard to the evidence that she would give on the question whether the plaintiff had acquired prior knowledge of the German passage in P3. It does not appear, however, that the plaintiff was at any stage informed that the matter to be investigated by the committee was restricted to that allegation alone, and it is highly probable that throughout he was under the impression that the scope of the inquiry was as stated in P4, particularly as he was questioned by the committee about his practical examination as well.

On the 21st May, 1952, as notified in P4, the committee of inquiry held its first sitting. Miss Balasingham appears to have been questioned as the first witness. The next to be questioned were Mr. Kirtisinghe and Professor W. Fernando, in that order. Professor Fernando is the head of the Department of Zoology in the University and the maternal uncle of the plaintiff. He came into the inquiry as the

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German passage in P3 was selected by him as examiner, with the approval of Mr. Kirthisinghe the other examiner, from a book belonging to him which was kept under lock and key in his office. Sir Ivor Jennings stated in evidence at the trial that he was satisfied from his inquiries that the drawer of the table in Professor Fernando's office in which the book was kept had been locked, presumably at all material times. If there was originally any suspicion that Professor Fernando had dishonestly apprised the plaintiff, his nephew, of the German passage that would be set for the examination, all I need say is that there is no evidence pointing in that direction. Sir Ivor Jennings also stated in evidence that there were several possible sources of leakage of the content of an examination paper and that although he and the other members of the committee of inquiry ultimately were satisfied that the nature or substance of the German passage in P3 had become known to the plaintiff prior to the examination, none of them could reach a definite conclusion as to the point at which the leakage occurred.

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To resume the narrative as to what took place at the sitting of the committee of inquiry on the 21st May, 1952, the plaintiff was the last person to be questioned at that sitting. In his evidence at the trial he said that his questioning by the committee on that occasion did not last more than half an hour but he admitted that at an early stage he was shown an exercise book, said to belong to Miss Balasingham and containing eight or nine German words, and he was asked whether he had those words in any book of his prior to the examination, which he denied. He also said that from the questions put to him he gathered that Miss Balasingham had alleged that prior to the examination she had copied those words into her book from a book belonging to him. The plaintiff was next given the question paper P3 with those same eight or nine words (which also occur in the German passage in that paper) underlined and he was asked to translate the passage into English which, he says, he did without difficulty but he was stopped before he had completed the translation. He was next put further questions with regard to his knowledge of German and he replied that he studied German for three years at the University for the purpose of his course in Zoology. While this three-year study of German turned out to be nothing more than a weekly lecture of an hour's duration at which German passages on different topics in Zoology were given to

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the students for translation, it may be assumed that the instruction given in this particular branch was considered by the University authorities to be sufficient for the purpose for which it was intended. In the absence of any contradiction there seems to be no reason, therefore, to think that in this branch of his studies too the plaintiff had not attained a proficiency comparable to that attained by him in the other branches as shown by the marks which he scored in the rest of the examination.

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The report of the committee of inquiry, which is the document P11, sets out in an amplified form the allegation made by Miss Balasingham as to how she came to copy the eight or nine German words into her exercise book. According to that report the incident took place some weeks prior to the examination. Miss Balasingham said she suspected from the plaintiff's behaviour that there was something in one of his notebooks which he did not wish the other students to see. On one occasion (apparently in a moment of absent-mindedness quite in contrast to his previous vigilance) he had left the book on a bench in the Zoology research laboratory and had gone out when she seized the opportunity to glance through the book and saw a list of about thirty German words, in some cases with the English equivalents, of which words she copied nine into the exercise book produced by her. Of the other words she later remembered that one was zitronensaft. The words which she copied appear in the German passage in P3 in the same order in which she had copied them into her book except for the eighth and ninth words. The report P11 purports to reproduce the whole passage with the ten words underlined. Actually only nine words have been underlined including the word zitronensaft which occurs at the end of the passage. The plaintiff stated in evidence that on being questioned by one of the members of the committee as to the meaning of the word zitronensaft he gave it as citronella juice whereas the correct rendering appears to be lemon juice. The observation may be permitted that if the object of the plaintiff in having the German words written in his exercise book, as alleged by Miss Balasingham, was to acquaint himself with their English equivalents, it was hardly likely that he would not have been able to give the correct rendering of the word zitronensaft when questioned by the committee

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unless, of course, he tried to make it appear that he was unfamiliar with that word, but in that case it would have been a simple matter to ascertain how he had translated it in the answer script submitted by him in the examination.

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Why the plaintiff should have written these German words in an exercise book which he habitually took with him to the Zoology laboratory, or why Miss Balasingham should, several weeks prior to the examination, have copied them into her book, are questions the answers to which do not appear in evidence in the case.

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The full particulars of the allegation made by Miss Balasingham, as set out in the report P11, do not seem to have been made known to the plaintiff either at the inquiry on the 21st May or on the only other occasion when she was questioned, namely, the 3rd June, 1952. The Plaintiff was afforded no opportunity at any stage of cross-examining Miss Balasingham, nor was even the gist of her evidence communicated to him. No record of the proceedings was kept by the committee, nor does it appear that any member of it made notes of the evidence adduced. According to Miss Balasingham, another student (Miss de Silva) was sitting next to her when she copied the words from the plaintiff's book. Miss de Silva denies that she saw the copying but admitted that Miss Balasingham had subsequently, but before the examination was held, told her about the list. Miss Balasingham also stated to the committee that immediately after the examination she told some of the other students about the words which she had copied from the plaintiff's book and which she found in the German passage in P3, but only one of those students when questioned by the committee appears to have corroborated her on the point. The substance of the evidence given by those other witnesses who were questioned (which evidence was partly in favour of the plaintiff and partly against him) was not communicated to him. Even with regard to the only specific allegation of Miss Balasingham with which the plaintiff was confronted on the dates on which he was questioned by the committee, namely, that she had copied eight or nine German words from a book in the plaintiff's possession which words occurred in the German passage in P3, no particulars appear to have been furnished to the plaintiff as regards the date, time or place of the incident. To put

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10 it shortly, the plaintiff was, several weeks after the examination, questioned about something which is alleged to have taken place several weeks before the examination and all the information given him was that these eight or nine German words from a list which appeared in a book belonging to him had been copied by Miss Balasingham into her book and that those identical words as underlined in the passage shown to him at the inquiry before the committee were to be found in the German passage set for the examination.

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20 It is clear from the report P11 that the finding of the committee of inquiry that the plaintiff had acquired prior knowledge of the nature or substance of the German passage in P3 proceeded almost entirely from an acceptance of Miss Balasingham's evidence. There can be no doubt that on an acceptance of that evidence the Vice-Chancellor would have had ample ground to be satisfied that the plaintiff had improperly acquired that knowledge and to have reported the matter to the Board of Residence and Discipline for further action. It is also clear that the Board of Residence and Discipline in deciding to suspend the plaintiff indefinitely from all examinations of the University acted (as the Board was entitled to do) on the basis of the report of the committee without holding any independent inquiry.

30 In the normal course the matter would have been finally concluded on the Board of Residence and Discipline giving their decision as there is no provision for an appeal from that decision either to any other authority of the University or a Court of Law. The case for the plaintiff, however, is that in holding the inquiry the committee collectively or the Vice-Chancellor alone (if he is to be regarded as the person who held the inquiry) was performing a quasi-judicial function and under a duty to conduct it in accordance with the principles

40 of natural justice and that as these principles were disregarded the plaintiff is entitled to a declaration in these proceedings that the finding of the committee of inquiry or of the Vice-Chancellor, as the case may be, and the decision of the Board of Residence and Discipline are null and void and of no legal effect.

One of the reasons stated in the report P11 for accepting the evidence of Miss Balasingham is that she was able to describe the incident alleged

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by her "with a wealth of circumstantial detail, of no direct relevance to the story as such which carried conviction". Although "the wealth of circumstantial detail" given by Miss Balasingham was not directly relevant to her story the committee of inquiry did consider it relevant for the purpose of testing Miss Balasingham's credibility, but nowhere in the report is it stated what this circumstantial detail consisted of, nor was it communicated to the plaintiff.

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It appears that some time after the first sitting of the committee of inquiry (on the 21st May, 1952) Miss Balasingham was further questioned regarding the exercise book said to belong to the plaintiff and from which she alleged she had copied the German words. She then described that book as one with a bluish cover and of the same size as a University exercise book. The plaintiff was thereupon requested by the Vice-Chancellor, by his letter P5 dated the 28th May, 1952, to appear before the committee again on the 3rd June, 1952, and to bring with him all the exercise books which he had used during his course. The plaintiff duly appeared before the committee on the 3rd June, 1952, and produced only one exercise book. This was a University exercise book which the plaintiff had obtained prior to 1950. Twenty eight of the front pages in the book contained notes on Botany for the first examination in Science while the back page contained a few more notes on Botany and three impressions of the rubber stamp of the Zoology Department, signed by the plaintiff and one of them bearing the date 7.12.48. Apparently this rubber stamp was available at all times to the students. In the middle of the book were five sheets on the right hand page of each of which was a drawing of the circulatory system of the rat. One of these drawings appeared to have been corrected by Dr. Cruss. The five pages referred to were of the same type of paper as the rest of the book, which also contained the correct number of sheets for a University exercise book. The cover and pages of the book were in good condition but the binding thread appeared to have torn the cover. The book itself is not an exhibit in this case, and these observations as regards its condition and contents are taken over from the report P11 in which the committee's findings were communicated to the Board of Residence and Discipline. It appears from the same report that at the meeting of the committee

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at which the plaintiff produced the exercise book, but before he had done so, Miss Balasingham had been questioned whether she could remember anything specific about the book other than the German words and she stated that she thought that it contained a drawing of the arterial system of the rat because she had previously copied that drawing into the same exercise book into which she subsequently had copied the German words. There were in fact in Miss Balasingham's book copies of two of the drawings appearing in the plaintiff's book. After the plaintiff had produced his book it was shown to Miss Balasingham who was, however, not prepared to assert positively that it was not the book from which she had copied the German words although she had no recollection that it contained any notes in Botany. Dr. Crusz was also questioned as regards the particular drawing in that book which he had corrected and which bore, in what appeared to be in his own handwriting, a remark he had made on the progress shown by the plaintiff as indicated by that drawing. Dr. Crusz stated in evidence at the trial that when he was questioned about that drawing by the Vice-Chancellor he identified it as undoubtedly one corrected by him, not only because it bore his own handwriting but also because he had an independent recollection of the matter. He also stated that the Vice-Chancellor seemed to be taken aback by this reply and that as the latter was sceptical of his assertion he suggested to the Vice-Chancellor that the opinion of a hand-writing expert be obtained. No expert opinion was, however, obtained.

The exercise book produced by the plaintiff contained no German words at all, nor (presumably) did it bear any signs of erasures on any of its pages. The real evidence afforded by the book, the evidence of Dr. Crusz, identifying the particular drawing in it which he claimed to have corrected and the reluctance of Miss Balasingham to assert positively that it was not the book from which she copied the German words, were all in favour of the plaintiff. But the members of the committee of inquiry appear to have taken the view that there were circumstances justifying the suspicion that five sheets had been extracted from the middle of the book and five other sheets containing the drawings referred to had been removed from a similar book and interpolated so as to make it appear that this was the only book in plaintiff's possession from which it would have been possible for

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Miss Balasingham to have copied anything into her book. The main circumstances which influenced the committee in entertaining this suspicion are (1) that the binding thread appeared to have torn the cover, possibly indicating that the thread had been removed and replaced by means of a stout needle; (2) that the book opened readily at the centre page and there was a crease in a drawing on one page, suggesting that the book had been placed in a press; (3) that there was no explanation as to why the plaintiff should have stamped one of his Botany note books with the stamp of the Zoology Department and have signed and dated one of the impressions; (4) that it was remarkable that although, as stated on an earlier occasion by the plaintiff, he made notes of his lectures in Zoology in files and drawing books, he should have at the end of his course entered in an old Botany exercise book his drawing of the circulatory system of the rat; and (5) that the particular drawing which had been corrected by Dr. Crusz and bore his handwriting may have been "copied" and was not the original. The committee accordingly concluded that no inference, either favourable or unfavourable to the plaintiff, should be drawn from this book and decided to consider the allegation against the plaintiff only on such other evidence as was available. In my opinion, and with all respect to the members of the committee, most of the matters which raised this cloud of suspicion regarding the book were either too trivial or too speculative to have merited serious consideration.

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It was, nevertheless, entirely within the competence of the committee to have entertained the suspicion that the exercise book produced by the plaintiff was a fabrication provided it was arrived at fairly and in good faith. Regarding the good faith of the members of the committee there can be no question. But it seems to me that what is disquieting about this part of the committee's investigation is that the plaintiff was at no time afforded an opportunity of explaining the allegedly suspicious features about this book. His explanation of these features, given after the report P11 and the final decision of the Board of Residence and Discipline had been communicated to him, is contained in paragraphs (f) to (n) of his letter P14 to the Vice-Chancellor. That on the ground of these suspicious features the committee should have decided to ignore the evidence relating to this book could

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not have been otherwise than detrimental to the plaintiff since if that evidence had been taken into consideration in the light of the plaintiff's explanation (had he been given an opportunity of tendering it in the course of the committee's inquiry) it may well have turned the scales in his favour.

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10 Having considered the various matters to which I have drawn attention in this somewhat detailed summary of the proceedings before the committee of inquiry I have little hesitation in forming the opinion that, irrespective of the question whether the committee of inquiry or the Vice-Chancellor were performing a quasi-judicial or purely administrative function in holding the inquiry, the procedure adopted was unfair to the plaintiff in that it deprived him of a reasonable opportunity of testing the truth of the case against him or of presenting his defence and explaining various matters in regard to which adverse inferences were drawn against him.

20 In my view it is no answer in justification of that procedure to say that the plaintiff at no time asked for an opportunity of cross-examining Miss Balasingham or to be given fuller particulars of the case he had to meet. It must be remembered that the plaintiff appeared before the committee of inquiry in the position of an accused without being represented by counsel or a friend, and it is hardly to be expected that in the circumstances he would have made these requests which, reasonable as they would have been,

30 may have induced in him the apprehension that they could be misconstrued by the committee and have prejudiced his case.

Mr. Choksy on behalf of the defendant submitted that it would not be safe to assume that the extent and sufficiency of the proceedings before the committee of inquiry are fully reflected in the evidence adduced in this case, and that if this Court, acting on such an assumption, were to arrive at an adverse finding against the defendant in respect of those proceedings, it would virtually be condemning the defendant without having given the defendant an opportunity of placing the full facts before the Court. There is, however, nothing in the cross-examination of the plaintiff or the evidence of Sir Ivor Jennings to suggest that all the material facts connected with the proceedings of the committee of inquiry had not been elicited at the trial. It is also to be noted that a substantial part of the plaintiff's case was that the findings of the

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committee of inquiry were null and void on the ground, inter alia, that they were contrary to the principles of natural justice. A specific issue incorporating that ground was raised at the trial, and the cross-examination of the plaintiff and the evidence of Sir Ivor Jennings were, no doubt, mainly directed towards rebutting this part of the plaintiff's case. If there was other evidence material to the case which was available to the defendant, such evidence should, in my opinion, have been adduced at the trial, and in the circumstances it cannot fairly be urged that the defendant had no opportunity of placing all the facts before the Court.

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Two submissions made by learned counsel for the plaintiff at the hearing before us may be dealt with at this stage. The first of these was that the action of the Vice-Chancellor in appointing a committee of inquiry to investigate the allegation against the plaintiff amounted to an improper delegation of his functions and was illegal since under Section 8 in Part I of Chapter VIII of the General Act No.1 the person to be satisfied is the Vice-Chancellor himself and no other, and he could not have delegated his functions under that section except in accordance with the specific provision which has been made in that behalf. Section 17 of the same Part and Chapter in which section 8 occurs provides that the Vice-Chancellor may delegate his functions under section 8 to the Dean of a Faculty. It was open, therefore for the Vice-Chancellor to have delegated to Professor Mailvagnam, but not to Mr. Keuneman, the function of inquiring into the allegation against the plaintiff. The evidence given by Sir Ivor Jennings at the trial makes it clear, however, that he did not intend the appointment of the committee of inquiry to be a delegation of his functions, and that his object was only to have the assistance of the other two gentlemen in the elucidation of what he considered to be a serious allegation reflecting on the reputation of the University itself. This evidence has been accepted by the trial Judge. The very fact that Sir Ivor Jennings himself was a member of the committee of inquiry is inconsistent with a delegation. There is no procedure laid down in Section 8 as to how the Vice-Chancellor should act in satisfying himself in regard to any of the matters dealt with therein. The submission that there was an improper delegation of the Vice-Chancellor's functions cannot, therefore, be accepted. The other submission was that the findings of

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the committee of inquiry, as set out in the concluding part of P11, represented the findings of the collective body and cannot be regarded as findings arrived at by the Vice-Chancellor. But the evidence of Sir Ivor Jennings is that as a result of the proceedings before the committee he was personally satisfied that the nature or substance of the German passage in P3 had become known to the plaintiff prior to the examination and that he drafted a report expressing his views and sent it to the other two members of the committee and they agreed with him. This evidence, too, has been accepted by the trial Judge. While it is possible that before the draft report was sent to the other two members Sir Ivor Jennings had discussed the matter with them and ascertained their tentative views and was to some extent influenced by those views in arriving at the findings against the plaintiff, I do not think that it alters the position that each member of the committee, including the Vice-Chancellor, was individually satisfied that the plaintiff had obtained prior knowledge of the nature or substance of the German passage in P3. This submission too must, therefore, be rejected.

I now come to the principal point on which this appeal was pressed, namely, that in the circumstances of this case the Vice-Chancellor, in holding an inquiry into the allegation against the plaintiff the truth of which allegation had necessarily to be decided on the evidence of witnesses (though not evidence in the strictly legal sense), was performing a quasi-judicial function and that such inquiry had to be conducted in accordance with the principles of natural justice. In the determination of this point much assistance is derived from some of the judgments in English and local cases in which the powers of the Courts have been invoked to quash by writ of certiorari the decisions of various administrative bodies. It was stated by the Privy Council in the case of Nakkuda Ali v Jayaratne (1) that in the exercise of the powers granted under section 42 of the Courts Ordinance in regard to the issue of prerogative writs the Supreme Court should be guided by the relevant rules of English common law. The circumstances as to when the English Courts would issue these writs have been laid down in the oft-quoted passage from the judgment of Lord Atkin in the well-known case of Rex v Electricity Commissioners, Ex Parte London Electricity Joint Committee (2) which reads as follows: "Whenever any body of persons having legal

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authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

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In the present case it is not disputed that in inquiring into the allegation against the plaintiff the Vice-Chancellor purported to do so on the basis that he was clothed with legal authority in that behalf (as indeed he was). But Mr. Choksy strenuously contended that in regard to the action taken by the Vice-Chancellor and the Board of Residence and Discipline no legal rights were involved, either of the plaintiff or any other person. His position was that no student of the University could claim a legal right to be allowed to sit for any University examination and that, on the contrary, the matter was entirely within the discretion of the appropriate authorities of the University.

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Section 6(b) of the Ceylon University Ordinance, No.20 of 1942, empowers the University to hold examinations for the purpose of ascertaining the persons who have acquired proficiency in different branches of study, and section 32 provides that the conduct of such examinations shall be prescribed by Statutes, Acts and Regulations made under the Ordinance. Chapter V of the General Act No. 1 deals with the conditions under which a student become eligible to sit for examinations for first degrees, while Chapter VIII of the same Act deals with examinations procedure. Under section 10 in Part II of Chapter V a candidate for the final examination in science is required to have passed or been exempted from the first examination and to have followed to the satisfaction of the Vice-Chancellor for at least two years the courses prescribed by regulations made by the Senate in the subjects in which the candidate presents himself for examination. Presumably, when the plaintiff presented himself for the examination to which this case relates he had fulfilled the conditions imposed under Section 10. But even where those conditions had been fulfilled by a candidate, section 8 of Part I of Chapter VIII empowers the Vice-Chancellor to suspend him from the examination, while under section 14 of the same part the Board of Residence and Discipline may suspend him indefinitely from any University examination. It seems to me, therefore, that even though a right to sit for a particular examination is not conferred in specific

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terms on a student of the University, it is implicit in the provisions to which I have referred that such a right exists subject, however, to the powers conferred on the Vice-Chancellor and the Board of Residence and Discipline under sections 8 and 14 respectively of Part I of Chapter VII of the General Act No. 1. It would follow, then, that if, as may be presumed, the plaintiff had fulfilled the conditions imposed under section 10 of Part II of Chapter V of the General Act No. 1, he acquired a right to sit not only for the examination held in March and April, 1952, in the subjects which he offered but also any future final examination in science in the same subjects which may be held by the University authorities, and such a right could only be taken away by appropriate action under provisions of the above-mentioned sections 8 and 14.

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In my opinion, therefore, the present case would fall within the ambit of the observations of Lord Atkin which I have already quoted, provided, of course, there was imposed on the Vice-Chancellor, or on the Board of Residence and Discipline, in respect of the action taken against the plaintiff, a duty to act judicially, and the question whether there was such a duty I shall now proceed to consider.

On this question the argument in appeal followed the usual pattern in such cases, and numerous decisions of the English and Ceylon Courts were cited to us. Having regard, however, to the importance to either side of the issues involved, no criticism can be made of learned counsel for having taken up several days of hearing in a detailed scrutiny of these decisions, but as stated by Lord Radcliffe in delivering the judgment of the Privy Council in Nakkuda Ali v Jayaratne (supra), "the basis of the jurisdiction of the Courts by way of certiorari has been so exhaustively analysed in recent years that individual instances are now only of importance as illustrating a general principle that is beyond dispute", and he added that the general principle is most precisely stated in the passage quoted earlier by me from the judgment of Lord Atkin in Rex v Electricity Commissioners (supra).

Mr. Choksy laid great stress on the words "where the Vice-Chancellor is satisfied....." in section 8 of Part I of Chapter VIII of the General Act No.1 as indicating that, inasmuch as the Vice-Chancellor is the person to be satisfied, no duty

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to act judicially is imposed, and he submitted that this view is confirmed by the absence of provision requiring an inquiry of any kind to be held by the Vice-Chancellor, or giving a right of appeal to the candidate adversely affected from any order made by the Vice-Chancellor under this section. He also pointed out that such order cannot be set aside even by the Board of Residence and Discipline, empowered though the Board be to deal further with the matter in the manner specified in section 14 on receiving the Vice-Chancellor's report in terms of Section 8.

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The effect of language similar to that occurring in section 8 was considered in Weeraratne v Pouiler (3) by Dias, J., who came to the conclusion that no duty to act judicially was imposed. That case, however, dealt with the revocation of an authority granted to a dealer in certain controlled commodities under the Food Control (Special Provisions) Regulations, 1943. The regulations do not appear to have conferred a right in any dealer either to obtain the authority which had been revoked or to continue to enjoy the status of an authorised dealer once that authority had been granted. In Dankoluwa Estates Co., Ltd., v The Tea Controller (4) the question whether words of a similar nature implied a duty to act judicially was also answered by Soertsz, J., in the negative. But the decision did not turn on the wording alone but on other considerations as well. In Point of Ayr Collieries Ltd. v Lloyd-George (5) and Robinson and others v The Minister of Town and Country Planning (6) the effect of equivalent phraseology was considered and the Court held that there was no duty imposed to act judicially. In both these cases the making of the orders which were the subject matter of the proceedings had been entrusted by the legislature to a Minister of State who in arriving at his decision was, it would seem, entitled to take into account questions of policy and expediency and they are, therefore, to be distinguished from the present case. It is also to be observed that in Nakkuda Ali v Jayaratne (supra) the judgment emphasised that there is no general principle that phraseology such as under consideration excluded an objective test and their Lordships took the view that the words "where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer", in the particular regulation the interpretation of which arose in that case, imposed a condition that there must in fact have existed such reasonable grounds, known

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to the Controller, before he could validly exercise the power of cancellation of a licence issued to the dealer. Notwithstanding this interpretation, Mr. Choksy relied on the ultimate finding in that case, that the Controller was under no duty to act judicially or quasi-judicially when applying the regulation, as supporting his submission that the Vice-Chancellor too is not required to act in a similar way when proceeding under section 8. But as I understand the grounds for that finding, they were that when the Controller revoked a licence granted to a dealer he was only taking executive action to withdraw a privilege and not determining any question involving the legal rights of the dealer; and that there was nothing in the bare words of the regulation itself from which a duty to act judicially could be inferred. I have already stated why in the present case I consider that legal rights of the plaintiff were involved in the action taken by the Vice-Chancellor as well as the Board of Residence and Discipline. Moreover, when one looks at the reason as set out in the latter P4 and in the evidence of the Vice-Chancellor for appointing a committee of inquiry it is apparent that the matter was not one which could have been disposed of by executive action alone. The allegation, he said, was an extremely serious one which affected not only the plaintiff but also the reputation of the University and "a formal inquiry" was necessary so that the public may be satisfied and because if there had been a leakage from the University it was his duty to report it to the University Council for disciplinary action. Mr. Weerasooria who appeared for the plaintiff stated from the Bar, and it was not contradicted by learned Counsel for the defendant, that as long as the order of suspension against the plaintiff stood he would be precluded from continuing his academic career not only at the University of Ceylon but also at any other university.

As observed by Lord Atkin in General Medical Council v Spackman (7), in the absence of specific provision in that behalf, the procedure to be followed by bodies which are not strictly judicial bodies would necessarily vary with the kind of case which they are called upon to investigate. His observations imply that where the matter to be investigated is an allegation of a grave nature which, if made out, would have serious consequences affecting the legal rights of the person whose conduct is called into question, a more strict procedure

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than otherwise is to be insisted on. In the present case, having regard to all the circumstances, it seems to me that the question of the truth or falsity of the allegation against the plaintiff could not fairly be determined except by the application of the judicial process or a form of procedure closely analogous to it. To adopt the dictum of Parker J., in Rex v Manchester Legal Aid Committee, Ex parte Brand and Co., Ltd., (8), the Vice-Chancellor or the committee of inquiry had to decide the matter "solely on the facts of the particular case, solely on the evidence before them and apart from any extraneous considerations. In other words, they must act judicially...". Parker J., also pointed out in that case that "the duty to act judicially may arise in widely different circumstances which it would be impossible, and indeed, inadvisable, to attempt to define exhaustively".

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Mr. Weerasooriya drew our attention to two decisions of long standing authority where it has been held that even purely domestic tribunals such as committees of clubs, which under the rules have the power to expel a member on the ground of misconduct, are under a duty to act judicially in the exercise of such power. In Fisher v Keane (9), although the decision proceeded on the failure of the committee of a club to follow the rules governing the expulsion of a member, Jessel M.R. observed that a committee functioning on such an occasion must act according to the ordinary principles of justice and should not convict a man of a grave offence which shall warrant his expulsion from the club without fair, adequate and sufficient notice and an opportunity of meeting the accusations brought against him. In the leading case of Labouchere v The Earl of Wharncliffe (10) power was given under the rules to the committee of a club to take certain action towards the expulsion of a member if "in the opinion of the committee" such action was called for. It was clearly stated by the Court that although it had nothing to do with the question whether the judgment of the committee, having the facts fully before them, might be right or wrong, it was, nevertheless, concerned whether the accused had been given fair notice and due inquiry had been made. No authority was cited to us where the correctness of these decisions was questioned. It seems to me that these decisions do indicate that the committee of a club function as a quasi-judicial tribunal when proceeding under the rules against a member of the club for alleged misconduct.

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Two other cases cited by Mr. Weerasooriya show to what extent the Courts in England have gone in holding that decisions of purely administrative bodies come within the range of the jurisdiction of the Court in certiorari. These are Rex v Boycott and Others Ex parte Keasley (11) and the King v Postmaster-General Ex parte Carmichael (12). In the latter case Lord Hewart, C.J., expressed the opinion that the certificate of a medical officer, issued under certain statutory provisions and relating to the question whether the person to whom the certificate referred was suffering from a particular disability or not, was of the nature of a judicial act and fit subject for certiorari. But it is not necessary, I think, that for the purpose of the present case I need to rely on these cases.

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While neither the Vice-Chancellor nor the Board of Residence and Discipline can be regarded as purely domestic tribunals they would, nevertheless, be statutory bodies inasmuch as they are constituted under the provisions of the Ceylon University Ordinance No.20 of 1942. But I do not see any reason why the same considerations should not be applicable to statutory bodies as well when functioning in similar circumstances as domestic tribunals.

In the present case an inquiry was necessary in order to decide on the truth of the allegation against the plaintiff. The legal rights of the plaintiff were involved. No question of policy or expediency arose. I would hold, therefore, that the Vice-Chancellor was under a duty to act judicially when he investigated the allegation and reported on it to the Board of Residence and Discipline. In my opinion the learned trial Judge came to a wrong conclusion on this question. I also hold, for the reasons already stated by me, that the investigation of the Vice-Chancellor was not made in accordance with the principles of natural justice and is not, therefore, valid for the purposes of any action which the Vice-Chancellor could have taken under section 8 of Part I of Chapter VIII of the General Act No. 1.

With regard to the Board of Residence and Discipline, the position would appear, however, to be different. Even in the circumstances of this case no inquiry into the allegation against the plaintiff need have been made by the Board in taking action under Section 14 of Part I of Chapter VIII of the General

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Act No.1, as all that the section requires is that there should be before the Board a report (in this instance from the Vice-Chancellor). The Board was under no duty even to inquire on what material the Vice-Chancellor arrived at any finding contained in the report. In any event, they were entitled to assume that the report had been made after due inquiry. The decision taken by the Board under Section 14 in this particular case cannot be regarded as anything more than a purely administrative or executive one. In arriving at that decision there was no duty imposed on the Board, therefore, to act judicially, although different considerations might have arisen had the Board, too, decided to hold an independent inquiry into the allegation against the Plaintiff. This view does not however conclude the matter. 10

Mr.Choksy conceded that even though the acts of the Board of Residence and Discipline under Section 14 be of a purely administrative or executive nature, they could, nevertheless, be set aside by the Courts in appropriate proceedings where they are shown to have been performed without jurisdiction or in excess of jurisdiction as, for example, where the conditions prescribed for the performance of the acts had not been satisfied. The principle on which the Courts will intervene in a purely administrative decision has been explained in Lee v The Showmen's Guild of Great Britain (13). See also, In re Bracegirdle (14). 30  
When one looks at Section 14, it is clear that the only condition precedent for the Board taking any action under it is that there should be a valid report before the Board. If in the present case the Board acted without any report at all, or on a report purporting to be by the Vice-Chancellor but which subsequently turned out not to have been made by him, the decision of the Board, however bona fide arrived at, cannot be supported as having any legal effect. So also a report made by the Vice-Chancellor but without due inquiry (having regard to the duty imposed on him to act judicially) cannot be regarded as a valid report for the purpose of enabling the Board to take action under Section 14. 40

Had the present proceedings been by way of certiorari the Plaintiff would undoubtedly have been entitled (assuming that the conclusions

reached by me are sound) to an order quashing the report of the Vice-Chancellor. But Mr. Choksy contended that this action was wholly misconceived and that it is not open to the District Court, nor equally to this Court sitting in appeal, to grant the relief asked for in the prayer in the plaint. His argument on the point was twofold: firstly, that such relief as the Plaintiff claims can be obtained only on an application in the first instance to this Court by way of certiorari and, secondly, that as no right of appeal has been granted from the finding of the Vice-Chancellor or the decision of the Board of Residence and Discipline under Section 8 and 14 respectively of Part I of Chapter VIII of the General Act No.1, the District Court has no jurisdiction, in any event, to entertain such an action as this.

In England the jurisdiction to issue writs of certiorari is exclusively in the Queen's Bench Division. But there are numerous instances where the validity of orders, for the quashing of which a writ of certiorari would have issued, has been successfully challenged by proceedings for a declaration and injunction instituted in the Queen's Bench Division or the Chancery Division. Two such instances are Fisher v Keane (supra) and Labouchere v The Earl of Wharncliffe (supra), both being cases where an injunction was applied for in the Chancery Division to restrain the committees of certain clubs, which had made orders of expulsion of the Plaintiffs from the clubs on the ground of misconduct, from interfering with the Plaintiffs' enjoyment of the use and benefit of the clubs. Both actions were brought on the basis that the orders of expulsion were null and void, and the injunctions applied for were granted. If I am right in the view expressed earlier by me as to the effect of the decisions in those cases, the orders which were impugned could have been quashed by writ of certiorari, but it does not seem to have been even argued that the alternative remedy of an injunction was not available to the Plaintiffs. In Barnard and Others v National Dock Labour Board and Others (15), which was an action filed in the Queen's Bench Division for a declaration that an order of suspension made by a statutory board was unlawful, the point was specifically taken that the only way in which the decisions of the board could be questioned was by writ of certiorari. The Court of

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Appeal rejected this contention and granted the declaration. It should be stated, however, that in that case the Court took the view that proceedings by way of certiorari would not have been open to the Plaintiffs as the illegality which vitiated the decision of the Board came to light long after the time for the writ had run.

In the present case, too, it would seem that against the purely administrative or executive decision (as held by me) of the Board of Residence and Discipline suspending the Plaintiff indefinitely from all University examinations, the remedy of certiorari is not available to him. If, therefore, any legal remedy is open to him at all it would be by way of an action for a declaration that the decision of the Board is null and void. Plaintiff's substantial grievance arises out of this decision. With regard to Mr. Choksy's submission that even this remedy is not available to the Plaintiff inasmuch as no appeal from the decision of the Board lies, the point was considered in Barnard and Others v National Dock Labour Board and Others (supra), the decision in which is against Mr. Choksy. The judgment of Lord Justice Denning in that case as well as the authorities cited by him clearly show that, particularly where the remedy by certiorari may not be available, the Courts will intervene by declaration and injunction notwithstanding the absence of a right of appeal. Moreover, if, for the reasons stated by me, the report P.11 is not a valid report, the decision of the Board in acting on it would be in excess of the jurisdiction conferred on the Board under Section 14; and it is well settled law that a non-appealable order made without, or in excess of, jurisdiction has not the conclusive effect which the legislature may have intended when it withheld the right of appeal.

On the basis that the decision of the Board is invalid, a cause of action as defined in Section 5 of the Civil Procedure Code would clearly have accrued to the Plaintiff to obtain the declaration claimed in these proceedings and in my opinion the learned trial Judge was wrong when he held that the District Court had no jurisdiction to entertain this action.

The judgment and decree appealed from are set aside and a decree will be entered declaring that -

- (i) the finding of the committee of inquiry contained in the report P.11
- and (ii) the decision of the Board of Residence and Discipline suspending the Plaintiff indefinitely from all University examinations are null and void and of no legal effect. The Plaintiff will be entitled to his costs both here and in the Court below.

In the  
Supreme Court  
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Judgment.  
28th November,  
1956  
- continued.

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Sgd. H.W.R.Weerasooriya  
PUISNE JUSTICE

T.S.Fernando J. I agree.

Sgd. T.S.Fernando  
PUISNE JUSTICE.

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- (1) 51 N.L.R. 457.
  - (2) (1924) 1 K.B.171 at 205.
  - (3) 48 N.L.R. 441.
  - (4) 42 N.L.R. 197.
  - (5) (1943) 2 A.E.R. 546.
  - (6) (1947) 1 A.E.R. 851.
  - (7) (1943) A.C. 627 at 638.
  - (8) (1952) 1 A.E.R. 480 at 490.
  - (9) (1879) 11 Ch.D. 353.
  - (10) (1879) 13 Ch.D. 346.
  - (11) (1939) 2 K.B.D. 651.
  - (12) (1928) 1 K.B.D. 291.
  - (13) (1952) 2 Q.B.D. 329.
  - (14) 39 N.L.R. 193.
  - (15) (1953) 2 Q.B.D. 18.
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In the  
Supreme Court  
of Ceylon.

No. 15.

DECREE.

No.15.

Decree.

13th December  
1956.

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

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

E.F.W. Fernando Plaintiff-Appellant

against

The University of  
Ceylon Defendant-Respondent

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In the District Court of Colombo.

This cause coming on for hearing and determination on the 9th and 10th August, 17th, 18th, 20th, 21st and 24th September and 28th November, 1956 and on this day, upon an appeal preferred by the Plaintiff-Appellant before the Hon. H. W. R. Weerasooriya, Puisne Justice and the Hon. T. S. Fernando, Q.C., Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondent.

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It is considered and adjudged that the judgment and decree appealed from be and the same are hereby set aside and decree is entered declaring that

(1) the finding of the Committee of Inquiry contained in the report P.11 and

(2) the decision of the Board of Residence and discipline suspending the Plaintiff indefinitely from all University Examinations are null and void and of no legal effect. The Plaintiff will be entitled to his costs both here and in the Court below.

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Witness the Honourable Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the thirteenth day of December in the year One thousand nine hundred and Fifty-six and of Our Reign the Fifth.

Sgd. W.G. Woutersz.  
Deputy Registrar, Supreme Court.

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE  
PRIVY COUNCIL

In the  
Supreme Court  
of Ceylon.

No.16.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the Matter of an application for leave  
to appeal to Her Majesty the Queen in  
Council under The Appeals (Privy Council)  
Ordinance, (Cap.85).

Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council.

19th December,  
1956.

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The University of Ceylon  
(Defendant-Respondent)  
Appellant

and

E.F.W.Fernando (Plaintiff-Appellant)  
Respondent

To

THE HONOURABLE CHIEF JUSTICE AND THE OTHER  
JUSTICES OF THE HONOURABLE THE SUPREME COURT OF THE  
ISLAND OF CEYLON.

On this 19th day of December, 1956.

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The petition of the University of Ceylon, the  
Appellant above-named, appearing by David Ernest  
Martensz, William Henry Edwin Ludovici, George Neil  
Stewart de Saram, Albert Reginald Tampoe, Victor  
Gnanaratnam Cooke, Vernon Cumerbatch van Geyzel  
Kelaart, Rajanathan Devasenapathy and Abdul Careem  
Abdul Haseeb, practising in partnership under the  
name style and firm of F.J. & G. De Saram, and  
their assistants Hector Claude Perera, Velupillai  
Murugesu, Maurice Stanley Wallbeoff, Nadarasa  
Rathinasapapthy and Cecil Emmanuel Swampillai, its  
proctors, sheweth as follows :-

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1. That feeling aggrieved by the judgment and  
decree of this Honourable Court pronounced on the  
28th day of November 1956 the Appellant is desirous  
of appealing therefrom to Her Majesty the Queen in  
Council.

2. The said judgment is a final judgment, and  
the matter in dispute on the appeal exceeds the  
value of Rs.5,000/- and is also one that involves  
directly or indirectly a claim or question to or



In the  
Supreme Court  
of Ceylon.

No.16.

Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council.

19th December,  
1956

- continued.

respecting property or a civil right amounting to  
or of the value of Rs. 6,500/-.

3. The question involved in the appeal is also  
one which, by reason of its great general or public  
importance or otherwise ought to be submitted to  
Her Majesty in Council for decision.

WHEREFORE the Appellant prays on the grounds  
aforesaid for conditional leave to appeal against  
the said judgment of this Court dated the 28th day  
of November 1956 to Her Majesty the Queen in Coun-  
cil.

Sgd. F.J. & G. de Saram.

Proctors for Appellant.

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No.17

Order on  
Application  
for Conditional  
Leave to Appeal  
to the Privy  
Council.

18th June 1957.

No. 17.

ORDER ON APPLICATION FOR CONDITIONAL LEAVE TO  
APPEAL TO THE PRIVY COUNCIL.

Present: Basnayake, C.J., and Pulle, J.

Argued and Decided on: June 4, 5, 6, 7, 17 and 18,  
1957.

Basnayake, C.J.

This matter has been argued before us at length  
by Counsel on both sides. Learned Counsel for the  
Applicant canvasses the correctness of certain de-  
cisions of this Court and invites us to hold that  
they have been wrongly decided. Sitting as we are  
presently constituted we do not think that we have  
the power to over-rule the decision of another  
Bench of two Judges. It is therefore necessary to  
constitute a more representative Bench to decide  
the question that arise in this matter. We there-  
fore order under Rule 4 of the Appellate Procedure  
(Privy Council) Order, 1921, that the application  
which is before us be referred to a Bench of five  
Judges. Let the application be listed before a  
Bench of five Judges on 1st July 1957.

Sgd. Hema Basnayake,  
Chief Justice.

Pulle, J.

I agree.

Sgd. M.F.S. Pulle,  
Puisne Justice.

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No. 18.

JUDGMENT GRANTING CONDITIONAL LEAVE TO APPEAL  
TO THE PRIVY COUNCIL.

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In the  
Supreme Court  
of Ceylon.

No.18.

Present: Basnayake, C.J., Pulle, J., K.D. de  
Silva, J., Sansoni, J., and L.W. de  
Silva, A.J.

Judgment  
granting  
Conditional  
Leave to Appeal  
to the Privy  
Council.

Argued on: 1,2,3,4 and 5 July 1957.

Decided on: 31st July, 1957.

31st July 1957.

Basnayake, C.J.

10 This is an application by the University of  
Ceylon (hereinafter referred to as the University)  
for leave to appeal to the Privy Council from the  
judgment of this Court delivered on 28th November,  
1956.

Rule 2 of the Rules in the Schedule (herein-  
after referred to as Schedules Rule 2) to the  
Appeals (Privy Council) Ordinance requires an ap-  
plicant for leave to appeal to the Privy Council -

- 20 (a) to give, within fourteen days from the date  
of the judgment to be appealed from, the op-  
posite party notice of his intention to apply  
for leave, and
- (b) make an application to this Court by petition  
within thirty days from the date of such judg-  
ment.

30 The present application has been made within  
the prescribed time; but the opposite party (here-  
inafter referred to as the Respondent) opposes it  
on the ground that the University has not given the  
prescribed notice. It is not disputed that fail-  
ure to give the prescribed notice is fatal to this  
application. This Court has all along taken the  
view that the provision of Scheduled Rule 2 as to  
notice is imperative and that compliance therewith  
is a condition precedent to the reception of an  
application for leave to appeal.

40 Learned Counsel on behalf of the University  
claims that it has in the instant case complied  
with the requirements of Scheduled Rule 2 by doing  
the following acts:-

In the  
Supreme Court  
of Ceylon.

          
No.18.

Judgment  
granting  
Conditional  
Leave to Appeal  
to the Privy  
Council.

31st July 1957  
- continued.

- (a) By sending by registered post on 6th December 1956 two notices directed to the Respondent, one signed by the Vice-Chancellor and Registrar of the University and sealed with its Seal, and the other signed by the Proctor for the University, to each of the following places:-
- (i) No.82 Barnes Place, Colombo, the admitted residence of the Respondent, and
- (ii) St. Peter's College, where at the material date the Respondent was a teacher. 10
- (b) By sending by registered post on 6th December 1956 to the address for service given in the Proxy of the Proctor who represented the Respondent both at the trial and in the appeal to this Court, two notices in the same terms and signed by the same persons who signed the notices sent to the Respondent.
- (c) By handing to the same Proctor personally two similar notices on 11th December 1956, before the expiry of the period of fourteen days. 20

All the notices sent on 6th December 1956 were delivered on 7th December 1956 at the respective addresses. Learned Counsel for the University submits that all the notices satisfy the requirements of Scheduled Rule 2.

The Respondent has filed an Affidavit in which he says that on 7th December, the day on which the notices were delivered both at No.82 Barnes Place and at St. Peter's College, he left his residence at 8 a.m., before the letters were delivered there, for the purpose of invigilating at a term test at St. Peter's College, where he worked from 8.45 a.m. to 10.30 a.m. From St. Peter's College he went to the National Museum and worked there till 4.30 p.m. and came back to the College where he helped at its Christmas Fete till 7.30 p.m., and later left for Peradeniya by the 8.15 p.m., train without going back to his house. He returned to Colombo on the night of 16th December 1956 and was handed the letters containing the notices by his mother the next morning. The Respondent also states that on being informed on 21st December by his Proctor, Lucien Jansz, that notice addressed to him had been 30 40

sent by post to the care of the Rector, St. Peter's College, he went to the College and found them lying on a table in the Masters' Room.

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On these facts learned Counsel for the Respondent submitted

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- 10 (a) that notice as required by Scheduled Rule 2 has not been given,
- (b) that a notice under that Rule to be effective must reach the Respondent, in the sense of his becoming aware of it, or of the notice coming to his knowledge, within the prescribed period of fourteen days.
- (c) that the delivery of a notice at the Respondent's residence without proof that he read the notice or otherwise became aware of it within the fourteen days, is not notice as contemplated in Scheduled Rule 2,
- 20 (d) that the delivery of a notice at the place where the Respondent is employed, without proof that he read the notice or otherwise became aware of it within the fourteen days, is not notice as contemplated in Scheduled Rule 2,
- 30 (e) that the notice given to and served on the Proctor who represented the Respondent at the trial of the action and in the appeal to this Court does not amount to giving notice to the Respondent as the Proctor has no authority to act for him beyond the terms of his Proxy which did not expressly authorise him to receive a notice given under Scheduled Rule 2,
- 40 (f) that even if the Proctor who represented him at the trial can be regarded as his agent the delivery of a notice to him in the absence of a special authority under Procedural Rule 6 of the Appellate Procedure (Privy Council) Order, 1921, does not satisfy the requirement of Scheduled Rule 2 in view of the decision of this Court in Fradd v. Fernando, 36 N.L.R. 132.

We have had the advantage of a full argument

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by learned Counsel on both sides and we have been referred to a number of decisions both of this Court and of the Courts in England. It is not necessary for the purpose of this judgment to refer to most of the cases cited and only those which have a direct bearing on the questions arising for decision will be mentioned herein.

It is an established principle that where personal service is required it must be so stated in express words in the enactment and in the absence of such words a notice required to be given by a statute may be given in any other way. (Reg. v. Deputies of the Freeman of Leicester, 117 E.R.613 at 615, Ex parte Portingell, (1892) L.R. 1 Q.B. 15 at 17). Our Civil Procedure and Criminal Procedure Codes and the Insolvency Ordinance contain examples of such express provisions prescribing personal service. The words "give", "send", "deliver" and "serve" by themselves are not to be regarded as connoting personal service. In certain contexts they have been held to mean merely send or despatch or transmit (vide Retail Dairy Company Ltd. v. Clarke, (1912) 2 K.B. 388, and the Judgment of Buckley L.J. in Browne v. Black, (1912) 1 K.B. 316 at 322). In other contexts they have been held to mean not only sent, despatched or transmitted but also sent, despatched or transmitted and received at the other end. (vide Judgment of Vaughan Williams and Kennedy, L.J.J. in Browne v. Black, (1912) 1 K.B. 316 at 319 and 326). The decisions of this Court have recognised the use of the post as a means of giving the notice required by Scheduled Rule 2 and learned Counsel for the Respondent does not seek to question the right of an applicant for leave to send the prescribed notice by post. Where the post is used as a medium of transmitting the prescribed notice, is an applicant for leave required to do more than send, in due time, a properly addressed prepaid letter containing the name and address of the opposite party? We think not, for it is not in his power to do more. Besides, it is well established that "where a letter, fully and particularly directed to a person at his usual place of residence, is proved to have been put into the post-office this is equivalent to proof of a delivery into the hands of that person; because it is a safe and reasonable presumption that it reached its destination" - per Abbott, Id. C.J. in Walter v. Haynes, (1824) 171

E.R.975. Although the law does not require that the registered post should be used it is the practice of cautious persons (as in the instant case) to adopt the safe guard of registering the letter so that proof of its delivery at its destination could be adduced should it become necessary to do so.

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10           Now when we return to Scheduled Rule 2 we find  
no express words requiring personal service. The  
requirement of "giving notice" is therefore satis-  
fied by sending a notice by post. In our opinion  
the requirements of the statute are satisfied once  
the letter is despatched and reaches its destina-  
tion within the prescribed period. The addresses  
may not be at his house, he may not choose to open  
the letter, he may destroy it, his servant or other  
person to whom the letter is handed by the postman  
may forget to give it to him; but all these are  
not considerations which affect the act of the  
20           applicant once he has performed it in due time. To  
expect the applicant not only to send the notice  
in due time, but also to ensure that the Respond-  
ent reads it or becomes aware of it within the  
prescribed period, is to ask the applicant to do  
the impossible. Lex non cogit ad impossibilia is  
a well-known maxim applicable to the interpretation  
of statutes. A statute should be construed so as  
not to place upon it an interpretation which re-  
quires the performance of the impossible. Without  
30           express words in that behalf we are not disposed  
to place on Scheduled Rule 2 the construction that  
learned Counsel for the Respondent seeks to place  
on it. We are unable to uphold his submission  
that not only must a notice sent by post be de-  
livered to the address to which it is despatched  
but it must also "reach" the addressee in the sense  
that he must become aware of it by opening and  
reading the letter within the prescribed period.

40           We are of opinion that in the instant case  
notice was given the moment the letters reached No.  
82 Barnes Place and St. Peter's College and that  
it is immaterial that the Respondent was not at  
his residence at the time the letter was delivered  
and for nine days thereafter or did not read the  
notice till after the fourteen days. The duty  
cast on an applicant for leave to appeal being to  
give notice, once a notice in writing has been de-  
livered at the usual place of residence of the

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opposite party in due time, the terms of the statute are satisfied and it is immaterial whether he reads the notice within the prescribed period or after it or never.

In support of his contention that the delivery of the letter at the house of the Respondent was sufficient, learned Counsel for the University referred us to the following remarks of Lord Kenyon in Jones v. Marsh, (1791) 100 E.R. 1121:-

"But in every case of the service of a notice, leaving it at the dwellinghouse of the party has always been deemed sufficient -- So wherever the Legislature has enacted, that before a party shall be affected by any act, notice shall be given to him, and leaving that notice at his house is sufficient". 10

The view we have formed is in accord with the observations quoted above, and in our opinion they apply with equal force to a letter delivered by post. 20

The soundness of this principle has been reaffirmed by Lord Chief Justice Abbott in Doe dem. Neville v. Dunbar, (1826) 173 E.R. 1062, and in the later case of Tanham v. Nicholson, (1871-2) 5 L.R.H.L. English and Irish Appeals 561 at 573 and 574 by Lord Westbury where he pointed out that owing to the looseness of the language in some of the later judgments the erroneous notion grew that it was competent to meet the evidence of delivery by counter testimony to prove that the notice never reached the person for whom it was intended. 30

The argument of this case proceeded on the assumption that Scheduled Rule 2 is not satisfied unless the notice is in fact delivered at the address of the Respondent within the period of fourteen days. The question whether a notice posted within the prescribed period and in fact delivered after it, owing either to delay or mishap in the post or on account of the letter having been posted without allowance being made for its delivery in the ordinary course of post at the address of the opposite party within the period, is a valid notice, does not arise for decision here, and we do not therefore propose to refer to it in this judgment although it was discussed at length in the 40

course of the hearing and the decision of this Court in Balasubramaniam Pillai v. Valliappa Chettiar, 40 N.L.R.89, was cited in support of the argument that it is sufficient if the notice is sent within the fourteen days even though it is delivered to the opposite party after that period.

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10 Counsel for the University contended that a mere sending or despatching of the notice within the fourteen days was sufficient while Counsel for the Respondent maintained that not only must the notice be delivered at the address of the Respondent within fourteen days but it must also reach him in the sense of his being made aware of it within that period.

20 Our opinion that the University has complied with Scheduled Rule 2 disposes of this application. But as this application was referred to a Bench of five Judges for the purpose of deciding the further question whether Rules 5 and 5A of the Rules made under Section 4 of the Ordinance (hereinafter referred to as the Procedural Rules) were applicable to the giving of notice under Scheduled Rule 2, it is necessary to deal with it as the conclusion we have come to is in conflict with the previous decisions of this Court.

30 It appears to have been assumed in all previous cases that Procedural Rule 5 prescribed a mode of serving the notice required to be given under Scheduled Rule 2. The principle which we have stated above, that where personal service is not expressly required by a statute it should not be construed as requiring personal service does not seem to have been given due consideration in the previous decisions. We have no reason to doubt the soundness of that principle and we do not see how, without doing violence to it, Procedural Rule 5 can be said to prescribe the mode of giving notice under Scheduled Rule 2. Procedural Rule 5, which prescribes that "a party who is required to serve any notice may himself serve it or cause it to be served, or may apply by motion in Court before a single Judge for an order that it may be issued by and served through the Court", can therefore have no application to a rule which does not require personal service. The Schedule is a part of the enactment, and to hold that Procedural Rule 5 controls the Schedule would amount to saying that

40



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a subsidiary rule can over-ride the enabling enactment. It is well settled that a rule made under an enactment cannot derogate from the enactment itself and where a subsidiary rule is inconsistent with the enabling enactment it must yield to the enactment. If Procedural Rule 5 was designed to apply to Scheduled Rule 2 it would clearly be ultra vires. There is no ground for assuming that the rule-making authority intended to make a rule which is clearly ultra vires. Procedural Rule 5 must be regarded as being intra vires of the enabling power, but as having no application to Scheduled Rule 2. 10

As stated above our opinion that Procedural Rule 5 does not prescribe the mode of giving the notice required by Scheduled Rule 2 is in conflict with the previous decisions of this Court, chiefly Fradd v Fernando, 36 N.L.R. 132. In that case it was held that Procedural Rules 5 and 5A should be read in conjunction with Scheduled Rule 2 and that as Procedural Rule 5 prescribes personal service the notice required by Scheduled Rule 2 should be served on the opposite party personally. We are unable to agree with that decision. Our reasons are - 20

(a) As stated in the earlier part of this judgment Scheduled Rule 2 does not require personal service of the notice required to be given by it. A rule prescribing the mode of personal service cannot therefore apply to it. 30

(b) Procedural Rule 5 is made under Section 4 of the Appeals (Privy Council) Ordinance which provides for the making of rules to be observed in any proceedings before the Supreme Court. The notice given under Scheduled Rule 2 not being a proceeding before the Supreme Court, Procedural Rule 5 can have no application to it. (vide Hayley and Kenny v. Zainudeed, 25 N.L.R.312: Municipal Council Colombo v. Letchiman Chettiar, 44 N.L.R. 217 at 219). 40

(c) Procedural Rule 5 is designed to apply to notices given after proceedings have commenced in Court while the notice prescribed in Scheduled Rule 2 is a step to be taken before the application for leave to appeal is made.

(d) A statute cannot be modified by rules made under it in the absence of express power in that behalf. To read Procedural Rule 5 as applying to Scheduled Rule 2 would amount to holding that the Schedule (which is part and parcel of the enactment) can be modified by rules made under it. Section 4 does not confer any power to make rules inconsistent or in conflict with the Ordinance. It would therefore be wrong to read Procedural Rule 5 as controlling Scheduled Rule 2.

10

(e) Procedural Rule 5 when read as applying to notices required to be given after proceedings have commenced is *intra vires* of the enabling enactment and should be read in that sense so as to give it validity.

In our opinion therefore Fradd v. Fernando (supra) has been wrongly decided and we accordingly over-rule it.

20

We wish to repeat that Scheduled Rule 2 does not require personal service of the notice required to be given there under and Rules 5 and 5A of the Procedural Rules have no application to it.

30

The application for leave is granted upon the condition that the Appellant shall within a period of one month from the date of this judgment enter into good and sufficient security by depositing with the Registrar a sum of Rs.3,000/- and by hypothecating that sum by bond for the due prosecution of this appeal and the payment of all such costs as may become payable to the Respondent.

We declare that University entitled to costs of the hearing into the Respondent's objection.

Sgd. Hema Basnayake,  
Chief Justice.

Pulle J. I agree.

Sgd. M.F.S. Pulle.  
Puisne Justice.

K.D.De Silva, J.  
I agree.

Sgd. K.D. De Silva.  
Puisne Justice.

40

Sansoni J.  
I agree.

Sgd. M.C.Sansoni.  
Puisne Justice.

L.W.de Silva A.J.  
I agree.

Sgd. L.W. de Silva  
Acting Puisne Justice.

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Supreme Court  
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In the  
Supreme Court  
of Ceylon.

No. 19.

DECREE GRANTING CONDITIONAL LEAVE TO APPEAL  
TO THE PRIVY COUNCIL

No.19.

Decree granting  
Conditional  
Leave to Appeal  
to the Privy  
Council.

8th August,  
1957.

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

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the Matter of an application by the  
Defendant dated 19th December, 1956,  
for Conditional Leave to Appeal to Her  
Majesty the Queen in Council against  
the decree of this Court dated 28th  
November, 1956.

10

The University of Ceylon  
(Defendant-Respondent)  
Appellant

against

E.F.W.Fernando (Plaintiff-Appellant)  
Respondent.

District Court of Colombo.

20

This cause coming on for hearing and deter-  
mination on the 4th, 5th, 6th, 7th, 17th and 18th June  
and 1st, 2nd, 3rd, 4th, 5th and 31st July, 1957  
before the Honourable H.H.Basanayake, Q.C., Chief  
Justice, the Honourable M.F.S.Pulle, Q.C., Puisne  
Justice, the Honourable K.D.de Silva, Puisne Jus-  
tice, the Honourable M.C.Sansoni, Puisne Justice  
and the Honourable L.W. de Silva, Acting Puisne  
Justice of this Court, in the presence of Counsel  
for the Appellant and Respondent.

30

It is considered and adjudged that this ap-  
plication be and the same is hereby granted upon  
the condition that the Appellant do within a per-  
iod of one month from the date of judgment in this  
application enter into good and sufficient security  
by depositing with the Registrar a sum of Rs.3000/-  
and by hypothecating that sum by bond for the due  
prosecution of this appeal and the payment of all  
such costs as may become payable to the Respondent.

Deposit in terms of provisions of section 8 (a) of the Appellant Procedure (Privy Council) Order 1921 with the Registrar a sum of Rs.300/- in respect of amount and fees mentioned in Section 4(2)(b) and (c) of Ordinance No.31 of 1909 (Chapter 85).

In the Supreme Court of Ceylon.

No.19.

Decree granting Conditional Leave to Appeal to the Privy Council.

8th August, 1957

- continued.

10 Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

The Appellant is entitled to costs of the hearing into the Respondent's objection.

Witness the Honourable Hema Henry Basnayake, Q.C., Chief Justice of Colombo, the 8th day of August, in the year One thousand nine hundred and fifty-seven and of Our Reign the Sixth.

20 Sgd. W.G. Woutersz,  
Dy. Registrar, S.C.

No. 20.

APPLICATION FOR FINAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the Matter of an application for Final Leave to appeal to Her Majesty the Queen in Council under the Appeals (Privy Council) Ordinance, (Cap. 85).

30 The University of Ceylon  
(Defendant-Respondent)  
Appellant

and

E.F.W.Fernando (Plaintiff-Appellant)  
Respondent.

To:

The Honourable the Chief Justice and the other

No.20

Application for Final Leave to Appeal to the Privy Council.

12th August, 1957.

In the  
Supreme Court  
of Ceylon.

Justices of the Supreme Court of the Island of  
Ceylon.

On this 12th day of August 1957.

No.20.

Application  
for Final Leave  
to Appeal to  
the Privy  
Council.

12th August,  
1957

- continued.

The humble petition of the University of Ceylon, the Appellant above-named, appearing by David Ernest Martensz, William Henry Edwin Ludovici, George Neil Stewart De Saram, Albert Reginald Tampoe, Victor Gnanaratnam Cooke, Vernon Cumberbatch Van Geyzel Kelaart, Rajanathan Devasenapathy and Abdul Careem Abdul Haseeb, practising in partnership under the name, style and firm of F.J.G. De Saram, and their assistants Hector Claude Perera, Valupillai Murugesu, Maurice Stanley Wallbeoff, Nadarasa Rathinasabapathy and Cecil Emmanuel Swampillai, its proctors, sheweth as follows :-

10

1. That the Appellant on the 31st day of July 1957 obtained conditional leave from this Honourable Court to appeal to Her Majesty the Queen in Council against the judgment of this Court pronounced on the 28th day of November 1956.

20

2. That the Appellant in compliance with the conditions on which such leave was granted (a) has deposited with the Registrar of this Honourable Court a sum of Rs. 3,000/- as security for the due prosecution of the said appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellant to pay the Respondent's costs of appeal (as the case may be) (b) has duly hypothecated the said sum of Rs. 3,000/- by a bond bearing date the twelfth day of August 1957 to and in favour of the said Registrar and (c) has deposited with the said Registrar a sum of Rs. 300/- in respect of the amounts and fees mentioned in Section 4 (2)(b) and (c) of Ordinance No.31 of 1909 (Cap.85).

30

Wherefore the Appellant prays that the Appellant be granted final leave to appeal against the said judgment of this Court dated the 28th day of November 1956 to Her Majesty the Queen in Council.

40

Sgd. F.J. & G. de Saram,  
Proctors for Appellant.

No. 21.

DECREE GRANTING FINAL LEAVE TO APPEAL TO THE  
PRIVY COUNCIL

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In the  
Supreme Court  
of Ceylon.

No.21.

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

Decree granting  
Final Leave to  
Appeal to the  
Privy Council.

30th August,  
1957.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

10

In the Matter of an application by the  
Defendant dated 12th August, 1957, for  
Final Leave to Appeal to Her Majesty  
the Queen in Council against the decree  
of this Court dated 28th November 1956.

E.F.W.Fernando Plaintiff

Vs.

The University of Ceylon Defendant

E.F.W.Fernando Plaintiff-Appellant

Vs.

The University of Ceylon  
Defendant-Respondent

20

The University of Ceylon  
Defendant-Respondent

Vs.

E.F.W.Fernando Plaintiff-Appellant  
Respondent.

District Court of Colombo.

30

This cause coming on for hearing and determina-  
tion on the 26th day of August, 1957 before the  
Honourable H.W.R.Weerasooriya, Puisne Justice and  
the Hon. M.C. Sansoni, Puisne Justice of this  
Court, in the presence of Counsel for the Petitioner.

It is considered and adjudged that the appli-  
cant's application for Final Leave to Appeal to  
Her Majesty the Queen in Council be and the same  
is hereby allowed.

Witness the Honourable Hema Henry Basnayake,  
Q.C., Chief Justice at Colombo, the 30th day of  
August, in the year One thousand nine hundred and  
fifty-seven and of Our Reign the Sixth.

Sgd. W.G. Woutersz,  
Dy. Registrar, S.C.

Exhibits

P.3.  
Question Paper  
in the Final  
Examination in  
Science -  
Section B -  
Zoology V.  
1952.

E X H I B I T S

P.3. - QUESTION PAPER IN THE FINAL EXAMINATION  
IN SCIENCE - SECTION B - ZOOLOGY V.

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UNIVERSITY OF CEYLON

Final Examination in Science, 1952.

Section B

ZOOLOGY - V

(Three hours)

(Answer all the questions)

1. Write an essay on one of the following :- 10
  - (a) The comparative physiology of the thyroid gland.
  - (b) Animal communities.
  - (c) Bioluminescence.
  - (d) The influence of size on the organisation of animals.
  - (e) Zoology as a subject in the school curriculum.
  - (f) Instinctive and intelligent behaviour.
  
2. Translate and comment on :- 20

Either "Unter den Haemadipsinae ist die Haemadipsa ceylonica (Moq. Tand.) besonders gut bekannt; sie lebt auf Ceylon, auf dem Malaischen Archipel, den Sundainseln, in Japan, China, Siam, Indien u. a. Orten. Während der trockenen Jahreszeit versteckt sich die Haemadipsa in der Erde und unter trockenem Laub. Mit dem Eintritt der Regenzeit kriechen die Bluteigel myriadenweise an Büschen, Gras und anderen Gegenständen empor, befestigen sich an ihnen mit dem hinteren Saugnapf, ziehen sich der Länge nach aus und hängen herab, bis ein Mensch oder ein Tier vorbeigeht. Die Anwesenheit der Nahrungsquelle verspüren sie in einem Abstand von 15-20m. Die Haemadipsa geht leicht auf ihren Wirt über, dringt durch die kleinsten Öffnungen oder Spalten in den Kleidern ein, und saugt sich am Leibe fest. Sie verursacht höchst schmerzhafteste, mit starkem Blutverlust verbundene Bisse; schmerzhafteste, mit starkem Blutverlust verbundene Bisse; massenhafte Bisse

30

sind für den Menschen unausstehlich; es sind Todesfälle nach dem Haemadipsa-Bisse bekannt, welche wahrscheinlich durch eine sekundäre Infektion erklärt werden. Die Haemadipsa kann man durch das Benetzen mit Zitronensaft entfernen."

(Pawlowsky)

10 or "Chez tous les Amphibiens, le debut de la gastrulation se signale par un sillon apparaissant en un point donne de la region sous-equatoriale de la blastula. Il peut etre, selon les formes, plus ou moins eleve. On le voit, chez la Grenouille rousse, se dessiner dans la partie inferieure du croissant gris a 25 sous l'equateur. Chez le Triton, il apparait plus bas d'une quarantaine de degres. L'enfoncement progressif des cellules qui bordent inferieurement cette petite encoche donne a celles du bord superieur le relief d'une levre stricee de pigment. D'heure en heure, celle-ci devient plus apparente et plus arquee. Elle  
20 s'incurve en lame de faucille, en meme temps que son rayon de courbure diminue. Au moment ou elle dessine un fer a cheval, les cellules legerement pigmentees qui se trouvaient dans la concavite ont disparu; il ne reste qu'un bouchon vitellin, bien-tot circonscrit egalemeent du cote ventral par un soulevement toujours moins accentue que du cote dorsal."

(Brachet)

Exhibits

P.3.

Question Paper  
in the Final  
Examination in  
Science -  
Section B -  
Zoology V.  
1952.

- continued.

P.4. - LETTER, VICE CHANCELLOR TO PLAINTIFF

30 Confidential.

No.D.  
University of Ceylon  
Colombo.  
16th May, 1952.

P.4.

Letter, Vice-  
Chancellor to  
Plaintiff.

16th May 1952.

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo, 7.

Dear Mr. Fernando,

All allegation has been made to me in writing that you had acquired knowledge of the content of one or more of the papers set at the Final Examination of Science, Section B, Zoology, before the



Exhibits

P.4.

Letter, Vice-Chancellor to Plaintiff.

16th May 1952  
- continued.

date of the examination. Since this is a very serious allegation which may affect not only you but also one or more of the members of the University staff, I have consulted Mr.A.E.Keuneman, Q.C. who agrees that the allegation is sufficiently circumstantial to justify a formal enquiry.

I have therefore appointed a commission consisting of Mr.Keuneman, the Dean of the Faculty of Science, and myself, and have asked Mr.Keuneman to take the lead in the enquiry. He has asked that a meeting be held in the Board Room College House, on Wednesday, 21st May at 5 p.m. and that you be requested to attend. I should be glad if you would attend on this occasion and would report to Mr.Blok, who is acting as Secretary to the commission.

10

Yours sincerely,

Sgd. Ivor Jennings,  
Vice-Chancellor.

P.5.

Letter, Vice-Chancellor to Plaintiff.

28th May 1952.

P.5.- LETTER FROM VICE CHANCELLOR TO PLAINTIFF

CONFIDENTIAL

No.D.  
University of Ceylon  
Colombo.

20

28th May, 1952.

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo 7.

Dear Mr. Fernando,

The commission of enquiry would be glad if you would give evidence again on the 3rd June at 5.30 p.m. at College House. It would be helpful if you would bring along all the exercise books which you have used during your course.

Yours sincerely,

Sgd. Ivor Jennings,  
Vice-Chancellor.

P.7.- LETTER FROM VICE CHANCELLOR TO PLAINTIFF

Exhibits

Ref: No.CPF

University of Ceylon  
Colombo.

18th/21st July, 1952

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo 7.

P.7.

Letter  
Vice-Chancellor  
to Plaintiff.

21st July 1952.

Dear Sir,

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The Board of Residence and Discipline has found guilty of an examination offence in connection with the Final Examination in Science held in April 1952 and he suspended you indefinitely from all University examinations.

Yours faithfully,

Sgd. Ivor Jennings,  
Vice-Chancellor.

P.6.- LETTER FROM PLAINTIFF TO VICE-CHANCELLOR

P.6.

CONFIDENTIAL

82, Barnes Place,  
Colombo.

23rd July, 1952.

Letter  
Plaintiff to  
Vice-Chancellor.

23rd July 1952.

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The Vice-Chancellor,  
University of Ceylon,  
Colombo.

Dear Sir,

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I have read with much concern reports appearing in the daily press that a student has been suspended for two years following the leakage of a paper in German in the Zoology section of the Final Year Science Examination. This would seem to indicate that the Commission of Inquiry before which I attended on 21.5.52 and 3.6.52 have accepted as true the allegation that I had acquired knowledge of the contents of one of the papers set at the Final Examination in Science in Section B, Zoology, before the date of the examination. If the Commissioners have come to this conclusion and have decided to suspend me, as reported in the

Exhibits

P.6.

Letter  
 Plaintiff to  
 Vice-Chancellor.  
 23rd July 1952  
 - continued.

Press, I submit that a very grave miscarriage of justice has occurred, for which I shall find myself penalised for an offence which I never committed. The serious nature of the charge preferred against me as well as of the punishment will bring to an untimely end my entire academic career and leave my character under a stigma wholly undeserved. I have, therefore taken the liberty to address you in the eager hope that the following submissions will be considered by you and by the other members of the commission, before whom I trust you will place this letter.

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1. At the Enquiry held on 21.5.52, I was confronted for the first time with this serious allegation against me made by a fellow-student, Miss Balasingham, and questioned by the members of the Commission. At no time was I given an opportunity of questioning Miss Balasingham nor indeed was I even present at the time she made her statements before the Commission. I would like, with respect to record my protest against this procedure. The elementary principles of natural justice require that the charges a person is called upon to answer should be made and proved in his presence. An opportunity of testing the truthfulness of witnesses, of placing their acts and words in their proper perspective, and of generally criticising the value to be given to the evidence should, I very respectfully state, have been given to me as a person accused. It is a matter for regret and for dissatisfaction that I was not afforded any such opportunity at the Inquiry. Indeed, apart from the information gathered from the Press, I am still unaware as to who testified against me or what was said. I must, therefore, be excused if I allow myself to believe that among them were persons ill-disposed towards me or schemers motivated by petty jealousies and rivalries, interested in engineering "stunts" for ulterior ends. I make this submission not in order to question the impartiality of the Commission (for that does not permit of any doubt) but rather to bring to your notice the fact that had I been given such an opportunity I could in all probability have pointed out a number of circumstances and facts which would have conclusively established my innocence. You yourself, Sir, in your letter to me dated 16th May refer to the "circumstantial" nature of the allegation. It is not for me to draw the attention of

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yourself or of Mr. Keuneman, lawyers as you are, nor of the Dean of the Faculty of Science as a man of science, to the dangers that are always inherent in the processes of deduction and inference. It will be sufficient if I reiterate that the entire charge is based on, and sought to be supported by, purely inferential material.

Exhibits

P.6.

Letter  
Plaintiff to  
Vice-Chancellor.

23rd July 1952

- continued.

10 2. The evidence, according to the report appearing in the "Ceylon Observer" of 17th July revealed that I had "for some time before the Examination regularly taken down notes and translations of passages from a certain book in the library". It is not suggested that this constitutes any known offence. What evidently has converted my enthusiastic study into a transgression is the dishonest intention which is sought to be attributed to me by inference; Is it said that my conduct was surreptitious? No, for my colleague does not say so. What then is intended to be conveyed by suggestive  
20 inference? That I had come by this information "some time before the Examination" and was openly preparing myself. Further, my "reactions" to some questions alleged to have been put to me by Miss Balasingham had according to the Press report "showed" that I was "uneasy". What these questions were or what my alleged reactions were I was not told at the inquiry. I was never given an opportunity of finding out what Miss Balasingham meant by "uneasy". Whether her statements were  
30 truths, half-truths or falsehoods I cannot find out, for I do not know what she said in evidence. These are the matters for the clarification of which I had a right to be afforded an opportunity. I trust my general submission in the preceding paragraph will now assume the significance which should attach to it.

40 3. The "Observer" of 17th July carried the following precis of the evidence of the Examiner in German, "the Examiner in German was amazed to see that this student who was not particularly bright in this subject, had done excellent work in his paper". I would emphasise the fact that nobody could possibly have reached this conclusion. Unlike certain other subject, a language which is not taught for conversational use but merely for academic requirements, is not a subject in which a student's proficiency - let alone "brightness" - could be observed by a teacher in the normal course

Exhibits

P.6.

Letter  
Plaintiff to  
Vice-Chancellor.  
23rd July 1952  
- continued.

of his duties. The "lectures" in German consist entirely of passages written on the blackboard for translation. No oral or written tests have been held to judge the standard of students comparatively or otherwise. What opportunities then could anyone have had for the formulation of such a considered opinion? I was asked by a member of the Commission whether I was a German scholar. I am, and have always been, devoted to the Science of Zoology and my deep interest in the subject has necessitated a fair knowledge of the German language for the study of learned journals. The German literature I have had to rely on in the course of my work will be apparent from a perusal of the two monographs written by me and published in the Ceylon Journal of Science Vol. XXV Part I. 10

These questions would perhaps have been academic, but for the grave injustice which will result from any reliance being placed on this expression of opinion, if such an opinion was given, as to my proficiency. 20

4. The information on which I have based these submissions was obtained entirely from the Press reports appearing in the "Ceylon Observer" of 17th July and 20th July. I have not yet received any official intimation of the decision of the Commission, nor have I yet been made aware of the evidence on which I have been judged. It is a matter for regret as well as concern that a confidential inquiry of this nature should receive such wide publicity while the matter is still "sub judice". It is not a mere "journalistic anticipation" that has been published but facts alleged to have been stated in evidence at the inquiry. I suggest that the very fact of the unauthorised publicity this matter has received in the Press seems to indicate that there has been a conspiracy of some kind against me. 30

These are submissions, Sir, which I respectfully make in order to bring before the Commission as forcefully as I can the fact of my innocence. I have no other alternative method of protesting my innocence except to state emphatically that the allegation made against me is entirely and utterly untrue. My academic record would indicate that I am not the type of student who would need to resort to conduct such as that alleged in order to achieve 40

10 success at an Examination. I am not in a position to attribute any particular motive to the student who made these accusations against me except to say it is possibly due to jealousy or that she has been made use of. All I can say honestly and truthfully is that I did not acquire any knowledge of any papers in the Final Science Examination Section B Zoology before the date of the Examination. My request is that the Commission be pleased to take these matters into consideration before arriving at a decision. If a decision has already been reached, I urge that the matter be reconsidered to prevent a grave injustice which will eventually ruin my entire career. Justice demands that any doubt that may have arisen in the minds of the Commissioners should be resolved in my favour. They will, no doubt, be fully alive to the anxiety and pain of mind which any decision adverse to me is bound to cause, convinced as I am that any such adverse decision will be most unjust and inequitable. I trust this letter will be considered by the Commissioners at the earliest opportunity, and I conclude in the earnest hope that it will get the consideration and attention which I seek.

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Yours faithfully,

D.3.- LETTER FROM PLAINTIFF TO VICE-CHANCELLOR

30 The Vice-Chancellor,  
University of Ceylon,  
Colombo.

Dear Sir,

Since the writing of my memorandum addressed to you this morning, I have received your letter (Ref: No. CPF) dated the 18th/22 July, 1952.

40 I beg that the decision therein communicated to me be reconsidered in the light of the material I have placed before you in my memorandum.

Yours faithfully,

Sgd.....

E.F.W.Fernando.

Exhibits

P.6.

Letter  
Plaintiff to  
Vice-Chancellor.

23rd July 1952  
- continued.

D.3.

Letter  
Plaintiff to  
Vice-Chancellor.  
23rd July 1952.

Exhibits

P.8.- LETTER FROM VICE CHANCELLOR TO PLAINTIFF

P.8.  
Letter,  
Vice Chancellor  
to Plaintiff.  
24th July 1952.

CONFIDENTIAL

University of Ceylon  
Colombo.  
24th July, 1952.

Ref: No.D.

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo 7.

Dear Sir,

Thank you for your letter of 23rd July, 1952, which I will circulate to my colleagues, I should, however point out that most of your memorandum is based on a report in a local newspaper which was grossly inaccurate. No information was given to the press except the bare fact of the decision, and even that was given after the "Observer" report appeared. The "Observer" report was obviously a garbled version of gossip in circulation.

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Yours faithfully,

Sgd. Ivor Jennings,  
Vice-Chancellor.

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P.9.

P.9.- LETTER FROM VICE CHANCELLOR TO PLAINTIFF

Letter,  
Vice Chancellor  
to Plaintiff.  
29th July 1952.

CONFIDENTIAL

University of Ceylon  
Colombo.  
29th July, 1952.

Ref: No.D.

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo 7.

Dear Mr. Fernando,

I have now consulted Mr. A.E. Keuneman, Q.C., about your letter of 23rd July 1952. He does not think that an inquiry of this nature need be conducted on the lines of a case in Court, and he considers that you were sufficiently informed of the case. All that the General Act of the University requires is that the Vice-Chancellor be "satisfied". In consequence of the inquiry I am satisfied.

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I have already informed Professor W. Fernando that I should be willing for him to read our report in my office and to pass on to you the gist of it, omitting those portions which deal with examination results and examination procedure. Since he has not availed himself of the opportunity, I send you a copy of the report with paragraphs 8, 10 and 11 excluded, though I have given an account of the contents of these paragraphs.

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P.9.

Letter,  
Vice Chancellor  
to Plaintiff.

29th July 1952  
- continued.

10 This is a confidential document and I should be glad if you would return it to me when you have studied it.

Yours sincerely,  
Sgd. Ivor Jennings,  
Vice-Chancellor.

P.11.- REPORT OF THE COMMISSION OF INQUIRY

P.11.

Report of the  
Commission of  
Inquiry.

20 An allegation having reached the Vice-Chancellor that the content of a paper had come to the knowledge of a student, he made preliminary enquiries and then requested Mr. A.E. Keuneman Q.C., a Member of the Council and Professor A.W. Mailvaganam, O.B.E., Dean of the Faculty of Science, to serve on a board of enquiry with him.

30 2. The students principally concerned sat for the Final Examination in Science, Section B Zoology, in March-April of this year. The allegation originated with Miss S. Balasingham, sister-in-law of Mr. Sivaprakasapillai, Lecturer in Civil Engineering. Mr. Sivaprakasapillai very properly consulted Professor E.O.E. Pereira about a statement she had made to him and eventually it reached the Vice-Chancellor. The allegation was that Mr. E.F. W. Fernando had had some knowledge of the content of the German passage in Zoology Paper V some weeks before the examination. Mr. Fernando is a nephew of Professor W. Fernando, Professor of Zoology. This relationship was a source of embarrassment to us in our enquiry. It necessarily affected Professor Fernando's evidence. It also affected the  
40 evidence given by the students. To the usual anxiety not to inform against another student was added an even greater anxiety not to offend the Professor. Two students exhibited a remarkable



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P.11.

Report of the  
Commission of  
Inquiry  
- continued.

ignorance of events which must have been within their knowledge, at least by hearsay.

3. Miss Balasingham states that, owing to Mr. Fernando's behaviour, she suspected that there was something in one of his notebooks which he did not wish the other students to see. On one occasion he left the book on the bench in the Section B laboratory and went out of the room. She seized the opportunity to glance through the book and saw a list of German Words, in some cases with English equivalents. There were about 30 words and she copied nine of them into her own notebook, which she produced. She could remember only one of the words which she had not copied, Zitronensaft, a word which appeared almost at the end of the list. This word appears at the end of the German passage in Paper V. The other nine words appear in the passage, and in the order in which they are shown in the list in Miss Balasingham's book, except that the order of the eighth and ninth words is changed. The passage, with the ten words underlined, was as follows :-

"Unter den Haemadipsinae ist die Haemadipsa ceylonica (Mod. Tand.) besonders gut bekannt; sic lebt auf Ceylon, auf dem Malaischen Archipel, den Sundainsein, in Japan, China, Siam, Indien u.a. Orten. Während der trockenen Jahreszeit versteckt sich die Haemadipsa in der Erde und inter trickenen Laub. Mit dem Eintritt der Regenzeit kriechen die Blutegel myriadenweise an Büschen, Gras und anderen Gegenständen empor, befestigen sich an ihnen mit dem hinteren Saugnapf, ziehen sich der Langa nach aus und hängen herab, bis ein Mensch oder ein Tier vorbeigeht. Die Anwesenheit der Nahrungsquelle verspüren sie in einem abstand von 15-20 m Die Haemadipsa geht leicht auf ihren Wirt über, dringt durch die kleinsten Öffnungen oder Spalten in den Kleidern ein und saugt sich am Leibe fest. Sie verursacht höchst schmerzhafte, mit starken Blutverlust verbundene Bisse; Massenhafte Bisse sind für den Menschen unausstehlich; es sind Todesfälle nach dem Haemadipsa-Bisse bekannt, welche warrsche-inlich durch eine sekundäre Infektion erklärt werden. Die Haemadipsa kann man durch das Benestzen mit Zitronensaft entfernen."

(Pawlowsky)

4. This list in Miss Balasingham's book was

apparently not shown to anyone until our enquiry began. It was then shown to Mr. Sivaprakasapillai and was produced to us at our request. A large part of our enquiry was necessarily directed towards ascertaining whether the list really was in the notebook before the examination began. In our opinion it was. The following factors are relevant:

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P.11.

Report of the  
Commission of  
Inquiry  
- continued.

- 10 (1) Miss Balasingham was able to describe the copying with a wealth of circumstantial detail, of no direct relevance to the story as such, which carried conviction. If the story was invented, it was a remarkably successful invention.
- 20 (2) Another student, Miss Y. de Silva, was sitting next to Miss Balasingham on the occasion when the copying is said to have been done. Miss de Silva denies that she saw Miss Balasingham copying, but she admits that Miss Balasingham told her about the list before the examination. Miss de Silva is a second-year student in Zoology, and we believe that she could have told us more. Another student Mr. C.H. Fernando, also admits that Miss Balasingham told him about the list before the examination.
- 30 (3) Miss Balasingham's behaviour immediately after the examination was entirely consistent with her story. She says that she recognised the word Zitronensaft and then some of the other words. She asked Mr. E.F.W. Fernando how he did, and he said that the German passage was very easy. She then walked back to the Section B laboratory with Mr. C.H. Fernando, Mr. Indrasena and Mr. Morel. She told them about the words which she had copied from Mr. E.F.W. Fernando's book and that she had found some of them in the German passage. Mr. C.H. Fernando corroborates her on this point, but Messrs. Indrasena and Morel say they walked across together and did not speak to Miss Balasingham.
- 40 We did not believe them. Mr. Indrasena, for instance, denied all knowledge of the allegation and even asked us what it was, though we had already had evidence that he had discussed the matter with Miss de Silva four days before he gave evidence. After leaving Section B laboratory Miss Balasingham went to the Arts Block to get her car, and met Miss de Silva,

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Report of the  
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Inquiry  
- continued.

to whom she also disclosed the story. Mr. Sivaprakasapillai drove her home and, as she puts it, she "blurted out" the story to him. The same evening she asked him not to say anything about it because she did not want to get mixed up in it, but he had already informed Professor Pereira and Mr. Kirtisinghe.

5. Mr. E.F.W. Fernando denies that he ever had a list of German words in any of his books. He said that all his class work was in a single foolscap file and his practical work in drawing books. He was at first a little vague about exercise books but gave the impression that he sometimes did his "references" in exercise books. We had not at this stage ascertained the nature of the book from which the copying was said to have been done. Subsequently we ascertained that it was an exercise book with a bluish cover, of the same size as a University exercise book, though Miss Balasingham was not prepared to say that it had the University seal on the cover. Mr. Fernando was then asked to produce all his Zoology notebooks. He produced only one. It was a University book, apparently sold by the Co-operative Society before 1950. It contained in the front 28 pages of notes on Botany for the First Examination in Science. On the back page were a few notes on Botany and three impressions of the rubber stamp of the Zoology Department, all three signed by Mr. Fernando and one of them dated 7.12.48. We have ascertained that the stamp is available at all times to students, but we are unable to explain why a First Examination student should stamp one of his Botany notebooks with the Zoology Department stamp and go to the trouble of signing and dating one of the impressions. The middle of the book contains five sheets on the right hand page of each of which is a drawing, apparently of the circulatory system of the rat. These five sheets are of the same type of paper as the rest of the book and the book contains the correct number of sheets. The cover and the paper are in good condition, but the binding thread appears to have torn the cover. This may be due to rough usage of which the rest of the book gives no evidence, or it may be that the thread has been removed and replaced by means of a stout needle. Unlike most exercise books produced by machine, this book opens readily at the centre page. Also, it seems to have been in a press since a small

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drawing, said to have been made by Dr. Crusz, was made.

Exhibits

P.11.

Report of the  
Commission of  
Inquiry  
- continued.

6. This book was produced to us at our third meeting, immediately after Miss Balasingham gave evidence for the third time. Until that meeting nobody had mentioned anything about the circulatory system of the rat. Miss Balasingham was asked at that third meeting if she could remember anything specific in the notebook other than the German words. She said she thought there was a drawing of the arterial system of the rat, because she had copied a drawing from Mr. Fernando's book previously. Mr. Fernando (who had not heard this evidence) gave evidence immediately afterwards and produced the book. He drew pointed attention to the fact that one of the drawings (of the veins of the rat) had been corrected by Dr. Crusz. He was asked if that drawing had been copied by any other student, and replied that Mr.C.H.Fernando had done so. He was pressed to say whether Miss Balasingham had copied it. He said that he could not remember but she might have done.

7. There are in fact in Miss Balasingham's book copies of two of the drawings, and they appear on the sheet following that containing the list of German words. So far as we know they had not been seen by Mr.E.F.W.Fernando, but they were seen and carefully studied by Professor Fernando when he was shown the book by the Vice Chancellor on the day after our second meeting. After the third meeting, the Vice-Chancellor saw Dr. Crusz, who remembered correcting a drawing of the veins of the rat shown him by Mr. Fernando. He said that the writing on the drawing produced looked like his, but he was not willing to affirm positively that it was not copied. Miss Balasingham was shown the book produced by Mr. Fernando. She was not willing specifically to assert that it was not the book from which she copied the German words, but she thought it was not, because she could not remember that there was any Botany in the book. We are unable to draw any conclusion from this book either favourable or unfavourable to Mr. Fernando. The facts given in paragraph 5 raise the suspicion that the five sheets containing the drawings may have been taken from a similar book - and these books were sold by the Co-operative Society in thousands - and inserted into a Botany book. It

Exhibits

P.11.

Report of the  
Commission of  
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- continued.

is certainly remarkable that Mr. Fernando should do all his Section B Zoology in files and drawing-books until, right at the end of the course, he studies the circulatory system of the rat, which he deals with in an old Botany exercise book. We find it unnecessary to decide this point, however, since we conclude from the other evidence that he had an exercise book from which Miss Balasingham copied the German words.

8. (This paragraph gives details of the performance of Mr. E. F. W. Fernando and Miss Balasingham at the First Examination in Science, the Subsidiary Subject (Botany) and the German passage). 10

9. Asked to explain why he found the German passage so easy Mr. Fernando stated that he had read two articles in German for his research projects. Also, he had at first found the passage difficult but had then noticed that many of the words were similar to English words. He had thus been able to give a free translation of most of it. We are unable to accept this second argument. The passage is easy to anyone who knows a little German, but hardly any of key words are recognizable by one who knows English only. It should however be added that marks were given for the comment as well as for the translation; and, since the passage deals with the leech, anybody who could understand its drift could earn marks for the comment. 20

10. (This paragraph begins: "In accordance with the usual practice in respect of this paper, the German passage was selected by Professor Fernando and approved by Mr. Kirthisinghe. It was taken from a book belonging to Professor Fernando, which is kept in a locked cupboard of which he alone has a key. So far as he knows, there is no other copy of this book in the Island". The procedure in setting, approving and printing the paper is then explained in detail, together with the security precautions). 30

11. (This paragraph begins "There is no evidence whatever of the point at which the leakage occurred". The remainder of the paragraph gives the dates of the various stages and shows that they give no help towards solving the question of the source of the leakage). 40

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P.11.

Report of the  
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- continued.

10 12. (All the safety precautions depend not merely on the bona fides of the senior officers concerned but also on their following a rigid procedure at all times. All examiners know that there are times when they forget the precautions e.g. when an examiner is called from his room and forgets to lock a drawer or a safe. There is no evidence on which we can found an accusation either of male fides or of negligence against any officer, teacher or other employee of the University.

13. Our findings are :-

- (1) Mr.E.F.W.Fernando acquired knowledge of the nature or substance of the German question in Zoology Paper V before the date and time of the examination and must therefore be reported to the Board of Residence and Discipline under the General Act, Chapter VIII, Part I, Section 8.
- 20 (2) There is no evidence as to the manner in which this knowledge came to Mr. E.F.W. Fernando.

P.12. - LETTER FROM PLAINTIFF TO VICE CHANCELLOR

P.12.

CONFIDENTIAL

82, Barnes Place,  
Colombo 7.  
7th August 1952.

Letter,  
Plaintiff to  
Vice-Chancellor.  
7th August,  
1952.

The Vice Chancellor,  
University of Ceylon.

Dear Sir,

30 I thank you for your letter of 29.7.52 and the copy of the report which you were so kind as to send me. I have already returned under registered cover the latter document.

2. At the outset I wish to correct a wrong impression that seems to have been gathered by you from the earlier part of my memorandum. It was never my intention to complain that the inquiry was not conducted on the lines of a case in Court. I respectfully agree with Mr.A.E.Keuneman, Q.C., that an inquiry of this nature need not be so

Exhibits

P.12.

Letter,  
Plaintiff to  
Vice-Chancellor.  
7th August,  
1952  
- continued.

conducted. What, however, I do submit is that the elementary principle of requiring an accused person to be given every possible opportunity of clearing himself of the accusation seems, no doubt unwittingly, to have been overlooked in this instance. I reiterate once again that had I an opportunity of confronting the various witnesses and testing their evidence by cross-examination I would have satisfied the Commission as to my innocence.

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3. With regard to the material placed before the Commission at the inquiry, as revealed by the document forwarded to me by you, not a few allegations seem to have been made which are, in fact, untrue. To cite but one glaring instance, Miss Balasingham has stated that when she questioned me immediately after the Examination as to how I did, I replied that "the German passage was very easy". I deny having given her any such reply. This statement of hers is false. This sort of brazen allegation made without contradiction and accepted as true has, I believe, contributed in no small measure to the reliance placed by the Commission on Miss Balasingham's evidence. How many other similar statements were made and accepted I am not to know. I can only conclude that the original suspicions I had entertained as expressed in my memorandum to you do not seem unwarranted.

20

4. However, I note, not without deep regret that in consequence of the inquiry you are "satisfied", that I am guilty of the charge. I still submit that I am innocent and that my conscience is clear. I am only sorry that the evidence on which you have been satisfied is evidence which I shall always regard as tainted. If I have convinced you that there is some reason for my belief, perhaps it is still not too late for you to reconsider the merits of the matter.

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5. Finally, I wish to urge that the Board of Residence and Discipline shall take into serious consideration the fact that the only evidence against me was entirely circumstantial and that I had no opportunity of questioning the witnesses who testified against me. Protesting as I do, my innocence, I have no other redress before me except to take whatever steps remain to prevent my whole career being ruined. The stigma of an accusation such as this, which is completely unfounded and

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which has no basis in fact, will, unless it is removed forthwith, remain to handicap me through life. These are added considerations which, in my view, justify my asking once more that the whole matter be reconsidered and that I be granted the justice which I will not have received until I am cleared of this charge.

Yours faithfully,

Sgd. E.F.W.Fernando.

(E.F.W.Fernando).

Exhibits

P.12.

Letter,  
Plaintiff to  
Vice-Chancellor.

7th August,  
1952

- continued.

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P.10. - LETTER FROM VICE-CHANCELLOR TO PLAINTIFF

University of Ceylon  
Colombo.  
14th August 1952.

Ref: No.D.

E.F.W. Fernando, Esq.,  
82, Barnes Place,  
Colombo 7.

Dear Mr. Fernando,

P.10.

Letter,  
Vice-Chancellor  
to the  
Plaintiff.

14th August,  
1952.

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Thank you for your letter of 7th August 1952, which I will lay before the Board of Residence and Discipline at its next meeting.

I also acknowledge the return of the copy of the report of the Committee.

Yours sincerely,

Sgd. Ivor Jennings.

Vice-Chancellor.



ExhibitsP.13. - LETTER FROM VICE-CHANCELLOR TO PLAINTIFF

P.13.  
Letter,  
Vice-Chancellor  
to Plaintiff.  
11th September,  
1952

Ref. C.P.F.

E.F.W.Fernando, Esq.,  
82, Barnes Place,  
Colombo 7.

University of Ceylon  
Colombo.  
11th September 1952.

Dear Mr. Fernando,

The Board of Residence and Discipline considered your letter of 7th August, 1952 and decided that the original decision should stand.

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Yours sincerely,  
Sgd. Ivor Jennings,  
Vice-Chancellor.

## P.14.

P.14. - LETTER FROM PLAINTIFF TO VICE-CHANCELLOR

Letter,  
Plaintiff to  
Vice-Chancellor.  
24th September,  
1952.

The Vice-Chancellor,  
University of Ceylon.

82, Barnes Place,  
Colombo 7.  
24th September, 1952.

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Dear Sir,

I have to acknowledge your letter of the 11th September and I note with pain the summary nature of your communication, which suggests that my submissions were considered by the Board of Residence & Discipline as of negligible or no commentable value as against the evidence and conclusions which the Commissions put up to the Board of Residence & Discipline in your report on the subject. I have therefore, now, no alternative but to submit in detail, for my part, what I consider to be an impartial analysis of the evidence which the Commission has collected and the conclusions it has formed, which I trust you will be gracious enough to put before the members of the Commission as well as before the members of the Board of Residence & Discipline for their sympathetic consideration.

30

In making such an analysis I have also no

option but to compare the procedure adopted by the Commission of Enquiry in this case with the one adopted in the normal Courts of Justice in this country. I must state at the outset that two very elementary principles of justice have been denied to me as an accused person. These are :-

1. Having the opportunity of questioning witnesses who have made allegations or given evidence in support of allegations made against me.
2. Having the opportunity of following the proceedings whereby such evidence is construed as a proof of my guilt.

This situation implies that the Commission of Enquiry and the Board of Residence & Discipline are of opinion that the entire, relevant evidence has been presented in the report of the Commission. And, this report in spite of its dominating tone of suggestion and implication and its content of only circumstantial evidence, presents fairly and without prejudice to the accused person sufficient justification for condemning him although he has no opportunity of appeal against the sentence. If I am considered wrong or unwarranted in the above assumption, I humbly beg to know in what respect this is so.

The finding then is that I have committed the offence of acquiring knowledge of the nature or substance of the German question in Zoology Paper V before the date and time of the examination.

The associated facts are as follows :-

The conviction is based entirely on the "unproved" assertion of one single individual, that I had for some weeks before the examination a list of German words in an exercise book, which words were subsequently found to occur in the German passage set in the Zoology paper. The conviction is, moreover, meted out under circumstances in which there is no provision for an appeal and in spite of no evidence being found in which such alleged knowledge came to me.

The sentence imposed on me for the alleged offence is exactly comparable in the University or Academic sense to a capital sentence of a criminal

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Court of Law. In Courts of Law, where procedure adopted is always according to strict legal formality, it is still thought necessary in order to prevent the miscarriage of justice, not merely to allow the accused the opportunity of hearing and questioning the evidence brought against him and of answering the charges that have been framed against him before sentence is actually passed, but even to assign at the expense of the State a defending Counsel for the accused if he is not fortunate enough to be able to employ such Counsel himself. In the face of such ruling principles of justice, it is difficult to understand why sentence is passed on me not merely ignoring every one of these principles but adopting an entirely new and unheard-of precedent of condemnation on what is nothing more than the evidence of Miss Balasingham.

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I shall deal with the evidence in question part by part in the sequence set out in the report of the Commission and I would beg the Commission and the Board of Residence & Discipline to consider in fairness to me the argument which I humbly submit as very relevant to this case.

20

(a) The allegation originated with Miss Balasingham

The word "originated" in this context might suggest that the allegation was made by more than one person. Far from this being so, the only corroboration that could be obtained for the allegation were statements by two students and the brother-in-law of Miss Balasingham and this allegation had been made to them individually by Miss Balasingham.

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(b) Mr. (E.F.W.) Fernando is a nephew of Professor W.Fernando, Professor of Zoology . . . . . It (this relationship) necessarily affected Professor Fernando's evidence. It also affected the evidence given by the students.

This statement implies that the Commission was apparently not willing to consider any relevant evidence favourable to me given by these individuals. In other words, a prejudiced attitude on the part of the Commission is inevitable. Apparently the Commission failed to realise that by adopting

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such an attitude they would be penalising me unfairly for no fault of my own. Further, if Professor Fernando's evidence in this case is considered as necessarily biased evidence on account of family relationship, then does it not follow on the same premise that Mr. Sivaprakasapillai's evidence could also be considered as biased evidence?

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10 (c) Miss Balasingham states, that owing to Mr. Fernando's behaviour she suspected there was something in one of his notebooks which he did not wish the other students to see.

In this statement she makes a definite allegation of suspicious behaviour which is naturally very relevant to her main allegation. Is it not elementary justice to have enquired as to exactly how this suspicious behaviour was indicated, on what occasions, when and there, and to have checked or corroborated any evidence that she might have presented if so confronted. On the other hand,  
20 if this was done, why is no mention made of it in the report?

(d) The list in Miss Balasingham's book was apparently not shown to anyone until our enquiry began. It was shown to Mr. Sivaprakasapillai and produced to us at our request.

30 Since in the earlier part of the report, Professor Fernando's evidence is considered by the Commission as biased evidence owing to family relationship, it follows that Mr. Sivaprakasapillai's evidence should also be regarded as biased evidence for the same reason, and hence is of little value as corroboration of Miss Balasingham.

(e) A large part of our enquiry was necessarily directed towards ascertaining whether the list really was in the notebook before the examination began. In our opinion it was.

This opinion is presumably based on the evidence presented in paragraph 5 of the report which is as follows :-

40 (1) Miss Balasingham was able to describe the copying with a wealth of circumstantial detail of no direct relevance to the story as such, which carried conviction. If the story was invented it was a remarkably successful invention.

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It is surprising that this "wealth of circumstantial detail" is regarded as being of no relevance, specially when it is stated to have helped to convince the Commission of the truth of Miss Balasingham's statement?

The circumstantial details nowhere appear in the report - an omission which assumes significance as the possibility of a remarkably successful invention is actually admitted?

- (2) Another student, Miss Y.de Silva, was sitting next to Miss Balasingham on the occasion the copying is said to have been done. Miss Silva denies that she saw Miss Balasingham copying but she admits that Miss Balasingham told her about the list before the examination. Miss de Silva is a second year student and we believe she could have told us more. 10

The word "denies" in this context suggests that Miss Balasingham's statement to the effect that Miss de Silva had seen her copying had been accepted as true and Miss de Silva is consequently placed in the position of an untruthful witness without any evidence to justify this, an attempt being made to strengthen the picture by the statement about Miss de Silva which follows. 20

- (3) Miss Balasingham's behaviour immediately after the examination was entirely consistent with her story.

The point at issue here is whether her story is consistent with the evidence available. It will be seen from the report that her actual statements are supported only by one witness while being denied by three witnesses. The statements in question are :- 30

- (a) She asked Mr.E.F.W.Fernando how he did and he said that the German passage was very easy.

This statement is an untruth. She did not speak to me, nor did I speak to her on this occasion. 40

- (b) She then walked back to the Section B laboratory with Mr.C.H.Fernando, Mr.Indrasena and Mr. Morel. She told them about

the words she had copied from Mr. E. F. W. Fernando's book and that she had found some of them in the German passage. Mr. C. H. Fernando corroborated her on this point, but Messrs. Indrasena and Morel say that they walked across together and did not speak to Miss Balasingham. We do not believe them. Mr. Indrasena, for instance, denied all knowledge of the allegation and even asked us what it was though we had already had evidence that he had discussed the matter with Miss Y. de Silva four days before he gave evidence.

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It is relevant to mention here that all the statements of Miss Balasingham could have been concocted easily in association with Mr. C. H. Fernando, the only witness who corroborates her story. It seems to me that the weight of evidence on this point is in my favour.

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(f) He (myself) was at first a little vague about exercise books but gave the impression that he sometimes did his "references" in exercise books.

30

This statement is a complete misunderstanding by the Commission of my attitude and my replies to the questions put to me by them. I made no statement that "I sometimes did references in exercise books", and in the absence of such a statement how was the wrong impression formed? Since this paragraph 5 concerns features about this book, I may state here the exact facts about it. The exercise book referred to was one used by me originally for some Botany notes which had left a considerable number of pages still unused. In consequence it had been used by me to make diagrams of the blood system of the rat which I required for demonstration classes in progress during the January-March session. These diagrams were made on five unused pages starting from the middle of the book. On the last page of this book was a list of references in Botany. I used this book frequently for my demonstration classes. On no occasion did I lock it up or make it specially inaccessible to any of my fellow-students. It would have been possible therefore, for any of them to have made copies of the diagrams in this book without my knowledge.

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(g) Mr. Fernando was asked to produce all his Zoology notebooks (or exercise books as mentioned in the letter of the Vice-Chancellor to me). He produced only one.

This would seem to imply that I had other exercise books which I did not produce. It must be stated here, as may be seen in the same paragraph of this report, that I clearly stated to the Commission that I made all my Section B lecture notes on foolscap which I kept in files. In this connection, I must state something which is relevant but has not been mentioned in the report. On the first day of the Enquiry for which I was summoned, I was asked by Mr. Keuneman whether I brought the book. To which I replied that I was not aware of what book he was talking about. Then I was told that it was the exercise book in which I was alleged to have a list of German words. My reply was that I had no exercise book with any German words. Then I was asked to produce everything which had German in it. I replied that all my German was in loose papers. Then I was asked to bring only what contained the German, which I produced the following day. Mr. Keuneman specifically emphasised that I bring only what had German.

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(h) On the back page were a few notes of Botany and three impressions of the rubber stamp of the Zoology Department all these signed by Mr. Fernando and one of them dated 7.12.48. The stamp is available at all times to students, but we are unable to explain why a first examination student should stamp one of his Botany notebooks with the Zoology Department stamp and go to the trouble of signing and dating one of the impressions.

30

It is relevant to enquire here why this long statement is included in the report if no explanation can be vouchsafed by the Commission. It is possible that a false impression had been created in the minds of the members of the Commission by this detail.

40

(i) The cover and the paper are in good condition, but the binding thread appears to have torn the cover. This may be due to rough usage of which the rest of the book gives no evidence or it may mean that the thread has been removed and been replaced by means of a stout needle.

In this statement an alternative which throws a reflection of dishonesty on me is suggested without the other obvious possibility being properly examined. The Commission did not address any question on this point to me. Had they done so, I would have informed them that the book is carried in my hand when I cycle and frequently on such occasions it becomes necessary to clutch the handle-bars and brakes with both hands, thus exposing the binding of the books carried in the hand to comparatively rough treatment.

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(j) Unlike most exercise books produced by machine, this book opens readily at the centre page.

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This suggests that the book was not manufactured by machine but hand-manufactured by me for the purpose of the enquiry. Again the obvious explanation, that if the middle page of a book is frequently used for reference it would soon necessarily open readily at this page, is completely overlooked.

(k) Also it seems to have been in a press since a small drawing said to have been made by Dr. Cruz was creased.

30

The insinuation here again is that these pages containing the diagrams have been introduced by me from another book and the book subsequently closed in a press to obscure the fact of introduction. Why is this relatively important point kept as a hanging suggestion instead of being properly pursued? Has the fact that it may be an original crease, as occasionally found in new exercise books, been examined and eliminated? Has the crease itself distorted the page as would be done if the crease was caused subsequent to manufacture or recently? Surely, if these points are investigated, it must enhance the value assigned to the crease in question.

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(l) Miss Balasingham was asked at the third meeting if she could remember anything specific in the notebook other than the German words. She said she thought there was a drawing of the arterial system of the rat because she had copied a drawing from Mr. Fernando's book previously.



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If this statement is examined it will be clear that it does not hang together. How could Miss Balasingham think that there was a drawing of the arterial system of the rat in the book from which she alleges she copied the German words because she had copied a drawing from a book of mine previously. It is surely obvious that for Miss Balasingham to identify the book from which she copied the German words as the same book from which she had previously copied a drawing of the arterial system of the rat, she must either have noticed the drawing of the arterial system of the rat at the time she alleges she surreptitiously stole my book to copy the German words or, must have noticed the identity of the book with the one containing the arterial system of the rat by some other feature in the book. Why then has she omitted to state this, and why has the Commission failed to clarify this point? Has it not been obvious to the Commission that when a judgment is made in a case based entirely on the assumed truthfulness of one single witness, it is very necessary to show that the evidence of this witness is at least completely clear and above the slightest suspicion of falsehood or error. 10 20

(m) Mr. Fernando gave evidence immediately afterwards . . . . . He was asked if that drawing had been copied by any other student and replied that Mr.C. H.Fernando had done so. He was pressed to say whether Miss Balasingham had copied it. He said that he could not remember but she might have done. 30

This is not correct. In reply to the question by the Commission whether any student had copied this drawing, I stated that I was not aware of any student having done so.

(n) After the third meeting the Vice-Chancellor saw Dr. Crusz, who remembered correcting a drawing of the veins of the rat shown by Mr. Fernando. He said that the writing on the drawing looked like his, but he was not willing to affirm positively that it was not copied. 40

If there was a suspicion of Dr.Crusz's writing being copied, which could not be cleared by reference to Dr.Crusz, why in fairness to me (since this does cast a reflection on my integrity) was not a handwriting expert asked to pronounce his opinion

and clear this point? And if this amount of trouble is not warranted in the opinion of the Commission, how can they justify including it in their report and thereby casting a slur on my integrity without any vestige of proof?

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(o) Miss Balasingham was shown the book produced by Mr. Fernando. She was not willing specifically to assert that it was not the book from which she copied the German words, but she thought it was not, because she could not remember that there was any Botany in the book .....

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The facts given in paragraph 5 raise the suspicion that the five sheets containing the drawings may have been taken from a similar book and inserted into a Botany book.

At this point, some very obvious questions can be raised to clarify the suspicion mentioned above of sheets being inserted, which are not asked by the Commission. These are:

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1. Did Miss Balasingham notice any features regarding this exercise book of mine from which she copied the diagram of the arterial system of the rat, other than these diagrams? That is, did it contain notes, was it largely blank, etc.?

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2. Could she not say whether that book of mine said to contain the list of German words had any matter other than the diagrams mentioned, even though she might not have been able to ascertain the actual substance of the contents?

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3. What useful purpose can be ascribed to me in suggesting that the diagrams of the rat were removed from some other book and introduced into a Botany book, especially as this might have led to a proof of manipulation on my part, had Miss Balasingham remembered clearly some special feature associated with the book from which the diagrams are supposed to have been removed?

To sum up briefly the impression given by this long account of evidence on this book, is that the Commission appears to be prejudiced in the examination of this evidence. In fact, the only

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way in which its meaning becomes sensible is on the assumption that Miss Balasingham's evidence has already been accepted by the Commission as a proved and established fact.

(p) This paragraph (8) gives details of the performance of Mr.E.F.W.Fernando and Miss Balasingham at the first examination in Science, the subsidiary subject (Botany) and the German passage.

Without disclosing confidential details, is it not possible for the Commission to state here whether my performance in these examinations follow a natural sequence or do not, because this can be the only purpose of bringing this matter into the enquiry.

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(q) Asked to explain why he found the German passage so easy, Mr. Fernando stated that he had read two articles in German for his research projects. Also he had at first found the passage difficult, but had then noticed that many of the words were similar to English words. We are unable to accept this second argument. The passage is easy to anyone who knows a little German, but hardly any of the key words are recognisable by one who knows English only.

20

The Commission's finding on this point is incorrect, possibly, as in all probability not one of the members of the Commission was familiar with technical Zoological terms in either English or German and with the biological features of the animal concerned in this passage. My statement to the effect that there was some similarity in English and German terms naturally applies to them as they would strike an individual with biological knowledge and which would not be at all obvious to laymen on the subject.

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(r) Paragraphs 11 & 12.

These emphasise unmistakably the complete absence of direct evidence in this case, but no account of their significance is taken by the Commission in their procedure for finding evidence or drawing conclusions from uncorroborated or purely circumstantial evidence. Why is this so?

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In such a very long and continuous report, is

it not natural and certainly very desirable to summarise or state very briefly in conclusion the essential points of evidence on which the findings of the Commission are based? Such a summary is conspicuous by its absence. Also conspicuous by absence is the fact that circumstantial evidence in my favour is given absolutely no consideration in the formulation of the final findings of the Commission, and in no place in the report in which favourable circumstantial evidence is mentioned, is its significance considered or indicated. It is relevant, therefore, for me to mention briefly such circumstantial evidence here. This can be summarised thus:

1. The language question by its very nature falls within the category of easy questions to students who have studied the language with reference to their main subject of study. The actual passage is of no unusual difficulty.
2. The association of the language question with the essay in one paper indicates its value from the point of view of credit as relatively small. As credit is also given for biological comment on the passage, the credit for actual translation is even still smaller.
3. Is it at all reasonable to think that a student of my calibre (my University record may be compared with any of the better class Section B students in any comparable subject at any time) who has moreover attended classes in German for over a period of two years and who has had in the course of the current year to read German biological articles for research projects in which he was engaged, to have had recourse to the dishonest procedure of obtaining knowledge of the German question beforehand?
4. Is it probable that, assuming I had been capable of committing such a dishonest act, I would be so foolhardy as to expose myself to the possibility of detection in such an obviously stupid manner as that alleged against me?
5. Presuming, again, that I had a list of words

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concerned with the questions in the forthcoming examination, is it probable that I would have kept them in a book I frequently carried to the laboratory for purpose other than the study of German or of study not directly concerned with the forthcoming examination?

6. In a case in which Section B students of a department are concerned, is not the opinion of the Head of the department and of other staff under whom the students have worked of some importance in assessing value to circumstantial evidence? such opinions are conspicuous by their absence in this report. Can the opinion of the Head of the department be completely discounted because he happens to be related to the student concerned? 10
7. Is there not in the circumstances of this case room for petty jealousy and malice to get expression in untrue allegations and false evidence, and is it not essential to eliminate all possibility of such before accepting as true allegations which are not capable of being proved? 20
8. Is it not essential to ensure that if the evidence of one witness is accepted as conclusive without direct proof, it becomes essential to ensure that the character and conduct of such a witness is completely exemplary and above taint of suspicion in the various circumstances of the case? Has this been done? 30
9. Is it not a fact that the whole case hinges on the unproved allegation of one individual who admits:-
  - (a) having stolen a book from a fellow-student (Miss Balasingham in her statement that she surreptitiously took my exercise book and extracted a list of German words therefrom).
  - (b) suspecting dishonesty by which both she as well as her fellow-students would be unfavourably and unfairly affected, still refraining from reporting this immediately to the Vice-Chancellor, who could rectify the matter. 40

(c) of giving, what in her opinion was clear proof of such dishonesty, to more than one third party, but lacking the courage to report it to the proper authorities who alone could administer justice in the case.

10. Can the evidence of such a witness be accepted as completely true and unaffected by malice or jealousy and motivated only by principles of truth and justice?

10

I must also mention here that in the original letter No.D of 16.5.52 of the Vice-Chancellor to me on this matter, he stated that an allegation had reached him in writing, that I had acquired knowledge of the contents of one or more of the papers set at the final examination Section B Zoology before the date of the examination. In the report of the commission, however, there is no mention of any allegation other than one of having some knowledge of the contents of the German passage in Zoology Paper V of the Section B examination. Indeed I may add here that I was kept in ignorance of the particular paper to which this allegation referred until I was confronted with it at the first interview I had with the Commission. It is very important, however, both from the point of view of strengthening the circumstantial evidence in this case as well as establishing the absence of dishonesty and malice in the allegations made against me, that every allegation connected with this case be carefully examined.

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30

Finally, in view of all the evidence, remarks and reports of this case, does the Commission of Enquiry and the Board of Residence & Discipline feel completely satisfied that there is no possibility of my innocence in this matter?

I am enclosing 2 extra copies of my letter which I respectfully request you to send the Dean of the Faculty of Science and the Head of the Zoology Department respectively, as they are the principal officers of the University other than yourself who have been concerned with my career as a science student of this University.

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Yours faithfully,  
Sgd. E.F.W.Fernando.

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P.14.

Letter  
Plaintiff to  
Vice-Chancellor.

24th September,  
1952

- continued.

ExhibitsP.15. - LETTER FROM PLAINTIFF TO VICE-CHANCELLOR.

P.15.

Letter  
Plaintiff to  
Vice-Chancellor.  
27th November,  
1952.

Confidential.

82, Barnes Place,  
Colombo 7.

27th November 1952

The Vice-Chancellor,  
University of Ceylon,  
Peradeniya.

Dear Sir,

1. For some time now I have been anxiously awaiting a reply to my communication sent to you by registered post on the 27th September 1952 appealing for a reconsideration of the decision made against me by the Board of Residence and Discipline. Please be good enough to let me know whether this appeal has been placed before the Board and the Commission of Inquiry for their sympathetic consideration as humbly requested by me. If it has not yet been placed before them, please let me know when it is likely to be so placed.

10

2. I submit once again that I have been found guilty of an offence which I never committed. The anxiety and pain of mind which I am now undergoing as a result of the finding of the Commission of Inquiry is something therefore which I trust you will not find difficult to understand.

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3. Since submitting my appeal I have heard that one member of the Commission of Inquiry, Professor A.W.Mailvaganam, is related to Miss Balasingham on whose complaint this inquiry was in the first instituted, and on whose testimony the Commission has placed so much store. While in no way wishing to question Professor Mailvaganam's personal integrity and impartiality, I wish humbly to submit that if this fact had been brought to your notice earlier you, Sir, would perhaps have included in the Commission a more disinterested person in place of Professor Mailvaganam. In view of the important role played by Miss Balasingham in these proceedings and, moreover, in view of the fact that her evidence as to certain incidents was believed in preference to mine, it is understandable if I now take the view that the inquiry was not conducted according to the strict principles of natural justice.

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4. I would, therefore state once again, that in view of my earlier submissions and the added consideration referred to in the last paragraph this is eminently a matter which merits review by you. I conclude in the hope that you will grant me the relief which I claim I am entitled to.

Yours faithfully,  
Sgd. E.F.W.Fernando.

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P.15.

Letter  
Plaintiff to  
Vice-Chancellor.

27th November,  
1952

- continued.

P.16. - LETTER FROM VICE-CHANCELLOR TO PLAINTIFF

P.16.

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University of Ceylon,  
University Park,  
Peradeniya.

5th December, 1952.

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo 7.

Dear Sir,

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The Board of Residence and Discipline has not met since the receipt of your letter of 27th September 1952. Most of the work of the Board is now delegated to committees in Peradeniya and in Colombo respectively, and accordingly it meets rarely. No doubt a meeting will be needed before the end of the session, and I will then place your letter before the Board. You will appreciate that I cannot justify the expenditure of University funds on a special meeting to consider a matter which has already been considered twice.

Yours faithfully,

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Sgd. Ivor Jennings,

Vice-Chancellor.



<u>Exhibits</u>	<u>P.17. - LETTER FROM PLAINTIFF TO VICE-CHANCELLOR</u>	
P.17. Letter Plaintiff to Vice-Chancellor. 7th December, 1952.	REGISTERED EXPRESS  Sir Ivor Jennings, Vice-Chancellor, University of Ceylon, University Park, Peradeniya.	82, Barnes Place, Colombo 7.  7th December 1952
	Dear Sir,	10
	Thank you for your letter of 5th December. I fully appreciate the difficulties confronting you regarding arrangement of meetings of the Board of Residence and Discipline.	
	However, I trust that this matter will be considered at the next meeting of the Board and that you will place before the Board my letters of the 27th of September and the 27th of November and obtain for me the redress asked for.	
	Yours faithfully, Sgd. E.F.W.Fernando.	20
	<hr/>	
P.18. Letter Vice-Chancellor to Plaintiff. 8th December, 1952.	<u>P.18. - LETTER FROM VICE-CHANCELLOR TO PLAINTIFF</u>  Confidential  Ref: No.V.C.56.  Mr.E.F.W.Fernando, 82, Barnes Place, Colombo 7.	University of Ceylon, University Park, Peradeniya.  8th December 1952.
	Dear Sir,	30
	I have now checked your allegation that Professor Mailvaganam is related to Miss Balasingham. I find that Mrs.Mailvaganam's paternal aunt married a brother of the first Mrs.Balasingham, who died over 30 years ago. Miss Balasingham is the	

daughter of the second Mrs. Balasingham. If you choose to call that a relationship you are entitled to that opinion. To your question whether knowledge of these facts would have prevented me from requesting the Dean of the Faculty of Science to take part in an inquiry relating to his Faculty the answer is in the negative.

Yours faithfully,  
Sgd. Ivor Jennings,  
Vice-Chancellor.

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P.18.

Letter  
Vice-Chancellor  
to Plaintiff.

8th December,  
1952

- continued.

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P.19. - LETTER FROM PLAINTIFF TO VICE-CHANCELLOR

P.19.

REGISTERED.

82, Barnes Place,  
Colombo 7.

18th December 1952

Letter  
Plaintiff to  
Vice-Chancellor.

18th December,  
1952.

The Vice-Chancellor,  
University of Ceylon,  
University Park,  
Peradeniya.

Dear Sir,

20

With reference to your letter of the 8th instant, (Ref.No.V.C.56) I may state that what matters is not the length of time that may have lapsed between the related parties alive and dead, but the nearness of proximity of their relationship as a matter of fact.

30

I am in a position to prove that Professor Mailvaganam is the brother-in-law of one Mr. Thuraisingham, whose first cousin (sons of two brothers) Mr. T. Sivaprakasapillai, Lecturer in Civil Engineering, University of Ceylon, married Miss Balasingham of the first bed, and the informant. Miss S. Balasingham, is his sister-in-law, and as such it is in the interest of justice and fair play, that such a person should not have constituted a Member of a Board, where his interest and duty are in conflict, unless of course, under very extraordinary and urgent special considerations even though the integrity of such a person is beyond any doubt whatsoever.

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P.19.

Letter  
Plaintiff to  
Vice-Chancellor.

18th December,  
1952

- continued.

Your honour is aware of the mode of administering justice, and I may be permitted to state the following to refresh your memory:- The legal maxim "nemo debet esse iudex in propria sua causa", - no man can be judged in his own cause - that is to say, that it is a fundamental rule in the administration of justice, that a person cannot be judge to a cause in which he is a party, and also applies to a cause in which he had an interest (vide per Lord Cottenham L.C., in *Dimes v Grand Junction Canal Co.* 3, H.L. Case 759). 10

In this instant case Professor Mailvaganam has, had and will always have an interest to see that her allegation is substantiated, owing to the seriousness of the allegation in itself, and of the very serious consequences on her, if she were to be proved to be untruthful, in which event her information will be presumed to be malicious; and thus it is of paramount interest to Professor Mailvaganam to see to it that his close relative, Miss Balasingham, the informant, is safe at any costs - that is human nature as well. 20

I have not the least doubt, please Sir, that had you known the exact relationship of Miss Balasingham to Professor Mailvaganam you would never have had the Professor as a Member of the Board of Inquiry, because, Sir, for the simple reason of your being a great lawyer yourself and hence would naturally act according to established and accepted legal principles. 30

Therefore, Sir, I respectfully submit that the inquiry was bad "ab initio" and is of no avail as a decision arrived at by a Board vested with semi-judicial powers.

And, in sequence, I suggest, with due respect that you are now left with two alternatives: (a) open the Inquiry "de novo" or (b) accept the true position that the whole Inquiry has been abortive, due to the sole fact that an interested person in Professor Mailvaganam did constitute a Member of the Board of Inquiry, and hence the proceedings and the findings are contrary to accepted principles of our law as enumerated above. 40

With respect, I request that this letter be submitted to the Board of Residence and Discipline

271.

for their further consideration along with my letters dated the 27th September, 1952 and 27th November, 1952.

May I have the honour of being acknowledged of this communication as well, please Sir.

Yours faithfully,  
Sgd. E.F.W.Fernando.

Copy to Professor A.W.Mailvaganam,  
Dean, Faculty of Science, and  
Member of Commission of Inquiry.

10

Exhibits

P.19.

Letter  
Plaintiff to  
Vice-Chancellor.

18th December,  
1952

- continued.

P.20. - LETTER FROM VICE-CHANCELLOR TO PLAINTIFF

University of Ceylon,  
Peradeniya.

22nd December, 1952.

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo 7.

P.20.

Letter  
Vice-Chancellor  
to Plaintiff.

22nd December,  
1952.

I beg to acknowledge the receipt of your letter of 18th December 1952.

20

Sgd.

Vice-Chancellor.

P.21. - LETTER FROM PLAINTIFF TO VICE-CHANCELLOR

82, Barnes Place,  
Colombo 7.  
19th January 1953.

The Vice-Chancellor,  
University of Ceylon,  
University Park,  
Peradeniya.

P.21.

Letter  
Plaintiff to  
Vice-Chancellor.

19th January,  
1953.

30

Reference your letters dated 5.12.52  
8.12.52  
and 22.12.52

Exhibits

P.21.

Letter  
Plaintiff to  
Vice-Chancellor.

19th January,  
1953  
- continued.

And my letters dated the <sup>24th</sup>~~27th~~ September: 27th No-  
vember and 18th December, 1952.

Sir,

In view of the above references and in particu-  
lar your letter of 5.12.52 and mine of 18.12.52, I  
may kindly request Your Honour to let me know  
early when this subject matter be placed before the  
Board of Residence and Discipline, to enable same  
to come to a decision, in the light of the fresh  
findings, ascertained for the first time and em-  
bodied in my letter of 18.12.52; so that I may  
without undue delay seek such other remedy else-  
where, if necessary.

10

Thanking you, Sir, for the favour of your kind  
attention with the least possible delay.

Yours faithfully,

Sgd. E.F.W.Fernando.

P.22.

Letter  
Vice-Chancellor  
to Plaintiff.

20th January,  
1953.

P.22. - LETTER FROM VICE-CHANCELLOR TO PLAINTIFF

University of Ceylon  
University Park,  
Peradeniya.  
20th January, 1953.

20

Ref: No.D.

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo, 7.

Dear Sir,

The question raised by your letters will be  
considered by the Board of Residence and Discipline  
at its first meeting. It has not met since the  
Faculties of Oriental Studies and Arts moved to  
Peradeniya.

30

Yours faithfully,

Sgd. Ivor Jennings,

Vice-Chancellor.

P.23. - LETTER FROM VICE-CHANCELLOR TO PLAINTIFF

Exhibits

University of Ceylon,  
University Park,  
Peradeniya.  
16th March, 1953.

P.23.

Letter  
Vice-Chancellor  
to Plaintiff.  
16th March 1953.

Ref: No.D.

Mr.E.F.W.Fernando,  
82, Barnes Place,  
Colombo 7.

Dear Mr. Fernando,

10 At its meeting on the 12th March 1953 the Board of Residence and Discipline considered your letters of 24th September, 27th November and 18th December 1952. In its opinion the material which you have placed before the Board does not justify the reopening of the inquiry. Mr.A.E.Keuneman and I concur in that decision. Professor Mailvaganam has expressed no opinion in view of the allegations made against

Yours sincerely,  
Sgd. Ivor Jennings,  
Vice-Chancellor.

20

D1. - THE CALENDAR OF THE UNIVERSITY OF CEYLON  
FOR THE SESSION 1950-51. THE GENERAL ACT NO.1.  
CHAPTER VIII PART I.

D.1.

The Calendar of  
the University  
of Ceylon for  
the Session  
1950-51.  
The General Act  
No.1 Chapter  
VIII Part I.

CHAPTER VIII

Examinations

PART I

Examinations Procedure

30

1. The administrative arrangements for University Examination shall be made by the Registrar in consultation with the Vice-Chancellor. In other respects they shall be conducted by Boards of Examiners appointed by the Senate after consulting in the case of an examination leading to a degree, the appropriate Faculty or Faculties.

2. There shall be a separate Board of Examiners for each of the following examinations:-

Exhibits

D1.

The Calendar of  
the University  
of Ceylon for  
the Session  
1950-51.

The General Act  
No.1 Chapter  
VIII Part I.  
- continued.

Preliminary and Scholarships Examination;	
First Examination in Arts;	
First Examination in Science;	
First Examination in Laws;	
First Examination for Medical Degrees;	
Final Examination in Arts;	
Final Examination in Science;	
Final Examination in Laws;	
Second Examination for Medical Degrees;	
Third Examination for Medical Degrees;	10
Final Examination for Medical Degrees;	
First Examination in Dental Surgery;	
Second Examination in Dental Surgery;	
Third Examination in Dental Surgery;	
Final Examination in Dental Surgery;	
Special Examination in Dental Surgery;	
First Examination in Agriculture;	
Second Examination in Agriculture;	
Final Examination in Agriculture;	
First Examination in Veterinary Science;	20
Second Examination in Veterinary Science;	
Third Examination in Veterinary Science;	
Final Examination in Veterinary Science;	
M.A. Examination;	
M.Sc. Examination;	
L.L.M. Examination;	
M.Sc. Agriculture Examination;	
Entrance Examination Diplomas in Sinhalese and Tamil;	
First Examination Diplomas in Sinhalese and Tamil;	30
Final Examination Diplomas in Sinhalese and Tamil;	
Ceylon History Certificate Examination;	
Examination for the Diploma in Medicine and Surgery	

## Examination for the Diploma in Education.

Exhibits

The Senate may add to the above list or provide that, for any particular year, two or more Boards of Examiners shall be combined.

Dl.

The Calendar of the University of Ceylon for the Session 1950-51.

The General Act No.1 Chapter VIII Part I.

- continued.

3. The Vice-Chancellor shall be Chairman of each of the Boards of Examiners referred to in Section 2 and shall appoint a Dean of a Faculty or a Head of a Department to be Deputy Chairman.

10 4. (1) There shall be at least two examiners for each paper and for each practical examination, and in the case of the Final Examination in Arts, the Final Examination in Science, the Final Examination in Laws, the Final Examination in Agriculture, and the Final Examination in Veterinary Science, the M.A.Examination the M.Sc.Examination, the L.L.M.Examination and the M.Sc. Agriculture Examination, one of them shall be an external examiner. The examiners for each paper shall be jointly responsible for it and shall sign the draft. Each script shall be read by two examiners, one of whom shall be the external examiners if there is one. In the event of any disagreement the marks recommended by each shall be reported to the Board of Examiners, who shall decide the marks to be awarded

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(2) Where the external examiner is unable to be present at a practical examination, the internal examiner (if there is only one) shall be assisted by an assistant examiner who for this purpose shall act as if he were an examiner.

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(3) This section shall not apply to the Preliminary and Scholarships Examination, the First Examination for Medical Degrees, the First Examination in Dental Surgery, the First Examination in Veterinary Science, the First Examination in Agriculture or the Diplomas in Sinhalese and Tamil Entrance Examination.

40 5. Each Board of Examiners shall have a scrutinising committee consisting of the Vice-Chancellor, the deputy-chairman and such other persons, not exceeding three in number, as the Senate may appoint. The scrutinising committee shall have power to examine all papers, to modify any question in respect of language, and to refer back to



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VIII Part I.  
- continued.

the examiners or to the internal examiner, with their suggestions, any paper containing questions which appear to them to be unsuitable or unsatisfactory.

6. The Senate may make Regulations containing instructions to examiners or to Boards of Examiners, and such Regulations shall be secret. In accordance with such instructions, if any, the Board of Examiners shall compile the pass lists and where honours or distinctions may be awarded, shall determine which candidates are recommended for honours or distinctions. The lists, as recommended by the Board of Examiners, may be published by the Registrar, but he shall notify that they are subject to confirmation by the Senate; and the lists shall not be regarded as final until they have been approved by the Senate. The names of candidates recommended for scholarships, exhibitions, prizes, medals or other awards shall not be published until the award had been made by the Senate except in the case of awards on the Preliminary and Scholarships Examinations, the Diplomas in Sinhalese and Tamil Entrance Examination, the First Examination for Medical Degrees and the First Examination in Dental Surgery and the First Examination in Veterinary Science.

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7. Where the Vice-Chancellor has reason to believe that the nature or substance of any questions or the content of any paper may have become known before the date and time of the examination to any person other than the examiners for that paper, the members of the scrutinising committee, the Registrar, and any person authorised by the Registrar to handle the paper he may order the suspension of the examination, or the cancellation of the paper or the setting of a new paper by the same or different examiners; and for the purposes of any new paper the Vice-Chancellor may act as scrutinising committee.

30

8. Where the Vice-Chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination, or has attempted or conspired to obtain such knowledge, the Vice-Chancellor may suspend the candidate from the examination or remove his name from any pass list,

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and shall report the matter to the Board of Residence and Discipline for such further action as the Board may decide to take.

8a. Where the Board of Residence and Discipline is satisfied that any person who is not a candidate at an examination has done any act which, if he were such a candidate, would be within the terms of Section 8 of the Part, the Board may -

- (1) report the matter to the Council for such action under Section 55 of the Ordinance or otherwise as the Council may think fit; or
- (2) order that he be not admitted to any University examination or to any course of study in the University for a definite period or an indefinite period or at any time.

9. (1) No book or paper or printed or written document or picture, other than a book or paper authorised by Act or Regulation, may be taken by any candidate into an examination room, nor may any candidate receive any such book or paper or document or picture from any other person while he is within the examination room, other than a book or paper authorised by the Registrar.

(2) Where any candidate is found to be in possession or to have been in possession, of any such book, paper, document or picture as is referred to in sub-section (1), he shall be deemed, until the contrary is proved, to have contravened that sub-section.

(3) No candidate at an examination shall read anything written by any other candidate or speak to or otherwise communicate with any other candidate at the examination or any person outside the examination room.

(3a) No candidate shall knowingly permit any other candidate to read anything written by him or to see any diagram or picture drawn by him, or to watch any practical examination conducted by him; nor shall any candidate conduct himself so negligently that an opportunity is given to any other candidate to read anything written by him

Exhibits

D1.

The Calendar of the University of Ceylon for the Session 1950-51.

The General Act No.1 Chapter VIII Part I.  
- continued.

Exhibits

D1.

The Calendar of  
the University  
of Ceylon for  
the Session  
1950-51.  
The General Act  
No.1 Chapter  
VIII Part I.  
- continued.

or to watch any practical examination conducted by him.

(4) Where an invigilator has reasonable grounds for believing that a candidate has contravened or attempted to contravene any provision of this section, he may exclude or suspend him from the examination and shall report the matter to the Vice-Chancellor as soon as may be possible.

(5) Where the Vice-Chancellor is satisfied that any candidate has contravened or attempted or conspired to contravene any provision of this section, he may suspend him from the examination or remove his name from any pass list and shall report the matter to the Board of Residence and Discipline for such further action as the Board may decide to take. 10

9a. (1) Where at an examination a candidate is directed to produce any record of practical work or field work done by him and the Vice-Chancellor is satisfied that the record produced is not his own work, either as a whole or in part, the Vice-Chancellor may suspend him from the examination or remove his name from any pass list and report the matter to the Board of Residence and Discipline. 20

(2) Where the Vice-Chancellor is satisfied that the record of practical work produced by any candidate is that of another candidate at that or any other examination or a member of the University the Vice-Chancellor may suspend from any examination or remove from any pass list the person whose record of work is produced and shall report the matter to the Board of Residence and Discipline. 30

10. If in the opinion of an invigilator at any Examination any candidate is guilty of disorderly conduct he shall warn him that, if he persists, he will be excluded from the examination; and, if the candidate nevertheless persists, he may be excluded from the examination.

The fact shall be reported as soon as possible to the Vice-Chancellor, who shall bring the matter to the notice of the Board of Residence and Discipline. 40

11. If circumstances arise which, in the opinion

of the senior invigilator at an Examination, render necessary the cancellation or postponement of the examination, he shall stop the examination and, as soon as may be possible, collect the scripts already written. He shall then report the matter as soon as possible to the Vice-Chancellor.

Exhibits

D1.

The Calendar of the University of Ceylon for the Session 1950-51.

The General Act No.1 Chapter VIII Part I.

- continued.

10 11a. An invigilator shall be empowered to require any candidate to make a statement in writing on any matter which may have arisen during the course of the examination and such statement in writing on any matter which may have arisen during the course of the examination and such statement shall be signed by the candidate. If any candidate refuses to make such a statement or to sign it the invigilator shall report the matter to the Vice-Chancellor, who may suspend him from the Examination.

20 12. If in the opinion of an invigilator at an examination circumstances arose which, in his opinion, rendered the examination unfair to the candidates or to any candidate, he shall report the matter to the Vice-Chancellor.

13. Where a matter is reported to the Vice-Chancellor under Section 11 or Section 12 he may take such action as he thinks fit; and if he orders that another examination be held such examination shall be deemed to be the examination for the purposes of the Acts and Regulations.

30 14. Where any matter is reported to the Board of Residence and Discipline under this Part, the Board may -

(1) remove the name of the candidate from any pass list; or

(2) suspend the candidate from any University examination for such period as the Board may decide, or indefinitely; or

(3) order that the candidate be suspended from the University for such period as the Board may decide or indefinitely; or

40 (4) do all or any of these acts.

14a. Where the Vice-Chancellor or the Board of

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D1.

The Calendar of  
the University  
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the Session  
1950-51.

The General Act  
No.1 Chapter  
VIII Part I.  
- continued.

Residence and Discipline is satisfied that any person has committed a breach of any provision of this Part, such person shall be deemed to have committed an offence, and the Vice-Chancellor or the Board may authorise the Registrar to give public notice of the fact that such an offence has been committed by that person, or to give private notice to any principal of a school or other person.

15. Any complaint by any candidate or by any teacher of the University that an examination has been improperly conducted or that any Act or Regulation has not been complied with shall be made to the Vice-Chancellor, who shall investigate the complaint and report the result of his investigation to the Senate; and the Senate may take such action as it thinks appropriate. 10

16. The marks awarded to any candidate for any question or any paper or examination, and all the proceedings of a scrutinising committee or Board of Examiners, shall be secret and confidential and shall not be disclosed to any person who is not a member of the Board of Examiners concerned or of the Senate: 20

Provided that -

- (1) the Registrar may authorise any member of the University staff to handle the mark lists; and
- (2) Where a Board of Examiners for an Entrance or First Examination allocates class marks as well as numerical marks, the Registrar may disclose the class marks, and where in either of those examinations the Board decides that a candidate shall be marked "Weak" in any subject, the Registrar may disclose that the Candidate is "Weak" in that subject. 30

17. The Vice-Chancellor may delegate any of his functions under Sections 7 to 15 to the Dean of a Faculty. 40

18. The Registrar shall be Secretary to each scrutinising committee and Board of Examiners, but with the approval of the Vice-Chancellor may delegate any of his functions under this Act to any member of the University staff.

19. A Board of Examiners may appoint a Committee to conduct a viva voce examination.

20. A Board of Examiners may report to the Senate on any matter relating to the standard or content of the examination and may report to the Vice-Chancellor in any case where, in its opinion a candidate is not likely to profit adequately by his continuance in the University.

10 21. Subject to any instruction that may be given by the Vice-Chancellor, the Registrar shall appoint invigilators. Subject to this part the Vice-Chancellor may give such instructions to any invigilator as he thinks fit.

22. No candidate shall be admitted to the examination room later than thirty minutes after the time fixed for the examination, and no candidate shall leave the examination room until thirty minutes have elapsed after the commencement of the examination.

20 22a. Nothing in this Part shall affect the powers of the Vice-Chancellor or the Board of Residence and Discipline under Chapter X of this Act or affect the power of the Board of Admission to refuse admission or re-admission to the University.

23. In this Act, "external examiner" means any person who is not engaged in teaching in the University.

Exhibits

D1.

The Calendar of the University of Ceylon for the Session 1950-51.

The General Act No. 1 Chapter VIII Part I.

- continued.

Exhibits

D2.

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the University  
of Ceylon  
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(Page 24)

D2. - THE CALENDAR OF THE UNIVERSITY OF CEYLON  
SESSION 1952/53. (PAGE 24)

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Board of Residence and Discipline

The Vice-Chancellor (Chairman)

	Until
Professor N. Attygalle	1954
Professor P.K. Chanmugam	1955
Professor E.L. Fonseka	1954
Professor D.E. Hettiaratchi	1955
Professor E.O.E. Pereira	1955
Professor J.L.C. Rodrigo	1955
Miss K. Mathiapparanam	1954
The Director of Physical Education (Mr. G. Brant-Little)	
The University Medical Officer (Dr. C. Weeratunga).	

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